

**IN THE COURT OF APPEALS OF IOWA**

No. 23-1533  
Filed March 6, 2024

**IN THE INTEREST OF B.G. and A.G.,  
Minor Children,**

**J.G., Father,**  
Appellant.

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Appeal from the Iowa District Court for Adair County, Monty Franklin, District Associate Judge.

A father appeals the adjudicatory and dispositional orders in child-in-need-of-assistance proceedings. **AFFIRMED.**

Theodore R. Wonio of Rasmussen, Nelson and Wonio, PLC, Atlantic, for appellant father.

Brenna Bird, Attorney General, and William E. Sales, III, Assistant Attorney General, for appellee State.

Sandra Kromminga, Laura Luetje, and William Strong of Lamberti, Gocke & Luetje, P.C., Ankeny, for the mother.

Nicholas Einwalter, Des Moines, attorney and guardian ad litem for B.G.

Dusty Clements of Clements Law & Mediation, Newton, attorney and guardian ad litem for A.G.

Considered by Greer, P.J., and Schumacher and Ahlers, JJ.

**SCHUMACHER, Judge.**

A father appeals the adjudicatory and dispositional orders in child-in-need-of-assistance (CINA) proceedings. We find there is clear and convincing evidence in the record to support the CINA orders. We affirm the decision of the district court.

**I. Background Facts & Proceedings**

J.G., father, and A.N., mother, are the parents of B.G., born in 2010, and A.G., born in 2015. The parents are divorced. Under the parents' dissolution decree, the parents share joint legal custody; the mother has physical care of the children and the father exercises visitation. In January 2023, the father filed an application to modify the dissolution decree, asking to have the children placed in his physical care.<sup>1</sup> The father also filed an application for rule to show cause, claiming the mother interfered with his relationship with the children and denied him his court-ordered visitation.

A.G. was removed from the father's custody on May 1, due to allegations that the father sexually abused A.G. on multiple occasions. B.G. was removed from parental custody on the same day, with custody of B.G. placed with HHS for relative placement. There were also concerns about inappropriate touching of A.G. by B.G. A.G. had a forensic interview, and it was determined that she made

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<sup>1</sup> In the application he claimed the mother made several false claims against him with the Iowa Department of Health and Human Services (HHS). The family has been involved in seven assessments, not including rejected assessments. The parents, in addition to their dissolution proceedings, have also been involved in multiple Iowa Code chapter 236 proceedings concerning domestic abuse allegations.

consistent and credible disclosures about sexual abuse. A.G. stated the father used his fingers to penetrate her vagina.

A.G. had a psychological evaluation and was diagnosed with moderate to severe post-traumatic stress disorder (PTSD). The psychologist noted A.G. showed signs of anxiety and a high level of dysregulation. The therapist noted, "In order to ensure that [A.G.] is able to continue to move through the process of healing and recovery, it is of critical importance that she is able to remain in a safe and stable environment."

At the adjudication hearing, an HHS worker testified about the founded report for sexual abuse regarding the father. A.G. participated in a forensic interview where she stated the father touched her "in her potty spots." A.G. had increased behavioral indicators, including outbursts, bedwetting, and emotional breakdowns. The child's therapist shared the child "was not presenting anything atypical for someone who has experienced trauma." HHS did not confirm that B.G. was present for any sexual abuse of A.G. by the father. HHS recommended further services for the family.

The CINA adjudication order cited Iowa Code section 232.96A(3)(b) and (4) (2023). The court found:

The facts were also shown as follows: the parents of these children have used them as pawns and the truth is difficult to ascertain as both parents lie in order to make themselves look good. The evidence presented by [HHS] was found to be credible, but testimony from the child's mother and the child's maternal grandmother were not found to be reliable or credible. Clear and convincing evidence has been shown that [A.G.] has been sexually abused by her father and/or her brother, including her consistent statements, use of age-appropriate language, and emotional reactions to the situation.

Following the dispositional order, the father appeals the court's orders.

## II. Standard of Review

The district court's decisions in CINA proceedings are reviewed de novo. *In re L.H.*, 904 N.W.2d 145, 149 (Iowa 2017). We are not bound by the factual findings of the court, but we give weight to those findings. *In re J.S.*, 846 N.W.2d 36, 40 (Iowa 2014). The court's "determinations must be based upon clear and convincing evidence." *Id.* at 41. Our primary consideration is the best interests of the children. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997).

## III. Sufficiency of the Evidence

A. The father claims the adjudication is not supported by the evidence. He asserts the allegations of sexual abuse arose as a tactic by the mother in the parents' ongoing custody dispute. He notes the court found the mother was not a credible witness. The father also points out that the State did not present the child's forensic interview as an exhibit. He contends the allegations of sexual abuse were later denied by A.G. The father denies he sexually abused A.G.

A court may enter a CINA adjudication if the court "concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required." Iowa Code § 232.96(9). "Clear and convincing evidence' exists 'when there are no "serious or substantial doubts as to the correctness [of] conclusions of law drawn from the evidence.'" *L.H.*, 904 N.W.2d at 149 (alteration in original) (citations omitted).

The court relied on section 232.96A(3)(b) and (4). We will discuss each of these grounds because "[t]he grounds for a CINA adjudication do matter." *In re J.S.*, 846 N.W.2d 36, 41 (Iowa 2014). This is because "[t]he underlying grounds

of adjudication in [CINA] cases have important legal implications beyond the adjudication.” *In re L.G.*, 532 N.W.2d 478, 480 (Iowa Ct. App. 1995).

Section 232.96A(3)(b) applies when a “child has suffered or is imminently likely to suffer harmful effects as a result of” “[t]he failure of the child’s parent . . . to exercise a reasonable degree of care in supervising the child.” In addition to allegations that A.G. was sexually abused by her father, there were also allegations that A.G. was inappropriately touched by B.G. while with the father. The father’s petition on appeal does not address these concerns about lack of supervision of the children. We conclude there is clear and convincing evidence to support the CINA adjudication under section 232.96A(3)(b) in that the child reported being sexually abused by B.G. while with her father.

The court also relied on section 232.96A(4), which applies when “[t]he child has been, or is imminently likely to be, sexually abused by the child’s parent . . . or other member of the household in which the child resides.” On appeal, we give weight to the district court’s factual findings, especially when considering the credibility of witnesses. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa 1999). We are particularly inclined to give weight to the court’s findings on issues of credibility because “[t]he . . . court had the advantage of listening to and viewing the witnesses.” *Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 20 (Iowa 2001).

The court found the testimony of HHS workers was credible. This included the founded report of sexual abuse against the father and testimony about A.G.’s forensic interview. Although the court found the mother and maternal grandmother were not credible witnesses, the court concluded there was clear and convincing evidence in the record to show A.G. was “sexually abused by her father and/or her

brother,” considering the child’s consistent statements; her use of age-appropriate language, and her emotional reactions to the situation. A.G. had increased behavioral indicators, including outbursts, bedwetting, and emotional breakdowns. She was also diagnosed with PTSD. We find there is clear and convincing evidence in the record to support the CINA adjudication under section 232.96A(4).

**B.** The father also appeals the dispositional order. See Iowa Code § 232.99. He raises the same issues he raised in regard to the adjudicatory order. For the reasons we affirm the adjudicatory order, we affirm the dispositional order. At the time of the dispositional order, A.G. could not be safely returned to the father’s custody and B.G could not be safely returned to parental custody.

We affirm the district court’s orders.

**AFFIRMED.**