

IN THE COURT OF APPEALS OF IOWA

No. 2-1177 / 12-2077
Filed January 9, 2013

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

**B.H.-W., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals from an order adjudicating her child as a child in need of
assistance. **AFFIRMED.**

Ellen Ramsey-Kacena, Cedar Rapids, for appellant mother.

Eric Nelson of State Public Defender, Council Bluffs, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman, Assistant
County Attorney, for appellee State.

Julie Trachta of Linn County Advocate, Inc., Cedar Rapids, for minor child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

MULLINS, J.

A mother appeals from the juvenile court's order adjudicating her child as a child in need of assistance. The mother argues the State did not establish by clear and convincing evidence that the child was in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and .2(6)(c)(2). For the reasons contained herein, we affirm.

I. Background Facts & Proceedings

D.S. was born in May 2012. D.S.'s mother and father are not married and are no longer living together. At all times throughout these proceedings, D.S.'s father was incarcerated for pending domestic abuse charges.

On June 15, 2012, the mother was arrested for public intoxication outside of her home. At the time, D.S. was in the care of the mother's sister. During incident, the mother said she did not care about the baby and wished the baby would die.

On August 17, 2012, the State filed a child-in-need-of-assistance petition. In support of the petition, a DHS social worker noted that the mother had a history of depression and inconsistent medication management. The mother's depression is sufficiently severe to require supplemental security income. The social worker noted that the court previously terminated the mother's parental rights to another child. The mother indicated that her parental rights were terminated because the child's maternal grandmother was using crack cocaine around the child and was currently incarcerated for an offense related to the distribution of heroin.

On September 15, 2012, the mother was arrested for her involvement in a disturbance at a bar in Cedar Rapids. While in the police car, she made comments to the arresting officer wishing both the officer and his mother would die. She subsequently pleaded guilty to public intoxication and disorderly conduct. This conviction was the mother's fourth public intoxication conviction in the past four years. The mother subsequently attended a substance abuse evaluation. The evaluation recommended outpatient treatment for alcohol abuse. The mother refused to attend treatment.

In October 2012, the mother called D.S.'s paternal grandmother for assistance in caring for the child. The grandmother called DHS because the mother sounded intoxicated on the phone, and she was concerned that the mother was caring for D.S. while intoxicated. The mother denied caring for D.S. while intoxicated.

On October 29, 2012, the juvenile court held a joint adjudication and disposition hearing. Although the father was incarcerated, he stipulated to adjudication. In the event the court found D.S. could not safely remain in his mother's care, the father requested the child be placed with a relative.

During the adjudication proceeding, the mother testified that she has both formal and informal support systems in place. Two friends testified on the mother's behalf. The mother testified that she did not believe she had a substance abuse problem. She indicated, "I can stop drinking on my own. I don't need no drug test and nobody to tell me to." The mother also testified about her current living situation. She testified that she must be out of her current apartment by November 14, 2012, but planned to leave by November 1,

2012, to avoid an eviction. At the time of the adjudication hearing, it was unknown where the mother and D.S. would live, but she was hopeful that she could temporarily stay with friends.

The juvenile court found:

[The mother's] mental health and use of alcohol, if not addressed, continues to place [D.S.] at imminent risk of neglect and lack of supervision. [D.S.] is an infant and the level of care and supervision he requires to be safe is quite high. [The mother's] lack of insight into the effects of her alcohol use and her inconsistent attention to her mental health requires that she be court ordered to participate in these services to safely maintain her child in her care, thus requiring the intervention of the Court.

The juvenile court adjudicated D.S. a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and .2(6)(c)(2). The court ordered D.S. to remain in the mother's custody with DHS providing supervision. The mother appeals.

II. Standard of Review

We review child-in-need-of-assistance proceedings de novo. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). We give non-binding deference to the juvenile court's factual findings. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). In determining whether a child should be adjudicated in need of assistance, our paramount concern is the best interest of the child. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The State must prove a child is in need of assistance by clear and convincing evidence. *In re B.B.*, 500 N.W.2d 9, 12 (Iowa 1993).

III. Analysis

The mother argues the State failed to meet its burden in proving that the child is in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and .2(6)(c)(2). Under Iowa Code section 232.2(6)(b), a child is in need of assistance if parent has physically abused or neglected the child, or is imminently likely to abuse or neglect the child. If we find adjudication proper on one ground, we will affirm. *In re J.A.D.-F.*, 776 N.W.2d 879, 884 (Iowa Ct. App. 2009).

This case first came to DHS's attention when the mother was arrested for public intoxication and disorderly conduct. During the arrest, it was reported that the mother said she did not care about the baby and wished the baby were dead. Three months later, in September 2012, the mother was arrested for public intoxication and interference with official acts. During the September arrest, the mother's sister had to miss work to care for D.S. while the mother spent the night in jail. Despite four public intoxication convictions in the past four years, the mother denies having a substance abuse issue and refuses to follow through with recommendations for outpatient treatment.

The mother also suffers from documented mental health issues. Her severe depression has necessitated the receipt of supplemental security income for the past thirteen years—beginning when she was just thirteen years old. Despite the severity of her depression, the mother is inconsistent in managing her medication and following through with mental health appointments.

The mother's housing situation is concerning. At the time of the adjudication proceeding, the mother indicated that she planned on moving out of

her apartment in three days. However, the mother was unsure where she and her five-month-old child would be moving.

Our legislature designed Iowa Code chapter 232 to prevent probable harm to children. See Iowa Code § 232.2(6)(b); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We need not stand by until actual harm befalls this child. *J.E.*, 723 N.W.2d at 798. The mother's troubling statements about the child, substance abuse issues, refusal to seek substance abuse treatment, inconsistently managed mental health issues, and unstable housing, create an imminent likelihood that the child will be abused or neglected without judicial intervention. Accordingly, we find the State presented clear and convincing evidence of grounds for adjudication under Iowa Code section 232.2(6)(b). As a result, we do not reach the question of whether adjudication is also appropriate under Iowa Code section 232.2(6)(c)(2). See *J.A.D.-F.*, 776 N.W.2d at 884.

AFFIRMED.