

IN THE JUVENILE COURT FOR POLK COUNTY

<p>IN THE INTEREST OF</p> <p>████████ GOMEZ,</p> <p>A CHILD</p>	<p>JUVENILE NO. ██████████</p> <p>CHILD IN NEED OF ASSISTANCE REMOVAL ORDER WITH A MODIFICATION OF PLACEMENT AND ADJUDICATION ORDER DATE OF REMOVAL: ██████/2022</p>
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THIS MATTER came on for conclusion of proceedings on February 15, 2023, in accordance with Section 232.96 of the Iowa Code for adjudication and removal pursuant to Iowa Code sections 232.95 and 232.78. Required reporting was provided by stenographers.

Present at the Hearing were:

Child: presence waived

Child's Attorney and Guardian ad Litem: Paul White, Cole Mayer

Mother: Gregga Gomez

Mother's Attorney: Joel Fenton, withdrawn 2/26

Putative Father: Jesse Gomez

Father's Attorney: Scott ██████████

Iowa Department of Health and Human Services (DHHS): Elizabeth Lockwood, Tami Wailes

County Attorney Office: Annette Taylor, Jordan Brackey

Others: FCS provider, Heather Broudeur; maternal aunt/placement; maternal uncle; host of relatives and family friends

State's Exhibits #1-7 and Father's Exhibits #17 offered and admitted into evidence by EDMS The Court incorporates the findings of the social records/reports as filed on or before November 22, 2023 and on January 20, 2023

FINDINGS OF FACT

Proper notice of this hearing was served on all parties and persons entitled to such notice in accordance with Section 232.88 of the Iowa Code have been made in accordance with Section 232.37 of the Iowa Code. The guardian ad litem filed necessary report pursuant to Iowa Code.

This matter was initially set for a temporary removal hearing on September 8, 2022. Father's initial counsel's motion to withdraw was approved on September 1, 2022, and other court appointed counsel was ordered. On September 8, 2022, the Court found good cause to continue the matter, and without objection, it was set for October 6, 2022, to coincide with the adjudication hearing. The Court ordered a professional staffing and for the Department to provide the parents with mental health services. The order reflected the parents should comply with the Department's recommendations and that the parents should engage in mental health services. On September 26, 2022 father's new counsel withdrew, and Atty. Scott Bandstra filed an appearance on September 27, 2022. On October 6, 2022, the Court found good cause to resume the matter to November 21, 2022. The matter was contested, and the parties agreed to depose medical witnesses to expedite time needed for the hearing. The Court confirmed the prior temporary removal and ordered the parties to attend a solution focused meeting and/or staffing. Due to a breakdown of communication and/or personal conflict, the assigned assistant county attorney withdrew from the matter, and assistant county attorney Jordan Brackey filed an appearance on October 11, 2022. The father filed a motion to dismiss the removal on November 19, 2022, and the State filed a resistance on November 21, 2022. Mother's counsel filed a joinder motion to dismiss on November 21, 2022. The contested November 21, 2022 matters resumed on November 22, 2022, but counsel had additional evidence to present. The Court ordered that the parents should comply with Department recommendations, to include family centered services and if appropriate, complete mental health evaluations. Given the holiday, the Court's and counsel's schedules, the matter was resumed on January 26, 2023. On January 20, 2023, mother's counsel filed a motion to withdraw and made further record on

January 26, 2023. After hearing counsel's and the mother's statements on the motion to withdraw, the motion was granted. The Court made a record with the mother at the time of hearing, and she wished to proceed without counsel. The Court made a record regarding her right to counsel, and the mother voluntarily and intelligently waived her right to counsel. Days before the hearing was to resume, the guardian ad litem had a family emergency, and Atty. Cole Mayer filed an appearance on January 25, 2023. At the time of hearing on January 26, 2023, Mr. Mayer was ready to proceed. The parties still wished to present evidence, and the matter was resumed on February 13, 2023. Each time prior to resuming the hearing, the Court made a record with the mother regarding her right to counsel, and she voluntarily and intelligently waived her right to counsel. Pending the hearing, the Court confirmed the prior temporary removal and gave the Department the discretion to ensure the parents had semi-supervised and scheduled unsupervised time with the child, to include transporting and attending medical/treatment/therapy appointments. The Court ordered the Department to determine the appropriateness of relatives familiar with the child's care who may be able to be present with the child and parents in the home, when ordered by the Court. The Court ordered the Department to obtain the parents' mental health assessments. Counsel did not complete arguments, and the matter resumed on February 14, 2023, and finally submitted to the Court on February 15, 2023. At the conclusion of the testimony and argument, the Court granted the motion to dismiss the removal, and ordered the child's immediate return to the parents. The Court took the matter of adjudication under advisement and indicated this written removal and adjudication ruling would be entered. The Court ordered the Department to provide family preservation services pending the Court's written order.

The child was removed by temporary ex parte order on August 30, 2022, and placed in the temporary legal custody of the Department for purposes of placement with an adult relative after allegations of the parents' failure to provide the child adequate health care. The child has been diagnosed with cystic fibrosis, an acquired genetic disease. The Department evaluated the child and concluded that the child was in immediate or impending danger of harm because of her significant health needs and what was reported as the parents' lack of care.

At the time of hearing, the State presented evidence of concerns regarding the parents not following the cystic fibrosis doctor's recommendations and not filling the child's medication. Following the conclusion of the evidence and upon hearing arguments of counsel and the mother, this court did not find by substantial evidence that the removal was necessary. This court found that there was not an imminent risk to the child's life or health if the child was returned. Further, this court found that the potential emotional, mental, social and physical harm of having the child remain in out of home placement was greater than any potential risk of harm with the child returning to the home, as set forth in the findings below. Placement outside the parental home is no longer necessary because a return to the home would not be contrary to the child's welfare for reasons as stated on the record and incorporated herein. Further, this Court does not find by clear and convincing evidence that the child is a Child in Need of Assistance as alleged in the petition or the aid of the Court is required as set forth in the findings below.

The following reasonable efforts were provided to the family to prevent the need for removal: *child abuse assessment and child protective assessment, care team meeting at Blank Children's Hospital, relative placement, supervised and semi supervised interactions, family preservation and family centered services; relative placement, witness depositions, psychological evaluations, medical care, and HHS case management.*

On August 31, 2022, the State filed a petition alleging the child to be a Child in Need of Assistance as defined in Iowa Code section 232.96A(5), alleging the child was a "child who was in need of medical treatment to cure, alleviate or prevent serious injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment."

Over the course of the hearing, the parties presented evidence by calling the Family Centered Services provider, each of the parents, the custodian and the Department's child protective worker and relied upon the submission of depositions by Dr. Alladin Abosaida and Dr. Callie Williams. Upon considering the evidence, the Court makes the following specific findings of fact: The child is the subject of a March 8, 2022 family assessment after allegations the parents were not providing the child with adequate medical care for her cystic fibrosis. Cystic fibrosis (CF) is a complex multi-systemic disease that requires consistent daily care. During the assessment, the Department reported the parents had not provided the child with her prescribed medications for months and refused to meet with a gastrointestinal doctor after the child continued to have difficulty getting nutrients from food. During the assessment, the father reported having difficulties and a strained relationship with the Des Moines CF doctors and scheduling a consultation with a CF doctor in Iowa City. The father reported that the child had not gone without her medication, and they had an abundance of supply and did not need to pick up additional medication. The Department did not observe any visible outward signs of harm. The family reported the child's C-Diff had impacted the child's health and ability to maintain weight, and they were working with doctors. The Department reported the family was fully cooperative and forthcoming during the assessment.

The hospital report reflects the child was 3% upon admission to the on August 15, 2022, and historically has been below the recommendation of at least 50%BMI despite attempts to assist the parents. The child required hospitalization for IV antibiotics monitoring to stabilize her respiratory status and increase weight. Her baseline x-ray demonstrated a worsening of the disease. The management of her pancreatic insufficiency is a lifelong therapy. It is crucial that treatment includes age-appropriate education provided by a dietitian specialized in CF care. It was later learned that the child tested positive for the COVID-19 which was not known at the time and would have contributed significantly to the child's symptoms and complications. One of the primary concerns reported by the Department was what was reported as a lack of use of Pulmozyme. Upon cross, the Department worker conceded that she did not gather any physical records evidence to support her findings.

During an August 23, 2022, medical appointment, it was reported that the parents became escalated, yelling and screaming at the nurse when discussing use of the child's vest used during her breathing treatment. It was reported that the mother had refused to properly put the vest on the child for nebulizer treatment, rather laying the child on the vest, and the father has refused to put the vest on the child while she was sleeping. The parents have expressed concerns with medical staff regarding a dissatisfaction of the child's care by the clinic.

Dr. Alladdin Abosaida, a pediatric pulmonologist, serves as the director of the Blank Children's Hospital's Cystic Fibrosis Center. He has specialized training and knowledge, has seen patients with cystic fibrosis on a daily basis for the past 10 years and trained in the area since 2006. He has worked with the child, who is now two years old, since her birth. He reports given current modern therapies/treatments, a CF patient's life span is now 53 years old instead of the 20 or less than 30 years before. He stated that there were two approaches to do enzymes which are not regularly produced in a patient with CF and are important to absorb the fat in a diet. One approach is to "calculate the dose based on weight or you could calculate the dose based on fat content." He did not think the latter was "very practical in kids with cystic fibrosis because kids can eat half the amount and then they quit... So, it's kind of difficult when you do it in a kid." Dr. Abosaida and the gastroenterologist recommended the child's dosage by the weight approach rather than by fat; however, the CF Foundation recommends both approaches. The parents calculated the child's enzymes by weight, which is one of the approved methods. Both the parents testified to the amount of detail and attention they provide to the child around her meal intake. The father, especially, reported being zealous in ensuring the child receives the adequate amount of enzymes.

The other concern was with the child's Pulmozyme, which is a treatment that breaks the mucus in the lungs. Dr. Abosiada reports that it "is the only treatment on the market that works for cystic fibrosis." He reported that while he had tried another medication, Mucomyst, it "does not work in cystic fibrosis and the reason, because of the different components ...that does not break that kind of mucus..." The parents had expressed side effect concerns with the Pulmozyme. Dr. Abosaida reported the pharmacy records reflected the parents were not filling the child's Pulmozyme prescription. The parents testified that they have more than enough of the Pulmozyme to treat the child, and additional refills were not necessary. Dr. Abosaida stated that he "believe in the guidelines put forth by the CF Foundation, and I think it works for all patients. The parents were not receptive to a recommended for a newer drug, Orkambi. Dr. [REDACTED] testified that the "disease is a progressive disease no matter what you do. With all of these treatments, it's still progressive. These therapies, what it does, it slows the progression, but it doesn't prevent the disease. It's not a cure."

Pseudomonas is bacteria that is found everywhere, in faucets and shower heads, and everybody is exposed to it every day, but our bodies are able to get rid of it. In CF patients, this bacteria can accelerate the progression in cystic fibrosis and cause lung damage. Dr. Abosaida reported that he did not have data to support the frequency of the child having pseudomonas was more than the average CF patient.

The child had both a nebulizer machine that added inhalation treatment that makes steam that the child can breathe in and a vest, a shaking machine or oscillator that's placed on the chest and shakes to dislodge the mucus from the airways so the child can cough it up. Dr. Abosaida reported he "probably did" prescribe the vest the parents chose even though it was not his recommendation because he has "to be sure she gets whatever she needs." He was concerned the parents were not using the vest at home because the child was crying and screaming when they put it on her at the hospital. He reported a respiratory therapist would have discussed the use of the vest with the parents, and the child's reaction was not unusual while adjusting to use of a new vest. The parents testified that the fitting of the vest and not having the comforts of being at home attributed to the child's discomfort. Dr. Abosaida did not believe the child's hospitalization was due to her not receiving prescribed treatments at home.

Dr. Abosaida stated that he had never heard of a salt lounge, and it was not the recommendation of the CF Foundation, but he could not recommend it or recommend against it. The parents testified that the child was benefiting from the use of the salt room which was less expensive than prescribed medication or medication that was not available. Dr. Abosaida believed court intervention would be helpful because he believed it there was "no way I can do it with the family." He compared this family with another family who consistently followed all of his recommendations without questioning his judgment. During depositions, he immediately characterized the parents as "difficult". Upon explaining, he stated, "They don't want to do whatever we recommend, they refuse treatments, they always look for different approach, which I encourage people to look at. If there's anything outside what we recommend, I would like to discuss it and I just—no matter what you do, no matter how you explain it, no matter how you spend time with them, they don't want to listen to our recommendations." He admitted he and the parents had a "broken relationship", but they had tried to repair it at different times but weren't successful.

Dr. Abosaida did not believe the child was on track to have an extended life expectancy because he did not "believe she got the proper treatments at home and it remind me of old days when we didn't have enough therapy for a patient with cystic fibrosis." He reported the X-ray "would help to see if there is any significant progress in her disease that you can see on the x-rays, or if there are, like, mucus plugs which in some cases would need a bronchoscopy to clear them out. So the x-rays I think is very important for our care." He reported any risk of radiation from the X-rays were "very, very low" and believed "when you look at the benefits versus – you know, versus the risk, I think the benefit is higher than the risk in chest X-rays." He agreed the FDA recommends not to do an X-ray unless it is necessary. The child had an X-ray in March 2022, but there was an occasion when the parents left and did not complete

clinic. While Dr. Abosaida admitted he did not know if the parents had had any contact with anyone else at the clinic, he had not personally heard from the parents at all after that until the child was admitted in August 2022. On August 16, 2022, the child's test result detected SARS COV2 with Influenza A/B and RSV, PCR. At that time, Dr. Abosaida spoke to the Department regarding the child's weight, which he reported was always at the lower end of the body mass index (BMI). He states that a healthy BMI, 50% which is important to fight infections and fight inflammation. In October 2022, the child's BMI was 49%, which he reported was not a failure to thrive. The parents presented evidence of their attempts to schedule appointments for the child from May 2022 – August 2022, which were either declined or according to Dr. Abosaida, were rescheduled due to being scheduled on a day Blank did not have a CF clinic. The parents sought a second opinion regarding the X-ray and were concerned because the child had one within a few months. The parents did allow an X-ray when the child presented with complications at later appointment. Dr. Abosaida reported he was sure they had responded to the parents or had had some communication with them, but he was not able to document such.

He acknowledged that the Department made the decision that continuation of the child in the home was contrary to the child's welfare due to the parents being unwilling to provide the adequate health care. He also reported that a removal from the parents was not his decision, but one for the Department. He clarified that he "did not believe the child was getting the proper therapy at home," but he did not believe the child was in imminent danger if she were returned. He clarified that the child's risk is ongoing, but not imminent, as CF is irreversible.

██████████ who admittedly has "specific education in cystic fibrosis that all medical providers or nurses are provided, but I do not have any specialized training outside of that." The parents took the child to the hospital in July 2022, and ██████████ reported the parents were concerned and worried that the child had not been admitted. The parents had attempted to make or schedule appointments for the child that appeared to have been canceled or denied by the clinic. The parents took the child to Blank Children's Hospital in August 2022 when the child presented with concerns of her skin where a peripherally inserted central catheter (PICC) line was removed. After the parents became frustrated with what they believed to be a lack of care with the Blank clinic, they were provided with a referral to the University of Iowa CF Clinic. ██████████ made the referral, stating "because the family was trying to get care for, specialized care for Vivian and needing to have a better relationship and it seemed like they were needing a different--a second opinion or collaborating with a different special practice that's specific to CF." She reported the parents were "very interested in trying to care for her, have beneficial care for her that was as low risk as possible." Dr. ██████████ made that referral based upon her conversation with the parents and with Dr. Abosaida, being aware there were alternative options. She was also familiar with alternative and holistic medicine. The child's body mass index (BMI) on October 4, 2022 was within a normal range. The parents were not unwilling nor reluctant to follow through with that referral. Dr. ██████████ reported the parents had always been receptive to her advice to care for the child. She, as a mandatory reporter, has never had any concerns for the child and agreed that the parents had gone out of their way to provide care for the child. Dr. ██████████ reported that the parents had not failed to provide medical care for the child. Dr. ██████████ reported that she did not believe the child was in any imminent danger nor was supervision by the Court necessary because she had "not seen anything that lead me to believe that she's in any sort of danger in her parents' care." She reported that "X-rays should be used when they are medically necessary, as limited as possible." Dr. ██████████ was not aware of the reported benefits of use of salt room.

Sara Lee has been the child's primary nurse practitioner since March 2021. She does not have specialized training in cystic fibrosis. She reported that the child has consistently attended her appointments, missing only one, and that the parents have been proactive and are always loving. She reports the child is thriving and meeting her speech, mental and physical milestones. She reports the child's infection impacted her growth but that infection has cleared. The parents attended the appointment as scheduled for their second

opinion at the University of Iowa Cystic Fibrosis Clinic. The primary care provider reports the child has not been in any immediate danger. The parent's request for a different vest was denied by insurer due to a lack of information submitted in the child's records.

The child's temporary relative placement, a paternal aunt, is a mandatory reporter. She has reported the parents have provided daily care of the child while in her care. The parents have consistently given the child's her treatments, given her enzymes and provided food for her. While the child was in out of home placement, the parents continued to provide the routine care for the child. The father was spending the night with the child at the relative's home while the mother remained in the parents' home with another child. The father and relative placement shared how difficult it has been, emotionally, for the child when the father leaves the home for work. While the family center services (FCS) worker, Heather Broudeur, acknowledged that given the child's medical needs, this matter was not solely an issue of parenting, she stated that she did not observe any concerns with the parents and their care of the child during her professionally supervised interactions. She has observed lots of affection and love shown between the child and her parents.

Since the temporary removal, the parents have continued to provide care for the child, including her nebulizer treatments, medication management, medical appointments and providing enzymes. The parents have a fundamental right to care for their child. While questioning the cystic fibrosis medical staff's recommendations, they were not "unwilling or unable to provide such treatment". They continued to try to schedule appointments for the child after receiving no response or having appointments canceled by the Blank clinic. Admittedly, there was a significant breakdown of the parents and medical staff relationship. Dr. Abosaida did not believe the parents were doing enough in their care of the child, and the parents did not believe Dr. Abosaida and the Blank clinic were doing enough in its care of the child. The parents chose to seek additional treatments and alternative options, some which were recommended by the Cystic Fibrosis Foundation, that Dr. Abosaida so heavily relied upon. They also sought holistic remedies to ease the child's symptoms and reported observing the benefits therefrom. The child's response to COVID, which was not known to Dr. Abosaida at the time, more than likely attributed to the child's loss of weigh and some deterioration of her condition.

The Court made the parents aware that prior to adjudicating the child, the Court could not order the parents to engage in services, but that their engagement would be in their and in the child's best interest to do so. The parents have remained cooperative and have followed the recommendations of the Department. The parents each a completed psychological evaluation as recommended. Neither parent presented with any significant history of mental illness or mental health treatment beyond the stress of having their child removed. The parents have not changed the manner of care for the child since the child was removed from their home. The child has gained weight and is doing well. The parents have demonstrated a willingness and ability to ensure the child is getting care to address her incurable disease. Having the child remain outside of the parents' home, albeit with a relative, would cause additional emotional harm to the child. A return to the parents' home is not contrary to the child's welfare.

There is not clear and convincing evidence to support the allegations of the petition filed on August 31, 2022, alleging the child to be in need of assistance pursuant to Iowa Code section 232.96A(5), and the aid of the Court is not required. Given the type, duration, and intensity of the services provided to the family in relation to the relative risk to the child in remaining in the home, reasonable efforts to avoid removal of the child from the home have been made, which include: *child protective assessments, mental health evaluations, relative placement, FCS, parent and sibling interactions, medical care, family preservation services, and Department case management*. The Court finds that the Department has made reasonable efforts to provide for visitation or other ongoing interaction between the child and child's siblings, as required by Iowa Code section 232.108. The Court has inquired of the parties as to the sufficiency of services being provided and whether additional services are needed to facilitate the safe

return of the child to the home. The parents requested additional interactions with less supervision, which was previously granted. The parents were permitted to transport the child to appointments and have outings with the child that were either semi or unsupervised, and there continues to be no safety concerns.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter as provided in Division III of the Iowa Code Chapter 232.
2. As to removal, the burden of proof is upon the State by substantial evidence.
3. As to adjudication, the burden of proof is on the State by clear and convincing evidence.
4. The standard guiding the Court's inquiry is the best interests of the child.
5. The Court's aid is not required, and the child in interest is not a Child in Need of Assistance as set forth in the Findings of Fact.
6. This disposition is the least restrictive and most appropriate for the child.

IT IS THEREFORE ORDERED that the prior temporary removal is denied as previously stated and ordered on the record. The child shall remain in the parents' care.

IT IS FURTHER ORDERED that the Child in Need of Assistance petition filed August 31, 2022 is hereby dismissed, and the Department of Health and Human Services is relieved of any further supervision.

The parents are informed that the consequences of a permanent removal may include termination of the parents' rights with respect to the child.

Clerk to send a copy of this order to the child, child's parents, counsel of record, HHS, foster parent or foster care facility or agency, CASA, and ICFCRB.

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State of Iowa Courts

Case Number



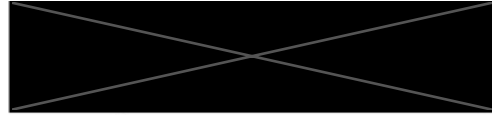
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Case Title



GOMEZ
ORDER FOR REMOVAL

So Ordered



 District Associate Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-03-04 12:48:45