

**IN THE COURT OF APPEALS OF IOWA**

No. 7-568 / 07-1235  
Filed September 6, 2007

**IN THE INTEREST OF A.R., C.R., and H.R.,  
Minor Children,**

**M.L.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Winneshiek County, Alan D. Allbee, Associate Juvenile Judge.

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

Andrew P. Nelson of Meyer, Lorentzen & Nelson, Decorah, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Andrew Van Der Maaten, County Attorney, and Stephen Belay, Assistant County Attorney, for appellee.

David Strand, Decorah, for father.

Karl Knudson, Decorah, guardian ad litem for minor children.

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

**MILLER, J.**

A mother appeals a juvenile court order adjudicating her three children to be children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) (children imminently likely to suffer harmful effects as a result of failure of parent to exercise reasonable degree of care in supervising the children) and 232.2(6)(d) (children imminently likely to be sexually abused by a member of the household in which the children reside) (2007). We affirm.

Melody is the mother of daughters A.R. and H.R., ages fourteen and thirteen, and a son, C.R., age six (“the children”), as well as a nineteen-year-old son, Stewart, who lives with Melody and the children. Melody was divorced from the children’s father in late 2003.

In August 2006 Melody and children came to the attention of the Iowa Department of Human Services (DHS) concerning matters that gave rise to the present CINA proceeding. In July 2006 Melody had begun dating Buddy, who thereafter at times spent the night in the mobile home occupied by Melody and the children. Buddy did not inform Melody, and Melody was apparently unaware, that Buddy was a registered sex offender who some four years earlier had been convicted and imprisoned, following a guilty plea, for sexual abuse in the third degree for sexually abusing his biological, pre-teen daughter who at the time was a little younger than Melody’s daughters. The abuse had occurred in the home while the daughter’s mother was at work.

The DHS informed Melody of Buddy’s history of sexual abuse and investigated for possible abuse or neglect of the children and potential denial of critical care through failure to provide proper supervision of the children. Melody

declined to enter a “Colorado safety plan” for the children, stating Buddy had not been honest with her and she felt there was no need for such a plan as she intended to end her relationship with Buddy. The DHS accordingly closed its investigation, as an “unfounded” report of child abuse or neglect.

Melody nevertheless continued her relationship with Buddy, married him in December 2006, and he moved to her home in December 2006. In January 2007 the DHS began another abuse or neglect investigation, resulting in a “founded” report of child abuse, denial of critical care through failure to provide proper supervision of the children, with Melody and Buddy as the persons responsible. The State filed a petition seeking adjudication of the children as CINA. They were adjudicated CINA in May 2007. Following a July 2007 dispositional hearing and order, Melody timely appealed the CINA adjudications.

Our review of CINA proceedings is de novo. Iowa R. App. P. 6.4; *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Our fundamental concern is the best interests of the children. *Id.* We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State has the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2). “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

Melody claims her marriage to and cohabitation with Buddy “did not per se create an imminent risk” of (1) “harm to her minor children . . . and necessarily

result[ ] in her inability to provide them with proper supervision,” and (2) “sexual abuse to the minor children.” She argues the State did not prove by clear and convincing evidence the statutory grounds for the CINA adjudication alleged by the State and relied on by the juvenile court. She relies in large part on a January 26, 2007 “Colorado safety plan,” signed and agreed to by herself and Buddy. The plan provides that Buddy will not be alone with any of the children, he will not be in the home if Melody is not there unless the children are all elsewhere, and the family will accept services and unannounced visits. We conclude other evidence in the record fully supports the juvenile court’s findings and conclusions to the contrary.

Melody, the children, and Buddy live in a rural mobile home with the closest neighbor about one-fourth mile away. Melody works two different jobs, both many miles from the home and involving substantial numbers of evening and late evening hours. Buddy has helped Stewart acquire some employment. Neither Melody nor Stewart has a vehicle or driver’s license, and both are dependent upon Buddy for transportation to and from work. Melody’s “land line” telephone service was terminated just before she and Buddy were married, and Buddy has the family’s only cell phone. In short, the family’s home is somewhat isolated and the family, including the children, is heavily dependent upon Buddy for its contact with others.

Buddy had pled guilty to sexual abuse of his daughter and admitted to his guilt during a sexual offender treatment program he started while in prison and completed while later on parole. He did not inform Melody of his conviction when he began dating her, spending time with her and the children, and spending the

night in her home with her and the children. When Melody was informed of Buddy's crime and conviction he denied guilt, insisting his former wife and children had lied and he had been wronged by the legal system. He refused to participate in recommended counseling, but at the adjudication hearing testified he had an appointment to begin counseling in the near future. At the adjudication hearing Buddy had not arranged or participated in a requested psychosocial evaluation. Up to the adjudication hearing, and even during his testimony at that hearing, Buddy denied that he was guilty of the sexual abuse. Near the end of his testimony it appears he did finally acknowledge his guilt, stating: "I did it, and it's a shameful thing to do, okay."

Melody's daughters are just a little older than Buddy's daughter was at the time he sexually abused her. Despite the overwhelming evidence of Buddy's guilt as provided by his guilty plea, conviction, and subsequent admission during sexual offender treatment, Melody refuses to believe that Buddy in fact sexually abused his daughter. Melody feels that Buddy presents no risk to the children.

We conclude, as the juvenile court did, that the children are children in need of assistance as alleged by the State and shown by the evidence.

**AFFIRMED.**