

IN THE COURT OF APPEALS OF IOWA

No. 7-344 / 07-0640
Filed May 23, 2007

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

**C.L.B., Father,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A father appeals the district court's order adjudicating his daughter a Child
In Need of Assistance (CINA). **AFFIRMED.**

Steven Gardner of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P.,
Ottumwa, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Mark Tremmel, County Attorney, and Seth Harrington, Assistant County
Attorney, for appellee state.

Sarah Wenke, Ottumwa, for appellee, mother.

Mary Krafka, Ottumwa, for the minor child.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

A father, C.B., appeals the juvenile court's child in need of assistance, (CINA) adjudication of his five-year-old daughter, B.B., pursuant to Iowa Code sections 232.2(6)(c)(2) and (d) (2005) and subsequent dispositional order continuing her custody with her mother. Our scope of review in juvenile court proceedings is de novo. *In re M.A.F.*, 679 N.W.2d 683, 684 (Iowa Ct. App. 2004). Although we give weight to the juvenile court's factual findings, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998). Upon our de novo review, we affirm the adjudication and subsequent dispositional order.

The father argues that evidence was not sufficient to find B.B. a child in need of assistance, and therefore we should reverse the adjudication, dismiss the dispositional order, and dismiss the CINA petition with prejudice. The juvenile court adjudicated B.B. under the following code sections: 232.2(6)(c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child) and (d) (child was sexually abused or is imminently likely to be). The Iowa Department of Human Services (DHS) founded an abuse allegation against the father for denial of critical care: failure to provide proper supervision, as DHS's assessment confirmed B.B. was sexually abused by her two older half-brothers while in the father's care. Reports and opinions from both Kathy Lowenberg, a licensed master social worker/mental health counselor who conducted a forensic interview of B.B., and Dr. Resmiye Oral, M.D. who conducted a physical examination, concluded that her detailed accounts of what happened to her were

credible. B.B. also informed various professionals that her father had witnessed at least one instance of sexual abuse perpetrated by her seventeen-year-old half brother, N.B. She reported that her father reprimanded N.B. and warned B.B. not to tell anyone about the contact or he would punish her.

About five months after the initial report of abuse, B.B. did abruptly tell her individual therapist "I lied." The therapist, Caren Roth, testified that B.B. did not claim anyone forced her to tell a fabricated story, but that it appeared she just did not want to discuss the instances of abuse anymore, which was consistent with Roth's observations that B.B. was growing increasingly frustrated by having to recount the abuse. Roth also testified that it is not uncommon for children to recant allegations of abuse, and this was B.B.'s way of shutting down further discussions of the abuse.

Throughout the course of the investigation, the father has denied that B.B. was sexually abused, that he witnessed abuse, that he threatened to punish B.B. if she talked about any alleged abuse, or that his sons were caretakers for or were ever alone with B.B. during her visits to his home. The father refused to cooperate with much of the DHS investigation, as it was his belief that B.B.'s mother, from whom he was separated and in an ongoing and contentious custody suit, had coached B.B. into telling a false story. The father refused to comply with a DHS recommended safety plan for B.B., that his sons would have no contact with B.B. during the investigation. He instead opted to entirely forego visitation with B.B. in his home, but eventually supervised visitation was arranged at DHS's discretion. On our de novo review, considering the graphic nature of B.B.'s detailed description of what she claimed happened to her and the

unrebutted opinions of the various professionals, we conclude the juvenile court properly found clear and convincing evidence supporting the grounds for adjudication.

The father also argues for the first time on appeal that therapist Roth's testimony regarding recantation as a common occurrence in child victims of sexual abuse should not have been admitted into evidence. This issue was not raised at trial and is therefore not preserved for our review. See *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993) (declining consideration for the first time on appeal an evidentiary issue that was not first passed on by the trial court).

We affirm the adjudication and disposition.

AFFIRMED.

Miller, JJ. concurs. Sackett, C.J., concurs specially.

SACKETT, C.J. (concurring specially)

I concur in all respects except in doing so I do not consider therapist Roth's testimony that recantation is a common occurrence in child victims of sexual abuse.