

**IN THE COURT OF APPEALS OF IOWA**

No. 7-019 / 06-2015  
Filed February 14, 2007

**IN THE INTEREST OF M.H., R.H., and C.H.,  
Minor Children,**

**K.R.H., Father,  
Appellant.**

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

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

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for appellant  
father.

Lorraine S. Machacek, Cedar Rapids, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, David C. Thompson, County Attorney, and Anthony Janney, Assistant  
County Attorney, for appellee State.

Angela Railsback, Cedar Rapids, for minor children.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

**ZIMMER, P.J.**

A father appeals from a juvenile court order that adjudicated his three children as children in need of assistance (CINA). We affirm.

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

Kenneth and Stacy are the parents of Courtney, born in 1991; Rachel, born in 1993; and Michael, born in 1996. During the fall of 2005, the parents, their children, and Kenneth's sixteen-year-old niece were living in a trailer in Garrison, Iowa.

The Iowa Department of Human Services (Department) became involved with the family after a caller reported the parents were using methamphetamine and refusing to allow anyone to enter their home. The caller indicated Stacy's father had recently discovered and torn down a methamphetamine lab located in the crawl space under the trailer. The department was also informed a fire had started in the insulation under the trailer several months earlier.

On November 2, 2005, a Department social worker and a Benton County Sheriff's Detective went to the parents' home to investigate. They found no drugs or drug paraphernalia in the trailer; however, they observed the family trailer was not safe for the children to reside in because of its condition.<sup>1</sup> During their discussions with the investigators, Kenneth and Stacy both admitted they had used methamphetamine in the recent past, but denied using drugs in the presence of their children. Stacy admitted she lost her job after testing positive for drugs in September. Kenneth was also unemployed. As a result of the

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<sup>1</sup> The investigators found a blow torch in one of the trailer's bedrooms. The trailer was extremely dirty and contained so much clutter that the investigators feared the children would not be able to safely exit the trailer in the event of a fire or other emergency.

investigation, the Department determined the children were being denied critical care due to the condition of the parents' home.<sup>2</sup>

The Department arranged for the children to stay with their maternal grandparents, who lived a short distance from the parents' home. Kenneth and Stacy agreed to a plan that called for the children to remain with Stacy's parents while Kenneth and Stacy cleaned their trailer. The parents also agreed to accept "eyes and ears" services.

All three children were given hair stat tests to determine if they had been exposed to drugs. The test results were negative. The parents cleaned up their home, and the children were allowed to return home with services in place to monitor their safety. The family home was monitored for about two weeks. No problems were noted.

After Kenneth and Stacy learned their children tested negative for exposure to drugs, the parents refused to submit to voluntary drug testing, and they declined to accept further services from the Department. Because Kenneth was on probation as a result of criminal convictions in two different counties, he was required to submit to drug testing beginning in March 2006 as a condition of his probation. Kenneth's first drug test was positive for methamphetamine. Two subsequent tests were negative.

After Kenneth and Stacy declined to participate in services on a voluntary basis, the State filed an application on April 4 alleging the children were in need of assistance. On June 30 Stacy and the children's guardian ad litem stipulated

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<sup>2</sup> The Department had previously concluded that Kenneth physically abused Courtney in 2003.

the children were in need of assistance. However, Kenneth denied the State needed to intervene on behalf of the children. A hearing was held in August to address the father's resistance to the children's adjudication as CINA.

On September 1, 2006, the juvenile court entered an order adjudicating the children in need of assistance. At the adjudication hearing, the juvenile court noted the family had not cooperated with the preparation of a social history, so the court was unable to hold a dispositional hearing at the same time the adjudication hearing was held. After a disposition order was entered on December 1, 2006, Kenneth filed this appeal challenging the juvenile court's CINA adjudication order.

## ***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) (2005). 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) (citation omitted).

## ***III. Discussion***

The children were adjudicated CINA pursuant to Iowa Code sections 232.2(6)(c)(2), 232.2(6)(g), and 232.2(6)(n) (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; and parent's drug or alcohol abuse results in child not receiving adequate care). Kenneth contends the evidence does not support the juvenile court's adjudication of the children as CINA on any of the

statutory grounds relied on by the State. He alleges the State failed to prove he was actively using illegal substances and providing inadequate care to the children. He also argues that because the children tested negative for illegal substances, they have not been harmed.

On our de novo review of the record, we find clear and convincing evidence supports the children's adjudication as CINA. At the time of the adjudication hearing, Kenneth was on probation for driving while barred, possession of weapons, and possession of methamphetamine. Kenneth's probation officer testified Kenneth had two possession-of-methamphetamine charges within one year. When the Department investigated the parents' home in November 2005, it determined both parents had recently been using methamphetamine. At that time, the Department determined the children had been denied critical care based on the condition of the home. Kenneth tested positive for methamphetamine in March 2006. As the court noted, Kenneth was required to attend substance abuse treatment, but the Area Substance Abuse Counsel closed his case because he failed to attend counseling on a regular basis.

The juvenile court concluded Kenneth's lack of follow-through with substance abuse treatment, his criminal record related to substance abuse, and the condition of the home at the time the Department intervened justify the adjudication of the children as CINA. We agree. Although the record reveals no direct injury to the children at this point in time, Kenneth needs to understand that our juvenile statutes are preventive as well as remedial. *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). Their goal is to prevent probable harm to children; they do

not require delay until after harm has occurred. *Id.* The record in this case justifies juvenile court intervention and the adjudication of all three children.

***IV. Conclusion***

Because we conclude the juvenile court properly adjudicated Courtney, Rachel, and Michael as children in need of assistance, we affirm the court's adjudicatory order.

**AFFIRMED.**