

**IN THE COURT OF APPEALS OF IOWA**

No. 9-169 / 09-0096  
Filed March 26, 2009

**IN THE INTEREST OF B.K. and B.K. Jr.  
Minor Children,**

**S.M.K., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Tama County, Casey D. Jones,  
District Associate Judge.

A mother appeals from the juvenile court's adjudicatory order dismissing  
child in need of assistance proceedings. **AFFIRMED.**

Jennifer Steffens of Bennett, Steffens & Grife, P.C., Marshalltown, for  
appellant mother.

Norma Meade, Marshalltown, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, and Brent D. Heeren, County Attorney, for appellee State.

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for minor children.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

**DOYLE, J.**

A mother appeals from the juvenile court's adjudicatory order dismissing child-in-need-of-assistance proceedings. Upon our de novo review, we affirm.

***I. Background Facts and Proceedings.***

S.K. is the mother and B.K. Sr. is the father of B.K. Jr., born in May 2001, and B.K., born in November 2005. On the evening of August 17, 2008, the father was at home watching the children while the mother was at work. When the father started getting B.K. ready for bed, B.K. became defiant and uncooperative with his father, taking his pajamas off repeatedly and refusing to go to bed. B.K. was also hitting, kicking, and spitting at the father. The father then spanked B.K.'s buttocks four to six times over a period of approximately two to three hours. The father stated the spankings did not cause B.K. to cry out or alter his behavior in any way. The father admitted the spankings were intentional and were intended as discipline, and that the spankings were not due to any loss of control on his part.

The next morning, the mother observed a red mark on B.K.'s arm and bruising on B.K.'s buttocks while changing B.K. The mother took B.K. to the emergency room, and the injuries were reported to the Iowa Department of Human Services (Department). Following the report, the Department initiated a child abuse assessment and established a safety plan. Both parents agreed to the safety plan that required, among other things, that the father stay somewhere other than the family home until the Department's assessment could progress and until the Department, in-home services, and the family agreed for him to

return to the family home. The parents separated shortly thereafter, and the mother eventually filed for divorce.

The Department's assessment determined the allegations of physical abuse against the father were founded. However, the Department's assessment noted its risk assessment for the children returned as low. The assessment recommended the family continue to address appropriate and effective discipline techniques, reasonable expectations of the children at their respective ages, anger management issues for the father, and counseling for everyone involved regarding the dissolution of the marriage and the effects on all parties.

On October 1, 2008, the State filed a petition alleging the children were children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) (child whose parent has or is imminently likely to abuse or neglect the child) and 232.2(6)(c) (child who has or is imminently likely to suffer harmful effects as a result of either mental injury caused by the acts of the child's parent or the failure of the child's parent to exercise a reasonable degree of care in supervising the child) (2007). A contested adjudicatory hearing was held on December 16, 2008. There, the father sought dismissal of the petition, asserting the children were not CINA and the aid of the juvenile court was not required. The Department and the children's guardian ad litem disagreed and requested the children be adjudicated CINA.

On January 2, 2009, the juvenile court issued its adjudicatory order dismissing the State's petition. The court determined the State failed to present clear and convincing evidence to show B.K. Jr. was a CINA under Iowa Code sections 232.2(6)(b) or (c). Additionally, the court determined the State failed to

present clear and convincing evidence to show B.K. was a CINA under section 232.2(6)(b). However, the court determined the State presented clear and convincing evidence the father had physically abused B.K. as contemplated in section 232.2(6)(b). Nevertheless, the court agreed with the father that the aid of the juvenile court was not required and dismissed the petition.

The mother appeals.<sup>1</sup>

## ***II. Scope and Standards of Review.***

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

## ***III. Discussion.***

On appeal, the mother contends the juvenile court should have adjudicated the children in this case CINA, alleging the State met its burden in proving the grounds alleged in the CINA petition, sections 232.2(6)(b) and (c). Additionally, the mother argues the juvenile court erred in concluding further services or supervision were not necessary to protect the children. We disagree.

Upon our de novo review, we conclude the juvenile court did not err in dismissing the CINA petition. Even if the court concludes facts sufficient to sustain a CINA petition have been established by clear and convincing evidence, the court “*shall* dismiss the petition” “if the court concludes that its aid is not

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<sup>1</sup> Neither the State nor the children's guardian ad litem appealed the order. However, the guardian ad litem did file a statement reiterating his belief the children were CINA.

required in the circumstances.” Iowa Code § 232.96(8) (emphasis added). Here, the court determined the aid of the juvenile court was not required, explaining:

This incident, which all parties agree is singular in nature, happened over four and a half months ago. Both parents have been very cooperative with the [Department]. [The father] has followed a very rigid voluntary visitation policy for both [children]. While there was some delay in starting, [the father] has now involved himself in anger management and other counseling. The risk assessment for the children, conducted by [the Department], returned as low. [The assessment stated that this was] “due to a number of positive factors offsetting the use of excessive/inappropriate discipline. This family has not been involved with the Department in the past. There are no issues of domestic violence, although [the mother] has admitted she doesn’t feel totally safe right now. There are no reported issues of substance abuse or mental health counseling. There are only two children in the family and neither has behavioral or mental health issues. [The parents] have accomplished a number of very positive things, with the exception of the issues identified in this report.” The abuse report . . . also states that both parents have support from extended family members and both are able to “articulate when they struggle and have sought assistance when needed.”

The court is unsure of exactly what aid, other than that which has been accepted in the past four-months, could be given by the court to [B.K.] and this family to correct what seems to be an isolated incident. The history of the family indicates that [the parents] are dedicated, loving, and involved parents. Both parents have swatted [B.K.] before as a means of discipline, without either parent objecting. [The father] went too far one night in his discipline of [B.K.]. The injuries are upsetting, but are not so egregious or of such a nature as to shock the conscience. The court firmly believes that [the father] would never use such force on [B.K.] again, even if [the Department], the police, and the juvenile court had never been involved. Other than the “use of excessive/inappropriate discipline” by [the father] in this one instance, there are no parenting or supervision issues involving this family. After four and a half months of voluntary cooperation with [the Department], the court does not believe any further services or supervision are reasonably necessary to protect these children. Therefore, the court cannot find that its aid is required in these circumstances. Clearly, there are some communication problems between [the parents] as their marriage dissolves, but these are not issues that need to be addressed in juvenile court. Most couples who are getting divorced have communication problems, but they must find a way to work through those problems on their own.

Under the circumstances of this case, we agree with the assessment of the juvenile court that its aid is not required. We therefore affirm the juvenile court's dismissal of the CINA petition.

**AFFIRMED.**