IN THE COURT OF APPEALS OF IOWA

No. 1-038 / 00-0914
Filed March 14, 2001

FILED
MAR 14 2001
CLERK SUPREME COURT

IN THE INTEREST OF B.S., Minor Child,

STATE OF IOWA,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens, Associate Juvenile Judge.

The State appeals the district court's order dismissing the child in need of assistance petition filed pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(f) (1999). **AFFIRMED.**

Victoria Siegel, County Attorney, for appellant.

Thomas F. Kintigh of Griffin, Dew & Kintigh, Ottumwa, for appellee-mother.

Cynthia Hucks of Box & Box, Ottumwa, guardian ad litem for minor child.

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

MAHAN, J.

The State appeals the district court's order dismissing the child in need of assistance petition filed pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(f) (1999). It contends it proved by clear and convincing evidence (1) the mother was not able or not willing to provide the necessary treatment pursuant to Iowa Code section 232.2(6)(f), and (2) the mother failed to exercise a reasonable degree of care in supervising the child, resulting in harmful effects to him. We affirm.

Background Facts and Proceedings. Brandon, age seven, was in first grade at the time of the CINA hearing. Up until a few months prior to the CINA hearing, Brandon and his mother, Megan, lived with Megan's mother, Jackie. Brandon's father is deceased. At the time of the CINA hearing, Megan and Brandon were living with Paul, Megan's paramour of seven months. Megan attends a local community college full-time.

Brandon's teachers noticed Brandon exhibited behavior problems and anger. Brandon's behavior escalated throughout kindergarten and first grade. Brandon became frustrated easily, and would "growl," and pound his fist or bang his head on the table. He would kick chairs over. Anyone in his way would get hurt, too. He would say "I hate myself," and "I'm going to be dead soon." He remarked he should kill himself and stated he knew how. He drew detailed pictures, which included depictions of weapons and blood. He expressed anger toward Megan and Paul. His teachers noted Brandon's difficulty interacting with his peers. He spit in other children's milk, choked a child, and pretended to

urinate on his desk. Other students' parents called the school to express concern with his behavior. His teachers described Brandon as "a bright young man," but expressed concern for his academic future if his behavior does not change.

Brandon's kindergarten teacher spoke regularly with Jackie regarding Brandon's behavior, because she generally brought him to school and picked him up. In Spring 1999, his kindergarten teacher referred Brandon to the school's student assistant team; a group of teachers, counselors, and administrators that discusses concerns with particular students and recommends strategies to help the child. The team agreed Megan needed to be more involved with Brandon's schooling, and recommended approaching her about getting Brandon into counseling to deal with his behaviors. Brandon has seen a counselor regularly since Spring 1999. Megan began seeing the same counselor soon thereafter. Brandon also sees a counselor at the school.

Brandon's first grade teacher dealt primarily with Jackie at the beginning of the school year. Midway through the year, Megan began to take a more active role. She would bring Brandon to and from school. During this time, however, Brandon would often arrive fifteen to twenty-five minutes late. Just prior to the CINA hearing, Brandon's grandfather began bringing him to and from school. In an effort to open the lines of communication with Megan regarding Brandon's behavior at school, his first grade teacher initiated a notebook system. She would write a report of anything she felt Megan needed to know, and send it

home with Brandon each day. Megan acknowledged reading the notes by signing the notebook, but she only responded on one occasion.

Megan agreed to the implementation of family preservation services. A caseworker visited Brandon and Megan at home several times over a forty-five day period. The caseworker saw Brandon at home and at school. She expressed concern that Brandon's behavior escalated at school and not in the home environment. She observed Megan setting appropriate limits and consequences for Brandon. She recommended Brandon be evaluated by a psychiatrist. Megan consented to the assessment, and agreed to placing Brandon on medication to help stabilize his mood. The caseworker reported Megan had not refused to participate in recommended services. Megan testified she would be willing to continue whatever services might be recommended for Brandon, including an inpatient psychiatric evaluation. Megan requested the family preservation services continue after the initial forty-five day period.

School officials approached the county attorney in late 1999 or early 2000, requesting the State file a CINA petition. The Department of Human Services (DHS), which was providing services on a voluntary basis at that time, did not believe an adjudication was necessary.

The State filed a CINA petition on behalf of Brandon on February 7, 2000, alleging Brandon was a child in need of assistance under Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(f). After a hearing, the juvenile court issued its findings of fact, conclusions of law and order, dismissing the State's petition on both grounds. The State appeals.

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 juvenile court's findings, we give them weight, especially when considering the credibility of the witnesses. *Id.* Our paramount concern is the best interest of the child. *In re N.C.*, 551 N.W.2d 872, 872 (Iowa 1996).

The State has the burden of proving the allegations of its CINA petition by clear and convincing evidence. *Id.* at 873. This is more than a preponderance of the evidence and less than evidence beyond a reasonable doubt. *Id.*

Iowa Code section 232.2(6)(c)(2). The State argues it proved by clear and convincing evidence Megan failed to exercise a reasonable degree of care in supervising Brandon, resulting in harmful effects on him. 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 . . . the 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).

The record presents no evidence Megan has failed to supervise Brandon. The family's caseworker testified Megan is doing a good job of parenting Brandon, and he is safe in his mother's care. Jackie, Megan's mother, testified similarly. Brandon's teachers and school officials had not observed the family's home setting, and could only speculate as to Megan's ability to supervise Brandon at home. Based on our de novo review of the record, we conclude the State failed to present clear and convincing evidence Brandon is a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2).

Iowa Code section 232.2(6)(f). The State contends it proved by clear and convincing evidence Megan was unable or unwilling to provide the necessary treatment pursuant to Iowa Code section 232.2(6)(f). That section applies to a child:

> Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

Iowa Code § 232.2(6)(f).

The State presents a close case. Brandon clearly has serious emotional and behavioral problems that must be addressed. The State and school officials seem to agree Brandon's problems are rooted in his home environment. Megan and DHS officials, however, point to a family history of depression and other mental disorders as the possible root of Brandon's problems. Regardless of the source of Brandon's problems, the record reflects Megan has done everything asked of her thus far. She has taken Brandon to counseling and for psychiatric evaluation. She indicated she would agree to an in-patient psychiatric evaluation of Brandon if necessary. Megan has received counseling herself, and has welcomed an in-home caseworker to provide family preservation services to Brandon and the family. She moved out of her mother's house, at the suggestion of DHS and school officials, in order to dissipate the tension between herself and Jackie that may have fueled some of Brandon's and the family's problems.

Although this is a close case, we conclude Megan has done everything asked of her by DHS and school officials. As long as Megan continues to

cooperate, we cannot reverse under section 232.2(6)(f). The State is not precluded from filing another CINA petition if Megan refuses services or additional factors give rise to court intervention with this family. On this record, however, we must affirm under both sections 232.2(6)(c)(2) and 232.2(6)(f).

AFFIRMED.