FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-525 / 91-303

IN THE INTEREST OF K.B., a/k/a K.C., Minor Child,

A.B., Mother,

Appellant.

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Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge, and Michael Woods, Juvenile Referee.

Mother appeals her daughter's child in need of assistance adjudication. **AFFIRMED.**

Robert J. Phelps, Davenport, for appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State.

Bobbi M. Alpers, Davenport, guardian ad litem for child.

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

SCHLEGEL, J.

K.B. is a girl born in September 1985. Her mother, A.B., has been the custodial parent throughout the child's life. A.B. has three younger daughters, half sisters of K.B. The mother has frequently left all of her children in the care of others for extended periods, sometimes without making any arrangements to pick them up. A.B. moves often and has seldom held a job.

In 1990 all four children were adjudicated to be children in need of assistance. This process occurred in two separate proceedings, one involving the three younger children and another involving the oldest child, K.B. In a dispositional order following her CINA adjudication, K.B. was placed in the home of her paternal grandparents. A.B. appeals the CINA adjudication concerning K.B. This appeal does not challenge the CINA adjudications of the three younger children.

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 heard and observed the witnesses

first hand. In re S.V., 395 N.W.2d 666, 668 (Iowa App. 1986).

I. A.B. challenges the sufficiency of the evidence to support the CINA adjudication. She argues her frequent change of residence is not a basis for a CINA determination. The trial court found K.B. to be a child in need of assistance as defined by Iowa Code section 232.2(6)(g). This section provides that the child is one

> [w]hose 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.

Iowa Code § 232.2(6)(g) (1991). A.B. asserts she provided good child care, subject only to the difficulties faced by a single mother with no money and no job skills.

A.B. argues that "no where [sic] in the list of reasons for determining a child in need of assistance does constancy of living appear", and "[t]here is no requirement for a person who is a citizen of the United States to maintain a residence or to keep a residence for any particular period of time." The trial court specifically addressed this concern:

> In the Court's view, finding the mother an appropriate apartment is a matter that can be resolved rather quickly, especially with return of the children, and it doesn't constitute the issue at all. . . . The problem is really one of constancy. . . . If the problem were merely housing, the Court could have the children returned to the mother's care and terminate its jurisdiction within thirty days. The problems appear to be long running and much more insidious.

The court did not base its decision on the mother's finances. The court, instead, relied on the evidence showing A.B.'s "lack of attitude and effort and a commitment to meeting the children's need [sic] consistently over time."

We find there is clear and convincing evidence to support K.B.'s CINA adjudication. A.B. left K.B. in the care of maternal and paternal grandparents, her natural father, and other friends for significant periods of time. While at the maternal grandparents' home, K.B. was often cared for by just her grandmother who has multiple sclerosis, cannot walk, and can only move around her home by crawling. This grandmother has expressed concerns that she cannot meet K.B.'s needs while her husband is at work. K.B. stayed with these grandparents from December 1989 to March 1990. From March 1990 through August 1990 K.B. stayed primarily with both sets of grandparents and her natural father. A.B. testified that she has lived in approximately seven different places in the last year. The homes include those of friends, her father, and her three younger children's father.

It seems that at times A.B. has the ability to provide appropriate parenting. However, the record is full of instances of her refusal or failure to provide appropriate parenting, nurturance, supervision, essential food and clothing, and attention to medical needs. We agree with the trial court determination: "The issue is the lack of

attitude and effort and a commitment to meeting the children's need [sic] consistently over time. Additionally, the mother has consistently refused services, evaded issues, and those people [sic] who have attempted to assist her." We find A.B. has failed to supply K.B. with adequate care despite the services made available to her.

II. Finally, A.B. claims she was denied effective representation by her trial counsel. She states her counsel failed to cross-examine any of the writers of reports "upon whom the State's case depended." We find no merit in this claim.

A party in a juvenile proceeding claiming ineffective assistance of counsel must prove both prongs of the Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 692-93 (1984), test. In re J.P.B., 419 N.W.2d 387, 390 (Iowa 1988). The party must show both a deficiency of counsel and actual prejudice stemming from the deficiency. Id. Actual prejudice cannot be presumed due to the unique nature of juvenile court proceedings. Id.

A.B.'s counsel presented her client as a witness at both the adjudication and the disposition hearings and called additional persons to testify in support of A.B. at each hearing. It was a reasonable trial strategy to present these witnesses and not attempt to get the case workers to change their opinions on the witness stand. We

find no deficiency in her performance. In addition, A.B. makes no allegations as to what would have been gained from cross-examining the authors. No prejudice can be shown by the attorney's failure to object to the reports admitted or to cross-examine their authors. See Iowa Code § 232.96 (4) - (6) (1991) (reports made to or by the department of human services are admissible). A.B. was not denied her statutory right to counsel.

We determine it is in K.B.'s best interests that she be adjudicated a child in need of assistance. We affirm the trial court adjudication and disposition.

AFFIRMED.