

FILED

April 22, 2026

IMAGE ID N2611220QNSC, FILING ID 0000044753

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

Case No. A-25-990

IN THE NEBRASKA COURT OF APPEALS

IN RE INTEREST OF ESPERANZA C.

STATE OF NEBRASKA, Appellee
HEATHER SMITH, Appellant

APPEAL FROM THE SEPARATE JUVENILE COURT FOR
DOUGLAS COUNTY, NEBRASKA

Honorable Vernon Daniels
Juvenile Court Judge

BRIEF OF APPELLEE

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STATEMENT OF APPELLATE COURT JURISDICTION

The Appellant provided a statement as to the jurisdiction of this Court as required by certain Nebraska statutes. The State of Nebraska would add the jurisdiction of this Court is invoked per statute, which provides:

Any final order or judgment entered by a juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from the district court to the Court of Appeals. The appellate court shall conduct its review in an expedited manner and shall render the judgment and write its opinion, if any, as speedily as possible.

Neb. Rev. Stat. § 43-2,106.01(1).

A proceeding before a juvenile court is a ‘special proceeding’ for appellate purposes. To be appealable, the order in the special proceeding must affect a substantial right . . . It is well settled that a judicial determination made following an adjudication is a special proceeding which affects the substantial rights of parents to raise their children and is a final, appealable order.

In re Interest of Tabatha R., 255 Neb. 818, 827, 587 N.W.2d 109, 116 (1998) (internal citations omitted).

The judgment of the Separate Juvenile Court of Douglas County, Nebraska, is a final order as defined above, and this appeal was properly filed, thus conferring jurisdiction upon this Court.

STATEMENT OF THE CASE

Nature of the Case:

Heather Smith (hereinafter “Appellant”) is the natural mother of Esperanza Chavez (hereinafter “Esperanza”). On February 26, 2025, the State of Nebraska (hereinafter “State”) filed a Motion for Termination of Parental Rights alleging Esperanza was within the meaning of Neb. Rev. Stat. § 43-292 (2), (6), and (7). (T62-64). The State also alleged that it would be in Esperanza’s best interests to terminate the parental rights of Appellant. (T64). An adjudication on the State’s Motion for Termination of Parental Rights was held on August 22, 2025, September 8, 2025, and October 6, 2025. (T85; T89; T105).

The Issues Tried to the Court:

- (1) Whether Esperanza came within the meaning of Neb. Rev. Stat. § 43-292 (2), (6), and (7).
- (2) Whether the termination of Appellant’s parental rights was in Esperanza’s best interests.

How Issues Were Decided:

In an order filed December 8, 2025, the Separate Juvenile Court of Douglas County found the State proved, by clear and convincing evidence, that Esperanza came within the meaning of Neb. Rev. Stat. § 43-292 (2), (6), and (7). (T106). The juvenile court also found by clear and convincing evidence that termination of Appellant’s parental rights was in the best interests of Esperanza. (T106).

Scope of Review:

An appellate court reviews juvenile cases *de novo* on the record and reaches its conclusions independently of the juvenile court’s findings. *In re Gunner B.*, 312 Neb. 697, 700, 980 N.W.2d 863, 866 (2022). However, when the evidence is in conflict, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

PROPOSITIONS OF LAW

I.

An appellate court reviews juvenile cases *de novo* on the record and reaches its conclusions independently of the juvenile court's findings. However, when the evidence is in conflict, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *In re Gunner B.*, 312 Neb. 697, 700, 980 N.W.2d 863, 866 (2022).

II.

To terminate parental rights under Neb. Rev. Stat. § 43-292, the State must prove a statutory basis for termination exists, and termination is in the best interest of the minor child. *In re Interest of Mateo L.*, 309 Neb. 565, 582, 961 N.W.2d 516, 528 (2021).

III.

To properly terminate parental rights pursuant to Neb. Rev. Stat. § 43-242(2), the State must prove that the parent has substantially and continuously or repeatedly neglected and refused to give the juvenile necessary parental care and protection. *In re Interest of Elijah P.*, et al., 24 Neb. App. 521, 542, 891 N.W.2d 330, 346-47 (2017).

IV.

One need not have physical possession of the child to demonstrate the existence of neglect contemplated by Neb. Rev. Stat. § 43-242(2). *In re Interest of J.N.V.*, 224 Neb. 108, 111, 395 N.W.2d 758, 761 (1986).

V.

A parent’s failure to “provide an environment to which his or her children can return can establish substantial, continual, and repeated neglect” as contemplated by Neb. Rev. Stat. § 43-242(2). *In re Interest of Joseph S.*, 291 Neb. 953, 961, 870 N.W.2d 141, 147 (2015).

VI.

Under Neb. Rev. Stat. § 43-242(6), the State must adduce evidence that a “parent has failed to comply, in whole or in part, with a reasonable provision material to a rehabilitative objective.” *In re Interest of Kassara M.*, 258 Neb. 90, 97, 601 N.W.2d 917, 924 (1999).

VII.

Pursuant to Neb. Rev. Stat. § 43-242(7), parental rights may be terminated if “[t]he juvenile has been in out-of-home placement for fifteen or more months of the most recent twenty-two months.” This subdivision reflects a reasoned legislative judgment that a child cannot—and ought not—be made to wait dubious parental maturity. *In re Interest of Mateo L.*, 309 Neb. 565, 580-81, 961 N.W.2d 516, 527 (2021).

VIII.

Neb. Rev. Stat. § 43-242(7) “operates mechanically and, unlike the other subsections of the statute, does not require the State to adduce evidence of any specific fault on the part of a parent.” *In re Interest of Mateo L.*, 309 Neb. 565, 580, 961 N.W.2d 516, 527 (2021).

IX.

In a termination proceeding, the evidence adduced to prove termination on any statutory ground other than Neb. Rev. Stat. § 43-242(7) is highly relevant to the best interests of the juvenile, as it

would show abandonment, neglect, unfitness, or abuse. *In re Interest of Shelby L.*, 270 Neb. 150, 156, 699 N.W.2d 392, 398 (2005).

X.

Since a natural parent possesses a fundamental liberty interest in the rearing of their children, an appellate court must presume it is in a child's best interest to maintain a relationship with his parent. *In re Interest of Mateo L.*, 309 Neb. 565, 582–83, 961 N.W.2d 516, 529 (2021).

XI.

The best interests presumption is overcome when the State adduces sufficient evidence that a parent is “unfit to perform the duties imposed by the [parent-child] relationship[.]” *In re Interest of Mateo L.*, 309 Neb. 565, 583, 961 N.W.2d 516, 529 (2021).

XII.

Parental unfitness is defined as “a personal deficiency or incapacity that has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and that has caused, or probably will result in, detriment to a child's well-being.” *In re Interest of Mateo L.*, 309 Neb. 565, 583, 961 N.W.2d 516, 529 (2021).

XIII.

While the law itself does not require perfection of a parent, where a parent is unable or unwilling to rehabilitate herself within a reasonable amount of time, the child's best interests require termination of parental rights. *In re Interest of Kantril P. and Chenelle P.*, 257 Neb. 450, 465, 676 N.W.2d 378, 384 (1999).

STATEMENT OF FACTS

Procedural History:

On April 14, 2021, the State filed a Petition alleging Esperanza came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) through the fault Appellant, due to Appellant (1) engaging in domestic violence in front of the minor child; (2) failing to take sufficient and adequate steps to ensure safety from domestic violence; (3) failing to provide proper parental care, support, supervision, and/or protection; and (4) failing to provide safe, stable, and/or appropriate housing. (T1). Due to the above allegations, the State alleged that Esperanza was at risk for harm in the care of Appellant. (T1). The protective custody and first appearance relating to the State's motion occurred on April 23, 2021. (T3). Appellant was fully advised of her rights, acknowledged service, and entered a plea of denial. (T4). The juvenile court found that it was in Esperanza's best interest to remain in the custody of the Nebraska Department of Health and Human Services (hereinafter "DHSS") and placement was to exclude the home of Appellant. (T4). Appellant was additionally ordered to participate in the following court ordered services on a voluntary basis:

1. Have reasonable rights of agency-supervised visitation in a neutral location as arranged by the Nebraska Department of Health and Human Services;
2. Complete a family medical history with Health and Human Services within 15 days;
3. Provide to Health and Human Services at the close of today's hearing:
 - (a) Any medical devices required by the child;
 - (b) A list of any known food/medication allergies concerning the child;
 - (c) List of any medication currently being taken by said child;
4. By April 30, 2021, complete an affidavit identifying the other parent of each minor child under the jurisdiction of the court;

5. Notify the court, her attorney, and the Nebraska Department of Health and Human Services of any change in address, phone number, and/or place of employment within 48 hours of said change;
6. Timely notify the court of any services she deems necessary to assist with return of the child to the parental home;
7. Timely notify her attorney of any voluntary and/or court-ordered services that are not being timely provided;
8. Make reasonable efforts on her own to bring about rehabilitation.

(T5).

On July 20, 2021, the juvenile court held an adjudication hearing for the State's petition. (T9). The juvenile court found Counts I-A, B, C, D, E to be true by the preponderance of the evidence and that Esperanza came within the meaning of Neb. Rev. Stat. § 43-247(3)(a). (T10). The juvenile court found that it was in Esperanza's best interest to remain in the custody of DHHS with placement to exclude the home of Appellant. (T10). Appellant was ordered to participate in the following services:

1. Obtain and maintain safe, stable, and adequate housing and provide proof to the case manager monthly;
2. Obtain and maintain a legal, stable source of income and provide proof to the case manager monthly;
3. Complete a monthly budget to assist with timely determination of ability to pay for services/treatment ordered by the court;
4. Meet with her case manager by the 10th day of each month;
5. Submit to a psychological evaluation within 30 days as arranged by Health and Human Services. Collateral information shall be provided;
6. Timely notify the court of any services she deems necessary to assist with return of the child to the home and/or if court-ordered services are not being timely provided.

(T10.)

On September 17, 2021, the juvenile court held a dispositional hearing. (T13). The juvenile court ordered a permanency objective of reunification concurrent with adoption, and found that barriers to permanency included Appellant's material noncompliance with the court's previous rehabilitation order. (T13).

On March 17, 2022 the juvenile court held a review and permanency planning hearing. (T19). The juvenile court found it was unable to make fully informed findings with respect to treatment needs of Appellant due to Appellant's psychological evaluation being completed, but not offered as an exhibit. (T19). The juvenile court took the issues of reasonable efforts and permanency under advisement and asked that counsel set the matter for hearing as it relates to the evaluation. (T19). The juvenile court ordered that all previous orders remain in full force and effect. (T20).

A stipulated motion to receive evidence was filed on April 7, 2022. (T22). Specifically, no party objected to the juvenile court receiving the initial diagnostic interview for Appellant, or the psychological evaluation for Appellant. (T22). The parties agreed with the recommendations provided by the initial diagnostic interview and psychological evaluation, and requested the juvenile court to adopt those recommendations into Appellant's rehabilitative plan. (T22). The juvenile court did not receive the exhibits pursuant to the stipulated motion, and ordered the matter to be set for hearing as the matter of reasonable efforts was taken under advisement. (T25).

On May 11, 2022, the juvenile court held a review and permanency planning hearing. (T28). The juvenile court found that the permanency objective shall be reunification, and that barriers to that include Appellant's lack of housing and lack of therapy completed. (T28). The juvenile court ordered the following:

- a. To the extent not otherwise modified herein, the court's orders of July 19, 2021, and September 13, 2021, shall remain in full force and effect with the exception that the mother's psychological evaluation is received on today's date as exhibit 27;
- b. The court has reviewed exhibits 27 and 28. Exhibit 27 is a

psychological evaluation consisting of two pages. Exhibit 28 is an IDI and recommends "further evaluation" [nos]. Until more clarification is provided, (Appellant) shall participate in therapy to address unspecified depression disorder and anxiety;
c. She shall participate in a domestic violence program, (T28).

On November 2, 2022, Appellant filed a motion for additional weekly visitation. (T31). The juvenile court granted additional weekly supervised visitation and found that the permanency objective remains reunification. (T34).

On November 22, 2022, the juvenile court held a review and permanency planning hearing. (T36). The juvenile court held that the permanency objective is one of reunification and that barriers to reunification are the fact that the court has not received a progress report from Appellant's therapist. (T37). The juvenile court held that all previous orders remain in full force and effect. (T37).

On March 6, 2023, Appellant filed a motion for unsupervised visitation. (T40). The juvenile court granted the motion and ordered one weekly unsupervised visitation to occur between Esperanza and Appellant. (T43).

On May 17, 2023, the juvenile court held a review and permanency planning hearing. (T45). The juvenile court ordered a permanency objective of reunification with concurrent plans of adoption and guardianship. (T46). The juvenile court noted Appellant's barriers to reunification include, but are not limited to: inability to sustain stable housing; inconsistent visitation due to lack of transportation; swearing at the case manager or hangs up on case manager; length of time the child has been in care; declining to execute releases of information to allow the case manager to speak with service providers. (T46). The juvenile court took the issue of no further reasonable efforts under advisement. (T46). The juvenile court held that to the extent Appellant's previous orders were not modified, they were to remain in full force and effect with the additions that:

a. Visits shall be supervised and Appellant must call by noon the day prior to a scheduled visit to confirm she will attend.

Transportation assistance shall be provided;

b. Appellant shall participate in therapy to address diagnosis;

c. Within 24 hours, other shall execute releases to allow the case manager to speak directly with service providers.

(T46).

On November 20, 2023, the juvenile court held a review and permanency planning hearing. (T49). The juvenile court ordered the permanency objective to be one of reunification with concurrent plans of adoption and guardianship. (T50). The juvenile court noted Appellant's barriers to reunification were, but not limited to: the length of time the child has been in care; there is lack of clarity as to whether Appellant has completed a domestic violence program; and inconsistent visitation by Appellant. (T50). The juvenile court held the no further reasonable efforts ruling under advisement. (T50). The juvenile court held that to the extent Appellant's previous orders were not modified, they were to remain in full force and effect, with the additions that:

a. Appellant shall meet with her case manager by the 20th day of each month and provide evidence of compliance with her rehabilitation plan;

b. By December 20, 2023, Appellant shall provide proof of completion of a domestic violence program;

c. By January 20, 2024, Appellant shall complete a parenting program;

d. With respect to exhibit 53, the court considers only page 1 of 1 dated October 31, 2023. The balance of the exhibit is cumulative;

e. Appellant shall continue in therapy as previously ordered,

(T50).

On May 14, 2024, the juvenile court held a review and permanency planning hearing. (T53). The juvenile court ordered a permanency objective of adoption, and found that barriers to reunification were Appellant's inconsistent participation in therapy,

inconsistent visits, pending abuse/neglect charges, a pending eviction, and the mother obtaining employment two weeks ago. (T53). The juvenile court also held that no further reasonable efforts to effectuate a plan of reunification shall be required, but that Appellant has a continuing duty of self-help measures and past orders to serve as a guide to reunification. (T54).

On May 17, 2024, DHSS filed an ex parte motion to suspend visitation between Esperanza and Appellant. (SUPPT1). An affidavit authored by Patrice Clemons was attached to the motion and set forth numerous reasons in support, which included, but was not limited to, Appellant engaging in violent conduct toward case professionals in front of Esperanza. (SUPPT2-5). That same day, the juvenile court issued an Ex Parte Order suspending visits between Appellant and Esperanza. (SUPPT7).

On July 17, 2024, a stipulated order was filed. (T57). The parties stipulated that Appellant must participate in and successfully complete an anger management class, and Appellant must continue to participate in individual therapy. (T57). Upon commencement of those services, Appellant's agency supervised visitation with Esperanza shall resume. (T57).

On November 5, 2024 a review and permanency planning hearing was held. (T59). The juvenile court found that the permanency objective for Esperanza shall be adoption. (T59). The juvenile court found barriers to reunification to be continued profanity by Appellant towards her attorney and case manager, lack of progress by Appellant, and length of time Esperanza has been in care. (T60).

On February 26, 2025, the State filed a motion to terminate the parental rights of Appellant in relation to Esperanza. (T62-64) In the motion, the State alleged Esperanza came within the meaning of Neb. Rev. Stat. § 43-292 (2), (6), and (7), and that termination of Appellant's parental rights was in Esperanza's best interests. (T62-63). As it related to the allegations concerning Esperanza within subsection (6), the State specifically contended that Appellant:

- (A) Failed to regularly participate in visitations;
- (B) Failed to regularly participate in individual therapy;

(C) Failed to make any measurable or sustained progress towards reunification, despite three years and ten months of court involvement.

(T63).

On May 8, 2025, Appellant filed a motion for reasonable efforts hearing, requesting the juvenile court to order DHHS to conduct a family finding. (T66). This matter was set for hearing on May 14, 2025. (T67). On May 15, 2025, the juvenile court entered an order rescheduling the matter for a review and permanency planning hearing, and reasonable efforts hearing on June 16, 2025. (T67).

On June 16, 2025, the juvenile court held a review and permanency planning hearing. (T68). The juvenile court found the permanency objective to be adoption, and that all previous orders remain in full force and effect. (T69). In addition, evidence regarding Appellant's reasonable efforts motion was heard, and the juvenile court took the matter under advisement, and planned to issue its findings and orders in conjunction with the termination of parental rights proceeding which was scheduled for August 22, 2025. (T70).

On August 6, 2025, DHHS filed a stipulated motion allowing for virtual visitation between Esperanza, Haley Outen, and Josephine Ponce Ortiz, who are relatives of Appellant. (T73). The juvenile court granted the motion and allowed for visitation to occur as arranged by DHHS. (T77).

On August 10, 2025, Appellant filed a motion for change of placement, claiming that Appellant feared for Esperanza's safety with her current foster placement. (T79). The matter was set for hearing on August 22, 2025. (T80). On August 21, 2025, Appellant filed a motion for visitation during the pendency of the appeal. (T82). The matter was set for hearing on August 22, 2025. (T83).

On August 22, 2025, the adjudication hearing for the State's motion for termination of Appellant's parental rights commenced. (T85). The juvenile court took judicial notice of previous findings, received evidence offered by the State, and heard testimony of witnesses offered by the State. (T85-T87). Due to needing additional

time, the adjudication hearing on the motion to terminate parental rights was continued to September 8, 2025. (T87). The juvenile court also heard matters regarding Appellant's motion for change of placement and Appellant's motion for visitation during pendency of any appeal. (T85). For sake of clarity of the record, the juvenile court advised that these motions would be considered separately and independently of the motion for termination of parental rights. (T85).

On September 8, 2025, the adjudication for the motion to terminate parental rights resumed. (T89). The State called additional witnesses and rested, and DHHS and the guardian ad litem rested without presenting evidence. (T89). Appellant requested a continuance to present her case in chief, and the juvenile court granted the continuance. (T89). In addition, the juvenile court found that Appellant's motion for visitation pending appeal shall be considered in association with Appellant's case in chief regarding the motion for termination of parental rights. (T90). The juvenile court also held that Appellant's motion for change of placement would be taken up at the conclusion of the termination of parental rights proceedings. (T90). The matters were set for October 6, 2025. (T89).

On October 6, 2025, Appellant presented evidence for her case in chief in the termination of parental rights, the motion for visitation pending appeal, and the motion for change of placement. (T92-96). The juvenile court entered an order overruling Appellant's motion for change of placement and motion for negative reasonable efforts finding. (T92-T96).

In an order filed on December 9, 2025, the juvenile court found the State proved Esperanza came within the meaning of Neb. Rev. Stat. § 43-292 (2), (6), and (7) by clear and convincing evidence, relating to Appellant and found counts I, II, IV, V-A and C, VI and VII of the States' Motion for Termination of Parental Rights to be true. (T106). Specifically, the juvenile court found that despite three and a half years of juvenile court involvement, Appellant failed to put herself in a position of fitness to parent. (T106). The juvenile court also found that Appellant presently had an outstanding warrant for her arrest.

(T106). The juvenile court ultimately concluded that rather than Appellant solve the matter of the warrant and comply with her rehabilitation plan, she chose to be absent. (T106). The juvenile court noted case professionals attempted to assist Appellant, but those attempts were met with Appellant's resistance. (T106). The juvenile court found that count V-B shall be dismissed for failure of proof. (T106). The juvenile court further found that to the extent Appellant had completed therapy, there was no support that her completion allowed her to gain insights sufficient for parental fitness. (T106).

In turn, the juvenile court determined that the State adduced clear and convincing evidence that Esperanza's best interests and welfare were best served by terminating Appellant's parental rights. (T106). Appellant's motion for visitation during the pendency of appeal was overruled. (T107). The juvenile court supported that ruling as Appellant had not maintained consistent visits, taken steps needed for visits to occur, and her whereabouts at the then present time were unknown. (T107). The juvenile court found the testimony of Breonna Berry, Patrice Clemons, Zachary Dolezal, Megan Ott, Selena Leon, and Calandria Plambeck to be individually reliable, credible, probative, and entitled to weight. (T105). The testimony of Rachel Parker was found not to be reliable, credible, and entitled to weight for the reason that she demonstrated bias towards the mother on what appears to be based on the witness's own "lived experience". (T106).

Factual History:

On August 22, 2025, a hearing was held on the motion to terminate parental rights of Appellant. (5:16-25). The juvenile court informed the parties that it intended to rule on Appellant's negative reasonable efforts motion heard on June 17, 2025, within the body of the order pertaining to the motion to terminate parental rights. (6:1-9). The juvenile court also noted that it would consider evidence adduced for the motion to terminate parental rights and Appellant's motion for change of placement in conjunction. (7:14-16). The Appellant did not appear for the proceedings. (9:11-16). The State, HHS, and guardian

ad litem noted their objections to Appellant's motion for visitation pending appeal and motion for change of placement. (12:3-20).

Prior to the first witness being called the State offered several exhibits. (13:3-25; 14:1-14). The State's offer of exhibit 103, which is a certified copy of Appellant's criminal docket in Douglas County, noted that Appellant had an active criminal warrant as of this date. (15:16-19).

The State called Breonna Berry (hereinafter "Berry") as its first witness. (15:21-23). Berry testified that she has been Esperanza's foster parent for four years. (19:1-15). Berry testified that Esperanza has been placed with her since April of 2021. (20:12-20). Berry testified that Esperanza has lived with her continuously since that time. (20:21-23).

Berry stated when she first received Esperanza in April 2021, the visit schedule consisted of four supervised visits with Appellant throughout the week. (22:11-17). Berry testified she was made aware of when visitations occurred and of any visitation changes through communications from the caseworker or visitation worker and that these communications occurred both when Appellant canceled or had to change to a different day or time. (24:24-25; 25:1-7). Berry testified that Appellant's visits during the period of January 2022 to December 2022 were inconsistent. (27:2-4). Berry reiterated that the last time Appellant saw Esperanza was in mid-May or early June of 2024. (27:21-25; 28:1-5). Berry testified that the last time Appellant and her had any contact was in April or May of 2021. (28:24-25; 29:1-3). Berry stated she has made no further attempts to contact Appellant since May 2021, nor has Appellant sent any form of gifts, cards, or compensation for Esperanza. (31:8-17). Berry also testified that Appellant has not attempted to contact Berry regarding Esperanza since May of 2021. (31:15-17).

Berry testified that she takes care of Esperanza on a day to day basis. (31:18-21). Berry testified that she takes Esperanza to all of her medical appointments, and that Appellant has not attended those medical appointments, nor has Appellant asked Berry about those

medical appointments. (32:3-20). On cross examination, Berry testified visits were often rescheduled and there were many occasions where those “make-up” visits did not occur. (40:22-25; 41:1-5). Berry testified that the visits where Esperanza was picked up from daycare, at least fifty percent of them did not occur. (42:3-18). It should be noted that due to confusion of evidence pertaining to the motion to change of placement and the motion for termination of parental rights, the juvenile court decided at this point to take both motions up independently. (50:12-20).

The State called Patrice Clemons (hereinafter “Clemons”) to the stand. (60:6-9). Clemons is a children and family service specialist with DHHS. (60:12-20). Clemons stated she worked as Appellant’s case manager from January 2022 to July 2024. (72:10-21). Clemons stated Esperanza came into care of DHHS due to an April 2021 domestic violence incident between Appellant and the alleged father. (74:3-17). Clemons testified that while she was on the case, Esperanza remained a state ward and was never placed with Appellant. (75:1-19).

Clemons testified that Appellant’s court orders from January 2022 to July 2024 were to participate in agency supervised visitation, individual therapy, domestic violence class, psychiatric evaluation, family support, obtain and maintain safe and stable housing, complete a parenting class, and obtain and maintain steady employment. (77:1-6). Clemons testified that she monitors a parent’s income by having conversations with the parent and reviewing documentation provided by the parent. (79:13-17). Clemons stated Appellant was employed from mid-2022 to the end of 2023, but that Appellant was ultimately fired because her supervisor said she stole something. (81:23-25; 82:1; 83:1-2). Clemons testified that she implemented a family support worker for Appellant to assist in locating new employment opportunities. (83:14-17). Clemons testified that Appellant was not able to financially provide for Esperanza after losing employment because she never received verification that Appellant obtained new employment. (84:4-17).

Clemons then testified to the visitation schedule, and stated that visits started as fully supervised, moved to a combination of supervised and unsupervised, then reverted back to fully supervised. (84:18-25; 85:1-2). Clemons testified that in March of 2022, Appellant was unsuccessfully discharged from a visitation agency for being combative to the staff. (87:3-15). Clemons testified that she issued a new referral for agency supervised visitation. (88:1-7). Clemons stated that Appellant was unsuccessfully discharged from that visitation agency in June 2022 due to noncompliance. (89:17-24; 90:3-9). Clemons testified that she made another referral for agency supervised visitation. (90:10-24). Clemons then testified that she met with Appellant throughout the life of the case regarding visitations, and discussed inconsistencies with said visitations. (93:23-25; 94:1-22). Clemons stated that Appellant's visitation attendance declined near the end of 2023. (95:23-24). Clemons then testified that between the end of 2023 and the suspension of visits in 2024, the visits never moved to an unsupervised level. (98:4-7).

Clemons testified that she monitors a parent's compliance with court ordered therapeutic services by speaking with parents and reaching out to providers for updates. (101:12-25). Clemons testified that Appellant was initially attending therapy when Clemons was initially assigned the case in 2022. (103:6-11).

Clemons testified that in March of 2024, the juvenile court ordered that no further reasonable efforts be provided, which is interpreted to mean the case manager is no longer obligated to assist a parent in setting up services and that a parent is responsible for self-help. (108:11-21). Clemons also stated that to her knowledge this order never changed. (108:22-25; 109:1).

On cross-examination, Clemons testified that she authored a court report in November 2022, expressing concerns regarding Appellant's parenting, specifically her inconsistent visits and not confirming said visits. (109:18-25; 110:1-17). Clemons stated she had further concerns in 2023 with Appellant's progress regarding therapy, domestic violence, and visitation. (111:1-14). Clemons testified that

Appellant's visitation in early 2023 was inconsistent due to transportation issues and Appellant not confirming her visits in advance. (111:15-21). Clemons also testified that Appellant was not participating in her unsupervised visitation in 2023. (116:3-6). Clemons stated Appellant was not in compliance with specific court orders in October 2023, specifically therapy, visitation, and signing releases. (119:1-10). Clemons testified that Appellant stated she did not want to be forced back into therapy at that time. (119:11-15). Clemons stated attendance with visitation was not consistent and visits had to revert back to fully supervised visitation. (119:16-24). Clemons also testified that Appellant failed to sign releases of information for service providers. (119:25, 120:1-2).

Clemons testified in May of 2024, Appellant had not attended her first domestic violence class, and therefore was not able to attend the rest of the series. (122:12-25, 123:1). Clemons also testified that Appellant was unsuccessfully discharged from her parenting class on February 4, 2024. (123:7-11). Clemons also testified that Appellant was not in compliance with the court ordered therapy at this time. (125:7-23). Clemons also testified that Appellant was not participating in visitation consistently at this time. (126:16-22).

Clemons testified that Appellant would often argue with her during family team meetings when Clemons voiced her concerns about court orders. (152:1-5). Specifically, Clemons recalled an instance where Appellant accused her of lying about what she reported to the judge, and Appellant had called her a "bitch." (152:8-14). Clemons described Appellant's progress with court orders from January of 2022 to July of 2024 as minimal. (152:18-21). Clemons testified she left the case in July of 2024 due to her professional relationship with Appellant being severed, as Appellant was calling the hotline in attempts to get her fired. (153:20-25; 154:1).

The State then called Zachary Dolezal (hereinafter "Dolezal") to the stand. (167:8-10). Dolezal is employed as a probation officer with Douglas County. (168:14-23). Dolezal testified that he was assigned as Appellant's probation officer in November 2024. (179:8-13). Dolezal

testified he was Appellant's probation officer until she absconded from supervision in April 2025. (179:22-25; 180:1). Dolezal stated Appellant's court orders under her criminal docket were to refrain from unlawful conduct, report as directed, maintain employment, and previously mentioned standard conditions, which included making herself available for probation appointments and programming, cooperate with all matters that may affect supervision, abstain from the use of alcohol or controlled substances, refrain from contact with individuals who are on probation or engaging in illegal activity, and stay within the State of Nebraska and not leave the state without advanced permission from your probation officer. (170:4-18; 180:21-25). Dolezal testified those special conditions included completing the payment of her fines and fees, completing an anger management class, and to follow through with court orders under the juvenile case. (181:1-4).

Dolezal testified to Appellant's compliance with probation (181:5-9). Dolezal stated Appellant completed anger management class, made herself available for home visits, and maintained employment. (181:9-13). Dolezal stated there a few times where Appellant was unable to meet with her due to transportation issues or financial reasons. (181:13-19). Dolezal testified Appellant had difficulties with staying sober as she tested positive for THC multiple times. (181:20-25).

Dolezal testified to allowing Appellant to leave the State of Nebraska on a travel permit from March 28 through April 8, 2025. (182:17-18). Dolezal testified that Appellant did not return to the State of Nebraska following April 8 and was therefore not in compliance with her travel permit that was granted. (184:9-14). Dolezal testified that he attempted to contact Appellant on April 9, 2025 after Appellant did not show up to their scheduled meeting. (185:5-7; 185:17-24). Dolezal testified that Appellant told her she was not in the State of Nebraska, and Dolezal informed Appellant that she was in violation of the travel permit he had granted her. (186:1-6). Dolezal testified Appellant set up a meeting with him upon her return, but that meeting never

happened, and in turn, he submitted violation of probation paperwork. (189:3-6). Dolezal stated he cited the numerous violations in the paperwork, including Appellant not reporting as directed, missing multiple probation meetings, missing multiple drug tests, testing positive for THC multiple times, and overstaying her travel permit that was provided. (189:7-16).

Dolezal testified Appellant spoke with him about the juvenile docket and those conversations featured Appellant making disparaging comments regarding the validity of the juvenile case, her believing it was fictitious and it should not have been pursued. (193:12-15). Dolezal stated that sentiment concerned him as cooperating with juvenile court orders was a condition of her probation and left him with the impression that Appellant lacked the internal motivation needed. (194:12-17). Dolezal stated Appellant was more noncompliant with her probation orders than compliant. (194:22-25). Dolezal testified there was an active warrant for Appellant's arrest due to her violating her probation orders. (195:1-11).

The State called Megan Ott (hereinafter "Ott") to the stand. (205:12-15). Ott is employed as a child and family services specialist supervisor with DHHS. (205:16-21). Ott was the supervisor for Esperanza and the family from September 2024 until June 2025. (214:4-12). Ott testified Esperanza came into DHHS care in April 2021 due to a domestic violence incident between Appellant and an alleged father. (214:11-12; 215:14-16). Ott testified Esperanza was never placed in Appellant's home while she was on the case and that Esperanza continuously resided with Breonna Berry. (215:24-25; 216:1; 216:8-15).

Ott testified that Appellant's court orders while she was on the case were to participate in individual therapy and an anger management class. (217:2-5). Ott testified that in order for visitation between Esperanza and Appellant to start, Appellant had to engage in individual therapy and complete an anger management class. (218:4-8). Ott testified that during a family team meeting in November 2024, those court orders were being discussed with Appellant, and Appellant

became very escalated. (217:22-25; 218:1-3). Specifically, Ott testified that Appellant was very unhappy about where Esperanza was placed, and she became very angry, yelling, and cussing, and it got to the point where the family team meeting was ended due to Appellant's behavior. (219:1-10). Ott testified that it was really difficult to get to the point of having a true discussion with Appellant due to her level of anger during the family team meeting. (228:19-22).

Ott stated Appellant had not participated in therapy while she was assigned the case. (219:25; 220:2-4). Notably, Ott testified that Appellant did not participate in individual therapy after Appellant's visitation was suspended in May 2024. (240:20-23). Ott stated Appellant had participated in and completed anger management class in the beginning of 2025. (220:5-19). Ott testified that while she was on the case, visits between Appellant and Esperanza never resumed due to Appellant's failure to be in therapy. (220:20-24). Ott testified that to her knowledge, the last time Appellant saw Esperanza was May 2024. (220:25; 221:1-2).

Ott testified Appellant has not been compliant with the court orders for reunification and has not placed herself in a position to parent Esperanza. (221:3-11). Ott stated she has concerns on Appellant's fitness as a parent as there has been no stability, no showing that Esperanza would be successful in Appellant's home, and Appellant was an escalated parent who was difficult to deescalate. (221:12-18).

Ott stated the issues causing Esperanza to be in DHHS care had not been resolved. (222:6-9). Ott testified Appellant is not in a position to provide Esperanza with emotional regulation and stability. (223:2-5). Ott testified that it was in Esperanza's best interest to terminate Appellant's parental rights, supporting this opinion by citing the length of time Esperanza had been in DHHS care and Appellant's lack of behavioral change and lack of engagement in individual therapy. (223:6-21).

The State called Selena Leon (hereinafter "Leon") to the stand (243:6-9). Leon is a case manager in the Child and Family Services

Division of the Nebraska Department of Health and Human Services. (243:12-18). Leon testified that she was the case manager for Esperanza during a three-month period starting in June or July of 2025. (253:7-23). Leon stated that during her time as Esperanza's case manager, she attempted to evaluate Appellant's compliance with the court orders to engage in individual therapy and anger management classes, but she has only been able to successfully contact Appellant once via phone. (256: 22-25; 257: 1-19). During this phone call, Appellant informed Leon that she had completed individual therapy three times and an anger management class once, but that it was not viewed as completed by DHHS. (258:18-21).

Leon testified she had received no confirmation from Appellant that Appellant participated in therapy or an anger management course. (258:22-25; 259:1-21). Leon testified that Appellant's progress had been poor and she was concerned about Appellant's fitness to parent Esperanza. (260:17-20). Leon based those opinions on the failures around court orders and the length of time Esperanza has been in care. (260:17-20; 261:11-25). Leon testified to the importance of communication between case managers and parents and the lack of said communication from Appellant. (262:16-25; 263:1-4). Leon concluded that, based on her training and experience, the lack of progress in court orders, and the length of time Esperanza has been in state care, it is her opinion that it is in the best interests of Esperanza that Appellant's parental rights be terminated. (263:5-20).

The State rested, DHHS rested, and the guardian ad litem rested. (278:25; 279:1-8). The juvenile court set this matter for a new date off of the record to allow Appellant to present her case in chief.

Matters reconvened on October 5, 2025. (289:1-3). Appellant called Calandra Plambeck (Hereinafter "Plambeck") as its first witness. (290:12-20). Plambeck works as a mental health therapist with Thoughts Within Counseling. (292:15-22). Plambeck stated she worked at Generation Hope from 2021 through February of 2024. (294:19-25; 295:1-4). Plambeck testified that while working at Generation Hope, she was Appellant's mental health therapist from

September 2023 to February 2024. (298:5-11). Plambeck stated that during the therapy sessions over this six-month period, Appellant testified that she knew some of her behaviors, such as irritability and anger, were probably not protective of her children and that this stemmed from her past trauma history, and she was hoping to identify and challenge them when they arose. (302:17-25; 303:1-5).

The State cross-examined Plambeck and asked whether Appellant was consistent in attending her therapy sessions, to which Plambeck testified that Appellant was consistent. (305:5-18). Plambeck also testified that Appellant took accountability regarding her juvenile court case through statements such as saying “I know what I did was wrong” and “I should have protected my children better.” (305:19-25; 306:1-2).

Leslie Christensen, on behalf of the Nebraska Department of Health and Human Services then cross-examined Plambeck, asking whether Appellant had her parenting time suspended due to behaviors after their final therapy session in February 2024, and would Plambeck recommend she continue therapy, to which Plambeck stated yes and that Appellant did not follow up with Thoughts Within for therapy. (307:24-25; 308:1-9).

Appellant then called Mildred Tucker (hereinafter “Tucker”) as its next witness. (310:21-22). Tucker testified that she works as a mental health therapist at Cultivating Paths. (312:9-12). Tucker then stated that she worked with Appellant on anger management. (313:12-19). Tucker testified that Appellant successfully completed the eight sessions of anger management with her and received a certificate of completion. (315:18-25; 316:1-10).

Appellant then called Rachel Parker (hereinafter “Parker”) as its next witness. (328:8-18). Parker testified regarding the visitations between Appellant and Esperanza; however, the juvenile court found her testimony unreliable and not credible, and it was not entitled to weight because she demonstrated bias toward the mother based on what appears to be the witness's "lived experience". Thus, the State does not think her testimony is relevant to the case.

ARGUMENT

I. THE JUVENILE COURT CORRECTLY FOUND THAT THE STATE PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ESPERANZA CAME WITHIN THE MEANING OF NEB. REV. STAT. § 43-292(2).

To properly terminate parental rights pursuant to Neb. Rev. Stat. §43-292(2), the State must prove that the parent has substantially and continuously or repeatedly neglected and refused to give the juvenile necessary parental care and protection. *In re Interest of Elijah P.*, et al., 24 Neb. App. 521, 542, 891 N.W.2d 330, 347 (2017). It is not required that one have physical possession of the child to demonstrate the presence of neglect contemplated by Neb. Rev. Stat § 43-292(2). *In re Interest of Joseph S.*, 291 Neb. 953, 962-63, 870 N.W.2d 141, 149 (2015). A parent's failure to "provide an environment to which his or her children can return can establish substantial, continual, and repeated neglect." *Id.* at 961, 870 N.W.2d at 147. Past neglect, along with facts relating to current family circumstances which go in the best interests, is all properly considered in a parental rights termination case under Neb. Rev. Stat. §43-292(2). *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 909, 782 N.W.2d 320, 328 (2010).

In the case at bar, the Separate Juvenile Court correctly found that Esperanza came within the meaning of Neb. Rev. Stat. §43-292(2) as Appellant substantially and continuously neglected her child throughout this case. Appellant did not have physical possession of Esperanza since her removal, and Appellant continuously subjected her to substantial neglect due to her failure to provide for Esperanza's basic needs, failure to consistently participate in and show material progress with therapeutic services and classes, failure to consistently participate in visitation, and her failure to resolve outstanding criminal matters.

Appellant has not taken the necessary steps to provide for Esperanza's daily needs. Berry testified that Esperanza has been placed with her continuously since April of 2021. (20:12-20). Berry

testified that the last time Appellant saw Esperanza was in mid-May or early June of 2024. (27:21-25; 28:1-5). Berry also testified that since May of 2021, Appellant has not sent Esperanza any form of gifts, cards, or compensation to assist Berry in providing for Esperanza's daily needs. (31:8-17). Berry testified that Appellant never attended medical appointments for Esperanza. (32:3-20). Clemons testified that from January of 2022 through July of 2024, Appellant had not maintained consistent employment, and therefore, was unable to financially provide for Esperanza. (81:23-25; 82:1; 83:1-2; 84:4-17).

Appellant has not participated in the necessary therapeutic services or classes that would assist her in creating a safe environment for Esperanza to return to. Clemons and Ott testified that this case came into care due to ongoing domestic violence concerns surrounding Appellant and the alleged father. (74:3-17; 214:11-12). Throughout the life of the case, Appellant was court ordered to participate in individual therapy, domestic violence courses, anger management classes, and parenting courses, which were all crucial to Appellant being able to safely reunify with Esperanza. (77:1-6; 217:2-5). In addition, a lot of these services were ordered due to Appellant consistently engaging in combative behaviors toward case professionals. (87:3-15; 152:8-14; 219:1-10). In May of 2024, Appellant's visits with Esperanza were suspended due to Appellant engaging in violent conduct toward case professionals in front of Esperanza. (SUPPT2-7). Appellant was ordered to complete an anger management class and participate in individual therapy in order for those visits to safely resume. (T57; 218:4-8). Ott testified that Appellant did not participate in individual therapy after her visits were suspended, which was the sole reason why visitation never resumed. (220:20-24). The overall lack of compliance with therapeutic services and classes paired with Appellant's continued aggressiveness towards case professionals led both Leon and Ott to testify that they questioned Appellant's ability to parent Esperanza. (223:2-21; 260:17-20; 261:11-25; 263:5-20.) Appellant consistently engaged in combative behavior throughout the life of this case, failed to participate or show material progress after

participating in numerous court ordered services designed to address those issues, which ultimately shows that Appellant cannot provide a safe environment for Esperanza to return home to.

Appellant continuously or repeatedly neglected and refused to give Esperanza necessary parental care and protection by failing to consistently participate in visitation. Appellant failed to consistently attend visits with Esperanza. (27:2-4; 40:22-25; 41:1-5; 42:3-18). Clemons testified that she made numerous referrals for agency supervised visitation due to Appellant being unsuccessfully discharged for material noncompliance and/or combativeness toward case professionals. (87:3-15; 88:1-7; 89:17-24; 90:3-9; 90:10-24). While participation did occasionally occur during the first few years of the case, Clemons testified that Appellant's participation declined near the end of 2023. (95:23-24). From the end of 2023 till the time visits were suspended in May 2024, visitation never moved to an unsupervised level. (98:4-7). Visitation between Appellant and Esperanza has not occurred since May of 2024, and Esperanza has not seen Appellant since. (27:21-25; 28:1-5; 220:20-24). Appellant has continuously neglected and refused to give Esperanza necessary parental care by failing to consistently participate in visitation throughout the life of this case.

Appellant's outstanding criminal matters also prove that Appellant has failed to provide Esperanza with proper parental care and protection. Appellant was placed on probation in November of 2024. (179:8-13). Dolezal testified that Appellant was more noncompliant with her probation orders than she was compliant. (194:22-25). In April of 2025, Dolezal submitted a violation of probation for Appellant due to her continued noncompliance, and testified that Appellant failed to report as directed, Appellant missed multiple probation meetings, missed multiple drug tests, tested positive for THC on numerous occasions, and overstayed her travel permit that was provided to her. (189:7-16) A warrant was issued for Appellant's arrest due to her violating her probation orders, and as of the date of Dolezal's testimony, the warrant was still active. (195:1-11).

Appellant's failure to resolve outstanding criminal matters provides further evidence that she is not capable of providing a safe and stable environment for Esperanza.

Appellant has substantially and continuously neglected Esperanza physically, emotionally, and financially. By failing to put herself in a position where Esperanza could be placed safely back in her care, Appellant has neglected Esperanza. The record clearly establishes that Appellant substantially and continuously neglected Esperanza, as evidenced by her failure to provide for Esperanza's daily needs, her failure to participate in or show substantial progress in therapeutic services and classes, her failure to consistently participate in visitation, and her failure to resolve outstanding criminal matters. Thus, due to Appellant's substantial and continuous failure to provide and care for Esperanza, this Court must affirm the Separate Juvenile Court's termination of Appellant's parental rights under Neb. Rev. Stat. § 43-292(2).

II. THE JUVENILE COURT CORRECTLY FOUND THAT THE STATE PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ESPERANZA CAME WITHIN THE MEANING OF NEB. REV. STAT. § 43-292(6).

Parental rights can be terminated "[f]ollowing a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination." Neb. Rev. Stat. § 43-292(6). In other words, when the circumstances fall under subdivision (6), the State must adduce evidence that a "parent has failed to comply, in whole or in part, with a reasonable provision material to a rehabilitative objective." *In re Interest of Kassara M.*, 258 Neb. 90, 97, 601 N.W.2d 917, 924 (1999).

The juvenile court concluded Appellant did not adhere to material portions of her rehabilitative plan and found that grounds for

termination existed under Neb. Rev. Stat. § 42-292(6). Specifically, the juvenile court found that, despite three and a half years of court involvement, Appellant has failed to make any measurable or sustained progress toward reunification with Esperanza. (T106).

Appellant contends that she made “genuine, reasonable efforts to comply and was committed to moving toward reunification with the minor child.” Brief for Appellant, p. 17. Yet, the great weight of evidence suggests otherwise. Multiple witnesses described Appellant’s progress with her court orders as minimal, poor, unresolved, and noncompliant. (152:18-21; 221:3-11; 222:6-9; 260:17-20; 261:11-25). Appellant wholly failed to show consistency with court orders designed to assist her with reunification with her child. Appellant’s lack of engagement led to the court correctly concluding there were grounds for termination existing under Neb. Rev. Stat. § 42-292(6). The record is clear that Appellant failed to make material progress toward her court ordered rehabilitative plan.

Appellant failed to consistently participate in agency supervised visitation with Esperanza. Berry testified that Appellant had not participated in a visit with Esperanza since May or June of 2024. (21:23-24). Prior to May or June of 2024, Berry testified that Appellant’s visits were inconsistent and commonly missed. (27:2-4; 40:22-25; 41:1-5). Clemons testified that while she was the case manager from January 2022 through July of 2024, Appellant was unsuccessfully discharged from numerous visitation companies due to noncompliance and exhibiting combative behavior toward case professionals. (87:3-15; 89:17-24; 90:3-14). Clemons testified that in 2022, Appellant was inconsistent in attending visits and often did not confirm said visits. (109:18-25; 110:1-17). Clemons testified that Appellant’s visitation in early 2023 was inconsistent due to transportation issues and Appellant not confirming her visits in advance. (111:15-21). Clemons also testified that when there was a combination of supervised and unsupervised visitation in 2023, Appellant was not participating in her unsupervised visitation. (116:3-6). Clemons testified that due to the inconsistency with unsupervised

visitation, visitation reverted back to agency supervised visitation. (119:16-24). Clemons testified that between the end of 2023 and May of 2024, visitation never moved to an unsupervised level. (98:4-7). Ultimately, in May of 2024, Appellant's visitation was suspended, and all parties stipulated to those visits resuming upon Appellant participating in an anger management class and participating in individual therapy. (T57). Ott testified that while she was on the case from September of 2024 till June of 2025, visits between Appellant and Esperanza never resumed due to Appellant's failure to be in therapy. (220:20-24). Ott testified that the last time Appellant saw Esperanza was May 2024. (220:25; 221:1-2). Appellant has failed to attend her visitation consistently throughout the life of this case. In addition, when visitation was suspended due to Appellant's own actions in May of 2024, Appellant did not follow through with the necessary court orders that would have allowed her visitation to resume.

Appellant failed to participate in therapeutic services and classes that were ordered as part of her rehabilitation plan, and Appellant failed to demonstrate any material progress toward parental fitness. Appellant was unsuccessfully discharged from parenting classes on February 4, 2024, due to noncompliance. (123:7-11). Clemons testified that Appellant was unsuccessfully discharged from a domestic violence class in May of 2024 due to Appellant not attending the first meeting, and therefore becoming ineligible to attend the rest of the series. (122:12-25, 123:1). While Ott testified that Appellant successfully completed an anger management class, Appellant failed to demonstrate to the juvenile court or case professionals any sort of material and sustained progress due to Appellant continuously acting combative and escalated towards case professionals. (217:22-25; 218:1-3). Ott testified that Appellant became very angry and began yelling and cussing at case professionals during a family team meeting near the end of 2024, and that it was nearly impossible to have a true discussion with Appellant due to her level of anger that was exhibited. (228:19-22). Clemons also testified that Appellant had accused her of lying about what she reported to the judge and called her a "bitch," and

that Clemons ultimately removed herself from her role as Appellant's case manager due to Appellant reportedly making hotline calls about Clemons in an attempt to get her fired. (152:8-14; 153:20-25; 154:1).

Appellant's participation in individual therapy was inconsistent throughout the life of the case. Clemons testified that Appellant was initially attending therapy in 2022. (103:6-11). In October 2023, Appellant was not attending individual therapy and expressed she did not want to participate at that time, despite her being court ordered to do so. (119:1-15). In May of 2024, Clemons also testified that Appellant was not in compliance with the court ordered therapy due to her lack of engagement. (125:7-23). Ott testified that from September of 2024 through July of 2025, Appellant had not participated in therapy. (219:25; 220:2-4). After visitations were suspended in May 2024, Appellant still failed to participate in individual therapy, despite it being a necessary service to participate in in order for visitation with Esperanza to resume. (240:20-23). The juvenile court found that the State failed to meet its burden in regards to Appellant's lack of participation in therapy, but noted that there was no support that her completion of therapy allowed her to gain insights sufficient for parental fitness. (T106). Despite some periods of compliance with certain court orders, Appellant has demonstrated a lack of material and sustained progress towards court orders designed to remedy the reasons that led to Esperanza's removal.

Ultimately, Appellant's lack of engagement, completion, and progress in court-ordered services led the juvenile court to find that no further reasonable efforts were required in May of 2024. (T54). The juvenile court declared that, aside from visitation, DHHS was no longer required to provide further reasonable efforts to Appellant. (T54). Testimony clarified that this finding relieved DHHS of the obligation to assist Appellant in arranging services, placing the responsibility on Appellant to pursue self-help measures to effectuate reunification. (108:11-21). This finding reflects Appellant's consistent and material noncompliance towards court orders and reunification efforts. There is no evidence that Appellant undertook any self-help

measures to effectuate reunification with Esperanza. Accordingly, the no-reasonable-efforts finding provides additional support for the juvenile court's conclusion that grounds for Appellant's termination existed under Neb. Rev. Stat. § 42-292(6).

In summary, the record contains clear and convincing evidence that Appellant failed to engage in rehabilitative services. While Appellant minimally engaged with some services, her efforts have not translated to measurable progress. Appellant has not demonstrated any measurable or sustained progress, and has failed to comply in whole or in part with the rehabilitative objective. Thus, this Court must affirm the Separate Juvenile Court's termination of Appellant's parental rights under Neb. Rev. Stat. § 43-292(6).

III. THE JUVENILE COURT CORRECTLY FOUND THAT THE STATE PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ESPERANZA CAME WITHIN THE MEANING OF NEB. REV. STAT. § 43-292(7).

Pursuant to Neb. Rev. Stat. § 43-292(7), parental rights may be terminated if “[t]he juvenile has been in out-of-home placement for fifteen or more months of the most recent twenty-two months.” This subdivision reflects a reasoned legislative judgement that a child cannot—and ought not—be made to wait dubious parental maturity. *In re Interest of Mateo L.*, 309 Neb. 565, 580-81, 961 N.W.2d 516, 527 (2021). Importantly, subdivision (7) “operates mechanically and, unlike the other subsections of the statute, does not require the State to adduce evidence of any specific fault to the parent.” *Id.* at 580, 961 N.W.2d at 527.

Though Appellant did not address the juvenile court's finding under Neb. Rev. Stat. § 43-292(7) as an assignment of error, Appellee would briefly address the argument for purposes of the appeal. In the current matter, the State presented clear and convincing evidence that Esperanza was consistently in out-of-home placement for multiple years. Berry, Clemons, and Ott all testified that Esperanza was removed from Appellant's care in April 2021. (20:12-20; 74:3-17;

215:14-16). Esperanza was placed in Berry's home in April of 2021 and has resided there continuously since. (20:21-23; 75:1-19; 215:24-25; 216:1-15). The first day of the termination of parental rights hearing marked four years and four months that Esperanza was not in Appellant's care, which is well beyond the statutory requirement. Esperanza cannot be expected to linger in foster care awaiting Appellant to participate in the necessary court orders in order to reunify with her. Thus, this Court should affirm the juvenile court's finding that Esperanza was within the meaning of Neb. Rev. Stat. § 43-292(7), and a statutory basis for the termination of Appellant's parental rights existed.

IV. THE JUVENILE COURT CORRECTLY FOUND THAT TERMINATION OF APPELLANT'S PARENTAL RIGHTS WAS IN ESPERANZA'S BEST INTERESTS AND THAT APPELLANT IS UNFIT TO PARENT HER CHILD.

In a termination of parental rights proceeding, the State must prove a statutory ground for termination and must prove that termination is in the best interest of the minor child. *In re Interest of Kendra M.*, 283 Neb. 1014, 814 N.W. 2d 747 (2012). In a termination proceeding, the evidence adduced to prove termination on any statutory ground other than Neb. Rev. Stat. § 43-292(7) is highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse. *In re Interest of Shelby L.*, 270 Neb. 150, 699 N.W.2d 392 (2005). The best interests and parental unfitness analyses in the context of a termination of parental rights case require separate, fact-intensive inquiries, but each examines essentially the same underlying facts. *In re Interest of Mateo L. et al.*, 309 Neb. 565, 961 N.W.2d 516 (2021). The trial court's findings will not be set aside on appeal unless they are against the weight of the evidence or there is a clear abuse of discretion. *In re Interest of J.S.*, 1 Neb. App. 518, 519, 400 N.W.2d 89, 90 (1993).

The law does not require perfection of a parent, but where a parent is unable or unwilling to rehabilitate themselves within a

reasonable amount of time, the child's best interests require termination of parental rights. *In re Interest of Kantril P. & Chenelle P.*, 257 Neb. 450, 465, 676 N.W.2d 378, 384 (1999); *In re Interest of Zanaya W.*, 291 Neb. 20, 30, 863 N.W.2d 803, 811 (2015). There is a rebuttable presumption that the child's best interest is served by maintaining a relationship with the parent. *In re Interest of Mateo L.*, 309 Neb at 583. That presumption can only be overcome by showing that the parent is either unfit to perform the duties imposed by the relationship or has forfeited that right. *Id.* The Nebraska Supreme Court has said that unfitness derives from the fault and neglect subsections of that statute and an assessment of the child's best interests. *Id.* In this context, parental unfitness means a personal deficiency or incapacity that has prevented, or will probably prevent, the performance of a reasonable parental obligation in child rearing and that has caused, or probably will result in, detriment to a child's well-being. *Id.* The Nebraska Supreme Court also noted that a child being placed in an out-of-home placement by itself can be independent grounds for termination because "children cannot and should not be suspended in foster care or be made to await uncertain parental maturity." *Id.* at 581.

Since April of 2021, Appellant has repeatedly failed to put herself in a position to properly parent Esperanza. Due to Appellant's lack of substantial progress over this period, the inability to properly care for her child, and the inability or refusal to consistently participate in her rehabilitative plan, the juvenile court's finding that Appellant is unfit and that termination of Appellant's parental rights is in the minor children's best interests should be upheld.

Esperanza was removed from Appellant's care when she was two months old. (20:12-20). Esperanza has continuously resided in a foster home that meets her daily needs and provides her with an environment that she can flourish in. (31:18-21; 32:3-20).

Throughout this case, there were ongoing barriers which directly prevented Appellant from reunifying with Esperanza. Despite having nearly four years to do so, Appellant failed to complete the necessary

court orders that would have led to reunification with her child. Esperanza should not be forced to be suspended in foster care waiting for Appellant to reach parental maturity and finally address those barriers. Appellant has consistently shown an inability to regularly participate in visitation, participate in and show progress in therapeutic services and classes, and inability to resolve her criminal matters. Appellant's shortcomings show a complete lack of parental fitness.

Appellant continuously engaging in criminal behavior throughout the life of this case also proves that Appellant is an unfit parent. Appellant was put on probation in November of 2024 for child abuse charges. (15:16-19; 179:8-13). Appellant continued to engage in criminal behavior by continuously testing positive for THC and absconding from the State of Nebraska. (189:7-16). Due to her behaviors, Dolezal submitted a violation of probation, and as of the date of the termination of parental rights proceeding, Appellant had an active warrant for her arrest. (T106; 195:1-11). The continued engagement in criminal conduct puts Esperanza in further peril, and reiterates that Appellant cannot provide Esperanza with a life of stability. Appellant's behaviors, and consequences she faces of such behaviors, prove that she is unfit to parent, and that termination of Appellant's parental rights is in Esperanza's best interests.

Appellant's inappropriate actions with case personnel additionally showed that she is an unfit parent. Both Ott and Clemons testified to Appellant being consistently combative during family team meetings. Clemons stated Appellant would argue during these meetings and even once accused Clemons of lying about what she reported to the judge, and Appellant had called her a "bitch. (152:1-14). An additional incident during a family team meeting in November 2024, occurred where court orders were being discussed and Appellant became very escalated. (217:22-25; 218:1-3). Ott testified that during a meeting Appellant was unhappy about Esperanza's placement and that unhappiness quickly escalated into anger, yelling, and cussing. (219:1-8). Appellant's behaviors reached a point where the family team

meeting had to end. (219:9-10). Ott testified Appellant's level of anger made it hard to get to the point of having a true discussion during the family team meeting. (228:19-22). Similarly, Appellant's negative and inappropriate behaviors are documented within NDHHS's motion to suspend visitation (SUPPT1-5). These actions led the juvenile court to suspend all visitation, as it was appropriate and in the best interest of Esperanza. (SUPPT7). Appellant's negative actions and behaviors towards case personnel was a consistent trend throughout the life of this case. Appellant has continuously shifted the blame of her own noncompliance on case professionals. Dolezal also testified that Appellant continuously made disparaging comments regarding the juvenile case as she believed it was fictitious and should not have been pursued. (193:12-15). Appellant's failure to show any sort of rehabilitation of her own combative behaviors, and her failure to take accountability for why her child was removed despite over four years of juvenile court involvement, shows that Appellant is unfit to parent Esperanza.

A best interest determination is prospectively focused. *See In re Interest of Mateo L.*, 309 Neb. at 582, 961 N.W.2d at 528-29. The presumption that Appellant is a fit parent is strongly overborne by the overwhelming evidence displaying her inability to provide for Esperanza or alleviate the reasons why Esperanza came into care. While Appellant attempted to take steps towards reunification, her progress was minimal and inconsistent. The State is also concerned that Appellant has participated in some services designed to address the issues as to why the case came into care, yet, there is a clear failure to internalize and apply any skills that were taught to Appellant. Esperanza needs an environment with a reliable, consistent, and safe parental figure. Appellant's absence, failures, and lack of progress directly show she is unable to provide that type of environment. Thus, the State respectfully requests that this Court affirm the juvenile court's finding that Appellant is unfit to parent Esperanza, and that it is in Esperanza's best interests that Appellant's parental rights be terminated.

CONCLUSION

For the aforementioned reasons, the State adduced clear and convincing evidence that multiple statutory bases for termination under Neb. Rev. Stat. § 43-292 existed, and termination of Appellant's parental rights was in the best interests of Esperanza. Thus, the State respectfully requests this honorable Court affirm the juvenile court's termination order.

Respectfully Submitted,
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CERTIFICATE OF WORD COUNT

I certify that the accompanying brief complies with Neb. Ct. R. § 2-103(c), in that it was prepared using Century Schoolbook 12-point typeface and contains 11,282 words, excluding this certificate. This certificate was prepared in reliance on the word count function of Microsoft Word, specifically, Microsoft Word for Windows. DATED this 22nd day of April 2026.

/s/ Allyson Talpash

Allyson Talpash #28226

Deputy Douglas County Attorney

Certificate of Service

I hereby certify that on Wednesday, April 22, 2026 I provided a true and correct copy of this *Brief of Appellee* - *State* to the following:

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