

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF DELANA S. & MARK G.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
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IN RE INTEREST OF DELANA S. AND MARK G.,  
CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA AND JOEL E. CARLSON,  
GUARDIAN AD LITEM, APPELLEES,  
V.  
ANNEA G., APPELLANT.

Filed April 10, 2012. Nos. A-11-699, A-11-700.

Appeal from the County Court for Thurston County: DOUGLAS L. LUEBE, Judge.  
Affirmed.

Matthew M. Munderloh, of Johnson & Mock, for appellant.

Nora H. Goll, Thurston County Attorney, for appellee State of Nebraska.

Joel E. Carlson, of Stratton, DeLay & Doele, P.C., L.L.O., guardian ad litem.

IRWIN, SIEVERS, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Annea G. appeals the termination of her parental rights as to her two minor children. The children's guardian ad litem, Joel E. Carlson, joined in the petition to terminate Annea's parental rights and is similarly joined with the State for purposes of this appeal. As such, we refer to the guardian ad litem and the State collectively as "the State." Because the State proved by clear and convincing evidence that a statutory ground for termination of parental rights existed and that Annea was an unfit mother and because Annea does not assign error to the juvenile court's finding that termination was in the best interests of her children, we affirm.

## BACKGROUND

Annea is the biological mother of Delana S., born in December 2005, and Mark G., born in May 2008. Delana and Mark were removed from Annea's home on June 20, 2008, due to allegations of abuse by Chris G., Annea's husband and Mark's biological father. Delana's biological father is unknown. Upon removal, the children were placed with Arland H. and Robin H., their maternal grandparents, where they continue to reside. Shortly after the removal of Delana and Mark from the home, Annea and Chris moved to Iowa and have resided in numerous locations outside of Nebraska since that time.

On June 24, 2008, the State filed a petition alleging that Delana and Mark were children within Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). It alleged that Chris was observed yelling at, swearing at, and hitting Delana on June 20 in the presence of Annea, who did not attempt to stop the abuse. On December 12, the county court for Thurston County, Nebraska, sitting as a juvenile court, adjudicated Delana and Mark. Annea and Chris were not present at the hearing, and their request to appear telephonically was denied. An attorney did appear on their behalf.

In January 2009, the juvenile court held a disposition hearing, at which time a case plan was adopted. Annea and Chris appeared telephonically. The case plan outlined the primary permanency plan of reunification and an alternative plan for adoption. In order to achieve the goal of reunification, the case plan ordered Annea and Chris to work with a family support worker, attend parenting classes, complete pretreatment assessments, attend individual therapy, abstain from using illicit drugs, and spend time with their children. The case plan also set out a visitation plan requiring a minimum of two in-person visits per month and four monitored telephone calls per week. During the hearing, Sheila Sawatzky, the Nebraska Department of Health and Human Services (DHHS) caseworker handling this case, emphasized that Annea and Chris were expected to comply with the visitation plan as it was "an integral part of the reunification process." She also opined that Annea and Chris needed to live "in relatively close proximity to the children" in order to achieve reunification. When the court asked Annea whether she understood what she needed to do to be reunited with her children, she answered, "Yes, sir, I do."

In February 2010, the State filed an amended motion to terminate the parental rights of Annea and Chris and William S., who was, at that time, believed to be Delana's biological father. The original petition to terminate had been filed in September 2009. The amended motion alleged statutory grounds for termination under Neb. Rev. Stat. § 43-292(1), (2), (6), and (7) (Cum. Supp. 2010).

In May 2011, the case was bifurcated, and the parties proceeded to trial only on the issue of whether Annea's parental rights should be terminated. Annea was present throughout the trial.

Sawatzky testified at trial as to the problems she had working with Annea on the case plan. She explained that there were numerous periods of time when she had no contact with Annea or Chris and that she frequently had no way to reach them. After Annea and Chris moved abruptly in August 2008, Sawatzky lost all contact with them until October, when Chris called to inform her of their whereabouts and to provide a current telephone number. By November, however, that telephone number was inoperable, and letters addressed to Annea and Chris at their last-known address were returned as undeliverable. Sawatzky said that she had periodic

contact with Annea and Chris until February 2009 and that after they moved to Sioux City, Iowa, in March, they were more engaged in working on the case plan. But, by the end of April, she lost contact with them again. Other than two voicemails left by Chris, neither of which provided a return telephone number, Sawatzky had no contact with Annea or Chris between April 2009 and July 2010. In late July, Annea reinitiated contact by calling to inform Sawatzky that Annea had left Chris and was living in Minnesota. Annea made inquiries about working on the case plan from Minnesota, but DHHS took the position that it would no longer provide Annea with reasonable efforts toward reunification due to her previous delinquency and her location out of state.

Sawatzky also testified to Annea's sporadic and inconsistent visitation with Delana and Mark. All visitation, whether in person or via telephone, was supervised. Annea engaged in visitation between removal on June 20, 2008, and the move in early August. Then, visitation ceased until January 2009, when monitored telephone visitation was set up. Sawatzky testified that even then, Annea often was unavailable during the specific times when telephone visitation was scheduled. She made only one telephone call in January and four in February. Annea attended in-person visitation in March and April. But, in late April, Sawatzky suspended all visitation because Annea was frequently not showing up or canceling and because Annea had repeatedly tested positive for marijuana use. Annea's last visitation with Delana and Mark was on April 16, 2009.

In addition to Annea's inconsistent visitation, Sawatzky testified that Annea made little progress toward meeting the other goals enumerated in the case plan. Annea completed the substance abuse referral in July 2008. But then, when most of the services "were really just getting started," she abruptly moved to Iowa. Consequently, family support services ceased. Similarly, the comprehensive family assessment was only partially completed because of Annea's sporadic contact with Sawatzky. According to Sawatzky, Annea attended some parenting classes but did not complete the program. And even though Chris informed Sawatzky at one point that they were setting up individual therapy in Iowa, Sawatzky never received confirmation that Annea actually completed any therapy as ordered.

Sawatzky finally testified to Delana's and Mark's progress in foster care. At the time of trial, the children had been in foster care for 35 months. Sawatzky noted that over this time, Delana became attached to Robin. Sawatzky also stated that Arland and Robin were "really the only parents that [Mark] has ever known." Sawatzky observed that both Delana and Mark seemed happy and healthy living with their grandparents.

Like Sawatzky, Robin testified to the bond that had developed between herself and Delana, calling it "quite a relationship." In addition, Robin stated that Annea had no contact with the children between August 2008 and January 2009 and between April 2009 and the time of trial in 2011. And Robin recalled that any contact between Annea and the children occurring between January and April 2009 was confined to monitored telephone visitation and supervised in-person visitation.

Jan Chinn, a licensed mental health practitioner, testified about her experience working with Delana in counseling after removal. At the time of trial, Delana had been in counseling with Chinn for a total of 17 months. Chinn diagnosed Delana with adjustment disorder with anxiety and oppositional defiant disorder. She also observed that Delana had an "insecure, disruptive

attachment” resulting from a “poor early environment” during the first few years of her life. Chinn testified that children need a consistent home environment with caregivers who provide parental caring and intervention. In her opinion, Delana’s and Mark’s placement with Arland and Robin was providing this needed consistency and stability.

The final witness at trial was Annea. Her testimony confirmed that there were long periods of time when she was not in contact with Sawatzky or the children. Annea’s explanation for these long periods without communication was that Chris would not let her contact anyone because he did not want people to know where they were. According to Annea, she always wanted to return to Nebraska but “felt helpless because [she] didn’t have ID or a Social Security card.” She stated that since leaving Chris, she has abstained from drug and alcohol use, finished the parenting classes, and enrolled in individual therapy. Annea also stated that she still wanted to work on the goals of the case plan and that her objective was reunification with Delana and Mark. At the time of trial, Annea lived in Minnesota, approximately a 9-hour drive from her children in Nebraska.

On July 21, 2011, the juvenile court issued an order terminating Annea’s parental rights under § 43-292(1), (2), (6), and (7). It specifically found that termination was in Delana’s and Mark’s best interests and that Annea was an unfit mother.

Annea timely appeals.

#### ASSIGNMENTS OF ERROR

Annea alleges that the juvenile court erred in determining that the State proved by clear and convincing evidence any basis upon which to terminate her parental rights to Delana and Mark. Specifically, Annea alleges, restated, that the State failed to prove that grounds for termination exist under § 43-292(1), (2), (6), or (7) and that Annea is an unfit parent. Annea does not assert error regarding the court’s ruling that termination was in the best interests of Delana and Mark.

#### STANDARD OF REVIEW

In an appeal from a judgment or order terminating parental rights, an appellate court, in a trial de novo on the record and disregarding impermissible or improper evidence, determines whether there is clear and convincing evidence to justify termination of parental rights under the Nebraska Juvenile Code. *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

#### ANALYSIS

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

Section 43-292 provides 11 separate conditions, any one of which can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010). Only one ground for termination need be proved in order for parental rights to be terminated. *In re Interest of Lisa W. & Samantha W.*, 258 Neb. 914, 606 N.W.2d 804 (2000).

In the instant case, there was clear and convincing evidence that Delana and Mark were in out-of-home placement for 15 or more of the most recent 22 months, thus establishing grounds for termination under § 43-292(7). It is undisputed even by Annea that DHHS removed the

children from the home on June 20, 2008, and that the children have resided with their grandparents since that time. This means that Delana and Mark had been living in foster care for almost 35 months by the time of trial. The juvenile court did not err in terminating Annea's parental rights pursuant to § 43-292(7).

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 Phoenix L.*, 270 Neb. 870, 708 N.W.2d 786 (2006), *disapproved on other grounds, In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007). Accordingly, we do not consider Annea's assigned error relevant to the court's determination that the State proved grounds for termination under § 43-292(1), (2), and (6).

#### *Parental Unfitness.*

Even when children are adjudicated and under the jurisdiction of a juvenile court, the Due Process Clause of the U.S. Constitution demands some showing of parental unfitness if parents are to be deprived of their interest in the care, custody, and control of their children. *In re Interest of Lakota Z. & Jacob H.*, 282 Neb. 584, 804 N.W.2d 174 (2011). The fact that a child has been placed outside the home for 15 or more of the most recent 22 months does not demonstrate parental unfitness. *In re Interest of Angelica L. & Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009).

Upon our de novo review of the evidence, we find that Annea is an unfit parent for several reasons. First, Annea has a history of homelessness. For periods of time during this case, she acquired housing and transportation by traveling with a carnival. Other times, she stayed in a hospital waiting room. Even when Annea did have housing, she needed help to pay for it, and it was determined to be unsuitable for children. Additionally, Annea was evicted at least two times during these proceedings. At the time of trial, she was still living with family. Second, Annea has chosen not to live in close proximity to her children, despite being advised by DHHS to do so. She voluntarily moved out of the state shortly after Delana and Mark were removed from her care and has lived in seven different states since then. She currently lives in Minnesota, a 9-hour drive away from her children in Nebraska. Perhaps most important is the fact that Annea has maintained minimal contact with her children since removal. She had no contact, whether in person or via telephone, between August and December 2008 and again from April 2009 until the time of trial in 2011. Even when Annea was participating in in-person and telephone visitation, her attendance was sporadic and unreliable. Annea's last visitation with Delana and Mark occurred on April 16, 2009. Finally, we note that Annea consistently tested positive for marijuana use during the limited times when she maintained contact with DHHS.

While we recognize that beginning in late 2010, Annea took a parenting class, began therapy, abstained from using drugs, and found employment, these efforts are not sufficient to outweigh the evidence of her general parental unfitness. As the juvenile court noted, "[t]he efforts by [Annea] to comply with the various case plans were sporadic at best, and clearly too little, and for the most part too late[.]" The juvenile court did not err in finding Annea to be an unfit mother.

## CONCLUSION

Because the State proved by clear and convincing evidence that Delana and Mark were in out-of-home placement for 15 or more of the most recent 22 months and that Annea was an unfit mother and because Annea does not contest the juvenile court's finding as to best interests, we find Annea's assignments of error to be without merit. The juvenile court did not err in terminating Annea's parental rights as to Delana and Mark. We affirm.

AFFIRMED.