

IN THE COURT OF APPEALS OF IOWA

No. 2-759 / 12-1230
Filed September 19, 2012

**IN THE INTEREST OF R.G.,
Minor Child,**

**G.L.G., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A father appeals from the adjudication of his daughter as a child in need of
assistance. **AFFIRMED.**

Ellen B. Ramsey-Kacena, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and William Croghan, Assistant
County Attorney, for appellee.

Sherry Schulte of Crawford, Sullivan, Read & Roemerman, P.C., Cedar
Rapids, for mother.

Julie Trachta, Linn County Advocate, Cedar Rapids, attorney and
guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

TABOR, J.

In adjudicating R.G. to be a child in need of assistance (CINA), the juvenile court found clear and convincing evidence she was imminently likely to be sexually abused by her father, Glenn. The court also found R.G. suffered harm from her father's failure to exercise reasonable care in supervising her. Glenn challenges the CINA adjudication, alleging the State did not meet its burden of proof. He also contends the juvenile court erred in requiring his contact with R.G. to be supervised, and in directing the Department of Human Services (DHS) to assess the risk he poses to T.G.-S., a younger female child regularly in his care.

Because this case turns largely on which witnesses we find more reliable, we pay particular deference to the juvenile court's explicit credibility findings as part of our de novo review of the record. The court credited the testimony of doctors called to testify for the State over the opinion of the father's expert. We affirm the court's conclusions. We also find restricting Glenn's contact with R.G. to supervised visits is in R.G.'s best interests. Finally, we reject Glenn's claim that his due process rights were violated when the court directed the DHS to further assess whether T.G.-S. was safe in his unsupervised care.

I. Background Facts and Proceedings.

R.G. was born in December 2003. Her parents separated in April 2008. R.G. lived with her mother, Dorothy, but had visits with her father, Glenn.

After the separation, Glenn moved in with another married couple, Angela and Thomas, creating what they call a "polyamorous relationship." Angela, who

had sexual relations with both Thomas and Glenn, gave birth to a daughter, T.G.-S., in 2009. While Thomas is T.G.-S.'s father by virtue of being married to Angela, the three adults have not taken steps to determine the child's paternity.

R.G. started kindergarten in late summer of 2009. Because she exhibited aggressive behavior at school, R.G. started therapy sessions with Dr. Sandra Fischer. During an appointment in February 2010, R.G. told the psychologist that her father "whacks his wiener" and demonstrated by "rub[bing] her hand in front of her private area." The six-year-old told Dr. Fischer her father asked her to "whack his wiener" but she said no because it was "hairy" and "gross." R.G. also reported to Dr. Fischer that her father tried to touch her "private parts" but she closed her legs. Dr. Fischer contacted the DHS to initiate a child abuse assessment.

In her interview at the Child Protection Center, R.G. reported that her father "spanks his wiener" in front of her and T.G.-S. She said he was naked when he did so. She described his "wiener" as "big," "hanging down," and "hairy." R.G. told the interviewer her father told her not to tell anyone about the incidents. Glenn told the DHS worker who investigated R.G.'s allegations that he was a practicing nudist. The worker concluded Glenn's actions lacked sexual intent and determined the child abuse assessment was unfounded.

After R.G. began having overnight visits with her father in June 2010, her mother reported that R.G. began wetting her pants. R.G. also resisted wearing underwear and exposed herself to playmates on occasion. Dorothy observed R.G. simulating oral sex between her Barbie dolls. Dorothy contacted the DHS

about her concerns that Glenn was sexually abusing R.G., but because R.G. did not say Glenn had sexual contact with her, the DHS declined to open a case.

Dorothy took R.G. to Dr. Shannon Sullivan in July 2010 to discuss why R.G. might be wetting her pants and the cause for a genital rash. Dr. Sullivan referred R.G. to Dr. Resmiye Oral, a pediatrician specializing in child abuse and neglect and the medical director of the child protection program at the University of Iowa Hospital and Clinics. During an August 4, 2010 interview, R.G. told Dr. Oral that her father had pulled down his pants and underwear and showed her his “wieners” while she was alone with him in his bedroom. R.G. told the doctor that her father said he showed his “wieners” to her because she was the only one who loved him. Glenn told R.G. to keep it a secret. When asked, R.G. denied Glenn asked her to touch his “wieners,” stating “it’s gross to touch” and making a face. Dr. Oral concluded R.G. was either sexually abused by her father or was being groomed for more explicit sexual acts.

The DHS started a second child abuse assessment. During the assessment period, the parties agreed Glenn would have no contact with R.G. and his contact with T.G.-S. would be fully supervised. As part of the assessment, R.G. was again interviewed at the Child Protection Center. When Dorothy told R.G. the night before the interview she had a doctor’s appointment the next day, R.G. had an anxiety attack. The girl told her mother she could not tell her father’s secrets or she would never get to see him again.

Based upon Dr. Oral’s findings, the DHS concluded R.G. had been denied critical care by her father because his conduct resulted in his gross failure to

meet R.G.'s emotional needs. The DHS determined the report of child abuse was founded and placed Glenn on the child abuse registry. The DHS filed a CINA petition regarding R.G.

The juvenile court held hearings in December 2010 and February 2011. On March 30, 2011, the juvenile court entered its order adjudicating R.G. to be a CINA. The court also ordered Glenn to complete a psychosexual evaluation. The evaluation was completed in September 2011 by an evaluator of Glenn's choosing. The evaluator recommended Glenn complete sex offender treatment and have no contact with R.G., T.G.-S., or "any child" until he successfully completed treatment and passed a polygraph exam. She also recommended Glenn undergo a psychiatric evaluation and follow any resulting recommendations.

Glenn appealed the March 30, 2011 CINA adjudication. This court reversed and remanded because Glenn was not provided Dr. Fischer's records, which the juvenile court relied on in adjudicating R.G. to be CINA. *In re R.G.*, No. 11-0577, 2011 WL 269581 (Iowa Ct. App. July 13, 2011).

Following the remand, the State requested an adjudicatory hearing, which was scheduled for February 2012. Glenn retained Dr. Luis Rosell, a forensic psychologist with expertise regarding sex offenders, to critique the September 2011 psychosexual evaluation. Dr. Rosell did not evaluate Glenn or R.G. Dr. Rosell testified the psychosexual evaluation cannot determine whether a person has committed an offense. He questioned the validity of the results, indicating they could be skewed by Glenn's denial of the offending behavior. Dr. Rosell

also discussed the possibility R.G. had been coached to make accusations against her father, but admitted he does not work with child victims of sexual abuse and did not have full access to all of the information in the case.

At the close of the CINA hearing, the father requested additional time to recall a witness. The court held that hearing on April 27, 2012.

On June 18, 2012, the juvenile court filed its order—again adjudicating R.G. to be a CINA pursuant to Iowa Code sections 232.2(6)(c)(1), 232.2(6)(c)(2), and 232.2(6)(d) (2009). The court ordered fully supervised visitation between Glenn and R.G. It also directed the DHS to “complete further assessment as to the safety and/or risk of harm to [T.G.-S.] if Glenn continues to provide unsupervised care to that child.” Glenn petitioned for this appeal.

II. Scope and Standard of Review.

We review child-in-need-of-assistance proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). This standard requires us to review both the facts and the law and adjudicate the rights of the parties anew. *Id.* Our fundamental concern is the child’s best interests. *Id.*

III. CINA Adjudication.

Glenn first contends the State failed to prove the grounds for the CINA adjudication by clear and convincing evidence. He cites conflicting evidence and argues the case relies “heavily” on Dorothy’s assertions, which are not consistent with the entirety of the evidence.

R.G. was adjudicated a CINA on three grounds: section 232.2(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 parents), section 232.2(c)(2) (child has suffered or is imminently likely to suffer harmful effects as a result of the failure of the child's parent to exercise a reasonable degree of care in supervising the child), and section 232.2(d) (child has been or is imminently likely to be sexually abused by the child's parent). The crux of the State's case is that Glenn sexually abused his daughter or engaged in behaviors intended to groom R.G. for sexual abuse. Glenn argues the State did not offer clear and convincing evidence to support that allegation.

We agree with the juvenile court's determination that clear and convincing evidence shows Glenn sexually abused R.G. or engaged in grooming behavior with the intent to sexually abuse her. On multiple occasions, R.G. reported her father exposed himself to her and fondled his genitalia, invited her to touch his genitalia, and attempted to touch her genitalia. She made these statements to her mother, to Dr. Fischer (who met with R.G. a total of sixty-one times), in her first interview with the Child Protection Center, and to Dr. Oral. She offered a consistent account to those individuals. Additionally, R.G. exhibited behavior frequently seen in sexual abuse victims. She began wetting herself though she had been fully toilet trained for years. She had "mini-meltdowns." She showed signs of anxiety about resuming visits with her father. She demonstrated aggressive behavior at school. R.G. also showed sexual knowledge uncommon for a child her age, demonstrating oral and anal sex between her dolls.

Glenn called Dr. Rosell as a witness in an attempt to discredit the damning recommendations reached by the psychosexual evaluator in September 2011.

The juvenile court found it significant that Dr. Rosell did not evaluate R.G., nor did he interview Glenn, Dorothy, Dr. Oral, or Dr. Fischer. Dr. Rosell also received limited portions of the record. The juvenile court assessed his relative credibility as follows:

Considering the totality of the circumstances, the Court finds that Dr. Oral and Dr. Fischer's testimony as to the significance of [R.G.]'s statements regarding her father's behavior and their conclusions that [R.G.] has been sexually abused or is being groomed for sexual abuse by her father is more reliable on those issues than Dr. Rosell's testimony.

We give strong consideration to this finding. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997) (holding where evidence is in conflict, we give consideration to the juvenile court on issues of credibility).

Because clear and convincing evidence supports R.G.'s adjudication as a child in need of assistance, we affirm.

IV. Supervised Visitation.

Glenn next contends the juvenile court erred in requiring all contact between him and R.G. be fully supervised. He argues he is being denied his constitutional right to parent his child based on "spurious and questionable allegations."

"Visitation between a parent and child is an important ingredient to the goal of reunification." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). But the nature and extent of visitation is always controlled by the child's best interests. *Id.* This standard may warrant limited parental visitation. *Id.*

We agree with the juvenile court's determination that limiting Glenn's contact with R.G. to supervised visitation is in her best interests. As stated

above, the evidence shows Glenn has sexually abused R.G. or is imminently likely to sexually abuse her. R.G. cannot be safely left alone in his care. Supervised visitation allows Glenn ongoing contact with R.G. while protecting her from future abuse. We affirm the juvenile court's order regarding supervised visitation.

V. Safety Assessment for T.G.-S.

Finally, Glenn contends the juvenile court exceeded its authority in directing the DHS to complete a safety assessment to determine whether he presents a risk of harm to T.S.-G. He argues T.S.-G. is not the subject of the present proceedings, the DHS has not completed a founded child abuse assessment regarding her, and no one has alleged he acted inappropriately with that child. He suggests the directive violates his right to procedural due process.

The State argues Glenn failed to preserve error on this claim because he did not raise the issue immediately after entry of the adjudicatory order or at disposition. As a general rule, an issue not raised in the juvenile court cannot be decided for the first time on appeal. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Glenn could have challenged the juvenile court's directive to the DHS concerning T.S.-G. by filing a motion pursuant to Iowa Rule of Civil Procedure 1.904(2). See Iowa R. Civ. P. 1.904(2) ("On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be enlarged or amended and the judgment or decree modified accordingly or a different judgment or decree substituted."); *In re A.M.H.*, 516 N.W.2d 867,

872 (Iowa 1994) (holding rule 1.904(2) applies to juvenile court CINA proceedings).

But even if Glenn were not required to file a rule 1.904(2) motion to preserve error, we do not believe the juvenile court's order directing the DHS to complete a safety assessment involving T.G.-S. violated his right to procedural due process. Due process requires parents have an opportunity to be heard, which may include a right to notice of the hearing, to confront and cross-examine adverse witnesses, to be represented by counsel, to an impartial decision maker, and to a decision based solely on legal rules and the evidence presented at the hearing. *A.M.H.*, 516 N.W.2d at 870.

The juvenile court's order did not direct Glenn to take any action, nor did it adjudicate his rights or the rights of T.G.-S.'s legal parents. It simply directed the DHS to embark on a further assessment whether Glenn poses a risk to T.G.-S.—as provided in Iowa Code section 232.71B. This section requires the DHS to start an assessment if it receives a report it determines constitutes a child abuse allegation. Iowa Code § 232.71B(1)(a). The DHS must provide written notification of the assessment to the child's parents within five working days of starting the assessment. *Id.* § 232.71B(2). The legislature crafted this provision, along with the rest of chapter 232, to protect the rights of parents as well as to protect children who are in need of assistance. See *A.M.H.*, 516 N.W.2d at 871. Because nothing in the court's order violates Glenn's due process rights and because the assessment follows the protections set forth in section 232.71B, we

find the juvenile court was within its power to direct the DHS to perform a safety assessment regarding the care of T.G.-S. Accordingly, we affirm.

AFFIRMED.