FILED
MAY 28 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-134 / 91-1438

386

IN THE INTEREST OF R.H., L.H., AND A.W., Minor Children,
R.H., Father of R.H. and L.H., and **B.W.,** Mother,
Appellants.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Judge.

The parents of three children appeal juvenile court orders adjudicating the children to be in need of assistance. **AFFIRMED.**

Stephen P. Wing, of Dwyer, Wing, Zamora, Taylor & Walters, Davenport, for appellant father.

Murray W. Bell, of Newport, Bell & Oxley, Davenport, for appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee, the State of Iowa.

James L. Ottesen, Davenport, for appellees, the children R.H., L.H., and A.W.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

B.W. is the mother of five children: C.W., T.W., A.W., R.H., and L.H. These children are now ages twelve, ten, eight, three, and two, respectively. C.A. is the father of the three oldest children, and B.W.'s husband, Rodney, is the father of the youngest two.

In January 1991, it was reported that Rodney had sexually abused one or more of the children. The report was investigated by police and the Department of Human Services, and it was determined that C.W. and T.W. had been sexually abused. Rodney eventually pleaded guilty to two counts of second-degree sexual abuse and was sentenced to twenty-five years in prison.

Very early in the investigation, both B.W. and Rodney were told by investigators that Rodney should not have any contact with the children, and they agreed. However, there were reports that B.W. was allowing Rodney access to the children, and Rodney was discovered babysitting the children at B.W.'s home when he was arrested there on the sexual abuse charges arising out of the investigation.

In February 1991, the State filed CINA petitions, and a hearing was held to determine whether the children should be placed in foster care. It was decided that an intensive family preservation program should be instituted in lieu of removal. However, the program failed due to B.W.'s refusal to cooperate, and the children were then placed in foster care.

On June 25, 1991, the juvenile court entered an order adjudicating all of the children to be children in need of assistance on the basis they had suffered harm as a result of their parents' failure to exercise a reasonable degree of care in supervising them. See Iowa Code § 232.2(6)(c)(2) (1991). C.W. and T.W. were found to be children in need of assistance on the additional basis they had been sexually abused by a member of their household. See Iowa Code § 232.2(6)(d) (1991).

The juvenile court based its ruling on several findings. B.W. had difficulty accepting the truth Rodney had sexually abused the children. She blamed C.W. and T.W. for reporting the sexual abuse and breaking up the family. She had pressured C.W. and T.W. to recant. She had encouraged A.W., R.H., and L.H. to be critical of C.W. and T.W. for their "lies." She did not demonstrate an understanding of the effect the abuse has had on the children. It was unclear whether she would participate in family counseling, and without her involvement in counseling, the children would not be able to resolve the sexual abuse issues. Finally, her ability to protect the children from harm and to avoid future relationships which present a danger to the children was questionable. The juvenile court found these factors were all supervisory matters affecting family functioning, sibling bonding, family discipline, and the children's mental health, and concluded B.W. was unwilling or unable to meet the children's needs.

In August 1991, a dispositional hearing was held. The evidence presented indicated B.W. had made substantial progress in assisting the children with counseling, but she still exhibited a degree of ambivalence. In September 1991, the juvenile court continued foster care for the children and adopted the case permanency plan prepared by the Department of Human Services and designed to achieve the goal of reunification.

B.W. has appealed from the juvenile court's CINA adjudication but only as it relates to her three youngest children, A.W., R.H., and L.H. Rodney has appealed only as to his children, R.H. and L.H. Both the children's guardian ad litem and the State have filed appellee's briefs supporting the juvenile court's adjudication. On our review, we affirm.

Appellate review of a juvenile court's CINA adjudication is de novo. In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). We review both the facts and the law and adjudicate anew the rights of the parties. In re N.M.W., 461 N.W.2d 478, 480 (Iowa App. 1990). While we are not bound by the juvenile court's factual findings, we give them weight because the juvenile court has had the opportunity to hear and observe the witnesses first hand. In re S.V., 395 N.W.2d 666, 668 (Iowa App. 1986); Iowa R. App. P. 14(f)(7). We review the record for clear and convincing evidence to support the CINA adjudication. Iowa Code § 232.96(2) (1991). Of paramount

concern are the welfare and best interests of the children. In re N.M.W., 461 N.W.2d at 480; Iowa R. App. P. 14(f)(15).

We find the record supports the juvenile court's judgment. The record contains clear and convincing evidence showing A.W., R.H. and L.H. have suffered harm as a result of their mother's failure to exercise a reasonable degree of care in supervising them, see Iowa Code § 232.2(6)(c)(2) (1991), and we believe it is in the children's best interests to be removed from the mother's home.

The costs of this appeal are taxed to B.W. and Rodney.

For all the reasons stated, the judgment of the juvenile court is affirmed.

AFFIRMED.