

IN THE COURT OF APPEALS OF IOWA

No. 8-399 / 08-0674
Filed June 25, 2008

**IN THE INTEREST OF A.B. and K.B.,
Minor Children,**

B.T., Mother,
Appellant.

Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

A mother appeals from the juvenile court's ex parte temporary removal, adjudicatory, and dispositional orders concerning her children. **AFFIRMED.**

Jack B. Bjornstad of Bjornstad Law Office, Spirit Lake, for appellant mother.

Scot L. Bauermeister of Fitzgibbons Law Firm, Estherville, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Lyssa Pelinski, Special Prosecutor for County Attorney, for appellee State.

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, for the minor child.

Considered by Huitink, P.J, and Mahan and Eisenhauer, JJ.

HUITINK, P.J.

B.T., a mother, appeals from the juvenile court's ex parte temporary removal, adjudicatory, and dispositional orders concerning her children, A.B. and K.B. We affirm.

I. Background Facts and Proceedings

On December 6, 2007, A.B., who is thirteen years old, and K.B., who is sixteen years old, reported to the county attorney that their mother, B.T., physically and verbally abused them. As a result, a child abuse assessment was done by the Iowa Department of Human Services (DHS), which eventually resulted in a founded child abuse report, and the children were removed from the parental home pursuant to a temporary ex parte removal order and placed with their maternal grandparents.

On December 11, 2007, the State filed a child in need of assistance (CINA) petition under Iowa Code sections 232.2(6)(b), (c)(1), (f), and (j) (2007). The evidence at the four-day combined removal and adjudication hearing revealed the following: For about the last ten years, the children testified B.T. has hit, slapped, kicked, and spanked them multiple times a week for minor infractions of household rules. Although most incidents were relatively minor, two recent incidents resulted in a "goose egg" to K.B.'s head that lasted for about ten days and a bruise on K.B.'s left shoulder. The children also testified B.T. called them derogatory, demeaning names on a regular basis, including slut, whore, stupid, fat, and anorexic. Many witnesses testified B.T. has anger management issues, loses her temper, has mood swings, and exhibits controlling behaviors. The children testified that as a result of the abuse they fear their

mother, have thoughts of suicide and running away, and do not eat for days at a time. They are adamant that they do not want to return home. However, B.T. denied abusing the children and believed the children could safely be returned to her care with counseling. The juvenile court's February 12, 2008 order determined removal was appropriate and adjudicated the children CINA under the sections listed in the petition. The juvenile court also ordered the children and B.T. to undergo psychological evaluations.

Prior to the dispositional hearing, the children's psychological evaluations were completed. The children were diagnosed with many serious psychological conditions requiring counseling and treatment. The juvenile court's April 9, 2008 dispositional order determined the least restrictive disposition is to continue out-of-home placement with the maternal grandparents, considering the adjudicatory harm and the need for counseling before reunification can occur.

On appeal, B.T. claims: (1) insufficient evidence exists to support removal and adjudication of the children under all the grounds and (2) the allegations complained of are insufficient for continued out-of-home placement.

II. Standard of Review

Our review in child in need of assistance proceedings is de novo. Iowa R. App. P. 6.4; *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the juvenile court's findings of fact, especially its credibility determinations; however, we are not bound by them. Iowa R. App. P. 6.14(6)(g); *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State has the burden of proving the grounds by clear and convincing evidence. Iowa Code § 232.96(2). "Our overriding consideration

is the best interest of the children.” *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998).

III. Removal

Initially, we address the State’s argument that any complaint regarding the validity of the ex parte removal order is moot. We agree. “Any error committed in granting the temporary ex parte order cannot now be remedied.” *In re A.M.H.*, 516 N.W.2d 867, 871 (Iowa 1994). “We cannot go back in time and restore custody based on alleged errors in the initial removal order.” *Id.*

IV. Adjudication

B.T. claims insufficient evidence exists to adjudicate her children CINA under sections 232.2(6)(b), (c)(1), (f), and (l). Under section 232.2(6)(b), children may be adjudicated CINA if the parent has physically abused them. “Physical abuse” is defined as “any nonaccidental physical injury suffered by a child as a result of the acts or omissions of the child’s parent” Iowa Code § 232.2(42). The juvenile court found and we agree the children were credible and B.T. physically abused (by hitting, slapping, kicking, and spanking) and injured (by bruising or leaving other marks) them in anger for minor infractions of household rules. See *In re B.B.*, 598 N.W.2d 312, 315 (Iowa Ct. App. 1999) (stating although parents have the right to inflict reasonable corporal punishment on their children, they must not do so because they are angry with the children and are gratifying their own aroused passions).

Children may be adjudicated CINA under section 232.2(6)(c)(1) if they suffer or are imminently likely to suffer harmful effects as a result of a mental injury caused by the acts of the parent. “Mental injury” is defined as “a

nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and sustainable impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin." Iowa Code § 232.2(35). Similarly, under section 232.2(f), children may be adjudicated CINA if they are

in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and whose parent . . . is unwilling to provide such treatment.

The juvenile court found and we agree that as a result of B.T.'s physical abuse and derogatory, demeaning name-calling, the children suffered mental injury and emotional damage, as evidenced by the children's fear of their mother, thoughts of running away and suicide, and possible eating disorder. Although B.T. has taken the children to counseling in the past, we agree with the juvenile court that for counseling to be the most effective it should be facilitated and monitored by DHS.

Finally, children may be adjudicated CINA under section 232.2(6)(f) if they for "good cause" desire to be relieved of their parent's care and custody. Like the juvenile court, we agree the children do not want to live with B.T. and the foregoing provides sufficient good cause.

V. Disposition

Under section 232.102(5), the juvenile court "[w]henver possible . . . should permit the child to remain at home with the child's parent" unless clear and convincing evidence exists that "(1) [t]he child cannot be protected from physical abuse without transfer of custody; or (2) [t]he child cannot be protected

from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.” Like the juvenile court, we find after the dispositional hearing the children could not be returned to B.T. because of the adjudicatory harm and the need for counseling before reunification can happen. Although B.T. is estranged from the maternal grandparents, there is no evidence in the record they are unwilling to support reunification or have impeded reunification.

Therefore, we affirm the juvenile court’s ex parte temporary removal, adjudicatory, and dispositional orders.

AFFIRMED.