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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF D.M., A Child,

Appellant.

Filed May 28, 1987

7-94
86-1379

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Appeal from the Iowa (Juvenile) District Court for Muscatine County (2329), James A. Weaver, District Associate Judge.

A juvenile appeals the adjudication that he was a child in need of assistance and the dispositional orders which placed him in the custody of the Department of Human Services and then in a residential treatment facility. **AFFIRMED.**

Jeffrey M. Johnson, Muscatine, for appellant child.

Thomas J. Miller, Attorney General of Iowa; Charles K. Phillips, Assistant Attorney General; and Bruce Ingham, Assistant County Attorney; for the appellee State.

Considered by Snell, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

D.M., the child in question, appeals the adjudication that he was a child in need of assistance and the dispositional orders which placed him in the custody of the Department of Human Services and then in a residential treatment facility. We affirm.

On April 11, 1986, the Iowa Department of Human Services filed a petition alleging that D.M. was a child in need of assistance, pursuant to Iowa Code section 232.2(6)(c)(2) and (f) (1985). On June 24, 1986, an adjudicatory hearing was held and an order was subsequently issued adjudicating the child in need of assistance pursuant to section 232.2(6)(f). On July 25, 1986, a dispositional hearing was held and an order was issued transferring the child's custody to the Department of Human Services for the purpose of placement at an appropriate facility for inpatient evaluation. On August 5, 1986, a second dispositional hearing was held and subsequently the court ordered that custody of D.M. be transferred to the Department of Human Services for the purpose of placement in an appropriate residential treatment facility and in shelter care pending such placement. On September 18, 1986, an order was issued directing placement of D.M. at the Mental Health Institute at Independence.

In CINA proceedings we review the evidence de novo. In Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984).

The State bears the burden of proving the allegations in its petition by clear and convincing evidence. Iowa Code § 232.96(2) (1985). If the court concludes facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance. Iowa Code § 232.96(9) (1985). Clear and convincing evidence is a standard lying somewhere

between a preponderance of the evidence and evidence beyond a reasonable doubt. King v. King, 291 N.W.2d 22, 24 (Iowa 1980).

Iowa Code section 232.2(6)(f) provides that a child in need of assistance is one:

> Who 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.

We believe the facts of this case clearly and convincingly demonstrate that D.M. was in need of treatment for illness or disorders as described in the statute and that his parents were unwilling or unable to provide such treatment.

Dr. John Hartson, a pediatric psychologist from the University of Iowa Hospitals who had conducted a psychological evaluation of D.M., testified at the CINA hearing:

> Q. You mentioned in your discussion that you found some symptoms of depression. Is that accurate? A. Right.
>
> Q. In your opinion, is the child in need of treatment because of those symptoms: A. Yes. That was one of the presenting concerns and one of the reasons that D.M. was admitted to Mercy Hospital in Iowa City under Dr. Bhatara's care.
>
> Q. What kind of treatment is needed, in your opinion? A. The research on treating depression in children suggests that psychopharmacological intervention, abuse of medication—use of medication, has some efficacy, as well as counseling related to coping with the difficulties that led to the depression. It also suggests that a combination of those two treatment modalities has the greatest benefit.
>
> Q. In addition to needing a specific program at school level and in addition, also, to needing treatment for the symptoms of depression, is the child, in your opinion, in need of treatment for any other reason? A. The inability or the difficulties that D.M. has been having relating to the home situation, the—his management and how he relates to his parents would be a concern.
>
> Q. How should that be addressed? A. Probably best dealt with through individual and family meetings, ongoing.
>
> Q. I believe you told us that none of the results of your tests were consistent with one of the reasons for the original referral, that

being the possibility that the child had sexually abused one or more other individuals. I assume that you are not telling us that he didn't do that, only that the test results are not consistent with that. A. Exactly.

Judy Hunter, a social worker with the Department of Human Services

o investigated allegations of sexual abuse committed by D.M., testified:

Q. Did you do anything else to determine whether or not, in your opinion, the incidents were true or the allegations were true? A. S. was three years old, was giving a very firm description of the sexual abuse as it had occurred. S. talked to the doctor who saw her regarding the sexual abuse, and shared with him that she too had been sexually abused, gave a very verbal description of that to the doctor.

Q. Ultimately, was your report founded or unfounded? A. My report is founded.

Q. Why? A. Based on the fact of S.'s description of the sexual abuse, the physical provided by the doctor showed that there was a fairly good chance, based on her verbal relations of the incident, that she had been sexually abused. The doctor did not find anything physical that he could definitely say was a result of the sexual abuse.

Q. Any other reasons? A. Based on the fact that I talked with B.H., did a personal interview with B.H., also who had related that he had been sexually abused by D.M., gave a very, very clear verbal description of what had occurred on that incident, too.

Sharon Savage, a social worker with the Department of Human Services,

as assigned to D.M.'s case. She prepared a case plan that the family refused

sign. She testified:

Q. If the Court should find as a result of all the evidence that the child is in need of treatment, should that decision be left up to the parents or should the decision as to how to go about seeking treatment or following through on treatment be left up to the parents? A. I don't believe so.

Q. Are there reasons other than what you discussed earlier in your testimony why you believe that? A. Well, I am not sure what I have discussed in the testimony. I think that treatment decisions cannot be based on whether the parents have the money to pay or not. There have to be--ways have to be found to pay for treatment that needs to be done. I also think that the situation is totally out of control. D.M. has been on the run, for my understanding, on practically a constant basis. The family has not been able in their own volition to control that. I am not sure that we can either, and I

> think that we may be getting real indications that D.M. needs to have a placement that is a lot more secure than a family home.

No witnesses were called on behalf of D.M. The parents of D.M. volunteered separate statements. The mother testified concerning the trouble she had had with D.M.:

> And then D. ran away and then we got him to Iowa City. He was there two weeks, and then Dr.—I don't remember the psychiatrist's name, but anyway, he told us that with Dr. Hartson and Dr.—or the counselor, Franck—that only one would be okay to go to, because the two of them together would confuse D., if we went and took him to both of them at the same time.
>
> So then we was just taking him to Dr. Hartson until HMO wrote and told us that they couldn't pay for Dr. Hartson's calls no more. And I did go see Dr. Hartson the last time, because D. had ran away and I was worried about him, and that was when he was running the streets. And I stopped him at the hospital—by the hospital, my daughter and I, and I told him to come home with me, and he said, "No."
>
> And I says, "D., the kids you run with are all 18 and they can get in trouble." And I says, "I will press charges against them for harboring you as a runaway."
>
> And he says, "You do that and you'll wind up in the hospital."

The father of D.M. referred to his son as "disturbed," "in trouble," and having "sexual problems." The father recognized that D.M. needed professional help with his problems.

We believe the testimony presented to the court provided clear and convincing evidence that D.M. was suffering from a mental disorder or had incurred emotional damage, evidenced by depression and aggressive behavior. The testimony also revealed that D.M.'s parents were unable or unwilling to provide such treatment. As Ms. Savage testified, the parents had refused to voluntarily place the child, they refused to grant access to the reports of professionals that did assess D.M., and they refused even to sign the case plan providing for the voluntarily acceptance of services. In light of the foregoing, we believe there is no serious or substantial doubt about the correctness of the conclusion

drawn from the evidence. See Raim v. Stancel, 339 N.W.2d 621, 624 (Iowa App. 1983).

Iowa Code section 232.96(7) (1985) provides, "After the hearing is concluded, the court shall make and file written findings as to the truth of allegations in the petition and as to whether the child is a child in need of assistance." In its order of June 25, 1986, the court concluded that D.M. was a child in need of assistance as defined in Iowa Code section 232.2(6)(f) (1985). Specific factual findings were not made in the order. D.M. argues that this failure is grounds for a remanding of the case with directions for a dismissal of the petition. We do not agree. We do think the court should have provided more specific factual findings as directed by the statute, but we do not agree that the lack of specificity here requires reversal. First, the court did specify the statutory section which was relied on in making its determination. Given the testimony presented, the facts of this case closely fit the definition of a child in need of assistance under 232.2(6)(f) (1985), hence the child and parents were notified of the reasons for the decision. Second, our review of juvenile cases is de novo. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the trial court but we are not bound by them. Iowa R. App. P. 14(f)(7). Given the testimony presented, the clarity of the record made, the number of witnesses testifying, and the representation by counsel of D.M. at the hearing, there is little reason for us to reverse on this matter. In our de novo review, we have concluded, by pointing to specific testimony in the record, that there was clear and convincing evidence D.M. was indeed properly adjudicated a child in need of assistance. We do not think a reversal based on the failure to make more extensive fact findings of explicit in the order would benefit any of the parties concerned. And, third, such a decision is not required by our case law. D.M. suggests that In re Interest of J.R.H., 358 N.W.2d

311 (Iowa 1984), requires reversal of the present case. We disagree. J.R.H. did say that the transfer of legal custody of children in a dispositional order is prohibited unless the court enters certain findings. Id. at 320. However, J.R.H. turned on the absence of any factual basis in the record for the court's dispositional order: "There has never been a hearing or a determination by clear and convincing evidence that her children have suffered or are imminently likely to suffer some harm resulting from her acts or omissions which would justify the adjudication of the children as in need of assistance." Id. That is not the situation in the instant case. A brief, written finding was made in this case by reference to the statutory basis for the adjudication. A full hearing was held that produced clear and convincing evidence of the need to adjudicate the child in need of assistance. An adequate record was made permitting an appellate court to fully exercise its duty of de novo review. In these circumstances, we do not find that the order as it stands requires a remand or reversal of the adjudication.

D.M. also argues that the postadjudication predisposition orders directing the child to be placed in either foster care, shelter care, or in the parent home under supervision, were not supported by sufficient evidence and were not accompanied with requisite written findings. We need not reach the merits of this argument since we believe that any decision on our part would have no force or effect in the underlying controversy, hence the issues as relating to these orders are moot. See Iowa Bankers Association v. Iowa Credit Union Department, 335 N.W.2d 439, 442 (Iowa 1983). We do note, however, that even were we to address the issues raised as to these non-final disposition orders, our analysis would differ little from our examination of the CINA adjudication.

D.M. finally contends that the final disposition that was ordered after the August 5, 1986, hearing which provided for transfer of custody to the Depart-

ment of Human Services for the purpose of placement in a residential facility was not the least restrictive disposition appropriate under the circumstances and thus violative of Iowa Code section 232.99(3) (1985). We find no merit in this contention. The court had before it the recommendations of the Department of Human Services, including the report from the psychiatrist staffing the evaluation, and of the counselor who had been seeing D.M. for an extensive period of time. After examining these reports the court ordered the child into a residential placement facility. Such a conclusion was appropriate and in full compliance with section 232.99. Our conclusions concerning the lack of factual findings in the order following the CINA adjudication also apply to the order placing D.M. in a residential facility. Under the circumstances of this case, we do not reverse on the lack of factual findings; however, we have confidence that our courts will fully observe the directions of Iowa Code sections 232.99(4) and 232.96(7).

AFFIRMED.