

**IN THE COURT OF APPEALS OF IOWA**

No. 7-731 / 07-1552  
Filed October 12, 2007

**IN THE INTEREST OF A.K., Minor Child,**

**M.B.K., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Des Moines County, Mark Kruse,  
District Associate Judge.

A mother appeals a juvenile court order directing institution of proceedings to terminate her parental rights to one child and a subsequent juvenile court order terminating her parental rights to that child. **AFFIRMED.**

Peter W. Hansen of Hansen Law Office, Burlington, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Jennifer Slocum, Assistant County Attorney, for appellee.

Alan Waples of Wittkamp & Waples, Burlington, for father.

Peggy Ell, Burlington, attorney and guardian ad litem for minor child.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MILLER, J.**

Monica is the mother, and Steven the father, of one-year-old Alexis. Monica appeals an April 2007 juvenile court order directing the county attorney to file a petition seeking termination of the parental rights of Alexis's parents and an August 2007 order terminating her parental rights to Alexis. The August order also terminated Steven's parental rights to Alexis, and he has not appealed. We affirm.

Monica is the mother of not only Alexis, but also a son age thirteen, a daughter age ten, and a son age eight ("the children"). Steven is not the father of the three older children. The children came to the attention of the Iowa Department of Human Services (DHS) when Alexis tested positive for methamphetamine when born in late March 2006. During the resulting assessment Monica and Monica's other daughter also tested positive for methamphetamine.

The children were removed from Monica. Services began, with the goal of reuniting the children with Monica. The children were initially placed with Monica's father and stepmother, where the older three children have thereafter remained. Since May 30, 2006, Alexis has been in the legal custody of the DHS and in family foster care placement with one family.

In June 2006 the children were adjudicated children in need of assistance (CINA). Alexis's adjudication was pursuant to Iowa Code section 232.2(6)(c)(2) (2005) (child who has suffered or is imminently likely to suffer harmful effects as a result of a parent's failure to exercise a reasonable degree of care in supervising the child). The goal remained reuniting the children with Monica.

By the time of an early January 2007 dispositional review hearing the court-appointed special advocate (CASA) for the children recommended changing the permanency goal for Alexis from reunification with Monica to termination of parental rights and adoption. In early March 2007 the State filed an application requesting a permanency hearing. In its application the State pointed out that it would be recommending the permanency goal of reunification for Alexis be changed to adoption. The juvenile court held an extended permanency hearing on April 6, 2007. It thereafter entered detailed findings of fact, conclusions of law, and an order on April 18, 2007. The order in relevant part directed the county attorney to file a petition seeking termination of the parental rights of Alexis's parents.

The State filed a petition as directed. Following a lengthy hearing held in June and July 2007, on August 20, 2007, the juvenile court filed detailed findings and conclusions and an order terminating Monica's parental rights to Alexis pursuant to Iowa Code section 232.116(1)(h) (2007) (child three or younger, adjudicated CINA, removed from physical custody of parents at least six of last twelve months, cannot be returned to parents at present time). Monica appeals the April 18 and August 20, 2007 orders.

We review a permanency order de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003).

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Monica first claims the juvenile court erred in changing the permanency goal for Alexis from family reunification to termination of parental rights because the evidence showed that termination was not in Alexis's best interest. She points out that all parties agreed it would be in the best interest of the three older children that she be granted a three-month extension to allow her to follow through with substance abuse aftercare and to see if she could remain free from illegal drugs. She further notes that she and the DHS had agreed it would be in the best interest of all four children that she be given the three-month extension she was requesting.

Monica had abused methamphetamine and alcohol from 1994 to at least 1997. In about April and May 2006 she had participated in an intensive outpatient substance abuse treatment program, but thereafter failed or refused to attend and participate in a recommended six-week aftercare program and tested positive for methamphetamine use in July 2006. Monica had denied use of methamphetamine despite testing positive for its use shortly after Alexis's March 2006 birth and again in July 2006. Finally, after testing positive again in December 2006, in January 2007 she had acknowledged her longstanding abuse. In December 2006 Monica, against advice of her service provider, ended her visitations with Alexis and her other children for a period of some three months, ending in late March 2007.

In January 2007 the juvenile court ordered Monica to participate in substance abuse evaluation and treatment as an inpatient. She did so, for twenty-one days from late February to mid-March. She acknowledges that she

tested positive for methamphetamine use upon admission, as she had used just a day or two before entering the program in February 2007. Upon her discharge from the inpatient program her discharge summary stated her “prognosis remains guarded” and recommended that she continue treatment as an outpatient, continue mental health services for psychiatric concerns, and attend AA or NA meetings.

The DHS’s recommendation for a three-month extension before determining permanency was based on a reluctance to treat Alexis differently than the other three children, and Monica’s recent completion of the inpatient phase of substance abuse evaluation and treatment. However, by the time of the permanency hearing, almost three weeks after she had completed her inpatient stay, Monica had not began outpatient treatment. She continued to associate with Steven, who himself had an apparent problem with use of methamphetamine but refused or failed to participate in offered and available services.

Further, as pointed out by Alexis’s guardian ad litem and the State, by the time of the permanency hearing the section 232.116(1)(h) statutory grounds for termination of the parental rights of Alexis’s parents had long since been met, while the analogous grounds for termination concerning the older three children had not been met. See *C.B.*, 611 N.W.2d at 494 (“[T]he legislature incorporated a twelve-month limitation for children in need of assistance aged four and up, and a six-month limitation for children in need of assistance aged three and below.”).

Finally, as also pointed out by the guardian ad litem and State, while the older three children have been with Monica most of their lives and are bonded to

her, such was not true with Alexis. Alexis had been removed from Monica shortly after birth, was not bonded to her, and was closely bonded to her foster family with whom she had lived almost all her life.

We conclude the evidence at the April 2007 permanency hearing did not show that terminating Monica's parental rights to Alexis was not in Alexis's best interest.

Monica next claims that at the permanency hearing the juvenile court erred by utilizing an incorrect evidentiary standard in determining whether she had made sufficient progress in complying with the case permanency plan. She points out that Iowa Code section 232.104(1)(c), dealing with the permanency plan and hearing, provides in part: "[T]he court shall also make a determination as to whether *reasonable progress* is being made in achieving the permanency goal and complying with the other provisions of the permanency plan."<sup>1</sup> (Emphasis added.) The juvenile court found, in part: "In this case the Court cannot find there was any *substantial progress* for the goal of reunification by the mother." (Emphasis added.) Monica argues that because the statute requires only "reasonable progress" the emphasized language from the juvenile court's decision demonstrates that it utilized an incorrect evidentiary standard, a higher standard than required by the statute. For two reasons we disagree.

First, we conclude that "substantial" progress is in fact not a higher standard than "reasonable" progress. "Substantial" is defined as "consisting of or relating to substance; not imaginary or illusory." Webster's New Collegiate

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<sup>1</sup> The permanency goal up to the permanency hearing was reunification of Alexis with Monica, and one of the provisions of the plan was that Monica was to remain drug free and participate in substance abuse evaluation and follow recommendations for treatment.

Dictionary 1153 (1980). For progress to be “reasonable” it must at least have substance, and must be more than imaginary or illusory.

Second, as pointed out by the guardian ad litem and State, in determining whether the juvenile court utilized an improperly higher standard than required by statute we should not consider in isolation only one sentence from the court’s decision. The court also stated: “The Court cannot define progress by [Monica] as ‘substantial’ or *such that would give any finder of fact any level of confidence beyond speculation* that things would change to the point that it would be possible for the child Alexis to go home in the coming months.” (Emphasis added.) We conclude this language makes it abundantly clear the court utilized an evidentiary standard no higher than the “reasonable progress” standard of the statute.

We agree with and affirm the juvenile court’s April 18 order directing institution of proceedings seeking termination of the parental rights of Alexis’s parents.

Monica also claims that the evidence does not support the juvenile court’s finding that there were reasonable efforts to reunite her with Alexis. She states that at the time of the permanency hearing the DHS and she were in agreement that she needed inpatient treatment and to complete aftercare for substance abuse.<sup>2</sup> She also states that less than one month after her discharge from inpatient treatment “the juvenile court . . . ordered termination.”<sup>3</sup>

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<sup>2</sup> In fact at the time of the April 6, 2007, permanency hearing Monica had completed the inpatient phase of substance abuse evaluation and treatment some three weeks earlier, but had not yet started outpatient aftercare.

<sup>3</sup> In fact the juvenile court did not order termination until August 20, 2007, some five months after Monica completed inpatient treatment.

Shortly before and at the April permanency hearing the DHS recommended that Monica be given an additional three months to complete substance abuse inpatient treatment and participate in aftercare and to otherwise make progress in complying with provisions of the permanency plan. Subsequent to the permanency hearing and resulting order the DHS recommended termination. The essence of Monica's argument is that a failure to make reasonable efforts toward reunification is demonstrated by (1) the DHS's post-permanency-hearing change in recommendation concerning Alexis to recommend termination, and (2) an alleged inconsistency in the DHS recommending an additional three months to allow for progress to reunite with the three older children while recommending termination of Monica's parental rights to Alexis. We again disagree.

At the April permanency hearing it became clear that although Monica had completed inpatient treatment some three weeks earlier she had not yet arranged for or began outpatient aftercare. After beginning aftercare on April 20, 2007, Monica stopped participating less than one month later and was thereafter unsuccessfully discharged from the program. At the permanency hearing Monica claimed she had been attending "Moms Off Meth" meetings for two weeks. It became apparent she had first attended the day before the permanency hearing. She then stopped attending less than a month after the permanency hearing. Monica continued to live with Steven, who tested positive for methamphetamine use on April 11, 2007, and would not participate in substance abuse evaluation or treatment.

At the June and July termination hearing the DHS case supervisor made it clear that its caseworker's change in recommendation between the March 6 application for a permanency hearing which the DHS had instigated and the April 6 hearing, a change from recommending termination and adoption for Alexis to recommending a three-month extension, was a mistake – that the recommendation should have remained as before with respect to Alexis, termination and adoption.

The foregoing facts made it clear why the DHS, after the permanency hearing, again recommended termination with respect to Alexis. Further, as previously noted, Alexis's circumstances were completely different than those of the three older children and we find no inconsistency between a recommendation for termination as to Alexis and a three-month extension as to the other children. We conclude Monica's claim that there were not reasonable efforts to reunite her with Alexis is without merit.

Monica's remaining claim is that the State did not meet its burden to prove that at the time of the termination hearing Alexis could not be returned to her. We have above discussed and need not again describe in detail here Monica's long-standing substance abuse problem; her use of methamphetamine and denial throughout 2006; her use of methamphetamine up to her February 2007 inpatient admission and treatment; her 2006 outpatient treatment and failure or refusal to participate in a recommended aftercare program; her failure to timely commence aftercare following her February-March 2007 inpatient treatment, and her subsequent unsuccessful discharge from aftercare; and her brief and apparently incomplete and unsuccessful participate in "Moms Off Meth." In

addition, Monica has failed or refused to participate in recommended mental health treatment. Although she claims to no longer live with Steven, substantial evidence suggests contrary.

We find, as the juvenile court did, that the State proved by clear and convincing evidence that at the time of the termination hearing Alexis could not be returned to Monica without being subject to the threat of abuse or neglect that would cause her to remain a CINA.

We have found no merit to Monica's claims of juvenile court error. Upon our de novo review we agree with and affirm the decisions of the juvenile court.

**AFFIRMED.**