FILED
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CLERK, SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF S.D.W,
A Child;

L.W. and **R.W.,** Natural Parents,

Appellants.

Filed March 9, 1988

7-147
86-1509

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Appeal from the Iowa District Court for Polk County (No. J 6385-13), Larry J. Eisenhauer, Juvenile Referee.

The natural parents of a one-year-old boy appeal the juvenile court order adjudicating him a child in need of assistance. **AFFIRMED.**

Carol L. Copolla and Anita L. Shodeen of Coppola, Coppola & Clark, Des Moines, for appellants.

Thomas J. Miller, Attorney General; Gordon E. Allen, Special Assistant Attorney General; Charles K. Phillips, Assistant Attorney General; and Rebecca Belcher, Assistant Polk County Attorney, for appellee.

Ted Marks, guardian ad litem, Des Moines, for child.

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

OXBERGER, C.J.

The natural parents of a one-year-old boy appeal the juvenile court order adjudicating him a child in need of assistance. The parents assert there was insufficient evidence to support the adjudication. We affirm.

There is no dispute in this case that S.D.W. was physically abused. S.D.W. suffered four fractures within a one-month period. The only dispute is whether the parents were the perpetrators. They allege a baby-sitter was responsible for the abuse.

We review this appeal de novo. Iowa R. App. P. 4. Iowa Code section 232.2(6)(b) (1985) states a "Child in need of assistance means an unmarried child . . . [w]hose parent, guardian or other custodian has physically abused or neglected the child, or is imminently likely to abuse or neglect the child." The State must show by clear and convincing evidence the child was abused by one of these parties. In Interest of Long, 313 N.W.2d 473, 482 (Iowa 1981). Clear and convincing evidence is evidence that establishes the facts by a preponderance of the evidence but less than establishing the facts beyond a reasonable doubt. In re Henderson, 199 N.W.2d 111, 121 (Iowa 1972). A finding of child abuse may be predicated upon evidence of (1) multiple injuries or other serious impairment of health that ordinarily would not occur in the absence of neglect, and (2) the parents' control over the child when the abuse or neglect is alleged to have occurred. In Interest of Driver, 311 N.W.2d 87, 89 (Iowa 1981).

As noted earlier, there is no dispute S.D.W. was abused. We conclude from our de novo review of the record that the parents were the perpetrators of the abuse. The record shows that all of the injuries occurred in approximately a one-month period. At various times during this period two baby-sitters and the parents had control over S.D.W. The parents, however, were the only people in a position to inflict all the injuries.

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On April 7, 1986, S.D.W. was taken to the doctor, who, upon examination, discovered healing lacerations under the tongue. The doctor testified that he rotated S.D.W.'s arms and legs and did not discover any fractures. On April 28, 1986, S.D.W. was taken to the hospital; examination revealed a spiral fracture of his upper left arm. Further examination revealed a fractured rib, a fractured left leg, and a fracture of the left knee. These fractures were of various ages. The tibial fracture was dated as occurring two weeks prior to April 28. The rib fracture was dated as occurring in late March. The humerus fracture was dated as occurring sometime between April 18 and April 28. The knee fracture was dated as occurring within seven days of April 28.

The dating of these fractures eliminates the first baby-sitter, K.P., since she had no control over S.D.W. after April 8, 1986. She did have S.D.W. on April 28, 1986. S.D.W. showed no signs of discomfort on that day. The only injury that occurred while S.D.W. was in K.P.'s care was the mouth injury which was the result of S.D.W.'s possibly falling off a bed.

The second baby-sitter, I.B., had control over S.D.W. when these injuries occurred. The parents have introduced new evidence of a founded child abuse report against I.B. for a spiral fracture to an infant. While this evidence tends to support their position, I.B. was not in a position to have inflicted the rib injury because she was not caring for S.D.W. when that injury occurred. Also, when S.D.W. was picked up from K.P. on April 28 he showed no distress or reaction when his left arm was put in a coat. A doctor testified that the fracture was of sufficient severity that S.D.W. would have reacted to the pain. The Broadlawns' child abuse pediatric consultation staff also concluded the case did not involve multiple perpetrators.

We conclude therefore the evidence supporting the juvenile court's decision is clear and convincing, and the adjudication of S.D.W. as a child in need of assistance was correct.

The judgment of the juvenile court is affirmed.

AFFIRMED.

Habhab, J. concurs; Sackett, J. specially concurs.

SACKETT, J. (specially concurring)

I concur in the result only. I would find sufficient evidence to support the adjudication of S.D.W. as a child in need of assistance without determining the parents were the perpetrators of the abuse. The record establishes a reasonable caretaker should have noticed the child's injuries. The parents returned S.D.W. to the first baby-sitter despite suspicion she had injured S.D.W. I find clear and convincing evidence the parents failed to exercise a reasonable degree of care in supervising the child. See Iowa Code §232.2(6)(c).