

**IN THE COURT OF APPEALS OF IOWA**

No. 8-201 / 08-0310  
Filed March 26, 2008

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

**S.D., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Wapello County, William S. Owens,  
Associate Juvenile Judge.

A mother appeals a juvenile court order adjudicating her child to be a child  
in need of assistance. **AFFIRMED.**

John Silko, Bloomfield, for appellant mother.

Cynthia Hucks, Ottumwa, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Mark Tremmel, County Attorney, and Seth Harrington, Assistant County  
Attorney, for appellee State.

Allen Anderson, Oskaloosa, for minor child.

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

**HUITINK, P.J.**

Sarah appeals the juvenile court order adjudicating her son, J.D., a child in need of assistance. We affirm.

**I. Background Facts and Prior Proceedings**

Sarah has a history of anger management problems. She has been diagnosed with a depressive disorder and a borderline personality disorder. In May 2007 the juvenile court terminated Sarah's parental rights in regards to her child, K.L., for issues related to domestic violence in the presence of the child, denial of critical care, and an inability to maintain a safe and sanitary home. Three months later, Sarah gave birth to J.D. Sarah's husband, Thaddeus, is not a party to this appeal.<sup>1</sup>

One month after J.D. was born police were dispatched to Sarah's residence because someone reported that a man was standing outside her house with a gun. When police arrived, they discovered that the man was only playing with a BB gun. However, because the house was in such a state of disrepair, the officers contacted the local housing authority. A housing inspector arrived at the scene and warned that the property would be condemned if certain repairs were not made within thirty days.

Shortly thereafter, Sarah and Thaddeus got into a heated argument. Someone called the Iowa Department of Human Services (DHS) and reported that they saw Sarah slam/throw J.D. to the ground while he was strapped in his

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<sup>1</sup> Thaddeus claims he is not J.D.'s biological father, but concedes he is J.D.'s legal father.

car seat. The person also stated that they saw Sarah throw things while she argued with Thaddeus.

A DHS investigator went to speak with Sarah and Thaddeus. Sarah first told the investigator that J.D. was not present during the argument. Then a family friend named Amy arrived and started to speak with Sarah and the investigator. Amy told the investigator that she was present and saw Sarah slam the car seat (containing J.D.) on the ground. She also demonstrated how the car seat rocked violently and tilted upwards once it hit the ground. Sarah interrupted and told the investigator "I didn't throw it down that hard." Sarah then picked up the car seat and demonstrated how she had put it on the ground. The investigator noted that even this demonstration showed that the car seat was "roughly" placed on the ground. Amy also told the investigator that Sarah had thrown a tire and a book during the argument.

While conducting this investigation, the investigator also found that the family home was very messy. There were also extension cords strung from a nearby house to provide electricity to the home. The investigator suggested that J.D. be voluntarily placed with his maternal grandmother. Sarah agreed to this arrangement. Ultimately, the State filed a petition alleging J.D. was a child in need of assistance.

At the adjudicatory hearing a DHS caseworker said that Sarah and Thaddeus had improved their housing situation and shown adequate parenting skills during supervised visitations. However, the caseworker also described numerous recent instances where Sarah had acted erratically and aggressively. Because of this aggressive behavior and Sarah's reluctance to take her

psychiatric medication, the caseworker feared that J.D. would suffer harm if returned to her care.

Sarah testified and told the court that the health department, Amy, and DHS were treating her unfairly. She also denied (1) slamming the car seat on the ground, (2) ever telling the investigator “I didn’t throw it down that hard,” or (3) demonstrating how she had actually placed the car seat on the ground. She also stated that she did not like to take her medication because it made her feel like a “zombie.”

On December 24, 2007, the juvenile court issued an order finding that J.D. “would be in imminent risk to life or health unless removed.” The court adjudicated J.D. a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2007) (child is likely to suffer harm due to parents’ failure to exercise care in supervising child) and ordered that he remain in the custody of his maternal grandmother.

Sarah now appeals the adjudication and removal.<sup>2</sup>

## **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. *Id.*

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<sup>2</sup> Thaddeus did not file an appeal.

### III. Merits

Sarah claims the evidence at the adjudicatory hearing was “remarkably vague” and insufficient to prove her child was at risk and in need of assistance. She also contends that J.D. should be returned to her care.

The State bears the burden of proving the child in need of assistance allegations by clear and convincing evidence. Iowa Code § 232.96(2). Clear and convincing evidence is evidence that leaves “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983).

Upon our de novo review of the record, we find there is clear and convincing evidence to support a finding that this child is in need of assistance. Sarah has a history of struggling to control her anger. Even though she denies any wrongdoing, we find the more credible evidence to be that Sarah did, in the midst of a heated argument, slam or roughly place J.D. onto the ground. Her actions could have caused her one-month-old child serious injury. Thankfully, they did not.

We are troubled by Sarah’s attempts to minimize the situation by pointing out that J.D. did not suffer any actual injuries. Because Sarah cannot appreciate how her inability to control her anger places J.D. in imminent risk of harm, we conclude that J.D.’s interests are best served by adjudicating him a child in need of assistance. Likewise, we find the current placement is appropriate while Sarah still experiments with ways to control her anger.

Accordingly, we affirm the decision of the juvenile court.

**AFFIRMED.**