

IN THE COURT OF APPEALS OF IOWA

No. 1-564 / 11-0752
Filed September 8, 2011

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

**S.K., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Juvenile Judge.

A father appeals from his son's adjudication as a child in need of
assistance. **AFFIRMED.**

Michael H. Said of Law Offices of Michael H. Said, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant
County Attorney, for appellee.

Mike Bandstra, Des Moines, for mother.

John Jellineck of the Public Defender Office, Des Moines, attorney and
guardian ad litem for minor child.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

SACKETT, C.J.

A father appeals from the juvenile court order finding his son to be a child in need of assistance. He contends there is not clear, convincing, and competent evidence his son is in need of assistance as defined in Iowa Code sections 232.2(6)(b) or (c)(2) (2011). On de novo review, we affirm.

Background and Proceedings. The family came to the attention of the Iowa Department of Human Services in May of 2010 after the child in interest called the police when his father held a gun to the mother's head and told the child, "My gift to you is your mom going away forever." The father was arrested for domestic assault with a weapon, harassment in the first degree, and child endangerment. A child protective assessment was founded regarding the father for denial of critical care—failure to provide proper supervision. The department worked with the mother and child on an infrequent basis because the mother and child were "on the run" from the father and extended family members.

In July of 2010 the father attacked the mother again, was arrested, charged with kidnapping and attempted murder, and he has remained in jail throughout the juvenile court proceedings. The mother and child began receiving some services through the department. Another child protective assessment was completed. The mother told department workers both she and her son had suffered years of physical abuse by the father. The child protective assessments show the child has experienced physical, emotional, and verbal abuse from his father as well as witnessing the father's abuse of the mother. The child's individual therapist reported, "the abuse that occurred to [the child] as well as

[his] witnessing the abuse that occurred to his mom has had a profoundly negative impact on [him].”

Despite her efforts to hide herself and her son from extended family members, the mother was discovered and attacked by family members on both sides of the family in January of 2011. Her throat was cut, she was stabbed numerous times, and she was beaten to the point of unconsciousness. She did not report this attack to the police because her father told her to keep quiet or the next time she would just receive a bullet in the head. The mother requested the department’s help in keeping the child safe.

On March 3, 2011, the child was removed based on an ex parte removal application, and the department petitioned to have the child found in need of assistance. Following a contested hearing on March 30, the court found the child to be in need of assistance under Iowa Code sections 232.2(6)(b) and (c)(2), and ordered the child placed in his mother’s custody subject to department supervision. The court made detailed findings concerning the father’s abuse of the child, the child’s credibility, and the continued threat to the child posed by the father and the extended family. The court ordered that the father have “no contact whatsoever” with the mother or child.

Following a contested dispositional hearing in May, the court confirmed the child as a child in need of assistance, continued his placement in his mother’s custody under department supervision, adopted the case permanency plan, and

ordered the father to provide the information requested for a social history questionnaire.¹ The father appeals.

Scope and Standards of Review. Child-in-need-of-assistance proceedings are reviewed de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). Although we are not bound by them, we give weight to the juvenile court’s factual findings, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). The facts underlying a statutory ground for finding a child in need of assistance must be established by clear and convincing evidence. Iowa Code § 232.96(2). “Clear and convincing evidence is evidence that leaves ‘no serious or substantial doubt about the correctness of the conclusion drawn from it.’” *D.D.*, 653 N.W.2d at 361 (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

Merits. The father contends the statutory grounds for finding his son in need of assistance are not supported by clear, convincing, and competent evidence. He argues generally that much of the evidence the court relied on for its “factual and legal findings” was second- or third-hand hearsay, was evidence that “exceed[ed] the leeway granted for hearsay evidence in juvenile proceedings,” was unreliable, was related to unproven pending criminal charges, or was in violation of his due process or right of confrontation. He asks us to discount the “discredited hearsay testimony” and set aside the adjudication. He

¹ In view of the pending criminal charges against the father, the court ordered that the information provided by the father not be disseminated to anyone other than the attorneys involved and the department. It specifically ordered that the information not be shared for use in the criminal prosecution of the father.

also seeks removal of the no-contact order “as it is unnecessary and unreasonably impinges on his right to maintain his relationship with his child.”

Before the adjudicatory hearing, the father filed a motion to adjudicate law points, seeking to compel the mother’s attendance at the hearing so she could be cross-examined. The juvenile court issued its written ruling the day of the adjudicatory hearing, but also ruled orally at the beginning of the hearing. The court concluded Iowa Code chapter 232 requires that a parent receive notice of the hearing, but does not require attendance or participation. The Sixth Amendment right of confrontation applies only in criminal cases; it does not apply in child-in-need-of-assistance proceedings. *In re D.J.R.*, 454 N.W.2d 838, 845-46 (Iowa 1990); *accord In re J.S.*, 470 N.W.2d 48, 51-52 (Iowa Ct. App. 1991). This argument is without merit.

The court admitted exhibits from the department’s records and took judicial notice of the criminal case files concerning the father. Iowa Code section 232.96(4) expressly provides that a child-abuse “report made to the department . . . shall be admissible in evidence.” Section 232.96(6) provides:

A report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child’s parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker’s lack of personal knowledge, may be proved to affect its weight.

We conclude the father’s arguments concerning the admission of hearsay evidence in exhibits is without merit.

The court found clear and convincing evidence supported finding the child in need of assistance under section 232.2(6)(b), which requires a finding the child's "parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child." Section 232.2(6)(c)(2) requires that the child suffer or be imminently likely to suffer the harmful effects of "[t]he failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child." The father contends the statutory grounds for finding his son in need of assistance were not established because the father

is detained pending trial on the [criminal] allegations against him and that the child no longer resides in the same household and respondent does not reside there as required by the express terms of both of the statutes.

We do not read the statutory language as restrictively as the father suggests. To understand the statute as requiring that the child currently reside in the same household as the person who abused the child or who failed to supervise the child properly would mean that once a child is removed from the home the child could not be found in need of assistance. The State has a duty to assure that every child within its borders receives appropriate care and treatment. *In re D.T.*, 435 N.W.2d 323, 329 (Iowa 1989). The provisions of Iowa Code chapter 232 are designed to effectuate that duty. See *In re M.M.*, 483 N.W.2d 812, 814 (Iowa Ct. App. 1992). They are preventative as well as remedial. *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). The goal of our statutory scheme is to prevent probable harm to the child; our statutes do not require delay

until after the harm has happened. *Id.* We conclude this argument is without merit.

We affirm the juvenile court's order finding the child in need of assistance and the dispositional order confirming the finding.

AFFIRMED.