

**IN THE COURT OF APPEALS OF IOWA**

No. 0-448 / 10-0710

Filed July 14, 2010

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

**B.H., Father,**  
Appellant,

**L.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,  
Judge.

A mother and a father separately appeal from a juvenile court order  
continuing their child in the custody of the Iowa Department of Human Services  
for placement in foster care. **AFFIRMED ON BOTH APPEALS.**

Patricia Zamora of Zamora, Taylor, Woods & Frederick, Davenport, for  
appellant-father.

Cheryl Fullenkamp, Davenport, for appellant-mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Michael Walton, County Attorney, and Julie Walton, Assistant County  
Attorney, for appellee.

Jack Dusthimer, Davenport, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.\* Tabor, J.,  
takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MILLER, S.J.**

L.B. is the mother, and B.H. the father, of L.H., born in early March 2009. L.B. and B.H. separately appeal from an April 2010 juvenile court dispositional review order continuing L.H. in the custody of the Iowa Department of Human Services (DHS) for continued placement in foster care. We affirm on both appeals.

In this child in need of assistance (CINA) proceeding, L.H. was initially removed from the physical custody of L.B. and the legal custody of his parents and placed in the custody of the DHS for placement in foster care in July 2009. He was returned to the physical and legal custody of L.B. in September 2009, when she entered inpatient substance abuse treatment, a program she successfully completed in December 2009. L.H. was thereafter again removed from L.B.'s physical and legal custody and placed in the custody of the DHS in February 2010 when L.B. relapsed and used crack cocaine. Following an April 2010 dispositional review/permanency hearing the juvenile court continued for two months, subject to stated conditions, hearing on requests by the State and L.H.'s guardian ad litem for waiver of reasonable efforts; continued for two months, subject to the stated conditions, the permanency hearing; and ordered that L.H. continue in DHS custody and foster care placement. L.B. and B.H. separately appeal.<sup>1</sup>

Our review of child in need of assistance proceedings is de novo. We review both the facts and the law, and we adjudicate rights anew. Although we give weight to the juvenile court's factual

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<sup>1</sup> Neither the State nor either parent suggests that the juvenile court's order is in whole or in part an interlocutory order.

findings, we are not bound by them. As in all juvenile proceedings, our fundamental concern is the best interests of the child.

*In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001) (internal quotations and citations omitted).

L.B. claims the juvenile court erred in continuing L.H. in foster care rather than returning him to her care, arguing she has met DHS requirements by completing a residential treatment program. B.H. similarly claims the court erred in not returning L.H. to L.B., arguing that given L.B.'s "serious drug use" a relapse is not an unexpected occurrence and that L.B. was making arrangements for long-term placement in a substance abuse treatment facility.<sup>2</sup> For the reasons that follow, we find no merit to these claims.

Shortly after L.H.'s birth concerns existed that L.B. was using crack cocaine while acting as the caretaker for L.H. The DHS's child protection worker's investigation and attempts to work with L.B. were somewhat thwarted by L.B. failing to return calls, failing to keep appointments, providing inaccurate information concerning her residence, providing inaccurate information concerning L.H.'s medical care, and providing inaccurate information concerning her past and present substance abuse treatment. L.B. had lengthy history of substance abuse, and a history of domestic violence in her relationships.

L.B. did admit to the child protective worker that she had used crack cocaine while pregnant with L.H. L.B. had been unsuccessfully discharged from

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<sup>2</sup> The State points out that at the hearing resulting in the challenged order neither L.B. nor B.H. requested L.H.'s immediate return to L.B., and suggest that thus neither of them has preserved error on their present claims. While the State is arguably correct, we prefer to address the merits of the claims raised.

substance abuse treatment in February 2009, and had not sought further substance abuse treatment. L.B. has eight older children, but because of her history of ongoing substance abuse none of them were in her physical custody. B.H., with whom L.B. maintained a relationship, has a history of drug-related criminal charges, including two such charges in 2008 and one in March 2009, and has a history of anger management problems.

As a result of the existing concerns and L.B.'s lack of cooperation, the State filed a CINA petition in May 2009. In June 2009 the juvenile court issued an ex parte order that L.H. be removed from parental custody and placed in the custody of the DHS. L.H. apparently could not be located, and in July 2009 the court ordered that L.B. produce L.H. to the DHS or risk being held in contempt of court. L.B. thereafter surrendered L.H. to the DHS. Following a temporary removal hearing, in July 2009 the court ordered L.H. placed in DHS custody for foster care.

In September 2009 the juvenile court adjudicated L.H. to be a CINA. By then L.B. once again had begun substance abuse treatment, as an inpatient. The juvenile court then placed L.H. in L.B.'s custody, provided that L.B. continue in the inpatient program and successfully complete it. The court ordered that L.H.'s parents not remove him from the State of Iowa without prior approval by the court.

In an October 2009 dispositional order the juvenile court found that L.H. remained a CINA. The court approved a DHS case plan and ordered L.H.'s parents and others involved in the case to comply with it. The case plan

required, among other things, that B.H. meet with the service provider and cooperate with a substance abuse evaluation and follow any resulting recommendations. L.B. was at the time successfully participating in and cooperating with her inpatient substance abuse treatment program.

In December 2009 L.B. was successfully discharged from her inpatient program. However, as of February 2010, in violation of juvenile court orders, L.B. and B.H. had removed L.H. from Iowa and were living out of state. L.B. was not keeping scheduled appointments with the service provider; was violating the established safety plan by allowing B.H. to have unsupervised visits with L.H.; was failing or refusing to keep appointments for outpatient substance abuse treatment; had been unable or unwilling to obtain employment or stable housing; and was refusing to voluntarily re-enter a substance abuse treatment program. L.B. had recently voluntarily committed herself for mental health treatment because of thoughts of self-harm. A hair stat test performed on L.H. was positive for a high level of cocaine metabolites. B.H. had at all times refused to cooperate with the DHS or participate in ordered services such as substance abuse evaluation and anger management classes.

In February 2010 L.H. was again removed from L.B. and placed in DHS custody for placement in foster care. As of the April 2010 hearing and order L.B. was discussing with the DHS the possibility of re-entering an outpatient substance abuse treatment program, but had taken no concrete steps to do so. B.H. continued his refusal to cooperate or participate in any ordered services.

The juvenile court concluded that because of the circumstances there was a risk of continued adjudicatory harm to L.H. if then placed in the home of his parents, and that such placement at that time would therefore be contrary to his welfare. Upon our de novo review, we fully agree with the juvenile court and thus affirm its decision and resulting order.

**AFFIRMED ON BOTH APPEALS.**