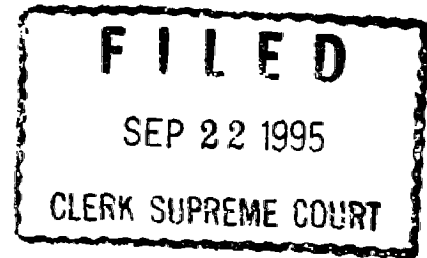


IN THE COURT OF APPEALS OF IOWA

No. 5-455 / 95-879

IN THE INTEREST OF V.B., Minor Child,
M.B., Mother,
Appellant.



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

M.B., mother of minor child V.B., appeals a district court ruling terminating her parental rights. **AFFIRMED.**

Robert E. Tucker, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, **Judy** Sheirbon, Assistant Attorney General, and Heather Dickinson, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

HABHAB, J.

V.B. was born on October 18, 1988, to Dorothy B. and David H. Shortly thereafter, Dorothy was incarcerated in Oklahoma following her conviction for grand larceny. Dorothy received a ten-year sentence. Physical care of V.B. was given to Dorothy's mother. However, V.B.'s grandmother was also incarcerated, and physical care of V.B. was then placed with David. On June 2, 1992, the police removed V.B. from David's home and placed her in foster care, where she has resided since.

V.B. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(d) (1991). The Department of Human Services (DHS) initiated a case permanency plan and set up visitation, but David only visited V.B. seven times in fifteen months. David also failed to complete a sexual abuse offenders treatment program. By the 1993 case permanency plan hearing, David had not seen V.B. in over eight months. Since the 1993 hearing, David has had no contact with V.B.

In 1992, Dorothy was paroled. However, a short time later, she was placed back in prison for escape and a second larceny charge. At no time during her parole did Dorothy attempt to contact V.B. In 1993, termination proceedings were initiated and copies were sent to Dorothy via her parole officer. In January 1994, a DHS social worker wrote to Dorothy and enclosed a picture of V.B. The social worker received a letter from Dorothy requesting that V.B. be moved to Oklahoma to live in

foster care with Dorothy's other children. She was told it would not be possible for V.B. to be transferred to Oklahoma.

In April 1994, the social worker sent Dorothy another letter with a new picture. Dorothy did not respond to this letter. However, one month later a new case worker received a telephone call from Dorothy requesting that V.B. be moved to Oklahoma.

At the termination hearing, Dorothy claimed she had no intention of abandoning V.B. She maintained that her incarceration left her with no alternatives to visiting with V.B. She argued that David had basically kidnapped the child and had taken her away from her grandmother. She further testified she has a potential release date of November 1995. She insisted she wanted to care for V.B. once she was paroled.

The district court concluded that V.B. had been in foster care for over four years and had no memory of her mother. The court determined David and Dorothy's parental rights should be terminated pursuant to both Iowa Code sections 232.116(1)(b) and 232.116(1)(g) (1993).

Dorothy appeals. David does not appeal.

Appellate review of termination proceedings is *de novo*. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984), *cert. denied sub nom. J.G. v. Tauke*, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* at 491-92.

Dorothy appeals the district court's decision regarding termination under section 232.116(1)(b) and section 232.116(1)(g). We are not, however, required to find both sections were satisfied. Only one of the sections cited by the district court must be satisfied to affirm the decision to terminate Dorothy's parental rights. We conclude Dorothy's parental rights were properly terminated pursuant to section 232.116(1)(b).

Section 232.116(1)(b) permits the juvenile court to terminate the parent-child relationship if the court finds "that there is clear and convincing evidence that the child has been abandoned or deserted." Abandonment occurs when there is "a giving up of parental rights and responsibilities accompanied by an intent to forego them." *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994) (quoting *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977)). "[P]arental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981).

Incarceration alone is not sufficient to support a termination. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993). However, imprisonment cannot be used as a justification for a lack of a relationship with a child. *Id.*

Dorothy has been incarcerated most of V.B.'s life. V.B. was born in October 1988 and Dorothy was convicted of grand larceny later in 1988. At no time during Dorothy's parole from October 1992 until April 1993 did she attempt to contact V.B.

Dorothy is unable in her brief to cite any affirmative steps taken to contact V.B. while Dorothy was in prison.

We find Dorothy's inaction clearly equates to "a giving up of parental rights and responsibilities." *See In re D.M.*, 516 N.W.2d at 891. Further, we cannot comprehend how Dorothy's failure to even attempt contact with V.B. during her imprisonment or during her parole is consistent with an intent not to abandon.¹ Consequently, we also conclude there was an accompanying intent to forego parental rights and responsibilities. Accordingly, we affirm the district court's decision to terminate Dorothy's parental rights pursuant to Iowa Code section 232.116(1)(b).

AFFIRMED.

¹ Dorothy contends her incarceration prevented her from visitation. While this may be true, incarceration cannot be used as a justification for a lack of a relationship with a child. *In re M.M.S.*, 502 N.W.2d at 8. We also note that, while incarceration may have prevented visitation, it should not have prevented Dorothy from at least attempting to contact V.B.