No. 98-1308. [9-206] IN RE B.B.

Appeal from the Iowa District Court for Black Hawk County, Daniel Block, Associate Juvenile Judge. **AFFIRMED.** Heard by Sackett, C.J., Vogel, J., and Schlegel, S.J. Opinion by Vogel, J. Special concurrence by Sackett, C.J.

(13 pages $5.20)

Jay B. is the father of four children: Brandon, born in September of 1983, and Jason, born in June of 1985, are the product of his first marriage to Katherine T.; Keshia, born in September of 1988, and TeShea, born in January of 1995, are the product of his current marriage to wife Janice. DHS first encountered the family in 1988, when a report of physical abuse was alleged with Jay as the perpetrator and Brandon, then aged five, and Jason, then aged three, as the victims. Due to the bruises found and Jay's admission to spanking Brandon with a belt, this investigation resulted in a founded report of abuse by Jay of Brandon. After two more founded reports of abuse in which Jay admitted to spanking the children with belts or whipping them with extension cords, Jay and Janice agreed to participate in services and began attending family therapy and parent skills services. In 1997, DHS investigated another allegation of abuse of Brandon. The investigator confirmed that Brandon had bruises on his buttocks from being whipped with an extension cord by Jay. Based on the family's past history and lack of success with services, the investigator recommended that a petition be filed in juvenile court. Jay and Janice were ordered to continue participating in family therapy and skill development services. In March of 1998, DHS reported to the court that although Jay and Janice were meeting with service providers, they were being evasive and had made very little progress. An adjudicatory hearing was subsequently held, and the juvenile court determined the children to be children in need of assistance pursuant to Iowa Code section 232.2(6)(b)(2). **OPINION HOLDS:** ***I. Constitutional claims.*** Jay and Janice contend that the adjudication of their children unconstitutionally infringes on their right to free exercise of their religious beliefs in corporal punishment. However, Jay and Janice did not specifically raise a constitutional argument at trial or in their 179(b) motion and the trial court did not address any constitutional issues in its rulings. Therefore, the issue was not preserved for our review and we will not address it in this appeal. ***II. Clear and convincing evidence.*** Jay and Janice next contend that the juvenile court erred in finding clear and convincing evidence to support the adjudication. However, it is clear that Jay and Janice fully intend to continue utilizing the same methods of harsh corporal punishment to discipline their children. On our de novo review, we conclude that there was clear and convincing evidence that Brandon and Jason had been physically abused and that the remaining children in the home are imminently likely to be physically abused. This case differs from *Hildreth* because Jay and Janice have been repeatedly warned of the possible physical consequences of using belts, cords, and boards in disciplining their children. When physical injury results in this family, we must assume that they intended the natural consequences of their acts. In addition, when looking at the amount of force used compared to the gravity of the children's misconduct, there is a question as to whether Jay, in particular, physically punishes the children for purely corrective reasons. Jay admitted that the children were regularly and routinely physically punished for fairly minor infractions, such as being disrespectful, talking back, and not cleaning the house to his satisfaction. The children told investigators that physical punishment was used more often than other methods, and Brandon told an investigator that he thought Jay took out his work stress on them. There are also strong indications in this record that striking these children has taught them that aggressive behavior is acceptable. Both Brandon and Jason have apparently adopted Jay's physically aggressive method of problem-solving as evidenced by their fighting and aggressive behavior at school. While the State is not going to step in to stop parents from using corporal punishment on their children, the evidence strongly supports that Jay crossed the line from corrective to abusive action. He repeatedly used excessive force which both exceeded the limits of moderation or reasonableness as outlined in prior case law and occasionally inflicted physical injury on his children. We find clear and convincing evidence to support that the children were children in need of assistance under Iowa Code section 232.2(6)(b). **SPECIAL CONCURRENCE ASSERTS:** I concur specially. The question is whether children should be found to be children in need of assistance where (1) their parents believe spanking is an effective form of discipline, and (2) the force the parents use in imposing the discipline has resulted in the children suffering minor bruises and abrasions. The parents insist the State's action infringes on their right to the free exercise of their religious beliefs. The majority does not address the constitutional issue. I reject the parent's claim religious freedom should allow them to abuse children. However, the question remains whether the parents' choice of discipline is child abuse. These parents love their children and have provided them structure, food, clothing, and discipline. We are involved *only* because the State is contending the parents do not properly discipline their children. Not many years ago children were disciplined in homes and at school by spanking them with rulers, sticks, and belts. This was not looked upon as child abuse, but as an acceptable form of discipline. It is not the purpose of this concurrence to debate how children should be disciplined. I personally do not believe spanking children to be acceptable discipline, yet it is not my place to impose my values on others. Rather, it is my job to assess whether what happened here is serious enough to demand State intervention. Children in homes where parents never yield a stick suffer bruises and scrapes from play and sporting events, such as football, boxing, and soccer where physical contact with another that produces pain is a part of the sport itself. Had these children received the bruises and lacerations in a football game or a boxing meet, or been clobbered by a hockey stick, we would look at the injuries as normal incidents of childhood and allow an otherwise functioning family to go about their business without State intervention. Children are well-served in an intact and strong family unit. Even when State intervention is needed and brings necessary relief, it comes at a cost to the family unit and can undermine the relationship between parent and child. In our less than perfect world, all parents inflict injury, whether physical or emotional, on their children. These parents' actions have rendered hurt. If placed on a scale of one to ten, with a light slap being one and murder being ten, their actions probably ranked a two. Whether these

children grow up to hate their parents for the discipline or thank them for it is something this court is without the ability to judge. I commend the majority of the Supreme Court who, in *Hildreth v. Iowa Dep't of Human Servs.*, 550 N.W.2d 157 (Iowa 1996), approached the matter from a rational and reasonable basis. Life is not perfect, despite attitudes that with enough government regulation we will make it so. A large number of children in this state face extremely bleak and distressing circumstances and do not enjoy the love and attention these children receive from their family. While I disagree with some of the majority's conclusions and findings, I concur because I find they have correctly applied *Hildreth*.