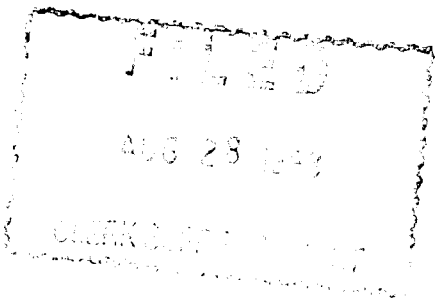
IN THE COURT OF APPEALS OF IOWA

No. 8-398 / 97-720



IN THE INTEREST OF S.D., K.D., B.D., and S.D.,
Minor Children,

T.S.D., Mother,
Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard and Sylvia A. Lewis, District Associate Judges.

Mother appeals the juvenile court adjudicatory and dispositional orders finding her children are in need of assistance. **REVERSED.**

Alan R. Bohanan, Iowa City, for mother.

Jon M. Kinnamon, Iowa City, guardian ad litem for minor children.

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

VOGEL, J.

Tamra D. appeals the juvenile court adjudicatory and dispositional orders finding her four youngest children are in need of assistance. We find there was not clear and convincing evidence to prove the children are in need of assistance, and therefore reverse.

Background facts. Tamra and Doug D. are the parents of two sets of twins: Spenser and Kimberlea, born in June 1995; and Baily and Sylvia, born in October 1996. In addition, Tamra has another daughter, Saira, born in 1986, and a son, Adam, born in 1979. Tamra and Doug separated shortly before the birth of the youngest twins. Doug's contact with the children since then has been sporadic, and he has provided little or no financial support to Tamra.

In August of 1994, Tamra requested the Department of Human Service's (DHS) assistance in managing Saira's behavior. Saira was diagnosed with several behavioral disorders, and began receiving medication and therapy services through the DHS. In 1996, two founded reports of denial of critical care were made against Tamra and Doug concerning the first set of twins for failing to provide adequate supervision due to small objects on the floor. In June of 1996, the State filed a child in need of assistance (CINA) petitions for the first set of twins. In August of 1996, the parties stipulated that Saira was in need of assistance. In December of 1996, the State

amended the CINA petition to include the second set of twins, alleging that Tamra was "overwhelmed physically, emotionally, and financially."

After a trial held in January of 1997, the juvenile court adjudicated all four children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) (1995). In April of 1997, the court entered its dispositional order, finding the least restrictive and appropriate placement was that the children continue to be in Tamra's care under the protective supervision of DHS. Both Tamra and Doug appealed; however, Doug has since voluntarily dismissed his appeal. The State filed a statement declining to participate in the appeal.

Scope of review. Our review of an action arising from CINA proceedings is de novo. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa App. 1997); 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. *D.S.*, 563 N.W.2d at 14; Iowa R. App. P. 14(f)(7). The State shall have the burden of proving the allegations by clear and convincing evidence. Iowa Code §232.96(2)(1995).

The court adjudicated the children under Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). Tamra argues that the State failed to meet its burden of proof and that neither of these sections pertain to the conditions of the home or care of the children, which were the basis of DHS's initial involvement. Iowa Code sections 232.2(6)(b) and (c)(2) define a child in need of assistance as an unmarried child:

> (6)(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.
>
> (6)(c) Who has suffered or is imminently likely to suffer harmful effects as a result of . . . (2) [t]he 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 trial transcript reveals that most of the testimony in the three and a half day trial focused on Saira, and that very little was directly relevant to the situation of the four youngest children. Nevertheless, in finding clear and convincing evidence to support their adjudication, the juvenile court specifically referenced the frequent number of overnight guests in the tiny home, the children's exposure to smoking, the founded abuse reports and Tamra's resistance to DHS's suggestions and involvement.[1] However, we find these concerns were not adequately supported in the record.

At trial, the State called two witnesses: Denise Best, a case worker therapist assigned to Saira, and Greg Lorber, a social worker at DHS to whom Denise reported. Denise was the only in-home family service provider who testified and has had the most contact with the family, yet she provided little or no clear verification of the allegations supporting the adjudication of the four youngest children. Denise testified that she was not aware of additional people living at the home or staying overnight,

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[1] The juvenile court ruled from the bench and expressed these concerns in open court; they did not appear in the formal order.

and stated that the people who did visit were there to help Tamra with cleaning and caring for the children. Denise further testified, contrary to the allegations in the child abuse reports,[2] that she had never seen small objects on the floor that would be of danger to the younger children. In addition, the main conflict between Denise and Tamra in regard to the younger children was Denise's concern that the children were sleeping on a cold floor. However, she acknowledged that the children were sleeping on a mattress and box spring set, and that Tamra was resistant only to putting the set on a frame because she was concerned about the children falling off the bed. These incidents and other minor complaints were either contested at trial or supported with vague and ambivalent secondhand information. Furthermore, both of the State's witnesses testified that Tamra made an effort to avoid smoking around the children. Without a specific admonition from a doctor saying that Tamra should not smoke in her home because of health risks to the children, we cannot say that her doing so supports an adjudication of the children.

Although Tamra is clearly in an extremely challenging situation given the number of young children she is responsible for, it appears the adjudication of these children was based more on anticipated future problems rather than on specific past problems that exposed the children to imminent harm or neglect. While we have no

[2] The child abuse report of September 12, 1996, alleged that the children were being denied critical care due to small objects being on the floor. The investigating social worker did not personally observe small objects on the floor, but cited Denise Best as the only witness of the same in concluding that the children had been denied critical care.

doubt that Tamra would genuinely benefit from parenting, daycare and homemaking services—and we strongly encourage her to take advantage of all available assistance —we cannot find clear and convincing evidence in the record to support the adjudication. We therefore reverse the juvenile court's adjudication of Spenser, Kimberlea, Baily and Sylvia.

REVERSED.