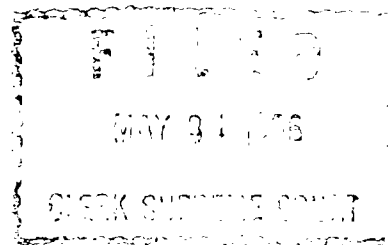


IN THE COURT OF APPEALS OF IOWA

No. 6-180 / 95-867



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

C.C.L.,

Appellant.

Appeal from the Iowa District Court for Polk County, Constance C. Cohen,
Juvenile Judge.

Juvenile appeals the juvenile court's order finding he committed the act of
second-degree sexual abuse and adjudicating him delinquent. **AFFIRMED.**

Michael D. Blazek of Reed, Blazek & Connolly, West Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney
General, Maureen McGuire, Assistant Attorney General, and Michelle Chenoweth,
Assistant County Attorney, for appellee State.

Heard by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

CADY, J.

This appeal requires us to examine the sufficiency of evidence to support an adjudication of delinquency for sexual abuse against a child under the age of twelve. We affirm the juvenile court on our de novo review.

The State filed a delinquency petition in October 1994 alleging C.C.L., age 13, sexually abused S.L., age 6, in violation of Iowa Code sections 709.1 (3) and 709.3 (2). The petition alleged the abuse occurred on September 4, 1994 while S.L. was visiting her father for the weekend, at the home of his girlfriend. C.C.L. is the son of the father's girlfriend.

S.L. was examined at a hospital on the afternoon of September 4 after she returned to the home of her mother and complained of pain while urinating. She was also examined by Dr. Riznan Shah on September 6, 1994. A report prepared by Dr. Shah included statements obtained from S.L. and her mother about the incident. The statements identified C.C.L. as the perpetrator.

S.L. testified at the delinquency hearing. She explained the incident occurred while she was in C.C.L.'s bedroom. She gave a detailed description of the room, and said C.C.L. removed her underpants and pulled her onto his bed. He then "stuck his private in her private" and "white stuff" came out. C.C.L. also testified at the hearing. He denied the incident and denied S.L. was ever in his bedroom.

C.C.L. objected to the admission of the medical report based on hearsay and undue prejudice. The court overruled the objection and admitted the report. It noted

the statements by the child and mother were not admitted for their truth, but to provide a historical perspective. Dr. Shah testified her examination of S.L. revealed no physical evidence of sexual abuse, but indicated physical evidence is found in only ten to twenty-five percent of sexual abuse cases.

The court found C.C.L. committed the act of second-degree sexual abuse and adjudicated him delinquent. Among its findings, the court noted “S.L. exhibited extraordinary credibility under [the] circumstances,” C.C.L. “had the opportunity to commit the acts alleged,” and C.C.L.’s “credibility was questionable.”

C.C.L. appeals. He contends the court erred in admitting the medical report into evidence. He further argues the evidence did not support the juvenile court’s finding he had committed second-degree sexual abuse.

Scope of Review

Our review is de novo. Iowa R. App. P. 4. We consider both questions of law and facts anew. *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991). Notwithstanding, we give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14 (f)(7); *In re J.D.S.*, 436 N.W.2d 342, 343 (Iowa 1989).

In this case, C.C.L. challenges both the admissibility of the medical report and the sufficiency of the evidence to support the adjudication. Because we are able to conclude C.C.L. committed the delinquent act of sexual abuse in the second-degree

without considering the medical report, it is unnecessary for us to decide whether the juvenile court properly admitted the medical report at the hearing.¹

Sufficiency of Evidence

A delinquent act must be proven by the State beyond a reasonable doubt. Iowa Code § 232.47 (10) (1993). C.C.L. argues, due to the lack of physical evidence, opportunity, and medical evidence, the State failed to establish he committed sexual abuse beyond a reasonable doubt.

We begin our analysis by considering the testimony of S.L. She provided details well beyond her age. Moreover, the trial court found her very credible, based on the manner, details, and consistency of her testimony. Furthermore, other evidence corroborated her testimony, including her description of C.C.L.'s bedroom. On the other hand, the trial court questioned the credibility of C.C.L. These findings by the trial court are important in our determination of the sufficiency of the evidence. *In re D.L.C.*, 464 N.W.2d at 883. The trial court had to resolve the conflict between the testimony of S.L. and C.C.L., and we give weight to the findings made. *Id.*

Mindful of the credibility findings, the lack of physical and medical evidence of sexual abuse has little impact. Expert testimony stated the lack of physical

¹ The State argued on appeal S.L.'s statements in the report were admissible not only for the historical perspective but also as statements given for the purpose of medical treatment. *See State v. Tracy*, 482 N.W.2d 675, 681-82 (Iowa 1992). *See also Morgan v. Foretich*, 846 F.2d 941, 950 (4th Cir. 1988) (no distinction under Federal Rule of Evidence 803(4) between a doctor consulted for treatment and a doctor consulted for diagnosis).

evidence was not unusual in sexual abuse cases. Furthermore, C.C.L. had an opportunity to commit the abuse while he was alone with S.L. in the upstairs portion of the house.

Based on our de novo review of the evidence, exclusive of the medical report, we conclude the State met its burden of proving beyond a reasonable doubt C.C.L. committed the delinquent act alleged in the petition. We affirm the juvenile court.

AFFIRMED.