

IN THE COURT OF APPEALS OF IOWA

No. 0-969 / 10-1759
Filed January 20, 2011

**IN THE INTEREST OF K.E., C.E., & R.E.,
Minor Children,**

**R.K.E., Mother,
Appellant.**

Appeal from the Iowa District Court for Poweshiek County, Randy S. DeGeest, District Associate Judge.

A mother appeals the adjudication of her children by the district court as children in need of assistance (CINA). **AFFIRMED.**

Jane Odland of Walker, Billingsley & Bair, Newton, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael W. Mahaffey, County Attorney, and Rebecca Petig, Assistant County Attorney, for appellee State.

Carl Frederick Stiefel, Victor, for appellee father.

Dustin Hite, Oskaloosa, attorney for minor child.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Rhonda appeals the adjudication and removal of her children, R.E. (born 2005), K.E. (born 2003), and C.E. (born 2001), by the district court as children in need of assistance (CINA). Upon our de novo review, we affirm. *In re M.A.F.*, 679 N.W.2d 683, 684 (Iowa Ct. App. 2004).

The children came to the attention of the Iowa Department of Human Services (DHS) in March 2010, after a report Rhonda's live-in boyfriend, David, had physically abused R.E. Although the abuse was not confirmed, the assessment revealed David's criminal history, including a conviction for lascivious acts with a child,¹ assault, and his failure to register as a sexual offender,² as well as multiple founded DHS child abuse reports. Rhonda signed a safety plan agreeing that David would not be alone with the children, but asserted David posed no threat to the children. David claimed he was rehabilitated after being a sexual offender, but DHS social worker, Meagan See, found that no information was available to confirm this. She found that "David continues to place blame on others for his actions." DHS worker Patty Hayersperger reported that "Rhonda sees absolutely no concerns regarding David's contact with the children. Although she did sign a detailed safety plan, there is currently no way to assure that the safety plan is being complied with."

Based on these safety concerns, the children were each adjudicated a CINA pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (2009) in

¹ This conviction was in 1993.

² His failure to register was for a period from 2001-2005. By the time the State filed its child-in-need-of-assistance petition, David had been removed from the sex abuse registry.

June 2010, but remained in Rhonda's custody. Following a violation of the safety plan, the children were removed from Rhonda's custody in August 2010 and placed with their father. A dispositional hearing was held with order confirming the adjudication and removal filed on October 19, 2010.

Rhonda argues that clear and convincing evidence does not support the children's CINA adjudication or removal from her custody. The State contends the record supports the juvenile court's belief that the children face a substantial risk of harm in Rhonda's home, and adjudication was proper. See *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). As always, our primary concern is the best interests of the children. See *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998). As noted during the adjudicatory hearing, DHS's main concern is the children's safety. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating children's safety is a defining element in a child's best interests).

While Rhonda asserts she did not leave the children alone with David, and it was merely speculation by DHS that the children faced any risk, DHS worker Hauersperger testified at the dispositional hearing that Rhonda broke the safety plan. She stated, "So I had called Rhonda and spoke to her on the phone, and she said she had to pay the cable bill quick so she left the children with David." Hauersperger testified that she asked Rhonda whether she realized she broke the safety plan, and Rhonda responded "yes." Hauersperger does not believe this was an isolated incident, and leaving the children with someone who has a history of sexually victimizing young children was DHS's primary safety concern. Further, DHS worker See testified, "there's nothing in [David's] history that

indicates rehabilitation, that indicates a change, that indicates compliance . . . he is consistently non-compliant with the regulations set up for him.” We agree with the district court that continuation of the children in Rhonda’s home, while David is living there, would be contrary to the welfare of the children, in order to preserve their safety. Iowa Code § 232.96(10)(a).

We conclude the State presented clear and convincing evidence that leaves “no serious or substantial doubt as to the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). We affirm, finding adjudication is in the children’s best interests.

AFFIRMED.