

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF ALLEN G. ET AL.

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IN RE INTEREST OF ALLEN G. ET AL., CHILDREN UNDER 18 YEARS OF AGE.
STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

v.

CANDY G., APPELLANT, AND TABITHA G., APPELLEE AND CROSS-APPELLANT.

IN RE INTEREST OF JESSE G. AND MARCOS M., CHILDREN UNDER 18 YEARS OF AGE.
STATE OF NEBRASKA, APPELLEE,

v.

TABITHA G., APPELLANT.

Filed November 3, 2009. Nos. A-09-127 through A-09-129, A-09-227, A-09-228.

Appeal from the County Court for Scotts Bluff County: G. GLENN CAMERER, Judge. Judgments in Nos. A-09-127 through A-09-129 affirmed in part, and in part reversed and remanded for further proceedings. Judgments in Nos. A-09-227 and A-09-228 affirmed.

Brian J. Lockwood, Deputy Scotts Bluff County Public Defender, for appellant Candy G.

Leonard G. Tabor for Tabitha G., appellant in Nos. A-09-227 and A-09-228 and appellee in Nos. A-09-127 through A-09-129.

Tiffany A. Wasserburger, Deputy Scotts Bluff County Attorney, and Eric M. Stott, Special Assistant Attorney General, for appellee State of Nebraska.

INBODY, Chief Judge, and IRWIN and MOORE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Candy G. appeals, and Tabitha G. cross-appeals, from an order of the county court of Scotts Bluff County, acting as a juvenile court, terminating their parental rights to their minor children. Both Candy and Tabitha challenge, among other things, the statutory grounds for

termination of their parental rights and the county court's finding that termination of their parental rights is in the children's best interests.

Upon our de novo review of the record, we find that the State failed to adduce sufficient evidence to clearly and convincingly demonstrate that termination of Candy's parental rights is in the children's best interests. Accordingly, we reverse the order of the county court terminating Candy's parental rights, and remand for further proceedings. However, we find that the State presented sufficient evidence to warrant termination of Tabitha's parental rights. We affirm the order of the county court terminating Tabitha's parental rights.

II. BACKGROUND

These proceedings involve five children: Jesse G., born in December 1995; Marcos M., born in November 1999; Allen G., born in February 2002; Lydianna G., born in February 2003; and Tabitha G., Jr. (Tabitha Jr.), born in October 2005. Tabitha is the biological mother of all five children. Candy is the biological father of Allen, Lydianna, and Tabitha Jr. The biological fathers of Jesse and Marcos are not parties to this appeal, and thus their participation in this case will not be discussed further.

Prior to the commencement of these proceedings, all five children resided with Tabitha. Candy was living and working in Montana. He had not had contact with his children for "quite a while."

On September 26, 2006, the State filed petitions with the juvenile court, alleging that all five children were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Cum. Supp. 2006) due to Tabitha's inability to provide for the children and the children's exposure to domestic violence between Tabitha and her boyfriend. Additionally, the State alleged that Tabitha used excessive physical force in disciplining some of the children.

On that same day, the State filed motions for temporary custody of the children. The county court granted the motions. The children have been in the custody of Nebraska's Department of Health and Human Services (DHHS) since September 2006. When Candy learned that his children had been placed in the custody of DHHS, he returned to Nebraska.

In October 2006, a hearing was held to address the placement of Candy's children. It appears from the record that Allen and Lydianna had been placed with Candy and that Tabitha Jr. had been placed with Candy's mother. At the time of the hearing, however, Candy's mother was the primary caregiver for all three of the children.

In November 2006, another hearing was held. At this hearing, Candy indicated that Allen and Lydianna were residing with him and that Tabitha Jr. was residing with his mother because "she helps me out with the baby." Jesse and Marcos were each residing in separate foster homes. The court noted, "even though [Candy] is not a party in this case, it is kind of a complicated situation."

On January 19, 2007, an adjudication hearing was held concerning Tabitha. At the hearing, Tabitha admitted to the portions of the petitions which alleged that there is a history of domestic violence between her and her boyfriend while the children have been present. The State dismissed the remaining allegations.

As a result of Tabitha's admission, the children were adjudicated pursuant to § 43-247(3)(a). The court continued placement of the children outside of Tabitha's home, but permitted Tabitha visitation with the children.

At the time of the adjudication hearing, Allen, Lydianna, and Tabitha Jr. were placed with Candy's mother. Candy attended the hearing and informed the court that "at this moment I let my mom and dad take them so I can take care of my alcohol problem." Candy indicated that his mother permits him to visit the children whenever he wants.

In the months following the adjudication hearing, multiple review, permanency planning, and disposition hearings were held. At these hearings, the State presented evidence concerning Candy's and Tabitha's progress toward reunification. After each hearing, the county court ordered that all five of the children continue to reside in placements outside of Candy's and Tabitha's homes. We briefly recount the evidence presented at these hearings here.

In March 2007, a disposition hearing was held. At the hearing, the State presented evidence that Tabitha was making some progress toward reunification, however, the evidence revealed that further efforts were required to achieve reunification. Pursuant to the recommendations of DHHS, Tabitha was ordered to attend parenting classes, attend family therapy, attend domestic violence education classes, secure safe and stable housing, and attend supervised visitation with the children.

The State presented no evidence concerning Candy other than to mention that Allen, Lydianna, and Tabitha Jr. were still placed with Candy's mother.

A review hearing was held in August 2007. At this hearing, Tabitha's effort toward reunification was generally characterized as "sporadic" and her progress was labeled as "very poor." The evidence revealed that Tabitha was not consistently attending team meetings, was not keeping in contact with the caseworker, and was starting to miss visitation with the children. Tabitha had not yet completed any domestic violence education classes as ordered by the court in March 2007. The court again ordered Tabitha to attend parenting classes, attend family therapy, and attend supervised visitation with the children. Additionally, the court ordered her to attend a weekly team meeting, make weekly contact with the caseworker, and submit to a substance abuse evaluation.

At the hearing, Lisa Taylor, a DHHS caseworker, testified that Candy was not currently part of the family's case plan. She also indicated that Candy's visitation with his children "is kind of at Candy's choosing. He is able to participate and see the kids when he goes over to his mother's house." There was some indication that since the last hearing in January, Candy had been charged with driving while intoxicated. The court notified the parties that it was adopting reunification with Candy as a secondary permanency option for Allen, Lydianna, and Tabitha Jr. The court informed Candy that he needed to show consistency and address some of his problems to prove he is capable of providing a safe, stable home for his children. The court did not order Candy to complete any sort of case plan at this time.

On October 4, 2007, a review and permanency hearing was held. The evidence revealed that Tabitha's progress since the last hearing was "minimal." Tabitha had missed numerous visits with her children, had not participated in weekly team meetings, had not maintained contact with the caseworker, and had refused to participate in a substance abuse evaluation. Tabitha did attend domestic abuse therapy, but had recently stopped attending the scheduled appointments. Tabitha

did complete a parenting class, but her attendance and participation did not demonstrate full compliance with the court's order.

Candy did not attend this hearing. However, there was evidence presented concerning Candy's status with the case. The evidence revealed that Taylor was struggling to stay in touch with Candy. Taylor described her contact with Candy as "sporadic." Additionally, there was evidence that Candy had not been visiting the children. Taylor recommended that the court order supervised visitation through a visitation service for Candy and his children. Taylor also testified, "I would also like to give Candy another three months to figure out what he is going to do. And at that point, if he has not made any more progress, I would like to change the permanency and possibly move towards termination of his rights as well."

On January 10, 2008, a review hearing was held. At this hearing, the evidence revealed that Tabitha was continuing to be inconsistent in her attendance at visitations with her children. There was evidence that this inconsistency was having a negative effect on the children's behavior. Additionally, there was evidence that Tabitha had seen a therapist to address domestic violence issues, but that she had not seen the therapist since October 2007. Tabitha had completed a substance abuse evaluation.

There was evidence that contact between Candy and Taylor continued to be "sporadic." In fact, Taylor testified that she had only met with Candy once since the October hearing. Candy had not had visitation with the children since October 24, 2007. Candy did appear at the hearing and asked that the court give him "90 days." Candy stated, "I've been attending my classes and stuff. I can't take on my kids when I can't take care of myself right now." The court formally ordered Candy to obtain housing, participate in a substance abuse evaluation, follow the recommendations of the evaluation, and attend visitations with his children on a regular basis.

On March 11, 2008, a permanency planning hearing was held. Taylor testified that Tabitha had not been attending visitation with the children and had not made any progress toward reunification. There was no evidence presented concerning Candy. At the close of the hearing, the county court changed the permanency plans to adoption, canceled Candy's and Tabitha's visitations with the children, and found that "reasonable efforts are no longer necessary."

On July 7, 2008, the State filed motions for termination of Tabitha's and Candy's parental rights. The State alleged that termination of Candy's parental rights was warranted pursuant to Neb. Rev. Stat. § 43-292(1), (2), (4), (6), and (7) (Reissue 2008) and that termination of Tabitha's parental rights was warranted pursuant § 43-292(2), (4), (6), and (7). The State also alleged that it would be in the children's best interests if Candy's and Tabitha's parental rights were terminated.

On January 29, 2009, a hearing was held on the State's motion for termination of parental rights. We will set forth the specific facts as presented at the hearing as necessary in our analysis below.

At the conclusion of the termination hearing, the county court found that the State proved by clear and convincing evidence that grounds for termination of Candy's parental rights existed under § 43-292(1), (2), (4), (6), and (7) and that grounds for termination of Tabitha's parental rights existed under § 43-292(2), (6), and (7). The court found that it would be in the children's

best interests to terminate Candy's and Tabitha's parental rights. The court then entered an order terminating the parties' parental rights. Candy appeals, and Tabitha cross-appeals here.

III. ASSIGNMENTS OF ERROR

On appeal, Candy assigns eight errors. He alleges, restated, consolidated, and renumbered, that the county court erred in (1) conducting the termination hearing without the presence of the children's guardian ad litem; (2) finding that the State proved the statutory factors for termination of his parental rights under § 43-292(1), (2), (4), (6), and (7); (3) finding that termination of his parental rights was in the children's best interests; and (4) terminating the parental rights of an "unadjudicated parent."

On cross-appeal, Tabitha assigns four errors. She alleges, restated and consolidated, that the county court erred in (1) conducting the termination hearing without the presence of the children's guardian ad litem; (2) finding that the State proved the statutory factors for termination of her parental rights under § 43-292(2), (6) and (7); and (3) finding that termination of her parental rights was in the children's best interests.

IV. ANALYSIS

1. 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 Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). 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 *id.* The State must prove these facts by clear and convincing evidence. *Id.* 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 proven. *Id.*

2. ABSENCE OF GUARDIAN AD LITEM

Prior to the start of the termination hearing, the county court noted that the children's guardian ad litem was not present. The State indicated, "I'm not sure where he's at, Judge, but we are ready to proceed without his presence." The court decided to proceed without the guardian ad litem, and neither Candy nor Tabitha objected. However, in their briefs to this court, both parties assign as error the county court's decision to hold the termination hearing although the children's guardian ad litem was not present.

Perhaps in recognition of the rule that one who makes no objection to a ruling at the trial court level may not complain of the ruling on appeal, Candy and Tabitha characterize their argument as "plain error." Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007); *Zwygart v. State*, 270 Neb. 41, 699 N.W.2d 362 (2005);

Russell v. Stricker, 262 Neb. 853, 635 N.W.2d 734 (2001). Plain error may be asserted for the first time on appeal or be noted by an appellate court on its own motion. *Worth v. Kolbeck, supra*; *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232, 674 N.W.2d 442 (2004).

Because Candy and Tabitha did not object to the county court's decision to hold the termination hearing without the presence of the guardian ad litem, we examine such decision under a plain error analysis. Upon our review, we conclude that the court's decision did not constitute plain error.

The parties' allegation that it was error to hold the termination hearing without the guardian ad litem is based on Neb. Rev. Stat. § 43-272.01 (Reissue 2008), which lists the duties of a guardian ad litem appointed by the court in a juvenile proceeding. Section 43-272.01(2)(a) provides that a guardian ad litem "shall be present at all hearings before the court in such matter unless expressly excused by the court."

The language of § 43-272.01 does require a guardian ad litem to be present at all relevant hearings. However, this statute only addresses the duties and requirements of a guardian ad litem. It does not address whether a court may conduct a hearing if a guardian ad litem is absent. Neither Candy nor Tabitha points us to any other authority to suggest that it is error for a court to conduct juvenile proceedings outside the presence of the guardian ad litem.

Furthermore, a review of § 43-272.01 reveals that in subsection (3), the statute provides, "Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition." At the time of the termination hearing, the children had been in an out-of-home placement for approximately 2 years. During this time, the children lacked permanency and stability. As such, holding the termination hearing in a timely manner, albeit without the guardian ad litem, is arguably in the children's best interests.

Upon our review, we conclude that the county court did not commit plain error in conducting the termination hearing without the presence of the guardian ad litem. Candy's and Tabitha's assertion has no merit.

3. TERMINATION OF CANDY'S PARENTAL RIGHTS

(a) Statutory Basis

Candy assigns as error the county court's finding that the State presented clear and convincing evidence to prove the statutory grounds for termination of his parental rights. Specifically, he challenges the county court's determination that termination of his parental rights was warranted pursuant to § 43-292(1), (2), (4), (6), and (7). Upon our de novo review of the record, we find that all three of the children were in an out-of-home placement for at least 15 of the most recent 22 months, pursuant to § 43-292(7). As such, we need not specifically address the county court's determinations as to § 43-292(1), (2), (4), or (6).

Termination of parental rights is warranted whenever one or more of the statutory grounds provided in § 43-292 is established. Section 43-292(7) provides for termination of parental rights when "[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months." This section 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. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

In this case, the State alleged that termination of Candy's parental rights was warranted pursuant to § 43-292(1), (2), (4), (6), and (7). After the hearing on the State's motion, the county court found that the State had proved by clear and convincing evidence that termination of Candy's parental rights was warranted pursuant to § 43-292(1), (2), (4), (6), and (7).

Allen and Lydianna were removed from Tabitha's home in September 2006 and placed in the custody of DHHS. At that time, Allen and Lydianna were placed with Candy. From September 2006 to January 2007, Allen and Lydianna resided with Candy at least part of the time. In January 2007, the two children were placed with Candy's mother because Candy indicated that he needed to take care of his alcohol problem. Allen and Lydianna continuously resided with Candy's mother from January 2007 to the time of the termination hearing in January 2009. As such, when the State filed its motion to terminate Candy's parental rights in July 2008, the children had been in an out-of-home placement for approximately 18 months. Moreover, at the time of the hearing on the motion to terminate Candy's parental rights, the children had been in an out-of-home placement for approximately 24 months. Accordingly, there is no dispute that Allen and Lydianna were in an out-of-home placement for 15 or more months of the most recent 22 months as § 43-292(7) requires.

The record reveals that Tabitha Jr. has been in an out-of-home placement continuously since September 2006 when she was removed from Tabitha's home. Tabitha Jr. never resided in Candy's home. As such, when the State filed its motion to terminate Candy's parental rights in July 2008, Tabitha Jr. had been in an out-of-home placement for approximately 22 months. Moreover, at the time of the hearing on the motion to terminate Candy's parental rights in January 2009, Tabitha Jr. had been in an out-of-home placement for approximately 28 months. Accordingly, there is no dispute that Tabitha Jr. was in an out-of-home placement for 15 or more months of the most recent 22 months as § 43-292(7) requires.

There is clear and convincing evidence that termination of Candy's parental rights was appropriate pursuant to § 43-292(7). In light of this fact, we need not, and do not, further address the sufficiency of the evidence demonstrating that termination of Candy's parental rights was also appropriate pursuant to § 43-292(1), (2), (4), and (6). Candy's assertions regarding the sufficiency of the statutory authority to support termination of his parental rights are without merit.

(b) Best Interests

Candy also assigns as error the county court's finding that the State presented clear and convincing evidence to prove that termination of his parental rights is in the children's best interests. Upon our de novo review of the record, we find that the State failed to adduce sufficient evidence to clearly and convincingly demonstrate that termination of Candy's parental rights is in the children's best interests. Accordingly, we reverse the order of the county court terminating Candy's parental rights, and remand for further proceedings.

In the previous section, we found that termination of Candy's parental rights was appropriate pursuant to § 43-292(7). As a result, we declined to address the sufficiency of the evidence demonstrating that termination of parental rights was also appropriate pursuant to

§ 43-292(1), (2), (4), or (6). We, therefore, treat our discussion of whether terminating Candy's parental rights is in the children's best interests as though § 43-292(7) is the only statutory basis for termination.

In cases where termination of parental rights is based solely on § 43-292(7), the Nebraska Supreme Court has held that appellate courts must be particularly diligent in their de novo review of whether termination of parental rights is, in fact, in the child's best interests. *In re Interest of Aaron D.*, *supra*. In such a situation, because the statutory ground for termination does not require proof of such matters as abandonment, neglect, unfitness, or abuse, as the other statutory grounds do, proof that termination of parental rights is in the best interests of the child will require clear and convincing evidence of circumstances as compelling and pertinent to a child's best interests as those enumerated in the other subsections of § 43-292. *In re Interest of Aaron D.*, *supra*.

The 15-month condition set forth in § 43-292(7) serves the purpose of providing a reasonable timetable for parents to rehabilitate themselves, but termination based on the ground that a child has been in out-of-home placement for 15 of the preceding 22 months is not in a child's best interests when the record demonstrates that a parent is making efforts toward reunification and has not been given a sufficient opportunity for compliance with a reunification plan. See *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232, 674 N.W.2d 442 (2004); *In re Interest of Aaron D.*, *supra*.

Candy's opportunities for compliance with a case plan were limited. Although the children had been out of Candy's home for almost 2 years at the time of the termination hearing, for most of this time, Candy's participation in the juvenile proceedings was voluntary and a result of his desire to obtain custody of his children. The State did not file a petition alleging any wrongdoing on Candy's part prior to the filing of the motion to terminate his parental rights.

In January 2008, approximately 15 months after the commencement of the juvenile court proceedings, Candy was ordered to complete a case plan for the first time. The tenets of the case plan required Candy to obtain housing, participate in a substance abuse evaluation, follow the recommendations of the evaluation, and attend visitations with his children on a regular basis.

In March 2008, a review hearing was held. At this hearing, the State did not present any evidence concerning Candy's progress with his case plan. Despite this lack of evidence, the county court canceled Candy's visitation with the children, found that reasonable and active efforts toward reunification were no longer necessary, and modified the permanency plan to adoption. After this hearing, DHHS stopped assisting Candy with meeting his goals.

Essentially, Candy was provided with approximately 2 months to achieve the goals of his case plan. It is not clear from the record what progress Candy made on the case plan during those 2 months. The caseworker, Taylor, testified that she was unable to review the plan with Candy because she was not in contact with him from January to March 2008. Taylor indicated that she could not confirm whether Candy had complied with any of the requirements of the case plan. Specifically, she testified that she had no knowledge about Candy's employment status, living arrangements, or financial situation.

Taylor also indicated that after the March 2008 hearing when reasonable efforts ceased, she received a signed release giving her access to Candy's counseling records and confirmation that Candy had completed a substance abuse evaluation. Additionally, Taylor learned that Candy

had enrolled in the family drug court program. The evidence at the termination hearing revealed that Candy enrolled in drug court in July 2008. He was ultimately terminated from the program in January 2009 due to noncompliance and lack of progress. However, there was evidence that Candy had taken random drug and alcohol tests during the pendency of the juvenile court proceedings. The last time Candy tested positive for drugs or alcohol was in November 2007.

At the termination hearing, Candy presented evidence to demonstrate his compliance with the case plan. He testified that he had been sober since November 2007. He had moved into a new house in approximately June 2008 “so [he] could get stability and start on [his] own so [he could] try to get [the] kids back.” He had been working at a construction job, but at the time of the hearing, he was unable to work due to a work-related injury. He was receiving workers’ compensation benefits.

Upon our de novo review of the record, we find the evidence presented at the termination hearing demonstrated that Candy had made progress on the requirements of his case plan. He had moved into stable housing, had stopped drinking, had completed a substance abuse evaluation, and was unemployed only as a result of his work-related injury. We acknowledge that Candy’s compliance with the case plan was not immediate. Arguably, he made little progress from January to March 2008, but we do not find that this 2-month period constituted a sufficient opportunity for compliance. We also acknowledge that the children have been out of Candy’s home for well over 2 years and that during this time, Candy has not been a model parent. However, the juvenile court proceedings focused almost exclusively on Tabitha. As such, we have very little information concerning Candy’s circumstances during the pendency of the proceedings and it is difficult to determine what efforts Candy was making during the time his children were out of his home.

Moreover, we conclude that the State failed to present clear and convincing evidence to demonstrate that termination of Candy’s parental rights was in the children’s best interests. While there was some evidence that Candy had not been visiting his children on a regular basis, there was also evidence that because Candy’s children lived with his mother, he could see them outside of a supervised visitation setting. Accordingly, it is not clear how often Candy saw the children. There was evidence that Candy acted appropriately toward the children when he did attend the supervised visits. The children’s therapist, Gina Townsend, testified that Candy’s two oldest children, Allen and Lydianna, have described their relationship with Candy as similar to that of an uncle, instead of the more intimate kind of relationship typically found between a parent and a child. However, Townsend also testified that the children do not have any negative feelings toward Candy. Noticeably, Townsend did not testify that it would be in the children’s best interests to terminate Candy’s parental rights.

In light of the lack of evidence concerning Candy’s relationship with the children and his ability to parent the children and in light of the evidence demonstrating that Candy was making progress on the goals of the case plan, we conclude that the State presented insufficient evidence to clearly and convincingly demonstrate that termination of Candy’s parental rights is in the children’s best interests. Accordingly, we reverse the order of the county court terminating Candy’s parental rights, and remand for further proceedings.

(c) Terminating Parental Rights
of Unadjudicated Parent

Candy also alleges that the county court erred in terminating the parental rights of an “unadjudicated parent.” However, because we conclude that the State failed to provide sufficient evidence to prove that termination of Candy’s parental rights is in the children’s best interests and remand for further proceedings, we do not address Candy’s additional assignment of error. However, we do note that the Nebraska Supreme Court has previously held that in some circumstances a juvenile court may proceed with a hearing on the termination of parental rights without a prior adjudication hearing. See *In re Interest of Joshua M. et al.*, 256 Neb. 596, 591 N.W.2d 557 (1999).

An appellate court is not obligated to engage in an analysis which is not necessary to adjudicate the case and controversy before it. *Curtis v. Curtis*, 17 Neb. App. 230, 759 N.W.2d 269 (2008).

4. TERMINATION OF TABITHA’S PARENTAL RIGHTS

(a) Statutory Basis

Tabitha assigns as error the county court’s finding that the State presented clear and convincing evidence to prove the statutory grounds for termination of her parental rights. Specifically, she challenges the county court’s determination that termination of her parental rights was warranted pursuant to § 43-292(2), (6), and (7). Upon our de novo review of the record, we find that all five of the children were in an out-of-home placement for at least 15 of the most recent 22 months, pursuant to § 43-292(7). As such, we need not specifically address the county court’s determinations as to § 43-292(2) or (6).

Termination of parental rights is warranted whenever one or more of the statutory grounds provided in § 43-292 is established. Section 43-292(7) provides for termination of parental rights when “[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months.” This section 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. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

In this case, the State alleged that termination of Tabitha’s parental rights was warranted pursuant to § 43-292(2), (4), (6), and (7). After the hearing on the State’s motion, the county court found that the State had proved by clear and convincing evidence that termination of Tabitha’s parental rights was warranted pursuant to § 43-292(2), (6), and (7). The court indicated that “the evidence really doesn’t establish” that termination of Tabitha’s parental rights was also warranted pursuant to § 43-292(4).

The record contains uncontroverted evidence that Jesse, Marcos, Allen, Lydianna, and Tabitha Jr. were removed from Tabitha’s care in September 2006 and that they continuously resided in an out-of-home placement throughout the pendency of the proceedings. As a result, when the State filed its motion to terminate Tabitha’s parental rights in July 2008, the children had been in an out-of-home placement for approximately 22 months. Moreover, at the time of the hearing on the motion to terminate Tabitha’s parental rights in January 2009, the children had

been in an out-of-home placement for approximately 28 months. Accordingly, there is no dispute that the children were in an out-of-home placement for 15 or more months of the most recent 22 months as § 43-292(7) requires.

There is clear and convincing evidence that termination of Tabitha's parental rights was appropriate pursuant to § 43-292(7). In light of this fact, we need not, and do not, further address the sufficiency of the evidence demonstrating that termination of Tabitha's parental rights was also appropriate pursuant to § 43-292(2) and (6). Tabitha's assertions regarding the sufficiency of the statutory authority to support termination of her parental rights are without merit.

(b) Best Interests

Tabitha also assigns as error the county court's finding that the State presented clear and convincing evidence to prove that termination of her parental rights is in the children's best interests. Upon our de novo review of the record, we affirm the decision of the juvenile court.

In the previous section, we found that termination of Tabitha's parental rights was appropriate pursuant to § 43-292(7). As a result, we declined to address the sufficiency of the evidence demonstrating that termination was also appropriate pursuant to § 43-292(2) or (6). We, therefore, treat our discussion of whether terminating Tabitha's parental rights is in the children's best interests as though § 43-292(7) is the only statutory basis for termination.

As we discussed more thoroughly above, in cases where termination of parental rights is based solely on § 43-292(7), the Nebraska Supreme Court has held that appellate courts must be particularly diligent in their de novo review of whether termination of parental rights is, in fact, in the child's best interests. See *In re Interest of Aaron D.*, *supra*.

When a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. *In re Interest of Joshua M. et al.*, 251 Neb. 614, 558 N.W.2d 548 (1997). Furthermore, the Nebraska Supreme Court has previously recognized that children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *Id.*

In this case, the evidence shows that despite almost 2 years of efforts by DHHS and the county court, Tabitha has been unable or unwilling to rehabilitate herself. During the time her children were in an out-of-home-placement, Tabitha failed to adequately comply with the county court's orders, failed to consistently attend visitation with her children, and failed to make progress toward achieving reunification.

Throughout the pendency of these proceedings, the court ordered Tabitha to (1) attend parenting classes, (2) complete domestic violence education classes, (3) complete a substance abuse evaluation and follow through with the recommendations, (4) attend and participate in a weekly team meeting, (5) make weekly contact with the case manager, and (6) secure safe and stable housing. Evidence presented at the termination hearing revealed that Tabitha failed to comply with a majority of these court orders.

The record reveals that Tabitha did complete a series of parenting classes as ordered by the court. However, Tabitha's participation in these classes was minimal. Tabitha missed three or four of the 12 sessions required by the program and did not schedule any makeup sessions. In fact, Tabitha missed the first class and failed to complete a preassessment. As such, it is impossible to determine whether the class resulted in any improvement in her parenting skills.

When Tabitha was present at the class, her facilitator reported that “she demonstrated minimum participation in group discussions.” Her facilitator believed that Tabitha was unable to “reap[] the full benefits of this class” because of her “inability or []unwillingness to honestly look at parenting issues.”

There is some indication in the record that Tabitha did attend a domestic violence education class and that she did attend a few sessions with a counselor to address domestic violence issues. However, there is also evidence in the record that Tabitha’s attendance at the domestic violence education class was sporadic and that Tabitha stopped seeing her counselor prior to their work being completed. Additionally, even at the termination hearing, Tabitha minimized her problems with domestic violence and appeared to insinuate that she only admitted to such problems so that the other allegations in the petition would be dismissed.

Tabitha did complete a substance abuse evaluation. After the completion of the evaluation, Tabitha admitted to the caseworker, Taylor, that she had an alcohol problem. Despite this admission, Tabitha failed to complete the recommendations from the substance abuse evaluation.

The record reveals that throughout the pendency of these proceedings, Tabitha failed to attend a majority of the team meetings and failed to keep in regular contact with Taylor. Evidence showed that Tabitha was verbally aggressive to Taylor, and even threatened Taylor at one time. Simply stated, the evidence reveals that Tabitha was uncooperative with Taylor’s requests and did not respond to Taylor’s repeated attempts to stay in contact. Taylor testified that Tabitha indicated to her that Tabitha was simply choosing not to meet any of her goals although the goals were easy and she had the ability to complete each goal. At the termination hearing, Tabitha testified that she had a lot of problems communicating with Taylor. Tabitha indicated, “I don’t think we understand each other or something.”

Tabitha failed to secure safe and stable housing during the pendency of these proceedings. Tabitha admitted during her testimony at the termination hearing that she has not had a stable residence during the 2 years that this case was pending. She testified that she had moved from house to house and had not kept Taylor informed of these moves. At the time of the termination hearing, Tabitha still had not acquired stable housing. She testified that she was living with her mother, “waiting for a house to get open.”

From the time the children were removed from Tabitha’s home through March 2008, the county court continuously provided Tabitha with the right to supervised visitation with her children. However, Tabitha did not consistently attend scheduled visitation sessions, and this inconsistency had a detrimental impact on the children.

Evidence presented at the termination hearing revealed that Tabitha was not consistent in her visitation with her children. She repeatedly missed visits, despite the efforts of DHHS to secure her with transportation and a location for visits. Tabitha would often call to say that she would be at a visit and the children would then be transported to the visitation location, but Tabitha would not show up. From January to March 2008, Tabitha missed almost all of her visits. At the termination hearing, Tabitha testified that she had to miss the visits because she had a warrant out for her arrest at the time and that she was actively avoiding law enforcement.

Tabitha’s inconsistency in attending visitation had a negative impact on the children’s behavior. The family’s therapist, Townsend, testified that the children were upset when Tabitha

missed visits and that, in some instances, the children would act out because of the missed visits. The supervised visitation specialist testified that when Tabitha missed visits, the children would act out on the drive back to their foster homes. Several times, workers had to stop the car to calm the children.

When Tabitha did attend the visits, she often acted inappropriately. Tabitha would yell at the children, would walk out of the visitation room because she was angry, and would blame the children for the visit becoming out of control. These behaviors upset the children and often caused them to cry until the visitation supervisors intervened. In addition, the visitation supervisors often had to intervene for the children's safety. Essentially, the evidence revealed that Tabitha was not yet capable of parenting all five children on her own.

Taken as a whole, the evidence presented at the termination hearing reveals that Tabitha did not make sufficient progress in complying with the court's orders, despite the length of time that had passed since her children were removed from her home. Taylor summarized Tabitha's efforts as being "sporadic and minimal." The evidence supports such a characterization. Tabitha made small efforts toward compliance, but failed to demonstrate a consistent effort toward reunification.

Both Taylor and Townsend testified that the children need a safe and stable environment. We agree. The children need a stable, permanent home. Tabitha is simply incapable of providing that at this time, and there is no indication that she will be capable of providing such stability at any time in the near future. Accordingly, we find the evidence clearly and convincingly establishes that termination of Tabitha's parental rights is in the children's best interests. We affirm the order of the county court.

V. CONCLUSION

Upon our de novo review of the record, we find that the State failed to adduce sufficient evidence to clearly and convincingly demonstrate that termination of Candy's parental rights is in the children's best interests. Accordingly, we reverse the order of the county court terminating Candy's parental rights, and remand for further proceedings. However, we find that the State presented sufficient evidence to warrant termination of Tabitha's parental rights. We affirm the order of the county court terminating Tabitha's parental rights.

JUDGMENTS IN NOS. A-09-127 THROUGH A-09-129
AFFIRMED IN PART, AND IN PART REVERSED AND
REMANDED FOR FURTHER PROCEEDINGS.
JUDGMENTS IN NOS. A-09-227 AND
A-09-228 AFFIRMED.