

**IN THE COURT OF APPEALS OF IOWA**

No. 2-282 / 12-0406  
Filed April 25, 2012

**IN THE INTEREST OF N.H.-B.,  
Minor Child,**

**C.H., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Constance Cohen,  
Associate Juvenile Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Nathaniel A. Tagtow of Pargulski, Hauser & Clarke, P.L.C., Des Moines,  
for appellant mother.

Thomas J. Miller, Attorney General, Amy Licht, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant  
County Attorney, for appellee State.

John P. Jellineck of Public Defender's Office, Des Moines, attorney and  
guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

**POTTERFIELD, J.**

A mother appeals the second decision of the juvenile court terminating her parental rights to her son. Because the factors in Iowa Code section 232.116(3)(a) (child in custody of relative) and (c) (closeness of parent-child relationship) no longer preclude termination, we affirm.

We recite the facts as we set them out in a previous appeal, *In re N.H.-B.*, No. 11-556, 2011 WL 2420857, at 2-6 (Iowa Ct. App. June 15, 2011):

C.H. is the mother and L.B. is the father of N.H.-B., born in January 2007. The parents are not married, and their relationship ended after the mother learned she was pregnant. The child primarily lived with the mother, and the father had visits with the child on some weekdays and every other weekend. Both parents have a history of substance abuse.

The mother came to the attention of the Iowa Department of Human Services (Department) in November 2009 after it was reported she had stolen and abused prescription medications while caring for the child. At that time, the father was working and living in Kentucky and would visit the child when he returned to Iowa. The mother admitted she and the father had used marijuana and prescription drugs together before the child's birth. She reported she suffered chronic vaginal pain after the child was born. From January 2007 to November 2009, the mother had approximately thirty visits to medical professionals seeking treatment of her pain, and she received prescriptions for hydrocodone, percocet, oxycodone, and vicodin, among others. The mother admitted she had snorted her pain medications to help her combat her pain faster. She further admitted she sometimes took more doses of medication than prescribed to reduce her pain.

After the Department became involved, the mother continued to minimize her use and abuse of prescription medications. The mother in November 2009 and February 2010 tested positive for methadone although she was not prescribed that medication. The mother rationalized her acquisition and use of the drug because of her extreme pain. The mother was also admitted to two different treatment facilities in the early stages of the case, but her stays in each facility were short lived.

In January 2010, the child was removed from the mother's care because the mother continued to minimize her abuse of methadone. The child was then placed in his maternal grandparents' care, with both parents receiving visitation with the

child. Services were offered to the parents, including urinalysis testing; substance abuse evaluations and treatment; family contact; family safety, risk, and permanency services; and family team meetings.

In May 2010, the child was adjudicated a child in need of assistance (CINA). . . .

The mother began making some progress. In May she admitted she had a problem with prescription medication, including an eight-year history of abusing prescription drugs, and she began seeing a therapist. In June 2010, the mother moved forward to semi-supervised visitation with the child. She began therapy for the child due to the child's anxiety. She began working two new jobs. From March 2010 to December 2010, the mother provided twenty-two samples for urinalysis that were negative for illegal substances and prescription drugs.

Nevertheless, concerns remained regarding the mother's progress. From February 16 to June 22, the mother missed four visits with the child. At some point, the mother's use of alcohol also became a concern. In July 2010, the mother requested a visit be changed from morning to afternoon because she planned to go out the night before and get "trashed" for her birthday.

A permanency hearing was held August 10, 2010, in which the Department recommended the parents be given an additional six months for reunification. The court agreed to give the parents an additional three months, stating:

Given the slow progress since the last hearing, [the child] should not have to wait six more months for permanency decisions. [The mother] is still struggling with her addiction and is not making decisions that demonstrate that providing [the child] a safe, stable environment is a priority. She is missing visits. Although she is making progress in treatment, and provides clean drug screens, she continues to consume alcohol and does not understand that this behavior is a problem. . . .

. . . .

The day after the permanency hearing, the mother was asked to provide a sample for urinalysis. Although the drug screen was negative for illegal substances and prescription drugs, the screen tested positive for alcohol, showing an alcohol level of .061 at 12:30 p.m. Thereafter, the mother's progress stagnated. In September, the mother reported drinking two vodka orange juices to cope with her pain. She also went to her dentist twice for tooth extractions and was prescribed hydrocodone at each of her appointments. The mother admitted she was not forthcoming with her substance abuse history or dependence on narcotics. In October, the mother reported she had taken two hydrocodone to

cope with her vaginal pain, rather than as prescribed for her tooth pain, and she missed a drug screen on October 13, 2010. From October 22 to December 29, she missed ten visits with the child, one to stay home with her puppy.

In November, the maternal grandparents reported the mother had passed out while caring for the child on her own. The grandmother reported that when the mother awakened, she could smell a strong odor of alcohol coming from the mother and the mother was staggering. The grandmother also reported the mother drank two drinks on Thanksgiving Day, and the mother had drunk before coming to the child's birthday party. There were also allegations that the mother had stolen two pills from the grandparents' home. During a family team meeting, the mother became confrontational with the service provider and threatened to punch the service provider in the face. The Department determined the mother's visits needed to be scaled back to fully supervised status due to the mother's "continued use of substances." On November 15, 2010, the State filed its petition to terminate the parents' parental rights.

In December, the mother reported she fell down her parents' stairs. She was prescribed oxycodone and muscle relaxers. Although she stated she had informed her doctor of her substance abuse history, the doctor, when called for verification by the Department's worker, denied the mother had reported her substance abuse history. The mother stated she did take the muscle relaxers but she flushed the oxycodone down the toilet.

A termination of parental rights trial was held and, on March 24, 2011, the juvenile court entered its order terminating the mother's parental rights.

On appeal, this court agreed that statutory grounds for termination had been proved. See Iowa Code section 232.116(1)(h) (2011) (child three or younger, previously adjudicated CINA, out of parent's custody for at least six of last twelve months, and cannot be returned to parent's custody at present time). Specifically we concluded there was clear and convincing evidence that the child could not be returned to the mother's custody at that time,<sup>1</sup> stating:

Here, as late as December, the mother obtained prescription drugs without disclosing her history of substance abuse to her

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<sup>1</sup> The mother contested only this factor of the four required to be proved.

doctor, and despite her past abuse of the medication, the mother sees no problem with her behavior. Although the mother's drug screens have been clean of prescription and illegal substances, it is clear the mother continues to make poor choices concerning her abuse of prescription medication. Her therapist acknowledged although she had made a lot of progress, the mother still had a ways to go. Additionally, after being given additional time for reunification, the mother missed numerous visits with the child, despite the child's known anxiety. She also passed out while caring for him. Under the circumstances presented, we find the State has proved by clear and convincing evidence the child could not be safely returned to the mother's care at the time of the hearing.

*In re N.H.-B.*, No. 11-556, at 10.

Nonetheless, we concluded that terminating the mother's rights was not in the child's best interests. We wrote:

It is true the mother has made some bad decisions during the pendency of the case. Her failure to advise her doctor of her past history of prescription drug use is a major concern; yet, she has not tested positive for illegal substances or prescriptions drugs since February 2010, not considering her missed drug screen in October 2010. However, since that missed drug screen, she has had clean drug screens. Although there is evidence that she has used alcohol during the case, except for one instance that the mother disputes, there is no evidence she has abused alcohol such that she cannot or will not be able to properly parent the child in the foreseeable future. The mother's therapist testified she did not believe alcohol was a problem for the mother and she believed the mother could safely parent the child. The mother is employed and hardworking.

Here, there is significant testimony concerning the mother's and the child's strong bond and relationship. Additionally, the child is in the maternal grandparents' care, and the grandmother has expressed she will continue the relationship between the mother and child provided the mother continues her sobriety. The child looks forward to visits with the mother.

We thus concluded that sections 232.116(3)(a) (child in custody of relative) and (c) (closeness of parent-child relationship) served to preclude termination despite the fact that the statutory grounds for termination had been met. Consequently,

we reversed the termination of the mother's parental rights and remanded "for further proceedings to make an effort to reunite the child with the mother." *Id.* at 14.

Following our remand, the mother experienced a traumatic incident. She continued to abuse alcohol, ignoring the effect on her ability to parent her child. The parent-child relationship we previously found as a factor weighing against termination, deteriorated significantly after missed and rescheduled visits and at least one visit while the mother was intoxicated. Another petition to terminate the mother's parental rights was filed.

Following the second termination trial on January 4 and 20, 2012, the juvenile court wrote, in part:

Unfortunately, [the mother] failed to see the Court of Appeals' decision for what it was: An opportunity to redouble her efforts to demonstrate her ability to maintain sobriety, strengthen her relationship with her son, and be a positive and nurturing person in his life. To the contrary, she appeared to believe that, because the Court of Appeals had given her parental rights back to her, that she need not do anything to retain them. At the [review] hearing on September 12, 2011, in addition to adopting the case plan recommendations, the Court ordered contact with [the mother] subject to the approval of [the child's] therapist; that [the mother's] new roommate undergo a background check; that funding for a SCRAM bracelet to detect alcohol consumption be pursued; that [the mother] provide documentation for medical conditions; and that [the mother] keep the [Department] and her attorney updated regarding contact information, due to unstable living arrangements.

. . . .  
. . . She continues to abuse prescription medications, shopping for them from a variety of providers without disclosing her history. She obtained a prescription for Percocet in the Emergency Room as recently as January 15, 2012. There is credible evidence that she stole prescription medications from a friend's mother . . . .

Although she was able to abstain from the use of alcohol while wearing a SCRAM bracelet for thirty days, she resumed drinking to excess almost immediately thereafter per her admission: the first weekend after the bracelet was removed. She then

minimized her consumption, indicating no insight whatsoever into her addiction.

. . . . .  
[The mother] testified that drinking a fifth of liquor a week is normal. Although [the mother] admitted that she was drinking more than before, she contended she had been honest . . . and that, despite a .348 BAC, she was a social drinker. She still does not believe alcohol interferes with her daily life or mental health. Despite the fact that she can only see [her child] in a professionally supervised setting, that her housing is not stable, and that her employment is sporadic at best, she perceives herself as functioning well.

The juvenile court determined there have been significant changes of circumstances since our June 2011 ruling:

[The child's] bond with his mother has been substantially weakened by her inability to meet his needs for consistency and predictability. They are no longer close. [The child] has, understandably, distanced himself emotionally from his mother after so many disappointments. Her failure to resolve her mental health and addiction problems prevent her from coping in a healthy way with life's stresses. She has had the benefit of supportive services for two years, despite herculean efforts to reunify. She is still dishonest with herself about her alcohol abuse and has no motivation to resolve it. She takes mental health medications, but refuses to see her therapist as recommended.

The juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(f) (child four or older, previously adjudicated CINA, out of parent's custody for twelve months, and cannot be returned to parent at present).

The mother appeals, contending (1) there is not clear and convincing evidence the child cannot be returned to her custody, (2) termination is not in the child's best interests, and (3) factors weigh against termination. We reject these arguments.

Upon our de novo review, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we find statutory grounds for termination exist and no factor serves to preclude

termination. This child has been out of his mother's custody for more than two years and the mother's mental health and substance abuse issues are unresolved. The mother does not deny that she continues to consume alcohol, but denies it is a problem. She has failed to complete a substance abuse evaluation. She failed to provide drug screens in November and December 2011. She refused to provide a urinalysis following a January 12, 2012 visit with her child, which ended because the visitation supervisor noted the mother smelled of alcohol and displayed signs of intoxication. The juvenile court wrote, "No professional now believes [the mother] could safely parent [the child] in the foreseeable future."

Moreover, there is no longer a strong bond between mother and child. The child has been out of the mother's custody since January 22, 2010. He is anxious and insecure. The mother's inconsistent and unpredictable contact with the child exacerbates his insecurity. He works extensively on predictability and control in his play therapy sessions with his therapist, Eileen Swoboda. Ms. Swoboda believes the child needs permanency now to promote healing and avoid long-term emotional damage.

We acknowledge that one factor that may weigh against termination is that the child is in the custody of a relative. See Iowa Code § 232.116(3)(a). But the factor no longer carries the weight it once did. We agree with the trial court's statement, "Guardianship for a child this age with the door open for an unstable parent to make efforts to disrupt the arrangement is not in his best interest." The child needs permanency and his grandparents are ready, willing, and able to provide it.



We affirm the termination of the mother's parental rights.

**AFFIRMED.**