

IN THE COURT OF APPEALS OF IOWA

No. 6-653 / 06-0899
Filed September 7, 2006

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

**F.S., Father, and
M.S., Mother,**
Appellants.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

Parents appeal from a juvenile court order that adjudicated their three children as children in need of assistance. **AFFIRMED.**

Nathan Tucker of Tucker Law Firm, South Sioux City, Nebraska, for appellant parents.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Marti Sleister, Assistant County Attorney, for appellee State.

Marchelle Denker of Juvenile Law Center, Sioux City, for minor children.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

A mother and father appeal from a juvenile court order that adjudicated their three children as children in need of assistance (CINA) under Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), 232.2(6)(d), and 232.2(6)(f) (2005). The parents contend the evidence does not support the juvenile court's decision. We affirm.

I. Background Facts & Proceedings

Ferdinand and Mariefel are the parents of Nerissa, born September 1995, Monique, born September 1991, and Leslie, born January 1990. Monique began seeing a therapist in March 2005 due to concerns she might have an eating disorder. She was diagnosed with major depressive disorder, bulimia, borderline personality traits, and parent/child problems. Monique attempted to commit suicide in May 2005 by overdosing on Tylenol and slitting her wrists. In July 2005 she told a therapist that she had a secret, but would not reveal what it was. Monique again attempted suicide in December 2005 by overdosing on Tylenol and slitting her wrists.¹

In January 2006 Monique was taken to the hospital due to depression and suicidal ideations. During her hospital visit, Monique disclosed that Ferdinand had inappropriate sexual contact with her when she was younger. Specifically, Monique alleged that when she was four years old, Ferdinand attempted to put his penis in her mouth. She claimed her sister Leslie witnessed the event.

¹ Physicians at the hospital discovered Monique had also carved the phrase "I HATE ME" into her left arm.

In an interview with a police officer, Leslie confirmed the details of Monique's allegations of sexual abuse. Leslie also told the police officer that Ferdinand recently threatened to harm her if she told anyone about the sexual abuse. Later, Leslie recanted her allegations of sexual abuse and claimed she lied to the police officer in an attempt to remain friends with Monique.

Monique also claimed Ferdinand exposed himself to her from when she was four years old until she was eight. She told an Iowa Department of Human Services (DHS) worker that Ferdinand "called me into the bathroom and he had shaved his pubic hairs and he asked me if I liked the way that it looked." Monique told the DHS worker she and Leslie disclosed Ferdinand's abuse to their mother, but Mariefel yelled at them and did not believe them. Monique also claimed Ferdinand kept binders full of pictures showing naked teenagers and women, and "he cuts out [male] parts and glues them onto the pictures."²

Monique told the DHS worker that Ferdinand kicked and punched her in the stomach and left bruises.³ She claimed he hit Leslie and Mariefel as well. Monique said her mother has hit her and thrown books at her.

Nerissa, Monique, and Leslie were removed from their family home shortly after Monique was hospitalized. Nerissa and Leslie were returned to the family home before an adjudicatory hearing was held.

² Monique also claimed Ferdinand had photographs of naked people on his computer. At the CINA hearing, Ferdinand admitted to occasionally receiving e-mails with pornographic attachments, which he would open and view before deleting.

³ Initially, Ferdinand only admitted to spanking his daughters on the buttocks to discipline them, but at the CINA hearing, he admitted to hitting Monique hard with a belt.

Following a contested adjudicatory hearing held March 31, 2006, the juvenile court adjudicated the children CINA pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), 232.2(6)(d), and 232.2(6)(f) (parent has physically abused or neglected child or is imminently likely to do so, child is likely to suffer harm due to parent's failure to exercise care in supervising child, child was sexually abused or is imminently likely to be sexually abused, and parent fails to provide needed treatment for a serious mental illness).⁴ The court ordered Monique to be placed in the temporary care and custody of DHS for placement in family foster care or relative care. The court allowed Nerissa and Leslie to remain with their parents. The court also ordered a psychosocial investigation and scheduled a disposition hearing. Ferdinand and Mariefel now appeal.

II. Scope & Standards of Review

We review CINA cases de novo. Iowa R. App. P. 6.4; *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). The State bears the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2). Clear and convincing evidence is evidence that leaves “no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citation omitted). Although the juvenile court relied on four sections to adjudicate the children CINA, we only need to find grounds under one of the sections in order to affirm the court's ruling. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

⁴ At the hearing, the children's guardian at litem joined in the State's request that the court remove Monique from the parental home.

III. Discussion

The parents contend the evidence does not support the juvenile court's adjudication of the children as CINA on any of the statutory grounds alleged by the State. For the reasons which follow, we find clear and convincing evidence supports a finding that Nerissa, Monique, and Leslie are children in need of assistance under section 232.2(6)(d) (child was sexually abused or is imminently likely to be sexually abused).

Ferdinand and Mariefel contend Monique fabricated the allegations of sexual abuse because the "only time she made such an allegation was when she was severely depressed, learned that she was failing a class, was unexpectedly removed from her friends at high school, and wanted to kill herself." They claim the State offered no corroborating evidence that sexual abuse occurred. At the adjudicatory hearing, Ferdinand also testified that Monique lies to her parents, refuses to obey them, and harbors anger and jealousy toward her sisters. Ferdinand claimed these feelings prompted Monique to fabricate allegations of sexual abuse to get attention from her parents.

The record reveals Monique's allegations were detailed, vivid, and consistent. Leslie also corroborated the details of Monique's allegations during a police interview. Although Leslie later retracted her statement, we note she also told the police officer that Ferdinand recently threatened to harm her if she told anyone about the sexual abuse. The juvenile court could reasonably have viewed Leslie's recantation with considerable skepticism. See *State v. Tharp*, 372 N.W.2d 280, 282 (Iowa Ct. App. 1985) (holding that when a victim of sexual abuse recants her testimony, we look upon that recantation with "the utmost

suspicion”). A DHS investigation concluded Ferdinand had sexually abused Monique.

Monique remained consistent regarding the details she revealed about Ferdinand’s abuse and her mother’s failure to do anything about it. Monique reported Ferdinand repeatedly exposed himself to her, and on one occasion she observed he had shaved his pubic hair. During his testimony at the adjudication hearing, Ferdinand admitted he had shaved off his pubic hair on one occasion, but he was unable to explain how Monique knew this fact. We find the juvenile court could reasonably conclude from this evidence that Monique knew Ferdinand had shaved his pubic hair because he had exposed himself to her.

The record also reveals the entire family sleeps in a ten-by-ten bedroom even though the home has two bedrooms and Ferdinand knows his teenage girls might feel uncomfortable sleeping in the same room as their parents.

Sharon Vervais, the in-home provider for the family from Transitional Services of Iowa, Inc., testified that Monique fears retribution from her father because she knows her allegations of sexual abuse have made him angry. Vervais testified that Monique told her she feels ostracized from the family and feels pressured to recant her allegations. Vervais also testified she was concerned about Monique’s depression and a possible future suicide attempt. Vervais concluded Monique was in imminent danger and should remain out of the home.

Upon our de novo review, we agree with the juvenile court’s conclusion that Nerissa, Monique, and Leslie are children in need of assistance pursuant to Iowa Code section 232.2(6)(d).

IV. Conclusion

We conclude the juvenile court properly adjudicated Nerissa, Monique, and Leslie as children in need of assistance. We affirm the court's order placing Monique with DHS for placement in family foster care or relative care and placing Nerissa and Leslie with their parents under DHS supervision.

AFFIRMED.