

**IN THE COURT OF APPEALS OF IOWA**

No. 8-852 / 08-1319  
Filed October 15, 2008

**IN THE INTEREST OF P.M.-B.,  
Minor Child,**

**P.B.B., Father,  
Appellant.**

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Appeal from the Iowa District Court for Webster County, James McGlynn,  
Associate Juvenile Judge.

A father appeals from the juvenile court's permanency order. **AFFIRMED.**

Derek Johnson of Derek Johnson Law Office, Fort Dodge, for appellant  
father.

Christopher O'Brien of O'Brien Law Office, Fort Dodge, for mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, and Timothy Schott, County Attorney, for appellee State.

Angela Ostrander of Bennett, Crimmins, Ostrander & Yung, Fort Dodge,  
for minor child.

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

**DOYLE, J.**

P.B.B. appeals from the juvenile court's permanency order that did not dismiss the case. We affirm.

P.B.B. is the father and J.M. is the mother of P.B.-M., born in July 2002. P.B.B. and J.M. separated in January 2006. Thereafter, the Woodbury County District Court entered a custody agreement concerning P.B.-M., granting both parents joint legal custody of P.B.-M., with primary physical care to P.B.B.

P.B.-M. came to the attention of the Iowa Department of Human Services (Department) in March 2006 after it was alleged that P.B.B. committed domestic abuse against J.M. in front of P.B.-M. A temporary order for P.B.-M.'s removal from P.B.B.'s custody was issued on March 30, 2006, and P.B.-M. was placed in J.M.'s custody.

On August 4, 2006, P.B.-M. was adjudicated a child in need of assistance (CINA). Following adjudication, the parents were offered services designed to transition P.B.-M. safely back into their care. J.M. was very cooperative with the Department and was taking steps to provide P.B.-M. a safe, stable, and secure home so she could be reunited with P.B.-M. However, P.B.B. made no efforts to regain custody of P.B.-M. On November 1, 2006, the juvenile court ordered that concurrent jurisdiction with the district court should be authorized to allow J.M. to petition the district court for modification of the January 2006 custody order so primary physical care could be transferred from P.B.B. to J.M. The juvenile court additionally continued P.B.-M.'s CINA adjudication, finding that clear and convincing evidence existed to support the original grounds for adjudication.

On November 13, 2007, the parties agreed to the entry of a stipulated order on the CINA dispositional review. The order stated that P.B.B. was now in prison and was unable to assume custody of P.B.-M. Although the Department recommended the case be closed, the order stated that doing so would deprive J.M. of a custodial order, and would not be in the best interests of P.B.-M. Consequently, the order stated that all parties either agreed with or acquiesced in keeping the CINA case open for a while longer with custody remaining with J.M. under the protective supervision of the Department, and with concurrent jurisdiction being authorized so that J.M. could obtain the modification of the custodial order in district court.

On December 14, 2007, P.B.B. filed a pro se motion to terminate the dispositional order, asserting the purposes of the dispositional order had been accomplished and that P.B.-M. was no longer in need of supervision, care, or treatment. The juvenile court denied P.B.B.'s motion on December 18, 2007, finding that until J.M. obtained a custodial order in district court, the purposes of the juvenile court's dispositional order had not been accomplished.

A permanency hearing was held on July 29, 2008, and P.B.B. requested that the case be closed. P.B.B. argued the district court's custody order was moot, maintaining that custody would automatically revert to J.M. because he and J.M. were married. J.M. took no position on P.B.B.'s argument, but stated it was her intention to file a motion in district court to modify the custody agreement right away.

On the same day, the juvenile court entered its order. The court found that J.M. had still not obtained a custodial order in district court, but that P.B.B.

was in prison and had been sentenced to over forty-five years. Therefore, the court entered a permanency order pursuant to Iowa Code section 232.104(2)(d)(2) (2007), transferring sole custody of P.B.-M. from P.B.B. to J.M., for placement in J.M.'s home under the protective supervision of the Department. The juvenile court again authorized concurrent jurisdiction so J.M. could obtain a custodial order in district court to modify the previous custody order, and found that P.B.-M. continued to be a CINA.

P.B.B. appeals. P.B.B. contends the district court erred in not dismissing the CINA proceeding because the evidence no longer shows that P.B.-M. is a CINA. Specifically, P.B.B. maintains that P.B.-M. is no longer a CINA because J.M. was doing well in her reunification efforts and services were no longer being provided to J.M. and P.B.B. We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005).

Here, there is a question as to whether P.B.B. preserved his argument for review, as he did not specifically raise this issue before the juvenile court. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Nevertheless, his argument fails upon the merits. J.M. does not appeal the permanency order. Consequently, we conclude that P.B.-M. is still a CINA with regard to J.M. and the juvenile court did not err in denying P.B.B.'s request for dismissal. Furthermore, there is no dispute in this case that P.B.B. was awarded primary physical care of P.B.-M. and that P.B.B. is now in prison and unable to fulfill his duties as the custodial parent. Accordingly, we conclude that P.B.-M. is still a CINA with regard to P.B.B., as P.B.B. is no longer able to supervise P.B.-M.

Accordingly, we affirm juvenile court's permanency order, which did not dismiss the case.

**AFFIRMED.**