

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF ALISONDRA V. ET AL.

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IN RE INTEREST OF ALISONDRA V. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

MISSY B., APPELLANT.

Filed March 12, 2013. Nos. A-12-593 through A-12-596.

Appeal from the County Court for Dakota County: KURT RAGER, Judge. Affirmed.

Stuart B. Mills for appellant.

Melinda Wicks, Deputy Dakota County Attorney, for appellee.

IRWIN, MOORE, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Missy B. appeals from the orders of the county court for Dakota County terminating her parental rights with respect to her children Alisondra V., Victoria B., Anthony V., and Bryan V. Although there is a separate record for each case, the appellant and the issues on appeal are the same. Therefore, we choose to consolidate these cases for resolution.

BACKGROUND

Missy appeals from the order of the county court for Dakota County, acting as the juvenile court. Missy filed her notice of appeal on June 27, 2012. The four children in this case are Anthony, born in December 2002; Victoria, born in December 2003; Alisondra, born in February 2005; and Bryan, born in September 2006.

In February and March 2010, the Nebraska Department of Health and Human Services (DHHS) received numerous reports via the child abuse and neglect hotline regarding safety

concerns for and inappropriate supervision of these four children. The reports contained numerous allegations: that the children were not being properly supervised, that there was inappropriate contact between the children, that Missy was bringing the children with her to buy drugs, that the children were being exposed to inappropriate individuals in the home, and that the adults engaged in inappropriate conversations in front of the children. DHHS was not able to substantiate these allegations, and the reports were determined to be “unfounded.” Missy began a voluntary, non-court-involved case with the children in March. Missy began family support services for the four children through a counseling service. Additional calls were made to the child abuse and neglect hotline with the same concerns, as well as an incident of physical abuse.

On May 28, 2010, the State petitioned the juvenile court to adjudicate the children and place them in the temporary custody of DHHS for lack of proper parental care by reason of the fault or habits of Missy. The children were placed in foster homes on May 27 and have remained in out-of-home placement since that time. Missy was granted supervised visitation with the children.

The children were adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) on August 23, 2010, and the children were placed in the full care, custody, and control of DHHS.

At the dispositional hearing on October 5, 2010, the court found that reasonable efforts had been made to prevent or eliminate the need for removal of the children from the home, but that it was not in the best interests of the children to be returned home. Missy’s visitation with the children transitioned to semisupervised visitation on October 14, and they occurred approximately three times per week and on weekends. The reports demonstrated that she was generally being cooperative with the services provided and that she had shown some progress. On December 6, Missy was arrested for false reporting, and on December 7, there was an intake with allegations that one of Missy’s older children had been having sexual intercourse with her father, Chad L., who was Missy’s ex-husband. An evaluation of these two events caused the visits to transition back to be fully supervised.

Missy’s fully supervised visits continued until April 6, 2011, when Missy was incarcerated, after being convicted of and sentenced for false reporting. Missy’s projected release date was the first week of August 2011. Missy requested visitation with the children to continue during her incarceration, and this was addressed at the review hearing on April 21. The jail did not allow contact visits, and the children’s therapist did not feel visits through a glass window would be productive. Instead, the children wrote letters to Missy during her incarceration. The court continued the permanency plan of reunification and ordered a permanency hearing to occur after the children had been out of the home for a year.

A hearing was held on July 12, 2011, on Missy’s request to have visitation with the children during her incarceration. K.C. Jager, the DHHS caseworker for Missy and the children, testified that during Missy’s incarceration, the children were all doing very well. Bryan and Victoria went off of their medication, and Alisondra continued to take medication only to help her sleep. She said that the children were all happy and that their behavior had improved; the foster parents reported the same. Jager said the children’s therapist recommended suspending visitation until Missy was released from jail, because she did not want to see the children’s progress in behavior and mental health diminish. The children did not voice a strong desire to Jager to see Missy, but continued to write letters back and forth. Jager said visitation could

resume when Missy was released from jail on August 4. At that time, the primary permanency plan was still reunification by October 6, the date the case plan was set to expire. The court entered an order on July 12, denying visitation while Missy was incarcerated.

Missy was released on August 4, 2011. Supervised visitation with the children resumed right away. Missy lost her home and job during her incarceration and stayed at a motel. She secured a rental home, but it was in need of repairs and cleaning, and she was not able to move in right away. On August 12, Missy was involved in an assault in Iowa in which she caused bodily harm to another person. She was on probation in Nebraska and was arrested and incarcerated on September 11 in connection with the assault. Visitation was suspended again during her incarceration.

At the October 24, 2011, review hearing, Jager stated the children were doing very well in foster care, but noted that the children reverted to some of their negative behaviors after their first visit with Missy. DHHS recommended that Missy's parental rights be terminated and that the goal for each child be changed to adoption. The case plan/court report was entered into evidence, and the court approved a change of the permanency objective to "termination of parental rights," with the concurrent plan modified to be "guardianship." The exhibits noted "poor" progress was being made to alleviate the causes of the out-of-home placement. The court did not order an end to all reasonable efforts to reunify the family at that time, despite Missy's lack of improvement and the difficulty DHHS would have to work under due to Missy's incarceration. Missy was released on December 25.

The therapist for Anthony, Alisondra, and Victoria wrote a letter to DHHS on January 6, 2012, recommending that visits be stopped because the children were negatively affected by the time spent with Missy. She said that after such visits, the three children resumed negative behaviors, including manipulation, psychosomatic symptoms, defiance, dishonesty, and mood changes. She said the increase in negative behaviors had led to an increase in therapy sessions after Missy's release from incarceration.

At the January 23, 2012, review hearing, the State requested permission to discontinue DHHS' reasonable efforts to reunify the children with Missy. The court received into evidence an exhibit, which noted "little to no progress since the last hearing."

Throughout the case, Missy was consistently told to cease contact with Chad because his presence in the lives of the children presented a safety concern. At the hearing, Missy acknowledged that one of the DHHS guidelines was to discontinue all contact with Chad. She also acknowledged she had been seen with Chad on January 7, 2012, in violation of those guidelines.

The court entered an order on February 6, 2012, finding that reasonable efforts had been made and that continuation of such efforts to preserve and reunify the family was determined to be "inconsistent with the plan of termination of parental rights."

The State filed motions to terminate the parental rights of Missy to Alisondra, Victoria, Anthony, and Bryan, and the hearing on these motions took place on April 20 and 30, 2012. The State alleged, with regard to Missy, that the children came within the meaning of Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2012) and that termination would be in the best interests of the children.

Family team meetings were held on a monthly basis when Missy was not incarcerated. Multiple witnesses testified for the State and said Missy received education on parenting, parenting skills, and communication. Service providers testified regarding Missy's defiance and lack of meaningful cooperation with services. She was described as defensive and not receptive to feedback. She was repeatedly informed of what she needed to do to be reunified with her children by DHHS and other service providers, and she disregarded guidelines and goals set for her. Such guidelines included warnings that Chad's continued involvement in her life would have an impact on her ability to reunify with her children. Missy stated she did not want Chad in her life, but she was later seen in public with him. At the termination hearing, Missy insisted Chad would always be a part of her life.

The county court for Dakota County issued the order terminating Missy's parental rights with respect to Alisondra, Victoria, Anthony, and Bryan on June 18, 2012. The court found termination was in the children's best interests and terminated Missy's parental rights pursuant to § 43-292(2), (6), and (7).

ASSIGNMENTS OF ERROR

Missy asserts the juvenile court erred in issuing an order terminating her parental rights pursuant to § 43-292 and finding such termination was in the best interests of the minor children.

STANDARD OF REVIEW

Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. *In re Interest of Justin H. et al.*, 18 Neb. App. 718, 791 N.W.2d 765 (2010).

When the evidence is in conflict, however, 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.*

For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. See *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). The State must prove these facts by clear and convincing evidence. 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 a fact to be proved. *Id.*

ANALYSIS

Statutory Grounds for Termination.

The State sought termination of the parental rights of Missy with respect to her children Alisondra, Victoria, Anthony, and Bryan, relying on the grounds set forth in § 43-292(2), (6), and (7).

Termination of parental rights is warranted whenever one or more of the statutory grounds provided in § 43-292 are established. If an appellate court determines that the lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds set forth in § 43-292, the appellate court need not further address the sufficiency of the

evidence to support termination under any other statutory ground. *In re Interest of Jagger L., supra.*

Missy does not allege that the State erred in determining that one or more of the statutory grounds was met in this case. She readily admits that the children have been in out-of-home placement for at least 15 of the most recent 22 months, which satisfies § 43-292(7). Having determined that one or more of the statutory grounds was met, we continue to an evaluation of the best interests of the children. Generally, when termination is sought under subsections of § 43-292 other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the interests of the juvenile. *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 180 N.W.2d 750 (2012). Accordingly, we will consider evidence relevant to the other grounds in our analysis of the children's best interests.

Best Interests of Minor Children.

Missy alleges the trial court erred in finding that termination of her parental rights was in the children's best interests.

She asserts that she has a fundamental liberty interest recognized by the courts to the care, custody, and control of her children and that the State did not meet the burden of showing it was not in the best interests of the children to continue that liberty interest. See, *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007); *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232, 674 N.W.2d 442 (2004). She argues the law looks for continued improvement in parenting skills and a beneficial relationship between parent and child. See *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004). She admits that she is not a perfect parent, but submits that she enjoys a beneficial relationship with her children and has demonstrated continued improvement. Therefore, Missy argues, it is not in the best interests of the children to terminate her parental rights.

The evidence shows that in May 2010, when the children were initially placed in foster care, Missy had supervised visitation with the children. The visitation transitioned to semisupervised visits three times per week and on weekends in October 2010, because Missy was cooperative with parenting courses and services offered to her and had shown progress. During these visits, a worker would perform random drop-ins. The reports show that the children had trouble following rules and expectations and that the foster parents reported an increase in negative behaviors of the children in the foster homes and at school. The semisupervised visits continued until Missy was arrested for false reporting. Also, there was an intake regarding allegations that one of Missy's older children had been having sexual intercourse with her father, Chad. As a result of these allegations and Missy's arrest, the subsequent visitation was fully supervised.

In April 2011, DHHS reports indicated Missy made "fair progress" to alleviate the cause of the out-of-home placement and generally demonstrated improvement. However, Missy was incarcerated in that month, and the jail did not allow contact visitation. Missy requested visitation during her first incarceration, and the court held a hearing on her motion. The court's order, filed July 12, 2011, denied the motion.

The children corresponded with Missy during that period via letters. While Missy was incarcerated, the children demonstrated fewer behavioral issues, they were able to discontinue the use of psychotropic medication during that period, and they became more emotionally stable.

Missy was released on August 4, 2011, and supervised visits resumed. However, she violated her probation by committing an assault on August 12, and she returned to jail on September 11. At the next review hearing on October 24, the permanency objective was changed to “termination of parental rights” with a concurrent plan of “guardianship,” noting the poor progress being made to alleviate the causes of the children’s out-of-home placement.

The evidence shows that monthly team meetings took place when Missy was not incarcerated and that services were made available to help her parent her children. Multiple service providers testified to her defiance and lack of meaningful cooperation with services. She was allowed visitation, but it was limited when she was incarcerated and when DHHS found there were concerns for the children’s safety and emotional stability. She has not made continued improvement; rather, the record shows that she initially made “fair” progress and that since that time, she has made poor progress or no progress at all.

This court has stated that when a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the child’s best interests require termination of parental rights. *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012).

The children were removed from Missy’s care in May 2010, and her parental rights were terminated in June 2012. She was given 2 years to rehabilitate herself, but failed to do so. She has shown a disregard for her role as a parent by acting in ways that were unlawful and contrary to the parenting objectives set for her by the court and DHHS. She was incarcerated between April and August 2011 for her unlawful actions, and she committed another unlawful act within a week of her release, resulting in another incarceration from September to December 2011. Missy’s incarcerations also led to the loss of her job and her home, so when she was able to resume visitation, she could not provide a safe and stable residence for the children. She also involved people in her life, namely Chad, when she was told several times it would have an adverse impact on her ability to reunify with her children.

Missy asserts that she is rehabilitating herself and that her incarceration should not count against her because she met her children’s needs during the periods when she was not incarcerated. The Nebraska Supreme Court has stated that though a parent’s incarceration alone is not sufficient grounds for termination, it may be considered along with other factors, as the criminal conduct causing the incarceration is voluntary. *In re Interest of Kalie W.*, 258 Neb. 46, 601 N.W.2d 753 (1999). In this case, Missy’s incarcerations are just one factor in the determination that reunification was not in the children’s best interests.

Missy argues that the law looks for a parent’s continued improvement in parenting skills and a beneficial relationship between parent and child. See *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004). In this case, the evidence shows Missy has not made a continued improvement in parenting skills. Further, though Missy loves her children and they love her, the children are not benefiting from their time with her. The children were better behaved and more emotionally stable during times when they were not in personal contact with Missy, and their behavior was negatively affected when visitation resumed.

Our review of the record indicates Missy did not demonstrate progress or continued improvement, and the children flourished at times when they had minimal contact with Missy. Missy has not taken responsibility for her actions and blames her children for the troubles in her life. We find there is clear and convincing evidence that termination of Missy's parental rights is in the children's best interests.

CONCLUSION

We hold that one or more of the statutory grounds for termination under § 43-292 was met and that there is clear and convincing evidence it is in the best interests of the minor children to terminate the parental rights of Missy with respect to Alisondra, Victoria, Anthony, and Bryan. The decision of the county court for Dakota County is affirmed.

AFFIRMED.