FILED
DEC 31 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-470 / 91-685

IN THE INTEREST OF E.N., A Child

Appellant.

487

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

Child appeals a juvenile court order adjudicating him to be a child in need of assistance. **AFFIRMED.**

Bobbi M. Alpers, Davenport, for appellant child.

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

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, P.J.

E.N. is a boy born in March 1975. In January 1990 a younger half brother, T.N., reported E.N. had engaged in sexual conduct with his seven-year-old half sister, J.H. T.N. stated he had seen his half brother lying with his pants off on top of J.H. on the bathroom floor and that J.H. had her clothes off. When questioned, J.H. indicated that sexual contact of some sort had occurred. E.N. has repeatedly denied sexually abusing her. A later medical examination of the girl found one large and two small scars near her hymen; the doctor testified this injury was consistent with touching and rubbing with fingers or male genitalia or a straddle-type injury.

After this incident of sexual abuse was reported, the State filed a petition asking that E.N. be declared a child in need of assistance. The juvenile court concluded after a hearing that E.N. should be adjudicated a child in need of assistance under Iowa Code section 232.2(6)(f). That section provides a "child in need of assistance"

> is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

E.N. has appealed the CINA adjudication and the subsequent dispositional order requiring him to attend adolescent sexual offenders group therapy. He challenges the sufficiency of the evidence to support the CINA

adjudication. He contends the evidence failed to establish the alleged act of sexual abuse ever occurred. He also argues the evidence failed to show he "is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage." Finally, he contends the evidence failed to show his mother is unwilling or unable to provide any treatment which he may need.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985); In re S.R.A., 440 N.W.2d 619, 620 (Iowa 1989). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Iowa R. App. P. 14(f)(7).

First, E.N. argues there is not clear and convincing evidence he sexually abused his younger half sister. E.N. states that his younger half brother, T.N., revealed the incident in order to transfer their mother's attention away from him when he was confronted by her with his problems at school. T.N. said later that he only chose to tell at that time because he did not want J.H. to get pregnant. E.N. also contends there is insufficient medical evidence to support a finding of sexual abuse. The first doctor to examine J.H. reported no physical evidence of sexual abuse. That doctor, the family practitioner, however, used only a light to conduct his pelvic exam.

After a thorough review of the record, we determine there is clear and convincing evidence E.N. sexually abused J.H. Her statements are credible. She described contact with her half brother's hands and "private parts" touching her "private parts." The doctor who specializes in child sexual abuse and who examined J.H. with a colposcope testified the scarring she observed in the child's genitalia was consistent with penile or digital contact with her genitalia. T.N. and J.H. have consistently described a sexually abusive incident which is consistent with the medical evidence. We agree with the trial court that the evidence is clear and convincing E.N. sexually abused J.H.

Second, E.N. contends there is not clear and convincing evidence showing he has any mental illness or disorder or emotional damage to be alleviated or cured. He argues there should have been expert opinion testimony concerning whether he is suffering from a mental illness, disorder, or damage. The trial court found, however, "sexual abuse committed by a fourteen-year-old male sibling against a six-year-old victim is an untoward aggressive behavior, evidencing a serious mental illness or disorder or emotional damage and necessitating specialized treatment the parent would be unable to provide." We agree.

Third, E.N. claims he does not meet the definition of a child in need of assistance under Iowa Code section 232.2(6)(f) because his mother is willing and able to provide any treatment which may be needed. The social

investigation report submitted at the dispositional hearing revealed E.N. has been physically abused three times by his mother, the last time being a whipping with an electrical cord after she found out about the sexual abuse incident. E.N. has been in the custody of his father and stepmother since the order adjudicating him a child in need of assistance on February 12, 1991. E.N.'s father transferred E.N. to learning disabled classes; his mother had kept E.N. in regular classes despite school officials' evaluations. In the custody of his father, it seems E.N. is doing well in school, and E.N. states his relationship with his mother has improved. E.N. wants to continue to live with his father and stepmother. We commend the mother for initially seeking help for her children after this incident, but we determine E.N. needs specialized treatment that his mother is unable to provide. See In re D.J.R., 454 N.W.2d 838, 843 (Iowa 1990). All requirements being met, we conclude E.N. is a child in need of assistance under Iowa Code section 232.2(6)(f).

Finally, we address the dispositional order which approves the Department of Human Service's case plan requiring E.N. to attend adolescent sexual offenders' group therapy. E.N. received individual counseling at the Vera French Mental Health Center from March 1990 until October 1990. E.N.'s individualized counseling was financed by his mother's medical coverage. Because E.N. now lives with his father, the medical coverage was dropped, and his father

states he cannot afford to pay for the treatment. Group treatment is now recommended because it could be done without charge to the parents and because E.N.'s former counselor and his social worker believe it would be helpful to E.N. We affirm the trial court order adopting the case permanency plan and believe E.N. should participate in group therapy. We affirm the trial court on all issues.

AFFIRMED.