

**IN THE COURT OF APPEALS OF IOWA**

No. 2-351 / 12-0164  
Filed May 9, 2012

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

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

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Appeal from the Iowa District Court for Mills County, Gary K. Anderson,  
District Associate Judge.

A father appeals juvenile court orders adjudicating one of his children a  
child in need of assistance and granting the district court concurrent jurisdiction  
to address the mother's request for custody. **AFFIRMED AS MODIFIED.**

Michael D. Hooper, Council Bluffs, for appellant father.

Scott D. Strait, Council Bluffs, for appellee mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Eric Hansen, Count Attorney, and Dawn M. Landon, Assistant County  
Attorney, for appellee State.

Katherine J. Kaminsky of Katherine J. Kaminsky, P.L.C., Glenwood,  
attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

**VAITHESWARAN, P.J.**

A father appeals juvenile court orders adjudicating one of his children a child in need of assistance and granting the district court concurrent jurisdiction to address the mother's request for custody.

***I. Background Facts and Proceedings***

The father had three children. Only the father's oldest child, Lydia, born in 2006, is the subject of this appeal. She has a different mother than the other children. She lived with her mother but exercised visitation with her father every other week.

The Iowa Department of Human Services first became involved with the father's household when the second of his three children was hospitalized with a broken arm and collarbone. Later, the father's youngest child, a five-month-old boy who lived in the father's household, died while in his care. At that point, the department sought and obtained Lydia's removal from the father's home. The juvenile court ordered the child to be released to her mother's custody, subject to supervised visitation with the father at the department's discretion.

Meanwhile, the father was arrested in connection with the death of his youngest child. Following a hearing to determine whether Lydia should be adjudicated a child in need of assistance, the juvenile court found clear and convincing evidence that the youngest child "died as a result of the intentional infliction of injuries upon him by his father."

The court adjudicated Lydia a child in need of assistance and ordered her to remain with her mother. The court later entered a dispositional order

confirming that placement and granting the mother concurrent jurisdiction “to pursue issues of child support, custody, and guardianship” in the district court.

On appeal, the father argues: (A) “[t]he State has not shown that they have provided [him] with adequate efforts for reunification with his child,” (B) “[t]he granting of said concurrent jurisdiction is premature considering the circumstances of said case,” and (C) the Court’s finding that another one of his children “died as a result of the intentional infliction of injuries upon him by his father [ ] is unsubstantiated.”

## **II. Analysis**

### **A. Reasonable Efforts**

The department is required to make reasonable efforts toward reunification of parents with their children. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). On our de novo review, we are convinced the department satisfied this obligation. *See id.* at 492 (setting forth standard of review).

The department made arrangements for twice-weekly supervised visits. While those visits were briefly suspended following the filing of charges, the department reinstated them shortly before the dispositional hearing. The father also availed himself of parenting classes and positive parenting programs.

We conclude the department made reasonable efforts toward reunification within the constraints of the father’s arrest.

### **B. Concurrent Jurisdiction**

The father next contends the juvenile court acted prematurely in granting the mother concurrent jurisdiction to pursue custody of Lydia. *See* Iowa Code § 232.3(2) (2011). We disagree.

Section 232.3(2) affords a juvenile court discretion to allow concurrent litigation of specific issues. Lydia was released to her mother, who had been her primary caretaker, and was reported to be “doing well” there. According to a department social worker the mother was “meeting all of Lydia’s needs,” despite personal and financial difficulties in her own life. As the father was not in a position to imminently assume Lydia’s care, the court appropriately decided to afford the mother an avenue to obtain physical care of the child.

### ***C. Court’s Fact Finding***

Finally, the father takes issue with the juvenile court’s finding that he intentionally caused the death of his youngest child. He contends this finding is “unsubstantiated.” On our de novo review of the record, we agree.

The circumstances surrounding the child’s death are well documented. Medical, police, and department records reveal that the youngest child was in his father’s care on the day he died. Emergency personnel responding to a 911 call arrived at the father’s home to find the infant lying on the living room floor “cyanotic with eyes open, dilated and unresponsive.” The child was taken to a hospital, where he was diagnosed with cardiac arrest and “[p]ossible trauma.” An examination showed signs of a skull fracture. A handwritten doctor’s note stated “I feel that [the child’s] CT findings of his head are consistent with injuries caused by child abuse delivered by an adult.” The department issued a founded child abuse report, with the perpetrator unknown. A subsequent medical examiner’s report found that the child sustained hemorrhaging, brain swelling, and abrasions. The report concluded, “The findings in the scalp, brain, and eyes

are consistent with inflicted head injuries.” The report identified the manner of death as “homicide.”

While these records paint a picture of an infant’s violent death at the hands of an adult, they do not establish by clear and convincing evidence that the father was the adult who inflicted the injuries. The father had yet to be tried or convicted of the crime, medical records did not identify a wrongdoer, and, as noted, the child abuse report issued by the department listed the perpetrator as “unknown.” The department’s report went on to reiterate that “[a]t this point the adult causing the injury has not been identified.” At the current stage of the proceedings, this evidence precludes a fact finding that the child “died as a result of the intentional infliction of injuries upon him by his father.” Accordingly, we strike that finding.

Even with this finding stricken, the record contains clear and convincing evidence to support Lydia’s adjudication as a child in need of assistance under Iowa Code section 232.2(6)(c)(2). That provision defines a child in need of assistance as an unmarried child “[w]ho has suffered or his imminently likely to suffer harmful effects as a result 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.” *Id.* § 232.2(6)(c)(2).

The department found that the father shared caretaking responsibilities of the dead infant with the infant’s mother. The department further found “it was more likely than not that the child suffered a non-accidental injury at the hands of a responsible caretaker.” While, at this stage of the proceedings, we do not

know which responsible caretaker caused the infant's death, the evidence at a minimum reveals that the father failed to supervise the infant properly.

We recognize that the failure-to-supervise evidence did not relate to Lydia. But the statute also covers children who "are imminently likely to suffer" harm. See *id.* § 232.2(6)(c)(2). The evidence supports a finding that Lydia was imminently likely to suffer harm. For that reason, we affirm the juvenile court's adjudication of Lydia as a child in need of assistance.

***III. Disposition***

We affirm the adjudication order as modified and affirm the dispositional order.

**AFFIRMED AS MODIFIED.**