

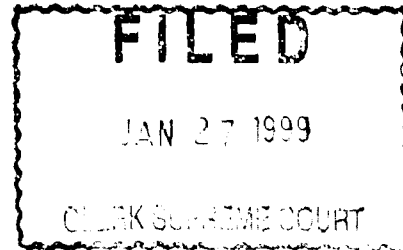
IN THE COURT OF APPEALS OF IOWA

No. 8-751 / 98-0812

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

**S.B., Mother,
Appellant,**

**R.M., Father,
Appellant.**



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

Mother and father both appeal termination of their parental rights to daughter.

AFFIRMED.

Scott A. Sobel of the Sobel Law Firm, Des Moines, for appellant-mother.

Douglas R. Smalley of Riemenschneider, Rydell & Smalley, Des Moines, for
appellant-father.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
and Cory McClure, Assistant County Attorney, for appellee-State.

David C. Backstrom, Juvenile Public Defender, Des Moines, guardian ad litem
for minor child.

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

MAHAN, J.

Shelia and Richard are the parents of Destiny, who was born in January 1997. The parents appeal the decision of the juvenile court terminating their parental rights. We affirm on appeal.

Shelia and Richard have a history of substance abuse. Destiny tested positive for methamphetamine at the time of her birth. She suffered seizures and other health problems due to her exposure to illegal drugs. She was placed in foster care when she was nine days old. Destiny was adjudicated to be a child in need of assistance.

Shelia entered a substance abuse treatment program in January 1997. She was discharged in April 1997. Later the same month, Shelia had a positive drug test. She also tested positive in May 1997. Shelia had a substance abuse evaluation in June 1997 and a relapse program was recommended. Shelia entered the program later that month. She had another positive drug test in July 1997. Shelia entered the House of Mercy in August 1997. She was asked to leave in October 1997 after drugs, drug paraphernalia, and vials of urine were found in her car. Shelia was arrested for possession of illegal substances.

Shelia has participated in individual therapy. Her therapist reported she was uncooperative most of the time. Shelia also participated in supervised visitation with Destiny. These visits generally went well, although Shelia gave Destiny inappropriate treats.

Richard has had minimal participation with services. He did not attend recommended parenting classes or individual therapy. He has seldom taken drug tests when asked to do so and some drug tests he has taken were positive for methamphetamine or cocaine. Richard has taken no steps to address his substance abuse problem. Richard has had only a few visits with Destiny and these visits have not gone well because Richard was not attuned to Destiny's needs.

Destiny has done very well in foster care. Despite initial health problems, her development is now considered to be age-appropriate. She is bonded with her foster family. The family has expressed an interest in adopting her.

In November 1997, the State filed a petition to terminate the parental rights of Shelia and Richard. After the petition was filed, Shelia entered an inpatient substance abuse treatment program. Subsequently, she entered a half-way house where she was living at the time of the termination hearing. The juvenile court terminated the parents' rights under sections 232.116(1)(c) and (g). The court found Destiny needs and deserves a stable, drug-free, loving home that can only be provided through a termination of parental rights. Shelia and Richard have each appealed.

I. SCOPE OF REVIEW. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. SHELIA. Shelia contends the State did not produce sufficient evidence to show ~~her~~ parental rights should be terminated. We find there is sufficient evidence in the record to support termination of Shelia's parental rights under section 232.116(1)(g). Destiny was under three years of age, had been adjudicated a child in need of assistance, and had been out of her parents' care for at least six months. Additionally, Shelia admitted at the termination hearing she was unable to care for Destiny at the present time.

Because we have found Shelia's parental rights were properly terminated under section 232.116(1)(g), we need not address Shelia's claims regarding other code sections. *See In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996).

Shelia claims the State did not engage in reasonable efforts to keep Destiny in the custody of a biological family member. Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997). We find no evidence Shelia made a request prior to the termination hearing for Destiny to be placed with a biological relative. Thus, we conclude she has not preserved this issue for our review.

Shelia raises three different subsections of section 232.116(3) which give the juvenile court the discretionary ability to refuse to terminate a parent's rights. Shelia

asserts there would be no need to terminate her parental rights if Destiny were placed with a relative. *See* Iowa Code § 232.116(3)(a). She also claims termination is improper because of the close bond between herself and Destiny. *See* Iowa Code § 232.116(3)(c). In addition, she points out the juvenile court need not terminate parental rights if the parent is admitted to an institution or health facility. *See* Iowa Code § 232.116(3)(e).

The factors in section 232.116(3) are permissive, not mandatory. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). It is in the juvenile court's discretion to apply the factors in the statute based on the unique circumstances of each case and the best interests of the child. *Id.*

Here, Destiny was not placed with a relative, so section 232.116(3)(a) was not applicable. Also, there was no evidence of a close bond between Shelia and Destiny. Destiny has been out of Shelia's care for almost all of her life. Furthermore, although Shelia is in a health facility for her substance abuse problems, termination is in Destiny's best interests. Shelia has made some recent progress. Some progress by a parent, however, is not sufficient. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). A parent must show an adequate overall ability to care in all custodial areas. *Id.* Shelia's past history shows she has been unable to free herself from illegal drugs. Moreover, her substance abuse counselors have noted Shelia is not fully committed to sobriety. The juvenile court did not abuse its discretion in finding it was in Destiny's best interests to terminate Shelia's parental rights.

III. RICHARD. Richard claims the State did not present sufficient evidence to support termination of his parental rights. He believes once Destiny was removed from her parents' care, there was an expectation he would have to show himself to be a "perfect" parent before she could be returned to his care.

Richard made no effort during the pendency of this case to put himself in a position to be even a minimally adequate parent for Destiny. Richard did not participate in services and took no steps to address his substance abuse problems. It is clear Destiny could not be placed in Richard's care at the present time and, thus, his parental rights were properly terminated under section 232.116(1)(g).

We affirm the decision of the juvenile court terminating the parental rights of Shelia and Richard to Destiny.

AFFIRMED.