

**IN THE COURT OF APPEALS OF IOWA**

No. 6-551 / 05-1619  
Filed September 21, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**PAMELA MORWITZER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Calhoun County, Joel E. Swanson,  
Judge.

Pamela Morwitzer appeals her conviction for child endangerment causing serious injury, contending her conviction was not supported by sufficient evidence. **AFFIRMED.**

Darren D. Driscoll of Johnson, Erb, Bice, Kramer, Good & Mulholland,  
P.C., Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney  
General, and Cynthia Voorde, County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

**MILLER, J.**

Pamela Morwitzer appeals her conviction, following jury trial, for child endangerment causing serious injury. She contends her conviction was not supported by sufficient evidence. We affirm.

This case arose following the admission of three-year-old Jeane Morwitzer to the emergency room of Lake City Hospital on May 7, 2004. Jeane lived on an acreage in rural Calhoun County, Iowa, with her maternal grandparents Pamela and Gene Morwitzer. The property included two "units," a farmhouse and a bus used as sleeping quarters. Apparently two of Morwitzer and Gene's children, Tammy and Michelle, also lived on the farm. Tammy is Jeane's mother. According to testimony given by Morwitzer in a previous 2004 court proceeding and admitted in the case at hand by stipulation of the parties, Gene and the two daughters slept in the bus while Morwitzer and Jeane lived and slept in the house. Morwitzer stated she would take care of Jeane during the day and that Gene would put Jeane to bed each evening at about 9:15 to 9:30 and return before Jeane awoke at about 8:00 to 8:30 the following morning. She also stated in this previous testimony that it was her responsibility to make sure Jeane got adequate care prior to April 2004. However, she stated that in April 2004 her other daughter, Michelle, was in the latter stage of pregnancy and she had to watch her more closely because she was in a lot of discomfort so Gene took over the primary care of Jeane at that point.

We believe it worthwhile to list the myriad of serious health problems Jeane was experiencing upon arriving at the hospital. Jeane was unresponsive

and emaciated, and medical personnel were unable to obtain a blood pressure from her. Normal blood sugar levels are between 100 and 120, but Jeane's blood sugar was 1035. The treating physician determined Jeane's condition was so dire that she needed to be transported to Blank Children's Hospital (Blank) in Des Moines by Life Flight to be treated by specialists.

At Blank, Jeane was diagnosed with diabetic ketoacidosis, or diabetic coma, a complication of Type 1 diabetes. She was also severely dehydrated and malnourished, weighing only approximately twenty-two pounds. Due to the malnutrition Jeane lacked the musculature to walk, sit or even breath on her own, and had to be placed on a ventilator to assist her in breathing. She did not have any subcutaneous tissue in her cheeks or buttocks, her lips and gums were extremely dry and bleeding, she had severely thinning hair, her skin was red and peeling off in several places on her body, her eyes were sunken, and her ribs, hip bones, and collar bones were all visible. Due to the lack of subcutaneous tissues medical personnel were required to give Jeane her insulin through an intravenous drip. Jeane also had to be fed through a feeding tube in order to slowly reintroduce food into her body because she had been malnourished for so long. She could not eat solid food for approximately two weeks after admission. Jeane was also not potty trained and was unable to speak when she was admitted to the hospital. Initially, her doctor at Blank was not sure Jeane would survive and estimated she was a few hours from developing multiple organ failure.

Based on Jeane's condition and injuries, Morwitzer was charged with child endangerment causing serious injury in violation of Iowa Code sections 726.6 and 726.6(5) (2003). The case proceeded to jury trial. At the close of the State's case and again at the close of all the evidence Morwitzer made motions for judgment of acquittal which the trial court overruled. The jury found Morwitzer guilty as charged. Following trial Morwitzer filed a motion in arrest of judgment and motion for new trial arguing, in part, that the State failed to prove she had any contact with Jeane or knowledge of her medical condition during the spring of 2004. The trial court apparently denied these motions, and proceeded to sentence Morwitzer to prison for not more than ten years.

We review challenges to the sufficiency of the evidence supporting a guilty verdict for corrections of errors at law. We will uphold a verdict if substantial record evidence supports it. Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.

We review the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record. The court considers all the evidence in the record, not just the evidence that supports the verdict.

*State v. Webb*, 648 N.W.2d 72, 75-76 (Iowa 2002) (internal citations omitted).

To prove Morwitzer guilty of child endangerment resulting in serious injury the district court instructed the jury that the State had to prove, in relevant part, that: during the Spring of 2004 Morwitzer was a "person having custody or control of Jeane Morwitzer, or was a member of the household in which Jeane Morwitzer resided"; during this period Morwitzer acted with the knowledge she was creating a substantial risk to Jeane's physical, mental or emotional health or safety; and Morwitzer's act resulted in serious injury to Jeane. On appeal

Morwitzer argues generally that the trial court erred in finding sufficient evidence to support her conviction and overrule her motions. Although it is not entirely clear from her appellate brief, it appears she is only challenging the sufficiency of the evidence to prove she had "custody or control" of Jeane during the spring of 2004 or had any knowledge of Jeane's medical condition during that time.

Jodi Keller, a child protective worker for the department of human services testified at trial for the State. She testified she visited Morwitzer in Morwitzer's Calhoun County home on May 7, 2004, in response to concerns regarding Jeane after she was brought to the hospital in the condition described above. Morwitzer answered the door. Keller asked Morwitzer where Jeane lived and Morwitzer stated that she lived with her in the house. Keller visited Morwitzer again on May 10 at which time Morwitzer told her she was the person who bought the groceries and prepared the meals in the home. During her investigation Keller also determined Morwitzer and Gene were primarily responsible for the care of Jeane and were the ones who bathed, fed, and dressed her. This information acquired by Keller from Morwitzer during her investigation was consistent with the testimony given by Morwitzer in the prior court proceeding as noted above.

To support her claim there was not sufficient evidence she had the requisite custody or control and knowledge of Jeane's medical condition during the spring of 2004, Morwitzer appears to rely heavily on the evidence that Gene took over as Jeane's primary caretaker during a period of about four weeks prior to Jeane's hospitalization in early May 2004. However, the evidence does not show that the pattern of Gene, Tammy, and Michelle sleeping in the bus and

Morwitzer and Jeane sleeping in the house changed after March 2004. Furthermore, Morwitzer's statements to Jodi Keller can quite reasonably be seen as acknowledging that up to the time of Jeane's hospitalization Morwitzer was responsible for grocery shopping for Jeane and preparing her meals and Morwitzer shared with Gene some responsibility for bathing, dressing, and feeding her. The jury could thus reasonably find that after March 2004 Morwitzer continued to have or share with Gene the custody or control of Jeane and had such frequent and ongoing contact with Jeane that she had to have been aware of her malnutrition and dire medical condition. However, even assuming that Gene was Jeane's primary caretaker during the several weeks prior to her hospitalization and that Morwitzer had insufficient contact with her to be fully aware of her condition immediately prior to her hospitalization, the record nevertheless contains ample evidence that Jeane's condition was clearly evident and would have been known to Morwitzer during the earlier time Morwitzer undisputedly had her custody or control.

Several medical professionals testified that Jeane's condition took well more than four weeks to develop and that it was a chronic condition that had been worsening over several months. The physician at Blank who initially treated Jeane, Dr. Judy Walker, testified at trial that chronic malnutrition is not generally caused by diabetes and that a person would have had to experience chronic malnutrition for "at least several months" for it to show like it did in Jeane when she arrived at the hospital. She also stated that generally persons suffering from diabetic ketoacidosis are hospitalized for twenty-four to forty-eight

hours before recovery, however due to the complications Jeane suffered from her severe malnutrition she was hospitalized for two months. Dr. Walker also testified she contacted Jeane's physician and realized Jeane had not gained any weight since she was eighteen months old. She also stated several other tests were performed on Jeane to see if she had any chronic problem other than chronic malnutrition that could explain her condition, and all such tests were negative.

The clinical dietician who worked with Jeane at Blank also testified at trial. She testified the malnutrition from which Jeane was suffering was a disease in and of itself and was a significant contributing factor to her poor health condition. It was her opinion that it would have taken three to six months of chronic malnutrition for Jeane to get to the state she was in when she arrived at Blank, and that there was "no way it was accomplished in four weeks." In addition, she had several laboratory studies done to determine how long the malnutrition had been going on. The levels of several vitamins and trace minerals in Jeane's system gathered from these tests showed the malnutrition was "chronic," "long term" and had been going on "for months." The dietician further testified that Jeane's condition would have been "obvious to any normal adult" just walking past her in a store and anyone who would have "taken a good look" at her would know something was wrong with her, maybe not what was wrong, but definitely that she was not healthy.

Another one of Jeane's treating physicians, Dr. Ricardo Flores, testified that on Jeane's x-rays there were several "growth arrest lines." Such lines

represent locations where the bone was no longer growing for lack of nourishment and are a strong indication of chronic malnutrition. He also noticed the several other tell-tale signs of chronic malnutrition discussed above, that Jeane had no fat on her body but had skin folds, indicating she had at one time had body fat, that her bones were visible like someone in a “concentration camp,” and that patches of her hair were falling out. He opined it would have taken a minimum of three to four weeks for Jeane to appear as she did when she arrived at the hospital; it would have been hard even for someone who provided no care for her not to notice her condition; and if someone was even minimally caring for her they should have been able to notice something was wrong well before she was hospitalized because she presented such a “drastic case.”

Based on the evidence contained in the record, we conclude substantial evidence supports the challenged elements of Morwitzer’s conviction. A reasonable jury could have found Morwitzer had custody or control of Jeane at a time during which she knew of Jeane’s condition and need for medical attention and acted with the knowledge she was creating a substantial risk to Jeane’s physical, mental or emotional health or safety by not seeking such medical attention. The jury could have so found regardless of whether Morwitzer was in fact not Jeane’s primary caretaker during the period of about four weeks prior to her hospitalization.

In her appellate brief Morwitzer also sets forth nearly verbatim certain claims, other than the sufficiency of the evidence issue we have addressed above, that she raised in her motions for judgment of acquittal, in arrest of



judgment, and for new trial. She then summarily asserts defense counsel was correct in making the claims made in those motions before stating in conclusion merely that there was insufficient evidence to support her conviction. However, she neither cites authority nor offers any substantive argument in support of these additional claims. When a party, in an appellate brief, does not state, argue, or cite to authority in support of an issue, the issue may be deemed waived. Iowa R. App. P. 6.14(1)(c); see also *State v. Scovill*, 224 N.W.2d 221, 223 (Iowa 1974); *State v. Adney*, 639 N.W.2d 246, 251 (Iowa Ct. App. 2001). We deem any additional issues Morwitzer may have been attempting to raise in this appeal to be waived.

We conclude there was sufficient evidence for a reasonable jury to find Morwitzer guilty beyond a reasonable doubt of child endangerment resulting in serious injury.

**AFFIRMED.**