

**IN THE COURT OF APPEALS OF IOWA**

No. 8-636 / 08-1063  
Filed August 27, 2008

**IN THE INTEREST OF A.C., A.C., E.K. and K.C.,  
Minor Children,**

**S.D.C., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Humboldt County, Kurt J. Stoebe,  
District Associate Judge.

A mother appeals from the order terminating her parental rights to four  
children. **AFFIRMED.**

Dani Eisentrager of Eisentrager Law Office, Eagle Grove, for appellant  
mother.

Marcy Lundberg, Fort Dodge, for appellee father of E.K.

Christopher O'Brien, Fort Dodge, for appellee father of K.C.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, and Jennifer A. Benson, County Attorney, for appellee State.

Lynn Seaba, Goldfield, guardian ad litem for minor children.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

**POTTERFIELD, J.**

Shelby is the mother of twin daughters, Alexa and Acacia, (born in 1999), and two sons, Kashdon (born in 2001), and Ethan (born in 2005). The family has been involved with the Iowa Department of Human Services (DHS) since 2002 when Shelby left the children with her parents and moved to Florida. She had become homeless and apparently was using drugs. The two oldest children were adjudicated to be in need of assistance (CINA) and the State later filed a petition seeking to terminate Shelby's parental rights. Shelby improved her parenting skills, participated in substance abuse treatment, and obtained a job and housing. The court dismissed the petition in 2003, and closed the CINA case in 2004.

In the fall of 2006, the family again came to the attention of DHS. The children had numerous tardies at school, and were reportedly left unattended in the front yard of their home. Shelby failed to comply with voluntary services, including drug screens. On December 13, 2006, the juvenile court removed all four children from Shelby's care and adjudicated them CINA pursuant to Iowa Code section 232.2(6)(c)(2) (2005). DHS found Shelby's progress in addressing her drug use and other issues to be insufficient. The State filed a petition on January 24, 2007, this time seeking termination of Shelby's parental rights to all four children. At trial on the petition, Shelby requested the court to continue the permanency determination for six months in order to give her more time to be in a position to care for the children. Denying this request, the court terminated her parental rights to all four children under sections 232.116(1)(d), (e), (f), (h), and (j). Shelby appeals from this order.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interests of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). While the district court terminated the mother's parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

*Reasonable Efforts.* Shelby first maintains DHS failed to make reasonable efforts to reunify her and the children. See *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa Ct. App. 1993). While we question whether this issue has been preserved for appellate review, we nonetheless reject this contention. DHS has been involved with Shelby and the family since 2002. Throughout the pendency of this case, DHS has offered Shelby an extensive list of services targeted to the problems that led to the children's removal. Many of those services were intended to address Shelby's substantial drug use, while others were in the area of parenting and counseling services. Her participation in those services was sporadic and largely unsuccessful; she has had several drug relapses and continues to use alcohol. Shelby signed a "contract of expectations" with DHS. Despite the clear goals and expectations set forth in that document, Shelby failed to make the effort necessary to succeed.

*Statutory Basis for Termination.* Shelby asserts the record lacks clear and convincing evidence to support termination under any of the code provisions

cited.<sup>1</sup> Upon our de novo review of the record, we conclude termination was appropriate under Iowa Code section 232.116(1)(d), which requires proof that the child, or another child in the family, has been adjudicated CINA, and that subsequent to the CINA adjudication the parents were offered services , but that despite the receipt of those services the circumstances which led to adjudication continue to exist.

The circumstances that led to the children's CINA adjudication were Shelby's substance abuse and lack of supervision of the children. Those two themes continued to dominate throughout the CINA proceedings, and eventually led to the termination of her parental rights. Shelby was frequently uncooperative with drug screens, experienced significant relapses, and at one time indicated that while she did not do "hard drugs," marijuana was "no big deal." On this issue, we defer to the juvenile court's credibility-infused finding that it did "not believe Shelby's assertions that she is 'one hundred percent committed to sobriety' or that she has changed." In addition, Shelby continues to associate with individuals with checkered pasts. At the time of the termination hearing, she was dating an individual on lifetime parole for felony drug offenses.

*Best Interests.* Shelby also claims termination is not in the best interests of the children. We disagree. Based on the history that has repeated itself throughout the lives of these children, Shelby simply has yet to make the changes to her life that would ensure the children's needs would be met in her care. Nor has she demonstrated a basic commitment to caring for her children.

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<sup>1</sup> In this section, we also address Shelby's claims that the circumstances leading to adjudication no longer existed, that she has addressed her substance abuse issues, and substantially complied with the case plan.

Between July 25, 2007, and December 25, 2007, she failed even to visit the children. This is not the action of a parent fully committed to reunification or one with the best interests of the children in mind.

Shelby admits that she presently is unable to care for the children, instead asking for an additional six months in which to be ready. As the juvenile court found, there is little reason in Shelby's history to believe that she will ever be in a position to safely care for her four children. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.").

*Separation of Children.* Finally, we address Shelby's contention that it is not in the best interests of the siblings to be separated from each other. At the time of the termination hearing, two of the children were placed with Shelby's mother and step-father, while the two other were placed with family friends. The girls had been separated from the boys since January, 2007. Our supreme court has, indeed, held that brothers and sisters should be kept together whenever possible. *In re L.B.T.*, 318 N.W.2d 200, 202 (Iowa 1982). However, the paramount concern must be the children's best interests. As discussed above, termination of Shelby's parental rights is clearly in the best interests of the children, who already have waited too long to be reunited with their siblings and their mother. Moreover, as the juvenile court notes, the children have thrived in their respective placements even though they have been separated. We therefore reject this claim and affirm the termination of Shelby's parental rights.

**AFFIRMED.**

