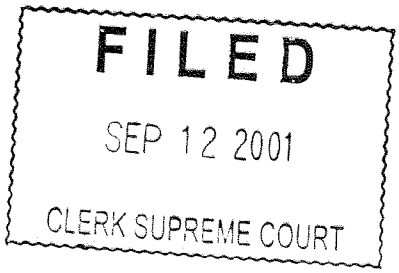
IN THE COURT OF APPEALS OF IOWA

No. 1-555 / 00-1751
Filed September 12, 2001



IN THE INTEREST OF W.I.,
Minor Child,

M.I., Mother,
Appellant.

Appeal from the Iowa District Court for Story County, Victor G. Lathrop, Associate Juvenile Judge.

Mother appeals from an adjudication and disposition order of the juvenile court finding her child is in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) and in further need of the court's assistance pursuant to Iowa Code section 232.96(9). **AFFIRMED.**

Timothy L. Gartin of Hastings & Gartin, L.L.P., Ames, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and Sarah Livingston, Assistant County Attorney, for appellee-State.

Stephen A. Owen of Moothart & Owen Law Firm, Ames, for minor child.

Considered by Mahan, P.J., and Zimmer and Miller, JJ.

MAHAN, P.J.

Mother appeals from an adjudication and disposition order of the juvenile court finding her child is in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) and in further need of the court's assistance pursuant to Iowa Code section 232.96(9). She contends the court erred in finding the State proved by clear and convincing evidence (1) the child was in need of assistance as defined by Iowa Code section 232.2(6)(c)(2) (1999), and (2) the court's assistance was required under the circumstances as provided by Iowa Code section 232.96(9). We affirm.

Background Facts and Proceedings. Mary is the twenty-two-year-old mother of Whitney, born January 3, 2000. Mary is in the borderline range of intellectual functioning. Whitney was born with a heart murmur and later developed a growth on her kidney and acid reflux. Prior to Whitney's birth, Mary began receiving voluntary services from the Healthy Futures program. Those services continued after Whitney's birth. During the first month of Whitney's life, an in-home service provider spent approximately seventy-two hours with Mary and Whitney.

On the evening of February 1, 2000, Whitney was burned while Mary was holding her. Mary had been cooking her dinner on the stove when Whitney began to cry. Mary picked up Whitney and was holding Whitney in her right arm with Whitney's head facing her chest and with her bare feet exposed to the stove. As Mary reached into a cupboard over the stove, Whitney slipped in her arms, and Whitney's feet touched the lid of a hot pot. At that time, Mary claims she

could not see any indications of injury to Whitney's feet, but she gave Whitney a cold bath out of concern Whitney's feet might have touched the hot object on the stove. Mary had an appointment to see Whitney's pediatrician, Dr. Paschen, the next morning.[1] Prior to attending the appointment, Mary discovered Whitney had blisters on her toes. Mary applied Vaseline on Whitney's toes and a Band-Aid on one of the toes.

While at Dr. Paschen's office, Mary requested Whitney's feet be examined. Mary initially denied to the nurse and doctor any injury to the child had occurred. She told Dr. Paschen the blisters were due to dry skin. Mary later testified she was overwhelmed with fears the State might take her daughter from her even for a minor incident. A week later, Mary told the truth about the cause of Whitney's injuries.

The injury was reported to the Department of Human Services, which conducted an investigation. The investigation resulted in the filing of a report of abuse on the grounds of denial of critical care and failure to provide adequate supervision. A temporary removal order was signed February 4, 2000, placing Whitney in temporary foster care. The State filed a CINA petition on February 10, 2000, alleging Whitney was a child in need of assistance under Iowa Code sections 232.2(6)(b)[2] and 232.2(6)(c)(2). A temporary removal hearing was held the same day and the juvenile court entered an order returning Whitney to Mary. However, this order was conditioned upon Mary residing in a residential program

---

[1] This appointment was not related to the injury.

[2] The allegation under this section was later dismissed.

such as the House of Mercy in Des Moines. Mary was admitted to the House of Mercy on February 16, 2000, and custody of Whitney was returned to her at that time.

An adjudication hearing was held on May 4, and May 17, 2000. The juvenile court issued an order on July 13, 2000, in which the court concluded the State had established by clear and convincing evidence Whitney was a child in need of assistance as defined by Iowa Code section 232.2(6)(c)(2). The court withheld adjudication at that time and scheduled a dispositional hearing for a later date.

A dispositional hearing was held on August 23, 2000. On October 5, 2000, the court entered a joint adjudication and disposition order. The court found "[t]he injury that brought Whitney to this Court's attention was accidental, and the likelihood of its happening again is small." However, the court adjudicated Whitney to be a child in need of assistance as defined by Iowa Code section 232.2(6)(c)(2). In addition, the court concluded assistance was required. The court ordered Whitney remain with Mary on the condition they both reside at the House of Mercy until certain conditions were met.

Standard of Review. We review CINA proceedings de novo. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999). Although we are not bound by the findings of the juvenile court, we give weight to the juvenile court's findings of fact, especially when considering the credibility of the witnesses. *Id.*; Iowa R. App. P. 14(f)(7). We review "both the facts and the law, and we adjudicate rights anew." *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). Our paramount concern is

the best interest of the child. *Id.* "An interest exists in maintaining the family unit, but that interest is not absolute and may be forfeited by certain parental conduct." *In re S.W.*, 469 N.W.2d 278, 279 (Iowa Ct. App. 1991).

The State has the burden of proving the allegations of its CINA petition by clear and convincing evidence. *In re N.C.*, 551 N.W.2d 872, 873 (Iowa 1996). This is more than a preponderance of evidence and less than evidence beyond a reasonable doubt. *Id.* It means there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence. *In re L.G.*, 532 N.W.2d 478, 481 (Iowa Ct. App. 1995).

Iowa Code Section 232.2(6)(c)(2). Mary contends the State failed to prove by clear and convincing evidence Whitney was a child in need of assistance under section 232.2(6)(c)(2). The State submits, however, it proved by clear and convincing evidence Mary failed to exercise a reasonable degree of care in supervising Whitney. Iowa Code section 232.2(6)(c)(2) applies to a child:

> Who has suffered or is imminently likely to suffer harmful effects as a result of . . . [t]he failure of the child's parent, guardian, custodian or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

Iowa Code § 232.2(6)(c)(2). To satisfy section 232.2(6)(c)(2), the State must prove by clear and convincing evidence (1) Mary failed to exercise a reasonable degree of care in supervising Whitney, and, (2) as a result, Whitney suffered or was imminently likely to suffer harmful effects.

The juvenile court concluded Mary failed to supervise Whitney and stated as follows:

> Mary held her child in one arm over a hot stove as she cooked her dinner. As a result, Whitney slipped and was burned. Mary's error or omission was in not placing the child nearby instead of directly over the hot stove. The Court finds by clear and convincing evidence that that act on Mary's part was a failure to exercise a reasonable degree of care in supervising Whitney. Whitney may not have been harmed to the degree the children in the above cases were harmed, but there is no degree of harm necessary for adjudication listed in the statute. Common sense says the potential for harm here was much greater than that which actually occurred.

We agree with this conclusion. Mary's actions in holding a child less than one month old over a hot stove while preparing a meal clearly fits the definition of failing to exercise a reasonable degree of care in supervising a child. We affirm the juvenile court on this issue.

Iowa Code Section 232.96(9). Iowa Code section 232.96(9) states as follows:

> If the court concludes facts sufficient to sustain a petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance.

Iowa Code § 232.96(9). Mary argues the State has failed to prove by clear and convincing evidence court assistance is needed in this case. We disagree.

We conclude the State has proved by clear and convincing evidence court assistance is required. Mary is in the borderline range of intellectual functioning. She was provided intensive in-home services prior to and following Whitney's birth. Upon admittance to the House of Mercy program, Mary received further assistance with counseling, parenting and skill development. Mary had mixed results in the program. Counselors have observed Mary missing appointments, exhibiting a range of behaviors, responding slow to parenting suggestions,

needing assistance to calm Whitney and care for her, and sleeping during the day. Mary also has failed to give medication to Whitney as prescribed because she did not feel it was important. Mary did progress in the House of Mercy program despite her continuing struggle to control her anger and being on time for her appointments. However, Mary is still unable to understand how Whitney and she are benefiting from these services. The State has proved by clear and convincing evidence it is in Whitney's best interest further court assistance be required. We affirm the juvenile court on this issue.

AFFIRMED.