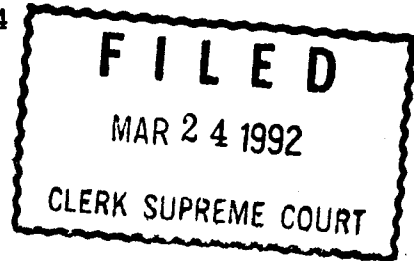


IN THE COURT OF APPEALS OF IOWA

No. 2-102 / 91-1354

IN THE INTEREST OF M.N., A Child,
V.N. and D.N., Parents,
Appellants.



Appeal from the Iowa District Court for Dubuque County,
Jane Mylrea, Juvenile Referee.

Mother and stepfather of a child have appealed from a
CINA adjudication. **AFFIRMED.**

Mary M. Schumacher of Roth & Schumacher, Dubuque, for
appellant parents.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Charles K.
Phillips, Assistant Attorney General, for appellee State.

Dirk J. Hamel of Norman, Gilloon & Wright, Dubuque,
guardian ad litem for child (appellee).

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

This case concerns a girl born in December 1982. At all relevant times she has lived with her mother and stepfather (hereinafter the parents). The stepfather has adopted her.

In April 1990, when the child was seven years old, her mother took her to the doctor because she had a rash on her buttocks. At that time, the doctor found the child also had a vaginal injury. The mother and the child claimed this injury occurred when the child's younger sister accidentally struck her in the vaginal area with a stick.

After the vaginal injury surfaced, the parents refused to admit that sexual abuse could have occurred, refused to consent to further medical examination of the child, and resisted services or involvement by the Department of Human Services.

The child was adjudicated to be a child in need of assistance. In a subsequent dispositional order, she was left in the home with the parents, subject to supervision.

The parents have appealed from the CINA adjudication. They challenge the sufficiency of the evidence to prove that the child is a child in need of assistance.

Both the State and the child's guardian ad litem have filed appellee's briefs asking that the CINA adjudication be upheld.

Scope of Review: In CINA proceedings, we review the evidence de novo. In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern is the welfare and best interests of the child. In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). We must review the record to determine whether the finding of a child in need of assistance is supported by clear and convincing evidence. Iowa Code § 232.96(2) (1991). Although we are not bound by the findings of the juvenile court, we give weight to the juvenile court's findings of fact because that court has had the unique opportunity to hear and observe the witnesses first hand. In re S.V., 395 N.W.2d 666, 668 (Iowa App. 1986).

Finding of Abuse: We first consider whether there was clear and convincing evidence to support the trial court's determination that Melissa was a child in need of assistance pursuant to Iowa Code section 232.2(6)(b). Section 232.2(6)(b) provides:

"Child in need of assistance" means an unmarried child:

. . .
b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

Dr. Obdebeeck from the Child Development Clinic in Cedar Rapids, and Dr. Fost, a staff pediatrician at the University of Wisconsin, evaluated Melissa. Dr. Obdebeeck concluded Melissa's injuries did not appear to be

accidentally caused by the stick alleged by the child and parents to have caused the injury. A colposcopic examination was conducted which determined the hymen had a scar and was enlarged. The hymen was rimmed causing Dr. Obdebeeck to believe the child had been penetrated. Her professional conclusion was that the child had been sexually abused. Dr. Fost examined Melissa with the naked eye. He did not rely upon a colposcopic examination. He did, however, agree the colposcopic examination was "very suggestive" of sexual abuse. Dr. Fost suggested that "absolute reliance" upon coloposcopic photographs to determine sexual abuse can be hazardous. Remarking on such evidence Dr. Fost stated:

That is my general impression from review of the literature and attending some seminars in this area is that Melissa's exam is one that I at least would be uneasy about saying is proof or is conclusive or shows beyond a reasonable doubt that she's been sexually abused. (emphasis added).

Dr. Obdebeeck assigned a probability of one in a million chance that the stick explanation caused the injury she observed. The trial court was not required to find evidence "beyond a reasonable doubt" that Melissa had been sexually abused. We find clear and convincing evidence was provided by Dr. Obdebeeck to explain the inconsistency of the injury and the parent's explanation of the incident.

Lack of Supervision: The trial court also determined Melissa was a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2). That section provides:

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

. . .
(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

The parents assert that assuming Melissa has been sexually abused, there was no evidence presented that the abuse was caused by or is the result of lack of supervision. The parents, however, acknowledge that they care for Melissa almost all the time. Following the incident on April 13, 1990, they sought no medical attention for the child's injury. Both parents have continually denied sexual abuse in the face of clear and convincing medical evidence to the contrary.

We find, in light of the medical evidence of sexual abuse and the parents denial, the trial court was correct in determining they would not seek appropriate and necessary counseling and therapy for Melissa to deal with the past sexual abuse. The end result would be a continuing neglect of Melissa's need to cope with the sex abuse. We affirm the trial court.

Costs are taxed to the parents.

AFFIRMED.