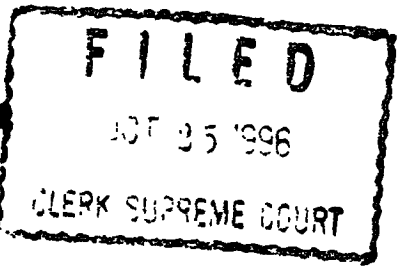
IN THE COURT OF APPEALS OF IOWA

No. 6-564 / 96-1091



IN THE INTEREST OF D.U.J., a/k/a/D.U.W., Minor Child,
B.W., Mother,

Appellant,

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Judge.

Mother appeals from the termination of her parental rights. **AFFIRMED.**

Matthew S. Sheeley of Parrish, Kruidenier, Moss, Dunn & Montgomery, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Jaki Livingston, Assistant County Attorney, for appellee.

Christine Bisignano, Des Moines, for minor child.

Decided en banc.

PER CURIAM

Barbara is the mother of Diamond, who was born on December 19, 1994. She appeals the decision of the juvenile court terminating her parental rights to the child.

Barbara took cocaine while pregnant with Diamond. He was born premature and had health problems, which required monitoring for tremors and seizures. He remained in the hospital until February 6, 1995. Barbara had some visits with Diamond at the hospital. Her last visit was on January 26, 1995. She has had no contact with Diamond since that date.

The Department of Human Services (DHS) told Barbara she would need to submit two clean urinary analysis reports before she could begin visitation. Barbara was also advised to obtain a substance abuse evaluation, attend a drug treatment program, and obtain a parenting evaluation.

In April 1995, Barbara was incarcerated in the Polk County Jail for prostitution. While in jail, she completed a chemical dependency evaluation. Barbara was released in May 1995, and entered an inpatient substance abuse treatment program. Barbara did not complete the program. Her probation was subsequently revoked, and she was incarcerated again in July 1995. She was moved to the Mitchellville Correctional Facility in October 1995.

Barbara has had previous experience with DHS. On May 23, 1988, her parental rights to three children were terminated. On August 8, 1989, her parental rights to another child were terminated. This child had also been born with cocaine

in its system. In addition, there was a pending termination of parental rights action in Pottawattamie County for two more children.

On November 29, 1995, the State filed a petition to terminate Barbara's parental rights to Diamond pursuant to Iowa Code sections 232.116(1)(b) and (g). The juvenile court determined Barbara's parental rights should be terminated under section 232.116(1)(g) because Diamond could not be safely returned to Barbara's care. Barbara now appeals.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Our primary concern is the best interests of the child. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). Those best interests include the child's long-range as well as immediate interests. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995).

II. Barbara contends the State failed to make reasonable efforts to reunite her with Diamond. In particular, Barbara believes DHS should have made a greater effort to give her visitation with Diamond. 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).

We believe the services which were provided to Barbara were reasonable. Barbara knew she would need to submit two clean urinary analysis reports before she could begin visitation. Barbara never submitted any urinary analysis reports to DHS.

We believe it was the action of Barbara, not DHS, which kept her from visiting her child.

Additionally, Barbara has been incarcerated most of the time since April 1995, and therefore unavailable for services. Her incarceration was due to her own actions, and she cannot fault DHS for being unable to provide services while she was in prison. Prior to her incarceration, Barbara failed to take advantage of available services. She failed to provide clean urinary analysis reports, complete a drug treatment program or obtain a parenting evaluation.

III. Barbara also claims that because the State terminated her parental rights without making reasonable efforts to reunite her with Diamond, the termination violated her right to due process of law. Due process requires "fundamental fairness" in judicial proceedings. *In re J.S.*, 470 N.W.2d 48, 52 (Iowa App. 1991). We conclude Barbara received fundamental fairness in the termination proceedings here. She received notice of the petition and hearing, was represented by counsel, counsel was present at the termination hearing, and she had an opportunity to present testimony. We do not find her due process rights were violated.

We affirm the decision of the juvenile court to terminate Barbara's parental rights to Diamond. We determine this termination is in Diamond's best interests.

AFFIRMED.