

IN THE COURT OF APPEALS OF IOWA

No. 2-1075 / 12-1836
Filed December 12, 2012

**IN THE INTEREST OF C.L.,
Minor Child,**

**M.L., Father,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals from the order adjudicating his child to be a child in need of assistance. **AFFIRMED.**

Sarah Stork Meyer of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, for appellant father.

Daniel Dlouhy of Dlouhy Law Firm, Dubuque, for mother.

Thomas J. Miller, Attorney General, Julia Kim, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Colista Anglese of Hammer, Simon & Jensen, East Dubuque, Illinois, guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

A father appeals from the order adjudicating his one-year-old child in need of assistance. He contends clear-and-convincing evidence did not support the statutory grounds for adjudication and there was no evidence the child could not be returned to his care. We affirm.

The family came to the attention of the Iowa Department of Human Services in May 2012 when C.L.'s three-year-old half-sibling A.P. was found to have an unexplained, non-accidental skull fracture and numerous bruises. The family consists of the parents of C.L., who are married, C.L., and A.P. A.P.'s injuries occurred sometime during the evening of May 4, 2012, while he was at his mother's home or his paternal grandmother's home. At the time, a court order prevented any contact between C.L.'s parents because of domestic violence. C.L.'s father was residing with his mother in the same trailer park as C.L.'s mother. The only people who had access to A.P. on the evening of May 4 were his mother, C.L.'s father, and C.L.'s paternal grandmother.

The court issued temporary removal orders concerning both children in June, and they were placed with the maternal grandparents. Both the mother and C.L.'s father denied any knowledge of how A.P. sustained the injuries, but suggested the child suffered the skull fracture from banging his head against a wall. The explanations given by A.P.'s mother and stepfather were not consistent with the medical evidence. Following a child protection assessment, the department issued a founded report of physical abuse with C.L.'s father as the perpetrator. It also found the mother and stepfather denied critical care to A.P. and failed to provide adequate medical care to the child.

Following a contested removal hearing in June, the court found returning the children home would be contrary to their welfare because of the allegations of physical abuse. The court ordered the children to remain in the department's custody for continued relative placement. The State then petitioned to have both children adjudicated in need of assistance under Iowa Code section 232.2(6)(b) and (c)(2) (2011). After a contested removal and adjudication hearing in August, the court found clear and convincing evidence supported the State's allegations and adjudicated both children in need of assistance under section 232.2(6)(b) and (c)(2). The court continued the children's placement with C.L.'s relatives.

In September, the court authorized the department to place the children in foster care after C.L.'s grandparents advised the department the children needed to be removed from their home. Later in September the court held a disposition hearing. The court noted there were no concerns about the care the parents provided during visitation, but visits were still fully-supervised "due to the concerns regarding the severity of [A.P.]'s injuries and the lack of any appropriate explanation by the parents." The court confirmed the adjudication of the children in need of assistance and ordered they remain in the department's custody for foster care placement. The court also ordered continued visitation at the department's discretion and continued services to facilitate reunification. C.L.'s father appeals.

We review the evidence in child-in-need-of-assistance adjudications de novo. *In re B.B.*, 500 N.W.2d 9, 11 (Iowa 1993). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented for review. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord

considerable weight to the factual findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by those findings. *Id.* Our main concern lies with the child's welfare and best interests. *Id.* at 481.

The father first contends the State did not prove the statutory grounds for adjudication under section 232.2(6)(b) or (c)(2). He argues only A.P. was injured, but C.L. "was not harmed or neglected in any way," and there is no evidence C.L. is likely to suffer abuse or neglect in his care. See Iowa Code § 232.2(6)(b). He further argues C.L. has neither suffered nor is imminently likely to suffer harmful effects from a lack of supervision. See *id.* § 232.2(6)(c)(2). Although the court was not able to find conclusively who caused A.P.'s injuries, the evidence supports the department's founded report citing C.L.'s father as the perpetrator of A.P.'s injuries. The report was founded as to the mother and C.L.'s father for failure to provide adequate healthcare to A.P. and as to the mother for denial of critical care and failure to provide adequate supervision of A.P. Although the mother and C.L.'s father were subject to a no-contact order resulting from domestic violence, it appears C.L.'s father went to the family home that evening. Both parents have anger management issues. Both deny any involvement in A.P.'s injuries and continue to offer accidental explanations for his serious, non-accidental injuries. Nothing has changed in the home except the no-contact order has been lifted. The significant injuries suffered by A.P. indicate C.L. would be in danger of harm if he remained in the home.

Because our statutory scheme is designed to prevent probable harm to children, the State need not wait until actual harm befalls children before taking protective measures. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (noting

statutory provisions are “preventative as well as remedial”). We conclude C.L. is imminently likely to suffer abuse or neglect at the hands of his parents. See Iowa Code § 232.2(6)(b). We also conclude C.L. is imminently likely to suffer harmful effects from a lack of supervision. See *id.* § 232.2(6)(c)(2). Clear and convincing evidence supports the statutory grounds for adjudication.

The father also contends there is no evidence C.L. could not be returned to his care. He argues all the reports of his supervised visitation reflect he “had appropriate interactions” with his child and cared for the child well. While we recognize the father has done well in supervised visitation, he has failed to address his role in the injuries A.P. received. See *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002) (noting a parent’s failure to address the parent’s role in abuse may hurt the parent’s chances of regaining custody). “The requirement that a parent acknowledge and recognize abuse is essential for any meaningful change to occur.” *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Although the court ordered the father to cooperate with reunification services, follow through with mental health evaluation recommendations, and participate in anger management counseling, these services “are not likely to be effective” as long as the father continues to deny the abuse of A.P. and his part in it. See *id.*; see also *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988) (stating meaningful change cannot occur without a parent’s recognition of the abuse). We agree with the juvenile court’s conclusion the department’s continued custody of C.L. for placement outside the family home is the least restrictive disposition available to protect the child and promote his best interests. See Iowa Code § 232.99(4).

AFFIRMED.