

IN THE COURT OF APPEALS OF IOWA

No. 6-979 / 06-1731
Filed December 28, 2006

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

M.D.W., Father,
Appellant,

N.I.H., Mother,
Appellant.

Appeal from the Iowa District Court for Kossuth County, Donald J. Bormann, District Associate Judge.

Parents appeal a juvenile court order adjudicating their children to be children in need of assistance. **AFFIRMED.**

Brian W. Thul, Whittemore, for appellant father of J.W.

Mark Laddusaw of Lynch & Lynch Law Office, Algona, for appellant mother.

Joseph J. Straub, Algona, for father of E.A.H. and J.M.H.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Todd Holmes, County Attorney, for appellee State.

Diane Wilson, Algona, for minor children.

Considered by Huitink, P.J., and Vogel and Vaitheswaran, JJ.

HUITINK, P.J.**I. Background Facts & Proceedings**

Norah and Martin are the parents of Latisha, born in 1988; Elizabeth (Lisa), born in 1989; and Joseph (Joey) born in 1991. Norah met Marc in October 2000, and she and Martin separated one month later. Norah and Marc began living together in August 2001; Norah became pregnant by Marc and gave birth to James in November 2001. Norah and Martin divorced in December 2001.

In May 2005 the Iowa Department of Human Services (DHS) found that Marc had sexually abused Latisha on numerous occasions between 2001 and 2003. The family had come to the attention of DHS on three prior occasions. In 1999 DHS issued a founded child abuse report against Martin and Norah for a failure to provide proper supervision when Joey suffered frostbite after leaving the home unsupervised in below-zero temperatures. A report of failure to provide proper supervision was founded in July 2004, after James, who was two years old at the time, wandered away from the home and into the middle of a busy intersection.

In March 2004 a report of failure to provide proper supervision against Marc was founded based on an incident during which Lisa exposed her bare breasts to oncoming truck drivers while riding with Marc on a trip to Chicago. Lisa reported to DHS that she and Marc were playing "Truth or Dare" at the time. She denied any sexual contact between her and Marc. According to the DHS report, Marc "didn't really see anything wrong with the situation." On the same trip, Marc and Lisa ended up spending the night in a motel room in Chicago due

to a flat tire on Marc's vehicle. Norah did not express a great deal of concern about the incident and did not request services from DHS. DHS did not invoke juvenile court jurisdiction.

A DHS worker interviewed Lisa during the investigation of Latisha's allegations of sexual abuse in May 2005. Lisa described a conversation with Marc during which, in response to a question by Lisa, he told Lisa that Norah gave him the best "blow job" he had ever had. During the same conversation, Marc asked Lisa if she was sexually active and told her about his past sexual experiences. Marc admitted to the conversation with Lisa. DHS workers testified at the adjudicatory hearing that Marc's inappropriate behavior and conversations with Lisa demonstrated he had poor boundaries with Lisa and suggested he had engaged in "grooming" and "gaming" Lisa for future sex acts.

Following the May 2005 founded abuse report, the juvenile court removed Latisha from the home, and the State filed petitions alleging the children were children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) (parent has physically abused or neglected child, or is imminently likely to do so), (c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising the child), and (d) (child was, or is imminently likely to be, sexually abused) (2005). The juvenile court heard eight days of testimony between October 2005 and January 2006.

Much of the testimony at the hearing related to Latisha's mental health. At age eight Latisha reported hearing and seeing angels. In 2001 a psychiatrist diagnosed her with schizophrenia. Another psychiatrist, Dr. Ron Larsen, later diagnosed Latisha with schizoaffective disorder, a form of schizophrenia that

“looks like depression at times and psychosis at other times when a person is not thinking clearly.” Dr. Larsen, who treated Latisha from late 2001 to early 2005, testified that Latisha’s report of the alleged sexual abuse by Marc was part of her schizoaffective disorder, and therefore not believable. The doctor described a July 2004 appointment during which he spoke with the family (Norah, Marc, and possibly Martin) about a statement by Latisha that she was being abused, but admitted he had no documentation of the conversation. Dr. Larsen explained he had not documented or reported the conversation because he believed Latisha’s statements were related to the schizoaffective disorder. He admitted, however, that children diagnosed with schizoaffective disorder are more vulnerable to sexual abuse, and that he would have paid more attention to what was said at the July 2004 appointment had he known about the March 2004 founded child abuse report related to Marc’s inappropriate conversations and behavior with Lisa.

Dr. Dale Armstrong, a psychiatrist with special training in child psychiatry, met with Latisha in October and November 2005, at the request of Norah’s counsel. Norah sought an opinion as to whether Latisha’s allegations of sexual abuse were credible, given her mental health status. After reviewing Dr. Larsen’s diagnosis, the instances of Latisha’s alleged psychotic behavior, and interviewing Latisha on two occasions, Dr. Armstrong concluded that Latisha had been telling the truth about the sexual abuse and that her account of Marc’s sexual abuse was not the result of delusion. He questioned Latisha’s diagnosis, opining that the symptoms she may have presented to the diagnosing physicians may have resulted from her sexual abuse and not from any schizophrenic disorder.

Dr. Armstrong noted that it is very unusual for a child to have psychosis or schizophrenia; and that schizophrenics, once diagnosed, usually experience worse and worse symptoms, whereas Latisha's condition had improved over time. He noted that Latisha's account to him matched the ones she had given earlier to others.

Latisha explained in detail to DHS workers, and to the court during her testimony, the sexual contact she had had with Marc, beginning in 2001 at age thirteen. She described incidents of intercourse, oral sex, and fondling that had taken place on approximately forty occasions over an approximately three-year period. Although most of the sex acts took place in the family home, Latisha described two occasions of sexual contact in a vehicle: one near a lake and another near a rural area.¹ Latisha's accounts of her sexual abuse were consistent from the time of the initial DHS investigation through her testimony at the adjudicatory hearing.

Marc told Latisha to keep quiet about what they were doing because he could go to jail for a very long time. He also told Latisha "he was going to say it was my schizophrenia if I ever told." After Latisha eventually told her father she and Marc "were doing stuff," and Norah found out, Norah threatened to "break both [Latisha's] legs" if it were true. Marc denied the abuse during his testimony at the hearing. Norah testified she would never believe Latisha, and that even if she did, Marc would remain in her life and her home.

¹ When asked by a DHS investigator whether he had ever been alone with Latisha, Marc mentioned only these two specific places.

The juvenile court filed its written ruling on May 17, 2006, reviewing in detail the testimony at the hearing, including the conflicting opinions of Drs. Larsen and Armstrong. The court found Latisha's statements during a taped interview with a DHS worker and Latisha's testimony at the hearing "extremely believable." The court further found

The support given by Dr. Armstrong's testimony and opinion, in spite of the contrary opinion of Dr. Larsen, is extremely clarifying to this court. Accordingly, this court believes that Latisha . . . actually experienced the events which she related to [DHS in May 2005] and to this court during her testimony.

The court adjudicated Lisa, Joey, and James as children in need of assistance pursuant to sections 232.2(6)(c)(2) and (d), and ordered services.² In a dispositional order, filed October 13, 2006, the court continued the CINA adjudication and ordered the continuation of services. Norah and Marc appeal the CINA adjudication and dispositional order.

II. Standard of Review

Our review of juvenile court proceedings is de novo. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these 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 by clear and convincing evidence. Iowa Code § 232.96(2) (2005).

² Latisha was eighteen years old and no longer under the juvenile court's jurisdiction in May 2006.

III. Discussion

Marc and Norah's sole argument on appeal is "whether the juvenile court, in weighing the evidence, properly applied the requisite legal standard of proof," clear and convincing evidence. Their argument essentially attacks the juvenile court's decision to place greater weight on Dr. Armstrong's opinion and Latisha's testimony than on Dr. Larsen's opinion or Marc's testimony.

Giving the appropriate deference to the juvenile court's findings of fact, particularly its assessments of credibility, we conclude the State proved by clear and convincing evidence the children were in need of assistance under chapter 232. Latisha provided detailed, consistent accounts of her abuse throughout the case. The witnesses testifying for the State, including DHS workers and Dr. Armstrong, concluded Latisha's accounts of the abuse were credible. The juvenile court heard testimony related to Marc's engagement in "gaming" and "grooming" behavior with Lisa prior to Latisha's allegations against him. Norah has demonstrated an inability or unwillingness to protect her children from Marc. In addition, all four children have been the focus of founded abuse reports.

We affirm the decision of the juvenile court.

AFFIRMED.