

IN THE COURT OF APPEALS OF IOWA

No. 6-890 / 06-1558
Filed November 30, 2006

**IN THE INTEREST OF
A.P., D.P., AND D.P.,
Minor children,**

J.P., Mother,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother appeals from the juvenile court's order terminating the Children in Need of Assistance (CINA) proceedings for three of her minor children.

AFFIRMED.

Cheryl J. Newport of Newport & Newport, P.L.C., Davenport for appellant.

Jeffrey Fields, Iowa City, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Gary Allison, County Attorney, and Korie Shippee, Assistant County Attorney for appellee State.

Arlen Pooch, Muscatine, for minor children.

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

VOGEL, J.

Jamie appeals from the juvenile court's order terminating the Children in Need of Assistance (CINA) proceedings for three of her minor children, Adrienne, Donevan and Dreyvan. The children were ages twelve, ten, and seven, respectively, at the time of the last review hearing. Because we agree with the juvenile court that the original adjudicatory harm has been relieved, we affirm.

The marriage of Jamie and James was dissolved in 2003, with Jamie being awarded physical care of their three children. In July 2005, Jamie voluntarily placed the children in the care of James. She resumed care for the children for a few days in late November 2005, until they were removed by ex-parte order due to the children's exposure to domestic abuse and substance abuse in Jamie's home where Tim, her boyfriend and father of her fourth child, also resided. Jamie has admitted to recreational marijuana use in the past, has been recommended for alcohol abuse treatment, and is self-described as suffering from severe anxiety disorder and borderline personality disorder. Tim has a long criminal record, as well as a history of alcohol abuse and marijuana use. In December 2005, Jamie fled the jurisdiction to Louisiana with Tim and their youngest child.¹ Adrienne, Donevan and Dreyvan were adjudicated CINA in January 2006, pursuant to Iowa Code sections 232.2(6)(c)(2) (children are likely to suffer harm due to parent's failure to exercise care in supervising the children) and 232.2(6)(n) (parent's mental capacity, condition, or drug or alcohol abuse results in children not receiving adequate care). The children were placed in the custody of James at the time of adjudication by the juvenile court. Jamie was

¹ Iseaha, born January 2005, is the subject of a separate proceeding.

ordered to have no unsupervised contact with the children until she cooperated with services as recommended by the Iowa Department of Human Services.

James sought concurrent jurisdiction in district court, seeking to modify the child custody provisions of the dissolution decree. In June 2006, the district court awarded James sole legal custody of Adrienne, Donevan, and Dreyvan and ordered that Jamie have no visitation with the children until she complied with DHS's recommended services in the juvenile case. When she does so, the order provided she is free to petition the district court for visitation. The DHS caseworker evaluating the children's CINA case completed a review report in early August 2006 that recommended the CINA case be dismissed, as the children were in the sole legal custody of their father and the original adjudicatory harm had been alleviated. The report also noted that although Jamie had been compliant with services since April 2006 and had three supervised visits with the children, she blamed them for their removal and believed they lied about domestic and substance abuse in her care in order to live with James. An August 2006 report by the children's guardian ad litem also recommended dismissal of the CINA case. Jamie's attorney was served with a copy of the reports and notice of the review hearing.

By order dated September 15th, the juvenile court granted dismissal of the CINA case concerning Adrienne, Donevan, and Dreyvan. Jamie was present at the hearing and represented by counsel who argued that the CINA case should remain open so that Jamie could continue to receive services, work towards the goals in the case plan, and have visitation with the children. The juvenile court denied the request, citing that the adjudicatory harm was alleviated, services

were no longer necessary to insure the safety of the children, and Jamie had an avenue in district court to establish visitation. Jamie appeals, arguing that (1) “the requisite finding to terminate the dispositional order were not made,” and (2) “the requisite notice and motion to terminate a dispositional order was not made.”

We conduct a de novo review of CINA proceedings. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, but we are not bound by these findings. Iowa R. App. P. 6.14(6)(g). Our overriding concern in such cases is always the best interests of the children. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

Jamie’s arguments on appeal concern CINA dismissal proceedings under Iowa Code section 232.103, which reads:

1. At any time prior to expiration of a dispositional order and upon the motion of an authorized party or upon its own motion as provided in this section, the court may terminate the order and discharge the child, modify the order, or vacate the order and make a new order.
2. The following persons shall be authorized to file a motion to terminate, modify or vacate and substitute a dispositional order:
 - a. The child.
 - b. The child's parent, guardian or custodian, except that such motion may be filed by that person not more often than once every six months except with leave of court for good cause shown.
 - c. The child's guardian ad litem.
 - d. A person supervising the child pursuant to a dispositional order.
 - e. An agency, facility, institution or person to whom legal custody has been transferred pursuant to a dispositional order.

f. The county attorney.

4. The court may modify a dispositional order, vacate and substitute a dispositional order, or terminate a dispositional order and release the child if the court finds that any of the following circumstances exist:

a. The purposes of the order have been accomplished and the child is no longer in need of supervision, care, or treatment.

b. The purposes of the order cannot reasonably be accomplished.

c. The efforts made to effect the purposes of the order have been unsuccessful and other options to effect the purposes of the order are not available.

d. The purposes of the order have been sufficiently accomplished and the continuation of supervision, care, or treatment is unjustified or unwarranted.

Iowa Code § 232.103 (2005).

Our appellate courts have “consistently observed that a juvenile court may not terminate CINA adjudication status unless the purposes of the original dispositional order have been fulfilled and “the child is ‘no longer in need of supervision, care or treatment.’” *In re K.N.*, 625 N.W.2d at 734 (citations omitted). Once James obtained sole legal custody from the district court, the harm concerning the children’s exposure to Jamie’s unhealthy lifestyle choices was no longer an issue. *Cf. K.N.*, 625 N.W.2d at 733-34 (finding dismissal improper where the juvenile court essentially admitted the purposes of the original dispositional order had not been accomplished, noted K.N. still remained “at risk,” and recognized K.N. was still in need of supervision, care, and treatment.) The juvenile court made the requisite finding that the adjudicatory harm was alleviated and was proper under section 232.103(4). We therefore affirm.

We find no merit in Jamie's contention that "the requisite notice and motion to terminate a dispositional order was not made." Jamie did not raise this issue before the juvenile court at the review hearing, and therefore the issue was not preserved for our consideration on appeal. See *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993) (holding that we do not consider for the first time on appeal an issue, even if constitutional in nature, that was not first passed on by the trial court.) Even if the issue was preserved, the authority to terminate a dispositional order and juvenile court jurisdiction sua sponte is clearly provided under section 232.103(1).

AFFIRMED.