

**IN THE COURT OF APPEALS OF IOWA**

No. 7-515 / 07-0761  
Filed July 25, 2007

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

**K.A.D., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Monroe County, William S. Owens,  
Associate Juvenile Judge.

K.D. appeals from the denial of her request for termination of placement  
and return of custody of B.T. to her. **AFFIRMED.**

Jonathan Willier, Centerville, for appellant mother.

Victoria Siegel, Ottumwa, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, and Steven Goodlow, County Attorney, for appellee State.

Mary Krafka of Krafka Law Office, Ottumwa, for minor child.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

**HUITINK, P.J.**

K.D. appeals from the denial of her request to terminate placement and return custody of her child to her. K.D. is the mother of B.T. (age fourteen). B.T.'s father, T.T., is not a party to this appeal. B.T. is currently in the custody of his paternal grandfather.

On April 19, 2006, the Iowa Department of Human Services (DHS) and a police officer investigated a report that B.T. had been left at his mother's home alone and unsupervised for an entire weekend. At the time of the investigation, K.D. still had custody of her three other children. There were allegations, which she denied, that she had also left them alone and unsupervised on other occasions. The children were placed with their respective fathers, and they are not subjects of this appeal.

B.T. was adjudicated a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(b) (parent has physically abused or neglected child (or is imminently likely to do so)) and (c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child) (2005). At a dispositional hearing on April 9, 2007, K.D. asked the district court to return custody of B.T. to her. The district court denied the request. On appeal, K.D. argues the juvenile court erred in finding that the child's placement should not be terminated and custody returned to the mother.

We review K.D.'s claims de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). "[A] placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6." Iowa Code

§ 232.102(9) (2007). When a dispositional hearing involves a parent's efforts to regain custody in a CINA proceeding, the proper issue should be whether there has been a change of circumstances since the original hearing which would warrant returning the child to the parent. *In re Welcher*, 243 N.W.2d 841, 844 (Iowa 1992). This allows the court to consider the parent's history, as it bears on the likelihood of the parent having made the adjustments necessary for the child's return, but does not allow the court to re-litigate the prior adjudicatory finding. *In re A.Y.H.*, 483 N.W.2d 820, 822 (Iowa 1992). The burden of proof is on the parent by a preponderance of the evidence. *Id.*

The district court ordered the family to participate in supervised and unsupervised visits, individual therapy for B.T., in-home and family-centered services, and a psychological evaluation and follow-up treatment for K.D. A social worker for DHS testified that she did not recommend B.T. be placed with his mother because "[K.D. had] not demonstrated stability in her personal life." The social worker also testified that K.D. visited B.T. inconsistently up until March 2007. Furthermore, K.D. had only found her part-time job two and a half weeks before the hearing and her apartment one week before the hearing. K.D. lost her driver's license for a period of time. The record also indicates that, for some period of time after B.T. was removed, K.D. did not have a telephone. In its order denying K.D.'s request to have B.T. returned to her custody the district court stated,

While [K.D.] would like to have [B.T.] placed with her, that would clearly not be in his best interests. [K.D.] has only recently moved to a new residence and has only recently obtained employment. [K.D.]'s has only fairly recently begun exercising visits on a consistent basis, and those visits are only for two-hours per week

and remain supervised. In addition, [B.T.] is very stable in his current placement, and is doing very well in school.

K.D. testified that she had her driver's license back, had rented an apartment, obtained insurance for her van and a telephone, and was holding down a job. She also testified that if she were not able to take B.T. with her to work, she had made arrangements to leave him with her mother or a neighbor. The record shows K.D. participated in a psychological evaluation as ordered. In particular, the psychologist conducting her evaluation observed that K.D. "is aware of how to be a good parent. She has, however, encountered a great deal of difficulty in actual, consistent, day-to-day implementation." The evaluation indicated that K.D. was participating in individual counseling as of September 14, 2006, and it was recommended that she continue to consistently participate in therapy. However, it is unclear from the record whether she continues to participate in individual counseling.

While K.D. has made good progress, we agree with the district court that she must demonstrate more consistent participation in services and visitation. K.D. has not shown a sufficient change in circumstances since the adjudication to warrant returning B.T. to her custody. We find it is in B.T.'s best interests to remain in his grandfather's custody until his mother has made sufficient progress in maintaining stability and participation in services and visitation. Therefore, we affirm the district court's order holding B.T. should remain in his grandfather's custody.

**AFFIRMED.**