

**IN THE COURT OF APPEALS OF IOWA**

No. 8-960 / 08-1557  
Filed March 11, 2009

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

**M.W.B., JR., Father,**  
Appellant.

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Appeal from the Iowa District Court for Scott County, Nancy Tabor, Judge.

A father appeals from the adjudicatory and dispositional orders concerning his child. **AFFIRMED.**

Timothy J. Tupper of Tupper Law Firm, Davenport, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael Walton, County Attorney, and Gerda Lane, Assistant County Attorney, for appellee.

Dana Copell, Davenport, for mother.

Cynthia Taylor of Zamora, Taylor, Woods & Frederick, Davenport, guardian ad litem for minor child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**SACKETT, C.J.**

A father appeals from the adjudicatory and dispositional orders concerning his son, contending there is not clear and convincing evidence that Jonathon, born on December 9, 2007, is a child in need of assistance as defined by Iowa Code section 232.2(6)(n) (2007). The mother has not appealed. We affirm.

**SCOPE OF REVIEW.** Our review of child in need of assistance proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State has the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2). “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

**BACKGROUND.** The State sought to have the child found to be in need of assistance under Iowa Code sections 232.2(6)(c)(2), (e), and (n).<sup>1</sup> On May 20, 2008, the juvenile court found:

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<sup>1</sup> Iowa Code section 232.2(6) defines “Child in need of assistance” to include an unmarried child:

.....  
 c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

.....  
 (2) The failure of the child’s parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

.....

While there is not evidence that the child is in need of medical treatment to cure, alleviate, or prevent a *serious* physical injury or illness, nor is there evidence that the [child] has suffered or is *imminently* likely to suffer harmful effects from a lack of supervision by the parents; clear and convincing evidence exists to support the conclusion that the child [is] in need of assistance pursuant to section 232.2(6)(n) Iowa Code (2007). Specifically, the court finds that the parents' drug or alcohol abuse resulted in the child not receiving adequate well-child checkups and not receiving adequate immunizations, both of which place the child at risk of harm.

(Emphasis in original). The court left the child in his parents' home, finding there was no evidence to indicate the adjudicatory harm could not be managed in the home, provided that the parents begin cooperating with staffing, medical care for the child, and substance abuse evaluations and treatment for themselves. The court said the treatment for the parents "shall include random urinalysis drug screenings."

A dispositional hearing before a different judge was held on July 17, 2008. On September 8, 2008, that judge entered a dispositional order finding the child had previously been adjudicated a child in need of assistance based on "denial of critical care through improper supervision by parents."<sup>2</sup> The court further found that the child's care was compromised by his parents' drug use. Placement of the child was continued with his parents, subject to Department of Human

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e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

....

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

<sup>2</sup> This directly contradicts the adjudicatory order that found "there is *not* evidence that the child . . . is imminently likely to suffer harmful effects from a lack of supervision by the parents." (Emphasis added).

Services supervision, but the parents were ordered to obtain substance abuse evaluations and to follow through with treatment recommendations.

On September 23, 2008, the father filed a notice of appeal and subsequently on October 10, 2008, a petition on appeal. We remanded for full briefing and the requested briefs have now been filed.

**DISCUSSION.** The father contends the court erred in finding clear and convincing evidence for adjudication based on section 232.2(6)(n). He argues there is no dispute that the child is in good health, has not been harmed by the parents, appears to be well cared for, and appears properly clothed and fed. He further argues there is lack of evidence of drug or alcohol abuse by the parents that “results in the child not receiving adequate care.” Iowa Code § 232.2(6)(n).

The evidence concerning the child’s care supports a finding the child was healthy and well cared for, and that the home the couple lived in and its furnishings were appropriate for a child. The step-grandfather testified Jonathon occasionally has had a diaper rash, on one occasion the child’s grandmother in washing the child’s clothing determined several pieces of the child’s clothing were urine soaked,<sup>3</sup> and he thought the child seemed happier at his home than at his own. The State argues this testimony supports a finding the child did not receive adequate care. The State also argues that the child has not had the recommended medical attention. At the time that the Department of Human Services entered the picture on January 22, 2008, the child, who was about

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<sup>3</sup> His testimony was: “Recently my wife held up several articles of clothing, one-piece suits for the child, and they were soaked from one end to the other with urine, and that kind of raised a red flag for me.”

seven weeks old, had had one doctor visit following his birth, and had not received any vaccinations. At the May hearing the step-grandfather testified that the mother finally had taken the baby to the doctor in the last month or so for shots and “so on.” There is no evidence that not having additional well-baby doctor visits put the child at risk, nor is there any evidence of what, if any, vaccinations are recommended for a child of Jonathon’s age. This is not clear and convincing evidence that the child has not received adequate care.

We conclude the State has not established by clear and convincing evidence the statutory grounds for finding the child is in need of assistance under section 232.2(6)(n).

Our analysis, however, does not end here. The State also pled sections 232.2(6)(c)(2) and (e). We can affirm the juvenile court on any ground pled, even if was not a ground relied on by the court. See *In re T.N.M.*, 542 N.W.2d 574, 575 (Iowa Ct. App. 1995).

Both parents have admittedly used alcohol and drugs in the past. The father admitted to a drug problem several weeks before the hearing. The parents have failed to submit to requested drug testing. They forged checks to obtain money to buy drugs. Courts have long recognized the dangers and hazards of leaving children in the custody of chronic drug users. See, e.g., *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (finding “parents [who] have severe chronic substance abuse problems” “clearly” presented a danger to their children). Jonathon’s adjudication as a child in need of assistance need not await the occurrence of injury or harm. See *In re D.T.*, 435 N.W.2d 323, 330 (Iowa 1989)

("[W]e think our temporary removal provisions in [CINA] proceedings are designed to prevent probable harm to a child and do not require delay until after the harm is done."). The State has the duty to see that every child within its borders receives proper care and treatment. *L.L.*, 459 N.W.2d at 494; *D.T.*, 435 N.W.2d at 329. From our de novo review, we find clear and convincing evidence supports finding the child in need of assistance under section 232.2(6)(c)(2).

**AFFIRMED.**