

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1024 / 09-1543  
Filed December 30, 2009

**IN THE INTEREST OF J.H., K.M.-S., M.H.,  
W.H., and S.H.,  
Minor Children,**

**S.H., Father,**  
Appellant,

**S.H., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A father and mother separately appeal from the juvenile court's  
adjudication/disposition order concerning their children. **AFFIRMED ON BOTH  
APPEALS.**

Cory Goldensoph, Cedar Rapids, for appellant father.

David Fiester, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Harold Denton, County Attorney, and Robert Hruska, Assistant County  
Attorney, for appellee.

Angela Railsback, Cedar Rapids, attorney and guardian ad litem for minor  
children.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

**SACKETT, C.J.**

A father and mother separately appeal from the juvenile court adjudication/disposition order that found the children to be in need of assistance. Both contend there is not clear and convincing evidence the court's aid is required. We affirm on both appeals.

**Background.**

The family came to the attention of the Department of Human Services in May of 2009 when allegations of denial of critical care were raised following the father's arrest on drug-related charges. Prior to the allegations, the family was participating in a number of services voluntarily. Two of the children tested positive for exposure to illegal drugs. The denial-of-critical-care investigation was founded as to the father. The father is participating in adult drug court as a result of his drug-related arrest.

In July the department filed a child-in-need-of-assistance petition alleging the children were in need of assistance as defined in Iowa Code section 232.2(6)(b), (c)(2), (f), and (n) (2009). By the time of the October 2 hearing, the department had prepared a social history of the family for the court. The court heard testimony from the department social worker who conducted the denial-of-critical-care investigation, the department case manager who works with the family, and the father. The court made the following statements of its reasons for finding the children in need of assistance under section 232.2(6)(c)(2) and (n):

[Mother and Father], I'm entering adjudication because I do think there is a very real risk of harm to the children based on [the father's] use of illegal substances, his addiction, and [Mother], your ability to provide protection to the children, not your unwillingness

to, but ability to, whether that is based on ability to recognize the drug use or some other reason. . . .

[S.H.] tested positive for marijuana. I don't have a reasonable explanation for that at this point. But with an eighteen-month-old child that has a stay-at-home mom, I have pretty limited places to look as to where that exposure would have come from.

In looking at the history here, I see [M.H.] tested positive for marijuana at birth. And I know that has been several years ago, but that again goes to the history here that there have been substance abuse issues for quite a while.

. . . .

I have many, many cases where children have been removed from parental care because one of the parents has been using methamphetamine. And that did not happen in your case, and I think that that is primarily because of the fact that you folks were honest and cooperative, and the department believes that they can rely on you to follow through with the safety plan and the relapse prevention planning in place. And because of that, even though this is a serious issue regarding safety of the children, they can remain in your care because we have confidence in your willingness to follow through with that plan.

. . . The adjudication, I think, is necessary for protection of the children and we need to have a safety net for that. And I need to know that if problems develop—And, again, not to be negative, [Father], but with your long history and where you are at in this current recovery process, I can't say with a great deal of assurance that your worst days are behind you. I hope that they are, and I certainly hope for your children's sake that they are, but I can't say that you are to the point where I think the children are no longer at risk, so adjudication will enter.

. . . .

I also like to tell folks in cases where substance abuse is an issue that time is one of the elements that is important. You can do everything that you need to do, but we also need to see that over a period of time and with enough consistency to say, "This is something that is a real change for this family," and it will continue on into the future. And that may well be what we are doing here. It is not that you are not doing what you need to do, it is that it needs to be in place for a longer period of time before I can say that oversight is not necessary by the court.

The written order continued the children's placement "in the custody of their parents under the protective supervision of the Department of Human Services." Both parents appeal, claiming the court's aid is not needed.

**Scope and Standards of Review.**

Our review of adjudicatory and dispositional orders is de novo. *In re E.W.*, 434 N.W.2d 898, 900 (Iowa Ct. App. 1988). We review both the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). The best interests of the child are paramount to our decision. *Id.*

**Merits.**

Although the father and mother appeal separately, they raise the same issue and their discussion of the issue is identical, word-for-word. Therefore, we will not address their claims separately.

Both parents assert, "There is only a possible need for future aid." They contend Iowa Code section 232.96(9) requires the juvenile court to find its "aid is required" before adjudicating a child to be in need of assistance. They argue the services they currently receive voluntarily and through the father's participation in adult drug court adequately provide for the children's safety and there is no *current* need for the court's aid.

Iowa Code section 232.96 provides the "permissible parameters of the juvenile court's initial ruling" after an adjudicatory hearing in subsections (8) and (9). *In re G.R.*, 348 N.W.2d 627, 630 (Iowa 1984). These subsections provide:

8. If the court concludes facts sufficient to sustain the petition have not been established by clear and convincing evidence *or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.*

9. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence

*and that its aid is required*, the court may enter an order adjudicating the child to be a child in need of assistance.

(emphasis added.) The statutory definitions of child in need of assistance found in section 232.2(6) “reflect a legislative determination that in these circumstances State intervention in family relations is generally more helpful than harmful.” *G.R.*, 348 N.W.2d at 632.

In the circumstances before us, we find the aid of the juvenile court currently is needed to provide a safety net for the children. The father’s methamphetamine addiction is the focus of his participation in drug court. The juvenile court’s focus is the welfare of the children. See Iowa Code § 232.1. We have long recognized parents with chronic, unresolved substance abuse problems present a danger to their children. *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). The father has failed to remain clean and sober after prior drug treatment. The juvenile court’s aid is required to provide for monitoring the father’s care of the children and the mother’s failure to recognize his relapse. Although the family is participating in some services voluntarily, the court’s aid is required to enforce their continued participation. We affirm the adjudicatory/dispositional order of the juvenile court.

**AFFIRMED ON BOTH APPEALS.**