

IN THE COURT OF APPEALS OF IOWA

No. 0-404 / 89-1854

FILED

AUG 30 1990

CLERK SUPREME COURT

IN THE INTEREST OF J.S.M., A Child,
T.J.T., Natural Mother,
Appellant.

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Appeal from the Iowa District Court for Marion County,
John P. Crouch, District Associate Judge.

The mother appeals the district court's dismissal of a
Child In Need of Assistance proceeding. **AFFIRMED.**

Gilbert R. Caldwell III of Caldwell, Caldwell &
Caldwell, Newton, for appellant mother.

Thomas J. Miller, Attorney General, Gordon E. Allen,
Deputy Attorney General, and Charles K. Phillips, Assistant
Attorney General, for appellee State.

Considered by Donielson, P.J., and Schlegel and
Sackett, JJ.

SACKETT, J.

The mother of J.S.M. appeals the juvenile court's dismissal of a child in need of assistance petition filed pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). We affirm the dismissal.

The child in question is a boy born in February 1986. The child's natural father has never been involved in the child's life, and the natural father's parental rights have previously been terminated. In 1987 the child's mother became involved with another man, T.E.M. In the fall of 1987 the mother obtained a court order voluntarily terminating her parental rights so that T.E.M. could adopt the child. In November 1987 the mother sought and obtained a court order vacating the voluntary termination.

In January 1988 the mother and T.E.M. were married. However, the marriage was stormy and short-lived. A stipulated dissolution decree was entered in November 1988; in this decree the mother stipulated that the child would be placed in T.E.M.'s primary physical care. During the marriage T.E.M. had adopted the child.

Shortly after the dissolution, the mother began to make allegations T.E.M. was sexually abusing the child. A medical and psychological evaluation of the child was inconclusive on this subject.

In March 1989 the mother took the child from T.E.M.'s care and went to California. In April 1989 T.E.M. and his

brother traveled to California, forcibly removed the child from the mother's care, and returned to Iowa.

In June 1989 the State of Iowa filed a petition asking that the child be declared a child in need of assistance. The grounds for this petition included; (1) the aggressive and volatile custody dispute between the mother and T.E.M., (2) the mother's allegations of sexual abuse by T.E.M., and (3) an allegation that T.E.M. had previously engaged in sexual abuse of another male child.

After a hearing, the juvenile court dismissed the State's CHINA petition. The juvenile court concluded the evidence failed to establish that T.E.M. had sexually abused the child.

The mother has appealed the dismissal of the CHINA petition. The mother contends the evidence warranted a CHINA adjudication, either because of the possibility of sexual abuse or because of other alleged deficiencies in T.E.M.'s home and in his parenting performance. T.E.M.'s other alleged deficiencies include poor anger control, emotional abuse, and failure to provide therapy for the child's emotional problems.

The mother also contends the juvenile court should have found the State proved by clear and convincing evidence that T.E.M. had previously engaged in sexual abuse of another male child.

In addition, the mother contends the juvenile court erred by restricting her cross-examination of T.E.M. during the hearing. T.E.M. had testified on direct examination that he was not a homosexual; the mother sought unsuccessfully to cross-examine him about his alleged lack of interest in heterosexual dating activities.

Finally, the mother asserts that new evidence of physical and sexual abuse by T.E.M. has come to light since the CHINA hearing. She asks that the case be remanded so that the juvenile court can consider this additional evidence.

The State, which initially requested the child be a child in need of assistance, did not appeal the dismissal of its petition. It has filed a rather inconclusive brief indicating that its position has "become somewhat neutral" and that it "will defer to counsel for the natural mother to make the argument for continuing juvenile court jurisdiction." The attorney or guardian ad litem for the child did not initially file an appellate brief. We directed that one be filed. A brief was filed urging the trial court be affirmed.

Our scope of review in child in need of assistance proceedings is de novo. In re Leehey, 317 N.W.2d 513, 515 (Iowa App. 1982). Precedent is of limited value in deciding this issue, and each case must ultimately turn on its own peculiar facts. Id.

An examination of both the State's and the guardian ad litem's arguments shows that the mother alone believes the child should be found to be a child in need of assistance. The guardian ad litem also points out that the mother made her allegations of sexual abuse only after she made her decision to regain custody of her child.

The mother contends that clear and convincing evidence exists that the father neglected the therapeutic needs of the child and that the child is at risk if he remains in the father's home. We find no evidence that the father neglected the therapeutic needs of the child.

There is also insufficient evidence to show that the child would be at risk if left in his father's custody. The flare ups of temper alleged by the mother have occurred in a large part due to the conflict between the two parents.

The allegations of sexual and physical abuse are not supported by clear and convincing evidence. The allegations that the father sexually abused another child are also not supported by the evidence. We affirm the trial court's dismissal of this action.

The mother also challenges the refusal of the trial court to allow cross-examination on an issue allegedly raised on direct examination. This is an issue within the discretion of the trial court. See In re Long, 313 N.W.2d 473, 482 (Iowa 1981). There was no abuse of discretion, and we will not disturb the ruling on appeal.

Finally, the mother asks us to remand for the consideration of what she contends is new evidence. The State may bring a new proceeding if it determines the evidence warrants it. We affirm the trial court.

AFFIRMED.