

IN THE COURT OF APPEALS OF IOWA

No. 2-320 / 12-0414
Filed May 23, 2012

**IN THE INTEREST OF L.W. and J.J.,
Minor Children,**

B.W., Mother,
Appellant,

J.J., Father of J.J.,
Appellant.

Appeal from the Iowa District Court for Appanoose County, William S. Owens, Associate Juvenile Judge.

A mother and father separately appeal from the dispositional order finding the children to be in need of assistance. **AFFIRMED.**

Kevin S. Maughan, Albia, for appellant-mother.

Monte M. McCoy, Centerville, for appellant-father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Richard Scott, County Attorney, for appellee.

Jonathan Willier, Centerville, attorney and guardian ad litem for minor children.

Julie De Vries of De Vries Law Office, P.L.C., Centerville, for appellee-custodian.

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

BOWER, J.

The mother of L.W. and J.J. and the father of J.J. separately appeal from the dispositional order, after affirming the children to be in need of assistance (CINA) and placing them in the legal custody of the maternal grandmother. They contend there is insufficient evidence to adjudicate the children CINA pursuant to Iowa Code section 232.2(6)(c)(2) (2011).

Because clear and convincing evidence shows the children suffered or are likely to suffer harm as a result of the mother and father's failure to exercise a reasonable degree of care in supervising them, we affirm.

I. Background Facts and Proceedings.

The mother has two children: L.W., born in October 2009, and J.J., born November 2010. On May 5, 2011, the children were in the care of J.J.'s father while the mother was at work. When the mother returned home from work, the father told her L.W.'s butt was red. After the mother found bruising on the child's inner thighs and genitals, she took him to the emergency room.

At the hospital, the child protection worker noticed pinpoint bruising on L.W.'s face. Both his ears appeared to have black and blue bruising on the inside and outside. The child also had bruising around his feeding tube that was approximately four inches long and two inches wide. When the nurse removed L.W.'s diaper, the worker observed his scrotum was swollen and black and blue as was the area near the anus and inside both thighs.

The mother reported that before leaving for work that day, she had heard L.W. cry out and when she responded, she observed the father's three-year-old

child crawling out of L.W.'s playpen. The mother put the child in time out. She reported the child had been observed pulling the dog's ears and opined that he may have done the same to L.W. After the incident, the mother gave L.W. a bottle and told him to go to sleep. She did not notice any bruising before leaving for work at around 3:30 p.m.

J.J.'s father reported that he had never watched L.W. before May 5, 2011. After the mother left for work, the father, J.J., L.W., and the father's three-year-old child were in the home. The father claims he only left the children alone for approximately two minutes while he went to the bathroom. At that time, he heard J.W. "squeal" and upon returning, observed the three-year-old standing next to L.W.'s playpen. When he changed L.W.'s diaper at around 5:30 p.m. that evening, the father noticed L.W.'s testicles appeared blue. When the mother returned home from work at around 10:00 p.m., the father told her what he had seen.

On June 3, 2011, the child abuse report was founded with the father listed as the person responsible for the abuse. The State filed a CINA petition on July 8, 2011. A hearing was held on October 27, 2011, and November 3, 2011. On January 13, 2012, the juvenile court entered its order finding the children to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2). Legal custody was ordered to remain with the mother, but the children's placement was left in the hands of the Department of Human Services, who placed the children with the maternal grandmother.

A dispositional hearing was held on February 23, 2011, for the purposes of determining the custody, placement, and supervision of the children. The mother and father requested the CINA petition be dismissed and the children remain in their legal custody. Following the hearing, the juvenile court confirmed the children to be CINA and placed the children in the maternal grandmother's legal custody. Both the mother and father appeal.

II. Scope and Standard of Review.

We review CINA proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review the facts and the law and adjudicate rights anew. *Id.* Although weight is given to the juvenile court's factual findings, we are not bound by them. *Id.* As in all juvenile proceedings, our fundamental concern is the child's best interests. *Id.*

III. Analysis.

A child is "in need of assistance" when he or she has suffered or is imminently likely to suffer harmful effects as a result of the failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child. Iowa Code § 232.2(6)(c)(2). The State has the burden of proving the grounds for a CINA adjudication by clear and convincing evidence. *In re B.B.*, 500 N.W.2d 9, 12 (Iowa 1993).

Neither the mother nor the father dispute that L.W. suffered injuries. They do dispute that the father was the cause of the injuries. The evidence shows the child suffered serious injuries to his head and genitals while in the care of the

father. The mother and the father speculate that the father's three-year-old child caused the injuries. While a doctor who examined L.W. was unable to rule out that explanation, she did indicate she found it hard to believe a child of that age could cause L.W.'s injuries. Furthermore, the child protective worker observed the three-year-old to be well-behaved in contravention of the mother's assertions that the child was "mean."

We also do not find the father's explanation credible; although he claims he was only away for two minutes during the period of time he was responsible for L.W.'s care, L.W. received extensive injuries while alone in his playpen. The three-year-old child—who was approximately thirty-five inches tall at the time the injuries were received—had to scale the side of the playpen, which measured twenty-eight inches high from the outside. It is not plausible that a child of that age would wait for the adult to leave the room to use the bathroom, climb into the playpen, cause injuries to the younger child's head, stomach, and genitals, and then climb back out again within a matter of minutes. The father's claim that L.W. "squealed" once during this period and his conflicting statements that he noticed L.W.'s butt was red when he changed L.W.'s diaper versus noticing L.W.'s scrotum was bruised blue further undercut his credibility.

The likely explanation is that the father caused L.W.'s injuries or failed to properly supervise the children, which allowed the three-year-old ample time to cause the injuries. In either event, the grounds for the CINA adjudication under section 232.2(6)(c)(2) have been proved. The record also shows the mother has a history of leaving her children with friends or family so she can pursue her own

interests. Both the maternal grandmother and L.W.'s in-home provider stated the mother would leave supervision of the children to them, leave the children in a crib or playpen with a bottle, and yell at the children. The maternal grandmother informed a worker that J.J. is so accustomed to taking a bottle without being held, that the child refuses to feed when being held.

Given the injuries that L.W. suffered and that both children are likely to suffer in the care of the mother and the father, we affirm the CINA adjudication and disposition.

AFFIRMED.