

IN THE COURT OF APPEALS OF IOWA

No. 0-196 / 10-0152
Filed May 12, 2010

**IN THE INTEREST OF K.S. and M.S.,
Minor Children,**

**M.S., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A father appeals from a juvenile court order adjudicating his daughters as children in need of assistance. **AFFIRMED.**

Pamela A. Vandell, Des Moines, for appellant father.

Michael Bandstra, Des Moines, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Karl Wolle, Des Moines, for minor children.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

The father appeals from a juvenile court order adjudicating his daughters, fourteen-year-old K.S. and sixteen-year-old M.S., to be children in need of assistance (CINA). We affirm.

On October 9, 2009, the State filed a petition alleging the children to be CINA. Following a contested hearing, on December 11, 2009, the juvenile court adjudicated the children as CINA under Iowa Code section 232.2(6)(c)(2) (2009). The court entered a subsequent dispositional order on January 12, 2010, confirming the CINA adjudications. The father now appeals.

Our review of CINA proceedings is *de novo*. Iowa R. App. P. 6.907 (2010); *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 conclusion 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, the father claims the juvenile court erred in finding the State proved the grounds for adjudicating the children as CINA under Iowa Code section 232.2(6)(c)(2). On our *de novo* review, we find clear and convincing evidence supports the adjudication made by the juvenile court.

Iowa Code 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." 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).

The State's CINA petition was filed as a result of an October 2009 report that the father had struck and injured K.S. and M.S. The Iowa Department of Human Services (DHS) investigated. The ensuing investigation resulted in a founded report that the father had physically and emotionally abused the daughters and mother over a period of many years. Among other physically and emotionally abusive acts, the record reveals that the father had done the following: recently slapped M.S.'s face causing her to have a fat lip and redness; told several friends that if the mother and daughters ever tried to leave him, he could kill them using a certain type of gun and bullet and get rid of the bodies without being detected; abused the family pets to the extent that a dog and several cats had died a short time after the abuse occurred; called the daughters names such as "little bitch"; threatened the daughters by telling them he could "knock [them] out of this world"; spanked the daughters with belts causing marks on their legs; and slapped the girls in the face with an open and closed hand. Interviews with the daughters by caseworkers indicate the daughters are

frightened of their father and struggle with anxiety, depression, and posttraumatic stress disorder.

The father argues the State has failed to prove that he has caused the children to suffer from any type of abuse. Rather, he alleges that any alleged incidents of abuse were actually corrective disciplinary actions as a result of the children's misbehavior. The father contends his daughters are "two rebellious teenage girls," but his attempts to punish them do not "cross the line from corrective to abusive."

The father does admit that he slapped that daughters in the face, made threats to the daughters, and used swear words and other harsh language with them. He further admits that his behavior causes the mother and daughters to fear him. However, the father attempts to minimize and justify his behavior and blames the State and DHS for the family's problems.¹

This case is unusual in that the father has the ability to properly supervise his children and was trying to provide good care, at least in his opinion. Typically, an adjudication as a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) involves a parent who inadequately or insufficiently supervises a child due to inability or lack of concern, placing the child at risk of harm. See *In re D.T.*, 435 N.W.2d 323, 326-28 (Iowa 1989); *In re M.L.R.*, 532 N.W.2d 175, 175-77 (Iowa Ct. App. 1995); but see *In re B.B.*, 440 N.W.2d 594, 596 (Iowa 1989). Although most section 232.2(6)(c)(2) adjudication cases involve a parent's failure to provide a reasonable degree of supervision, we do

¹ The father alleges that the reports exaggerate what actually happened, and repeatedly reasons, "if all that actually happened, why are they still here?"

not believe that the legislature intended such a limited scope or interpretation of section 232.2(6)(c)(2).

We note that section 232.2(6)(c)(2) states: “The failure of the child’s parent . . . to exercise a reasonable degree *of care* in supervising the child.” Effect must be given, if possible, to every word, clause, and sentence of a statute. *State v. Wiederien*, 709 N.W.2d 538, 546 (Iowa 2006) (Cady, J., dissenting); *Miller v. Marshall County*, 641 N.W.2d 742, 749 (Iowa 2002) (*citing* 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:06, at 181 (6th ed. 2000)). The inclusion of the phrase “of care” denotes something greater in scope than simply inadequate or lack of supervision, as the phrase would be superfluous if the statute were applicable to only supervision deficiencies.

We believe the proper interpretation of section 232.2(6)(c)(2) gives effect to each word and phrase of the statute and applies to situations where a child is not provided proper care and treatment while under a parent’s oversight. See *In re McDonald*, 201 N.W.2d 447, 553 (Iowa 1972). Of course, the application of section 232.2(6)(c)(2) is limited by the requirement that the child has suffered or is imminently likely to suffer harmful effects. A similar application of section 232.2(6)(c)(2) and somewhat comparable facts arose in *In re L.F.*, 590 N.W.2d 284 (Iowa Ct. App. 1998) (adjudication affirmed where home was one of confusion, stress and fear; father used intimidation and emotional abuse to gain control of family; and parents failed to seek psychiatric care for child). See also *In re N.H.*, 528 N.W.2d 94, 99 (Iowa 1995) (permanency order affirmed where children were adjudicated due to mother’s inability to exercise a reasonable level of discipline and supervision necessary for the children’s development).

We conclude the juvenile court properly adjudicated the children as CINA pursuant to Iowa Code section 232.2(6)(c)(2). Evidence of the father's admissions of age-inappropriate and strong physical discipline, emotional abuse, and lack of responsibility for his behavior proves that the children are imminently likely to suffer harmful effects as a consequence of the father's failure to exercise a reasonable degree of care while supervising them. Here, all family members are now undergoing counseling, and K.S. and M.S. suffer from anxiety, depression and possible posttraumatic-stress disorder. We are mindful of the difficulties parents face in parenting children, but the circumstances existing in this case were not isolated, short-lived, or simply tough-love discipline measures. Notwithstanding the father's well-intended motives, the home was absent of self-discipline, restraint, and dignity; and rather, anger, hostility, yelling, fear, intimidation, and intolerance became the norm to the extent that the children have suffered or were imminently likely to suffer emotional harm.

The father's ongoing violent tendencies and anger management problems justify the children's adjudication as CINA to secure the juvenile court intervention necessary to address the violence and attempt to protect them from imminent harm.

AFFIRMED.