IN THE COURT OF APPEALS OF IOWA

No. 2-223/ 91-1104

FILED
JUN 25 1992
CLERK SUPREME COURT

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

R.R., Father,

Appellant.

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Appeal from the Iowa District Court for Polk County, Vincent M. Hanrahan, Judge.

Father appeals a juvenile court order adjudicating his minor child to be a child in need of assistance. **AFFIRMED.**

Ray Sullins, Des Moines, for appellant.

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

M. Kathryn Miller, Youth Law Center, Des Moines, for appellee child.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

FACTS

Jenny Rowe[1] was born March 23, 1986. Her parents were not married. Jenny lived with her mother, P.L., except for thirty days during which P.L. received drug abuse treatment. While P.L. was in the drug treatment program, Jenny lived with her father, R.R. When R.R. was working, Jenny's maternal grandmother usually baby-sat. R.R. exercised regular visitation with Jenny until sexual abuse allegations surfaced in the fall of 1990.

After Jenny attempted to insert a crayon into her vagina and repeatedly lifted up her blouse, P.L. and R.R. took Jenny to Dr. Dewdney, a psychiatrist. Dr. Dewdney recommended R.R. should stop sleeping, showering, and bathing with Jenny.

From June through October of 1990, Jenny stayed with her great-aunt during the day. The aunt noticed Jenny had redness in the vaginal area and complained of pain when urinating soon after a weekend visitation with her father. The aunt also noticed Jenny acting in a sexual manner which was inappropriate for her age. When her aunt asked Jenny where she had learned this behavior, Jenny said her father. The aunt testified Jenny told her "sometimes when my daddy and I take our naps, we take our clothes off and

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1. This is not the child's real name; her initials are J.R.

lay down on the bed together and sometimes he touches me down there."

As a result of the aunt's observations, Jenny was taken to Dr. Rizwan Shah for a physical examination. Dr. Shah performed a forensic genital exam which indicated the hymenal opening was dilated and gapping with a stretched regular margin. The doctor testified these injuries were consistent with repeated introduction of a large object into the child's hymenal opening. He defined a "large" object as being twice the normal size of the hymen, in Jenny's case an object one-half inch in diameter. He concluded the injuries were consistent with the insertion of a finger and were inconsistent with the insertion of a sharp irregular shaped object such as a Lego. Ultimately, Dr. Shah determined Jenny had been sexually abused.

On August 2, 1990, Jenny was interviewed at the police station by a child protection investigator and a police officer. Jenny was very anxious during the interview. Jenny indicated someone had touched her, but she refused to reveal the person's identity. During a second interview held at the police station, Jenny told the police officer her father had touched her.

On August 24, 1990, the State filed a petition alleging Jenny was a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(d). The juvenile court issued a temporary no-contact order.

Jenny was referred to Dr. Cavallin, a clinical psychologist, for treatment. During treatment, Jenny told Dr. Cavallin her father had touched her, but she recanted and also named other individuals. Dr. Cavallin indicated Jenny appeared tired of talking about the incident.

Following a hearing, Jenny was adjudicated to be a CINA. A dispositional hearing was held and the juvenile court ordered custody of Jenny should remain with her mother. R.R. was ordered to undergo psychological and psychiatric evaluations and a chemical dependency assessment. The no-contact order was modified to allow for supervised visitations deemed appropriate by Jenny's therapist.

The father appeals from the adjudicatory order and subsequent disposition.

SCOPE OF REVIEW

Appellate review of a juvenile court's finding of a CINA is de novo. In re J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). Of paramount concern is the welfare and best interest of the child. In re D.L., 401 N.W.2d 201, 202 (Iowa App. 1986). 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 re Dameron,

306 N.W.2d 743, 745 (Iowa 1981). See also, In re Loeffelholz, 162 N.W.2d 415, 419 (Iowa 1968).

The reviewing court must review the record to determine whether the finding of a CINA is supported by clear and convincing evidence. Iowa Code § 232.96(2) (1991). Although, on review, the court is not bound by the findings of the juvenile court, "we give weight to the juvenile court's findings of fact because the juvenile 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).

ANALYSIS

R.R. claims the State did not prove by clear and convincing evidence R.R. sexually abused Jenny and, therefore, the juvenile court's CINA adjudication was improper. We disagree and find the State met its burden.

CINA is defined in Iowa Code section 232.2(6)(d) (1991) which provides in pertinent part:

> 6. "Child in need of assistance" means an unmarried child:
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> * * *
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> d. Who has been, or is imminently likely to be sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

Iowa Code § 232.2(6)(d) (1991). This Code provision allows for CINA adjudication when a child has been sexually abused.

We find there is clear and convincing evidence R.R. sexually abused Jenny. The physical evidence clearly establishes Jenny was sexually abused. The testimony of Dr. Shah indicates Jenny's injuries are consistent with the repeated insertion of an adult finger into the hymenal opening and not the insertion of a sharp Lego toy. Coincidentally, the aunt's observation of Jenny's red vaginal area and painful urination occurred soon after Jenny had visited her father.

Additionally, Jenny's statements that her father has touched her vaginal area and slept and showered with her during weekend visitations and while P.L. was in treatment is evidence of opportunity and identification. Dr. Cavallin testified Jenny's behavior of prolonged kissing, a preoccupation with adult breasts, inserting toys into her vagina, and recanting the perpetrator's identity, are all "red flags" which indicate Jenny was sexually abused. Dr. Cavallin explained it is not uncommon for a child to disclose the name of a perpetrator and if it is someone they love to try to protect them by going into denial. She testified it was not unusual for a child to still enjoy, or want to continue, seeing a sexually-abusive parent. She discussed how a young child is able to separate and forget the bad side of a parent and cling to the good memories. Jenny has clearly stated her father told her not to tell or he would have to go to jail.

R.R. argues Jenny was coached to answer that her father was the person who touched her. However, Dr. Cavallin indicated Jenny had not been coached because of her spontaneous statements. Dr. Cavallin simply determined Jenny had been asked about the abuse frequently and no longer wanted to talk about it.

CONCLUSION

We find the State proved by clear and convincing evidence Jenny was sexually abused by her father, R.R. and is a CINA. We conclude it is in Jenny's best interest she be adjudicated a CINA pursuant to Iowa Code section 232.2(6)(d). R.R. may have such visitation with Jenny as determined by Jenny's therapist to be in her best interest. After considering all issues, we affirm the juvenile court in all respects.

Costs of this appeal are taxed to the appellant.

AFFIRMED.