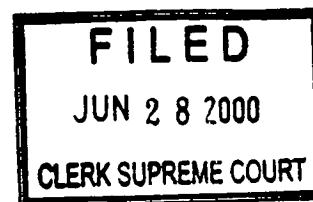


IN THE COURT OF APPEALS OF IOWA

No. 0-290 / 00-100
Filed June 28, 2000

IN THE INTEREST OF A.J.B., Minor Child,

**C.F.B., Mother,
Appellant.**



Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

The mother of minor child A.J.B. appeals a district court order terminating
her parental rights. **AFFIRMED.**

Ryan C. Ross of Vriezelaar, Tigges, Edgington, Rossi, Bottaro & Boden,
L.L.P., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney
General, and Rhoda M. Tenuta, Assistant County Attorney, for appellee State.

Lesley D. Rynell guardian ad litem.

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

VAITHESWARAN, J.

Crystal appeals a juvenile court order terminating her rights to parent Alex. She contends: (1) the Department of Human Services did not furnish services to correct circumstances which led to the termination; (2) the record lacks evidence to support a finding she likely will remain in prison for five or more years; and (3) termination is not in the best interests of the child. We affirm.

I. Background Facts and Proceedings

Crystal and Andrew are the parents of Alex, born on February 24, 1991. They met in the military and married shortly before Alex's birth. At the time of the incidents giving rise to this proceeding, the family lived in Sioux City, in the basement of Andrew's parents' home. In October 1995, while visiting relatives in West Virginia, Crystal learned that Andrew was having an affair with a woman named Jan. She returned to Iowa with a gun taken from her sister's home without her sister's knowledge or permission.

On her return, Crystal went to Jan's work place, threatened her, and left harassing messages on her answering machine. In November 1995, Crystal took four year old Alex to the mall and left him in the car unattended while she went in to look for Jan. Alex discovered a loaded gun in the car and shot out Crystal's window and that of another car.

Following this incident, Andrew moved upstairs and sought a divorce from Crystal. On December 13, 1995, the day Andrew had Crystal served with the divorce papers, Crystal bought 100 bullets. That same day, she shot Andrew in the neck, in Alex's presence. Four pieces of a bullet lodged in Andrew's spine. Andrew asserted Crystal marked the bullet with a knife, causing it to break apart

on entering his body. He claimed she learned this prohibited tactic in the military. As a result of the shooting, Andrew has quadraplegia and is dependent on a ventilator. Movement is limited to his neck and mouth.

Crystal was arrested and jailed. She ultimately pled guilty to terrorism, reckless use of a firearm and armed with intent charges. On April 1996, she was sentenced to consecutive prison terms not to exceed twenty-five years, with a five-year minimum on the terrorism charge.

In the dissolution proceeding, Crystal claimed for the first time that Andrew was not Alex's father. DNA testing confirmed this assertion. The district court nevertheless found Andrew to be Alex's equitable and legal father and, in the fall of 1996, awarded him sole custody and physical care.

In February 1998, the State sought to have Alex adjudicated a child in need of assistance on the ground that Alex had exhibited behavioral and emotional problems most of his life, which were exacerbated after he witnessed his mother shoot the only father he knew. The juvenile court adjudicated him a child in need of assistance and ordered him to remain with his father and undergo an inpatient evaluation.

Alex was placed in a residential treatment program for a short period. He continued to exhibit severe behavioral problems, including aggression toward staff and peers. Staff members diagnosed him with post-traumatic stress disorder and attention deficit hyperactivity disorder. The facility discharged him in October 1998 after concluding his behavior was not significantly improving.

On August 3, 1999, the State filed a petition to terminate Crystal's parental rights under Iowa Code sections 232.116(1)(c) (1999) (physical or sexual abuse

or neglect), (e) (child cannot be returned to parent), and (i) (parent imprisoned, release unlikely for five or more years). The State also sought to terminate the rights of Alex's biological father. The juvenile court terminated their parental rights. Only Crystal appeals.

II. Standard of Review

We review parental termination proceedings de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999). The State must prove the grounds for termination by clear and convincing evidence. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa App. 1997). When the juvenile court terminates parental rights on more than one statutory ground, we need only find evidence to support one ground in order to affirm. *S.R.*, 600 N.W.2d at 64 (citing *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996)).

III. Services

Crystal contends the Department of Human Services did not offer her services to correct the circumstances which led to Alex's adjudication as a child in need of assistance, as required by Iowa Code section 232.116(1)(c). The State essentially concedes the Department did not offer reunification services, but urges it was not required to because Crystal was unavailable to receive them.¹ Under the facts of this case, we agree with the State. Crystal remained incarcerated from the date of the shooting on December 13, 1995 through December 20, 1999, the date her rights to parent Alex were terminated. Although she asserted she was likely to be released within three to five years of

¹ Although Crystal saw a psychologist at the prison and took classes to assist her with her impulsivity, these services were furnished by the Department of Corrections.

her sentence, records suggest her earliest parole date would be in 2005. Therefore, the prospects for near term reunification were slim. Additionally, we note Crystal single-handedly created the circumstances which led to her separation from Alex. While Alex experienced behavioral and emotional outbursts before the shooting, he lost the care of his mother solely as a result of her arrest and subsequent imprisonment. We have stated an imprisoned parent "cannot fault DHS for being unable to provide services while [the parent] is in prison." See *E.K.*, 568 N.W.2d at 831. Under these circumstances, we conclude the agency's failure to furnish reunification services was not a violation of its statutory mandate under Iowa Code section 232.116(1)(c)(2).

IV. Best Interests

Crystal contends it was not in Alex's best interests to terminate her parental rights. Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Best interests are determined by examining the child's immediate and long-term interests. *In re J.W.D.*, 458 N.W.2d 8, 10 (Iowa App. 1990). We will consider what the future would likely hold if the child is returned to the parent. *Id.* "Insight for that determination is to be gained from evidence of the parents' past performance for that performance may be indicative of the quality of future care the parents are capable of providing." *A.J.*, 553 N.W.2d 909, 913 (Iowa App. 1996).

We agree with the juvenile court that Alex's immediate and long range best interests support termination of Crystal's parental rights. As the court stated:

Crystal ... has shown by her actions on not one, but two occasions, that her impulsive and angry behavior overcomes her best judgment. She left Alexander alone in a motor vehicle at age 4 with a loaded gun. It is simply by some greater design that Alexander shot the window out as opposed to shooting himself. Then, if that were not enough, she shot Alexander's father in front of him. Then, after divorce proceedings are instituted, she took it upon herself to tell the world that Andrew is not Alexander's biological father. It is clear that her past behavior indicates a desire to do what she feels is in her best interest as opposed to what is in Alexander's.

(Crystal's last name omitted).

Additionally, in testimony before the court, Crystal herself recognized that the most contact with Alex she could hope to receive upon release from prison was supervised visitation. She also recognized that Alex was in a comfortable and secure environment with Andrew and Jan. We have stated, "patience with parents can soon translate into intolerable hardship for the children." *In re A.Y. H.*, 508 N.W.2d 92, 96 (Iowa App. 1997) (quoting *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987)). That principle is particularly applicable here. The record suggests Alex will continue to suffer emotional difficulties whether or not his mother remains in his life. The record does not suggest that severance of his very tenuous ties with his mother will worsen these difficulties or, conversely, that continuation of the parental relationship will improve his prospects. We conclude it is in Alex's best interests to terminate Crystal's rights to parent him and we accordingly affirm the juvenile court's ruling.

AFFIRMED.