

Case No. A25-990

In the Appellate Court of the State of Nebraska

IN THE INTEREST OF ESPERANZA C.

Appeal from the Separate Juvenile Court For
Douglas County, Nebraska
Honorable Judge Vernon Daniels
Juvenile Court Judge

BRIEF OF APPELLANT

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SUMMARY OF JURISDICTION OF APPELLATE COURT

This is an appeal from an order issued on December 6, 2025 by the Juvenile Court of Douglas County, Nebraska (“Juvenile Court”) terminating the parental rights of Appellant Heather Smith (“Smith”) to her child, Esperanza Chavez. The order is final because it was made in a special proceeding and affected a substantial right of the Appellant. A proceeding before a juvenile court is a “special proceeding” for appellate purposes. *In re Ty M.*, 265 Neb. 150, 161, 655 N.W.2d 672, 683 (2003). A judicial determination made following adjudication in a special proceeding which affects the substantial right of parents to raise their children is a final appealable order. *Id.* Neb Rev. Stat. §25-2911 and §25-2902. The order terminating Appellant’s parental rights was filed on December 6, 2025. (T105). The Notice of Appeal was filed on December 30, 2025.

STATEMENT OF THE CASE

(a) The Nature of the Case

This is an appeal from an order of the Juvenile Court terminating Appellant’s parental rights to her child. On February 26, 2025, the State of Nebraska (“State”) filed a Motion for Termination of Parental Rights with regards to Esperanza Chavez. (T62). The termination of parental rights hearing took place on August 22, 2025 (T85) September 8, 2025 (T89) and October 6, 2025 (T105).

(b) The Issue Tried Below:

The issue tried in the Court below was whether Smiths' parental rights to the minor child Esperanza should be terminated.

(c) How the Issue Was Decided

The Juvenile Court found Counts I, II, IV, V-A and C, VI and VII of the Motion for Termination of Parental Rights to be true by clear and convincing evidence. Accordingly, the Juvenile Court terminated Smith's parental rights to her child.

(d) Scope of Review

Juvenile court cases are reviewed *de novo* on the record, and the court reaches its conclusions independently of the juvenile court's findings. However, when evidence is in conflict, the appellate court will consider and give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *In re Rylee S.*, 285 Neb. 774, 778 (2017) (citing *In re Interest of Jagger L.*, 270 Neb. 828 (2006)).

ASSIGNMENT OF ERROR

I.

**THE SEPARATE JUVENILE COURT OF DOUGLAS COUNTY,
NEBRASKA ERRED IN FINDING THAT THE STATE PROVED BY CLEAR
AND CONVINCING EVIDENCE THAT APPELLANT'S PARENTAL RIGHTS**

SHOULD BE TERMINATED PURSUANT TO NEB. REV. STAT. 43-292 (2)
and (6).

II.

**THE SEPARATE JUVENILE COURT OF DOUGLAS COUNTY,
NEBRASKA ERRED IN FINDING THAT TERMINATING APPELLANT'S
PARENTAL RIGHTS WAS IN THE BEST INTEREST OF HER CHILD.**

PROPOSITIONS OF LAW

I.

Before parental rights may be terminated, the evidence must clearly and convincingly establish the existence of one or more of the statutory grounds permitting termination and that termination is in the juvenile's best interests. *In re Interest of Rebecka P.*, 266 Neb. 869, 669 N.W.2d 658 (2003).

II.

Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of the fact to be proved. *In re Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

III.

Parental rights can only be terminated when the court finds that termination is in the child's best interest. *In re Chloe C.*, 20 Neb. App. 787, 794, 835 N.W.2d 758,

763 (2013).

IV.

There is a rebuttable presumption that the best interest of a child are served by reuniting the child with his or her parent. *In re Interest of Xavier H.*, 274 Neb. 331, 349, 740 N.W. 2d 13, 25 (2007).

V.

“Nature demands that the right “to custody of the child shall be in the parent, unless the parent be affirmatively unfit.” *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007) (quoting *In re Guardianship of D.J.*, 268 Neb. 239, 247, 682 N.W.2d 238, 345 (2004).

VI.

With such severe and final consequences, parental rights should be terminated only in the absence of any reasonable alternative and as the last resort. *In re Interest of Crystal C.*, 12 Neb. App. 458, 465, 676 N.W.2 378, 387 (2004).

VII.

The law does not require perfection of a parent. Instead, when assessing whether termination is in the best interests of a minor child, courts should look for the parent’s continued improvement in parenting skills and a beneficial relationship between the parent and child. *In re Interest of Aaron D.*, 269 Neb. 249, 265, 691 N.W.2d 164, 176 (2005).

VIII.

7.

Reasonable efforts to preserve and reunify the family must be shown by the State (and that those efforts failed) when considering the termination of parental rights under §43-292(6). *In re Andrew M. et al.*, 11 Neb.App. 80 (2002); *In re Interest of DeWayne G. & Devon G.*, 263 Neb. 43, 638 N.W.2d 510 (2002. See *Neb. Rev. Stat.* §43-283.01 (Reissue 1998).

STATEMENT OF FACTS

On April 4, 2021 the State filed a petition against Heather Smith alleging that the juvenile, Esperanza Chavez, came within the meaning of Neb. Rev. Stat. §43-247(3)(a). Specifically, the petition alleged under count I that Esperanza Chavez lacked proper parental care by reason of the fault or habits of Ms. Smith, to wit: a) Ms. Smith and her intimate partner, Rico Chavez, engage in domestic violence in front of the minor child; b) Ms. Smith has failed to take sufficient and adequate steps to ensure the safety of minor children from domestic violence; c.) Ms. Smith has failed to provide proper parental care, support, supervision, and/or safety of said minor child; d) Ms. Smith has failed to provide safe, stable, and adequate housing for said minor child; e) due to the above reasons, said juvenile is at risk for harm. (T1).

The First Appearance Hearing and Protective Custody Hearing was held on April 23, 2021. (T3). A denial was entered at this hearing and Smith did not resist detention. As a result, the court found that the minor child should remain in protective custody of the Nebraska Department of Health and Human Services for

continued appropriate placement, to exclude the parental home of the mother. (T3). The court ordered that Smith shall have reasonable rights of agency-supervised visitation in a neutral location; complete a family medical history with Health and Human Services within 15 days; provide medical information to the Department regarding medical devices, any known food/medication allergies and a list of medication taken by the minor child; complete an affidavit identifying the other parent of the minor child; notify any change of address, phone number and/or place of employment; notify the court of services she deems necessary to assist with return of the child to the parental home; notify counsel of any voluntary and/or court-ordered services that are not being timely provide; and make reasonable efforts to bring about rehabilitation. (T3).

On July 14, 2021, an adjudication hearing as to the biological mother was held and evidence was adduced. (T9). The Court found that Counts I-A, B, C, D and E of the petition are true by a preponderance of the evidence and that Esperanza Chavez came within the meaning of Neb. Rev. Stat. § 43-247(3)(a). (T9). The court ordered that the minor child remain in protective custody of the Nebraska Department of Health and Human Services for appropriate placement, to exclude the parental home of the mother. (T9). The mother was ordered to maintain housing; maintain a legal source of income; provide a monthly budget; meet monthly with her case manager; submit to a psychological evaluation within 30 days as arranged by Nebraska Department of Health and Human Services; be provided reasonable

rights of agency supervised visitation in a neutral location as arranged by Health and Human Services. (T9).

On March 25, 2022 a Stipulated Motion to Receive Evidence was filed by Nebraska Department of Health and Human Services legal counsel to receive the biological mother's IDI and psychological evaluation, which was completed in November 2021, and as previously ordered by this court. (T22).

On November 2, 2022, biological mother's counsel filed a motion to increase the number of weekly visits between the minor child and the biological mother due to the biological mother's progress in this case. (T31). The County Attorney, the Guardian ad Litem and NDHHS Attorney agreed with the legal father's counsel taking no position. (T31). The Court signed the Order on November 2, 2022. (T32).

On March 6, 2023 biological mother's counsel filed a motion for one weekly unsupervised visit in addition to the supervised visitation. (T40). The County Attorney, the Guardian ad Litem, the legal father's Attorney and NDHHS Attorney agreed (T40). The Court signed the Order on March 6, 2023. (T43).

On May 17, 2023, there was a Review and Permanency Planning Hearing in which the Court ordered that the permanency objection for Esperanza would be reunification with a concurrent plan of adoption or guardianship. (T45). Although the Nebraska Department of Health and Human Services requested "no more reasonable efforts" be provided, the Court took the same under advisement. (T45).

On November 20, 2023, a Review and Permanency Planning Hearing was held in

which Nebraska Department of Health and Human Services again requested that “no more reasonable efforts” be provided. Again, the Court took the same under advisement. (T49).

On May 14, 2024, a Review and Permanency Planning Hearing was held in which the Court ordered that “no more reasonable efforts” be provided. (T53).

On May 17, 2024, Nebraska Department of Health and Human Services filed an ex-parte motion to suspend visitation. The Order was signed on May 17, 2024. (T53).

On July 17, 2024, a stipulation was entered between the Nebraska Department of Health and Human Services and Smith regarding renewing visitation. (T57). The stipulation required Smith to participate in an anger management class and attend individual therapy before visitation would resume with her daughter.

On February 26, 2025, the Stated file a motion to terminate Smith’s parental rights. (T62). The termination of parental rights hearing took place on August 22, 2025 (T85) September 8, 2025 (T89) and October 6, 2025 (T105). Following the hearings, the court ordered that Smith’s parental rights be terminated. (T105).

At the termination of parental rights hearing, Patrice Clemons, Nebraska Department of Health and Human Services casemanager testified that she received the case in January, 2022 through July 2024 and was the fourth casemanager. (72:22-25, 73:3-5). Ms. Clemons testified that Smith’s court orders were agency-supervised visitation, therapy, domestic violence class, complete a psychiatric

evaluation, work with family support, maintain safe and stable housing, complete a parent class, obtain and maintain steady employment. (77:1-6).

Regarding Smith's compliance with court orders, the casemanager testified that Smith enrolled in a participated in a different parent course after she initially started with Boys Town and completed the same. (135:8-15). In addition, Ms. Clemons relayed that Smith participated in and completed domestic violence classes. (135:16-18). Evidence was adduced in which Ms. Clemons testified that Smith had independent housing during the majority of the time. (135:19-25, 136:1-5). Upon cross examination Ms. Clemons testified that Smith began as a waitress and worked in hospitality for nine to ten months at a motel. (136:6-25, 137:1-3). Finally, Ms. Clemons testified that Smith had unsupervised and supervised visitation. (137:4-25). During this time, Smith relayed that she was concerned that the foster mother would take down the make, model and license plate of her vehicle and give the same to the abuser, Rico Chavez, brother to the foster mother and requested to return to supervised visitation. (137:10-25). In addition, upon cross-examination and after "refreshing her recollection", the casemanager admitted that visitation did not occur consistently in October 2023 because Smith was hospitalized in October 2023. (145:17-25, 146:1-22). Megan Ott, Nebraska Department of Health and Human Services testified that she was supervisor of the case from September 2024-June 2025. (214:4-12) and testified that Smith completed anger management class. (220:12-14). Ms. Ott also testified on cross

examination that Smith participated in individual therapy. (232:10-18).

The State called Selena Leon, a Nebraska Department of Health and Human Services casemanager. Ms. Leon had been the casemanager since June or July of 2025. (253:11-15). Upon direct examination, Ms. Leon testified that she did not know if the conditions which brought the case to the court's attention had been resolved since she only had one phone call with Smith. (252:16-25). Ms. Leon testified that she had never seen confirmation of Smith participating in individual therapy and anger management classes. (258:22-25, 259:1-4). Upon direct examination, Ms. Leon testified that it was in the child's best interest that Smith's parental rights be terminated. (263:14-20).

On October 6, 2025, Ms. Calendra Plambeck testified on behalf of Ms. Smith. She testified that Smith participated in therapy in September 2023 and she was diagnosed with PTSD, major depressive disorder and generalized anxiety disorder. (299:3-10). Ms. Plambeck testified that Smith reported having a lot of DV; was a child of foster care and there was a lot of abuse when she was younger. (299:14-16.). Smith also reported sexual abuse occurred as well as physical abuse. (300:18-19.). Ms. Plambeck continued to see Smith for individual therapy from September, 2023 to February, 2024, which Ms. Plambeck began her own therapy practice. (303:6-16). Mildred Tucker, a provisional mental health therapist testified that Smith was consistent and successfully completed anger management which consisted of eight (8) sessions. (315:18-23, 31:5-10). Finally, Ms. Rachael Parker testified that she

was the visitation supervisor and worker for Smith and her daughter for over a year. (331:14-17). Ms. Parker testified that Smith and her daughter had a bond; there was never an issue in terms of safety regarding Smith and the child's interactions. (331:23-25, 332:1). When questioned, Ms. Parker testified that the visits were not stopped due to safety concerns; it was apparent that Smith loved her daughter, and her daughter enjoyed her time with Smith. (334:16-24).

The order terminating Smith's parental rights was entered on December 6, 2025. (T105).

SUMMARY OF THE ARGUMENT

- I. Ms. Smith complied with the court orders during the pendency of this case with the exception the final court order of individual therapy.
- II. Ms. Smith made efforts to comply with the requirements of the Court.
- III. There was never a safety concern during visits between Ms. Smith and the minor child.

The record in this case fails to establish by clear and convincing evidence that Appellant's rights should be terminated under Nebraska Revised Statute §§43-292(2) and 43-292(6).

The record in this case also fails to establish by clear and convincing evidence that termination of Smith's parental rights is in the child's best interest.

ARGUMENT

I.

**THE SEPARATE JUVENILE COURT OF DOUGLAS COUNTY,
NEBRASKA ERRED IN FINDING THAT THE STATE PROVED BY CLEAR
AND CONVINCING EVIDENCE THAT APPELLANT’S PARENTAL RIGHTS
SHOULD BE TERMINATED PURSUANT TO NEB. REV. STAT. 43-292 (2)
and (6).**

The Court found that Esperanza came within *Neb. Rev. Stat. §43-292(2)* but the evidence was insufficient to prove that Smith neglected her or refuse to give her care or protection. Throughout the majority of the case Smith followed the court orders which included, visitation, evaluations, individual therapy, anger management, housing and income. The only time it can be said that Smith neglected Esperanza was when she could not comply with additional individual therapy sessions in July 2024. Smith provided housing and a legal source of income for herself and her daughter even though she faced many obstacles.

The Court also found that Esperanza came within *Neb. Rev. Stat. §43-292(6)* because she did not make reasonable efforts to correct the conditions leading to her adjudication. As a result of Smith’s adjudication, the Court ordered that she was to maintain housing; maintain a legal source of income; provide a monthly budget; meet monthly with her case manager; submit to a psychological evaluation within 30 days as arranged by Nebraska Department of Health and Human Services; be provided reasonable rights of agency supervised visitation in a neutral location as arranged by Health and Human Services. (T9). Regarding Smith’s compliance with

court orders, Ms. Clemons, casemanager, testified that Smith enrolled in a participated in a different parent course after she initially started with Boys Town and completed the same. (135:8-15). In addition, Ms. Clemons relayed that Smith participated in and completed domestic violence classes. (135:16-18). Evidence was adduced in which Ms. Clemons testified that Smith had independent housing during the majority of the time. (135:19-25, 136:1-5). Upon cross examination Ms. Clemons testified that Smith began as a waitress and worked in hospitality for nine to ten months at a motel. (136:6-25, 137:1-3). Finally, Ms. Clemons testified that Smith had unsupervised and supervised visitation. (137:4-25). During this time, Smith relayed that she was concerned that the foster mother would take down the make, model and license plate of her vehicle and give the same to the abuser, Rico Chavez, brother to the foster mother and requested to return to supervised visitation. (137:10-25). Megan Ott, supervisor, testified that Smith completed anger management class. (220:12-14) and participated in individual therapy. (232:10-18). The facts in this case demonstrated that Smith maintained a consistent parental relationship with Esperanza prior to May 2024. During visitation between Smith and the child it was apparent that a bond existed. (331:23-25, 332:1). The visitations between Smith and the minor child were appropriate and safety concerns were not noted between Smith and the minor child. (334:16-24). Testimony was given which stated that Smith interacted with her child in the areas of education, potty training and playtime. Smith was also cognizant of the fact that

she did not want to duplicate her own abusive past for her minor child. If there were times when safety was an issue, it was not between Smith and the minor child, but it was the interaction with visitation worker(s). Although Smith had not completed the final court order of additional individual therapy by the time of the termination hearing, the evidence shows that she was making genuine, reasonable efforts to comply and was committed to moving toward reunification with the minor child.

ARGUMENT

II.

THE SEPARATE JUVENILE COURT OF DOUGLAS COUNTY, NEBRASKA ERRED IN FINDING THAT TERMINATING APPELLANT'S PARENTAL RIGHTS WAS IN THE BEST INTEREST OF HER CHILD.

Parental rights can only be terminated when the court finds that termination is in the child's best interest. *In re Chloe C.*, 20 Neb. App. 787, 794, 835 N.W.2d 758, 763 (2013). There is a rebuttable presumption that the best interest of a child are served by reuniting the child with his or her parent. *In re Interest of Xavier H.* 274 Neb. 331, 349, 740 N.W.2d 13, 25 (2007). A termination of parental rights is a final and complete severance of the child from the parent and removes the entire bundle of parental rights. *In re Justin H.*, 18 Neb. App. 713, 728, 791 N.W.2d 765, 773 (2010). With such severe and final consequences, parental rights should be terminated only in the absence of any reasonable alternative and as the last resort.

In re Interest of Crystal C., 12 Neb. App. 458, 465, 676 N.W.2 378, 384 (2004).

The only area where Smith did not fulfill the court order was failing to participate in individual therapy. Although this was stipulated to by the parties, evidence showed that she participated in numerous individual therapy sessions, dredging up past experiences which continue to haunt her to this day.

Unfortunately, the noncompliance with individual therapy led to the cessation of visitation with her minor child. The failure to complete this court order should not be used as a determining factor in severing Smith's parental rights for the rest of her and Esperanza's lives. When determining whether termination is in the best interests of a minor child, courts should look for the parent's continued improvement in parenting skills and a beneficial relationship between the parent and child. *Id.* Smith demonstrated this improvement in her parenting skills and showed a commitment to meeting the other requirements as ordered by the Court.

Smith continued to demonstrate substantial progress and meaningful compliance with the court orders. The facts in this case demonstrated that Smith maintained a consistent parental relationship with Esperanza prior to May 2024. During visitation between Smith and the child it was apparent that a bond existed. (331:23-25, 332:1). The visitations between Smith and the minor child were appropriate and safety concerns were not noted between Smith and the minor child. (334:16-24). Ms. Clemons relayed that Smith participated in and completed domestic violence classes. (135:16-18). Ms. Clemons testified that Smith had

independent housing during the majority of the time. (135:19-25, 136:1-5). Ms.

Clemons also noted the genuine concern Smith had regarding returning visitation to fully supervised due to Smith's concern that the foster mother would take down the make, model and license plate of her vehicle and give the same to the abuser, Rico Chavez, brother to the foster mother, and requested to return to supervised visitation. (137:10-25). Maintaining Smith's involvement in her child's life is both consistent with Nebraska law and is in the child's best interest.

The law does not require a parent to be perfect. It does require evidence of continued improvement and a beneficial relationship between the parent and her child. Here, there is evidence of improvement demonstrated by housing, income, participation and successful completion of anger management. In addition, when visits were taking place, the bond between Smith and her minor child was undeniable.

CONCLUSION

For the aforementioned reasons, Appellant asks the Court to reverse the Juvenile Court's decision to terminate Appellant's parental rights.

Date: March 23, 2026.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Comes now, Anne E. Troia, and hereby certifies that Appellant's Brief was electronically filed, a copy emailed to Counsel for the Appellee, via the Nebraska E-filing System.

/s/Anne E. Troia
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CERTIFICATE 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 excluding 4,026 words excluding this certificate. This certificate was prepared in reliance on the word-count function of Microsoft Word, part of Microsoft Office Professional Plus 2016.

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Certificate of Service

I hereby certify that on Monday, March 23, 2026 I provided a true and correct copy of this *Brief of Appellant* to the following:

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