IN THE COURT OF APPEALS OF IOWA

No. 0-746 / 00-0434
Filed January 24, 2001

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CLERK SUPREME COURT

IN THE INTEREST OF E.W., D.W., and T.S., Minor Children,

M.M., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

The mother of three minor children appeals a juvenile court ruling, following a CINA review hearing, placing minor child E.W. in residential treatment and the other two children with her under DHS supervision. **AFFIRMED.**

Sharon Sinnard, Davenport, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Gerda C. Lane, Assistant County Attorney, for appellee-State.

Patricia K. Wilger, Rock Island, Illinois, guardian ad litem for minor children.

Considered by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

MAHAN, J.

A mother appeals the decision of the juvenile court after a review hearing in a children in need of assistance (CINA) proceeding, which placed one child, Evan, in a residential treatment program. She claims Evan should be returned to her care. She asks to have the children's CINA adjudications dismissed. We affirm.

Michelle is the mother of Derek, born in December 1991; Evan, born in October 1992; and Tianna, born in August 1997. The family first came to the attention of the Department of Human Services (DHS) in December 1992. DHS issued a founded report of denial of critical care because Michelle had left the children in her apartment unattended while she went to a neighbor's to use a telephone. In March 1996, DHS issued a founded report of denial of critical care because Derek and Evan, then ages four and three respectively, had wandered away from home on several occasions.

Evan has been diagnosed with severe attention deficit hyperactivity disorder and oppositional defiant disorder. He was placed on medication for his condition. Michelle was inconsistent in giving Evan his medication. In July 1998, Evan began to attend a day treatment program. The family received in-home services from August 1998 to January 1999. Michelle refused to continue with services, stating she was not interested in learning parenting skills.

Michelle did not send Evan to the day treatment program for several days in February 1999. Evan's behavior became much worse; he appeared dazed and confused. Michelle requested assistance for Evan, but then refused to take

him to two scheduled visits with his psychiatrist. Evan was removed from his mother's care and temporarily hospitalized. DHS issued another founded report of denial of critical care due to Michelle's failure to provide medical care for Evan. When Evan was released from the hospital he was placed in foster care.

After Evan was removed from the home, Michelle participated in supervised visitation. She agreed to resume participating in parenting skills sessions. She refused to inform social workers where she was working or the name of the day care provider for Derek and Tianna. Both Derek and Tianna exhibited some aggressive behavior. On May 27, 1999, the juvenile court adjudicated Evan a CINA under Iowa Code sections 232.2(6)(b), (c)(2), (e), (f), (g) and (n). Derek and Tianna were adjudicated CINA under sections 232.2(6)(b) and (c)(2). Michelle did not attend the CINA hearing.

In June 1999, during a visit at her home, Michelle asked to hug Evan before he left. She then grabbed him, took him inside the house and locked the door. She told a social worker, "You will not take Evan from my home again, no matter what!" Michelle was very angry and refused to let Evan leave. Eventually, Evan let himself out of the house and he was returned to foster care. This episode was very traumatic for all three children. Visits were suspended for a short period of time.

Michelle obtained a psychological evaluation in July 1999. She was diagnosed with an adjustment disorder with depressed mood and generalized anxiety disorder. The report recommended Michelle participate in individual therapy. On July 9, 1999, the juvenile court entered a disposition order. Evan

remained in foster care and Derek and Tianna remained in the care of their mother. Michelle moved from Scott County to Henry County because she expected Evan would be placed there. That did not work out and Evan remained in Scott County.

In December 1999, Michelle moved to Des Moines County. She did not participate in services. She refused to tell social workers the name of the school Derek and Tianna attended. DHS was forced to obtain a court order to get medical treatment for Evan because Michelle refused to approve a change in his medication. Evan's behavior became worse and in January 2000 he was placed in a residential treatment program.

A review hearing was held on February 10, 2000. The court ordered Evan to remain in residential treatment, and Derek and Tianna would remain with their mother. Michelle appealed.

I. Scope of Review

Our review of an action arising from CINA proceedings is de novo. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa App. 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these findings. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Derek and Tianna

Michelle contends Derek and Tianna did not continue to be at risk of adjudicatory harm at the time of the review hearing. She asserts the juvenile

court case concerning these two children should be dismissed. She admits she has been resistant to accepting services, but claims her behavior has not put Derek and Tianna at risk of adjudicatory harm.

In a review of a CINA adjudication, the parent must show, by a preponderance of the evidence, the risk of imminent adjudicatory harm no longer exists. *In re D.S.*, 437 N.W.2d 587, 588 (Iowa App. 1989). For the proceeding to be dismissed, the parent must show no harm will come to the child as a result of the dismissal. *In re A.W.*, 464 N.W.2d 475, 477 (Iowa App. 1990).

Michelle has not met her burden to show Derek and Tianna are no longer at risk of an adjudicatory harm. Michelle has not cooperated with services. There is no evidence to show her parenting skills have improved. The concerns that were present at the time the children were adjudicated to be CINA are still present. Michelle continues to have problems with anger management and with providing appropriate and consistent discipline of the children.

III. Evan

A. Michelle claims residential treatment is not in Evan's best interests. She asks to have him returned to her care. She states Evan's behavior has not improved while he was in foster care. Michelle admits having some trouble controlling Evan's behaviors, but feels she can do better than foster parents.

We have held a party seeking a modification of the custody provisions of a prior dispositional order must show the circumstances have so materially and substantially changed that the best interest of the child requires such a change in custody. *In re J.F.*, 386 N.W.2d 149, 152 (Iowa App. 1986); *In re Leehey*, 317

N.W.2d 513, 516 (Iowa App. 1982). We determine this standard also applies to modifications of other provisions of the dispositional order such as visitation and services. *In re C.D.*, 509 N.W.2d 509, 511 (Iowa App. 1993).

Michelle has not adequately shown it would be in Evan's best interests to return to her care at the present time. Evan is in residential treatment because he is unable to control his behavior. In the past, Michelle has not provided adequate medical care for Evan. He was placed in foster care because Michelle refused to take him to visits with his psychiatrist, although he appeared dazed and confused. More recently, DHS was required to obtain a court order to adjust Evan's medication because Michelle refused to cooperate with Evan's psychiatrist. There is no evidence to show Michelle is now better able to meet Evan's needs.

B. Michelle also asks to have the juvenile court case concerning Evan dismissed. She alleges she is doing all she can do to become a better parent.

In a review of a CINA adjudication, the parent must show, by a preponderance of the evidence, the risk of imminent adjudicatory harm no longer exists. *D.S.*, 437 N.W.2d at 588. As discussed above, there is no evidence to show Michelle has improved her parenting skills since the children were adjudicated CINA. Michelle has not been cooperative with services, at times she has been outright resistant to the efforts of social workers. As with Derek and Tianna, Michelle has not met her burden to show Evan is no longer at risk of imminent adjudicatory harm. We affirm the decision of the juvenile court.

AFFIRMED.