

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF GABRIEL N. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
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IN RE INTEREST OF GABRIEL N. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

REBECCA W., APPELLANT.

Filed February 24, 2009. Nos. A-08-915 through A-08-918.

Appeal from the County Court for Butler County: CURTIS H. EVANS, Judge. Affirmed.

Robert J. Bierbower for appellant.

F.D. Botelho, Deputy Butler County Attorney, for appellee.

Stacey L. Parr, of Svehla, Thomas, Rauert & Grafton, P.C., guardian ad litem for children.

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

IRWIN, Judge.

I. INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. of App. P. § 2-111B(1), this case was ordered submitted without oral argument. Rebecca W. appeals from four separate orders of the county court for Butler County. In case No. A-08-915, Rebecca appeals from the county court's order terminating her parental rights to Gabriel N. In case No. A-08-916, Rebecca appeals from the county court's order terminating her parental rights to Jesse N. In case No. A-08-917, Rebecca appeals from the county court's order terminating her parental rights to Dana N. In case No. A-08-918, Rebecca appeals from the county court's order terminating her parental rights to Seth N. We consolidate these cases for purposes of opinion and disposition.

In all four cases, Rebecca asserts that the county court erred in finding that termination of her parental rights is in the children's best interests. For the reasons set forth herein, we affirm.

## II. BACKGROUND

These proceedings involve Jesse, born September 23, 1996; Gabriel, born September 29, 1998; Seth, born March 29, 2000; and Dana, born November 13, 2001. The children's parents are Rebecca and Scott N. Although Scott's parental rights as to each of the above named children were terminated at the same time Rebecca's parental rights were terminated, Scott does not appeal from this decision. As such, the termination of Scott's parental rights is not a subject of this appeal.

In April 2006, all four children were removed from Rebecca and Scott's home due to allegations of parental neglect. At that time, the State filed petitions alleging that the children were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004). The record before us does not contain a copy of the State's petitions, nor does it contain any specific information regarding the initial stages of these proceedings. The State's motions for termination of parental rights, which were filed in November 2007, are the first documents in each transcript. As such, the record does not provide a clear understanding of the precise reasons the children were removed from the parental home or the basis of the State's initial petitions.

Despite the deficiencies in the record, there is some indication that both Scott and Rebecca pled no contest to the allegations in the petitions and that each of the children was found to be a child within the meaning of § 43-247(3)(a). There is also evidence that the boys were not returned to their parents' home at any time during the pendency of the proceedings.

In November 2007, the State filed motions for termination of Rebecca's and Scott's parental rights as to Jesse, Gabriel, Seth, and Dana. In the motions, the State alleged that the county court had ordered both Rebecca and Scott to (1) maintain adequate housing for their family, (2) ensure that they are meeting their children's basic needs, and (3) obtain and maintain a steady source of income so that they will have the financial resources to meet their families' needs. In addition, the State alleged that Rebecca was ordered to complete a drug and alcohol evaluation and follow through with the recommendations of the evaluator. The State also alleged that the boys were children within the meaning of Neb. Rev. Stat. § 43-292(2), (4), (6), and (7) (Reissue 2008) in part because of both parents' failure to comply with the court's various orders. The State alleged that termination of Rebecca's and Scott's parental rights was in the children's best interests.

On July 21, 2008, a hearing was held on the State's motions for termination of parental rights. At the hearing, the State presented the testimony of numerous witnesses, including the testimony of Stephanie Dreier, the Department of Health and Human Services (DHHS) worker assigned to the family's case; the testimony of Keith Morrissey, the boys' therapist; and the deposition testimony of Glenda Cottam, who conducted a psychological and bonding assessment for the family.

Dreier, the caseworker assigned to the family, testified that Rebecca has not fully complied with the court's orders regarding maintaining adequate housing for her children, maintaining a steady source of income in order to meet the children's needs, completing drug and alcohol treatment, and abstaining from the use of alcohol. Dreier also testified that the boys have been suffering as a result of the pending case. She said that the boys have ongoing anger

issues and that these issues are intensified when something happens with one of their parents. Dreier opined that it would be in the boys' best interests to terminate Rebecca's parental rights.

Morrissey, the boys' therapist, testified that he has been working with the boys on anger management and conflict resolution. Morrissey testified that when he first became involved with the boys, about 18 months prior to the termination hearing, the boys were very aggressive toward each other. He described the aggression as much more severe and intense than normal sibling rivalry. Morrissey opined that the boys' aggression was partly caused by their anger and frustration with being removed from their parents' home and partly caused by the boys' having observed their parents' physical confrontations with each other. He testified that the boys have told him that fighting is a family "trait." Morrissey testified that the boys have made significant progress while they have been residing in their foster home. Though they still fight and argue with each other, the intensity of their aggression has been reduced. Morrissey testified that the boys require continued therapeutic services. Morrissey also testified that the boys appear to have only a limited attachment to Rebecca. He believed that the boys would not be greatly distressed if they were not to go back home with their parents.

Cottam also testified. Cottam performed a psychological and bonding assessment on Rebecca and her children. Cottam testified that the children do have a bond with their parents and that the children ultimately wished for reunification with Rebecca and Scott. However, Cottam also testified that Rebecca is not capable of parenting her children because she has not addressed her substance abuse problem, her violent relationship with Scott, her mental health issues, or her job instability. Cottam testified that Rebecca lacks insight into her children's behavioral problems. Cottam testified that the children "should not be reunited at this time with their parents. It would be a disaster."

At the conclusion of the termination hearing, the county court found that the State proved by clear and convincing evidence that all four of the boys were within the meaning of § 43-292(2), (4), (6), and (7). The court found that it would be in the children's best interests if Rebecca's and Scott's parental rights were terminated. The court then entered an order terminating Rebecca's and Scott's parental rights as to Jesse, Gabriel, Seth, and Dana. Rebecca appeals from this order.

### III. ASSIGNMENT OF ERROR

On appeal, Rebecca assigns two errors; however, both assigned errors concern Rebecca's assertion that the county court erred in finding clear and convincing evidence that termination of her parental rights was in the children's best interests. As such, we consolidate the two assigned errors for our discussion.

### 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 juvenile 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. *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. BEST INTERESTS

Rebecca assigns as error only the county court's finding that termination of her parental rights was in her children's best interests. Rebecca does not challenge the statutory basis for termination of her parental rights. As such, she does not challenge the county court's findings that she had substantially and continuously or repeatedly neglected the children and refused to give the children necessary parental care and protection, pursuant to § 43-292(2); that she is unfit to parent her children as a result of her habitual use of intoxicating liquor, pursuant to § 43-292(4); that following a determination of each of the children as a child described in § 43-247(3)(a), reasonable efforts to preserve and reunify the family under the direction of the court failed to correct the conditions leading to that determination, pursuant to § 43-292(6); or that the 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).

The sole issue on appeal is whether the State adduced sufficient evidence to demonstrate that termination of Rebecca's parental rights was in the best interests of the children. Rebecca contends that although she did not complete "one hundred percent of the goals mandated by the Court Report," she did make "significant progress in several areas." See brief for appellant at 9. Upon our de novo review of the record, we find that the evidence clearly and convincingly establishes that terminating Rebecca's parental rights is in the children's best interests.

The Nebraska Supreme Court has stated, "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 Phoenix L.*, 270 Neb. 870, 890, 708 N.W.2d 786, 801 (2006). The court has further recognized that children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *Id.*

In this case, approximately 19 months passed from the time that Jesse, Gabriel, Seth, and Dana were removed from Rebecca's home in April 2006 and the time that the State filed its motion to terminate parental rights in November 2007. An additional 8 months passed from the time the motion was filed to the time of the termination hearing in July 2008. In sum, the boys had been in an out-of-home placement for 27 months at the time of the termination hearing. During these 27 months, Rebecca did not take significant steps toward rehabilitating herself or toward reunification with her children. Evidence presented at the termination hearing revealed that Rebecca continued to have a problem with drug and alcohol use, that she was unable to provide a safe and stable home for her children, and that she was still struggling to take care of her basic needs.

The evidence revealed that Rebecca has an ongoing problem with drugs and alcohol. Despite the length of time that had passed since her children were removed from her home, at the

time of the termination hearing, Rebecca continued to use alcohol and drugs, had not completed necessary treatment and rehabilitation, and was convicted of driving while intoxicated in December 2007.

During a psychological assessment conducted on January 25, 2008, Rebecca admitted that she continued to use drugs and alcohol. Rebecca reported that she had last used cocaine on December 23, 2007. She admitted that she continued to drink alcohol and that she had blacked out as a result of her drinking in the last few months. Additionally, there was evidence that Rebecca tested positive for alcohol on more than one occasion during the pendency of the proceedings. In fact, Rebecca tested positive for alcohol as recently as June 2008.

Rebecca did not actively seek treatment for her substance abuse problem. While Rebecca did attend an inpatient treatment program, she failed to continue treatment after she left the inpatient facilities. Rebecca was supposed to continue her treatment in an aftercare program, however, she stopped attending the program prior to completing the treatment. Rebecca also did not complete the drug and alcohol therapy she enrolled in at Blue Valley Behavioral Health. Rebecca attended an initial session at the agency on September 19, 2007. After that appointment, Rebecca no-showed eight times, canceled her appointment without rescheduling six times, and rescheduled four times. As a result, Rebecca was discharged from the program for noncompliance. Her therapist noted that he did not get the impression that Rebecca was invested enough in the treatment to continue with any appointments. There was no evidence that Rebecca sought any additional treatment after being discharged from Blue Valley Behavioral Health.

Perhaps most indicative of Rebecca's continuing struggle with drugs and alcohol is her recent conviction for driving while intoxicated. Rebecca was arrested for driving while intoxicated in December 2007. Rebecca pled guilty to the charge in February 2008 and was sentenced to a term of probation. As a part of that probation, Rebecca was ordered to abstain from the use or possession of alcohol. Based on the evidence presented at the termination hearing, it is clear that Rebecca did not fully comply with the terms of her probation.

The evidence presented at the termination hearing revealed that Rebecca is unable to provide a safe and stable home for her children. While Rebecca was employed at the time of the termination hearing, she could only afford to live in a one-bedroom home. Such a home is not adequate to house four children. Additionally, Rebecca admitted that this house is paid for, in part, through her engaging in sexual acts with the landlord.

Other evidence presented at the termination hearing revealed that Rebecca was struggling to take care of her basic needs. There was evidence that Rebecca did not take her prescribed medication because she could not afford it. In addition, the evidence revealed that Rebecca continued to desire a relationship with the children's father, Scott, although Rebecca and Scott had a violent and tumultuous relationship. Rebecca did not want to break up with Scott. She indicated that she believed that she and Scott were a good team and could parent their children together. In contrast to Rebecca's statements, there was evidence that in March 2008, Rebecca and Scott were both arrested for third degree assault after engaging in a fight with each other. On March 26, 2008, Rebecca was granted a protection order against Scott. This protection order was dismissed in July 2008 at Rebecca's request.

Cottam, the clinical psychologist who conducted a psychological assessment on Rebecca and the boys, indicated that Rebecca simply does not possess the capacity to parent her children at this time. Specifically, Cottam indicated that Rebecca

needs to follow through with the recommendations that previously have been made. Certainly she needs to get a grip on this substance abuse problem. She needs to complete her program, she needs to be going to AA, she needs to be substance free, she needs to have a great relapse prevention plan. She needs to follow up with individual counseling . . . . If they prescribe something . . . for her, she better be taking [it].

Cottam also indicated that Rebecca needs to attend parenting classes, needs to address the confusion and the chaos surrounding her relationship with Scott, needs better coping skills and stress management skills, and needs better insight into her children's problems. Cottam indicated that it would be a "disaster" if the children were returned to Rebecca's home before she adequately addressed her "problems."

At the conclusion of the termination hearing, the boys had been in an out-of-home placement for approximately 27 months. During this time, Rebecca did not make significant progress toward rehabilitating herself or toward reunification with her children. As Cottam noted, Rebecca simply had not addressed any of her "problems" and, as such, was no closer to gaining reunification with her children than she was during the initial stages of the proceedings. Rebecca was provided with adequate time and resources to address her substance abuse problem, to obtain and maintain adequate housing, to learn to take care of herself, and to end the violent relationship between herself and Scott. Unfortunately, Rebecca did not avail herself of the many opportunities provided to her.

The evidence revealed that Rebecca's children have serious behavioral problems which need to be addressed. The boys' therapist testified that some of these problems stem from the boys' observations of their parents' violent relationship. The boys need a safe and stable environment to address their problems. Rebecca is simply unable to provide this to the boys. Accordingly, we find that the evidence supports a determination that terminating Rebecca's parental rights is in the boys' best interests.

We write further to address Rebecca's assertion that because "[t]here is no evidence of any reasonable alternative to parental termination," the county court erred in terminating her parental rights. See brief for appellant at 11. Rebecca asserts that a long-term guardianship should have been considered as an alternative to termination.

We first note that there is no requirement that all possible alternatives be exhausted before a parent's rights are terminated. See *In re Interest of S.R., D.R., and D.B.*, 239 Neb. 871, 479 N.W.2d 126 (1992). Rather, the requirement is that reasonable efforts be made to reunite the juvenile and his or her family. *Id.* As we discussed more thoroughly above, Rebecca was provided with ample time and resources to achieve reunification.

Additionally, we note that contrary to Rebecca's assertions, the record indicates that any action less than termination would not be in the children's best interests. While the children do have a bond with Rebecca, they also have serious behavioral problems. The children's ongoing interactions with Rebecca affected their behavior at the foster home and at their schools. Essentially, the evidence suggests that the boys have been suffering as a result of the lack of

permanency in their lives. A long-term guardianship would not provide them with the stability and security they need. Accordingly, we find the evidence clearly and convincingly establishes that termination of Rebecca'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 sufficient evidence to support the county court's orders terminating Rebecca's parental rights as to her four children. The county court orders are affirmed.

AFFIRMED.