

IN THE COURT OF APPEALS OF IOWA

No. 9-468 / 09-0683

Filed July 22, 2009

**IN THE INTEREST OF C.S.,
Minor Child,**

**J.M.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Dallas County, Virginia Cobb,
District Associate Judge.

A mother appeals the juvenile court's order adjudicating her son a child in
need of assistance. **AFFIRMED.**

Pamela Vandel, Des Moines, for appellant mother.

Karen Taylor, Des Moines, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Wayne Reisetter, County Attorney, and Sean Wieser, Assistant County
Attorney, for appellee State.

Steve Clarke, Des Moines, for minor child.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

Jennifer appeals the order of the juvenile court adjudicating her son, C.S. (born April 2001), a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (2007). We affirm.

I. Background Facts

In approximately February 2008, the Iowa Department of Human Services (DHS) received a complaint from an unknown source, alleging that Jennifer was constantly out partying and using drugs, that drug paraphernalia were lying around the home and Jennifer's car, and that C.S.'s room was covered with dog feces and vomit. Upon investigation, DHS found no drug paraphernalia and found dog feces in only one room (not C.S.'s). Jennifer initially denied drug use; however, a drug test that Jennifer consented to returned positive for cocaine. Dilution of the sample was also reported. At that point, Jennifer admitted cocaine use. The record also reflects that Jennifer has used methamphetamine and marijuana at an earlier stage in her life.

Jennifer agreed to a safety plan that placed C.S. in the temporary custody of Jennifer's mother (C.S.'s maternal grandmother), who was living with them at the time. One of the safety plan's provisions required that Jennifer and C.S. stay in the state of Iowa. Three days after Jennifer signed the plan, Jennifer's father (C.S.'s maternal grandfather) picked up Jennifer and C.S. and drove them to California.

Jennifer's father is a registered sex offender in California. This relates to a situation, known to Jennifer, where her father had improper sexual contact with one of Jennifer's girlfriends, who was fourteen years old at the time. There are

no allegations that Jennifer's father had any inappropriate contact with C.S. Jennifer and C.S. stayed in California for approximately two months from late March to late May 2008.

Jennifer and C.S. returned to Iowa at the beginning of June 2008. The record also shows that while Jennifer was using cocaine in early 2008, C.S. missed thirty-four days of school. Jennifer insists that it was her mother's responsibility at that time to get C.S. to school, and that she was unaware of this situation. However, Jennifer, her mother, and C.S. were all living in the same house. For the most part, C.S. has been performing satisfactorily in school during the 2008-2009 school year, although he has missed an above-average number of days.

C.S. has been seeing a therapist for anxiety and stress. C.S.'s therapist testified to concerns about Jennifer's struggles and anxieties rubbing off on C.S., about Jennifer's potential resumption of drug use, and about Jennifer's father being a sex offender. At the time of the adjudication hearing, Jennifer had been providing clean UA's, but she had not been following through on substance abuse treatment and she denied she was a drug addict.

In July 2008, the State petitioned to have C.S. declared a CINA. On February 10, 2009, the juvenile court adjudicated C.S. a CINA pursuant to Iowa Code section 232.2(6)(c)(2). A dispositional hearing was held on April 21, 2009, at which the juvenile court confirmed its previous finding that C.S. was a CINA on the grounds that he was imminently likely to suffer harmful effects as a result of the failure of the parent to exercise a reasonable degree of care in supervising

him. The court did order that Jennifer would retain temporary legal custody of C.S., subject to supervised visitation with C.S.'s father. Jennifer appeals.¹

II. Standard of Review

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. *Id.*; *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Our overriding concern is the best interests of the child. *K.N.*, 625 N.W.2d at 733.

III. Analysis

Jennifer argues that the court erred in finding clear and convincing evidence that C.S. was in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2). Under section 232.2(6)(c)(2), we must determine if the child has suffered or is imminently likely to suffer harmful effects as a result of the failure of the child's parent to exercise a reasonable degree of care in supervising the child. See *L.L.*, 459 N.W.2d at 494 (discussing that the provisions of Iowa Code chapter 232 are preventive as well as remedial). We believe the State carried its burden in this case.

Despite the fact that Jennifer has tested clean of illegal drugs since March 2008, she nonetheless tested positive for cocaine at that time. Jennifer's mother testified that Jennifer was not herself during that time period and thus, might have even been unaware that C.S. was not going to school. Jennifer's mother also testified that Jennifer has had periodic episodes of drug use in the past.

¹ C.S.'s father was a party to the CINA proceedings, but has not appealed the juvenile court's order. C.S.'s father and mother were never married to each other, but are currently married to other spouses.

When that occurs, according to her mother, Jennifer undergoes a personality change. Furthermore, Jennifer's trip to California with C.S., three days after signing the safety plan, demonstrated a lack of concern for C.S.'s well-being. (Jennifer justified the trip based on her father's ill-health, but the juvenile court found the explanation not to be credible, and so do we.) Upon our independent review of the record, we also agree with the juvenile court's observations that Jennifer has not forthrightly confronted her drug use and has been deceptive on a number of occasions.

Jennifer references two unreported cases: *In re L.J.*, No. 04-1386 (Iowa Ct. App. Oct. 27, 2004) and *In re W.G.*, No. 01-1860 (Iowa Ct. App. July 31, 2002). In these two cases, we found that CINA determinations were not warranted where there were only isolated instances of alcohol or drug abuse by the parents, and no evidence of impact on the children. Here, by contrast, there is evidence that C.S. has already suffered adverse effects from his mother's actions.

For the foregoing reasons, we affirm the order of the juvenile court.

AFFIRMED.