

IN THE COURT OF APPEALS OF IOWA

No. 6-264 / 06-0312
Filed May 24, 2006

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

STATE OF IOWA,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, Judge.

The State appeals a juvenile court order which dismissed child in need of assistance proceedings. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Dawn Eimers, Assistant County Attorney, for appellant.

Phil R. Caniglia, Council Bluffs, for the mother.

Scott Strait, Council Bluffs, for father D.S.

Michael Murphy of Murphy, Rodenberg & Stierman, Council Bluffs, for father D.W.

Maura Comstock, Council Bluffs, guardian ad litem for minor child.

Considered en banc.

PER CURIAM***I. Background Facts & Proceedings***

Diana is the mother of Andrew, born in October 2000, and twins, Jerry and Daniel, born in March 2004. Draper is the father of Andrew, while Danny is the father of the twins. The children lived with Diana, but Danny often visited and cared for them. In November 2005, allegations arose that the children had bruising on the buttocks area as a result of receiving belt spankings by Danny.

After an investigation, the Department of Human Services issued a founded report finding that Danny had physically abused the children, and that Diana had failed to protect the children from the abuse. The report noted the children's daycare provider, Tammy, had seen bruises which looked like they had been made by a belt on the buttocks of Jerry and Daniel. Andrew told Tammy, "daddy' hits really hard with the belt."¹ Andrew later told social workers his mom and dad gave him spankings with a belt. He stated the twins had gotten marks which were "black and blue and red and yellow" from being spanked with a belt and they would cry when spanked.

Diana denied hitting the children. She agreed Jerry and Daniel had bruises on their buttocks. She also admitted that Andrew told her Danny had spanked him with a belt. Danny admitted that he sometimes spanked the children, but stated it was not hard enough to leave bruises. Andrew stated that when Danny spanked him with a belt, "Mommy telled him to stop, and then she cried."

¹ Andrew refers to Danny as his daddy.

The children were removed from the parents' care and placed with a maternal cousin. Danny was arrested on charges of serious assault and child endangerment. Diana was also arrested. After the temporary removal hearing, the children were returned to the care of Diana, with Danny having supervised visitation.

The State filed a petition alleging the children were in need of assistance (CINA) under Iowa Code sections 232.2(6)(b) (2005) (parent is imminently likely to physically abuse or neglect child) and (c)(2) (child is likely to suffer harm due to parent's failure to supervise). The guardian ad litem agreed the children should be adjudicated CINA.

At the adjudicatory hearing, held on January 24, 2006, the juvenile court noted it had entered a temporary protective order earlier that day because Danny was alleged to have committed domestic abuse against Diana. At the hearing, a police officer testified concerning his investigation of the case. Tammy testified about the bruises she had seen on the children and Andrew's statements to her. She stated Daniel's bruises were so bad he could not tolerate being cleaned with baby wipes, and she had to clean him with a water sprayer. The twins' paternal grandfather and the maternal grandmother testified they had not noticed any unusual bruising on the children.

The juvenile court found clear and convincing evidence that someone bruised the children with a belt. The court stated, "Although the court suspects that Danny or Diana hit the children with a belt, the court does not find clear or convincing evidence that either parent physically abused the children." The court

also found insufficient evidence that the parents failed to supervise the children in a way to protect them from abuse. The court dismissed the CINA petition and returned the children to the parents. The State appealed.

II. Standard of Review

Our scope of review in juvenile court 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 factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

III. Merits

The State contends the juvenile court should have adjudicated the children in this case CINA. It alleges there is clear and convincing evidence to show the grounds alleged in the CINA petition—that a parent had physically abused or neglected the children (or was imminently likely to do so), and the children were likely to suffer harm due to a parent's failure to exercise care in supervising the children. See Iowa Code §§ 232.2(6)(b), (c)(2).

On our de novo review, we find the children should have been adjudicated CINA. An eyewitness, Andrew, clearly told police officers, social workers, his daycare provider, and his mother that Danny had spanked him and the twins with a belt. Although Andrew is only five years old, he made the same statements several times to several people, lending credibility to his statements. Furthermore, Andrew's statements are supported by the physical evidence observed by Tammy, the children's daycare provider, and Diana, the children's mother. The evidence shows both Jerry and Daniel had bruises on their

buttocks, and Daniel's were so severe he could not tolerate being cleaned with baby wipes. We also note the allegation of domestic violence in the parents' home.

Based on all of these factors, we reverse the decision of the juvenile court which dismissed the CINA petition. We determine the children should be adjudicated CINA under sections 232.2(6)(b) and (c)(2). We remand for further proceedings in the juvenile court.

REVERSED AND REMANDED.