

IN THE COURT OF APPEALS OF IOWA

No. 2-589 / 12-1049
Filed August 8, 2012

**IN THE INTEREST OF A.A., H.A., and J.A.,
Minor Children,**

**M.A., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A father challenges the juvenile court's ruling adjudicating his three biological children to be in need of assistance with regard to his rights under Iowa Code sections 232.2(6)(b), (6)(c)(2), and (6)(n) (2011). **AFFIRMED.**

Cory Goldensoph, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher, Assistant County Attorney, for appellee.

Deborah Skelton, Walford, for mother,

Kimberly Opatz, Cedar Rapids, guardian ad litem and attorney for minor children.

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

TABOR, J.

A father challenges the juvenile court's ruling adjudicating his three children—A.A., H.A, and J.A.—to be in need of assistance (CINA) under Iowa Code sections 232.2(6)(b), (6)(c)(2), and (6)(n) (2011). He argues the State failed to meet its burden to prove any of the three grounds.

We hold that because the father exposed his children to violence and the danger of a loaded firearm, and has previously reacted in similarly inappropriate ways in encounters with family members, the State proved by clear and convincing evidence that the children suffered or are imminently likely to suffer harmful effects as result of the father's failure to exercise a reasonable degree of care in supervising them. Therefore we affirm the juvenile court's CINA adjudication.

I. Background Facts and Proceedings

A.A., H.A., and J.A.—now ages seven, five, and three—are the biological children of Mohammed and Lisa. The married couple lived in Cedar Rapids with their three children as well as B.L. and B.C., Lisa's children from two previous relationships. B.L. is now nineteen years old, and B.C. is thirteen. Mohammed has acted as a father figure for all five children.

In November 2011, B.L. and Mohammed had an argument, after which they stopped speaking to each other. Their relationship remained strained over the next couple months. On Christmas Day, Mohammed told Lisa he was involved with another woman who was pregnant with his child. He left the family residence on New Year's Day, but would come back frequently to visit the

children. Mohammed and B.L. eventually reestablished speaking terms, but their interactions continued to be tense. Then eighteen, B.L. moved out about two weeks after her stepfather. She left with a car that Mohammed and Lisa paid for but was registered in B.L.'s name.

On January 15, 2012, Mohammed and Lisa confronted B.L. at the apartment where she was staying, and the three went to a restaurant to discuss ownership of the car, ultimately deciding Mohammed and Lisa would take it back. The next evening, after exchanging Facebook messages with her mother to ensure Mohammed was not at the house, B.L. traveled to her old residence to retrieve the vehicle.¹ B.L. was accompanied by her roommates, Haley and Joseph, who were engaged to be married.

Around midnight, B.L. opened the door to find both Lisa and Mohammed waiting in the living room. B.C. and H.A. were also present. Lisa allowed Mohammed liberal visitation with the children and he had been resting with H.A. before he had to leave for work. Lisa woke Mohammed to tell him that B.L. was on her way over with friends. Mohammed took a twelve-gauge shotgun, loaded it with five shells, and came downstairs.² He asked whether B.L. was coming

¹ Lisa testified:

I did not tell her that [Mohammed] was there or not there. I just told her to come in the morning, you know, not to come that night. And I told her I could get her the belongings that was in the car and stuff if she could come by in the morning and get them. And I told her I wasn't discussing the car with her because that was their issue. . . . But when it became more apparent that they were coming and—you know, then I did write that he was there and that, you know, that she would have to discuss that with him[.]

² When an officer asked why Mohammed was armed, he explained “[t]hat was the only way he could get [Joseph] to talk and explain what was going on.” He told the officer he

inside. After she refused, he told her to “get the fuck out,” and ran out to the car where her two friends were waiting.

Mohammed pointed the gun at Joseph, forcing him out of the vehicle and toward the house. On the way to the house, they slipped on a patch of ice, falling to the ground. As the juvenile court noted, “Luckily the gun did not discharge due to the fall.” B.L. tried to stop her stepfather by using pepper spray, but he managed to escort Joseph inside the residence, locking the door behind them.³

Inside the house, Mohammed told Lisa to escort the children out of the living room. B.C. went to her room and Lisa moved H.A. to the couch upstairs. Mohammed handed the shotgun to Lisa, who was unaware that it was loaded. She placed the gun on the floor at the top of the steps, a few feet away from the sleeping children. B.L. told officers that while she was watching from outside, she saw J.A. enter the room before being carried away by her mother. Lisa opened the door to allow both young women into the house, but only Haley entered before the door was closed and locked again. Mohammed verbally threatened both Haley and Joseph.

Outside, B.L. called the police, who arrived shortly before one in the morning. Police seized the shotgun, as well as .22 caliber long rifle, a .22 caliber handgun, and a nine millimeter handgun. Officers charged Mohammed with two counts of assault with a dangerous weapon, domestic abuse assault, and false

wanted to determine what Joseph’s intentions were toward his daughter, and wanted to make sure she was not involved with drugs.

³ B.L. claimed that after she sprayed her stepfather in the eyes with pepper spray, he turned the gun on her and she heard a click, but the safety was on.

imprisonment. The court ordered no contact between Mohammed and B.L. Mohammed lost his job because of the incident.

On January 25, 2012, the family developed a safety plan with the Iowa Department of Human Services (DHS). DHS worker Robbin Pierce spoke with Lisa regarding the incident. Because Lisa runs a childcare out of the home, they agreed Mohammed could no longer visit the house, nor was he allowed unsupervised contact with his children. Because all of the children were in the house at the time of the incident, Pierce found a denial of critical care. The DHS concluded that Mohammad's conduct with the loaded firearm placed the four youngest children in harm's way, considering the many deadly scenarios that could have played out. Although Pierce determined Mohammed caused a safety concern, she concluded Lisa was "fully capable of meeting the needs of the children on her own as a single parent" and did not recommend removing the children from the home.

Pierce spoke with Mohammed later that month. He grew up in Iraq, where he was exposed to war, and suffers from post traumatic stress disorder (PTSD). Mohammed justified his behavior by explaining he was stressed and sleep-deprived on the night in question. He recalled Lisa waking him up to say that B.L. and her friends would be taking the car "by any means necessary." He believes he did the right thing at the time to protect his property, but that it would never happen again. During the interview he said he should shoot himself, prompting Pierce to explain the harm that such an act would inflict on his family.

Before their separation, Mohammed was verbally and emotionally abusive to Lisa in front of the children. Lisa recalled that he has thrown objects and spit in her face during confrontations. He also physically abused an ex-girlfriend and her son, resulting in his arrest and participation in a batterer's education program. Lisa kept the guns when he moved out of the residence because he has made a few suicidal statements, and has a history of depression.⁴

On May 8, 2012, the juvenile court adjudicated A.A., H.A., and J.A. as CINA. The court ordered the children to stay under the protective supervision of the DHS, but remain in their mother's custody. The court also directed Mohammed to participate in an anger management class. The court granted discretion to the DHS to determine the appropriate level of supervision for the interactions between Mohammed and his children. Mohammed appeals the CINA adjudication.

II. Scope and Standard of Review

We review CINA proceedings de novo. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). While not bound by a juvenile court's fact findings, we accord them weight, especially when assessing witness credibility. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

The best interest of the children is our paramount concern in determining whether they should be adjudicated in need of assistance. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). It is the State's burden to prove by clear and

⁴ On April 16, 2012, Mohammed completed a mental health evaluation. The juvenile court recommended he visit a therapist and be evaluated for medication.

convincing evidence that a child is in need of assistance. *In re B.B.*, 500 N.W.2d 9, 12 (Iowa 1993).

III. Analysis

Mohammed argues the State failed to prove by clear and convincing evidence that A.A., H.A, and J.A. are CINA under the three statutory provisions cited by the court: section 232.2(6)(b) (parent has physically abused or neglected the child, or is imminently likely to abuse or neglect the child); (6)(c)(2) (child has suffered or is imminently likely to suffer harmful effects as result of the parent's failure to exercise a reasonable degree of care in supervising the child); and (6)(n) (the parent's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care).

Mohammed challenges all three bases. With regard to the court's findings of imminent abuse or neglect, he argues the State offered no evidence that his inappropriate conduct toward B.L. would be repeated toward his other children. He contends that because the children were asleep when the altercation occurred, they were not in need of supervision. Last, Mohammed argues that the only mental condition he suffers from is PTSD, and maintains that "[t]here is not a shred of evidence that his PTSD lead to the events of January 16, 2012, or has ever, in any way, put the children in harm's way."

The State counters that because "[h]is acts exposed his young children to guns, yelling, violence and police involvement . . . the juvenile court properly adjudicated his children as CINAs."

Although the juvenile court adjudicated the children in need of assistance on three statutory grounds, we will affirm its decision if we find adjudication was appropriate on any one ground. *In re J.A.D.-F.*, 776 N.W.2d 879, 884 (Iowa Ct. App. 2009). We find ample evidence in the record to support the juvenile court's conclusion that Mohammed's children suffered or are imminently likely to suffer harmful effects as a result of his failure to exercise a reasonable degree of care in supervising them. See Iowa Code § 232.2(6)(c)(2).

On the night of January 16, 2012, Mohammed brandished a loaded weapon and committed multiple assaults in the presence of his children. He also failed to ensure that the loaded shotgun was secured out of their reach. In carrying out his reckless and criminal acts, he failed to exercise a reasonable degree of care in supervising his children, whether they were awake or asleep. Exposure to violence has harmful effects on children. See *In re E.A.*, 552 N.W.2d 135, 138 (Iowa 1996).

We do not believe Mohammed's excuse of stress and sleep deprivation mitigates his conduct. Regardless of the motivating factors, the end result placed his children in grave danger. Because our statutory scheme is designed to prevent probable harm to children, the State need not wait until actual harm befalls the children before taking protective measures. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (noting statutory provisions are "preventative as well as remedial"). We find the State met its burden and we affirm the juvenile court's CINA adjudication.

AFFIRMED.