

IN THE COURT OF APPEALS OF IOWA

No. 7-680 / 07-1359
Filed October 12, 2007

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

**G.S.M., Father,
Appellant.**

Appeal from the Iowa District Court for Greene County, Steven J. Oeth,
District Associate Judge.

A father appeals from the order adjudicating his children as children in
need of assistance. **AFFIRMED.**

Mark Rasmussen, Jefferson, for appellant father.

Vicki Copeland, Jefferson, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Nicola Martino, County Attorney, for appellee State.

Dennis Ladd, Jefferson, for minor children.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

A father appeals from the order adjudicating his children as children in need of assistance. We affirm.

I. Background Facts and Proceedings.

Tamara A. is the mother of Tiffany, born in 1993; Erica, born in 1994; Stephen, born in 1996; and Luke, born in 1998. George M. is the father of Tiffany, Stephen, and Luke.¹

Tamara and George were married and divorced twice. Their final separation occurred in 2001. Tamara and George have shared joint custody of Tiffany, Stephen, and Luke for the past six years. Under the custody agreement, the children lived with each parent on an every-other-week basis. Erica went back and forth between the residences of Tamara and George with her half-siblings.

The children came to the attention of the Iowa Department of Human Services (Department) in May 2007, after Erica reported that George had inappropriately touched the clothing covering her breasts and vagina. Erica informed her mother she was no longer comfortable going to George's house. Tiffany, Stephen, and Luke reported that their father had not touched them inappropriately.

On May 21, 2007, the State filed a petition alleging Tiffany, Stephen, and Luke should be adjudicated children in need of assistance (CINA) under Iowa Code section 232.2(6)(d) (2007) (child has been, or is imminently likely to be, sexually abused by member of household in which child resides). At the

¹ Erica has not seen her biological father since she was a year and a half old.

adjudicatory hearing, the court received reports from the police and the Department. The court also heard testimony from Tamara, Erica, Tiffany, a police officer, and George's father. In an order filed on July 20, 2007, the juvenile court found the testimony of Erica was compelling, and concluded Erica's half-siblings should be adjudicated CINA as to their father because they were likely to be sexually abused by him.

The court entered a dispositional order on August 3, 2007. The order provided that custody of Tiffany, Stephen, and Luke would remain with their mother for purposes of placement in her home and granted George supervised visitation with the children. Additionally, the court ordered George to participate in counseling with a therapist specializing in sexual offenses and follow through with any recommendations made by the therapist.

George seeks reversal of the juvenile court order adjudicating the children as CINA.

II. Scope and Standards of Review.

We review CINA cases de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we are not bound by the juvenile court's factual findings, we give them weight, especially when credibility is at issue. *In re D.T.*, 435 N.W.2d 323, 329 (Iowa 1989). Our primary concern is the best interests of the children. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998). The State must prove the CINA allegations by clear and convincing evidence. Iowa Code § 232.96(2).

III. Discussion.

In this appeal, George contends the CINA allegations for Tiffany, Stephen, and Luke were not supported by clear and convincing evidence. Clear and

convincing evidence is evidence that leaves “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983).

The children were adjudicated CINA under section 232.2(6)(d). That section applies to children “[w]ho ha[ve] been, or [are] *imminently likely to be*, sexually abused by the child[ren]’s parent, guardian, custodian or other member of the household in which the child[ren] reside[].” Iowa Code § 232.2(6)(d) (emphasis added). Upon review of the entire record in this case, we find clear and convincing evidence supports the decision of the juvenile court.

On May 6, 2007, a police officer met with Tamara, Erica, Tiffany, and a service provider from the Department. The police report indicated Erica told her mother that on April 28, 2007, after George directed her brothers to leave the home, he held Erica on his lap, kissed her face, and then rubbed her “down there,” stopping only when her brother reentered the home. The report also stated that when asked if this had happened before, Erica told her mother that George had “grabb[ed] her boobs a lot.” The officer asked Erica about a note that Tamara had found next her bed, which stated:

Mom. I don’t [want] to go to George’s house. I don’t feel [comfortable because] he has been [squeezing] my boobs. And Saturday when you guys [went away] he raped my v--. So I don’t [want] to go anymore. Sincerely, Erica.

Erica told the officer that she did write the note, and that the letter “v” meant vagina.

The juvenile court heard testimony from Erica indicating that George had inappropriately touched her.² Although George did not testify at the adjudicatory hearing, he argued the evidence presented showed that any contact that occurred between him and Erica was not sexual in nature. The court, however, found Erica's testimony to be credible and compelling. See *State v. Knox*, 536 N.W.2d 735, 742-43 (Iowa 1995) (stating the fact-finder sits in the best position to judge whom and what to believe).

Although the record reveals no direct injury to Tiffany, Stephen, and Luke at this point in time, our juvenile statutes are preventive as well as remedial. *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). Our supreme court has previously stated that "ordinarily, all siblings are at risk when one child has been sexually abused." *In re D.D.*, 653 N.W.2d 359, 362 (Iowa 2002); see also *In re A.B.*, 492 N.W.2d 446, 447 (Iowa Ct. App. 1992) (ordering CINA petition filed on all children after allegations of sexual and physical abuse of one child). Examining the record, it is apparent that George treated Erica in the same manner as he treated Tiffany, Stephen, and Luke. At the adjudicatory hearing, Erica agreed that George had acted as a caring stepfather toward her and had done a lot of things for her in the past. Similarly, Tiffany acknowledged that George had tried to be good to her when she lived with him. The children's mother testified that "[Erica] has the . . . same relationship with [George] that the other three children do"

The children's guardian ad litem recommended that Tiffany, Luke, and Stephen be adjudicated according to section 232.2(6)(d), that custody remain

² The juvenile court noted that Erica responded to some questions by nodding or shaking her head. However, the juvenile court found that the substance of her testimony was communicated clearly.

with their mother, and that George have supervised visitation. Tiffany testified that she would not want to stay overnight with her father because she felt “scared” and “worried” that her father might do the same things to her that he did to Erica. She also stated, however, that she and her other siblings would like to have supervised contact with their father.

We conclude the juvenile court properly adjudicated all three children CINA. Accordingly, we affirm the decision of the juvenile court.

AFFIRMED.