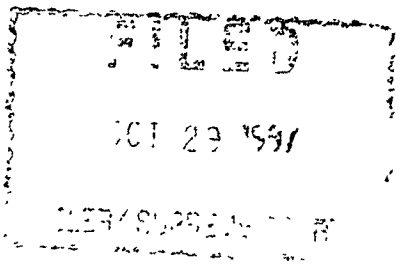
IN THE COURT OF APPEALS OF IOWA 000033

No. 7-486 / 96-2208
Filed 10/29/97



IN THE INTEREST OF G.D.B. and A.N.B., Minor Children,

D.B., Father,
Appellant,

R.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Artis Reis, Associate Juvenile Judge.

The parents of two minor children appeal a district court order adjudicating their children in need of assistance pursuant to Iowa Code section 232.2(6) (1995).

AFFIRMED.

David A. Morse of Garten & Wanek, Des Moines, for appellants

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Michael B. Oliver, Assistant County Attorney, for appellee State.

Considered by Cady, C.J., and Huitink and Vogel, JJ.

HUITINK, J.

D.B. and R.B. appeal a juvenile court order adjudicating their children, G.B. and A.B., in need of assistance pursuant to Iowa Code section 232.2(6). We affirm.

I. Background Facts and Proceedings.

D.B. and R.B. are the parents of G.B., born May 9, 1990, and A.B., born November 16, 1994. The family came to the attention of the Department of Human Services (DHS) on July 5, 1996, when a student nurse reported she had seen welts and red marks on G.B.'s face at a party the night before.

An investigation revealed D.B. had slapped G.B. across the face twice after G.B. refused to take a nap, called the father names, and spat at the father. R.B. was in the home during the episode, but did not intervene. D.B. also confirmed he had struck G.B. with a yard stick on a prior occasion, causing bruises on G.B.'s leg and breaking the stick. In addition, the child protective investigator found the home was very cluttered and unsafe for the children.

On July 26, 1996, a temporary no contact order was entered against the father. A temporary removal order was granted on July 29, 1996. The court confirmed the removal of the children after a hearing. The court found G.B. and A.B. were children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (6)(c)(2) on October 14, 1996, and custody of the children continued with DHS. A dispositional hearing on October 28, 1996, confirmed the children were in need of assistance and returned custody to D.B. and R.B., subject to supervision by the DHS.

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II. Scope of Review.

We review an action arising from CINA proceedings de novo. Iowa R. App. P. 4. We give weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, but we are not bound by these findings. Iowa R. App. P. 14(f)(7). Our paramount concern is the welfare of the child. *In re D.L.*, 401 N.W.2d 201, 202 (Iowa App. 1986). We review the record to determine whether the juvenile court's findings are supported by clear and convincing evidence. Iowa Code § 232.96(2).

III. The Merits.

D.B. and R.B. argue the juvenile court erred in finding G.B. and A.B. were children in need of assistance for two reasons: (1) D.B. did not commit child abuse; and (2) R.B. did not act unreasonably in supervising her children.

Iowa Code section 232.2(6)(b) defines a child in need of assistance as an unmarried child "[w]hose parent . . . has physically abused or neglected the child, or is imminently likely to abuse or neglect the child." D.B. relies on *Hildreth v. Iowa Department of Human Services*, in maintaining the marks on G.B.'s face did not constitute physical injury and child abuse *per se,* rather the marks were merely evidence to use in determining whether abuse had occurred. *Hildreth v. Iowa Department of Human Services*, 550 N.W.2d 157, 160 (Iowa 1996). Moreover, for physical abuse to exist, the parent must reasonably foresee his actions would cause actual physical injury to the child. *Id.* D.B. argues he did not foresee actual injury

would result from striking G.B. in the face, and his conduct was a reasonable act by a parent disciplining his child. We disagree.

In *Hildreth*, the court stated a parent may use reasonable corporal punishment in disciplining his child and, under such circumstances, if a reddening of the skin occurs and lasts more than twenty-four hours, it is not *per se* physical injury resulting in child abuse. *Hildreth,* 550 N.W.2d at 159-60. In that case, a father struck his child with a wooden spoon on her buttocks while the child was wearing jeans. *See Id.* The court found the father could not have reasonably foreseen his act would injure his child and characterized the father's conduct as a "rather limited striking." *Id.*

Based on our review of the record, we find D.B.'s conduct was unreasonable corporal punishment. D.B. should have reasonably foreseen his actions, striking his six-year-old son in the face with enough force to cause bruising, finger marks, and redness, would injure G.B. A physician documented the injury twenty-four hours after it occurred. Though not physical injury *per se*, this is further evidence D.B. injured and abused G.B.

The State alleges R.B. denied her children critical care and failed to exercise a reasonable degree of care in supervising them. We agree.

Iowa Code section 232.2(6)(c)(2) defines a child in need of assistance as an unmarried child "[w]ho has suffered or is imminently likely to suffer harmful effects as a result of . . . the following: . . . failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." The record provides clear and

convincing evidence R.B. failed to act reasonably in supervising her children. At the time D.B. struck G.B., R.B. was aware of the situation, yet did not intervene or check to see whether G.B. was injured. In addition, the home was so cluttered the children's safety was endangered, and hazardous items were available to the children. Under these conditions, the juvenile court correctly found G.B. and A.B. were children in need of assistance with respect to R.B.

With respect to A.B., D.B. argues he did not physically abuse her, and R.B. alleges she did not fail to provide reasonable supervision. We disagree. It is true D.B. did not strike A.B. in this instance. However, we affirm the juvenile court's finding A.B. is a child in need of assistance. Iowa Code sections 232.2(6)(b) and (6)(c)(2) protect children imminently likely to suffer physical abuse or the effects of their parents' failure to supervise them, respectively. Moreover, abusive action toward other siblings can be the basis of adjudication of a child not directly abused. *In the Interest of E.W. and A.W.*, 434 N.W.2d 898 (Iowa App. 1988). Our de novo review of the record shows there is clear and convincing evidence A.B. was in danger of imminent abuse.

Accordingly, we affirm the juvenile court's order confirming G.B. and A.B. are children in need of assistance and returning their custody to D.B. and R.B., subject to supervision by the DHS.

AFFIRMED.