

**IN THE COURT OF APPEALS OF IOWA**

No. 6-938 / 06-1589  
Filed December 28, 2006

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

**C.N., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Cass County, Mark J. Eveloff (adjudication) and Kathleen A. Kilnoski (disposition), District Associate Judges.

A mother appeals from a juvenile court order adjudicating her child to be a child in need of assistance. **AFFIRMED.**

Patrick A. Sondag, Council Bluffs, for appellant-mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Daniel Feistner, County Attorney, for appellee.

David Larson of Hanson & Sulhoff, Avoca, for father.

Andrew Knuth, Atlantic, guardian ad litem for minor child.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MILLER, J.**

A mother appeals from a juvenile court order adjudicating her child to be a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(d) (2005) (child who has been, or is imminently likely to be, sexually abused by a member of the household in which the child resides). We affirm.

Crystal is the mother of Kaylee, born in early 2002, and Ali, born in mid-2005. Kaylee's father is Jarrod, and Ali's father is Nolan. Nolan was incarcerated during the juvenile court proceedings in this case.

Crystal and Jarrod lived together after Kaylee's birth, but separated when Kaylee was about one and one-half years of age, approximately mid-2003. At some subsequent time Crystal and Ehren began cohabiting. Crystal and Jarrod shared Kaylee's physical care, exchanging her each two weeks. In early November 2005 the Iowa Department of Human Services (DHS) conducted a child abuse investigation after Kaylee, during a two-week period with Jarrod, told Jarrod and his girlfriend, Heidi, that Ehren had sexually abused her. The DHS investigation led to a "founded" report of sexual abuse by Ehren.

The State filed a petition alleging Kaylee was a CINA. It later filed a petition alleging Ali was a CINA. Following a June 6, 2006 hearing the juvenile court filed its ruling in August. It found that Crystal had abided by recommendations and orders that there be no contact between Ehren and Kaylee and Ehren and Ali. It found the State had not proved Ali was a CINA and dismissed the petition as to her. It found the State had proved the allegations concerning Kaylee, and adjudicated her a CINA pursuant to Iowa Code section 232.12(6)(d).

In a late September dispositional order the juvenile court found that Crystal had recently given birth to another child, fathered by Ehren. It ordered that Kaylee remain in the custody of Jarrod, in whose custody she had been since November 2005, subject to supervision by the DHS and visits with Crystal at the discretion of the DHS. Crystal appeals, seeking reversal of the juvenile court order adjudicating Kaylee a CINA.

Our review of an action arising from CINA proceedings is de novo. Iowa R. App. P. 6.4; *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999). Of paramount concern is the welfare and best interest of the child. *In re A.D.L.*, 497 N.W.2d 178, 180 (Iowa Ct. App. 1992). We give weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, but we are not bound by such findings. Iowa R. App. P. 6.14(6)(g); *In re B.B.*, 598 N.W.2d at 315. The State has the burden of proving the allegations in the CINA petition by clear and convincing evidence. Iowa Code § 232.96(2). “Clear and convincing evidence means no serious or substantial doubt exists about the correctness of the conclusions drawn from the evidence.” *In re S.J.M.*, 539 N.W.2d 496, 500 (Iowa Ct. App. 1995).

Crystal first claims the juvenile court erred in relying on the opinion of a forensic interviewer, Sally Kaplan, that Kaylee was being truthful, “notwithstanding the court itself during adjudication hearing sustaining repeated objections by [Crystal] to prohibit any witness from giving an opinion about Kaylee’s truthfulness.”

As shown by the evidence, a forensic interviewer is a person specially trained to talk to children when there is a suspicion of abuse or neglect. Sally

Kaplan holds a Master of Social Work degree; acquired a mental health provider's license by performing 2000 hours of supervised, post-master's degree work and passing a test; acquired a clinical social worker's license by passing another test; has eighteen years of experience in child welfare work; and has conducted at least 750 forensic interviews of children suspected to be victims of abuse or neglect. She conducted a forensic interview of Kaylee, prepared written reports and a summary, and testified at the adjudicatory hearing.

Crystal did timely object to certain questions to witnesses that might have led to the expression of opinions concerning Kaylee's truthfulness, and the juvenile court sustained her objections. However, in its adjudicatory ruling the court found Sally Kaplan's testimony "extremely credible," and in doing so noted Kaplan had testified "that a three-year-old would not be able to lie about [the] type of abuse [described by Kaylee]." Nevertheless, our review is de novo and for three reasons we find no reversible error.

First, the essence of Crystal's challenge to Kaylee's assertions of sexual abuse, the findings of the DHS child abuse investigator, and the opinion of the forensic interviewer that Kaylee had been sexually abused, was that Kaylee had been coached by Jarrod or Jarrod and Heidi to make her assertions of abuse by Ehren. As noted by the State, Crystal did not object when the forensic interviewer testified that "it's impossible to coach a three-year-old," nor did Crystal object to admission of a DHS report noting the forensic interviewer's opinion finding "Kaylee's accounts of Ehren sexually abusing her to be credible." We find no error in the juvenile court considering and, as noted below, to some extent relying on, evidence admitted without objection.

Second, as shown by its adjudicatory ruling and as emphasized in its ruling on Crystal's Iowa Rule of Civil Procedure 1.904 motion, the forensic interviewer's opinion concerning Kaylee's truthfulness was only one of several things the juvenile court relied on in concluding the State had met its burden.

Third, for the reasons discussed below and without giving any consideration to the forensic interviewer's opinion concerning Kaylee's truthfulness, we find the State has proved by clear and convincing evidence that Kaylee is a CINA as alleged by the State and found by the juvenile court, and in so doing reject Crystal's other claim of juvenile court error, that the State did not prove by clear and convincing evidence that Kaylee had been or was imminently likely to be sexually abused.

As noted above, at the time Kaylee made her assertions of sexual abuse by Ehren, Crystal and Jarrod had been separated for over two years. They had, apparently without any need for a court order concerning custody, physical care, or visitation, been equally sharing physical care of Kaylee who was then about three years and nine months of age. The record contains no evidence of any rancor or disputes concerning their shared arrangement, or of any attempt or desire to change it, before Kaylee alleged sexual abuse by Ehren. In short, the record does not demonstrate that Jarrod (or Heidi) had any substantial reason to coach Kaylee to make false accusations of sexual abuse by Ehren.

More importantly, Kaylee presented the forensic interviewer with detailed and graphic descriptions and drawings of male anatomical parts, and detailed and graphic descriptions of Ehren's acts and actions. These matters are to a substantial extent set forth in the juvenile court's adjudicatory ruling, are fully

supported by the record evidence, and need not be repeated in this opinion. It is sufficient to note that most all of such matters would not be within the knowledge of a child less than four years of age unless the child had actually observed the things and experienced the events upon which the verbal descriptions and drawings were based. We do note that a medical examination of Kaylee presented no physical evidence of sexual abuse, and that some statements by Kaylee that may arguably be interpreted as claiming sexual penetration are inconsistent with the findings of the medical examination. However, such arguable discrepancies are explained by evidence showing that Kaylee may have simply misunderstood the nature or extent of what had occurred.

Upon our de novo review we agree with and affirm the judgment of the juvenile court.

**AFFIRMED.**