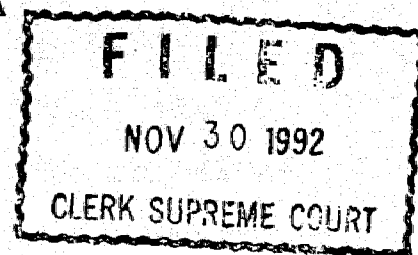


IN THE COURT OF APPEALS OF IOWA

No. 2-455 / 92-409

IN THE INTEREST OF A.A.C., A Child,
R.C., Father,
Appellant.



Appeal from the Iowa District Court for Scott County,
John Mullen, Judge.

The father appeals from a juvenile court order
determining that A.A.C. is a child in need of assistance.
AFFIRMED.

Michael T. Hines of McCarthy & Lammers, Davenport, for
appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Kathrine S.
Miller-Todd, Assistant Attorney General, for appellee
State.

Catherine Alexander of Stafne, Lewis, Jasper, Alexander
& Preacher, Bettendorf, guardian ad litem for minor child.

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

OXBERGER, C.J.

The juvenile court adjudicated six-year-old A.A.C. a child in need of assistance based, in part, on a finding her father had sexually abused her. Her father, R.C., appeals. He contends the juvenile court lacked sufficient evidence to support its finding A.A.C. was sexually abused by him. We affirm.

I. Background Facts and Proceedings

R.C. and C.C. were married in 1978. A.A.C. was born May 18, 1985. In May 1990, C.C. and R.C. were divorced. A.A.C. was placed in the physical custody of C.C., her mother. A.A.C. had regular visits with her father. Both parents acknowledge intense bitterness and animosity between them.

A.A.C. was referred to Joyce Morrison, a therapist at Mississippi Valley Counseling Associates in October 1990. She was referred by staff at her day care center because she was exhibiting symptoms evidenced by children who have been sexually abused, including engaging in excessive masturbation, isolating from peers, and intermittent aggression.

In April 1991, a child in need of assistance petition was filed on behalf of A.A.C. A.A.C. continued to exhibit symptoms of sexual abuse. She reported her father, R.C., slept naked with her and touched her. She then put her hands between her legs and demonstrated rubbing her vaginal area. She reported her dad would be "really mad" at her for telling.

The medical evidence is inconclusive as to the sexual abuse of the child. Neither physician identified evidence indicative of sexual abuse, but both acknowledged the child could have suffered sexual abuse in the form of fondling which would not leave signs of physical trauma.

The juvenile court found sufficient evidence of sexual abuse and accordingly, on December 5, 1991, adjudicated A.A.C. a child in need of assistance. R.C. appeals.

Our review is de novo. In re L.K.S., 451 N.W.2d 819, 820 (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. In re D.T., 435 N.W.2d 323, 329 (Iowa 1989).

II. Sufficiency of the Evidence

The juvenile court adjudicated A.A.C. a child in need of assistance pursuant to Iowa Code section 232.2(6)(d) (1991), which 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" The State's burden in a CINA proceeding is clear and convincing evidence. In re L.K.S., 451 N.W.2d at 823.

Joyce Morrison testified A.A.C. told her her father had "touch[ed]," "rub[bed]," and "play[ed]" with her as she demonstrated, rubbing her vaginal area. She testified A.A.C. told her "My dad rubbed my pee-pee here like this." She also testified A.A.C.'s excessive masturbation is one of the primary indicators of sexual abuse. In addition,

A.A.C.'s masturbation increased when she was told "sh" or "be patient," words she reported her father used when touching her. Morrison also testified A.A.C. acted out sexual behavior and expressed fear of her father finding out she told Morrison about the touching. Morrison also testified A.A.C. reported "idiosyncratic" information with her reports of sexual abuse, including detailed information about the location and circumstances surrounding the abuse.

The juvenile court found the testimony of Joyce Morrison "very credible." The court noted "she appeared professional, sincere, circumspect, well-educated and prepared in the field." Conversely, the juvenile court found R.C.'s testimony "flippant," "inconsistent," and "implausible."

In addition, A.A.C. subsequently reported identical incidents to investigators. A.A.C. indicated she did not understand why her dad would be so "mean" to her sometimes and "nice" during other times. She indicated she did not like the touching.

Although the medical examination did not indicate physical signs of sexual abuse, A.A.C.'s primary physician did not rule it out. Sexual abuse can occur in the form of fondling without creating signs of physical trauma.

We agree with the juvenile court clear and convincing evidence establishes that A.A.C. is a child in need of assistance because of sexual abuse.

AFFIRMED.