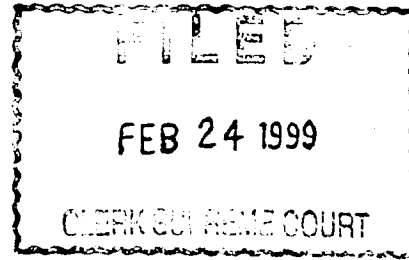


IN THE COURT OF APPEALS OF IOWA

No. 1998-15 (8-745) / 98-1188

**IN THE MATTER OF THE INTEREST
OF J.H. and C.H., Minor Children,**

**D.H., Father,
Appellant.**



Appeal from the Iowa District Court for Muscatine County, James A. Weaver,
District Associate Judge.

The father appeals from the court order adjudicating his children to be children
in need of assistance. **AFFIRMED.**

Paul Bouska, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and James S. Burger, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

MAHAN, J.

Doug and Patricia are the adoptive parents of Jennifer, born in December 1985, and Clinton, born in April 1987. Doug appeals the decision of the juvenile court adjudicating the children to be children in need of assistance (CINA). We affirm on appeal.

In August 1997, Patricia took the children and went to a domestic violence shelter due to domestic abuse and Doug's excessive use of alcohol. Jennifer and Clinton reported they had been physically abused by Doug. Jennifer also reported Doug had exposed himself to her while asking for sexual favors. The Department of Human Services (DHS) issued a founded report of physical and sexual abuse against Doug.

Patricia obtained a no-contact order based on her statements Doug had been physically abusive. Doug entered a substance abuse facility. Within a few days, he left the facility and shot himself. While in the hospital, Doug told a police officer Jennifer was truthful. He stated, "If she said that I did it, then I did."

In September 1997, Clinton alleged Doug had touched him on the buttocks and on his private parts. The child protection worker determined the statements were not credible based on Clinton's demeanor. In November 1997, Jennifer told her counselor Doug had performed sexual intercourse with her two times. In a videotaped interview, she later stated sexual intercourse had occurred four or five times. A physical examination revealed the hymen was intact and there was no evidence of

penetration. Because the new allegations of sexual abuse were unconfirmed, DHS did not issue any additional founded reports against Doug.

At the end of December 1997, Patricia asked to have the no-contact order lifted so she and the children could meet with Doug. At this meeting, Doug stated he had quit drinking and asked to be reunited with the family. Patricia decided to return to Doug. The parents voluntarily placed the children with Doug's sister. Shortly thereafter, Jennifer recanted all of her previous statements regarding sexual and physical abuse.

The State filed a CINA petition. At the hearing on the petition, Patricia testified there had not been any physical abuse during the marriage. She stated she was joking when she made out the no-contact application. Jennifer testified she made up the stories about sexual abuse because she thought it would help her mother get a divorce. She also testified, however, she did not want her parents to get a divorce.

The juvenile court adjudicated Jennifer and Clinton to be CINA under Iowa Code sections 232.2(6)(b) and (d). The court found both children had been physically abused by Doug. The court also found Jennifer's recantation was not credible. The court ordered the children placed in foster care. Doug is not to have visitation until he participates in treatment for sexual offenders. Doug has appealed.

I. Our scope of review is de novo. *In re L.B.*, 530 N.W.2d 465, 467 (Iowa App. 1995). Although we are not bound by the juvenile court's findings of fact, we give them weight, especially when considering the credibility of witnesses. *In re*

D.T., 435 N.W.2d 323, 329 (Iowa 1989). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Doug contends the State did not present sufficient evidence to show the children should be adjudicated CINA under section 232.2(6)(b). This section requires a finding a child has been physically abused or neglected, or is imminently likely to be abused or neglected. Iowa Code § 232.2(6)(b).

Jennifer and Clinton had several bruises when they first met with the child protection worker in August 1997. Jennifer stated Doug had hit her with the metal part of a fly swatter. Patricia confirmed this statement, stating she had seen the mark on Jennifer's leg. Jennifer also had a bruise on her knee, where she stated Doug had hit her with his fist. Clinton had a small bruise on his right side, where he stated Doug had hit him with a fly swatter. In addition, Clinton had a bruise on his knee, which he stated was caused when Doug tripped him. Doug admitted he had hit the children with fly swatters. We determine there is clear and convincing evidence the children were physically abused by Doug and were properly adjudicated to be CINA under section 232.2(6)(b).

III. Doug asserts there was insufficient evidence for the juvenile court to adjudicate the children as CINA under section 232.2(6)(d). This section applies to a child:

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 § 232.2(6)(d).

We find there was not sufficient evidence to show Clinton was sexually abused or was imminently likely to be sexually abused. Clinton's statements concerning inappropriate touches from Doug were considered not to be credible by the child protection worker due to Clinton's obvious excitement to be videotaped.

Concerning Jennifer, however, we find there is clear and convincing evidence to show she was sexually abused by Doug. Like the juvenile court, we find Jennifer's recantation was not credible. Jennifer was consistent in her initial statements regarding Doug's actions of exposing himself to her and asking for sexual favors. Even if Jennifer's later statements regarding sexual intercourse were not entirely accurate, it is clear Jennifer was involved in some type of sexual activity due to her knowledge of sexual matters. We determine Jennifer was properly adjudicated to be CINA under section 232.2(6)(d).

We affirm the decision of the juvenile court adjudicating Jennifer and Clinton to be children in need of assistance.

AFFIRMED.