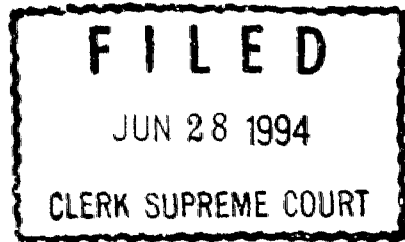


IN THE COURT OF APPEALS OF IOWA

No. 4-151 / 93-883

IN THE INTEREST OF M.T.M., A Minor Child,
G.M., Father,
Appellant.



Appeal from the Iowa District Court for Johnson County,
Sylvia A. Lewis, Juvenile District Associate Judge.

The father appeals from the juvenile court's order
finding M.T.M. to be a child in need of assistance pursuant
to Iowa Code section 232.6(2)(d). **AFFIRMED.**

Lawrence L. Lynch of Lynch, Greenleaf & Michael, Iowa
City, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Judy Sheirbon,
Assistant Attorney General, for appellee State.

Sally Weyer of Bergan & Weyer, Iowa City, attorney and
guardian ad litem for appellee minor child.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

CADY, J.

Gary appeals from a dispositional order adjudicating his daughter, Mary, to be a child in need of assistance. He claims the State failed to prove by clear and convincing evidence Mary had been sexually abused.

I. Background Facts and Proceedings

Mary is the six-year-old daughter of Gary and Jean. She has two siblings, Melanie, age 17 and Brian, age 16. At the time of these allegations, Mary resided with both of her parents and her siblings.

On August 6, 1992 Mary was in the basement rollerskating and playing with her father. She then came upstairs and reported to her mother "Daddy and I have a secret, but I can tell you. Daddy tickled me." When her mother asked her what she meant, Mary indicated her daddy tickled her down under her underwear. Mary told her father she had told her mother "our secret." Mary then told her mother her daddy was mad at her. When Gary came upstairs, Jean asked him what Mary meant by what she said. Gary replied, "Oh, we were just playing a game." He then indicated he did not know what Mary was talking about when she stated he had tickled her under her underwear.

After Gary left for work, Jean took Mary to the basement and asked her to describe what had happened. Mary indicated as she was skating around, her father would tickle her in her genital area. When Jean asked Mary where

her father had tickled her, she pulled her underwear down, spread her legs and pointed to her vaginal area.

Later that afternoon, Jean took Mary to Pediatric Associates to see the on-call doctor, Dr. Mary Larew. Dr. Larew is a partner of Dr. Stanley Hackbarth, Mary's pediatrician. Mary told Dr. Larew her father had tickled her in the genital area. Dr. Larew found redness of the genital area consistent with sexual abuse. Dr. Larew contacted the Department of Human Services, "DHS", and reported her suspicions.

On August 7, 1992, Maurice Wadle, an child abuse investigator with DHS, contacted Jean. He made arrangements to transport Jean and Mary to the Child Protection Center at St. Luke's Hospital in Cedar Rapids. Mary was interviewed by investigator Trish Kostel. The interview was videotaped. Mary also told the investigator her father tickled her in the genital area. The next week, Dr. Hackbarth, Mary's regular physician, found an abrasion of the genitalia which is consistent with sexual abuse.

The father claimed he merely was engaged in a tickling game with Mary. He claimed he tickled Mary on her abdominal area and not on her genitalia.

The juvenile court found Mary to be a child in need of assistance pursuant to Iowa Code section 232.2(6)(d) (1991). It found clear and convincing evidence Mary had been or was imminently likely to suffer sexual abuse by the father. The court placed Mary in Jean's custody.

II. CINA Adjudication

Gary challenges the juvenile court's adjudication of Mary as a child in need of assistance. He claims the State failed to show by clear and convincing evidence Mary had been sexually abused by him.

Appellate review of CINA proceedings is de novo. In re L.K.S., 451 N.W.2d 819, 821 (Iowa 1990). Although we are not bound by the juvenile court's fact findings, we give them weight, especially when considering the credibility of witnesses. Id. We recognize the juvenile court has had the unique opportunity to hear and observe the witnesses first hand. See In re A.D.L., 497 N.W.2d 178, 180 (Iowa App. 1992).

Mary was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(d) (1991). This section defines a "child in need of assistance" as 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." The State has the burden of establishing these grounds by clear and convincing evidence. See Iowa Code section 232.96(2).

Our paramount concern is the welfare and best interest of the child. In re N.M.W., 461 N.W.2d 478, 480 (Iowa App. 1990). The provisions of the juvenile code must be liberally construed to protect the welfare of the child in furtherance of our responsibility to provide that protection. See In re B.B., 440 N.W.2d 594, 596 (Iowa 1989).

Mary was consistent in her reports of the incident with her father. She described the same abuse to her mother, to Dr. Larew, and the Child Protection investigator. She indicated her father tickled her under her underwear while she was in the basement rollerskating. She pulled her underwear down and pointed to her genital area to show where she had been touched. She also reported he had touched her hard and it had hurt. Her report varied only slightly once, following lengthy, intensive examination during a deposition. The juvenile court had the opportunity to review her testimony on videotape, as did this court. We, like the juvenile court, found Mary to be highly credible in her report. In addition, both parents and Mary's sister testified Mary was a truthful child. Gary's testimony regarding the incidents of the morning corroborate Mary's testimony. Although Gary denies sexually abusing Mary, he admits they were alone in the basement together playing tickling games. His testimony regarding his conversations with Jean also corroborate Jean's testimony surrounding the incident.

In the evening of the the day Mary indicated to her mother her father had tickled in the genital area, Dr. Larew observed redness and a slight labial adhesion near Mary's vaginal opening. Dr. Larew testified her findings were consistent with the occurrence of sexual abuse. One week later, Dr. Hackbarth, Mary's pediatrician, observed a small abrasion at the front of Mary's vaginal opening. He

testified the abrasion was caused by some type of trauma which had occurred approximately one week earlier. He also testified the extreme redness Dr. Larew observed may have hidden the abrasion from her view.

Based on the evidence, we conclude clear and convincing evidence supports the finding Mary has been sexually abused by her father. We affirm the juvenile court's adjudication of Mary as a child in need of assistance pursuant to Iowa Code section 232.2(6)(d) (1991).

AFFIRMED.

Huitink, J., concurs; Sackett, P.J., specially concurs without opinion.