

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF AUTUMN L. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE INTEREST OF AUTUMN L. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

MARION W., APPELLANT, AND JOHN W., APPELLEE AND CROSS-APPELLANT.

Filed March 6, 2012. No. A-11-313.

Appeal from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge.  
Reversed and remanded for further proceedings.

Thomas C. Riley, Douglas County Public Defender, and Nicholas E. Wurth for appellant.

Donald W. Kleine, Douglas County Attorney, Jennifer C. Clark, Amy N. Schuchman,  
and Sarah Breen, Senior Certified Law Student, for appellee State of Nebraska.

Casey J. Quinn and Justin A. Quinn for appellee John W.

INBODY, Chief Judge, and CASSEL and PIRTLE, Judges.

INBODY, Chief Judge.

INTRODUCTION

Marion W. appeals the determination of the Douglas County Separate Juvenile Court terminating her parental rights to her four children. John W., Marion's husband, also cross-appeals that same order of termination, but only in regard to three of those four children. Based upon the repeated failure of the Nebraska Department of Health and Human Services (DHHS) to provide court-ordered services to Marion and John, coupled with various other factors as set forth in the opinion below, we find that the juvenile court erred in its determination that termination of Marion's and John's parental rights were in the best interests of the children. As such, we reverse the order of the juvenile court and remand the cause for further proceedings.

## STATEMENT OF FACTS

Marion is the biological mother of Autumn L., born in September 1999; Nancy W., born in July 2003; Amber W., born in August 2004; and Charles W., born in November 2005. Marion and John are married, but John is the biological father of only Nancy, Amber, and Charles; he is Autumn's stepfather. In August 2010, the State filed a petition against Autumn's biological father, who later voluntarily relinquished his parental rights, and thus, his rights are not at issue in this case.

On August 8, 2008, the State filed a petition alleging that Autumn, Nancy, Amber, and Charles were children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). The petition alleged that Marion and John had placed the children at risk for harm because the family home was "in a filthy, unwholesome condition" and had been closed by a housing inspector due to unsafe living conditions. The children were removed from the home and placed in the custody of DHHS. Marion and John pled no contest to the allegations contained within the adjudication petition, and the children were adjudicated as children within the meaning of § 43-247(3)(a).

Following the adjudication, at a disposition hearing on December 16, 2008, Marion and John were ordered, in part to:

1. Obtain and maintain, safe, stable, and adequate housing and provide proof to the case manager every six months;
2. Obtain and maintain a legal, stable source of income and provide proof to the case manager every six months;
3. Participate in individual therapy to address issues relating to appropriate expression of emotions, as arranged by [DHHS];
4. Participate in family therapy to address parenting skills as arranged by [DHHS.]

At the disposition hearing on June 11, 2009, the court ordered DHHS to arrange individual therapy, as previously ordered on December 10, 2008, and to arrange for vocational training for both parents. The court further ordered Marion and John to participate with a family support worker to assist with housing.

On August 3, 2010, the State filed petitions to terminate Marion's and John's parental rights pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2010). The petitions specifically allege that Marion and John failed to obtain and maintain safe, stable, and adequate housing and failed to provide proof to DHHS; to obtain and maintain a legal, stable source of income and failed to provide proof to DHHS; failed to consistently participate in individual therapy; and were not making sufficient progress in parenting the children.

The termination hearing proceedings were held over a number of days, beginning in November 2010 and continuing through April 2011. The record contains the three case plans and court reports received at the termination hearing. The December 5, 2008, case plan and court report indicates that Marion and John were to have three supervised visits each week for 2 hours each visit. The report shows that visits were improving as Marion and John brought more nutritious food, provided age-appropriate games, and provided close supervision of the children. The report specifically states, "Marion and John have made significant progress coming to the visits well prepared by having diapers, wipes, and clean clothes for all of the children" and

“[t]hey have improved significantly in disciplining the children consistently by giving time outs and giving clear explanations for the rules.” The report details that Marion and John consistently attended visitations, Autumn’s family therapy appointments, and meetings with the family support worker. The report further indicates that at that time, Autumn experienced difficulties with feeling as though she did not receive enough attention at visitation with all four children. This particular report contains very little information regarding Amber, Nancy, and Charles. This report concludes that continued placement of the children with DHHS was necessary because Marion and John had not obtained permanent housing and employment and because they were still in the process of “obtaining the skills necessary to keep themselves and their housing in safe conditions for their children.” DHHS recommended that Marion and John continue to participate in family therapy with Autumn; obtain and maintain safe, stable housing and a legal source of income; and continue to work with the support worker, have supervised visitation, and participate in “CFA.”

The December 4, 2009, case plan and court report indicates that Marion and John have made “significant progress” but that sometimes they required prompting with disciplining the children. The report indicates that Marion and John continued to provide appropriately for the children and improved with potty training the younger children. Marion and John continued to demonstrate appropriate discipline techniques and “have shown their bond with their children by insisting that they all sit together during meal times, engaging in activities with their children.” At that time, Marion and John were actively searching for an appropriate home, but had been unsuccessful. The two continued to participate with Autumn in family therapy once a week and had also begun individual therapy and were consistent in attending those appointments.

Regarding the children, this report indicates that Autumn, a fifth grader, struggled with aggression and boundaries. The case details that Nancy, a kindergartner, was friendly and talkative, and was easily frustrated, but had no reported psychiatric or psychological conditions. The report indicates that Amber, also a kindergartner, was developmentally delayed and was involved in special education services. Amber had a history of high lead levels and, aside from oppositional behavioral issues, had no psychiatric or psychological conditions. The report indicates that Charles had had previously reported aggressive behaviors, but that he had improved with no psychiatric or psychological concerns. The report concludes that “Marion and John have made significant progress towards [taking responsibility for their own and their children’s basic care/needs] by working with family support and by providing nutritious meals, extra clothes, diapers, and wipes during visits,” but that they had made minimal progress on obtaining and maintaining housing and a legal source of income.

The next case plan and court report in the record, dated June 25, 2010, indicates the progress as noted above, but that there continued to be concerns regarding cleanliness and hygiene because the children were returning from visitations at the park with filthy clothing and feces and/or urine in their clothing. The report indicated that although Marion and John had made progress, it was all due to prompting or modeling of visitation workers, and that Marion and John were having difficulty managing all four children. The report states that Autumn made progress with therapy and that Marion and John were consistently attending family therapy with Autumn. The other children continued to make progress and to address any issues which may have arisen.

The report, as authored by the case manager at that time, William Sanford, indicates that Marion and John attended all family team meetings and agreed with the services offered and recommendations, but consistently failed to follow through. Sanford's summary chastised Marion's and John's handwriting on a lease, stating he thought their writing was "like a third grade level." The report detailed concerns with unapproved individuals residing in the home in which a new lease had been obtained and the filthy condition of that new residence. The report indicates that Marion was employed, but had failed to provide DHHS with proof, and that she had lately been inconsistent with meeting with the family support worker, using work as an excuse to leave any meeting that she was able to attend.

The report then concludes that very little progress had been made by either Marion or John and that the children have multiple developmental, behavioral, and emotional needs and should be allowed to "settle into new families without the chaos and interference of the current visitation schedule." The report recommended that parenting time should occur no more than two times a week in a neutral setting, that the three youngest children should be placed in therapy, that it is unlikely to be able to place the children together because of their "special needs," and that "fos-adopt placements" be found for all of the children.

At the termination hearing, Heidi DeGodt, formerly a child and family services specialist with DHHS, testified that she was assigned to Marion and John's family in October 2008, and ended her supervision in April 2010. DeGodt testified that during that time, all four children remained out of the parental home. DeGodt testified that the children were placed in several different foster homes, none of which included placement of all four children together. DeGodt testified that she maintained contact with the foster families several times a week. At the inception of the case, Marion and John were allowed three visits per week with the children in a neutral location, because the residence at which they were living was not safe or stable. DHHS provided Marion and John with a family support worker. DeGodt testified that at the time of the first report, Marion and John were not consistently attending visitations because Marion was scheduled to work different shifts, some of which interfered with visitation.

DeGodt indicated that as of December 2009, Marion and John made progress in their visitations with the children, the interactions with the children were positive, and the children appeared to have a bond with Marion and John. Despite this, later in her testimony, DeGodt testified that in her opinion at that time, Marion and John were struggling with visitations. DeGodt explained that she could not recall how many times or when she personally had visitations with the family, and she admitted that the majority of her assessment was actually based upon visitation agency reports.

In January 2010, DeGodt explained that she continued to recommend supervised visitations because Marion and John continued to struggle with maintaining appropriate hygiene, cleanliness, supervision, and discipline. Furthermore, by that time, Marion and John had failed to obtain safe and stable housing. In April 2010, DeGodt testified that Marion and John claimed to be employed, but did not give any proof, and DeGodt had several concerns regarding a lease which Marion and John had recently entered into for a residence at 39th Street and Ames Avenue in Omaha, Nebraska. DeGodt testified that, at the 39th Street residence, the foundation was unstable, there were no stairs at the back exit door, and there were holes and exposed electrical outlets, all of which needed to be repaired. DeGodt indicated that DHHS had asked Marion and

John to complete a list of repairs; that she returned to the home a month later to find that some of those repairs had been made, although the outstanding necessary issues were very substantial and would be costly for Marion and John; and that the progress which had been made was insufficient to have the children in the home. DeGodt agreed that one of Marion and John's major problems in the case have been a lack of financial resources.

DeGodt testified that the juvenile court had ordered vocational rehabilitation services for Marion and John, which referral was not made by DHHS until December 2009. DeGodt indicated that John had continually reported to DHHS and the family support worker that he was working to find employment, that Marion had never refused to participate in a service designed to assist with gaining stable employment, and that both had consistently worked throughout the case to secure appropriate housing. DeGodt agreed that psychological evaluations had been ordered for Marion and John in October 2008, that the evaluations had been completed, and that she had reviewed those evaluations, but had not provided the evaluations thereafter to the therapists or other medical professionals, as collateral information, which was also as ordered by the court. Near the end of her testimony, again contrary to what she previously testified to, DeGodt stated that she had no doubt that the psychological evaluations had been sent to Marion and John's therapists.

DeGodt testified that the December 2008 court order indicated that Marion's specific goals for therapy related to the appropriate expression of emotions and that she did not recall what DHHS had done to assist Marion with the implementation of that goal. DeGodt testified that DHHS had verbally provided Marion and John with the names of agencies to provide low-cost therapy, in addition to referrals for specific providers. DeGodt testified she was instructed that DHHS would not be paying for individual therapy for Marion and that she should try to encourage Marion and John to find a way to fit the cost of therapy into their budgets.

DeGodt indicated that at the time of that December 2008 hearing, individual therapy had been recommended by DHHS and ordered by the court, but had not been set up by DHHS, although Marion and John were improving. DeGodt testified that she returned from leave in June 2009 and that individual therapy had still not been provided to either Marion or John, although the juvenile court had ordered DHHS to provide individual therapy by June 22, 2009. Eventually, both Marion and John obtained and coordinated individual therapy without the assistance of DHHS or DeGodt. DeGodt testified that as of February 2010, DHHS had no concerns regarding Marion's individual therapy and there had been no concerns raised at the family team meetings. However, DeGodt opined earlier that she did not believe that the goals which Marion was addressing with her individual therapist were sufficient to address why the family was in the court system. DeGodt stated that she spoke to Marion's therapist and that the therapist was aware of what "our ultimate goal is."

DeGodt testified that in March 2010, DHHS recommended that Marion and John's case be referred to the county attorney for termination of parental rights because of the amount of time the children had been out of home, only slight improvements had been made by Marion and John, and the lack of likelihood of any progress being made in the near future. As a result of the staffing meeting, DeGodt and the county attorney determined that Marion and John were not addressing the "core" issues of (1) parenting, (2) hygiene, and (3) failure to protect. In March 2010, DeGodt forwarded those three goals to the individual therapists. Again, DeGodt testified

that the therapists “knew what the ultimate goals were for the family that they were working on” because DHHS had verbally communicated those goals to them, which goals were different from the original goals recommended by DHHS and adopted by the juvenile court. DeGodt testified that in December 2009, she received a progress report regarding Marion which indicated that Marion’s therapy was focused on dealing with “feelings of guilt and shame associated with her children being placed in the foster care system. Other areas have been learning to communicate openly and honestly.” At the same time, John was working with his therapist on his depressive symptoms, communication skills, and relationships. DeGodt testified that there was no concern that the other issues were not being addressed because the issues which were addressed were issues that the juvenile court had ordered Marion and John to complete.

Sanford, who was formerly employed by DHHS, testified that he was assigned to this case in April 2010 as a child and family services specialist and case manager and that he remained with the case until March 2011. Sanford testified that DHHS had provided the children with medical and dental care services and that Autumn and Amber had been provided therapy services. Sanford testified that Marion and John were assigned a family support worker to provide services for them to address safe, stable, and appropriate housing.

Sanford testified that in March 2010, Marion and John had supervised visitation with the children and were ordered by the juvenile court to continue therapy and to receive vocational training. Sanford testified that he was concerned with visitations that occurred from April to June 2010, because he had observed frustration by Marion and John in managing the children. Sanford explained that Marion and John had to be redirected on too many occasions and that he had serious concerns with the home in which Marion and John were residing. Sanford testified that the home was free from “strewn-about objects” but was dusty and smelled of mold. Sanford detailed that the countertops and the tops of the cabinets were clean. Sanford testified that there was evidence of construction in the home and evidence Marion and John were working on the bathroom, although Sanford explained that there was one room which no one was allowed in which smelled of urine. Sanford testified that he was never provided a copy of the lease at this residence and that there was a problem with reports of an unauthorized individual living at the home. Sanford testified that in June 2010, the parents had separate visitations with the children due to a restraining order between Marion and John. John admitted that an argument ensued between the two and that he had put his hands on Marion to prevent her from leaving. Sanford testified that Marion and John reconciled soon thereafter.

Sanford testified that in late February or early March 2011, he conducted a walk-through of the home that Marion and John were currently residing in on Bristol Street in Omaha and that he had no safety concerns with the home other than with the appliances, which Marion and John were working on replacing. Sanford assessed that the home on Bristol Street was safe for visits with the children. Sanford testified that Marion and John had maintained the home since October 2010, and at the time of his walk-through, the home was swept, the kitchen was well stocked, and the bedrooms and bathrooms were appropriate. Sanford testified that he was concerned with Marion and John’s ability to afford the home after receiving reports that they were struggling to pay rent. At that time, Marion was employed through a temporary staffing agency, and although it was not a guaranteed full-time position, he had no concerns with the employment. Sanford

testified that John had also been working with a temporary agency, but his employment was sporadic.

Sanford testified that in early 2010, Marion was employed, working more than 40 hours a week by assisting with a delivery agency, and Sanford had requested paystubs from that employment, but was never given that proof. Sanford was concerned about this employment because he believed that Marion was being paid less than minimum wage for this job, was not receiving paystubs, and did not have regular work times. Sanford also testified that John did not have employment, but was regularly selling plasma for income and attending a technical school from which he received student loans.

Sanford explained that after June 2010, Marion ceased attending family therapy due to an injury and issues with transportation, and that even after providing Marion with bus passes, she failed to attend family therapy. Sanford testified that Marion was, however, attending individual therapy and that he had sent both Marion's and John's individual therapists their psychological evaluations. Sanford explained that Marion and John had ceased individual therapy for a short time and had indicated to Sanford that they were too busy looking for jobs and working. Sanford testified that he discussed the matter with Marion and John and reiterated that therapy was court ordered, after which they both re-engaged in individual therapy, although Marion had not resumed family therapy with Autumn.

Sanford opined that based upon the various factors he has reviewed, such as the status of the parents and the time the children have been placed out of the home, it would be in the children's best interests to have Marion's and John's parental rights terminated.

On cross-examination, Sanford testified that he actually did not recall many details regarding Marion and John's case, visitations, and family team meetings. Sanford indicated that during his time on the case, he personally observed only two visitations, one in May 2010 and a second in July 2010. Sanford testified that he did not note any parental deficiencies at the visitation in May 2010, and at the end of the family team meeting in May 2010, there were no changes in the individual therapy goals for Marion communicated.

Cathy Schweitzer, a licensed mental health practitioner, testified that she had treated Autumn since January 2010. Schweitzer diagnosed Autumn with attention deficit hyperactivity disorder (ADHD), disruptive behavior disorder, and posttraumatic stress disorder. Schweitzer testified that Autumn had been diagnosed with ADHD prior to Autumn's initial visit. Schweitzer indicated that the behavior disorder diagnosis stemmed from Autumn's being disruptive in the foster care home, argumentative, and difficult to manage. Schweitzer testified that the posttraumatic stress diagnosis stemmed from Autumn's removal from the parental home and from being a victim of sexual abuse by a younger cousin. Schweitzer opined that as of the most recent therapy session, she would no longer consider Autumn with a diagnosis of ADHD or disruptive behavior disorder.

Schweitzer also testified that once a week beginning in April 2010, and lasting through July 2010, she facilitated family therapy sessions between Marion, John, and Autumn. Schweitzer explained that the couple consistently attended family therapy, but were discharged as a result of scheduling conflicts. Schweitzer testified that Autumn was attached to her parents (which term "parents" included John as the stepparent and did not refer to Autumn's biological father) and that Autumn did not understand why she was removed from their care and why she

was unable to be returned. Schweitzer testified that Autumn asked every week when she could go home with Marion and John. Schweitzer testified that Autumn appeared to love Marion and John and appeared to have a bond with them; however, Schweitzer opined that Marion's parental rights to Autumn should be terminated because she did not believe that Marion was able to provide a secure, predictable, and safe environment which would address Autumn's needs.

Dr. Katherine Penny, Amber's pediatrician, testified that Amber had been diagnosed with ADHD. Dr. Penny testified that when Amber first visited in 2008, she had a reported medical history of high lead levels in her blood, but that those levels had returned to normal. Dr. Penny indicated that in May 2008, Amber's lead level was 14.6, which was considered a level of lead toxicity. Dr. Penny explained that any level above 10 was considered toxic, but that Amber's level of 14.6 was low on the possible ranges because the levels could read up into the hundreds. Dr. Penny testified that Amber had a history of developmental delay which could be attributed to lead toxicity, but that it was hard to know if that was solely the reason for the delay. Dr. Penny testified that Amber was receiving therapeutic services, such as physical therapy, occupational therapy, and speech therapy. Dr. Penny testified that the lead diagnosis was made prior to Amber's being treated by her, that there was no indication of what the source of the lead exposure had been, and that she could not say, based upon her training and experience, that the lead exposure which Amber suffered from caused Amber's ADHD or other developmental delays.

Autumn and Amber's foster mother, Abby B., testified that Amber was placed with her in April 2010, and Autumn in August 2010. Abby testified that Autumn struggled with following directions and personal hygiene, had stolen money from her home, and had forged Abby's signature on several occasions. Abby also indicated that Autumn had difficulty with boundaries, such as recognizing appropriate and inappropriate touching and affection. Autumn also frequently took on the motherly role for Amber and attempted to do everything for Amber, instead of letting Amber do it herself.

With regard to Amber, Abby testified that prior to being Amber's foster parent, she was a special education teacher and had worked with Amber. Abby testified that Amber was receiving speech and language support, occupational therapy, and physical therapy. Abby testified that Amber was developmentally delayed and had been making progress in her developments over the last year. Abby explained that Amber continued to work on these issues at school, but did not exhibit any other behavioral issues at home. Abby explained that prior to April 2010, visitations with Marion and John occurred four to five times a week, but that the visitation schedule had markedly decreased through December 2010, to only Saturday and Sunday from 2:30 to 4:30 p.m. Abby indicated that she had never been given a reason as to why the visitation schedule had changed. She testified that prior to visitations, Amber frequently indicated that she did not want to attend. On the other hand, Autumn was often anxious and excited prior to visitations and would come home happy and excited. Although, Abby explained that it would take several days after the visits to regain control of Autumn's behaviors.

Abby testified that the girls would often return from visitations unclean, but explained that this occurred during the summer visitations when the visitations would take place at the park or local community center and those issues ended when outdoor visitations ended. Abby testified

that Marion and John were not consistent in attending medical appointments, educational conferences, Autumn's holiday program, and some individualized education program meetings.

Tiffany White-Welchen, a licensed mental health practitioner, testified that she worked with Marion in September 2009 through June or July 2010. White-Welchen had difficulty in keeping in contact with Marion, in part, because Marion had employment with inflexible hours which made it difficult to maintain appointments. White-Welchen explained that at the beginning of her therapy sessions with Marion, Marion's goals included dealing with issues with guilt and shame associated with her children's placement in the foster care system and depression, and that Marion was making progress on each of those goals. Then, in March 2010, White-Welchen testified that she received a fax from DHHS indicating that Marion needed to work on three additional goals which were brand new goals. White-Welchen testified that the three new goals were hygiene, failure to protect, and parenting. Marion had not successfully reached those goals at the time therapy had ceased, but was making progress. Nonetheless, White-Welchen testified that as of March 2010, she was unsure if Marion could deal with the skills to nurture and manage a family because Marion was oftentimes overwhelmed and anxious.

White-Welchen testified that Marion had several strengths and was able to utilize resources available to her. Marion took whatever employment was necessary and available, even though it may not have been the most stable, and White-Welchen testified that Marion definitely loved her children and wanted them home. White-Welchen testified that throughout the course of treatment, there were often times that she did not have the communication from DHHS or collateral information regarding the case and the needs of the children. White-Welchen testified that she had not been invited or included in family team meetings by DHHS until April 2010. White-Welchen further indicated that although Marion told her the children had been removed because of a dirty house, a DHHS caseworker, Sanford, had explained to White-Welchen that the actual reasons for the children's removal were sexual abuse, lead poisoning, feces in the home, and neglect of the children.

Becky Herber, a mental health therapist, testified that she provided therapy to John from September 2009 through June 7, 2010. Herber testified that she was contacted by John, who requested individual counseling services. Herber testified that she received no information from DHHS regarding John, other than a telephone call requesting reports of his progress. John's initial goals were to address managing depression, working on communication within relationships, and managing emotions. Herber testified that John had made progress regarding the depressive symptoms, managing relationships, and communicating emotions. Herber testified that she later received three additional goals from "the county" to address with John, which were parenting, failure to protect, and hygiene. Herber testified that John had not successfully been discharged from therapy and had made a little progress, but added that it was difficult for her to determine if actual progress was made in those three areas because she did not observe John in his home or with the children. In a June 14, 2010, report from Herber, Herber indicated that John's hygiene had improved and that although John had successfully been able to verbalize issues regarding parenting at the therapy sessions, he failed to implement those actions during visitation with the children. Herber recommended that John continue to participate in counseling. Eventually, both Marion and John re-engaged in individual therapy with Herber.

Joaquin Guerrero, the family's assigned support worker, testified that he had worked with Marion and John since September 2009. Guerrero testified that the family's goals at that time were to secure and maintain housing and employment and to work on parenting. Guerrero testified that family support occurred two to three times a week for 2 hours each session. In September 2009, Marion and John were residing with a friend and Guerrero spent significant time with them looking at housing options, but explained that until either secured employment, Marion and John needed to save up money for housing. Guerrero testified that Marion and John secured a lease on a home in January 2010, on North 39th Street, but that there were concerns with the property. Guerrero testified that, for example, the front door needed a door knob, the back porch was missing stairs, there were plumbing problems in the bathrooms, and there was evidence of mice in the kitchen. Furthermore, the home had no appliances or furniture, and there was also concern regarding an unapproved individual living in the home. Guerrero, Marion, and John worked through a "to-do list" in order to identify and attempt to fix the problems with the home. Guerrero testified that Marion and John worked on the list and that he was impressed with the work they completed on the property. Guerrero testified that, despite Marion's and John's efforts, they still were experiencing difficulties with cleanliness, odors, and safety on the property.

In June 2010, issues arose with another individual living in the home possibly with children, pets, and the odor of mildew. Also during this time, a protection order had been issued and Marion and John were separated. After the separation, Guerrero testified that Marion and John reconciled and obtained a new lease at their current home on Bristol Street, at which time, in September 2010, family support services resumed. Guerrero testified that there had been a 45-day delay before Marion and John were able to move into the residence due to previous utilities that needed to be paid before the utilities could be turned on at the new residence. At the Bristol Street residence, Guerrero indicated there were some cleaning issues, but it was his opinion that the issues were caused by previous tenants and that Marion and John just needed to clean the home to take care of the problems. Guerrero testified that on some visits, there would be some clutter and the home needed to be cleaned but that on the following visit, those problems would be taken care of. Guerrero testified that cleanliness was a frequent issue at the residence on 39th Street and was also addressed at the Bristol Street residence, but not as regularly. Guerrero also testified that there have been other individuals residing in the Bristol Street home.

Regarding the couple's employment, Guerrero testified that he assisted Marion and John with filling out resumes, job applications, workforce development programs, and time management. Guerrero indicated that there had been a discussion with a caseworker, during which Marion and John had been warned that working temporary jobs would hurt them in terms of DHHS' definition of maintaining employment. However, Guerrero testified that the couple was at a point where they needed jobs, and that as far as he was concerned, whether it was long-term or temporary employment, as long as they were able to pay bills, it was approved by him. Guerrero testified that they also worked together on hygiene and interviews. Guerrero testified that John had not been able to maintain consistent full-time employment, but that Marion has been able to maintain full-time employment with various staffing services. In the winter of 2010, Marion indicated that she was employed for a truck delivery service, but there

were issues with Marion's being able to provide proof of paystubs to DHHS and Guerrero. Guerrero indicated that the employer refused to provide Marion with proof of employment and that there were some indications that Marion was being taken advantage of by being paid \$2 per hour on a commission-type arrangement. John had also made numerous inquiries and filed applications with staffing agencies, had explored options of a newspaper delivery route, and had also enrolled in a technical college. Guerrero agreed that John had been constantly seeking employment. John and Marion also donated plasma for compensation, in addition to taking various cash jobs, such as maintenance and repair.

Guerrero testified that John and Marion were required, through court orders, to receive vocational rehabilitation training and that as of September 2009, they had not been completed, although John had begun setting up appointments for the training on his own. Guerrero explained that in January 2010, he contacted a DHHS caseworker, DeGodt, because DHHS had still not given Marion and John a referral for the vocational training.

Guerrero testified that John and Marion had been fairly consistent with sessions with him, although they had missed some, but Guerrero explained that some of those missed appointments were due to Marion's working and that Guerrero opined he would rather have Marion working and miss an appointment, than come to an appointment and miss work. Guerrero testified that Marion has utilized significant community services in order to be in a better position, such as applying for disability, food stamps, and general assistance; utilizing the bus system for transportation; contacting and utilizing food pantries when necessary; pursuing her diploma through the GED program; picking up aluminum cans; and donating plasma. Guerrero agreed that Marion was much further along in her ability to provide for herself in the community than she was in 2009 and that she had learned new skills and improved her abilities. Guerrero testified that Marion was also taking the lead during one-on-one sessions with resumes, typing, and budgeting. Guerrero explained that Marion was budgeting the small income she received to cover basic expenses such as rent, utilities, and food, which left little money for anything else; that she did not spend money on anything unnecessary or frivolous; and that oftentimes, there was no money to budget for clothing. Guerrero also testified that Marion and John were making progress in the area of hygiene and dressing appropriately, although John needed frequent reminders.

Visitation worker Carrie Conley testified that since September 2010, she had supervised the family's Sunday visitations with Marion, John, and the four children. Conley testified that Marion and John experienced difficulties keeping track of all four children during visitations and that on occasion, Marion would step out of the visitation for various reasons which included being overwhelmed, going to the restroom, or to use her telephone. Conley testified that she addressed her concern with Marion about leaving during visitations and that Marion has responded by never again leaving, except to use the restroom. Conley testified that she frequently needed to step in to redirect Marion and John regarding handling the children and that Marion and John are frequently 10 minutes late to visitations due to their transportation by bus.

Conley testified that Marion and John always brought food to visitations, were able to make and serve the food for the children, and were able to clean up after the meal without assistance. Marion and John also brought spare clothing for the children to the visits. Conley explained that Marion had her own parenting technique for discipline, which included the use of

timeouts, which had been consistent, and which was something the children responded to, and that she only needed to redirect Marion on occasion. Conley testified that John had never left a visit, had monitored the children when Marion stepped out, and had appropriately disciplined the children similarly to Marion when necessary.

On April 6, 2011, at the conclusion of the termination hearing proceedings, the juvenile court issued an order which found that the allegations contained within the petition for termination were true by clear and convincing evidence, with the exception of the allegation regarding obtaining and maintaining a legal, stable source of income which was dismissed by the court. The juvenile court also found that termination was in the children's best interests. It is from this order that Marion appeals and John has cross-appealed.

#### ASSIGNMENTS OF ERROR

Marion assigns that the juvenile court erred by terminating her parental rights pursuant to § 43-292(2) and (6), and by finding that termination was in the children's best interests. John has cross-appealed, assigning the same, only as to Nancy, Amber, and Charles.

#### 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 another. *Id.*

#### ANALYSIS

Although this case involves an appeal by Marion and a cross-appeal by John, their respective assignments of error are identical, as is the testimony and evidence regarding both Marion and John. Therefore, in order to prevent an unnecessary and lengthy repetition of the facts, we will address the appeal, the cross-appeal, and the arguments contained therein together.

##### *Statutory Grounds for Termination.*

Both Marion and John contend that the juvenile court erred by terminating their parental rights pursuant to § 43-292(2) and (6). In this case, the juvenile court found that termination of Marion's and John's parental rights was warranted pursuant to § 43-292(2), (6), and (7).

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 interest. See *In re Interest of Jagger L.*, *supra*. 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 proved. *Id.*

Termination is warranted whenever one or more of the statutory grounds provided in § 43-292 is 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*.

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. *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

At the termination hearing, there was undisputed evidence presented which demonstrated that the children were removed from the home in August 2008 and were never returned to Marion’s or John’s home during the pendency of the juvenile court proceedings. As such, when the State filed its motion to terminate parental rights in August 2010, the children had been in an out-of-home placement for 24 months. Based upon this evidence, 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 Marion’s and John’s parental rights was appropriate pursuant to § 43-292(7). In light of this fact, we need not address the sufficiency of the evidence to demonstrate that termination was also appropriate pursuant to § 43-292(2) and (6). This assignment of error is without merit.

#### *Best Interests of Children.*

Both Marion and John also contend that termination of their parental rights was not in the best interests of the four children: Autumn, Amber, Nancy, and Charles.

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 other subsections of § 43-292. *In re Interest of Aaron D.*, *supra*.

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 Interest of Justin H. et al.*, 18 Neb. App. 718, 791 N.W.2d 765 (2010); *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004). Therefore, with such severe and final consequences, parental rights should be terminated only in the absence of any reasonable alternative and as the last resort. *Id.* The law does not require perfection of a parent. See *id.* Instead, we should look for the parent’s continued improvement in parenting skills and a beneficial relationship between parent and child. *Id.*

The record in this case reveals that the termination hearing spanned over a number of days, over 6 months, during which numerous witnesses testified and evidence was received. The evidence reveals that while they may not have been completely discharged from every goal in the case, Marion and John complied with every court order, in addition to goals given which were not ordered by the court. In numerous instances, the record reveals that Marion and John often took matters into their own hands to secure individual therapy and vocational training when such services were not provided either in a timely manner or in some instances, at all, by DHHS,

even though the juvenile court had specifically ordered DHHS to provide the services. Marion and John consistently attended all visitations with the children, exhibited appropriate parenting techniques, and provided for the children as required at visitation. Testimony was also given that Marion was paying child support for the four children. For the most part, Marion and John consistently participated in family and individual therapy, although testimony indicates that participation waned over the summer of 2010 due to the brief separation of the couple and inflexible work schedules. Marion's and John's individual therapists testified that both were making progress on the individual goals originally ordered by the juvenile court.

Caseworkers testified that there was concern about visitations with Marion and John because they required redirection from visitation workers. However, the record indicates that Marion and John were often reported as making "significant progress" with visitations. Workers and therapists testified that there clearly was a bond between the parents and children and that they all loved each other. The record indicates that Marion and John had made much progress in parenting by being prepared for visitations, providing food and clothing, appropriately interacting and disciplining the children, and learning from and following redirection given. Nonetheless, there was also evidence presented that Marion became overwhelmed at visitations with the four children and would step out of the room. On those occasions, the visitation worker testified that John appropriately took over for Marion, and once Marion was asked to not leave the room, she complied.

The record clearly indicates that Marion and John consistently sought out and worked diligently to secure employment, especially in the instance of Marion. The record reveals that even though Marion was not able to secure a single full-time job, she did work extraordinarily hard to maintain full-time employment through temporary staffing services and to be the family's main income provider. The family support worker testified that Marion made vast improvement in many of her skills and had taken the lead on family budgeting. The record also indicates that John continually worked to find stable employment so as to be able to provide financially for the family. Although clearly frowned upon by various witnesses at the termination hearing for sources of income, Marion and John should not be penalized for taking odd jobs for cash, undertaking paper routes for employment, donating plasma, or doing whatever was legally necessary to provide for the family.

The record indicates that one of the main concerns in the case was the state of Marion's and John's various residences and the lack of maintenance and cleanliness to those residences. In October 2010, after several failed attempts and waiting approximately 45 days to pay past due utilities, Marion and John were able to obtain appropriate safe and stable housing and maintained the residence through the termination proceedings. The family support workers and the case manager testified that the residence on Bristol Street was safe and was kept much cleaner than previous residences.

The State focuses much of its argument on an issue not included in the allegations contained within the petition for termination, although clearly concerning, that there had arisen an occurrence of domestic violence and a brief separation of Marion and John. The evidence indicates that John admitted to the incident and that the two reconciled and have since re-engaged in therapy, which now also addresses domestic violence issues. No evidence was

presented that there had been a previous history of domestic violence or that the incident had occurred in front of the children.

From our review of the record, it is evident that Marion and John have made tireless efforts to follow court orders, to comply with DHHS requests, and to essentially do whatever was required in order to maintain the family and ultimately have the children returned to their home. We are also very cognizant that there are goals ordered by the court which Marion and John have not been able to fully complete to the satisfaction of the court. However, the record indicates that many of the efforts put forth by Marion and John were made solely by Marion and John, without the assistance of any service provider. It is of great concern that the record reveals several circumstances where the juvenile court specifically ordered DHHS to provide services to Marion and John, which services were not provided for months after the hearing and, in many instances, after the court ordered DHHS to provide the services for a second or third time.

The testimony regarding children indicates that Autumn wants to live with Marion and John, was always excited for visits, and loved them and shared a bond. Testimony regarding Amber indicated that she was developmentally disabled, but had a bond with her parents. And the scant amount of evidence provided regarding Nancy and Charles also indicated that there was a bond with Marion and John.

In conclusion, we find that the evidence presented reveals that Marion and John have made continuing efforts toward reunification with their four children. Both have made progress in the goals originally set by the juvenile court and have worked extremely hard to be in a position to regain placement of their children. We appreciate that Marion and John both still have work to do before they can achieve complete reunification; however, perfection of a parent is not required when deciding whether termination of parental rights is appropriate. The record establishes that Marion and John have improved significantly as parents and does not establish the lack of any reasonable alternative.

Thus, based upon DHHS' failure to provide court-ordered services to Marion and John in a timely manner, taken into consideration with the totality of all of the evidence presented at the termination hearing, we determine that there is insufficient evidence to conclude that termination of Marion's parental rights to Autumn, Amber, Nancy, and Charles and termination of John's parental rights to Amber, Nancy, and Charles is in the children's best interests. As such, we reverse the juvenile court's order terminating Marion's and John's parental rights to these four children.

## CONCLUSION

Upon our de novo review of the record, we find that there is clear and convincing evidence to demonstrate that Marion's and John's children have been in an out-of-home placement for 15 or more months of the most recent 22 months pursuant to § 43-292(7).

However, we conclude that there is insufficient evidence to demonstrate that the termination of Marion's and/or John's parental rights is in the best interests of Autumn, Amber, Nancy, and Charles. As such, we reverse the juvenile court's order terminating Marion's and John's parental rights and remand the cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR  
FURTHER PROCEEDINGS.