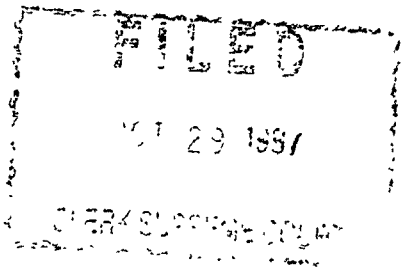
IN THE COURT OF APPEALS OF IOWA 000081

No. 7-382 / 96-2151
Filed 10/29/97



IN THE INTEREST OF C.C., A Minor Child,

B.C., Mother,
Appellant,
D.C., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

Parents appeal from a dispositional order confirming their son in need of assistance. **AFFIRMED.**

Nancy L. Pietz of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant-mother.

Michael R. Stowers of Babich, McConnell & Renzo, P.C., Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, John P. Sarcone, County Attorney, and Emily McConkey, Assistant County Attorney, for appellee-State.

Pamela Vandel, West Des Moines, guardian ad litem for minor child.

Heard Cady, C.J., Sackett, Huitink, Streit, and Vogel, JJ., and Habhab, S.J. but decided by Sackett, P.J., Streit, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

STREIT, J.

Betty and Dennis, parents of Cody, appeal Cody's adjudication as a child in need of assistance and an order ruling Betty should have only supervised visits with Cody. They contend the fact that, between the two of them, they have had parental rights to five children terminated on the grounds of physical and sexual abuse or neglect did not amount to clear and convincing evidence Cody was imminently likely to be abused or neglected. We affirm.

I. Background & Facts.

Betty and Dennis are the parents of Cody, born October 26, 1995. Betty's parental rights to her two other children were terminated in October 1989 and December 1993 because the children were physically and sexually abused by Betty and her paramour, James. Dennis's parental rights to two of his other three children were terminated in March 1993 and May 1994. A third termination was underway at the time of the proceeding.

Cody was removed from the parents' home on June 11, 1996. The State alleged the following reasons for removal: (1) the prior terminations; (2) Betty's history of sexual and physical abuse of her children; and (3) Betty's denial of the abuse, her failure to succeed in therapy, and her association with known abusers. Thereafter, the State filed a child in need of assistance (CINA) petition pursuant to Iowa Code sections 232.2(6)(b), (6)(c)(2), and (6)(d) (1995).

Hearing on the CINA petition and Cody's removal was held in August 1996. The court granted Dennis' motion to rescind the removal order, but found clear and convincing evidence that Cody was in need of assistance. The court ordered Cody placed in the temporary legal custody of the department of human services until Dennis obtained a separate residence from Betty. It granted Betty supervised visitation. The court subsequently entered a dispositional order confirming Cody was in need of assistance, and continued his legal custody with Dennis. Betty and Dennis appeal.

II. Standard of Review.

Appellate review of child in need of assistance cases is de novo. *In re B.B.*, 500 N.W.2d 9, 11 (Iowa 1993). We are influenced by the favorable vantage point of the trial court, and give weight to its findings of fact, especially the credibility of witnesses. *See* Iowa R.App.P. 14(f)(7). Our paramount concern is the child's welfare and best interests. *In re N.M.W.*, 461 N.W.2d 478, 480 (1990).

III. CINA Proceeding Based on Iowa Code Sections 232.2 (6)(b),(d).

The State alleged in its petition that Cody was a child in need of assistance pursuant to Iowa Code Section 232.2(6)(b) & (d). Those sections read as follows:

> "Child in need of assistance" means an unmarried child: . . .
> b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child. . . .
> d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

Iowa Code § 232.(6)(b) & (d) (1997).

The State has the burden to prove the allegations of its petition by clear and convincing evidence. Iowa Code § 232.96 (1993). Clear and convincing evidence is more than a preponderance of the evidence and less than evidence beyond a reasonable doubt. *King v. King*, 291 N.W.2d 22, 24 (Iowa 1980). It means there must be no serious or substantial doubt about the correctness of a particular conclusion drawn from the evidence. *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa App.1983). In this case the State does not need to prove Cody has been physically or sexually abused or neglected, it needs to prove it is imminently likely he will be if the State does not protect him with a CINA designation.

A. The State's Evidence. Betty had her rights to her two other children terminated. Tiffany, Betty's first child, was removed because Tiffany was sexually abused by Betty and her paramour. Tiffany recounted numerous incidents of physical, sexual, and "ritualistic" abuse. Betty has never admitted her role in Tiffany's abuse and denies she needs treatment.

Betty's rights to her second child, John, were terminated because Betty continued to associate with known sexual offenders, she did not make progress in therapy, she could not articulate any issues discussed in therapy or progress made in therapy, she violated no-contact orders, and she had shown an unwillingness to disassociate from dangerous environments or prioritize the safety and needs of her children over her other lifestyle choices.

Dennis had his rights terminated to two of his children, Starie and Dustin. While this case was proceeding, his rights to a third child were terminated. The reasons behind each of the three terminations was Dennis' inability to demonstrate basic child feeding and caring skills, not following through with recommended therapy, a "chaotic lifestyle," and unemployment. Dennis refuses to believe Betty is a physical and sexual abuser. He stated he would have to observe the abuse or have other "good evidence."

Considering this evidence, the court ordered Betty have no contact with Cody except supervised visitation at the discretion of the Department of Human Services (DHS). DHS was given temporary legal custody of Cody until Dennis obtained housing outside Betty's residence, at which time Dennis would be given temporary legal custody. The court further ordered Betty participate in therapy and both parents continue parenting classes.

B. The Parents' Contentions. The parents argue there is no evidence Cody has been abused and their prior history does not provide clear and convincing evidence it is imminent Cody will be abused or neglected. The language "imminently likely" in the statute enables the State to protect an endangered child before child is hurt or neglected. In determining if a child is endangered by his or her parent's ability to parent, the court can review the parent's prior history as a parent. *See In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The appropriateness of looking to the parents' treatment of other children in determining the likely welfare of the child in

question is ratified by Iowa statute. *See* Iowa Code §§ 232.2(6) & 232.116(1)(f) & (l) (allowing termination of parental rights on the basis that parental rights to other children in the home have been terminated; allowing termination of parental right on the basis of what has happened to siblings).

Given the history of the parents in this case, the likelihood of Cody suffering the same abuse or neglect as the five other children in the parents' past is, unfortunately, imminent. This is not a termination hearing. The father has temporary legal custody of the child. Both parents need assistance with their parenting skills. Hopefully, the adjudication of Cody as a child in need of assistance will prevent abuse or neglect which without public assistance would have been imminent. The trial court did not err in adjudicating Cody a child in need of assistance and ordering Betty to have only supervised visitation with Cody.

AFFIRMED.