

IN THE COURT OF APPEALS OF IOWA

No. 4-130 / 93-1424

FILED

MAY 26 1994

CLERK SUPREME COURT

IN THE INTEREST OF D.D., A Minor Child,
H.D. and L.K., Father and Mother,
Appellants.

Appeal from the Iowa District Court for Polk County,
A. Patricia Houlihan, District Associate Judge.

H.D. and L.K. appeal an order adjudicating their
daughter, D.D., CINA pursuant to Iowa Code section
232.2(6)(d)(1993). **AFFIRMED.**

Ben C. Chatman of Cook, Gotsdiner, McEnroe & McCarthy,
Des Moines, for appellants.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, Judy Sheirbon,
Assistant Attorney General, and Heather Dickinson,
Assistant County Attorney, for appellee-State.

Michelle Chenoweth, Des Moines, guardian ad litem for
minor child.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

D.D. is a seventeen-year-old high school student. She is one of eight children in a Vietnamese refugee family.

In May 1993 D.D. reported to a worker at the Bureau of Refugee Services that her nineteen-year-old brother had sexually abused her on several occasions. During a child abuse investigation, the mother admitted D.D. had told her about the abuse but she did not believe her because the son denied the allegation. A founded report of denial of critical care by the mother was made. D.D. was placed in foster care at her own request. On May 26, 1993, a CINA petition was filed pursuant to Iowa Code sections 232.2(6)(c)(2) and (6)(d) (1993).

At the August 1993 adjudication/dispositional hearing, the child abuse report containing D.D.'s statements as well as interviews with the parents and brother were admitted. The parents moved for a continuance of the proceedings until their son's criminal case was held, contending his right to due process and a fair trial would be violated without a continuance. The district court overruled the motion stating the proceedings concerned the best interests of D.D. only and the burden of proof in a CINA case was clear and convincing evidence as opposed to reasonable doubt in a criminal case. The court declined to appoint counsel to represent the brother. The court found D.D. to be CINA pursuant to Iowa Code section 232.2(6)(d) and ordered continued foster care. Allegations under section 232.2(6)(c)(2) were dismissed.

The parents appeal. They argue the district court erred in denying their motion to continue because their son should have had the right to intervene as a party and to have an attorney appointed to represent him.

In CINA proceedings, we review the evidence de novo. In re B.B., 500 N.W.2d 9, 11 (Iowa 1993). 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) (1993). Although we are not bound by the findings of the juvenile court, we give weight to the juvenile court's findings of fact because that court has had the unique opportunity to hear and observe the witnesses first hand. In re S.V., 395 N.W.2d 666, 668 (Iowa App. 1986).

The parents contend the CINA proceedings should have been postponed until their son, the perpetrator, had finished with his criminal trial. By not granting the continuance, they argue, the juvenile court denied him due process. We disagree.

Child in need of assistance proceedings are designed to meet and protect the best interests of children. In re B.B., 500 N.W.2d at 11. The parties in interest in this CINA adjudication are D.D. and the parents, who denied D.D. critical care.

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Iowa Code section 232.89(1) (1993) states in part, "the parent, guardian or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings" The law does not provide for a right to counsel for the brother in this case. A CINA adjudication is a civil action where the burden of proof is one of clear and convincing evidence. It is not a criminal conviction of the perpetrator.

The constitutional rights of the brother were never at issue in the CINA proceeding. Cf. In re A.D.L., 497 N.W.2d 180-81 (Iowa App. 1992) (no Sixth Amendment right to confrontation exists in a CINA proceeding). Furthermore, the record reveals no attempt by or on behalf of the brother to intervene in the proceedings. The parties whose rights were of concern in the proceeding were represented by counsel in accordance with the statute.

The statutory requirements for a CINA adjudication were met. There was clear and convincing evidence showing D.D. was a child in need of assistance under section 232.2(6)(d). The parents presented no evidence contradicting D.D.'s claims of sexual abuse by her brother. The record indicates clearly the parents agreed to the disposition.

For the reasons stated above we affirm the decision of the juvenile court adjudicating D.D. a child in need of assistance.

AFFIRMED.