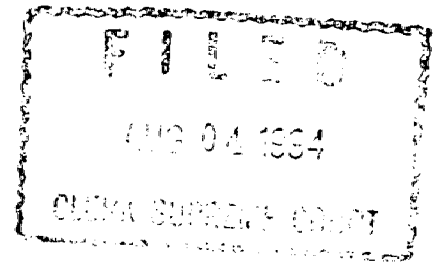


IN THE COURT OF APPEALS OF IOWA

No. 4-225 / 93-1495



IN THE INTEREST OF L.S., A Minor Child,
R.S., Mother,
Appellant.

Appeal from the Iowa District Court for Clay County,
Donavon D. Schaefer, District Associate Judge.

The appellant natural mother, R.S., appeals from a judgment of the juvenile court holding there was not clear and convincing evidence that the natural father had sexually abused their minor daughter. **AFFIRMED.**

Nancy L. Whittenburg, Spencer, for appellant mother R.S.

Bradley B. Howe of Sackett, Sackett & Howe, Spencer, for minor child L.S.

John M. Bjornstad of Cornwall, Avery, Bjornstad & Scott, Spencer, for father J.S.

Bonnie J. Campbell, Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

Heard by Donielson, C.J., and Cady and Huitink, JJ.
Sackett, J., takes no part.

CADY, J.

Robbin appeals from the decision of the juvenile court refusing to find her now former husband, Jeffrey, sexually abused their daughter, Lauren. She also claims the juvenile court incorrectly assigned a new treatment team to provide her daughter's therapy.

I. Background Facts and Proceedings

Lauren was adjudicated a child in need of assistance, "CINA", as a child who has been or is imminently likely to be sexually abused by the child's parent, guardian, or other member of the household pursuant to Iowa Code section 232.2(6)(d) (1993). The adjudication was stipulated by all parties. The identity of the perpetrator was not litigated at the hearing.

Lauren was examined by numerous psychologists regarding her alleged abuse. She was, at times, very specific and detailed in her descriptions about what kinds of abuse Jeffrey allegedly inflicted upon her. However, she also reported confusing allegations clearly not based in reality. The Department of Human Services, "DHS", investigated and determined Lauren's stories did not make sense. DHS determined it was unlikely Jeffrey committed sexual abuse against Lauren.

Following the adjudication hearing, the juvenile court agreed to allow, as a part of the disposition hearing, further litigation regarding the identity of the

perpetrator of sexual abuse. The DHS indicated the identity of the perpetrator was important to providing proper treatment and requested the court make a finding. In August 1993, the juvenile court held the dispositional hearing. At the hearing, Jeffrey testified Lauren told him about the abuse at the YMCA. Jeffrey claims he told Lauren she must tell the truth and not stories, but Robbin heard only a part of the conversation and wrongfully assumed he was trying to scare Lauren into not telling. Jeffrey also testified he strenuously requested to take a polygraph test and was given sodium amytal. Robbin objected to the introduction of the polygraph evidence but was overruled. Although numerous investigators testified that they believed Lauren's accounts of sexual abuse to be true, a number of experts who testified in Jeffrey's behalf stated that Lauren's stories mixed fantasy with reality.

The juvenile court held while there was some evidence that Jeffrey was the perpetrator, there was considerable evidence to the contrary. The court concluded it was impossible to find clear and convincing evidence Jeffrey perpetrated the sexual abuse upon Lauren. However, the court confirmed Lauren's status as a CINA and ordered a new treatment team. The court pointed out that the investigators who had been handling the case had become biased in their attempt to find Jeffrey guilty of sexual abuse and were no longer providing proper treatment with the goal of reuniting the family. Robbin appeals from the juvenile court's ruling.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). 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. Id. at 491-92.

II. Identity of Perpetrator

Robbin first claims Lauren's detailed descriptions of what Jeffrey did to her is clear and convincing evidence he perpetrated the sexual abuse. The State, the child's attorney and Jeffrey argue Lauren's reports are intertwined with fantasy and not sufficient to support finding Jeffrey sexually abused Lauren.

Adjudications made in CINA proceedings must be supported by clear and convincing evidence. Iowa Code § 232.96(2) (1991). The clear and convincing evidence standard leaves no serious or substantial uncertainty about the conclusion to be drawn from the evidence. See, e.g., Tratchel v. Essex Group, Inc., 452 N.W.2d 171, 180 n.2 (Iowa 1990). Clear and convincing evidence has also been described as evidence which persuades a rational factfinder that the contention is highly probable. Charles McCormick, McCormick on Evidence § 340 (John Strong ed. 1992).

We agree with the district court that while there is evidence Jeffrey sexually abused Lauren, there is

conflicting evidence indicating he is not the abuse perpetrator. The decision is extremely difficult and complex. Lauren initially reported someone who looked like her father touched her in her private parts. She then indicated it was "daddy" who touched her. She eventually reported he had touched her vagina, her bottom, and her breast and made her suck on his penis. She also reported he touched his mouth to her vagina. Lauren indicated her father's touching hurt her. At one point, she indicated a "white tube" came out of her daddy's penis. In addition, an examining physician, Dr. Rizwan Shah, found very small blisters on her left labia, which are consistent with oral herpes. Lauren testified Jeffrey had sores in his mouth around the time the abuse was reported. We note the experts are fairly divided on the issue of the identity of the perpetrator and do not provide significant direction in this case.

Notwithstanding, we do not reach the question of the identity of the perpetrator. Iowa Code section 232.2(6)(d) (1991) requires an adjudication of CINA when a child has been or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household. While this section may invite a determination on the question of the identity of the perpetrator, it clearly does not require such a finding.

The district court agreed to hold an evidentiary hearing on the question of the identity of the perpetrator

because the treatment providers and DHS requested the issue be litigated in order to fashion proper treatment for Lauren. In so doing, the court became further involved in the therapeutic process than was necessary to fashion proper disposition. The treatment team can consider the underlying evidence in the case and utilize it in a manner that will best promote the interests of Lauren without a specific judicial determination. We limit our determinations to those necessary to resolve the legal issues before us.

In CINA proceedings, our focus is the best interests of the child. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has a duty to see that every child within its borders receives proper care and treatment. See In re I.L.G.R., 433 N.W.2d 681, 689 (Iowa 1988). Our foremost consideration is Lauren's safety, well-being and treatment. We can effectuate that end without making a determination regarding the identity of the perpetrator. The district court order confirmed Lauren's status as a CINA and required ongoing therapeutic intervention. The court also designated Spencer Psychiatry as the treatment agency. The court further restricted contact between Lauren and Jeffrey to fully supervised visits. Finally, the court ordered that no unsupervised visits shall occur until ordered by the court upon determination and recommendation of the Spencer Psychiatry treatment team. We find these orders are comprehensive and provide for

Lauren's safety, well-being and treatment. These orders also serve to protect Lauren from further abuse, which effectuates our chief concern and the purpose of Iowa Code section 232.2(6)(d).

Accordingly, we affirm the order of the district court regarding the treatment and safety provisions for Lauren. We modify the order and refrain from making a determination regarding the identity of the perpetrator. Because we do not reach the question of whether Jeffrey is the perpetrator of the abuse, we do not address Robbin's claims regarding the admissibility of polygraph and "truth serum" evidence.

AFFIRMED.