IN THE COURT OF APPEALS OF IOWA

No. 9-196 (1999-41) / 98-1059

FILED

IN THE INTEREST OF K.C., C.C., and B.C.,
Minor Children,

M.C., Mother,
Appellant.

Appeal from the Iowa District Court for Wapello County, Gene W. Glenn, Associate Juvenile Judge.

The mother of three minor children appeals a juvenile court order adjudicating her children in need of assistance. **AFFIRMED.**

R.T. Starken of Starken Law Office, Ottumwa, until withdrawal, then M.C., pro se, for appellant.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney General, and Victoria Siegel, Assistant County Attorney, for appellee State.

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

Considered by Huitink, P.J., and Streit and Zimmer, JJ.

HUITINK, P.J.

Mindy C. appeals a juvenile court order finding her three minor children to be children in need of assistance and limiting her to supervised visitation. We affirm.

I. Background Facts and Procedure.

Shawn and Mindy C. are the parents of three minor children, Kiah, age seven, Chelsa, age six, and Brandon, age four. The parties' dissolution decree awarded Shawn physical care of the children subject to Mindy's visitation rights.

The Department of Human Services (DHS) initiated an investigation in January 1998 based upon allegations Jeremy D., Mindy's boyfriend, physically abused the children and that Mindy knew of the abuse. As detailed in their resulting founded child abuse report, DHS investigators discovered Chelsa and Brandon suffered cigarette burns to their ankles and hands. Investigators also reported that Kiah suffered several bruises after Jeremy struck her.

On March 2, 1998, the State filed a petition alleging Kiah, Chelsa, and Brandon were children in need of assistance (CINA). The petition alleged the children would likely suffer imminent harm from physical abuse by Jeremy D., a member of Mindy's household.

The record made at the adjudicatory hearing, includes the following:

> THE COURT: The Court will note that Petitioner's Exhibit No. 1 is Child Abuse Report by Nan Hyde, protective service worker, Iowa DHS, under date of March 26, 1998, with attached letter/report by Dr. Nancy O'Brien . . . and letter/report by Don Watson, social worker . . .
>
> *****

THE COURT: Is there any objection to the admission of Petitioner's Exhibit No. 1?

*****

THE COURT: And Mr. Starken?[1]

MR. STARKEN: No objection, Your Honor.

THE COURT: Admitted.

THE COURT: Do the parties wish to consent to adjudication based upon Petitioner's Exhibit No. 1 without further evidence?

*****

THE COURT: Mr. Starken?

MR. STARKEN: Yes, Your Honor.

THE COURT: The Court will invite your input as to what findings and with regard to whom the Court should make from the exhibit.

The record also includes this statement by Mindy's attorney prior to entry of the court's adjudicatory findings and order:

> Your Honor, based upon the Child Abuse Report, . . . I would urge the Court that it needs to limit its findings to the physical abuse allegation against Jeremy, as a member of the household in which the children were residing at the time. The report is not founded with respect to the conduct of [Mindy].
>
> *****
>
> [W]e would ask the court to limit its findings with respect to -- findings of Child in Need of Assistance to [Jeremy], but would expect that the Court would enter appropriate orders to protect the children given that [Mindy] is still involved in a relationship with [Jeremy].

Based upon the contents of the child abuse report, the juvenile court found Jeremy's physical abuse of the children supported their adjudication as children in

---

[1] Mindy was represented at the adjudicatory hearing by attorney R.T. Starken.

need of assistance. *See* Iowa Code § 232.2(6)(b). The district court also found Mindy's false statements to a DHS investigator about the cause of the children's injuries, her failure to obtain medical treatment for these injuries, her failure to report Jeremy's conduct to authorities and continued residence with him provided additional grounds for its adjudicatory decision. *See* Iowa Code § 232.2(6)(c)(2) (children have suffered or are imminently likely to suffer harmful effects as a result of parents' failure to exercise reasonable care in supervising the children). As a result of these findings and adjudication, the children were allowed to remain in Shawn's physical care subject to DHS's supervision of Mindy's visitation rights. A no-contact order was entered excluding Jeremy's access to the children.

On appeal, Mindy contends her consent to the children's CINA adjudication was limited to the adjudicatory harm resulting from Jeremy's abusive behavior. She argues she did not consent to, nor does the record support, a CINA adjudication based on her failure to supervise the children. The State argues Mindy failed to preserve error on her limited consent claim.

II. Scope of Review.

In child in need of assistance proceedings, we review the evidence de novo. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern is the welfare and best interests of the child. *In re D.L.*, 401 N.W.2d 201, 202 (Iowa App. 1986). We must review the record to determine whether the finding of a child in need of assistance is supported by clear and convincing evidence. Iowa Code § 232.96(2)

(1997). Although we are not bound by the findings of the juvenile court, we give weight to the juvenile court's findings of fact. *In re S.V.*, 395 N.W.2d 666, 668 (Iowa App. 1986).

III. The Merits.

Our interpretation of the foregoing excerpts from the record conflict with Mindy's. There is nothing in the statements made by the court or counsel identifying conditions imposed on the court's consideration of this evidence. In fact, the court expressly reserved judgment on Mindy's contributing conduct by inviting counsel's "input as to what findings and with regard to whom the Court should make from the exhibits."

We also disagree with Mindy's contention the child abuse report fails to support a finding of adjudicatory harm attributable to her. The record clearly and convincingly establishes Mindy's failure to protect her children from Jeremy's abusive behavior by her continued residence with him and false statements to investigators. Mindy's failure to protect and obtain needed medical care for her children justified their adjudication as children in need of assistance. These facts also support the imposition of conditions on her visitation rights.

We have reviewed all of the parties' arguments and find them to be without merit. The juvenile court's judgment accordingly is affirmed.

AFFIRMED.

No. 98-1059. [9-196] IN RE K.C.

Appeal from the Iowa District Court for Wapello County, Gene W. Glenn, Associate Juvenile Judge. **AFFIRMED.** Considered by Huitink, P.J., and Streit and Zimmer, JJ. Opinion by Huitink, P.J. (5 pages $2.00)

Mindy C. appeals a juvenile court order finding her three minor children to be children in need of assistance and limiting her to supervised visitation. Shawn and Mindy C. are the parents of three minor children, Kiah, age seven, Chelsa, age six, and Brandon, age four. The parties' dissolution decree awarded Shawn physical care of the children subject to Mindy's visitation rights. The Department of Human Services (DHS) initiated an investigation in January 1998 based upon allegations Jeremy D., Mindy's boyfriend, physically abused the children and that Mindy knew of the abuse. As detailed in their resulting founded child abuse report, DHS investigators discovered Chelsa and Brandon suffered cigarette burns to their ankles and hands. Investigators also reported that Kiah suffered several bruises after Jeremy struck her. On March 2, 1998, the State filed a petition alleging Kiah, Chelsa, and Brandon were children in need of assistance (CINA). The record made at the adjudicatory hearing, includes the following: THE COURT: Do the parties wish to consent to adjudication based upon Petitioner's Exhibit No. 1 without further evidence? *** THE COURT: Mr. Starken? MR. STARKEN: Yes, Your Honor. THE COURT: The Court will invite your input as to what findings and with regard to whom the Court should make from the exhibit. Based upon the contents of the child abuse report, the juvenile court found Jeremy's physical abuse of the children supported their adjudication as children in need of assistance. As a result of these findings and adjudication, the children were allowed to remain in Shawn's physical care subject to DHS's supervision of Mindy's visitation rights. On appeal, Mindy contends her consent to the children's CINA adjudication was limited to the adjudicatory harm resulting from Jeremy's abusive behavior. She argues she did not consent to, nor does the record support, a CINA adjudication based on her failure to supervise the children. **OPINION HOLDS:** Our interpretation of the foregoing excerpts from the record conflict with Mindy's. There is nothing in the statements made by the court or counsel identifying conditions imposed on the court's consideration of this evidence. In fact, the court expressly reserved judgment on Mindy's contributing conduct by inviting counsel's "input as to what findings and with regard to whom the Court should make from the exhibits." We also disagree with Mindy's contention the child abuse report fails to support a finding of adjudicatory harm attributable to her. The record clearly and convincingly establishes Mindy's failure to protect her children from Jeremy's abusive behavior by her continued residence with him and false statements to investigators. Mindy's failure to protect and obtain needed medical care for her children justified their adjudication as children in need of assistance. These facts also support the imposition of conditions on her visitation rights.