

IN THE COURT OF APPEALS OF IOWA

No. 3-208 / 92-1719

FILED

SEP 02 1993

CLERK SUPREME COURT

IN THE INTEREST OF J.C., A Minor Child,

B.C., Mother,

Appellant.

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Appeal from the Iowa District Court for Polk County,  
Larry J. Eisenhauer, Juvenile Referee.

The mother appeals the juvenile court's adjudication of her infant as a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(d) (1991). **AFFIRMED.**

Ben C. Chatman of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Kathrine S. Miller-Todd, John Sarcone, County Attorney, and Karen A. Romino, Assistant County Attorney, for appellee.

Heard by Schlegel, P.J., Sackett, J., and Keefe, S.J.\*

\*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

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SCHLEGEL, P.J.

The mother appeals the juvenile court's adjudication of her infant as a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(d) (1991). She contends the court erred in determining sufficient evidence existed to support the court's findings at the removal hearing, the adjudicatory hearing, and the dispositional hearing. The mother also claims the court erred in concluding the mother must successfully complete state-provided therapy before maintaining custody of her child.

The child, J.C., was removed from his mother immediately after the State learned of his existence. J.C. was born March 2, 1992, and was removed from the mother's custody on April 10, 1992. The State felt several issues regarding the abuse and neglect of the mother's previous child remained unresolved, demonstrating the mother's inability to be a safe and adequate parent.

The mother had initially come to the attention of juvenile authorities when this previous child, a daughter, T.C., born August 3, 1983, was removed from the home on February 26, 1988. At removal, T.C. had genital herpes and injuries consistent with sexual and physical abuse. At the time of T.C.'s removal, a no-contact order was entered with respect to T.C., her mother and her mother's paramour, J.S. T.C. greatly feared her mother, and J.S. and never wanted to see them again. T.C. provided graphic

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descriptions of sexual and physical abuse suffered at the hands of her mother and J.S. T.C. also made statements alleging her mother and others engaged in satanic ritualism.

The mother's parental rights over T.C. were terminated in October 1989. The court found T.C. never wanted to see her mother again. The court further found the mother had been offered all the appropriate services but had refused to admit any participation in the abuse. The court also found the mother was reluctant to acknowledge that her paramour had been involved in the sexual abuse or that sexual abuse had occurred at all. The court of appeals affirmed the termination in In re T.C., 462 N.W.2d 308 (Iowa App. 1990).

At the temporary removal hearing for J.C., the child in question, the clinical psychologist for T.C. testified that it would be important for the mother to undergo therapy before a child could be safely placed in her custody. The mother testified that she had never abused T.C. and that she had had no therapy or counseling since 1989.

At an adjudicatory hearing in July 1992 the State introduced a parental intake evaluation which showed the mother had denied that she or J.S. were involved in the abuse of T.C. The intake evaluation further indicated the mother could not explain how the injuries had occurred. The court adjudicated J.C. to be a child in need of assistance.

The dispositional hearing was held October 1, 1992. The Iowa Department of Human Services reported the mother had begun therapy on July 21, 1992, but that she had failed to progress. Since J.C.'s removal, the mother has been living with her brother, a known sexual perpetrator, and is in close contact with J.S. The court confirmed that J.C. remains CINA. The mother appeals.

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).

Having carefully reviewed the record, we conclude the juvenile court's adjudication of J.C. as a child in need of assistance is supported by clear and convincing evidence. Iowa Code sections 232.6(b), 232.6(c)(2), and 232.6(d) all provide for the protection of a child who is imminently likely to suffer abuse. The child in need of assistance statutes and temporary removal provisions are preventative as well as remedial. The courts must move to protect

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children from probable harm and need not delay until the harm has actually occurred. In In re D.T., 435 N.W.2d 323 (Iowa 1989), the supreme court stated:

Like our statutory termination provisions, we think our temporary removal provisions in CHINA proceedings are designed to prevent probable harm to a child and do not require delay until after the harm is done. Moreover, as in termination proceedings, we think it is appropriate to gauge from the parent's past performance what might happen if a child is returned rather than temporarily removed.

Id. at 330.

At the time J.C. was removed from the mother's custody in the present case, the mother's history revealed she was incapable of protecting a previous child from physical or sexual abuse. Although the previous child had genital herpes and exhibited other evidence of severe physical and sexual abuse, the mother was hesitant to acknowledge the occurrence of abuse, and she continues to deny any involvement or culpability regarding the abusive acts to this day.

In our decision terminating the mother's parental rights to the previous child, we recognized the substantial effort expended by the State to assist the mother. In addition, we found substantial evidence in the record indicating the mother's refusal to take the necessary steps to indicate her ability to effectively parent the child. The record in the present case reveals that continued, reasonable efforts have been made to eliminate the need for J.C.'s removal. However, since the termination of the

mother's parental rights to the previous child, the mother has failed to make adequate progress through therapy. She has continually denied participation in or knowledge of the physical and sexual abuse of the older child which has prevented her from successfully completing the State's programs.

The State, as *parens patriae*, has the duty to assure that every child within its borders receives proper care and treatment, and it must intercede when parents abdicate that responsibility. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The best interests of a child in any CINA proceeding are of utmost importance, and the requirement that a parent acknowledge and recognize the presence of physical or sexual abuse before any meaningful change can occur is essential in meeting the child's needs. In re H.R.K. 433 N.W.2d 46, 50 (Iowa App. 1988).

The trial court's finding that the parents need to recognize the cause of the children's injuries before any meaningful change can occur recognizes that a parent who acknowledges the need for professional help is more amenable to treatment than one who denies the need for help. Termination [or, in this case, adjudication of the child as CINA] in such a situation is not, however, a sanction . . . but simply the necessary result of failure to rectify parental deficiencies. Although the state cannot require the appellant to waive his constitutional right [the right against self-incrimination], that does not mean it must relinquish its right and obligation to protect these children.

Id. at 50 (citing In re S.A.V., 392 N.W.2d 260, 264 (Minn. App. 1986)).

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Although not authoritative, we further agree with the Minnesota appellate court's reasoning in In re S.A.V., in which the court stated:

The State is required to work with the parents to correct the conditions which caused the abuse with the aim of returning the children to the parents as soon as this can be done safely. However, if appellant refuses to cooperate in the process, or is unable or unwilling to correct the behavior that led to the abuse, the children cannot be returned safely to his custody.

Id. at 264.

We agree with the juvenile court that the mother must satisfactorily resolve the issues of abuse and neglect of the older child before the mother can be considered a safe and adequate parent for J.C. We agree the State has established by clear and convincing evidence that J.C. is imminently likely to be physically or sexually abused and is imminently likely to suffer harmful effects as a result of his mother's failure to exercise a reasonable degree of care in supervising J.C. Accordingly, we affirm the juvenile court's adjudication of J.C. as a child in need of assistance.

**AFFIRMED.**

Keefe, S.J., concurs; Sackett, J., specially concurs.

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SACKETT, J. (specially concurring)

I concur specially without opinion.