

IN THE COURT OF APPEALS OF IOWA

No. 9-782 / 09-1227
Filed October 21, 2009

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

**D.D.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A mother appeals the juvenile court's order adjudicating her child as a
child in need of assistance. **REVERSED AND REMANDED FOR DISMISSAL.**

Cory Goldensoph, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Harold Denton, County Attorney, and Lance Heeren, Assistant County
Attorney, for appellee State.

Annette Martin, Cedar Rapids, for minor child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

A mother appeals from the adjudicatory order concerning her child, contending there is not clear and convincing evidence that the child is a child in need of assistance (CINA) as defined by Iowa Code section 232.2(6)(c)(2) (2009) and the court's aid is not required to protect the child. Upon our review, we reverse and remand for dismissal.

I. Background Facts and Proceedings.

D.D.W. is the mother and A.J. is the father of D.J., born February 1999.¹ The mother has a long history of involvement with the Iowa Department of Human Services (Department), including two founded reports in 2005 of denial of critical care for failure to provide proper supervision to D.J. and the mother's other child, not at issue in this appeal. In early 2006, D.J. again came to the attention of the Department due to allegations that D.J. had been exposed to marijuana and domestic violence in the mother's home. Following a hair-stat test, D.J. tested positive for cocaine. D.J. was removed from the mother's care and was adjudicated a CINA in February 2006. In 2007, the mother made significant progress, and D.J. was returned to her care. The CINA petition was dismissed in November 2007.

In approximately May 2008, it was reported to the Department that mother and the mother's boyfriend smoked marijuana around D.J. In August 2008, D.J. was admitted to St. Luke's Children's Psychiatric Ward after D.J. threatened suicide. D.J. made several accusations against the mother including that the mother was smoking marijuana around D.J., the mother had hit D.J. with her

¹ The father does not appeal the juvenile court's order adjudicating D.J. as a CINA.

hand and with belts, and that the mother had made D.J. watch pornographic videos. D.J. was diagnosed with general anxiety disorder and was prescribed medication. D.J. refused to return to the mother's home, and the mother said that she was done with D.J. Thereafter, the father filed papers for D.J.'s involuntary committal. Following a hearing, D.J. was committed to an outpatient treatment program and was discharged to D.J.'s paternal grandparents' home. Because D.J.'s allegations against the mother were not confirmed by the Department, the family was able to work out alternative placements for D.J., voluntary services were in place, a CINA petition was not filed and the child protective service assessment was closed.

D.J.'s commitment was dismissed by the court in February 2009 due to a lack of follow through with services. That same month, the family again came to the attention of the Department after it was reported that the mother had pending felony charges of child endangerment and driving while barred. It was alleged that the mother, a barred driver, ran a stop sign and caused an accident trying to avoid being pulled over for a traffic violation. D.J. was with the mother at the time of the accident and sustained an injury. The Department initiated a child protective service assessment as a result of the driving incident and determined the report of denial of critical care for failure to provide proper supervision by the mother was founded.

During the Department's assessment, the mother reported that D.J. was living with her and had not been attending counseling. On March 10, 2009, the State filed a petition alleging D.J. to be a CINA pursuant to Iowa Code sections 232.2(6)(c) (child who has or is imminently likely to suffer harmful effects as a

result of either mental injury caused by the acts of the child's parent or the failure of the child's parent to exercise a reasonable degree of care in supervising the child), and 232.2(6)(n) (child who has or is imminently likely to suffer harmful effects as a result of parent's mental capacity or condition, imprisonment, or drug or alcohol abuse).

A contested adjudicatory hearing was held on May 29, 2009. There, the mother sought dismissal of the petition. The Department requested D.J. be adjudicated a CINA. The Department's ongoing worker testified that in addition to the car accident incident earlier in the year, the Department sought adjudication of D.J. as a CINA due to concerns that if there were not court involvement to oversee the case abuse could happen again and that D.J. may not have been receiving therapy. The worker also testified that D.J. had not tested positive for cocaine since D.J.'s last closed case, she did not have any concerns of about housing or domestic violence, and she was not aware of any imminent danger that D.J. was in at that time. D.J.'s guardian ad litem took no position at the time of the hearing, but filed a written statement recommending D.J. not be adjudicated a CINA "due to stability in housing, clean drug testing on behalf of [the] mother, commitment order dismissed on [D.J.], and no further child abuse assessments since February 2009." The guardian ad litem further stated:

Although undersigned believes the family could benefit from less chaos in their lives, I do not believe it rises to the level of a CINA adjudication for this child.

I would be concerned if [the mother] were to continue to drive with [D.J.] in the car and if there would be further injuries to the minor child, accidents, or law violations in regard to driving and the child being present.

On June 22, 2009, the juvenile court entered its order adjudicating D.J. a CINA pursuant to section 232.2(6)(c). The court noted the mother's car accident incident and the family's ongoing pattern of not following through with services. The court found that since D.J. had returned to her mother's home, D.J. had not attended counseling. Although the court noted the mother was employed, her housing was stable, and there were no current concerns of domestic violence or drug use in the home, it nevertheless determined that judicial oversight was required to ensure the mother's home remained free of drugs and violence and that D.J.'s mental health needs continued to be met.

On August 5, 2009, a dispositional hearing was held. At the hearing, the mother informed the court that she was getting D.J. back into counseling, and the court received the Department's social history report. Thereafter, the court entered its dispositional order ordering that D.J. should remain in the mother's custody under the supervision of the Department, as agreed to by the parties. The court also ordered a case permanency plan be submitted.

The mother appeals. She contends there is not clear and convincing evidence that the child is a child in need of assistance as defined by section 232.2(6)(c)(2) and the court's aid is not required to protect the child.

II. Scope and Standards of Review.

Our review of child in need of assistance proceedings is *de novo*. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State has the burden of proving the allegations by clear and convincing

evidence. Iowa Code § 232.96(2). “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

III. Discussion.

The court found the State proved by clear and convincing evidence that D.J. was a CINA pursuant to section 232.2(6)(c). Section 232.2(6)(c)(2) provides that a CINA

means an unmarried child . . . [w]ho 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.

It is true that a child’s adjudication as a CINA need not await the occurrence of injury or harm, see *In re D.T.*, 435 N.W.2d 323, 330 (Iowa 1989) (“[W]e think our temporary removal provisions in [CINA] proceedings are designed to prevent probable harm to a child and do not require delay until after the harm is done.”), and that the State has the duty to see that every child within its borders receives proper care and treatment. *L.L.*, 459 N.W.2d at 494; *D.T.*, 435 N.W.2d at 329. However, from our de novo review, we do not find clear and convincing evidence supports finding the child a CINA under section 232.2(6)(c)(2).

Although the mother allegedly drove her car negligently with D.J. in the car, injuring D.J., the Department’s ongoing worker testified she was not aware of any imminent danger that D.J. was in at the time of the adjudicatory hearing. The worker testified that D.J. had not tested positive for cocaine since the previous assessment, and there were no concerns regarding violence or housing

at the time of the adjudicatory hearing. Furthermore, the child's guardian ad litem recommended against adjudicating D.J. a CINA. The biggest concern the juvenile court seemed to have at the time of its adjudicatory order was about D.J.'s mental health treatment, and at the time of the disposition hearing, the mother informed the court that she was getting D.J. back into counseling. Given the Department's ongoing worker's testimony that she was not aware of any imminent danger that D.J. was in at the time of the adjudicatory hearing and the child's guardian ad litem's recommendation that the child not be adjudicated CINA, we find there was insufficient evidence to support that D.J. suffered or was imminently likely to suffer harmful effects as a result of the failure of D.J.'s mother to exercise a reasonable degree of care in supervising D.J. Furthermore, we find the court's aid is not required to ensure D.J.'s mental health needs continue to be met, as the mother is taking steps to ensure D.J. is being treated. We therefore reverse the juvenile court's order adjudicating D.J. a CINA and remand for dismissal.

IV. Conclusion.

Because we find clear and convincing evidence does not support finding the child a CINA under section 232.2(6)(c)(2) and we find the court's aid is not required to ensure the child's mental health needs continue to be met, we reverse the juvenile court's order adjudicating the child a CINA and remand for dismissal.

REVERSED AND REMANDED FOR DISMISSAL.