

IN THE COURT OF APPEALS OF IOWA

No. 1-642 / 11-0756
Filed August 24, 2011

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

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

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

Appeal from the Iowa District Court for Jones County, Angeline Wilson,
District Associate Judge.

A father and mother appeal separately from the order terminating their
parental rights. **AFFIRMED.**

Ryan P. Tang of the Law Office of Ryan P. Tang, P.C., Cedar Rapids, for
appellant father.

Brandy R. Lundy of Lundy Law Office, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, and Phil Parsons, County Attorney, for appellee State.

Jessica Wiebrand, Cedar Rapids, for minor child.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

EISENHAUER, P.J.

A mother and father appeal the termination of their parental rights to their child. They contend the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The child, age seven, was adjudicated in need of assistance in November 2008 following allegations her brother engaged in inappropriate sexual contact with their five-year-old cousin while the cousin was in the mother's care. She initially stayed with her mother but was removed from the mother's care in February 2009 after it was alleged she had been leaving the child in the care of strangers while she went to bars and became intoxicated. The brother, who is not the subject of this proceeding, was returned to the father's care in April 2009. Because her brother was considered a threat, she could not be placed with the father at that time.

The State filed a petition to terminate the parents' rights in May 2010. At the pretrial conference in July 2010, all parties agreed to a trial home placement with the father, who no longer had custody of the brother. The child began the trial home placement in August 2010, but it ended one month later when the child was found by police wandering the streets in inappropriate clothing after the father failed to pick the child up after school or arrange for her care. The school reported the child has been falling asleep during her classes, had problems with bug bites and lice, and was sent to school in inappropriate clothing.

The termination hearing was held in January and February 2011, and the court entered its order terminating both parents' rights pursuant to Iowa Code

section 232.116(1)(f) (2009) on May 3, 2011. In order to terminate under this section, the State must prove by clear and convincing evidence:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(f). The only dispute is whether the State proved the child cannot be returned to the parents' custody.

Clear and convincing evidence shows the child cannot be safely returned to the mother's care. The mother has substance abuse issues and failed to consistently submit to chemical testing as ordered. It was reported she was still drinking frequently as late as the fall of 2010. The mother admitted to spending time at bars, but claimed it was only to find rides as she does not have a driver's license. The mother also continued to question whether her son had committed sexual abuse even after he admitted he perpetrated on more than one child.

We likewise find clear and convincing evidence demonstrates the child cannot be safely returned to the father's care. The trial home placement with the father demonstrates his short-comings as a parent. The child was inadequately cared for while living with the father. She frequently fell asleep in class or came to school in inappropriate clothing; on a cool morning she showed up at school in a tank top and on another occasion came wearing a dress that did not fit her, and the school had to provide her with pants. She had untreated head lice, and the

father did not always make arrangements to provide for the child's care while he was at work. For the one-month trial home placement, the majority of the child's care was provided by a woman the father had made arrangements with to provide occasional childcare. The daycare provider registered the child for school, stayed home from her job to take the child to the doctor when she was sick, and allowed the child to stay the night when the father claimed he had to work late. The father suggests he is being penalized because he is poor. However, the choices he makes, which place his own needs above those of his child, demonstrate his inadequacies as a parent. As the guardian ad litem reported, the father "did not make [the child] a priority in his life. It seems like he was only capable of parenting [the child] when it was convenient for him and did not interfere with his work or relationships with women."

More importantly, in addition to the deficiencies cited above, both parents have severe chronic substance abuse problems. Despite repeated opportunities to address their substance abuse, it continues to be an issue, which prevents them from caring for their daughter. The grounds for termination under section 232.116(1)(f) have been proved by clear and convincing evidence.

We next consider whether termination is in the child's best interests. In determining best interests, we must consider the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *P.L.*, 778 N.W.2d at 37. We conclude the child's best interests require termination.

Neither parent has maintained stable housing during the two years this case was pending. Both were dependent on others for their support and, as a

result, could not maintain stable residences. The father had moved seven times in two years—living with his girlfriend, in spite of the DHS’s directives she was not to have contact with the child, or with others—and was sometimes homeless. While the mother had lived nine or ten months with a friend and did chores in return for rent, she had only one bedroom, which she would have to share with the child. Neither parent had reliable transportation as the father did not have a vehicle and the mother did not have a driver’s license.

Although the child had been out of the parents’ care of over two years, Iowa Code section 232.116(3)(c) states the court need not terminate parental rights if clear and convincing evidence indicates termination would be detrimental to the child because of the closeness of the parent-child bond. The trial court noted the bond between the parents and the child and stated: “The sadness [the child] and her parents feel because of the termination does not overcome the likely long-term hardship and neglect she would suffer if she is returned to the care of her parents.” We agree with this assessment. At some point, the rights and needs of the child outweigh the rights and needs of the parent. *In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009). The child requires a safe, stable, and permanent home, which neither parent is able to provide.

We affirm the termination of the mother’s and father’s parental rights to their child.

AFFIRMED.