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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-179 / 89-1369

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IN THE INTEREST OF C.G., A Child.

K.G., Sr. and L.G.,

Parents-Appellants.

Appeal from the Iowa District (Juvenile) Court for Worth County, Carlynn D. Grupp, Associate Judge.

The parents of a minor child appeal from an adjudication of a child in need of assistance. **AFFIRMED.**

Phillip N. Norland of Law Offices of Phillip N. Norland, Northwood, for appellants.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Judy Sheirbon, Assistant Attorney General; for appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

PER CURIAM

C.J.G. was born November 24, 1985. The child's parents are K.G. Sr. and L.G. They have a younger child, K.G. Jr.

On July 20, 1989, a child in need of assistance (CINA) petition was filed. C.J.G. had been removed from the home on July 14, 1989, by the authorities without court order. The child was placed in temporary shelter care. The juvenile court found C.J.G. to be a child in need of assistance on August 5, 1989. A hearing on disposition was held. On August 21, 1989, the court placed temporary legal custody of the child in the Iowa Department of Human Services (DHS) for Worth County for placement in a foster home. The parents appeal. We affirm.

The parents' contentions on appeal are summarized as follows: The juvenile court's decision was (1) contrary to the weight of evidence and not supported by sufficient proof, (2) an abuse of discretion, and (3) erroneous.

The principles controlling our review are well established. Appellate review of CHINA proceedings is de novo; accordingly, we review the facts and the law and adjudicate rights anew where the issues have been properly preserved and presented. In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). Our paramount concern is the welfare and best interest of the child. Id. In resolving the issues presented in this appeal, we review the record and determine whether the State has met its burden of presenting clear and convincing evidence to support the petition.

Our review of the facts disclose on July 14, 1989, a neighbor of C.J.G.'s parents' found her playing alone on or near the railroad tracks. This child was approximately one-fourth of a mile from her home. The neighbor called the DHS and reported this incident. The DHS investigator requested the Worth County Sheriff to have someone accompany her to the child's home. There had been other child abuse reports regarding C.J.G. and her brother before this day. When the DHS investigator and a deputy sheriff arrived at the home, the father, K.G. Sr., was there with K.G. Jr., who was asleep. The father indicated he had last seen C.J.G. ten minutes before the deputy sheriff and DHS worker arrived. In fact, C.J.G. had been in a neighbor's care for over forty-five minutes. When apprised of this, K.G. Sr. said "it was possible and he had no concept of time." The mother was gone from the home for a job interview. She was gone from the home longer than expected because of car trouble. K.G. Sr. has been diagnosed by a psychiatrist as having an explosive personality disorder and mental and physical impairments. This doctor advised K.G. Sr. not to be left alone with the children.

The evidence shows the inside of the home was filthy, unclean, and piled with clutter. The house smelled of urine and animal feces was on the floor. Many cats were inside the home. C.J.G. and her brother were filthy and had a strong odor. Outside of the home in the yard there was old furniture, tires, and cars. Also, there were

several big dogs in poor condition. Among the dogs belonging to this family are a husky, a husky/wolf, and a husky/coyote. Three of the dogs were tied, others were not. Dog feces was all over the yard, in the children's play areas, and their sand box. Both children were barefoot.

In January 1989, L.G. reported to the Worth County Sheriff's Office K.G. Sr. had a gun and shot some of the cats and the old cars. He also assaulted L.G. L.G. took the children and fled from the home. In January and February 1989, a DHS worker investigated the parents' home and determined the children were being denied critical care. Protective treatment was recommended. This investigation revealed a cat and two puppies in the main part of the house and chickens in the basement. Feces was throughout the house. Human feces was smeared on a wall and an open diaper was lying in a bedroom with dried feces exposed in it. There were finger marks drawn through the feces on the wall. A cat litter box with feces in it was in a small room adjacent to the kitchen. There was one bed with a mattress on it in the house. C.J.G. slept on a couch and her younger brother slept in a playpen in the living room. This room was filled with clutter and very messy. It was difficult to walk through. L.G.'s excuse for the condition of the premises was her husband was in the hospital and this prevented her from maintaining proper care of the home. However, a baby-sitter stated the home had been in this condition since the summer of 1988.

The DHS worker concluded the presence of the feces in the home was a health risk to the small children.

Homemaker-health aide services were given to L.G. until June 1989, when she began full-time work and was no longer available for lessons with the homemaker. DHS also offered them protective day-care for the children and family therapy.

The evidence further shows K.G. Sr. stopped taking his prescription medication for his mental and personality problems one month after it was prescribed. He also quit his counseling sessions.

L.G. has employment working a 4:30 p.m. to 12:30 a.m. shift. She plans to have a baby-sitter watch the children until they go to bed. After they have been put to bed she plans to leave K.G. Sr. with them alone until she gets home from work, unless ordered to do otherwise. She believes she does not need any of the services offered by DHS.

The juvenile court found the State had established by clear and convincing evidence C.J.G. was a child in need of assistance within the meaning of Iowa Code section 232.2(6)(b), (c)(1)(2), and (g). We refer to these provisions:

> 6. **"Child in need of assistance"** means an unmarried child:
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> b. Whose parent, guardian, or other custodian has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.
>
> c. Who has suffered or is imminently likely to suffer harmful effects as a result of:

> (1) Conditions created by the child's parent, guardian, custodian; or
>
> (2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.
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> * * *
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> g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

We note several established principles that control our decision in this appeal.

Our review is de novo, which means we give the trial court's findings substantial weight but are not bound by them. There is a rebuttable presumption that the best interests of a child are served by parental custody. The provisions of Iowa Code chapter 232 are to be liberally construed to protect the welfare of the child. In the Interest of B.B., 440 N.W.2d 594, 596 (Iowa 1989). A child's best interests are the paramount concern in applying the juvenile code. A child's best interests include proper care and treatment. Id. at 596-7. The State has the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2). The State, as parens patriae, has a duty to ensure that every child receives proper care and treatment. In Interest of G.R., 348 N.W.2d 627, 631 (Iowa 1984). The standard that the court's aid is not required in Code section 232.96(8) should be construed narrowly. Id.

It is apparent to us C.J.G. and her brother are constantly subjected to filth, animal and fowl feces, pestilence and unclean conditions in and outside of this home. There is definitely a continuing risk of harm to the children. The father has an explosive personality. He has assaulted and frightened L.G. with a gun. He has refused to take his medication and discontinued the consultation therapy. L.G. does not believe the family needs help or assistance from DHS to correct or improve the living conditions. She continues to leave the children in sole care of K.G. Sr. after being advised by his psychiatrist not to.

It is clear to us the juvenile court's decision is in accord with the weight of evidence and is supported by clear and convincing evidence. Similar conditions involving a filthy home environment, together with lack of proper supervision, has been held grounds for adjudicating a child as in need of assistance. See In Interest of D.T., 435 N.W.2d 323 (Iowa 1989); In Interest of M.H., 444 N.W.2d 110 (Iowa App. 1989).

We determine the juvenile court, in ordering C.J.G. from the parental home upon a finding of CINA, did not abuse its discretion. See In Interest of D.T., 435 N.W.2d at 330-331; In Interest of M.H., 444 N.W.2d at 113.

The parents' other arguments claiming the court's decision was erroneous are without merit.

AFFIRMED.

Donielson, P.J., and Hayden, J., concur; Sackett, J., specially concurs without opinion.