

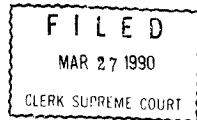
IN THE COURT OF APPEALS OF IOWA

No. 9-676 / 89-1108

IN THE INTEREST OF A.K.B., A Minor Child.

M.J.B., Father

Appellant.



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Appeal from the Iowa District Court for Polk County,
Vincent M. Hanrahan, Judge.

The father appeals from a juvenile court order adjudicating A.K.B. to be a child in need of assistance and preventing the father from having any further contact with A K B. and the child's older sibling. **AFFIRMED.**

Craig S. Shannon of Grefe & Sidney, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State of Iowa.

Kathryn Egenberger, Youth Law Center, Des Moines, as guardian ad litem for appellee A.K.B.

R.L.T., pro se, the mother.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

DONIELSON, J.

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A.K.B. is the youngest of two children born of the marriage between M.J.B. and R.L.T. The parents were divorced in April 1987 with the mother awarded physical care of the children subject to the father's right of visitation.

In November 1988, the mother contacted a counselor concerning statements made by A.K.B. indicating her father had sexually abused her. The child was interviewed by various individuals. The child indicated M.J.B. had touched her on her "privates" and her "po-po." A medical exam of the child revealed injuries indicating A.K.B. had been subjected to multiple digital insertions in her vaginal area.

As of November 8, 1988, M.J.B. was under an order prohibiting him from contacting A.K.B. A child in need of assistance petition was filed in December 1988. In February 1989, the juvenile court denied M.J.B.'s motion for an interview of the child by a disinterested third party. The case proceeded to hearing and A.K.B. was adjudged to be a child in need of assistance. As a result, the court entered an order prohibiting contact by M.J.B. with A.K.B. and her older sister. M.J.B. has filed this appeal. He contends the juvenile court erred in: (1) denying the father the right to interview the child through a third person regarding the child's allegations; and (2) finding clear and convincing evidence the child was sexually abused by her father.

I. Scope of Review. The principles controlling our review are well established, and are not in dispute. Appellate review of CHINA proceedings is de novo; accordingly, we review the facts and the law and adjudicate rights anew where the issues have been properly preserved and presented. In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). Our paramount concern is the welfare and best interest of the child. Id. In resolving the issues presented in this appeal, our ultimate task is to review the record and determine whether the State has met its burden of presenting clear and convincing evidence that A.K.B. was sexually abused by her father.

II. Cross-Examination. The father contends he was denied due process of law by not being allowed to cross-examine his daughter. Our supreme court recently rejected the contention that the sixth amendment right of confrontation applies to CHINA proceedings. In re L.K.S., No. 89-970, slip op. at 8 (Iowa Feb. 21, 1990).

M.J.B. appears to predicate his claimed right of confrontation upon due process principles rather than specifically upon the sixth amendment. However, we find the analysis set forth in L.K.S. to be persuasive. In declining to extend the right of confrontation in L.K.S., the court noted the different consequences which result from CHINA and termination proceedings. Id. But cf. In re H.R.K., 433 N.W.2d 46, 49 (Iowa App. 1988) (no error to refuse parents the opportunity to interview or subpoena

children in termination proceeding). We, too, conclude the consequences of a CHINA proceeding are not such that due process requires a right of confrontation in CHINA adjudications.

III. Clear and Convincing Evidence. The father contends the juvenile court erred in finding there was clear and convincing evidence he sexually abused A.K.B. From our review of the record, we find clear and convincing evidence supported the adjudication.

Uncontroverted medical evidence revealed A.K.B. had been subjected to repeated digital penetration by an object the size of an adult finger. A.K.B. told counselor Margaret Altmix, child protective investigator Connie McClellan, social worker Cindy McClary, and her mother that her father, M.J.B., had touched her "privates" and "private spots." In a videotaped interview, A.K.B. was asked to demonstrate with dolls how her father touched her. With a pushing motion, A.K.B. placed the adult male doll's fingers near the genital area of a child doll. She stated her father hurt her by putting his hands "through" and "inside" and "he just pushes hard."

Clear and convincing evidence supports the CHINA adjudication. The decision of the district court is affirmed.

AFFIRMED.