FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-418 / 90-242

IN THE INTEREST OF T.R., A Minor Child

T.R., Father,

Appellant.

Appeal from the Iowa District Court for Wapello County Juvenile, Gene Glenn, Juvenile Referee.

The father of a female child appeals a CHINA adjudication and the subsequent dispositional order. **AFFIRMED.**

Kirk A. Daily of Webber, Gaumer, Emanuel & Daily, P.C., Ottumwa, for appellant father.

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

Timothy W. James, Ottumwa, guardian ad litem for the child.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

HABHAB, J.

The father of a minor child, T.R. appeals a CHINA adjudication and a subsequent dispositional order granting temporary legal custody to the maternal grandmother. We affirm.

The child in question, T.R., is a girl born in June 1976. Her parents are presently married to each other, and she lived with both of them until 1989.

In 1989 two of T.R.'s female cousins reported that T.R.'s father had on several occasions exposed himself and masturbated in their presence and in the presence of T.R. T.R. confirmed these reports.

T.R. was adjudicated to be a child in need of assistance due to her father's acts of exposing himself and masturbating. In a subsequent dispositional order, T.R. was placed in the home of her maternal grandmother, subject to DHS supervision. T.R.'s mother was granted unlimited visitation, but her father was allowed only supervised visitation.

The father has appealed the CHINA adjudication and subsequent dispositional order. He challenges the sufficiency of the evidence to support the CHINA adjudication. He contends the State failed to prove by clear and convincing evidence that he had exposed himself or masturbated in front of T.R. and her cousins.

Review of a dispositional hearing held after a child has been adjudicated in need of assistance is de novo. In

re S.R.A., 440 N.W.2d 619, 620 (Iowa App. 1989). Consequently, we give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but we are not bound by them. Id.

The provisions of Iowa Code section 232 are to be liberally construed to protect the welfare of the child. In re Interest of B.B., 440 N.W.2d 594, 596 (Iowa 1989). Although we are committed to the rule that there is parental interest in the integrity of the family unit, this interest is not absolute and may be forfeited by certain parental conduct. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

The trial court found that the father's acts of indecent exposure constituted a failure to exercise a reasonable degree of care under section 232.2(6)(c)(2). We agree. That section provides:

> 6. Child in need of assistance means an unmarried child:
>
> > c. Who has suffered or is imminently likely to suffer harmful effects as a result of:
> >
> > > (2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.

We turn now to the crime of indecent exposure. Iowa Code section 709.9 defines the crime of indecent exposure as follows:

> A person who exposes a person's genitals or pubes to another, not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and

2. The person knows or reasonably should know that the act is offensive to the viewer.

Therefore, if clear and convincing evidence exists to show that the father exposed himself to his child in a manner satisfying the elements of section 709.9, the CHINA adjudication must be affirmed.

Clear and convincing evidence does exist to support the allegations of indecent exposure on the part of T.R.'s father. There was testimony from several children that on numerous occasions the father would expose himself and masturbate in front of them. On one occasion there was evidence the father gave the children money before exposing himself to them. The trial court held that the father's complete denial of any indecent exposure to the children and then his creation of various excuses for the possible exposures showed he lacked credibility. We agree with this determination.

The father agrees that if his acts of indecent exposure are supported by the evidence then he should have known such an act would be offensive to the viewers. In addition, the descriptions by the children of the father masturbating during these incidents clearly supports the trial court's determination that the father exposed himself to arouse or satisfy his sexual desires. Clear and convincing evidence exists to satisfy both elements of indecent exposure.

Evidence in the record justifies the CHINA adjudication and the trial court's dispositional order. We affirm the district court.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., specially concurs.

SACKETT, J. (specially concurring)

I concur with the majority but find, as the State argues, the act of indecent exposure fits the definition of sexual abuse under Iowa Code section 232.2(6)(d), and the adjudication should have been made under section 232.2(6)(d). This finding is more in accord with the father's conduct than section 232.2(6)(c)(2), failure to supervise relied on by the majority.