

IN THE COURT OF APPEALS OF IOWA

No. 8-345 / 08-0399

Filed May 14, 2008

IN THE INTEREST OF S.C., Minor Child,

J.L.C., Father,
Appellant,

B.J.C., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A father and mother appeal from the order terminating their parental rights
to their daughter. **AFFIRMED ON BOTH APPEALS.**

Cory Goldensoph, Cedar Rapids, for appellant mother.

Henry M. Keyes, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Rebecca A. Belcher,
Assistant County Attorney, for appellee.

Annette Martin, Cedar Rapids, guardian ad litem for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Jimmy and Bobby, the father and mother of Shelli, appeal from the juvenile court order terminating their parental rights to their daughter. Bobby contends the State did not prove the statutory grounds for termination. Jimmy contends (1) the State did not prove Shelli could not be returned to her mother's care, (2) termination is not in Shelli's interest, (3) the court abused its discretion in terminating his parental rights because Shelli was in the care of a relative, and (4) the State did not make reasonable efforts to maintain the parent-child relationship. We affirm on both appeals.

Shelli, born in January of 2004, was removed from her parents' care in December of 2006 when they were arrested for drug possession and child endangerment. She initially was placed with her maternal grandmother, later was moved to foster care for a short time, then placed with her maternal aunt, where she remained at the time of the termination proceeding in October of 2007.

In its February 26, 2008 termination order, the court terminated both parents' parental rights under Iowa Code sections 232.116(1)(h) and (l) (2007), based on findings both had chronic substance abuse problems and Shelli could not be returned home at that time.

Our review is de novo. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007). We give weight to the findings of the juvenile court, but are not bound by them. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). When the juvenile court terminates parental rights on more than one statutory ground, we may affirm if

any of the grounds are supported by clear and convincing evidence. A.S., 743 N.W.2d at 867.

The Mother. Bobby contends the statutory grounds for termination are not supported by clear and convincing evidence. She argues the State did not prove Shelli could not be returned to her care as provided in section 232.102. She further argues her six months of sobriety prior to the termination hearing shows she “is dedicated to leading a sober lifestyle in order to provide a safe home for Shelli,” and “no prognosis in the record [indicates her] addiction should prevent Shelli being returned to Bobby Jo’s custody.” She acknowledges “relapse is always a possibility.”

Under section 232.116(1)(h)(4), termination is proper if “the child cannot be returned to the custody of the child’s parents as provided in section 232.102 at the present time.” At the time of the termination hearing, Bobby and Jimmy, whose marriage has included domestic violence, drug use, and extramarital affairs, were still together as a family. Although Jimmy is Bobby’s only source of support, he also creates a risk of further domestic violence and a relapse into drug use. Although Bobby indicated her willingness to separate from Jimmy so she could have Shelli returned to her care, she also believes he is a good father, husband, and provider. Shelli could not be returned to Bobby’s care at the time of the termination hearing. We affirm the termination of Bobby’s parental rights under section 232.116(1)(h).

The Father. Jimmy raises four claims on appeal. He contends (1) the State did not prove Shelli could not be returned to Bobby’s care, (2) termination is not in Shelli’s interest, (3) the court abused its discretion in terminating his

parental rights because Shelli was in the care of a relative, and (4) the State did not make reasonable efforts to maintain the parent-child relationship.

The record is clear that Jimmy has a chronic drug abuse problem and does not intend to change. Shelli could not be returned to Jimmy's care. Even if we had found Shelli could be returned to Bobby's care, as Jimmy contends, termination of Jimmy's parental rights would be appropriate under sections 232.116(1)(h) and (l).

Safety and the need for a permanent home are the primary concerns when determining a child's best interests. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Shelli's parents cannot provide her with a safe, permanent home. To continue to keep her in a temporary or even a long-term foster home is not in her best interests, especially when she is adoptable and her aunt is willing to adopt her. *See In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). Termination of Jimmy's and Bobby's parental rights better serves Shelli's interests.

Under section 232.116(3)(a), the juvenile court need not terminate the parental relationship if a relative has legal custody of a child or if, based on the closeness of the parent-child bond, termination would be harmful to the child. Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). It is within the sound discretion of the juvenile court, based on the unique circumstances before it and the best interests of the child, whether to apply this section. *Id.* We find the juvenile court did not abuse its discretion in terminating Jimmy's parental rights

even though Shelli was placed with a relative and she has a bond with her parents.

We find no merit in Jimmy's contention the State did not make reasonable efforts to reunify the family because it did not allow unsupervised visitation or a trial home placement. The State need not place the child at risk in order to meet the reasonable efforts requirement.

AFFIRMED ON BOTH APPEALS.