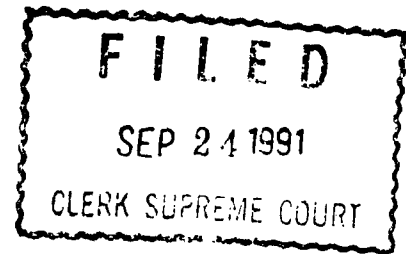


IN THE COURT OF APPEALS OF IOWA

No. 1-333 / 91-351



IN THE INTEREST OF C.J., A Child,
B.J., Mother, and H.J., Father,
Appellants.

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Appeal from the Iowa District Court for Dubuque County,
Jane Mylrea, Juvenile Referee.

The parents of a child appeal a juvenile court order adjudicating the child to be a child in need of assistance due to alleged sexual abuse by an older brother. **AFFIRMED.**

Mary M. Schumacher of Roth & Schumacher, Dubuque, for appellant parents.

Paula M. Stenlund of Reynolds & Kenline, Dubuque, guardian ad litem for the child (appellee).

Bonnie J. Campbell, Attorney General, John M. Parmeter, and Charles K. Phillips, Assistant Attorneys General, for appellee State.

Considered by Schlegel, P.J., and Hayden and Habhab,
JJ.

HAYDEN, J.

C.J. is a girl born in November 1979. She lives with her parents, H.J. and B.J., and siblings. On September 19, 1990, the Iowa Department of Human Services (DHS) received a referral alleging C.J. had been sexually abused by her sixteen-year-old brother, M.J. These allegations came from S.N., a ten-year-old friend of C.J. S.N. stated she was sexually abused by M.J. while visiting C.J.'s home. When S.N. told C.J. and another friend, K.P., about the abuse, C.J. stated she had also been abused by her brother but they should not tell her parents because they would not believe them.

C.J. was subsequently interviewed by the DHS and denied she had been sexually abused by anyone. M.J. denied sexual contact with either C.J. or S.N.

During a second interview C.J. changed her story and alleged S.N.'s older brother had sexually abused her. C.J. was unable to describe the event in any detail or explain why she failed to remember this incident during the earlier interview. A physical examination performed on C.J. revealed she had been sexually abused on more than one occasion.

The child abuse investigator obtained a removal order because C.J.'s parents would not cooperate with voluntary placement. When the investigator arrived at the family home, H.J. informed her C.J. and B.J. had gone on a trip and he did not know their location. The DHS was unable to

take custody of C.J. until seven days later when the court ordered H.J. and B.J. to disclose C.J.'s location.

The juvenile court adjudicated C.J. a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(b), (c)(2) and (d). H.J. and B.J. appeal challenging the sufficiency of the evidence to establish C.J. is a child in need of assistance.

Appellate review of a juvenile court's finding of a child in need of assistance is de novo. In the Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern is the welfare and best interest of the child. In the Interest of D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). In determining what is in the best interest of the child, the court necessarily looks at the present conditions and past performance "for that performance may be indicative of the quality of the future care that parent is capable of providing." In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). See also, In re Loeffelholz, 162 N.W.2d 415, 419 (Iowa 1968). The reviewing court 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) (1989).

H.J. and B.J. first contend there is not clear and convincing evidence to establish C.J. had been sexually abused by her brother. We disagree.

S.N. testified she was sexually abused by M.J. and was able to recall several details of the incident. S.N.'s

testimony was corroborated by K.P., another friend in the home when the incident occurred. K.P. testified when S.N. came out of M.J.'s bedroom, S.N. was upset and did not seem like herself. After the incident, S.N. told C.J. and K.P. that M.J. had raped her. During this conversation, C.J. admitted she had also been sexually abused by her brother.

C.J. was subsequently interviewed by DHS. During the first interview C.J. denied having had sexual contact with anyone. She appeared scared, cried, and did not make eye contact. At the second interview, C.J. changed her story and claimed she had been abused once by S.N.'s brother. During this session, her demeanor was bright. C.J. was not upset by the event or able to recall any details of the abuse. In addition, C.J.'s claim of a single incident of sexual contact with S.N.'s brother was inconsistent with the medical evidence which established multiple incidents of penetration.

Although it may be true, as H.J. and B.J. suggest, the "only evidence in the record connecting M.J. with the abuse is found in the testimony of K.P. and S.N.," it is also true the juvenile court found S.N. to be a credible witness and found C.J. to be less than credible in her denials. On appeal, we are not bound by the findings of the juvenile court; however, "we give weight to the juvenile court's findings of fact because the juvenile court has had the unique opportunity to hear and observe the witnesses first hand" In the Interest of S.V., 395 N.W.2d 666, 668

(Iowa App. 1986). This is especially true when the court's findings concern the credibility of witnesses. Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977). Based on this record, we find substantial evidence supporting the juvenile court's finding C.J. had been sexually abused by her brother and therefore was a child in need of assistance.

H.J. and B.J. also argue the evidence failed to establish they are imminently likely to neglect C.J. resulting in further sexual abuse to her. The record reveals H.J. and B.J. have consistently maintained their firm belief M.J. was not the perpetrator of C.J.'s sexual abuse. In addition, they sequestered C.J. from the DHS and the court for seven days until the court issued a second order demanding them to disclose C.J.'s location. Also of concern is C.J.'s change in story which occurred between the interviews conducted by the DHS. After the first interview, in which C.J. denied sexual contact with anyone, her parents discussed the incident with her. H.J. testified he did not bring up the possibility of S.N.'s brother as the perpetrator during this conversation with C.J. However, C.J. testified H.J. had specifically asked her if S.N.'s brother had ever abused her. Subsequent to this conversation, C.J. claimed in the second interview she had been abused once by S.N.'s brother. Finally, H.J. and B.J. were informed several months before the present investigation began another son of theirs had admitted an

instance of sexually abusing their granddaughter. They took no steps to obtain medical consultation for their son until the commencement of the present investigation. We agree with the juvenile court this evidence establishes H.J. and B.J. are imminently likely to neglect C.J. and unable to protect her from further abuse.

Finally, relying on Iowa Code section 232.96(8), H.J. and B.J. argue juvenile court intervention is not required to protect C.J. This Code section provides:

If the court concludes facts sufficient to sustain the petition have not been established by clear and convincing evidence or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.

Our supreme court interpreted this code section in In the Interest of G.R., 348 N.W.2d 627, 631 (Iowa 1984). The court concluded:

[T]he standard that the court's aid is not required in section 232.96(8) should be construed narrowly. Thus, if the evidence shows that resources are available to correct the specific problem rendering a child in need of assistance, the court should not readily invoke this statutory standard as a basis for dismissal unless there are strong grounds for concluding its aid is not required.

The court also identified several instances in which the juvenile court could conclude its aid was not required and dismiss the action even though the proof sustained the allegations in the CINA petition. For example, there may be cases in which the juvenile court does not have treatment or services available to correct a child's particular problem. Id. at 632. There may also be

instances in which alternative services are available to provide comparable treatment without resorting to the juvenile court. Id. Finally, in some cases state intervention could be more harmful than helpful. Id.

The present case, however, does not fall into any of these categories. Furthermore, C.J.'s parents are also M.J.'s parents, and they firmly believe M.J. was not the perpetrator of C.J.'s sexual abuse. As such, they are not in a position to support C.J. or adequately protect her from further harm by M.J. We hold the juvenile court was correct in determining its aid was required.

AFFIRMED.