

**IN THE COURT OF APPEALS OF IOWA**

No. 2-158 / 12-0071  
Filed March 28, 2012

**IN THE INTEREST OF A.J.B.,  
Minor Child,**

**A.S.B., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A mother appeals the termination of her parental rights to her child.

**AFFIRMED.**

Michael J. Lanigan of Law Office of Michael Lanigan, Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach and Kathleen Hahn, Assistant County Attorneys, for appellee State.

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**VAITHESWARAN, P.J.**

The juvenile court terminated a mother's parental rights to the youngest of her three children. The court cited Iowa Code section 232.116(1)(g) (2011) (requiring proof of several elements including proof that "the parent continues to lack the ability or willingness to respond to services which would correct the situation" and "an additional period of rehabilitation would not correct the situation") and section 232.116(1)(h) (requiring proof of several elements including proof that child cannot be returned to the parent's custody). On appeal, the mother contends the record lacks clear and convincing evidence to show she was unable to care for the child. Assuming without deciding that the mother is challenging the evidence supporting both statutory grounds, we may affirm if we find clear and convincing evidence to support either of them. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we are persuaded that Iowa Code section 232.116(1)(h) was proven. See *id.* (setting forth standard of review).

The mother came to the attention of the Iowa Department of Human Services in 2009 based on allegations that she was medically neglecting her two older children. There were also allegations that the mother and her boyfriend were using methamphetamine. The mother was subsequently arrested for possession of methamphetamine and child endangerment, and she was ultimately placed on probation.

Meanwhile, a clinician diagnosed the mother with possible Munchausen's Syndrome by Proxy, defined as "medical child abuse/pediatric condition

falsification.” The clinician provided the following opinion about the mother’s older children and her soon-to-be-born youngest child:

These children should not be returned to their mother until she accepts accountability for all the fabrications/possible inductions listed above and obtains extensive mental health and substance abuse treatment under DHS supervision. I understand [the mother] is pregnant again. Since, MSBP tends to recur with younger children as each child ages, I would have concerns that she may move her focus to her new infant with her two other children being out of her care.

The mother subsequently consented to the termination of her parental rights to the older two children.

The youngest child was born in early 2011 and was removed ten days after his birth. As grounds for the removal, the district court cited the removal of the older children as well as “ongoing concerns about the mother’s choice in relationships both romantic and ongoing family relationships.” The child was placed in foster care and was adjudicated in need of assistance.

The mother made some progress toward addressing the concerns that led to the child’s removal. She regularly submitted urine samples to her probation officer, which tested negative for the presence of illegal drugs. She also saw her longtime psychiatrist, who questioned the possible diagnosis of Munchausen’s Syndrome by Proxy, stating:

I believe that it will not be a useful effort to either prove or disprove the existence of Munchausen diagnosis. It is clear that [the mother] suffers from emotional disorder in the form of anxiety and depression, which has deep roots in her childhood with experiences of physical, emotional, and sexual abuse that she has gone through. She was not provided a healthy environment in order to grow up to be a healthy, well functioning adult.

She began seeing a therapist, who diagnosed her with mood disorder rather than Munchausen's Syndrome by Proxy and suggested that she might be able to reunify with her youngest child. The therapist was quick to add that he had not seen the mother interact with this child. But others who saw those interactions found them to be positive. Specifically, the department's social worker testified that the mother acted "lovey-dovey" toward her son, and the service provider who supervised the visits essentially reported the same thing. Additionally, the mother moved from her own mother's home into an independent trailer after the department expressed concern about the grandmother's history of drug abuse.<sup>1</sup> Finally, the mother improved her attitude toward the department's involvement in her life.

These improvements were commendable but did not tell the whole story. In the late summer and fall of 2011, the mother began associating with a high school friend who had an extensive criminal history. She was also arrested for fourth-degree theft, although there was no finding of guilt on that charge at the time of the termination hearing. Most significantly, she missed several appointments with her therapist and psychiatrist. Given her lengthy history of mental illness, the department social worker expressed particular concern with these missed appointments. She noted that the mother only attended a single therapy session in the three months preceding the termination hearing, despite the therapist's recommendation that she schedule those appointments on a bi-weekly basis. A visitation supervisor similarly testified that, while she tried to

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<sup>1</sup> The department suggested she may have been forced to move based on an eviction, but the department's social worker conceded at the termination hearing that she did not believe there had been a "formal eviction."

serve as an advocate for the mother, she had “concerns about the mother’s ability to meet her mental and physical health” needs. She stated,

I noted that she’s missed appointments and this is noted through [the mother’s] self-reporting as well as reports from the other providers, and I observed [the mother] not to follow recommendations for medical professionals, specifically the doctors’ advice regarding the care and treatment of her foot and ankle. And those two areas are highly concerning. And I explained to [the mother] that I see these to be intertwined with her ability to parent. She acknowledges that she hasn’t always been the best steward of her mental and physical health and acknowledged that she doesn’t always follow the prescribed treatment and for that reason I had told [the mother] if asked the question today I would not be able to say that [the child] could come home today. That I felt that she had made great strides from the time that I have met her but there was still much that we could still continue to improve upon.

Based on this evidence, we conclude the State proved that the child could not be returned to the mother’s custody. Accordingly, we affirm the termination of the mother’s parental rights to her third child.

**AFFIRMED.**