

IN THE COURT OF APPEALS OF IOWA

No. 2-1132 / 12-1669
Filed January 9, 2013

**IN THE INTEREST OF M.H. AND C.H.,
Minor Children,**

**T.H., Father.
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A father appeals the juvenile court's order adjudicating his children to be
children in need of assistance. **AFFIRMED.**

Caitlin Slessor of Nazette, Marner, Nathanson & Shea, L.L.P., Cedar
Rapids, for appellant father.

Thomas J. Miller, Attorney General, Julia S. Kim, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Lance Heeren and William
Croghan, Assistant County Attorneys, for appellee State.

Kimberly Opatz of Linn County Advocates, Cedar Rapids, attorney and
guardian ad litem for minor children.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

DOYLE, P.J.

A father appeals the juvenile court's order adjudicating two of his children to be children in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(1) and (6)(d) (2011). He argues the State failed to meet its burden to prove the grounds for adjudication. We affirm.

I. Scope and Standards of Review.

Our review of CINA proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review both the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). 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). The best interests of the children are paramount to our decision. *K.N.*, 625 N.W.2d at 733.

II. Background Facts and Proceedings.

T.H. is the father and D.H. is the mother of M.H., born in 1995, and C.H., born in 2000. The parents divorced in 2010.

In May 2011, C.H. was referred to a therapist for a psychological evaluation and treatment due to complaints of stomachaches, difficulty with sleep initiation, impaired concentration, falling grades, irritability, tearfulness, and periods of anxiety and depressed affect. The child, then ten years old, reported

to her therapist that on more than one occasion, the father confided in her that he was lonely and depressed, and at times he felt suicidal. The child indicated that it was difficult for her to communicate her needs and uncomfortable feelings directly to her father because of her fears about her father's emotional well-being, which in turn made her feel guilty and distressed.

Two months later, C.H. reported to her therapist that the father had placed his hand under her shirt and touched her breast area on more than one occasion. As a result of the child's claims, the Iowa Department of Human Services (Department) began a child abuse assessment, and it ultimately determined the abuse report was founded. Additionally, the father was criminally charged with indecent contact with the child, and a no contact order was entered between the father and the children. The father has at all times denied the child's allegations, and he is currently appealing the Department's finding of child abuse.

On April 11, 2012, the father was found not guilty of the indecent contact charge following a jury trial, and the no contact order was lifted. Thereafter, the father contacted the mother to request contact with the children, who had not seen the father since the fall of 2010. Both children stated they did not wish to see the father. M.H. had begun seeing the therapist after she became emotionally upset during her deposition. During her counseling sessions, she disclosed feeling very guilty about what happened to C.H.; she blamed herself for not knowing what was going on and for not stopping it. Additionally she had concerns about safety because of the father's history of alcoholism, domestic violence, and her own observations that the father would drive while under the influence of alcohol. Both children cited examples in which the father "would use

his position of authority to either coerce, or intimidate them, to cover up his drinking, and not tell their mother when he was drinking during the visits.” The children reported that if they did not comply, the father would either be mean to them or express anger.

On May 9, 2012, the State filed a petition alleging the children to be CINA within the purview of Iowa Code section 232.2(6) paragraphs (b), (c)(1), and (d). Following a contested adjudicatory hearing, the juvenile court entered its order adjudicating the children CINA under section 232.2(6)(c)(1) and (d). The juvenile court determined that, although the father had been found not guilty, both children had ongoing concerns about their ability to protect themselves from their father, particularly if he had been consuming alcohol. Both children had stated they do not feel safe with the father and did not wish to see him, and they definitely never wanted to see the father without the other child being present.

The father now appeals.

III. Discussion.

The father argues the State failed to prove by clear and convincing evidence that the children are CINA under the two statutory provisions cited by the court: section 232.2(6)(c)(1) (child has suffered or is imminently likely to suffer harmful effects as a result of mental injury caused by the acts of the child’s parent) and (6)(d) (child has been, or is imminently likely to be, sexually abused by the child’s parent). We will affirm the juvenile court’s decision if we find adjudication was appropriate on any one ground. *In re J.A.D.-F.*, 776 N.W.2d 879, 884 (Iowa Ct. App. 2009). Upon our de novo review, we find ample evidence in the record to support the juvenile court’s conclusion that both

children have suffered or are imminently likely to suffer harmful effects as a result of mental injury caused by the acts of the father. See Iowa Code § 232.2(6)(c)(1).

The children were ages seventeen and twelve at the time of the adjudicatory hearing. Both children have expressed great fear of their father for numerous reasons, including inappropriate touching and alcohol abuse. The Department's social worker testified she recommended at that time there be no contact between the father and the children because she believed the emotional needs of the children would be compromised by contact with the father. She specifically testified she believed seeing the father in and of itself would cause the children harm, explaining the children were "very anxious about whether or not he would be under the influence of alcohol during a session." She also stated she believed seeing the father would be emotionally difficult for both of the children, stating,

It's very apparent that emotionally both girls are struggling right now and I think that it would be detrimental to their emotional well-being to have contact with him at this point. I think that mostly they are both very fragile and that they are opening up in discussing a lot of family history and they are just not in a place right now where they could handle the additional stress of having contact with [the father].

Similarly, the children's guardian ad litem stated she believed adjudication in this case was warranted, explaining:

[A]s it has been set out on the record, there has been a lack of follow-through with substance abuse treatment for years with this family. I have met with both [children] and each and every time I meet them, they say they do not want to have any contact with their father. That is [C.H.'s] biggest fear, . . . that she is going to be forced into having contact. I think it is going to be damaging to her to be forced to have that contact until she is ready for that. . . .

[M.H.] also does not want contact with her father. She felt she was put in a position where she was not protecting her little sister. . . .

There's been boundary issues with [the father] disclosing mental health issues with [M.H.], there has been control issues. I just think there is a lot going on in this family, and I think there needs to be services to rectify that.

Given both children's clearly articulated fears and their wishes not to see the father, as well as the testimony, statements, and recommendations of the Department's social worker and the children's guardian ad litem, we agree with the juvenile court's conclusion the State proved by clear and convincing evidence that both children are at least imminently likely to suffer harmful effects as a result of mental injury caused by the father's acts. Accordingly, we affirm the juvenile court's adjudication of the children as CINA.

AFFIRMED.