

IN THE COURT OF APPEALS OF IOWA

No. 1-691 / 11-1073
Filed September 21, 2011

**IN THE INTEREST OF T.B. and S.B.,
Minor Children,**

**D.M.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Benton County, Jane F. Spande,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Dawn Wilson, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, David C. Thompson, County Attorney, and Jo C. Peterson,
Assistant County Attorney, for appellee State.

Patricia Lough, Vinton, for minor children.

Considered by Sackett, C.J., Tabor, J., and Huitink S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings.**

Danielle is the mother of two children: T.B., born in 1995, and S.B., born in 2002.¹ There was a previous child in need of assistance (CINA) action concerning the family that was dismissed in 2002. Danielle voluntarily received services between 2002 and 2009. A new CINA action was initiated on October 5, 2009, due to unsanitary conditions in the home. At that time the children had chronic head lice, and their school reported the children had significant hygiene issues. In addition, T.B. had behavioral problems the mother was unable to control.

On November 3, 2009, the juvenile court entered an adjudication order recognizing that all of the parties stipulated that the children were CINA pursuant to Iowa Code section 232.2(6)(c)(2) and (g) (2009). In the disposition order, entered January 11, 2010, the court determined T.B. should be placed with the Iowa Department of Human Services for purposes of relative placement with a maternal aunt and uncle. The court found T.B.'s relationship with his mother remained volatile, thereby placing his siblings at imminent risk of physical and emotional harm. S.B. was allowed to remain in the mother's care on the condition that they immediately move to the home of the maternal grandmother.²

In April 2010, Danielle had a fight with her mother and removed S.B. from the home in the middle of the night. She and the child would only return to the

¹ Danielle is also the mother of third child, born in 1998. This child lives with her father and is not part of this appeal.

² The dispositional order also adjudicated S.B. as a CINA to the interests of her father, who had not been served with notice at the time of the November 2009 adjudication order.

home when the grandmother was at work. Danielle began a romantic relationship with a man, Genio, who had a lengthy criminal history. The juvenile court entered an order on April 13, 2010, removing S.B. from the mother's care and placing her in the care of a maternal aunt.

In June 2010 T.B. became physically aggressive with his aunt and uncle and ran away from their home. He was placed in a youth shelter for a period of time. He was returned to the care of the aunt and uncle, but ran away again. T.B. was placed in the home of the maternal aunt who was also caring for S.B. His behaviors have greatly improved while in this placement. S.B. also thrived in this home.

Danielle's situation regressed instead of progressed. She was homeless, unemployed, and without transportation. At times she lived under a bridge. Occasionally, Danielle attended visitation with bruises on her face or hickeys, but denied being in a relationship. She and Genio were facing criminal charges for forgery and burglary. Danielle did not participate in any services to meet her mental health needs.

On April 4, 2011, the State filed a petition to terminate Danielle's parental rights. At the time of the termination hearing, Danielle had become involved with a faith-based program and appeared to be benefiting from that program. She denied being in a relationship with Genio, but admitted she visited him in jail and that she believed he was "a good man." The juvenile court terminated Danielle's parental rights pursuant to section 232.116(1)(f) (2011) (child four or older, CINA, removed from home for at least twelve months, and child cannot be safely returned home). The court found, "[b]ased upon her past history of instability in

relationships, employment and housing it is likely these children if returned to Danielle . . . would chronically face exposure to persons and lifestyles placing them at great risk of physical, emotional and mental harm.” The court concluded termination of Danielle’s parental rights was in the children’s best interests. Danielle appeals the termination of her parental rights.

II. Standard of Review.

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Clear and convincing evidence is needed to establish the grounds for termination. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Sufficiency of the Evidence.

Danielle contends there is not clear and convincing evidence the children cannot be returned to her care. Section 232.116(1)(f) requires the State to prove by clear and convincing evidence that the children could not be returned to the custody of the parent at the present time. In her appellate brief, however, Danielle admits the children cannot be returned to her care immediately. She states she is making positive changes in her life and the children could be returned to her care soon.

Essentially, Danielle is asking for more time to reunite with her children. Patience with parents can soon translate into intolerable hardship for their children. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). When the statutory time standards found in section 232.116 are approaching, and the parent has made only minimal progress, the child deserves to have termination of parental rights

promptly pursued. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). At some point, the rights and needs of the child rise above the rights and needs of the parents, and the legislature through section 232.116 directs us to that point. *Id.*

On our de novo review, we conclude there is clear and convincing evidence in the record to support termination of Danielle's parental rights under section 232.116(1)(f). The evidence clearly shows the children could not be returned to Danielle's care at the present time. Danielle does not have the ability or resources to care for the children. She has continued to live an unsafe and unpredictable lifestyle that would be extremely detrimental to the well-being of the children.

IV. Reasonable Efforts.

Danielle claims the department did not engage in reasonable efforts to return the children to her home as quickly as possible. The State has an obligation to make reasonable efforts, but it is the 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 Ct. App. 1997). Danielle did not request any additional or different services prior to the termination hearing. We conclude she has not preserved this issue for our review. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

V. Best Interests.

Finally, Danielle asserts the termination of her parental rights was not in the best interests of the children. She states that she has a close bond with the children and again asserts that she was addressing her problems. In considering

best interests under section 232.116(2) we “give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We conclude termination of Danielle’s parental rights is in the best interests of the children. Danielle has demonstrated she is unable to meet the needs of the children.

We affirm the decision of the juvenile court terminating Danielle’s parental rights to these two children.

AFFIRMED.