

**IN THE COURT OF APPEALS OF IOWA**

No. 7-164 / 07-0165  
Filed March 28, 2007

**IN THE INTEREST OF J.L. and J.L., Jr.,  
Minor Children,**

**J.L., Sr., Father,  
Appellant.**

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

A father appeals his children's adjudication as children in need of assistance. **AFFIRMED IN PART AND REVERSED IN PART.**

Mark Neary, Muscatine, 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 and Dana Christiansen, Assistant County Attorneys, for appellee State.

Mark Thompson, Iowa City, for minor children.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**MAHAN, J.**

John appeals the juvenile court's ruling finding his children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2005). He argues the court erred in (1) finding the children received inadequate care due to his alcohol and methamphetamine use and (2) determining the children have suffered or are imminently likely to suffer harm due to his alcohol and methamphetamine use. We affirm in part and reverse in part.

**I. Background Facts and Proceedings**

John and Elizabeth are the parents of J.L., born in August 1999, and J.L. Jr., born in April 2001. John and Elizabeth are divorced. Elizabeth was granted primary physical care of the children, but John has exercised regular visitation. In August 2006 Elizabeth and the children lived with Elizabeth's mother in Davenport. John lived in Muscatine. Elizabeth was planning to move to Muscatine and wanted the children to start school in Muscatine. She wanted them to stay with John until she was able to move. The children moved to John's home August 17, 2006. On August 19, 2006, the Iowa Department of Human Services (DHS) received a report of concern that the children were with their father, who had been charged with indecent exposure and who had admitted to being an alcoholic and using methamphetamine.

The DHS investigator made an unannounced home visit on August 19, 2006, and found John home with the children. The home was clean and appropriate. The investigator found the interaction between John and the children to be appropriate and nurturing. Away from the children, John admitted he drank alcohol and had used methamphetamine for two months between May

and July 2006. He also admitted he had five prior arrests for operating while under the influence and that he had completed treatment successfully. He disclosed he had been interviewed in relation to an indecent exposure that occurred on August 11, 2006, but did not remember it because he blacked out from drinking. The investigator confirmed there was no warrant for John's arrest.<sup>1</sup> The investigator also interviewed the children away from John. They indicated they had not witnessed their father drinking. They also understood "good touch" and "bad touch" and denied any related issues.

At the adjudication hearing the children's great-grandmother testified she stopped by John's home three or four times a month to see the children on unannounced visits and never observed John drinking, intoxicated, or harming the children. Elizabeth testified she knew John had used substances, although she did not believe he used around the children. The DHS investigator admitted that in her twelve day investigation she found no evidence John inappropriately supervised the children in the last year. She also testified she had no evidence John was a caretaker at any time when he was incapacitated by drugs or alcohol.

The juvenile court adjudicated the children CINA pursuant to sections 232.2(6)(c)(2) and (n). According to the court, "the basis of the adjudication is the children are imminently likely to suffer harmful effects, including the failure of the children's father to provide a reasonable degree of care in supervising the children due to the father's substance abuse." John appeals.

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<sup>1</sup> John was later arrested for the incident.

## II. Standard of Review

We review CINA adjudications de novo. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). We are not bound by the district court's factual findings, but give their credibility determinations some weight. *Id.* Our primary concern is the best interests of the children. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). In determining the children's best interests, we look to both long-term and immediate needs. *Id.*; see also *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

## III. Merits

In order to show the children are CINA under section 232.2(6)(c)(2), the State must show the children have "suffered or [are] imminently likely to suffer harmful effects as a result of . . . (2) The failure of the child[ren]'s parent . . . to exercise a reasonable degree of care in supervising the child." In order to show the children are CINA under section 232.2(6)(n), the State must show the parent's "mental capability or condition, imprisonment, or drug or alcohol abuse results in the child[ren] not receiving adequate care." The State must prove these allegations by clear and convincing evidence. Iowa Code § 232.96(2). "Clear and convincing evidence is evidence that leaves 'no serious or substantial doubt as to 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)).

We first turn to the adjudication under section 232.2(6)(n). John has a long criminal history. He also has demonstrated a problem with drug and alcohol abuse. In 2004 he broke into Elizabeth's apartment when children were present to confront Elizabeth and her boyfriend. However, John was not the children's caretaker at the time and had previously been told the children would not be at

the apartment. The State has no other evidence indicating John's criminal history or his substance abuse caused his children to receive inadequate care. Further, the State has not requested John to submit to urinalysis. He denies using methamphetamine after July 2006, and the State has no evidence to disprove his assertion. The State was able to show John used alcohol as recently as August 13, 2006, four days before the children moved in. There is, however, no evidence to indicate that John's alcohol usage has harmed the children. In fact, the incident in 2004 is the only time the children have been around John when he has been intoxicated. The children stated John did not drink around them. Their great-grandmother testified she had never seen John drinking or intoxicated around the children. Elizabeth testified she knew John drank but did not believe he drank around the children. Even the DHS investigator admitted there was no evidence the children had received inappropriate care under their father's supervision. In short, the State has failed to show clear and convincing evidence the children have received inadequate care. We conclude the district court erred in adjudicating the children CINA under section 232.2(6)(n). We reverse the adjudication under this section.

We now turn to the adjudication under section 232.2(6)(c)(2). Drinking and drug use in a home can cause serious damage to children. Given the length of time John has been abusing substances, his repeated OWI arrests, and the evidence he drank to the point of blacking out just a week before the children moved in, we are not confident in John's continued ability to keep his children safe. We conclude the State has shown by clear and convincing evidence that the children are imminently likely to suffer harm under John's supervision. The

juvenile court's ruling finding the children CINA pursuant to section 232.2(6)(c)(2)  
is affirmed.

**AFFIRMED IN PART AND REVERSED IN PART.**