

IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0569

IN THE INTEREST OF L.B.
Minor Child.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR CRAWFORD COUNTY
THE HONORABLE MARY JANE SOKOLOVSKE

APPLICATION FOR FURTHER REVIEW
(Iowa Court of Appeals Decision: September 1, 2021)

PURSUANT TO IOWA R. APP. P. 6.201 THE APPELLANT CERTIFIES
THAT THE MATERIAL CONTAINED IN THIS PETITION ON APPEAL IS
CONFIDENTIAL PURSUANT TO
IOWA CODE SECTION 232.147 (2019)

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QUESTION PRESENTED FOR REVIEW

- I. Whether the Court was in error when it terminated the parental rights of the Minor Child's Father pursuant to Iowa Code § 232.116(1)(f) and (g) when no Child in Need of Assistance Order was in force at the time of the Termination.

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STATEMENT SUPPORTING FURTHER REVIEW

This case presents an important question of law that has not been, but should be, settled by the Supreme Court. Iowa R. App. P. 6.1103. This case stems from a Child, L.B., who was involved with the Department of Human Services and adjudicated a Child in Need of Assistance on April 10, 2019 in JVJV025894. That case culminated in a Permanency Order being entered by the Court on November 25, 2019 placing the Child into a guardianship. The guardianship was then transferred to probate court and Letters of Appointment were issued to the guardian. On January 3, 2020, the Court entered an Order for Discharge terminating the Permanency Order, cancelling future hearings, and discharging L.B. from the jurisdiction of the Juvenile Court.

In June of 2020, L.B. came to the attention of the Department of Human Services once again. On June 12, 2020, the Woodbury County Attorney's Office filed a new Petition alleging L.B. to be a Child in Need of Assistance in JVJV026623. The Court never adjudicated L.B. to be a Child in Need of Assistance in case no. JVJV026623. On June 15, 2020, the Woodbury County Attorney's Office filed a Petition for the Termination of Parental Rights of L.B.'s biological parents.

After many continuances due to COVID-19 and hearings on

Motions made by L.B.'s parents, the Court held a combined Adjudication and termination of parental rights hearing. The court's Order resulting from that hearing did not adjudicate L.B. to be a Child in Need of Assistance, but instead the Court wrote, "Because the Court has determined that termination is appropriate, the Court declines to adjudicate [L.B.] a second time in JVJV026623 at this time." The Court then proceeded to terminate Brian Bolles's parental rights as it pertains to L.B. pursuant to 232.116(1)(f) and (g) of the 2019 Iowa Code. All of those code provisions require that the Child be Adjudicated a Child in Need of Assistance pursuant to Section 232.96.

STATEMENT OF THE FACTS

L.B. was born in 2014. Her father was in federal custody from 2014 through 2020. For most of her life, L.B. lived with her mother. In 2019, though, the Iowa Department of Human Services (DHS) learned the mother had assaulted the maternal grandmother in the presence of L.B. The mother also tested positive for methamphetamine.

On May 11, 2019, L.B. was adjudicated as a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(a), (b), (c)(2), and (n) (2019). L.B. was placed with her maternal grandmother. In November 2019, the Parties stipulated "that permanency for" L.B. "would

be achieved by establishing a guardianship” with the maternal grandmother. Also in November, the juvenile court entered a permanency order “pursuant to said stipulation” appointing the maternal grandmother as guardian and placing L.B. in her custody.

In December, the probate court issued letters of appointment to the maternal grandmother. The juvenile court then entered an order on January 7, 2020 discharging L.B. from the jurisdiction of the Juvenile Court, in its Order, the Juvenile Court Ordered, “IT IS THEREFORE ORDERED, that the permanency order entered herein is hereby terminated, the child is discharged from the jurisdiction of the Juvenile Court, the Iowa Department of Human Services is relieved of any further duties of supervision in the matter, counsel of record is hereby relieved of further duties of representation herein, all hearing scheduled before the juvenile court herein are canceled, and the juvenile court case(s) closed.”

Eventually, a conflict arose between the Guardian, L.B.’s grandmother, and Laresa Jones, Mother. On one occasion, the mother refused to return L.B. Local law enforcement sided with the mother despite the grandmother’s status as the child’s lawful guardian.

At that point, the State obtained an ex-parte removal order from the juvenile court and the State also filed a second CINA petition and a petition

to terminate the parental rights of both parents. The juvenile court heard evidence on both at a combined hearing for adjudication and termination of parental rights. The court entered an order terminating the mother's parental rights, pursuant to Iowa Code section 232.116(1)(f) and (l) (2020), and the father's parental rights, pursuant to section 232.116(1)(f) and (g).

The juvenile court found that "Because the court concluded termination was appropriate, the court declined to adjudicate L.B. as CINA for a second time at this time." All grounds for the termination of parental rights require the Child to be adjudicated a Child in Need of Assistance.

ARGUMENT

The Trial Court and the Court of Appeals erred when it terminated the parental rights of Father pursuant to Iowa Code § 232.116(1)(f) and (g) because L.B. was not adjudicated a Child in Need of Assistance.

Scope and Standard of Review: The proper standard of review for termination decisions is *de novo*. *In re. P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

Preservation of Error: Appellant raised the issue at both the District Court level and the Court of Appeals.

Discussion:

The District Court and the Court of Appeals erred when it terminated the parental rights of Father pursuant to Iowa Code § 232.116(1)(f) and (g)

because L.B. was not adjudicated a Child in Need of Assistance.

“The juvenile court shall have exclusive jurisdiction over proceedings under this chapter to terminate a parent-child relationship and all parental rights with respect to a child. No such termination shall be ordered except under the provisions of this chapter if the court has made an order concerning the child pursuant to the provisions of subchapter III [child-in-need-of-assistance (CINA) proceedings] and the order is in force at the time a petition for termination is filed.”

Iowa Code § 232.109(2020)(Emphasis added). A termination of parental rights Petition may be sustained under Iowa Code § 232.116(1)(f) if:

- (1) The child is four years of age or older.
- (2) *The child has been adjudicated a child in need of assistance pursuant to section 232.96.*
- (3) The child has been removed from the physical custody of the child’s parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child’s parents as provided in section 232.102.

Iowa Code § 232.116(1)(f) (emphasis added). A termination of parental rights Petition may be sustained under Iowa Code § 232.116(1)(g) if:

- (1) *The child has been adjudicated a child in need of assistance pursuant to section 232.96.*
- (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.
- (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

Id. § 232.116(1)(g) (emphasis added). To decide which view is correct, we look to the words of the statute. In re H.W., 961 N.W.2d 138, 141 (Iowa Ct. App. 2021) (“We find the meaning of chapter 232 in its words.”). When the legislature defines its words, “those definitions bind us.” In Re. J.C., 857 N.W.2d 495, 500 (Iowa App. 2015). Otherwise, we generally give a statute’s words “their common, ordinary meaning in the context within which they are used.” H.W., 961 N.W.2d at 142–43 (citation omitted). The context of a statute is an important consideration in the search for legislative intent because “[w]ords may have different meanings when used in the context of a special subject.” *Andover Volunteer Fire Dept. v. Grinnell Mut. Reinsurance Co.*, 797 N.W.2d 75 (Iowa 2010)(Citing 2A Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 47:27, at 443 (7th ed.2007)).

The Trial Court and the Court of Appeals erred when it terminated the parental rights of Father pursuant to Iowa Code § 232.116(1)(f) and (g) because L.B. was not adjudicated a Child in Need of Assistance. Iowa Code § 232.109 (2020), states that “... no such termination shall be ordered except under the provisions of this chapter if the court has made an order concerning the child pursuant to the provisions of subchapter III (CINA Proceedings) and the order is in force at the time a petition for termination is

filed.” The Court in this case had not made an order which was in force at the time the Petition was filed, no CINA Order in force at the time the Court held the termination hearing, and ultimately, the Child was not subject to an Order under the CINA provisions in the termination Order.

Iowa Code § 232.116(1)(f) and Iowa Code § 232.116(1)(g) requires that a child has been adjudicated a child in need of assistance pursuant to section 232.96 before it can terminate parental rights. See Iowa Code § 232.116(1)(f) and (g). In this case L.B. was not adjudicated a Child in Need of Assistance. (TPR ORDER, p.9). Even though L.B. had been *previously adjudicated* a Child in Need of Assistance, L.B. had been released from the jurisdiction of the juvenile court and the previous CINA adjudication had been terminated and discharged. See generally, *Order* dated January 7, 2020 Woodbury County Case No. JVJV025894.

The juvenile court and the court of appeals relied upon the *previous* adjudication in the *previous* CINA case, which was discharged pursuant to the above-referenced Order, to satisfy that element. To determine whether that is correct, we look to the meaning of the words and give them their plain meaning. We look to the context surrounding the statute to determine the legislative intent. The legislature did not use the phrase, “has been *previously adjudicated* a Child in Need of Assistance” in Iowa Code section

232.116(1)(f) or (g), instead the legislature used the phrase, “has been adjudicated a child in need of assistance....” We do, however, see the phrase, “has been *previously adjudicated* a child in need of assistance...” in other parts of Iowa Code Chapter 232, including in Iowa Code § 232.116(1)(d). Iowa Code § 232.116(1)(d) states, “The Court has *previously adjudicated* the Child to be a child in need of assistance....” The use of the phrase in the same chapter of the Iowa code gives the indication that the legislative intent was not to rely upon a *previous adjudication* for termination of parental rights under Iowa Code § 232.116(1)(f) or (g) but rather instill a requirement that the child is currently under a CINA Order which is in force.

Additionally, to adopt the argument of the county attorney and the Court of Appeals would cause uncertainty and a lack of permanency for families which have successfully discharged from a child in need of assistance action, by subjecting them to a termination of parental rights proceeding despite the family being successfully rehabilitated and having the case discharged. The argument posed by the county attorney and the Court of Appeals’ rationale would cause uncertainty and a lack of permanency in the context of a juvenile court using a guardianship to establish permanency for the child because to adopt the county attorney’s argument would cause

the family to be subject to a termination of parental rights at any time even though a guardianship had been established.

CONCLUSION

For the reasons stated above, the Appellant/Applicant requests that this Supreme Court reverse the decision of the Court of Appeals and the District Court and remand the case back to District Court for further proceedings. In the alternative, the Appellant requests that this Supreme Court Order further briefing of the issues presented herein and grant any other such relief as this Supreme Court deems necessary and appropriate.

NOTICE OF ORAL ARGUMENT

Counsel requests to submit this case without oral argument.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.1103(4) & 6.903(1)(g) because:

This brief contains 2,338 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.1103(4).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in proportionally spaced typeface using Microsoft Word in Times New Roman font, size 14.

CERTIFICATE OF FILING AND SERVICE

I certify I electronically filed this Application for Further Review on September 10, 2021, with the Clerk of the Iowa Supreme Court, service to be made electronically on all parties.

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