

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Allen M.,)
All'eana M., ZaVyana C.,)
and N'evaeh C.,)
Children under 18 years of age.)
State of Nebraska,)
Appellee,)
v.)
Alexis C.,)
Appellant.)

No. A-13-0634

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

JAN 17 2014

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

IRWIN, MOORE, and BISHOP, Judges.

MOORE, Judge.

Alexis C. appeals from an order of the separate juvenile court for Douglas County which terminated her parental rights to her four minor children. Allen M., the father of two of those children, challenges the same order which also terminated his parental rights. Following our review, we affirm the juvenile court's decision.

FACTUAL BACKGROUND

Alexis is the mother of four minor children: ZaVyana, born in May 2007, Allen Jr. and All'eana, born in April 2008, and N'evaeh born in October 2009. Allen M., Sr. (Allen Sr.), is the father of Allen Jr. and All'eana. The fathers of ZaVyana and N'evaeh were also involved in the juvenile court proceedings,



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but have not appealed. Because those fathers are not involved in the present appeal, we will only discuss the facts as they relate to Alexis and Allen Sr.

On or about February 8, 2011, Allen Jr. and All'eana were taken by their great-grandmother to Creighton University Medical Center with injuries that appeared to be the result of child abuse. The children's great-grandmother suggested to the police that Alexis was the source of the abuse. Due to these abuse allegations, all four of Alexis' children were removed from her home and were placed with their great-grandmother. When their great-grandmother determined that she could no longer provide for the children, they were placed in a foster home. Later, the children were removed from the foster home because of inadequate supervision. Since that removal, all four children have lived with their uncle, Vernon C. The children have not returned to Alexis' home since their original removal.

On February 11, 2011, the State filed a petition in the juvenile court alleging that Alexis' children lacked proper parental care because of her faults or habits. Specifically, the State alleged that Alexis had subjected her children to inappropriate physical discipline and had threatened their safety on various occasions. At the May 27 adjudication hearing, Alexis entered a plea of no contest to the charges.

The disposition and permanency planning hearing was held on June 28, 2011. On October 3, 2011; January 20, 2012; and August 1, 2012, the juvenile court held review and permanency planning hearings. The permanency objective remained reunification during this time and Alexis was required to follow a case plan prepared by the Department of Health and Human Services. Included among the case plan's terms were provisions that required Alexis to attend a parenting program, abstain from alcohol and controlled substances, submit to a psychiatric evaluation, complete random drug screenings, participate in family therapy, undergo chemical dependency evaluations, and participate in anger management courses.

Following the October 10, 2012 review and permanency hearing, the juvenile court ordered that Alexis receive no further reasonable efforts toward reunification. On December 10, 2012, the State filed a motion to terminate Alexis' parental rights. The State alleged that grounds for termination existed under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2012). On the same day, the State also filed a supplemental petition to terminate Allen Sr.'s parental rights, alleging that grounds for termination existed under § 43-292(1), (2), (7), and (9). The juvenile court heard evidence on the State's motion and supplemental petition on May 24 and June 13.

During its case, the State detailed the services provided to Alexis. Services included visitation with her children, drug screening, psychiatric and psychological referrals, bonding assessments, anger management classes, and individual therapy. The evidence at the hearing showed that Alexis participated in many of these services and made some progress toward achieving reunification with her children. The record shows she consistently attended visitation. In May 2012, the court granted Alexis' motion for unsupervised visits with her children, including one overnight visit per week. Amanda Gurock, her therapist, testified that Alexis was successfully discharged from family therapy, having formed a stronger bond with her children and having learned to use appropriate parenting techniques. Gurock also commented that Alexis had shown progress in managing her anger.

Despite her participation in these services, the State demonstrated that Alexis had not fully internalized the offered services and that her anger issues persisted. Alexis was incarcerated twice during this case: once for the child abuse that precipitated the juvenile court petition and again for violating her sentence of probation from the child abuse conviction. Alexis was inconsistent with her drug testing and had numerous altercations with the staff of the Department and another agency involved in her case which included threatening

phone calls and allegations of theft. The State also presented evidence regarding an incident in Cuming County when Alexis became involved in a physical altercation with a 77-year-old man. The altercation was a result of Alexis' prostitution with this man. As a result of this incident, Alexis was arrested, charged and convicted of a fight by mutual consent, and assessed a fine.

Brea Ross-Worthington was the family permanency specialist assigned to this case. During her testimony, she noted that the children have remained in the care and custody of the Department of Health and Human Services since February 2011. Ross-Worthington also testified that this was the second juvenile case for these children. During the first case, ZaVyana, Allen Jr., and All'eana became State wards for approximately 22 months after Allen Jr. and All'eana tested positive for drugs in their systems at birth. Taking into consideration both cases, Ross-Worthington determined that these children had spent 70 percent of their lives in foster care. She also stated that the present case was opened approximately 9 months after the first case was closed. Because of the children's extended time in foster care and Alexis' inconsistent behavior, Ross-Worthington stated her opinion that Alexis' parental rights should be terminated.

Ross-Worthington also believed that the juvenile court should terminate Allen Sr.'s parental rights. She noted that

Allen Sr. has been absent from the majority of Allen Jr. and All'eana's lives, only participating in sporadic visitation, and had not made efforts to participate in services. Instead, Allen Sr. placed a priority on his job and provided a number of reasons to explain his inability to accept placement of his children. Ross-Worthington testified that Allen Sr. does not understand the needs of Allen Jr. and All'eana because he has not spent enough time with them. She believed that Allen Jr. and All'eana would be at risk for harm if placed with their father.

On July 12, 2013, the juvenile court entered an order terminating Alexis' and Allen Sr.'s parental rights. The court found that the State had proved its alleged grounds for termination relating to each parent, and determined that termination was in the children's best interests. Alexis filed a notice of appeal on July 23, 2013. Allen Sr. later filed a separate notice of appeal on August 16, 2013.

ASSIGNMENTS OF ERROR

In her sole assignment of error, Alexis argues that the juvenile court erred when finding that it was in the children's best interests to terminate her parental rights.

Allen Sr. does not set forth a proper cross-appeal or assign errors in his brief, but argues that the juvenile court erred when terminating his parental rights.

STANDARD OF REVIEW

Cases arising under the Nebraska Juvenile Code are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the trial court's findings. *In re Interest of Justine J.*, 286 Neb. 250, 835 N.W.2d 674 (2013). However, when the 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. *Id.*

ANALYSIS

Termination of Alexis' Parental Rights.

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in § 43-292 exists and that termination is in the children's best interests. *In re Interest of Kendra M.*, 283 Neb. 1014, 814 N.W.2d 747 (2012). Here, the juvenile court found that the State proved grounds for termination under § 43-292(2), (6), and (7). Alexis does not challenge this basis of the court's order, so we need not address the grounds for termination. We move on to the best interest analysis.

Alexis claims that the juvenile court erred in finding that termination of her parental rights was in the children's best interests. She argues that she had completed the court's orders

and the Department was ready to return her children until the Cuming County incident occurred. Alexis believes that incident should not have been sufficient grounds to terminate her parental rights.

While the incident in Cuming County may have played a part in the juvenile court's decision, we disagree with Alexis' contention that this was the only reason to terminate her parental rights. Further, there is no indication in the record to substantiate her claim that the Department was ready to have the children return to her care. The record does show, however, that Alexis has experienced continual difficulties throughout the case maintaining control of her anger and communicating with staff workers. For example, Alexis was restricted from visiting Vernon C.'s house by the property owner after she became involved in a heated argument with another uncle. She was also accused of stealing a worker's wallet during a visitation. Alexis has also been inconsistent in submitting to required drug tests and has spent two different periods in jail during the pendency of the case.

Additionally, and perhaps more importantly, Alexis' children have spent the majority of their lives in foster care. These children have twice been under juvenile court jurisdiction for extended periods of time. In the present case, there is no indication in the record that Alexis has been able to correct

her past behaviors. In fact, the record seems to demonstrate that Alexis follows a pattern of descending into bad behavior after a period of progress. The children's need for stability in their lives requires a permanent placement. Children should not be suspended in foster care or be made to await uncertain parental maturity. See *In re Interest of Emerald C.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012).

Based upon our de novo review of the record, we find clear and convincing evidence that termination of Alexis' parental rights is in the children's best interests.

Termination of Allen Sr.'s Parental Rights.

On August 21, 2013, Allen Sr. filed a notice of appeal. Following this notice of appeal, the State moved for summary dismissal. The State argued that Allen Sr.'s appeal was untimely due to the fact that his notice of appeal was filed outside of the 30-day period following the juvenile court's order terminating his parental rights. See Neb. Rev. Stat. § 25-1912(1) (Reissue 2008) (appeal must be filed within 30 days of entry of judgment, decree, or final order). We overruled that motion with the following minute entry:

Appellee's motion for summary dismissal is overruled. The natural mother, Alexis H., timely filed a notice of appeal on July 23, 2013, and is designated as the appellant. See Neb. Ct. R. App. P. § 2-101(C). Allen M., is

designated as an appellee and has a right to a cross-appeal. See Neb. Ct. R. App. P. § 2-101(E).

Despite informing Allen Sr. of his right to a cross-appeal, his brief does not adhere to the established rules for a cross-appeal. Namely, Allen Sr. does not indicate on the cover of his brief that he is filing a cross-appeal nor is his brief prepared in the same manner as a brief of appellant. Allen Sr. does not include a separate "assignments of error" section in his brief. Neb. Ct. R. App. P. § 2-109(D)(4) requires an appellee who is presenting a cross-appeal to note the cross-appeal on the cover of the brief and directs the appellee to prepare the "Brief on Cross-Appeal" in the same manner and under the same rules as the brief of the appellant. Section 2-109(D)(1)(e) requires an appellant to include a separate section for assignments of error, designated as such by a heading, and also requires that the section be located after a statement of the case and before a list of controlling propositions of law. See *In re Interest of Jamyia M.*, 281 Neb. 964, 800 N.W.2d 259 (2011). Assignments of error consisting of headings or subparts of argument do not comply with the mandate of § 2-109(D)(1)(e). *Id.*

Because Allen Sr.'s brief does not comply with the established rules of appellate procedure, we may proceed as though he failed to file a brief, or, alternatively, may examine the proceedings for plain error. See *In re Interest of Jamyia*

M., supra; City of Gordon v. Montana Feeders, Corp., 273 Neb. 402, 730 N.W.2d 387 (2007). "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. *U.S. Cold Storage, Inc. v. City of La Vista*, 285 Neb. 579, 831 N.W.2d 23 (2013). In the interests of fairness, we examine for plain error.

While Allen Sr. may claim that he is interested in reunifying with his children, the record shows that he has not made concerted efforts to achieve reunification. He is inconsistent with visitation and places priority on his job. Allen Sr. also has declined to take placement of Allen Jr. and All'eana and has instead given the caseworker a number of reasons why he cannot take them. Because of Allen Sr.'s unwillingness to engage in services and the length of time the children have been in foster care, termination of his parental rights was proper. We do not find plain error in this case.

CONCLUSION

The juvenile court did not err in terminating Alexis and Allen Sr.'s parental rights.

AFFIRMED.