

IN THE COURT OF APPEALS OF IOWA

No. 0-001 / 09-1747
Filed February 10, 2010

**IN THE INTEREST OF K.D., K.H., and E.H.,
Minor Children,**

**C.B.H., Father of K.H. and E.H.,
Appellant,**

**V.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,
Associate Juvenile Judge.

A mother and a father appeal separately from a juvenile court order
adjudicating their respective children to be children in need of assistance.

AFFIRMED ON BOTH APPEALS.

Mary Lynn Wolfe of Wolfe Law Office, Clinton, for appellant-father.

Neill A. Kroeger, LeClaire, for appellant-mother

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant County
Attorney, for appellee.

Lucy Valainis, Davenport, attorney and guardian ad litem for minor
children.

Considered by Vogel, P.J., and Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.

V.H. is the mother of K.D., K.H., and E.H., who were respectively eight, four, and two years of age when the present child in need of assistance (CINA) proceedings were commenced in August 2009. C.H. is the father of the two younger children. Following a November 2009 dispositional order, V.H. and C.H. separately appeal from an October 2009 juvenile court order adjudicating their respective children to be CINA pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2009). (K.D.'s father does not appeal from the order adjudicating K.D. to be a CINA.) We affirm.

Our review of CINA proceedings is *de novo*. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *Id.* Our fundamental concern is the best interests of the children. *Id.* The State has the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2). "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusions drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

On appeal C.H. claims: "The State failed to prove the allegations of adjudicatory harm set out in the Child in Need of Assistance Petitions by clear and convincing evidence." V.H. similarly "does not agree with the Court's finding that her children are in need of assistance," arguing that "the Court erred in

finding clear and convincing evidence that the children are in imminent adjudicatory harm.”

The State’s CINA petitions were filed as a result of a series of incidents of physical abuse and denial of critical care. In June 2006, before V.H. and C.H. were married and before E.H. was born, an incident of physical abuse of K.H. by C.H. was confirmed and placed on the Central Child Abuse Registry as a “founded” report. In an incident observed by V.H.’s mother, C.H. had bitten nine-month-old K.H. on the arm in April 2006, ostensibly to teach K.H., who had just bitten K.D., not to bite others. The biting by C.H. left a bite mark and bruising on K.H.’s arm. C.H. pled guilty to assault causing bodily injury.

V.H. and C.H. married about April 2007 and E.H. was born in July 2007. In October 2008 reports of physical abuse of K.D. by C.H., and denial of critical care: failure to provide adequate shelter, with K.H. and E.H. as the victims and V.H. and C.H. as the perpetrators, were founded and placed on the Central Child Abuse Registry. The physical abuse involved C.H. choking K.D. by the collar of his shirt. K.D. indicated that C.H. had grabbed K.D. by the front of his shirt, K.D. ran in circles, the collar got twisted, and C.H. lifted K.D. by the collar. K.D. indicated that for a time during the incident he could not breathe. The incident resulted in scratches and petechiae on the right side of K.D.’s neck and petechiae behind his left ear. C.H. placed ice packs on the affected area, according to K.D. so that school personnel would not notice the injuries. C.H. claimed the injuries were the result of C.H. massaging K.D.’s neck to help K.D. swallow a pill. The findings of denial of critical care of the two younger children

were the result of a dirty, cluttered, and unsafe home. Among other things, there were plastic bags, bleach, and prescription and non-prescription medicines accessible to the younger children. The lack of cleanliness and unsafe conditions in the parents' homes thereafter remained a continuing concern.

Yet another investigation in May-June 2009 resulted in founded reports, placed on the Central Child Abuse Registry, of V.H. and C.H. denying critical care to the two younger children by failing to provide adequate shelter, and of V.H. and C.H., by acts or omissions, physically abusing K.H. With encouragement and oversight the parents had from time to time improved the cleanliness and safety of their homes. However, the home was again in worse condition. Food, Q-tips, and other small objects were present on the floors. The carpeting was stained and dirty. Old food was present on dirty dishes left within reach of the younger children. The home had a sour and rotting smell. V.H. indicated she was overwhelmed by a combination of supervising the children and trying to maintain the home. K.H. had unexplained, suspicious bruising on his lower legs, consisting of two parallel bruises on one leg plus another separate bruise.

At the CINA adjudicatory hearings, staff members of the Iowa Department of Human Services and a service provider testified to their opinions that despite the services provided to them V.H. and C.H. had not internalized the information being provided to them and that the children remained at risk of harm because of the parents' inability to properly parent them.

Iowa Code section 232.2(6)(b) defines a CINA as a child “[w]hose parent . . . has physically abused or neglected the child, *or is imminently likely to abuse or neglect the child.*” (Emphasis added). Section 232.2(6)(c)(2) defines a CINA as a child “[w]ho 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.” (Emphasis added). The State has a duty to see that every child within its borders receives proper care and treatment. *In re D.T.*, 435 N.W.2d 323, 329 (Iowa 1989). Our juvenile statutes are designed to effectuate that duty. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). The provisions of Iowa Code chapter 232 are preventative as well as remedial. See *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990) (affirming termination of parental rights). “Their goal is to prevent probable harm to the child; they do not require delay until after the harm has happened.” *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993).

We conclude the juvenile court properly adjudicated the children to be CINA pursuant to Iowa Code sections 232.2(6)(b) and (c)(2).¹ The repeated incidents of physical abuse and the continuing dirty and unsafe condition of the parents’ homes left the children imminently likely to suffer harmful effects as a consequence of further physical abuse, failure to exercise a reasonable degree of care in supervising them, or both. See *L.L.*, 459 N.W.2d at 494 (noting that

¹ We need not decide whether clear and convincing evidence also supports adjudication under section 232.2(6)(n) (child whose parent’s mental capacity or condition results in child not receiving adequate care). Cf. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) (holding, in termination of parental rights case, that we only need to find grounds to terminate under one of the statutory provisions relied on by the juvenile court in order to affirm its ruling).

statutory provisions are preventative as well as remedial). The circumstances justify adjudication of the children as CINA to secure the juvenile court intervention necessary to address the physical abuse and unsafe conditions of the home and attempt to protect the children from imminent harm.

AFFIRMED ON BOTH APPEALS.