

IN THE COURT OF APPEALS OF IOWA

No. 6-765 / 06-1277
Filed October 11, 2006

**IN THE INTEREST OF J.F.,
Minor Child,**

J.F., Father
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary Strausser,
District Associate Judge.

A father appeals from a juvenile court order that adjudicated his son as a
child in need of assistance. **AFFIRMED.**

Cheryl Newport of Newport & Newport, P.L.C., Davenport, for appellant
father.

Timothy Schemmel, Muscatine, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Gary Allison, County Attorney, and Korie Shippee, Assistant County
Attorney, for appellee State.

Arlen Poock, Muscatine, for minor child.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

A father appeals from a juvenile court order that adjudicated his son as a child in need of assistance (CINA). He contends the court erred in allowing the State to amend the CINA petition on the day of trial. He also claims the evidence does not support the juvenile court's conclusion that the child was in need of assistance. We affirm the juvenile court.

I. Background Facts and Proceedings

Jason and Kim are the parents of Joseph, born in January 2006.¹ On March 10, 2006, Tammy Moline, an Iowa Department of Human Services (DHS) child protection worker visited the parents' home. She observed Joseph lying in bed with his mother. The bed and home were crawling with cockroaches. The home smelled strongly of cat urine, and there was an empty chicken container with raw blood in it lying on the living room floor. Moline also detected the odor of alcohol coming from Jason. Jason admitted he had "a few beers earlier in the day," and he admitted he has an alcohol problem.

Moline made a founded child abuse assessment regarding Joseph. In the assessment report, Moline concluded Jason has an extensive history of alcohol consumption and his "ability to provide for Joseph's well-being is impaired." Furthermore, Moline found both parents lacked a "sense of awareness of personal hygiene and grooming."

¹ Both Jason and Kim have other children from prior relationships. Termination proceedings resulted in Jason losing parental rights to one of his children. Kim temporarily lost custody of her two older children when DHS issued founded child abuse reports in 2000 and 2004 regarding the conditions of her home.

On March 23, 2006, the juvenile court removed Joseph from the family home pursuant to an emergency removal order. On March 24, 2006, the State filed a petition claiming Joseph was a child in need of assistance. Following a contested adjudicatory hearing held May 22, 2006, the court adjudicated Joseph CINA pursuant to Iowa Code sections 232.2(6)(c)(2), 232.2(6)(g), and 232.2(6)(n) (2005) (child is likely to suffer harm due to parent's failure to exercise care in supervising child; parent fails to provide adequate food, clothing, or shelter; parent's mental capacity or condition or drug or alcohol abuse results in child not receiving adequate care). The court concluded numerous health and safety concerns were present in the home. The court found Jason has an alcohol problem and noted Kim's physician had stated the mother should not be alone with the child because of a seizure disorder. The court ordered Joseph to remain in the custody of his aunt. Jason now appeals.²

II. Scope and Standards of Review

We review CINA cases de novo. Iowa R. App. P. 6.4; *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). The State bears the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2). Clear and convincing evidence is evidence that leaves "no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Although the juvenile court relied on three sections to adjudicate Joseph CINA, we only need to find grounds under one of the sections in order to affirm the court's ruling. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

² Kim does not appeal from the juvenile court's order.

III. Discussion

Jason first contends the juvenile court erred in allowing the State to amend the CINA petition on the day of trial to add a claim that Joseph is a child in need of assistance under section 232.2(6)(n) (parent's mental capacity or condition or drug or alcohol abuse results in child not receiving adequate care).

Several days before the adjudication hearing, Joseph's guardian ad litem made a motion to amend the CINA petition to include section 232.2(6)(n) as one of the grounds for finding Joseph CINA. The court concluded the guardian ad litem was not authorized to amend the petition; however, on the day of the adjudication hearing, the court granted the State's motion to amend the petition to include section 232.2(6)(n) as a ground for adjudication. The court noted that the hearing had been continued due to the guardian ad litem's motion, providing the parents additional time to prepare. Furthermore, the court offered to continue the hearing if requested by the parents to allow them additional time to prepare. Despite this offer, both parents requested that the hearing go forward.

We find that because Jason expressly refused the court's offer to continue the hearing, he has waived any claim of error. Furthermore, Jason does not contend he was prejudiced by the court's decision to grant the State's motion to amend the petition. We reject this assignment of error.

Jason also contends the court erred in finding clear and convincing evidence supported the CINA adjudication. Upon our de novo review of the record, we disagree.

The record reveals the home the parents were occupying in March 2006 was condemned in 2004. Kim and her mother were allowed to move back into

the home subject to the condition that only two adults could inhabit the home. At the time of the child abuse assessment in 2006, a DHS worker noted Kim, her mother, Jason, Joseph, two large dogs, and two cats were living in the “extremely small,” one-bedroom home. Kim and Jason were aware the home had been condemned in the past and was to be occupied by only two adults. The record contains ample evidence that numerous health and safety concerns were present in the home at the time of Joseph’s removal.³

We find the record also reveals substantial evidence establishing Jason’s alcohol abuse. Jason has been convicted of operating a motor vehicle while intoxicated, public intoxication, and possession of drug paraphernalia. He has also served a prison sentence for burglary. Jason attempted to address his substance abuse issues in a treatment program, but he failed to complete the program. DHS worker Tammy Moline detected the odor of alcohol on Jason at the time of the child abuse assessment. After a court hearing on April 4, 2006, Moline and case manager Karen Larson could smell alcohol on Jason. Jason denied he had been drinking and claimed the smell was emitting from his body from alcohol he had consumed two days before the hearing. Kim has also expressed concern about Jason’s drinking problem. A DHS worker testified she was concerned the parents would not be able to keep the family home clean due to mental health and substance abuse issues.⁴ Contrary to Jason’s assertions,

³ The record reveals Jason and Kim have made progress in maintaining a clean and safe home.

⁴ Kim has a seizure disorder and takes medication for depression and anxiety.

the record supports the conclusion that he has a history of alcoholism and continues to drink frequently.

CINA statutes seek to prevent future harm to children. The fact that Joseph had not yet suffered any abuse from his parents' behavior does not prevent the juvenile court from acting. We find clear and convincing evidence supports the juvenile court's order adjudicating Joseph CINA.

IV. Conclusion

Upon our de novo review, we find the juvenile court did not err in allowing the State to amend the CINA petition the day of trial, and we agree with the court's conclusion that Joseph is a child in need of assistance. We affirm the court's order adjudicating Joseph as a child in need of assistance.

AFFIRMED.