

**IN THE COURT OF APPEALS OF IOWA**

No. 1-011 / 10-1997  
Filed February 9, 2011

**IN THE INTEREST OF W.B.,  
Minor Child,**

**K.A.B., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Dubuque County, Thomas Straka,  
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Stuart G. Hoover of Blair & Fizsimmons, P.C., Dubuque, for appellant  
mother.

Briane Kane, Dubuque, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Ralph Potter, County Attorney, and Lyle R. Galliard, Assistant  
County Attorney, for appellee State.

Patricia M. Reisen-Ottavi, Dubuque, for appellee minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

**DANILSON, J.**

Kelly is the mother of W.B., born in March 2008. She appeals from the termination of her parental rights pursuant to Iowa Code section 232.116(1)(h) (2009) (child under three years of age; adjudicated a child in need of assistance; out of parent's custody for six of the last twelve months; and cannot be returned to parent at present time). W.B.'s father's parental rights were also terminated, but he has not appealed. Upon our de novo review, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we affirm the termination of Kelly's parental rights.

Kelly, now age thirty, has a long history of drug use and addiction. She started smoking marijuana at age fifteen and began using methamphetamine when she was seventeen or eighteen. From 1999 to 2000, she served federal prison time on a charge of manufacturing methamphetamine.<sup>1</sup> Kelly relapsed in January 2005 and was again using methamphetamine and marijuana. She was in a halfway house while pregnant with W.B. She again was using methamphetamine and marijuana in August 2008.

Because of Kelly's drug use, W.B. was removed from Kelly's care in February 2009. W.B. was subsequently adjudicated a child in need of assistance (CINA) on April 22, 2009.

Kelly participated in inpatient substance abuse treatment in June 2009 (during which time W.B. was returned to her care), then resided in a treatment facility for six months. Kelly was successfully discharged in December 2009.

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<sup>1</sup> Kelly has an older child, whom she allowed her mother to establish a guardianship for prior to her prison sentence. That child remains in the grandmother's care.

After being discharged, Kelly and W.B. moved in with Kelly's aunt and uncle, with whom W.B. had resided upon his earlier removal. Unfortunately, Kelly began using methamphetamine again in April 2010, and W.B. was removed from her custody and placed in Kelly's aunt and uncle's care. Notwithstanding, Kelly was allowed to continue to reside with them. However, in August 2010, Kelly was asked to leave the home after she was arrested for operating while intoxicated (OWI) and possession of a controlled substance.

A petition for termination of parental rights came on for hearing on November 30, 2010. Kelly requested additional time to address her substance abuse issues. In regard to her request, the juvenile court wrote:

Mother had been participating in outpatient substance abuse treatment . . . . However, a discharge report dated November 15, 2010, indicates the mother tested positive for marijuana and/or methamphetamine throughout her treatment and she was eventually unsuccessfully discharged . . . . At the time of the termination hearing, mother had not yet re-engaged herself with any type of substance abuse treatment. Given mother's ongoing active drug use, lack of current substance abuse treatment, unresolved criminal issues, and permanency already being overdue,<sup>[2]</sup> the Court finds that an extension of time would not be in the best interest of the child.

On December 3, 2010, the court entered an order terminating Kelly's parental rights pursuant to section 232.116(1)(h).

We reject Kelly's contentions that the court erred in (1) finding clear and convincing evidence to support the termination and (2) denying a six-month

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<sup>2</sup> The court noted W.B. had been out of his mother's care for seventeen of the last twenty-one months. The court found the "mother is already well beyond the time frames contemplated for permanency and is in the same position now as she was one year and nine months ago as far as her substance abuse issues." See *In re M.Z.*, 481 N.W.2d 532, 536 (Iowa Ct. App. 1991) ("Termination should occur if the statutory period has elapsed and the parent is still unable to care for the child.").

extension. The statutory grounds are clearly satisfied: W.B. is under the age of three; has been adjudicated a CINA; has been out of Kelly's custody for at least six of the last twelve months; and—because of Kelly's active drug use and unresolved criminal issues<sup>3</sup>—cannot be returned to her care at the present time. See Iowa Code § 232.116(1)(h).

We agree with the juvenile court's observation that Kelly "has not been able to free herself from the constraints of her addiction and has not been able to maintain her sobriety outside of a treatment setting for any sustained period of time."

We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up. We have also indicated that a good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

*In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (internal citation omitted).

Under these facts, termination is in the child's best interests, see Iowa Code section 232.116(2), and no factor weighing against termination in section 232.116(3) requires a different conclusion.

Finding no error, we affirm the termination of parental rights.

**AFFIRMED.**

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<sup>3</sup> At the time of the termination hearing, Kelly had pending charges for OWI and possession of a controlled substance arising from her August arrest.