IN THE COURT OF APPEALS OF IOWA

No. 1-414 / 99-1509
Filed December 28, 2001

IN THE INTEREST OF D.C-B. AND P.C-B.,
Minor Children,

M.C-B., Mother,
Appellant,

D.B., Father,
Appellant.

FILED

Appeal from the Iowa District Court for Floyd County, Gerald W. Magee, District Associate Judge.

The father and mother appeal from a number of juvenile court rulings. **AFFIRMED.**

Kevin E. Schoeberl of Story, Schoeberl & Kowalke Law Firm, Cresco, for appellant-father.

W. Patrick Wegman and Judith O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, Charles City, for appellant-mother.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and Marilyn J. Dettmer, County Attorney, for appellee-State.

Cynthia Schuknecht of Noah, Smith & Schuknecht, P.L.C., Charles City, for minor children.

Heard by Mahan, P.J. and Hecht, J. and Habhab, S.J. *

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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HABHAB, S. J.

Appellant mother Michelle and appellant father Dennis appeal the temporary removal orders and children in need of assistance (CINA) adjudication regarding their children D.B. and P.B. Michelle argues on appeal the trial court erred in issuing a dispositional order placing the children in foster care and in issuing a temporary removal order. She claims there is not clear and convincing evidence to support the conclusion that D.B. and P.B. were in imminent danger if they remained in her custody. Michelle further argues the CINA adjudication was in error, for it was not supported by the evidence and was based upon testimony from the removal hearing, testimony of which she claims the court erroneously took judicial notice.

Dennis makes similar arguments that the disposition order, the temporary removal orders, and the CINA adjudication were not supported by clear and convincing evidence. He also disputes the requirement of the court's disposition order that he obtain a professional evaluation before the children can be returned to his care. Additionally Dennis argues the court erred in ruling against his motion to restrict release of documents and his application to exceed fee guidelines. After considering all issues raised on appeal, whether touched on in this opinion or not, we affirm.

Michelle and Dennis, who married in 1994, are the parents of P.B., born November 13, 1993, and D.B., born August 23, 1995. On March 22, 1998, D.B. was hospitalized for a rash and vomiting. Following repeated hospitalizations of D.B. and allegedly suspicious behavior by Michelle, both D.B. and her brother P.B. were temporarily removed from their parents' custody. The issue of the

children's temporary removal was heard before the juvenile court, which ruled the children were in imminent danger and should remain out of their parents' care.[1] On March 2, 1999 the children were adjudicated CINA. A disposition hearing followed.

We first address Dennis's claim the trial court erred in its November 12 and November 24, 1998 issuance of an ex parte temporary removal order. This order was based upon the assertion that Dennis had violated the conditions under which he had been granted temporary placement of the children at his home, specifically that he had allowed their mother unsupervised contact with them. Dennis claims the State failed to produce clear and convincing evidence that the children's mother had spent the night at his home. In addition he claims the trial court's denial of his application for expert evaluation in order to determine the truthfulness of P.B. (who had stated that his mother had spent the night with them) was an abuse of discretion. The State responds that this point is moot.

We are inclined to agree with the State. The temporary removal order was effective only until the resolution of the original application for temporary removal of the children, which was ultimately resolved in favor of the State. As the supreme court stated in *In re A.M.H.*, 516 N.W. 2d 867, 871 (Iowa 1994), "Any error committed in granting the temporary ex parte order cannot now be remedied. We cannot go back in time and restore custody based on alleged errors in the initial removal order" (citations omitted).

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[1] The juvenile court held that the evidence was not clear and convincing that the parents were unable or unwilling to provide treatment for the two children under section 232.2(6)(e) (1997). Therefore, that part of the State's case was dismissed. However, the court did adjudicate both children under section 232.2(6)(b) and (c)(2).

But even if the issue is not moot, we find the trial court did not err in either its November 12 or its November 24 ruling. We review CINA proceedings de novo. Iowa R. App. P. 4. *See A.M.H.*, 516 N.W.2d at 870. We give weight to the factual findings of the trial court, but we are not bound by them. Iowa R. App. P. 14(f)(7). Dennis claims that the trial court gave too much weight to hearsay evidence of the comments of P.B. to his teacher, babysitter, and a social worker that his mother had spent the night with them and their father. We disagree.

Although the statements that the mother had spent the night on November 10 came from P.B., they were unsolicited and were corroborated by other facts. As the district court noted, each witness P.B. told about his mother's presence at his father's home viewed P.B. as being truthful. In addition, his father stated that he believed his children would tell someone if their mother stayed in his home.

Likewise, we deny Dennis's claim that the trial court erred in refusing to grant him his application for expert evaluation. As to the credibility of P.B.'s statement we review the grant or denial of witness testimony by the trial court for abuse of discretion. *State v. Schultz,* 579 N.W.2d 317, 320 (Iowa 1998). We give great weight to the credibility findings of the trial court and find that its reluctance to accommodate further expert evaluation of P.B. after it had issued its ruling was not an abuse of discretion.

Dennis and Michelle together argue the trial court's temporary removal order on February 26, 1999, following an ex parte order for temporary removal on June 19, 1998, and hearings on July 23, 1998, August 11, 1998, October 6-9, 1998, December 15-17, 1998, was in error. They contend the court erred in ordering the temporary removal because there was not clear and convincing

evidence that Michelle posed an imminent risk to P.B. and D.B. The State claims all issues regarding temporary removal of the children are now moot.

Both parties further contend the CINA adjudication was not supported by clear and convincing evidence. Without deciding the issue of mootness, we address the issue of clear and convincing evidence as it pertains both to the removal order and to the CINA adjudication, for we believe our conclusion that there is clear and convincing evidence that Michelle posed an imminent risk to both of her children applies to both rulings.

As noted earlier in this opinion, we review the evidence in CINA proceedings de novo. Iowa R. App. P. 4, *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). We give great weight to the findings of the trial court, especially regarding issues of credibility, but we are not bound by these findings. Iowa R. App. P. 14(f)(7). In this case the juvenile court found that D.B. and P.B. were children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (1997). The temporary removal order and CINA adjudication were based upon evidence that a strange and severe rash D.B. had developed was due to Michelle's actions or purposeful inaction to harm her daughter. It is clear D.B. developed this rash while under the care of her parents, and that it would reappear and increase while under their care. Under those circumstances and others, the juvenile court ordered the temporary removal of the children, and adjudicated them CINA, ordering in the CINA adjudication that they remain removed from the custody of their parents.

We agree with the district court that there is clear and convincing evidence Michelle was harming D.B., and that remaining with her or with Dennis, who

allowed contact between Michelle and D.B., put the child at imminent risk of harm. Although, as appellants argue, the evidence that Michelle suffered from Munchausen Syndrome by Proxy[2] and was harming D.B. was not conclusive, we find persuasive the letter from Dr. Kanis of the University of Iowa Hospitals and Clinics (UIHC) that there was a high likelihood that Michelle had Munchausen Syndrome by Proxy for these reasons:

> 1. The very atypical course seen in this case – if this were SSSS (staphylococcal scalded skin syndrome) alone, specifically the multiple relapses spanning at least 1½ months;
> 2. The previous hospitalizations have shown clearing prior to discharge, only to have significant exacerbation in a short time post discharge (on oral medication);
> 3. The extreme amount of "doctor hopping" and showing up at other physicians' offices instead of following up with ones seen previously, despite scheduled appointments;
> 4. Unusual distribution of the rash – sparing arms, hands, feet;
> 5. Repeated requests for morphine for her child with statements that Denise is in pain, but exams showing a child not in pain;
> 6. Repeat requests for IV's to be placed in the child, despite her telling us earlier that IV's do not last very long in the child, 1 dose to 1 day, and that the IV's are difficult to place -- hence would be painful to place;
> 7. Several IV "failures" with IV's coming undone or coming out, that were puzzling to us; and
> 8. Mother stating that child will not eat -- when offered food, the child promptly eats.

It has been directed to our attention that the Mayo Clinic did not conclude this was a case of Munchausen Syndrome by Proxy. It is true this conclusion contrasts with the conclusions of the UIHC. It is here noted that the UIHC

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[2] Munchausen Syndrome by Proxy is defined in the record as having four components:

1. A caretaker or parent lies about something going on with the child;
2. The parent presents a child for medical attention;
3. The parent does not tell what he or she has done and that he or she is deceiving the medical provider; and
4. Once the perpetrator is removed, the symptoms disappear.

diagnosis included the Mayo Clinic's records and conclusions as well as additional facts developed after the Mayo Clinic hospitalization. There is testimony in the record to the effect the varying conclusions of Mayo Clinic and UIHC were not in fact in conflict, for the UIHC conclusion was based on a more comprehensive understanding of the situation. The juvenile court apparently found this explanation of the differing diagnoses credible.[3] We give great weight to this conclusion and find the CINA adjudication and temporary removal were supported by clear and convincing evidence that the children were at risk of imminent danger and that Michelle and Paul failed to exercise a reasonable degree of care in supervising the children.

Both parents also appeal the juvenile court's August 9, 1999 dispositional order. Michelle claims the court was in error to take judicial notice of all prior evidence, testimony, and exhibits introduced in the temporary removal hearings for purposes of the CINA adjudication. She also contests the judicial notice of such evidence from both the temporary removal and CINA adjudication proceedings for purposes of the disposition order. Dennis claims, almost to the contrary, that the court erred in the disposition hearing and order by admitting and considering evidence of his sexual offense history, that the court should

[3] In our de novo review we note testimony demonstrating the following: Michelle has Munchausen Syndrome; those with Munchausen Syndrome are more likely to suffer from Munchausen Syndrome by Proxy; Michelle's daughter, D.B., developed an inexplicable and severe rash while under her parents' care; at least twice this rash, which appeared to be in remission, would suddenly worsen within twenty-four hours of Michelle's predicting that it would; Michelle "hopped" from doctor to doctor in a quest to "cure" the rash; "doctor hopping" supports a conclusion of Munchausen by Proxy; while consulting with various doctors Michelle indicated D.B. had health problems including recurring urinary tract infections which she did not have; Michelle requested that D.B. undergo unnecessarily painful and unnecessarily invasive procedures; Michelle claimed D.B. was in great pain and needed morphine when she clearly was and did not; D.B.'s IV inexplicably and suspiciously became detached several times while she was hospitalized at Mayo Clinic; and D.B.'s rash cleared up when she went to live with foster parents.

have been bound by judicial notice to its earlier findings in the CINA adjudication that there was insufficient evidence that he would sexually abuse the children. Dennis also argues that his sexual offense history was not part of the original temporary removal and CINA petitions and should not suddenly be an issue in the disposition of the case.

We find no merit to these arguments. To answer Michelle's argument,[4] the juvenile court is authorized to judicially notice the pleadings and exhibits from previous CINA proceedings involving the same child or children. *A.M.H.,* 516 N.W.2d at 873. CINA proceedings include both the adjudicatory and the dispositional phases. *Id.* We find that judicial notice is authorized between and among these proceedings and phases if they involve the same children. *See id.* Further, judicial notice in CINA proceedings is not limited to evidence, but includes any part of the CINA record. *In re H.R.K.,* 433 N.W.2d 46, 48 (Iowa Ct. App. 1988).

When the court takes judicial notice, however, it must make provision for meaningful review, which includes indicating exactly what it is taking judicial notice of and making all noticed documents and testimony a part of the record. *See In re Adkins,* 298 N.W.2d 273, 277-8 (Iowa 1980). In this case the juvenile court indicated that it was taking judicial notice specifically of "prior evidence and testimony as well as exhibits." The noticed exhibits and testimony in this case were included in the record and provide for an adequate review. Although some

[4] Michelle also argues the taking of judicial notice was a violation of her constitutional right of due process, an argument not raised in the juvenile court. She cites for the most part *A.M.H.*, 516 N.W.2d at 870. There is not much question that a natural parent has due process rights not only in termination cases but also CINA proceedings. From our examination of the record, we find within the context of the *A.M.H.* case and the authorities cited therein that Michelle received the proper process due her.

words in the initial hearings were inaudible and could not be transcribed, we believe those initial hearings were sufficiently transcribed for us to conduct a meaningful review. We find no error in the court's taking judicial notice of the proceedings preceding the CINA or the disposition hearing and taking them into account in issuing its CINA and disposition orders.[5] Further, as we have indicated above, there was clear and convincing evidence that the children were in sufficiently imminent danger to justify the court's disposition order.

With respect to Dennis's argument, section 232.99(2) provides that all relevant and material evidence shall be admitted in a CINA proceeding. As we stated earlier, CINA proceedings involve a two-step procedure and evidence admissible or admitted in the adjudicatory hearing may be considered in the dispositional hearing. *A.M.H.*, 516 N.W.2d at 873. Evidence considered in the dispositional hearing is not, however, limited only to that evidence considered in the adjudicatory hearing. Although in this case the court found there was not clear and convincing evidence to adjudicate the children CINA based upon imminent risk of sexual abuse, it found in its disposition proceedings there was sufficient risk of sexual abuse to require Dennis to seek professional evaluation or assistance before D.B. and P.B. would be allowed back in his care. Evidentiary matters, unless they are matters of law, are within the trial court's discretion and we review for abuse of that discretion. *See In re E.H.III*, 578 N.W.2d 243, 245 (Iowa 1998). We find no merit to the claim that the admissible evidence and findings in a disposition proceeding are limited to the evidence and

[5] But even if there is error as urged by the appellants we would find no reversible error. From our de novo review we arrive at the same result reached by the juvenile court regardless of any alleged fault in judicial notice of particular proceedings. *Adkins*, 298 N.W.2d at 278.

findings in its adjudicatory proceedings. *See In Interest of T.C.*, 492 N.W.2d 425, 429 (Iowa 1992) (evidence irrelevant in the termination proceeding is crucial in the disposition proceeding). We further find no abuse of discretion on this point, and consequently we find no abuse of discretion in the admission of documents relating to Dennis's past sexual abuses. We therefore find no error in the district court's disposition order.

Dennis appeals the trial court's assessing him $2000 in attorney fees. The State claims that the standard of review is by petition to the supreme court for an original writ of certiorari. We do not necessarily dispute this contention. However, the question is before us and under the circumstances present we consider it proper to make the determination in this appeal. In doing so we find no evidence that the district court committed an error at law and therefore decline to modify its assessment of attorney fees in this case.

We have considered all issues raised by the appellants in their briefs whether covered in this opinion or not and find them to be without merit.

AFFIRMED.