

**IN THE COURT OF APPEALS OF IOWA**

No. 7-526 / 07-0906  
Filed October 12, 2007

**IN THE INTEREST OF M.N.C.,  
Minor Child,**

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

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Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

A father appeals the adjudication and dispositional orders in a child in need of assistance proceeding. **REVERSED AND REMANDED.**

Jeffrey L. Powell of Tindal & Kitchen, P.L.C., Washington, for appellant father.

Katie E. McConnell of Lloyd, McConnell & Davis, L.L.P., Washington, for appellees mother and grandmother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Barbara Edmondson, County Attorney, for appellee State.

Kathryn J. Salazar of Day, Meeker, Lamping, Schlegel & Salazar, Washington, guardian ad litem for minor child.

Considered by Zimmer, P.J., and Eisenhauer, J., and Nelson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**NELSON, S.J.****I. Background Facts & Proceedings**

J.W.C. and M.F.L. are the parents of M.N.C., who was born in August 2002. Both parents have a history of mental illness. Under a paternity order, M.F.L. had physical care of the child. J.W.C. exercised regular visitation and paid child support. In July 2006 concerns arose that M.F.L. was abusing prescription drugs. She agreed to place M.N.C. in the care of the maternal grandmother, L.N. During the summer of 2006 J.W.C. was having mental health problems, and he was hospitalized for several weeks. J.W.C. did not see the child for a period of time.

On September 21, 2006, the State filed a petition alleging M.N.C. should be adjudicated a child in need of assistance (CINA) under Iowa Code section 232.2(6)(a) (2005) (abandonment), as to the father, and section 232.2(6)(c)(2) (failure to supervise), as to both parents. Based on the parties' stipulation, M.N.C. was adjudicated CINA as to the mother, M.F.L., under section 232.2(6)(c)(2). J.W.C. was granted four hours of visitation each week, and he participated in this visitation.

J.W.C. contested the CINA adjudication. An adjudicatory order as to the father, and a dispositional order as to all parties, was entered on May 4, 2007.<sup>1</sup> The juvenile court found the child should be adjudicated CINA as to the father because he had abandoned the child for a period of three or four months during the summer of 2006. The court found, "While it is true that the father had some

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<sup>1</sup> The juvenile court also granted the father's request for concurrent jurisdiction so he could pursue custody, visitation, and other issues in district court.

mental health issues during this time, this is no excuse for his abandonment of his child.” The allegations regarding section 232.2(6)(c)(2) were dismissed as to J.W.C. J.W.C. appeals the adjudicatory and dispositional orders.

## **II. Standard of Review**

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court’s factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the child. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

## **III. Merits**

J.W.C. contends the juvenile court improperly found he had abandoned his child. As to J.W.C., the child was adjudicated CINA under section 232.2(6)(a), which applies to a child “[w]hose parent, guardian or other custodian has abandoned or deserted the child.” The term “abandonment” is defined as:

[T]he relinquishment or surrender, without reference to any particular person, or the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1). Abandonment involves two elements—conduct, and an accompanying state of mind. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996).

Looking at the entire record in this case, we find insufficient evidence J.W.C. intentionally relinquished “the parental rights, duties, or privileges inherent in the parent-child relationship.” See Iowa Code § 232.2(1). M.F.L. and L.N. testified J.W.C. did not have contact with M.N.C. from May 9, 2006, until late

August or early September 2006. J.W.C. stated there were only about six weeks when he did not see M.N.C., while he was hospitalized for his mental health problems. Whether it was six weeks or several months, however, the period of time did not continue once J.W.C. sufficiently recovered from his mental health problems so he could resume visits with his child. We conclude the record does not show J.W.C. intended to abandon his role as a parent.

We also note the guardian ad litem did not recommend adjudication on the grounds of abandonment. At the adjudicatory hearing the guardian ad litem argued J.W.C. did not intentionally sever his relationship with M.N.C. The guardian ad litem stated, "I think there was just extenuating circumstances that led to that position to where he wasn't able to have contact with his daughter during that time because he was dealing with his own health concerns." On appeal, the guardian ad litem again argues that the record does not support a finding of abandonment.

We conclude that as to J.W.C., the child M.N.C. should not be adjudicated CINA based on abandonment under section 232.2(6)(a). We reverse the decision of the juvenile court and remand for further proceedings in the CINA action involving the mother, M.F.L.

**REVERSED AND REMANDED.**