

IN THE COURT OF APPEALS OF IOWA

No. 1-112 / 11-0002
Filed February 23, 2011

**IN THE INTEREST OF J.C.,
Minor Child,**

**K.C. and K.C., Parents,
Appellants.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A father and mother appeal the juvenile court's order confirming their son
as a child in need of assistance. **AFFIRMED.**

Thomas P. Graves of Graves Law Firm, P.C., Clive, for appellants.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Stephanie Brown, Assistant
County Attorney, for appellee.

John Jellineck, Des Moines, attorney and guardian ad litem for minor
child.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

TABOR, J.

A father and mother appeal the juvenile court's order confirming their nine-year-old son, J.C., as a child in need of assistance (CINA). The parents contend the State failed to show by clear and convincing evidence that J.C. would be imminently likely to suffer mental injury if he were moved from foster care back to their home. Because the parents are not yet able to provide for their son's emotional needs, we affirm the CINA adjudication.

I. Background Facts and Proceedings

J.C. was born in August 2001. When he was three years old, his birth mother, Sue, died suddenly of an embolism. His father, Kevin, remarried in January 2007. Kevin's new wife, Kerry, adopted J.C. in October 2007. In an "ill-advised effort to help [J.C.] transition to thinking of Kerry as his mother," Kevin removed all photographs and other reminders of Sue from the home. Kevin admits that he did not handle Sue's sudden death very well. Neither he nor J.C. participated in grief counseling, leaving unresolved issues of loss for them both.

The family is affected by various mental health issues. J.C. has been diagnosed as having an attention deficit disorder and oppositional defiance disorder. The child takes medication to address his mental health needs and meets regularly with a therapist. Kerry suffers from depression, anxiety, and chronic pain; Kevin takes medication for situational depression. The parents have participated in ongoing marriage counseling.

In December 2009, teachers at J.C.'s school noticed bruises on his forearm and called the Department of Human Services (DHS). J.C. told the DHS worker that Kerry had grabbed him by the arm and spanked him on his buttocks and left leg. Kerry admitted to the DHS worker that she had grabbed her son's arm and spanked him with his clothes off ten times on two different occasions within a three-day span. The mother explained that the spankings were in response to J.C. telling lies. She also acknowledged restraining him with a belt during the corporal punishment. The child protection assessment concluded with a founded report of abuse against Kerry.

The DHS worked out a safety plan with the family, which entailed Kerry leaving the home for one week. During the months following the founded child abuse report, the DHS provided the family services to keep J.C. in the home. But the safety plan failed to correct the problems detected in the home. J.C. reported to social workers that his parents isolated him in his room for long periods of time, denying him privileges such as reading books. The workers reported that eight-year-old J.C. had been grounded seventeen days for lying. The parents discussed placing J.C. in "some kind of group home" to correct his behavior. The parents took him to a day program at Mercy Franklin, where the psychiatrist found J.C. to be a "fragile child" who was suffering anxiety because of negative emotions at home. The psychiatrist prescribed medication for J.C.'s anxiety, but did not believe that the child's behavior warranted placing him in an institutional setting. J.C.'s therapists recommended removal from his home based on the threat of mental injury from his parents' unrealistic expectations,

isolation strategies, and lack of emotional support for their son. The court ordered an emergency removal on July 29, 2010.

After a series of three hearings, on September 9, 2010, the juvenile court issued a removal order, finding that the return of J.C. to his parents “would place his mental health at imminent risk.” Kerry testified at the removal hearing that she was not responsible for J.C.’s injuries documented in the founded child abuse report. The parents insisted J.C.’s behavior was “out of control.” But the court gleaned very different information from school officials, who saw J.C. as “a model student academically and behaviorally.”

The removal court found the following:

To return [J.C.] to his parents today would result in emotional abuse and mental injury. He needs an “environment which is nurturing, calm, structured and consistent.” This family needs time to regroup and heal, individually and collectively. Though not imminently likely, physical abuse is also a concern. Kerry has physically abused [J.C.] in the past, and is unstable at the present time.

The court placed J.C. in foster care, where he remains today.

In accordance with Iowa Code section 232.96 (2009), the juvenile court held contested hearings on September 21 and 29, 2010. On October 11, 2010, the court found clear and convincing evidence that J.C. should be adjudicated as a CINA under Iowa Code sections 232.2(6)(b), (c)(1), and (c)(2). The court concluded that the parents’ continued view of J.C. as untrustworthy and incorrigible posed a threat of mental injury and improper supervision. The court wrote: “Foster parents, school personnel and other providers do not observe the acting out behaviors of which [J.C.’s] parents complain.” The court felt that if

trust could not be reestablished in the family, the child could not be returned to his parents without risk of further adjudicatory harm.

The juvenile court held another hearing on November 17, 2010. The State presented a DHS case plan, Family Safety, Risk and Permanency (FSRP) reports, and notes from J.C.'s therapist. The guardian ad litem discussed J.C.'s desire to engage in counseling with just Kevin present before involving Kerry in the sessions. The parents' attorney reported that those father-son counseling sessions had already begun. He also stated that his clients were interested in participating in whatever services were requested of them, but did not agree that J.C. should remain outside their home.

A further hearing was scheduled to occur in December 2010, but the parents' attorney decided not to present additional evidence. On December 21, 2010, the juvenile court confirmed J.C. as a CINA, maintained his foster care placement, adopted the DHS case permanency plan recommendation that J.C. be allowed more contact with his extended family, and ordered another review hearing for February 2011. Significant among the juvenile court's factual findings were the following: Kevin should participate in therapy and other activities with J.C. without Kerry present; Kerry should take responsibility for the harm she caused J.C. and accept J.C.'s need to spend one-on-one time with his father; and Kevin and Kerry need to undergo "full psychiatric evaluations to determine how best to expedite the delivery of reunification services."

The parents appeal from the December 21, 2010 dispositional order.¹

II. Scope and Standard of Review

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by those findings. *Id.* Our primary concern is the best interests of the child. *Id.* The State bears the burden to prove its allegations by clear and convincing evidence. Iowa Code § 232.96(2) (2009). "Clear and convincing evidence" must leave "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)).

III. Merits

The parents dispute the juvenile court's conclusion that the State presented clear and convincing evidence J.C. should continue to be adjudicated in need of assistance. They argue that the record shows "J.C. has a problem with the truth" and has "exhibited problem behaviors." They attribute their son's troubled relationship with Kerry to his "expressed . . . wish to get Kerry out of the

¹ In their petition on appeal, the parents challenge both the continued adjudication of J.C. as a CINA and his removal from their home. They also allege that the August 2, 2010, August 13, 2010, and September 8, 2010 removal hearings occurred beyond the ten-day deadline in Iowa Code section 232.95(1), denying them due process. We hold the dispositional orders on October 11, 2010, and December 21, 2010, rendered moot any issue regarding the child's removal. See *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994) (holding any error in the temporary removal order cannot be remedied after custody of the child is placed with DHS under a dispositional order). Because they are moot, we will not address the parents' complaints regarding removal. See *Watts v. State*, 456 N.W.2d 683, 683 (Iowa Ct. App. 1990) (noting courts generally do not consider an issue if it no longer presents a justiciable controversy).

family,” and they contrast that with Kerry’s “expressed . . . concern, love, empathy and support for her son.”

The parents’ arguments do not strike us as particularly helpful in moving toward the goal of reunification with their son. Even in this appeal, they continue to misuse J.C. as a “scapegoat” for the family’s turmoil. Exposing children to an anxiety-filled, stressful home life may be cause for a CINA adjudication. See *In re N.M.*, 528 N.W.2d 94, 99 (Iowa 1995) (finding mother was unable to exercise “reasonable level of supervision and discipline necessary for children’s development” and noting with disapproval her use of the children as “pawns in her stormy relationship” with children’s father); see also *In re L.F.*, 590 N.W.2d 284, 286 (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).

The juvenile court made the following insightful observations in its ruling:

Kerry is still angry with [J.C.] about the involvement of DHS in their lives. Kevin is depressed. To accommodate his parents, [J.C.] feels he needs to walk on eggshells around Kerry, and feels responsible to cheer up his father by endeavoring to be perfect. Progress is being made. Kerry’s communications with [J.C.’s] therapist, Lisa Baxter, are less condescending, accusatory, and untruthful. Kevin now agrees to meet with [J.C.’s] therapist without Kerry. But time is of the essence.

Our de novo review of the record brings us to the same determination. The State’s exhibits provide clear and convincing proof that J.C. and his parents are not ready for reunification. The parents have been slow to schedule outpatient psychiatric care for J.C. The DHS social worker reported that Kevin and Kerry still need to demonstrate their insight regarding how the loss of J.C.’s

biological mother has affected his behavior and their understanding of “age-appropriate expectations for their son so that they are able to consistently interact with him in a way that is nurturing and safe.” Until the parents make significant progress toward these goals, we agree that J.C. should be considered a CINA.

AFFIRMED.