

IN THE COURT OF APPEALS OF IOWA

No. 3-810 / 13-1045
Filed November 6, 2013

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

**C.C., Father,
Appellant.**

Appeal from the Iowa District Court for Cherokee County, Mary L. Timko,
Associate Juvenile Judge.

A father appeals the juvenile court order adjudicating his child in need of
assistance. **AFFIRMED.**

Lisa Mazurek, Cherokee, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Ryan Kolpin, County Attorney, and Kristal Phillips, Assistant County
Attorney, for appellee.

Marvin Miller, Cherokee, for mother.

Lesley Rynell, Sioux City, attorney and guardian ad litem for minor child.

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

BOWER, J.

C.C. appeals the district court order adjudicating his child in need of assistance. C.C. argues the district court erred in admitting several exhibits into evidence. We affirm.

I. Background Facts and Proceedings

A.C. was adjudicated a child in need of assistance (CINA) on April 11, 2013. The issue presented in this appeal is whether certain exhibits should have been admitted at the hearing.

The court set an April 2, 2013 deadline for the exchange of witness and exhibit lists. The State electronically filed their exhibit list at 4:40 p.m. on April 2, 2013.¹ Because the clerk's office closed at 4:30 p.m. on that date, C.C. did not receive notice of the filing until the following day. He argues it was therefore impossible for him to timely file a responsive witness list or issue subpoenas.

When the adjudication hearing was held on April 9, 2013, the State sought to introduce the exhibits previously disclosed without calling any witnesses. C.C. objected to the admission of the exhibits due to the lack of foundation. After a short recess to consider the case law, the court admitted the exhibits.

II. Standard of Review

We normally review CINA proceedings de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2012). This standard of review applies to "all termination decisions." *Id.* Less clear is whether a de novo standard of review applies to evidentiary decisions during CINA proceedings. Prior to *P.L.*, our supreme court applied an

¹ The exhibit list listed twelve exhibits. The State notified A.C. that no witnesses would be called to authenticate or provide foundation for the exhibits.

abuse of discretion standard to evidentiary decisions made during similar proceedings. See *In re T.C.*, 492 N.W.2d 425, 429 (Iowa 2010). Because the issues presented are exclusively tied to evidentiary issues, we will continue to apply an abuse of discretion standard. We will reverse the decisions of the district court only where it “is shown to have abused its discretion in balancing the probative force of the challenged evidence against the danger of undue prejudice or influence.” *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992).

III. Discussion

C.C. argues several exhibits should not have been admitted due to the State’s failure to call foundational witnesses.

In this matter, we are asked to resolve two separate questions. First, whether C.C.’s right to confrontation was violated when the State failed to present foundational witnesses, and second, whether the State provided a proper foundation to authenticate and identify the exhibits.

Our rules require evidence to be properly identified and authenticated. Iowa Ct. R. 5.901(a). The rules provide a non-exhaustive list of methods by which authentication and identification may be shown. Iowa R. Evid. 5.901(b)(1)–(10). In certain instances, evidence may be self-authenticating and require no further support. See Iowa R. Evid. 5.902. Special evidentiary provisions are created by the Code for CINA proceedings. See Iowa Code § 232.96 (2013). Normal rules concerning confidentiality and hearsay, for example, are suspended in CINA cases. Iowa Code § 232.96(5)–(6).

In admitting the exhibits the district court relied upon *In re Long*, 313 N.W.2d 473 (Iowa 1981). In *Long*, our supreme court reviewed the admission of documents which were not authenticated by live testimony. 313 N.W.2d at 477–78. The challenges to admission in *Long*, however, focused more on the right to confrontation than traditional foundational issues. *Id.* at 477. Relying upon the provisions of the Iowa Code which allow for the issuance of subpoenas, the court rejected the evidentiary challenge finding the aggrieved party could not complain of a lack of opportunity for confrontation when they failed to utilize their right to call a witness. *Id.* at 479. What *Long* does not stand for is the proposition that the State need not call foundational witnesses in CINA cases.

In re Delaney, 185 N.W.2d 726, 732–33 (Iowa 1971), stands for a similar proposition. In *Delaney*, our supreme court stated that when certain documentary evidence is furnished in a timely fashion to opposing counsel, the opposing party has a duty to attempt to secure the desired witnesses in order to preserve error on the issue. 185 N.W.2d at 732–33.

We find C.C. failed to take the necessary action in this case. The exhibits were provided several days in advance of the hearing and C.C. did not show he attempted to secure the presence of any of the witnesses. C.C.'s proper remedy was to file a motion to continue so he could subpoena any essential witnesses.

AFFIRMED.