

**IN THE COURT OF APPEALS OF IOWA**

No. 2-614 / 12-1051  
Filed September 6, 2012

**IN THE INTEREST OF C.S.R. and K.R.,  
Minor Children,**

**K.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother appeals juvenile court orders denying her motions to dismiss her children from the jurisdiction of the juvenile court and to grant the district court concurrent jurisdiction to litigate custody and visitation. She also appeals the order adjudicating one of her children in need of assistance. **AFFIRMED IN PART AND REVERSED IN PART.**

Francis J. Cleary, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

David A. Dawson of Law Office of David A. Dawson, Sioux City, for appellee father.

Joseph W. Kertels, Sioux City, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

**VAITHESWARAN, P.J.**

A mother has three children. The mother's oldest child, R.B. is the subject of a separate appeal and a separate opinion filed on this date. Her younger two children, C.R. and K.R., are involved in this appeal. K.R. was also involved in a prior appeal. See *In re K.R. and R.B.*, No. 11-1748, 2012 WL 299958 (Iowa Ct. App. Feb. 1, 2012).

K.R. was born in 2010. Her father is Cory. K.R. and R.B. were removed from their mother's care following an Iowa Department of Human Services investigation finding that Cory sexually abused R.B. The juvenile court entered an order prohibiting Cory from having any contact with the mother or children. The mother abided by the order but expressed a belief that Cory did not sexually abuse R.B. Despite this expressed belief, the juvenile court entered a dispositional order returning K.R. to her mother's home. The court noted that Cory's sister, with whom K.R. had resided, expressed a similar belief about Cory's lack of culpability, yet the department saw fit to place K.R. with her and allow her to remain there. We affirmed that order.

In 2012, the mother gave birth to C.R., also fathered by Cory. C.R. remained with his mother from the moment of his birth. He was nonetheless adjudicated in need of assistance.

Following the filing of our prior opinion relating to K.R., the mother moved to dismiss K.R. "from the jurisdiction of the Juvenile Court" or, alternately, moved for an order granting the district court concurrent jurisdiction to litigate custody and visitation. The juvenile court denied the motion to dismiss on the ground that juvenile court oversight was needed to ensure that the mother continued to

receive therapy and to monitor compliance with the no-contact orders. The court denied the motion for concurrent litigation for the following reasons:

Even if [the mother] were to establish herself as the sole legal custodian and physical caretaker of [the children], and even if she with Cory . . . would enter a stipulation wherein he would have no visitations with either of these children, and even if there were a no-contact order issued in District Court prohibiting contact between Cory and [the mother] or any of her children, both [the children] would remain at risk of harm so long as [the mother] does not believe that Cory . . . sexually abused her daughter . . . . So long as [the mother] remains in denial this court questions how long [the mother], without monitoring by others, would enforce the no-visitiation/no-contact restrictions of the District Court order. Only in juvenile court can the no-contact restrictions be truly monitored and enforced. At this juncture the court is unwilling to authorize concurrent litigation only to possibly second-guess the judgment of the District Court.<sup>1</sup>

On appeal of these orders as well as the order adjudicating C.R. in need of assistance, the mother essentially argues that K.R. no longer requires the protective services of the juvenile court and C.R. never required those services. Accordingly, she asserts the juvenile court (1) should not have adjudicated C.R. in need of assistance, and (2) should have dismissed the proceedings involving these two children, or, alternately, (3) should have afforded the district court concurrent jurisdiction to litigate custody and visitation issues.

We begin with C.R.'s adjudication. The child was adjudicated in need of assistance pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (d) (2011),

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<sup>1</sup> The juvenile court referred to both children in denying the motion for concurrent jurisdiction. The motion did not mention C.R., and the mother later stated she was not including C.R. because her custody and visitation rights vis-à-vis Cory did not need to be litigated, as Cory was not listed on C.R.'s birth certificate. A hearing transcript also indicates that the motion for concurrent jurisdiction only applied to K.R. We conclude that even if the motion for concurrent jurisdiction were intended to apply to C.R., it is no longer an issue that requires resolution, in light of our reversal of C.R.'s adjudication.

which, in part, define a “child in need of assistance” as a child who “is imminently likely to suffer” physical or sexual abuse or the harmful effects of a parent’s failure to exercise a reasonable degree of supervision. The juvenile court adjudicated C.R. in need of assistance under these provisions based on the mother’s refusal to internalize the evidence of R.B.’s sexual abuse by Cory. The court stated that, without internalization, the mother would likely expose these two children to Cory. In the court’s view, “contact between [C.R.] and Cory is hanging threateningly over [C.R.’s] head.”

On our de novo review, we disagree with this assessment as it relates to C.R. See *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008) (setting forth the standard of review). C.R. was born after the imposition of no-contact orders with Cory. The mother testified that she abided by those court orders and neither the department nor service providers contradicted this assertion. In short, there is no evidence in the record that C.R. was allowed to interact with Cory in any capacity.

There is also no evidence in the record that raises doubts about the mother’s parenting of C.R. A professional who worked with the mother testified that she appeared to be appropriately parenting the children and was not in need of services to assist her. She stated, “[S]he has done, you know, in regards to these two children what she needed to do.” Another professional seconded this opinion stating, “[T]here haven’t been any parenting concerns.” A care coordinator testified that she had been conducting three unannounced visits at the mother’s home since October, 2011. She stated she had no concerns when it came to the mother’s parenting of the youngest child. The mother’s therapist

testified that the children were the mother's top priority. She opined that C.R. was not in danger in her mother's care.

We are left with the question of whether the mother "was imminently likely" to expose C.R. to physical abuse, sexual abuse, or the harmful effects of her failure to supervise him. There is simply no evidence in the record to establish an imminent likelihood of any of these events with respect to C.R. The mother never exposed him to physical abuse, never exposed him to sexual abuse, and was never cited for failing to supervise him. For his entire life, he was free of the harm and imminent harm that plagued his half-sister and sister. For that reason, we reverse his adjudication as a child in need of assistance.

We turn to the mother's second argument, whether the juvenile court should have granted her motion to dismiss the proceedings as to both children. Our conclusion that C.R. should not have been adjudicated a child in need of assistance requires dismissal of the child-in-need-of-assistance action as to him.

We are left with K.R. K.R. was in the home with Cory during the time that Cory was found to have sexually abused her half-sister. As noted in our companion opinion, K.R.'s half-sister expressed a very real fear that K.R. would be harmed by Cory. Under these circumstances, we conclude the juvenile court appropriately took the cautious approach of declining to dismiss the proceedings as to K.R. pending the results of additional therapeutic services for the mother. Accordingly, we affirm the juvenile court's denial of the motion to dismiss the juvenile court proceedings as to K.R.

We end with a discussion of the mother's motion for concurrent proceedings. A party may seek permission to "litigate concurrently in another

court a specific issue relating to the custody, guardianship, or placement of the child who is the subject of the action.” Iowa Code § 232.3(2).

The court reunified the mother with K.R. subject to strict conditions. The juvenile court was in the best position to monitor compliance with these conditions. Additionally, given the juvenile court’s knowledge of and involvement with this family, we have no trouble concluding it was in the best position to address issues relating to the children’s welfare.

In summary, we affirm the juvenile court order denying the motion to dismiss and motion for concurrent jurisdiction as to K.R. We reverse the court’s adjudication of C.R. as a child in need of assistance and the denial of the motion to dismiss the proceedings as to him.

**AFFIRMED IN PART AND REVERSED IN PART.**