

IN THE COURT OF APPEALS OF IOWA

No. 8-751 / 08-1377
Filed October 1, 2008

**IN THE INTEREST OF A.H.,
Minor Child,**

**S.L.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A mother appeals the adjudication of her child to be in need of assistance.

AFFIRMED.

Jeffrey Mains of Mains Law Office, Des Moines, for appellant mother.

Todd Babich, Des Moines, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Chris Gonzales, Assistant
County Attorney, for appellee State.

M. Kathryn Miller, Juvenile Public Defender, Des Moines, for minor child.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

Suzanne is the mother of A.H., who was born in 2007. On June 25, 2008, the State filed a child-in-need-of-assistance (CINA) petition alleging that Suzanne had a history of exposing her children to multiple abusers and that she was currently in a relationship with an individual, Richard, who had a pending drug charge. The petition furthermore alleged she had left A.H. alone with Richard. Following a hearing on this petition, the juvenile court found A.H. to be in need of assistance under Iowa Code section 232.2(6)(c)(2) (2007). The court ordered that A.H.'s legal custody be retained by Suzanne but ordered her to participate in individual therapy. Suzanne appeals following the dispositional order.

Our scope of review in CINA proceedings is *de novo*. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the juvenile court's findings of fact, but we are not bound by them. *Id.* Our overriding concern is the best interests of the child. *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998).

A CINA adjudication under section 232.2(6)(c)(2) requires proof that the child "has suffered or is imminently likely to suffer harmful effects as a result of . . . [t]he failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." The primary issue on appeal is whether the State established by clear and convincing evidence that A.H. has suffered any harmful effects or is imminently likely to do so.

The current CINA petition was filed with regard to Suzanne's fourth child, A.H., after she continued her involvement with Richard, who recently had been charged with conspiracy to possess anhydrous ammonia with intent to manufacture methamphetamine. However, while this appears to have been the

event precipitating the State's current involvement, Suzanne has had a long history of exposing her children to questionable men, prompting involvement with the Iowa Department of Human Services (DHS)¹. Suzanne's two oldest children, born in 2001 and 2003, were abused by her then-paramour in 2006 and 2007. They were placed in foster care and Suzanne was making progress toward reunification, when in March of 2008, she moved in with her current paramour, Richard. This move, into the home of a man who had previously been abusive to Suzanne, prompted termination proceedings regarding those two children. Suzanne later consented to the termination of her parental rights after choosing to continue her relationship with Richard.

When A.H. was between three and five months old, Suzanne left her alone with Richard at his home "a couple of times." While at the adjudication hearing, Suzanne maintained she would not leave A.H. alone with Richard, she also admitted she viewed her relationship with him as "long term." The fact that she would choose to continue her relationship with the very man who, because of the danger he presented to Suzanne's other children formed a basis for DHS to seek termination of her parental rights, clearly demonstrates that A.H. is placed at imminent risk. Suzanne has not learned the lessons that cost her the parental rights to her two oldest children and which potentially threaten her rights to A.H. Child protective services worker Melissa Gates offered her opinion that it was not in A.H.'s best interests to have any contact with Richard. She opined that, based

¹ The record also contains other instances of Suzanne associating with men who present danger to her children. Suzanne has a third child to whom she has lost her parental rights. The father of this child was abusive to Suzanne's older son. Also, A.H.'s father has a troubling past. Suzanne admitted to DHS that he "has a criminal history" and was dishonest and untruthful to her.

on Suzanne's history of exposing her children to abusive men coupled with her current involvement with Richard, an abusive individual with a criminal history, A.H. was at imminent risk to suffer harmful effects. Suzanne was aware of DHS's position regarding her involvement with men, and in particular Richard, who could pose possible threats to her children, yet she chose to ignore the warnings.

The provisions of Iowa Code chapter 232 are preventative as well as remedial. *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). Their goal is to prevent probable harm, and they do not require delay until harm has occurred. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). Moreover, we look to the whole body of a parent's past performance in CINA cases because that performance may be indicative of the quality of the future care that the parent is capable of providing. See *L.L.*, 459 N.W.2d at 493. These very real concerns justify A.H.'s adjudication. Suzanne's poor judgment in her continued associations with abusive men poses an imminent risk to A.H. of harmful effects.

Suzanne also claims the evidence does not demonstrate that the aid of the juvenile court was required, and asserts dismissal of the CINA petition was thus mandatory. She cites Iowa Code section 232.96(8), which provides in part: "[I]f the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition." Upon our de novo review, for the reasons mentioned above, we fully agree with the juvenile court's determination that its aid was required, and affirm on this issue. We believe the juvenile court accurately characterized and identified the "common threat" running between the State's involvement with all four of her children as Suzanne's choice to be involved with

abusive men and her history of engaging in unhealthy relationships. In light of Suzanne's failure to address this significant concern and her inability to exercise better judgment on these matters, prompting the termination of her rights to her other children, the aid of the court is fully justified.

AFFIRMED.