

IN THE COURT OF APPEALS OF IOWA

No. 3-086 / 12-2218
Filed February 13, 2013

**IN THE INTEREST OF J.G.,
Minor Child,**

**S.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from a child in need of assistance dispositional order.

AFFIRMED.

Gina Kramer of Reynolds & Kenline, L.L.P., Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Matthew Noel, Dubuque, for appellee father.

Mary Kelley of the Public Defender's Office, Dubuque, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

A mother, S.F., appeals from a child in need of assistance (CINA) dispositional order regarding her youngest child, J.G. She contends the juvenile court erred in finding there was clear and convincing evidence J.G. suffered or was imminently likely to suffer harmful effects as a result of an instance of domestic violence. She also argues the services ordered by the court are unnecessary and overly restrictive. We affirm, finding the juvenile court properly adjudicated J.G. a child in need of assistance, and that the services offered were in the child's best interests.

I. Facts and Proceedings

J.G. was born in March of 2012. In July of 2012, his mother called police to their home, reporting domestic abuse. When police officers arrived, S.F. was crying and upset, holding J.G. A.G., J.G.'s father, was present, carrying a pair of scissors. S.F. told officers to "[h]elp me, he is going to kill me." She reported to the police that A.G. had attacked her: he hit her, threatened to stab her with scissors, and broke her phone when she attempted to contact police.

A.G. has a history of domestic abuse and child endangerment. He was arrested following the July incident and charged with child endangerment, domestic abuse assault while displaying a weapon, and obstruction of a 911 emergency communication. A caseworker from the department of human services (DHS) was assigned to evaluate whether J.G. was subject to harm by the domestic abuse incident. The report was founded against A.G., a CINA petition was filed, and an adjudicatory hearing was conducted October 31, 2012.

At the hearing, S.F. testified that J.G. was not exposed to the domestic abuse incident, that J.G. was in the bedroom while the fight took place in the living room, that she was more afraid for A.G. than herself, and that she accidentally hung up the phone after calling 911. She also testified that A.G. had pushed her in the past and threatened to kill her. She likewise reported being a victim of domestic abuse in a past relationship after the birth of one of her other children.

Testimony was also given by the DHS worker assigned to J.G., a child protective services worker, and three police officers who responded to S.F.'s call the day of the domestic abuse incident. They reported that on the day of the incident, S.F. was afraid for her life, that she reported the scissors being removed from her bag while she and J.G. were in her bedroom, that her cellphone had been broken by J.G.'s father, that the couple had been arguing all day, and that J.G.'s father had threatened to harm others and then commit suicide. The officers' testimony correlated with a written abuse report given by S.F. the same day, which disclosed that J.G.'s father also had threatened her with a weapon a month prior.

The court adjudicated J.G. CINA, finding S.F.'s testimony at the hearing unpersuasive and unreliable as it contradicted her reports to the officers the day of the incident. The court also found that, though S.F. did not want further involvement by the Department and felt she was sufficiently protected by a no-contact order, the serious nature of the events and history of domestic violence warranted continued protective supervision through CINA adjudication. The

court kept J.G. in his mother's care and ordered no contact between the child and father while the criminal no-contact order was in place.

On November 26, 2012, a dispositional hearing was held. In its order following the hearing, the court ordered J.G. to remain in S.F.'s care, custody and control. It also ordered her to meet with a domestic violence counselor, and ordered the family to participate in Family Safety, Risk, and Permanency (FSRP) services. J.G.'s father was also ordered to participate in services. S.F. appeals from this order, arguing there is no clear and convincing evidence to support the CINA adjudication and that the services ordered are overly restrictive and unnecessary.

II. Analysis

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review the facts and law and adjudicate rights anew, giving weight to the fact findings of the court—especially regarding the credibility of witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). However, we are not bound by these findings. *Id.* The crux of our inquiry is always the best interests of the child. *K.N.*, 625 N.W.2d at 733.

A. CINA Adjudication

S.F. first argues that the court inappropriately adjudicated J.G. CINA, as there was insufficient evidence he suffered or was imminently likely to suffer harm as a result of the July 25 domestic abuse incident. The juvenile court found J.G. was a child in need of assistance as defined by Iowa Code section 232.2(6)(c)(2), which reads:

(6) "Child in need of assistance" means an unmarried child: . . .

c. Who has suffered or is imminently likely to suffer harmful effects as a result of any of the following: . . .

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

In determining what action would be in the child's best interests, we not only look to the immediate interests, but into the future, to the child's long-term interests. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). To determine what kind of care a parent will provide to her child, we can look to the parent's past performance. *Id.*

During the hearing, S.F. minimized the domestic violence that occurred on the day she called the police for help, as well as previously reported abuse. We give deference to the district court's finding that her testimony was not credible. See *K.N.*, 625 N.W.2d at 733. Our CINA statute is designed to be remedial, and the State need not wait until actual harm has occurred. *J.E.*, 723 N.W.2d at 798. Given the incidence of abuse, we agree with the juvenile court that without adjudication J.G. is imminently likely to suffer harmful effects as a result of his parent's abusive relationship. The juvenile court properly adjudicated J.G. a child in need of assistance.

B. Services

S.F. next argues the services ordered for her are unnecessary and overly restrictive. The court ordered S.F. to take part in domestic violence counseling as well as FSRP services for the family.¹

It is the juvenile court's role at the dispositional hearing to "inquire of the parties as to the sufficiency of the services being provided and whether additional

¹ We note the "least restrictive" language argued by S.F. to apply to the requirement of services in fact applies to child supervision and custody. Iowa Code § 232.99(4).

services are needed to facilitate the safe return of the child to the child's home." Iowa Code § 232.99(3). The stated goal is to keep the child with the mother. Should the mother fail to comply with the services offered, that goal may change with a more restrictive placement so as to protect the child.

J.G. was adjudicated CINA because his parents failed to provide him with a home safe from domestic abuse. We find the district court's order for services was in the best interests of J.G. See *K.N.*, 625 N.W.2d at 733.

AFFIRMED.