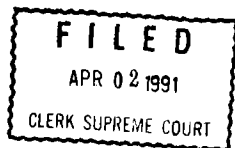


IN THE COURT OF APPEALS OF IOWA

No. 0-583 / 90-211



IN THE INTEREST OF J.H., S.H., T.H. and J.H.,
Minor Children.

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T.H. and K.H., Parents,

Appellees.

Appeal from the Iowa District Court for Wapello County,
Gene Glenn, Juvenile Referee, and Philip R. Collett, Judge.

Parents appeal order finding all four children to be
children in need of assistance and placing one child in
foster care. **AFFIRMED.**

Timothy W. James, Ottumwa, for appellant mother.

Michael C. Vinyard of Vinyard & Curran, P.C., Ottumwa,
for appellant father.

Bonnie J. Campbell, Attorney General; Gordon E. Allen,
Deputy Attorney General; and Kathrine S. Miller-Todd,
Assistant Attorney General, for appellee State.

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

HABHAB, J.

This case involves four children, ranging in ages from five to one.

The children's parents were suspected of physically abusing one of the children, a two-year-old, by causing a severe burn injury. As a result of this injury, all four children were adjudicated to be children in need of assistance. The child who suffered the injury was placed in foster care; the other three children were left in the parents' home, subject to supervision.

The parents have appealed from the CINA adjudications and the subsequent dispositional orders. The parents challenge the sufficiency of the evidence to establish that they had physically abused the two-year-old child. They also challenge the sufficiency of the evidence to establish that either the injured child, or the other three children, should be declared children in need of assistance.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). In determining what is in the best interest of the child, the court necessarily looks at the

present conditions and past performance "for that performance may be indicative of the quality of the future care that parent is capable of providing. In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

All four children were adjudicated CINA pursuant to Iowa Code section 232.2(6)(b), which provides that the parent has "physically abused or neglected the child, or is imminently likely to abuse or neglect the child"; and also Iowa Code section 232.2(6)(c)(2), which provides that the parent "failed to exercise a reasonable degree of care in supervising the child."

Physical abuse is defined in section 232.2(38) as:

any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian or custodian or other person legally responsible for the child.

This definition is broad enough to include injury to the child as a result of denial of critical care. In Interest of M.L.W., 461 N.W.2d 609, 613 (Iowa App. 1990). We are convinced, after a thorough review of the record, that there is clear and convincing evidence to find these children to be in need of assistance.

J.H. suffered a severe burn while under the care of his parents. Dr. Heitsman testified that the injured area involved first and second-degree burns which he felt were thermal in nature. While the parents contend the burn occurred from the child's contact with Raid bug spray, the trial court found that the parents' testimony was not

credible, and we agree. The evidence shows that the size and shape of the burn are not consistent with the story provided by the parents. In addition, the parents gave inconsistent accounts and, at times, false accounts as to what happened. The trial court found, and we agree, that their explanation for the injury is highly unlikely. It also found it unbelievable that the child could receive such a severe injury and not cry out in pain as testified to by the parents. Equally as important, when a child receives such a severe injury, immediate medical treatment is required. The parents testified they did not seek medical treatment for some time after the injury occurred. This does not demonstrate reasonable care and supervision.

We find there is clear and convincing evidence to find these children in need of assistance.

AFFIRMED.