

**IN THE COURT OF APPEALS OF IOWA**

No. 0-340 / 09-1584  
Filed May 26, 2010

**IN THE INTEREST OF A.C., B.P., C.C., and  
D.C., Minor Children,**

**J.C., Mother,**  
Appellant,

**C.P., Father of P.B. and D.C.,**  
Appellant.

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

A mother and father appeal from the juvenile court order adjudicating their  
children as children in need of assistance. **AFFIRMED.**

John J. Bishop, Cedar Rapids, for appellant-mother.

David Fiester, Cedar Rapids, for appellant-father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Harold Denton, County Attorney, and Rebecca Belcher, Assistant  
County Attorney, for appellee.

Jeannine L. Roberts, Cedar Rapids, guardian ad litem and attorney for  
minor children.

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

**EISENHAUER, J.**

A mother and father appeal from the juvenile court order adjudicating their children as children in need of assistance (CINA).<sup>1</sup> The mother contends the State failed to prove the grounds for the adjudication by clear and convincing evidence. The father contends there is insufficient evidence the aid of the court is needed and the court unfairly attributed his drug use to the mother. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The four children at issue came to the attention of the Department of Human Services (DHS) in May 2009 when it received a report the mother of all four children and the father of two of the children were using methamphetamine in the children's presence. The parents were discovered sleeping in the mother's apartment where the children were present and awake. A search of the apartment found marijuana and drug paraphernalia in a dresser drawer in the mother's bedroom. The father claimed responsibility for the marijuana and paraphernalia. The father lived with the mother "on and off" and supervised the youngest child while the mother attended school. The father was arrested. The mother and the DHS entered into a plan allowing the children to remain with the mother and prohibiting any unsupervised contact with the father. The children were removed from their mother's care and placed in foster care in September 2009 after she allowed the father to have unsupervised contact with the children.

After a combined adjudication and disposition hearing in September 2009, the children were adjudicated CINA pursuant to Iowa Code section 232.2(6)(c)(2)

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<sup>1</sup> Three of these children were previously adjudicated CINA, but the adjudication was reversed by this court.

(2009). The dispositional order placed custody of three of the children with the DHS for family foster care and authorized placement of one child with his paternal grandmother.

Under section 232.2(6)(c)(2), a child is defined as a child in need of assistance if he or she has suffered or is imminently likely to suffer harmful effects as a result of the failure of the child's parent, guardian, custodian, or other member of the household to exercise a reasonable degree of care in supervising the child. Iowa Code § 232.2(6)(c)(2). The mother contends the State failed to prove the children have suffered or are likely to suffer harmful effects as a result of her failure to exercise a reasonable degree of care in supervising the children.

We conclude there is clear and convincing evidence to support a CINA adjudication pursuant to section 232.2(6)(c)(2). The provisions of Iowa Code chapter 232 are preventative as well as remedial, *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990), and their goal is to prevent probable harm; they do not require delay until harm has occurred. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). Moreover, we look to the whole body of a parent's past performance in CINA cases because that performance may be indicative of the quality of the future care that the parent is capable of providing. See *L.L.*, 459 N.W.2d at 493.

The father has a lengthy and extensive substance abuse problem and the mother, in turn, fails to recognize the danger this presents to her children. He has been using drugs and alcohol for half of his life. At the adjudicatory hearing, he admitted to using methamphetamine two to three times per week and cocaine twice per week in the months leading up to the search of the home. In addition,

he admitted to smoking marijuana on a daily basis within seven days of the adjudication hearing and consuming alcohol regularly. His numerous attempts at sobriety have all failed. He admitted a drug screen taken the day he testified would “probably still be dirty.” He also has a lengthy criminal history, with convictions for alcohol and drug-related offenses, assaults, burglaries, and second-degree arson. The arson conviction occurred after the father burned down the home of the mother of another of his children. His parental rights to that child were later terminated.

The father attempts to minimize the danger his drug use presents to the children, and notes there is no evidence the mother abuses drugs. He also argues he never used illegal drugs in the residence or supervised the children while under the influence of drugs. Despite these assertions, on Memorial Day weekend, the father was driving a vehicle with the mother and the children after consuming three beers. A stop of the vehicle led to charges of possession of a marijuana pipe, driving while barred, violation of the open-container law, and speeding. This behavior demonstrates the type of risk the mother places the children in when she refuses to recognize the father as a danger to her children. The mother testified she will not allow contact between the father and the children until the father has addressed his substance abuse issues by attending and completing a treatment program. The trial court found this testimony incredible and so do we. The trial court found:

While [the father] openly admitted his drug use, his testimony minimizes the extent of his use and the risk of harm his behavior poses to the children. [The mother]’s testimony was not credible. Additionally, [the mother]’s testimony establishes that she

has no insight into the risk of harm to her children, and herself, if she continues her relationship with [the father]. [The mother] continues to excuse or ignore [the father]'s behavior and place blame upon others, even when doing so places her children at risk of harm. The evidence establishes that ongoing contact between [the father] and [the mother]'s children places her children at imminent risk of harm as he is an active drug user with a history of violence. [The mother] is unable or unwilling to recognize that risk and continues not only to allow contact between [the father] and the children, but to promote it.

The father claims his substance abuse problems were “unfairly applied” to the mother. The mother is aware of the father’s substance abuse problems and continues to choose a relationship with him at the expense of the safety of the children. Her inability to acknowledge the danger to the children when in the father’s care is properly attributed to her.

The father also contends the State failed to prove the court’s aid is required as provided in section 232.96(9). His argument is substantially the same as the argument already articulated; both parents assert the father does not use drugs in the presence of the children or watch them while under the influence. The mother claims she will continue to use services offered by the DHS and will not allow the father to have unsupervised contact with the children until he completes substance abuse treatment. For those reasons, the father argues, “There is simply nothing more the Court can do to ensure the children’s safety beyond the action this family has already undertaken.”

As stated, the mother has failed to appreciate the seriousness of the father’s substance abuse and the risk it presents to her children. Although the mother is now claiming she will not allow the father to have unsupervised contact with the children until he completes treatment, her past conduct belies her claim.

See *In re C.M.*, 526 N.W.2d 562, 565 (Iowa Ct. App. 1994) (noting the court necessarily looks at past performance because it may indicate the quality of the future care a parent is capable of providing). As the district court concluded,

[The mother]'s decision making regarding her relationship with [the father] and her total lack of insight into the risk of harm to her children when she maintains a relationship with someone with the type of criminal history, substance abuse history and history of violence as [the father], is imminently likely to result in harm to her children.

The evidence supports this conclusion and we adopt it as our own.

We affirm the district court order adjudicating the children to be in need of assistance.

**AFFIRMED.**