

A-25-990

IN THE COURT OF APPEALS FOR THE STATE OF NEBRASKA

IN THE INTEREST OF ESPERANZA C.

Children Under Eighteen Years of Age

APPEAL FROM THE SEPARATE JUVENILE COURT FOR DOUGLAS

COUNTY, NEBRASKA

JUDGE VERNON DANIELS, JUVENILE COURT JUDGE

BRIEF OF APPELEE-GUARDIAN AD LITEM

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STATEMENT OF JURISDICTION

Jurisdiction for appeal is conferred upon the Nebraska Court of Appeals in this matter by Nebraska Revised Statutes Sec. 25-1901, 43-245 and 25-1912. The appellant, Heather Smith, (hereinafter referred to as Smith) appeals from the Order of the Separate Juvenile Court for Douglas County Nebraska filed December 8, 2025 terminating her parental rights to her minor child, Esperanza Chavez. Notice of Intent to Appeal was filed on December 30, 2025. An Application and Affidavit and Order to Proceed *in forma pauperis* were filed on December 30, 2025. The order to Proceed *in forma pauperis* was signed by the court on December 30, 2025. Smith is the mother of the minor child, Esperanza Chavez, and as such, has a direct interest in the minor children whose welfare is affected by the Order of the Separate Juvenile Court for Douglas County Nebraska, filed December 8, 2025, terminating her parental rights to said children.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

The appellant, Heather Smith, appeals from the Order of the Separate Juvenile Court for Douglas County filed December 8, 2025, terminating her parental rights pursuant to Neb. Rev. Stat. secs 43-292 (2) (6) and (7) and finding that termination of the parental rights of Smith was in the bests interest of the minor child.

B. THE ISSUES TRIED IN THE COURT BELOW

The issues tried in the Separate Juvenile Court for Douglas County were whether the minor children came within the meaning of Neb. Rev. Stats. Secs 43-292 (2), (6) and (7) and if termination was in the best interest of the minor child

C. HOW THE ISSUES WERE DECIDED

The Separate Juvenile Court found, by clear and convincing evidence, that the minor child came within the meaning of Neb. Rev. Stat. sec 43-292 (2) (6) and (7) and that termination was in her best interest. Smith appeals from this decision.

D. SCOPE OF REVIEW

The Court of Appeals reviews the decisions of the Juvenile Court *de novo* on the record. The appellate court is required to reach a decision independent of the lower court's findings. If evidence is in conflict, the Appellate Court may give weight to the fact that the lower court observed witnesses and accepted one version of facts over another. *In Re Interest of Prince R.* 308 Neb. 415, 954 N.W. 2d 294 (2021)

PROPOSITIONS OF LAW

I.

On appeal, the court will review the record of the proceedings *de novo*. *In Re Interest of Prince R.* 308 Neb. 415, 954 N.W. 2d 294 (2021)

II.

When there is a factual conflict, weight will be given to the trial court as it observed the witnesses. The trial court's findings will not be set aside unless they are against the weight of the evidence or constitute a clear abuse of discretion. *In The Interest of Angelica L.*, 277 Neb. 983, 767 N. W. 2d 74 (2009)

III.

The State of Nebraska is required to present clear and convincing evidence that termination is in the children's best interest. *In Re Interest of Stacey D.*, 12 Neb. App. 707,

684 N. W. 2d 594 (2004), *In Re Interest of Mya*, 23 Neb. App. 383, 872 N. W. 2d 56 (2015). *In Re interest of L. J.*, 220 Neb. 102, 368 N. W. 474 (1985)

STATEMENT OF FACTS

The hearing on the Motion for Termination of Parental Rights began on August 22, 2025. (5:1) Smith did not appear. (9:11-16). The State of Nebraska offered a certified copy of the Juvenile case and a certified copy of a criminal complaint and conviction as to Smith. (14: 5-15:13, Exh.102, 103)

The first witness for the state was Breonna Berry. (15: 21). (hereinafter referred to as Berry) Berry has had placement of the minor child since April 2021.(20:5-17) The minor child is now four years of age. (20: 24-25) Berry testified that the mother had not had a visit with her child since May or June of 2024. (21: 23-24) Berry testified that the mother had not attempted contact with her, in any manner, since May 2021 and that she had not received cards, letters or compensation of any kind from Smith since Esperanza was placed with her. (31:8-17, 34:11-13) Smith never attended the minor child's medical appointments. (32:15-17) Berry testified that visits between the minor child and Smith from January 2022 through December 2022 were inconsistent. (27:2-4) To Berry's knowledge, over fifty percent of visits between Smith and her child did not occur. (42:8-19)

The next witness for the state was Patrice Clemons. (hereinafter referred to as Clemons) (60: 8-9). Clemons was the Nebraska Department of Health and Human Services caseworker for this family from January 2022 until July 2024. (72:14-16) During this time, the minor child was never placed with Smith. (75:1-2) Clemons met with Smith monthly and reviewed court orders at each meeting. (77:7-78:5) During the time she worked with Smith, Smith was employed for about ten months. (84:8-17) Smith was inconsistent with her visits and visits were ultimately suspended in 2024 (95:1-5). Between January 2022 and July 2024, Smith made minimal progress toward the completion of her court orders. (152:8-21)

During the time Clemons was on the case, specifically in May of 2023, despite being permitted unsupervised visits, Smith did not participate in unsupervised visits. (116: 3-6)

Clemons testified that as of October 2023, Smith was not in compliance with court orders pertaining to visitation, therapy or signing releases. (119:4-10). As of May 2024, Smith continued to fail to comply with the orders of the court. (122:12-124:9). At the time Clemons stopped managing this case Smith was not in compliance with the orders of the court. (127:5-9)

The next witness for the state was Zachary Dolezal. (hereinafter referred to as Dolezal) (168: 9-11) Dolezal is Smith's probation officer. (168:21-22, 179:9). While on probation, Smith had trouble maintaining sobriety, meeting with probation and ultimately failed to return to the state of Nebraska after being granted a travel permit. (181:9-11, 184: 20) The travel permit was granted from March 20, 2025 through April 8, 2025. (182:17-23) Dolezal did not believe she had returned to Nebraska at the time of his testimony. (184:19-20) Also, at the time of his testimony, Smith was not in compliance with the terms of her probation. (194: 22-25)

The case continued to September 8, 2025. Smith, again, failed to appear. (203:1-11) Megan Ott testified for the state. (hereinafter referred to as Ott) (205: 12-14) Ott was the Nebraska Department of Health and Human Services supervisor for this case from September 2024 until June 2025. (214:11-12). During the time she supervised this case, Esperanza did not return to her mother's care. (215: 25-216: 1) Visits were suspended in May 2024. (218:4-16) During the time Ott supervised this case, Smith was not in individual therapy. (220:2-4) During the time Ott was supervising the case, Smith did not place herself in a position to parent and Ott had concerns whether Smith was a fit parent due to her lack of stability and the level of escalation she exhibited. (221: 6-18). Ultimately, Ott opined that due to the length of time the child had been in care, the lack of behavioral change by Smith and lack of engagement in therapy, it would be in the minor child's best interest for Smith's parental rights to be terminated. (223:13-21)

The final witness for the state was the current caseworker, Selena Leon. (herein after referred to as Leon) (243:8-18, 253: 10). Leon testified that she had been on the case for three months at the time of the hearing on the Motion for Termination of Parental Rights. (263:11-12). Esperanza had never been returned to Smith's care. (255:17-20). Per Leon, Smith has not been in contact with Leon and has provided no proof of compliance with court orders. (262:20-25). Leon also opined that it would be in the minor child's best interest for the parental rights of Heather Smith to be terminated. (263:5-20)

The final day of testimony in this case occurred on October 6, 2025. Again, Smith did not appear. (289: 1-11) Three witnesses were called on Smith's behalf. The first witness, Calandra Plambeck. ((hereinafter referred to as Plambeck) (292:1). Plambeck provided therapy to Smith from September 2023 until February 2024. (298: 9-11). Plambeck could not state that Smith completed therapy or if she attended consistently. (308:22-309:4). Next Smith called Mildred Tucker (hereinafter referred to as Tucker) to the stand. (312: 4) Tucker stated that Smith completed an Anger Management course with her in January 2025. (325: 7-8). Lastly, Rachael Parker (hereinafter referred to as Parker) testified for Smith. (328: 10-11) Parker supervised visits between Esperanza and Smith. (330: 15-25) Parker stated that Smith was inconsistent with and missed visits. (341:7-8) In response to questions on cross-examination, Parker detailed numerous missed visits by Smith. (350:12-361: 5). Testimony concluded at with Parker's testimony. The parties presented closing argument.

On December 8, 2025, the court issued an order terminated Smith's parental rights as to Esperanza on all counts pursuant to Nebraska Revised Statutes 43-292 (2), (6) and (7) and found that termination of Smith's parental rights was in the minor child's best interest.

ARGUMENT

The appellant argues that the Juvenile court erred in finding that termination was in the minor child's best interest, that the that State had proven, by clear and convincing evidence, that the parental rights of the mother should be terminated pursuant to Neb. Rev. Stat 43-292 (2) and (6). (Brief of Appellant at 15, 17). The appellant's brief does not address the finding of the Separate Juvenile Court that 43-292 (7) was proved by clear and convincing evidence. The appellant also assigns as error the lower court's finding that termination was in the child's best interest.

Addressing Neb. Rev. Stat. 43-292 (7) first, the evidence is uncontroverted that the minor child has been placed out of the custody of her mother since this case began. The foster parent, Breonna Berry, testified that the child has been placed with her continually since April 2021 (15: 21, 20:5-17) The minor child is now four years of age. (20: 24-25) Clemons was the Nebraska Department of Health and Human Services caseworker for this case from January 2022 until July

2024. (72:14-16) During this time, the minor child was never placed with Smith. (75:1-2) Ott, Nebraska Department of Health and Human Services supervisor, testified that during the time she supervised this case, Esperanza did not return to her mother's care. (215: 25-216: 1). The court found that the state proved by clear and convincing evidence that pursuant to Neb. Rev. Stat. 43-292 (7), the minor child had been in out-of-home for fifteen or more of the most recent twenty-two months. (T105). The evidence is uncontroverted and not assigned as error in the brief of the appellant. This subsection of 43-292 operates mechanically and does not require a specific finding of fault on the part of the parent. *In re Interest of Becka p. etal.*, 27 Neb. App. 489, 933 N.W. 2d 873 (2019) The court can uphold the termination on this basis without addressing the findings of the court pursuant to Neb. Rev. Stat. 43-292 (2) or (6).

The mother does assign as error the lower court's finding that the state proved by clear and convincing evidence that the minor child came within the meaning of Neb. Re. Stat. 43-292(2) and (6), as Smith had substantially and continuously or repeatedly neglected and refused to give the minor child necessary parental care and protection and that Smith failed to correct the conditions which lead the court to take jurisdiction pursuant to Neb. Rev. Stat. 43-247 (3) (a). (Brief of Appellant at 5-6) Should this court wish to address the findings under these subsections, a brief review of the evidence presented at the hearings on the Motion for Termination of Parental Rights also supports the lower court's finding that the state has proved by clear and convincing both Neb. Rev. Stat. 43-292 (2) and (6).

The evidence presented at the hearings on the Motion for Termination of Parental Rights was uncontroverted. Smith did not comply with the orders of the court, did not placed herself in a position to care for her child and did not address the issues which brought this matter before the juvenile court despite the years of services provided to her. As noted above, the foster parent testified that the mother had not had a visit with her child since May or June of 2024. (21: 23-24) Prior to that time, visits were inconsistent with Smith missing approximately fifty percent of visits. (27:2-4, 42:8-19) Additionally, the foster parent stated that the mother had not attempted contact with her, in any manner, since May 2021 and that she had not received cards, letters or compensation from Smith of any kind, since Esperanza was placed with her. (31:8-17, 34:11-13) Smith never attended the minor child's medical appointments. (32:15-17). Testimony of the Nebraska Department of Health and Human Services echoes Berry's testimony and does not

place the mother in any better light. Clemons testified that between January 2022 and July 2024, Smith made minimal progress toward the completion of her court orders. (152:8-21) Ott, during the time she was supervising the case, Smith did not place herself in a position to parent and Ott continued to have concerns whether Smith was a fit parent due to her lack of stability and the level of escalation Smith exhibited. (221: 6-18). Finally, Leon never had an in-person meeting with Smith and Smith provided her with no proof of compliance with the orders of the court. (262:20-25) Finally, Smith's own witness detailed numerous missed visits. (350:12-361: 5).

This evidence supports the lower court's findings pursuant to Neb. Rev. Stat. 43-292 (2) in that Smith substantially and continually neglected and refused to provide Esperanza the necessary parental care and protection and she failed to correct the conditions that lead to the court's finding that Esperanza was a child that came under the court's jurisdiction pursuant to Neb. Rev. Stat 43-247 (3) (a). Smith has failed to place herself in a position where she can parent despite the numerous services offered to her over four years of court involvement at the time of the hearing on the motion. Sustained long-term progress has not been made. This court has held that a parent may neglect a child who is not in their care by failing to place themselves in a position to have possession of their child. *State v. Chad S. (In re. Louis S.)* 17 Neb. App. 867, 774 N.W.416 (2009). The facts of this case support a finding that by clear and convincing evidence the mother's parental rights should be terminated pursuant to Neb. Rev. Stat. 43-292(2).

The same evidence supports the lower court's finding as to 43-292 (6). Despite numerous reasonable efforts, Smith's non-compliance with the orders of the court is well documented. Smith made no effort to correct the conditions that lead to herself and her daughter coming under the jurisdiction of the juvenile court. The law of this state is clear, when a parent is unable or unwilling to rehabilitate herself within a reasonable time, it is in the children's best interests for parental rights to be terminated. *State v. Madison (In re interest of Leyton)* 307 Neb. 529, 949 N.W. 773 (2020). Again, the facts of this case support a finding that by clear and convincing evidence the mother's parental rights should be terminated pursuant to Neb. Rev. Stat. 43-292(6).

Finally, Smith argues that the state failed to show by clear and convincing evidence that it was in the best interests of Esperanza that Smith's parental rights are terminated. Again, the evidence is uncontroverted, both Ott and Leon opined that it would be in the minor child's best interest for the parental rights of Smith to be terminated. (223:13-21, 263:5-20). As the *Leyton* court noted, the parent's failure to consistently participate in services, the failure of the parent to consistently visit her child and the length of time the child had been in care all support the finding of the lower court that termination. In *State v. Alicia (In re Mia C.) 2025 Neb App. LEXIS 714 (2025)* noting the time the child there had been out of care and the parent's inability to comply with the orders of the court, that termination was in the child's best interest. *Id. at 18*. This case is the same and the evidence clearly supports the lower court's finding that the state has shown by clear and convincing evidence that termination was in the child's best interests.

CONCLUSION

In conclusion, the state met its burden to show by clear and convincing evidence that sections of Neb. Rev. Stat. 43-292 (2), (6) and (7) are true and that termination of Smith's parental rights is in Esperanza's best interest and would urge this court to affirm the findings of the Separate Juvenile Court for Douglas County. The appellant does not assign as error the lower court's finding that termination is allowed pursuant to Neb. Rev. Stat. 43-292(7) and this court may affirm on that basis alone. However, the appellant assigns as error the court's findings pursuant to Neb. Rev. Stat. 43-292 (2) and (6) and that the State did not show by clear and convincing evidence that termination was in the minor child's best interest. A review of the evidence supports the lower court's findings on all grounds. The State met its burden to show each of the sections of the statute alleged in the Motion for Termination of Parental Rights were shown to be true by clear and convincing evidence and that termination was in the child's best interest. The lower court's findings should be affirmed.

Respectfully submitted this 15th day of April 2026

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Certificate of Compliance with Nebraska Supreme Court Rules. 2-103

The undersigned hereby certifies that this brief complies with Neb. Ct. R. App.

P. sec. 2-103 (C) (3) (a). This brief contains 3397 words, including all text, cover page, tables, captions, headings, quotations, signature block and other kinds of writing. This brief complies with the typeface, formatting and style requirements required by Neb. Ct. R. App. P. sec. 2-103 (C). (The software used to type this brief is Microsoft Word for Mac Version 16.95.3 (2025) This brief complies with the software requirements and was typed in Times New Roman, 12point type and line spacing at 1.15.

/s/ Janine F Uccino

Certificate of Service

I hereby certify that on Tuesday, April 14, 2026 I provided a true and correct copy of this *Brief of Guardian Ad Litem/Appellee* to the following:

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