

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF JAMAR F.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF JAMAR F., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

HASINA G., APPELLANT.

Filed September 6, 2011. No. A-11-169.

Appeal from the Separate Juvenile Court of Lancaster County: TONI G. THORSON, Judge.
Affirmed.

Joy Shiffermiller, of Shiffermiller Law Office, P.C., L.L.O., for appellant.

Joe Kelly, Lancaster County Attorney, Carolyn C. Bosn, and Danielle Spencer, Senior
Certified Law Student, for appellee.

IRWIN, CASSEL, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Hasina G. appeals the decision of the separate juvenile court of Lancaster County terminating her parental rights to her son, Jamar F., born in September 2008. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Hasina's parental rights. As such, we affirm the order of the juvenile court terminating Hasina's parental rights to Jamar. Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

BACKGROUND

On November 3, 2008, shortly after Jamar's birth, the State filed a petition alleging that he should be adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults

and habits of Hasina and his father. Specifically, the State alleged that Jamar had been admitted to the hospital on October 28 and that his parents did not demonstrate the ability to provide for his basic needs. An affidavit for temporary custody stated that Jamar was suffering from a high fever, cough, and diarrhea, and that several nurses had noted Hasina's lack of interaction with the infant. Nurses' notes indicated that Hasina slept for extended periods of time and would not wake to feed Jamar despite the nurses' attempts to wake her. The petition also alleged that Jamar's father was a registered sex offender and lived in the residence of Hasina and Jamar. At a hearing in December, Hasina and Jamar's father admitted that the allegations in the petition were true, and the juvenile court adjudicated Jamar under § 43-247(3)(a) as to both parents. Jamar's father eventually voluntarily relinquished his parental rights and is not a party to this appeal.

Early dispositional and permanency hearings in this case resulted in several court-ordered requirements for Hasina, including that she participate in individual therapy, as well as anger management classes; participate in parent training as arranged by the Department of Health and Human Services (DHHS); obtain a safe and stable residence and legal means of support; participate in random drug testing; attend vocational rehabilitation; and not subject Jamar to tobacco smoke. Later orders reflected additional scrutiny on the part of the court with regard to Hasina's drug issues. For example, in May 2009, the court's dispositional order stated that Hasina was not to be under the influence of drugs and alcohol. In October, the court required Hasina to complete a drug and alcohol evaluation within 30 days. Then, in December, the court stated that Hasina "shall be tested for drugs after this court hearing."

The primary permanency plan in these dispositional orders also changed from that of reunification with an alternate plan of adoption, to a goal of adoption with an alternate plan of reunification. The dispositional order of March 2010 stated that poor progress had been made to alleviate the causes of Jamar's out-of-home placement. The court stated that DHHS had not documented a compelling reason for determining that the filing of a petition to terminate parental rights to Jamar would not be in his best interests.

The State filed a motion to terminate Hasina's parental rights to Jamar on April 15, 2010, on the basis that (1) Hasina had substantially and continuously or repeatedly neglected and refused to give Jamar necessary parental care and affection; (2) reasonable efforts to preserve and reunify the family, under the direction of the court, had failed to correct the conditions leading to Jamar's adjudication; and (3) Jamar had been in out-of-home placement for 15 months of the most recent 22 months. The State further alleged that termination of Hasina's parental rights was in Jamar's best interests.

On September 3, 2010, Hasina filed a motion to recuse the trial judge on the basis that the judge had also been a judge in a case involving a criminal violation on Hasina's part when Hasina was a juvenile and that the judge had also been a judge in a case involving Hasina's brother as a juvenile. The juvenile court denied the motion as being without merit.

At the October 4, 2010, hearing to terminate Hasina's parental rights, Melissa Martin, a child and family safety specialist for DHHS, testified that she began working with Hasina and Jamar in November 2008. She stated that she was responsible for assisting Hasina in setting up appointments with her attorneys but that Hasina did not show up for such appointments despite the fact that transportation had been arranged for her. Martin also assisted with supervising Hasina's visits with Jamar. Martin stated that Hasina typically canceled about a quarter of her

scheduled visitations and that DHHS put Hasina on a call-ahead program, meaning that Jamar would not be transported from daycare to the visitation site unless Hasina first called to confirm that she would show up. Even with this system, Hasina sometimes called ahead to confirm the visit and yet missed her visit with a waiting Jamar. Martin stated that she or another worker would arrive at Hasina's residence to personally drive her to her visitation with Jamar and that Hasina was rarely ready at the scheduled time. Martin testified that Hasina was responsible for providing breakfast for Jamar but that her unorthodox food choices for breakfast, such as ravioli, spaghetti, and cake, resulted in the workers' ensuring that Jamar ate breakfast at his daycare before arriving for his visits with Hasina. Martin noted that Hasina missed or forfeited other visits with Jamar because she refused to provide a urine sample in accordance with the court's requirement for random drug testing.

Martin stated that Jamar has sickle cell trait; that he has breathing problems, and possibly an allergy to cigarette smoke; and that Hasina had previously been warned that a visit would be ended if she smelled like smoke. Martin described a visit in February 2010, at which visit Hasina arrived smelling of smoke and was told that she could not cuddle with Jamar as it would affect his health. Martin testified that Hasina ignored her instructions and continued to hold and cuddle Jamar. When Martin called her supervisor about the problem, she was confronted by an angry Hasina who called Martin a "sneaky bitch, and that I can kiss her black ass." During this confrontation, Hasina inadvertently struck Jamar. The visit had to be ended when Hasina's outburst continued. After that incident, two DHHS workers were assigned to supervise visits with Jamar. Martin acknowledged that Hasina was very loving with Jamar and was always excited to see him. However, Martin felt that Hasina had somewhat inappropriate interactions with Jamar, such as the odd breakfast food choices, and that Hasina would refuse any redirection from DHHS workers. In recent weeks, DHHS has returned to having only one worker supervise Hasina's visits with Jamar, and there have been no recent incidents of Hasina coming to see him when she was smelling of smoke.

Meghan Koinzan, a child and family services specialist with DHHS, testified that she has been Jamar's case manager since January 2009. Koinzan recounted the procedural history of Jamar's case, noting that he was removed from his parents' care in November 2008 and has remained continuously in an out-of-home placement since that time. Koinzan stated that Hasina was referred for individual therapy, substance abuse treatment, medical evaluations, and vocational rehabilitation, and that she has received family support services, supervised visitation, and parenting skill building during visits. In Koinzan's estimation, Hasina never consistently participated in any of these services, save for a parenting class, despite being informed that her participation was a precursor to reunification with Jamar. According to Koinzan, she has never been in a position, as case manager throughout this case, to recommend that Jamar be returned to Hasina's custody. Koinzan stated that Hasina initially cooperated with drug and alcohol testing but that she stopped cooperating several months prior to the hearing. Koinzan said that Hasina has tested positive for THC, the active ingredient in marijuana, and alcohol throughout the life of the case but began refusing to submit to such testing because she does not feel she has a drug addiction problem.

Koinzan testified that it was in Jamar's best interests that Hasina's parental rights be terminated because he had been out of Hasina's care for 22 months and Hasina had made little to

no progress in regaining custody of him in that time. Although Koinzan also testified that Jamar's foster parents in his current placement were willing to adopt him, we have not considered this testimony.

Jamar's current foster parents have had him in their home since March 2010. They both testified that Jamar is thriving under their care and that he is a bright, affectionate child.

Hasina testified that she has undergone some individual therapy and that her problems stemmed from the fact that Jamar was taken from her. She stated that the trauma of that event caused her to resume her drug abuse. Hasina admitted to marijuana use but noted that she had undergone treatment in the past and had stopped using the drug for 2 years before she lost custody of Jamar. Hasina denied any use of alcohol. She stated that she would not undergo random drug testing because "I just don't want to do it." Hasina rationalized her refusal by saying that she was not going to participate in the drug testing until she was allowed to spend time with Jamar.

Hasina also acknowledged that she had not participated in court-ordered psychiatric evaluations because "I know I'm not mentally challenged or mentally unhealthy." She stated that she had completed a parenting course but that it was one she found on her own and was not the one that DHHS wanted her to take. Hasina saw no need for vocational rehabilitation because she had recently found a job at a fast-food restaurant, receives various forms of government aid, and also runs an informal beauty business in her home.

The juvenile court terminated Hasina's parental rights on each of the three statutory grounds asserted in the State's petition. The court noted that Jamar has been in out-of-home placement for 15 of the most recent 22 months and had not been returned to Hasina's care since his removal in November 2008. The court found that DHHS made reasonable efforts to correct the parenting problems adjudicated and described in detail the extensive programs and services offered to Hasina, most of which she rejected or half-heartedly participated in. The court found that Jamar is now in a stable foster home with foster parents who are willing to provide him care and permanency, that it was reasonable to find that Hasina will continue to be unable to attain the skills and stability she needs to safely parent Jamar, and that it was in Jamar's best interests, as shown by clear and convincing evidence, that Hasina's parental rights be terminated. Hasina timely appealed from this order.

ASSIGNMENTS OF ERROR

Hasina contends that the juvenile court erred in finding sufficient evidence to show that termination of her parental rights was appropriate and in Jamar's best interests. She also asserts that the trial judge erred in not recusing herself from the proceedings.

ANALYSIS

Sufficiency of Evidence.

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010). The juvenile court found that the State proved grounds for termination under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2010). Under § 43-292(7), the State must show that the child has been in an out-of-home placement for 15 or

more months of the most recent 22 months. The evidence was unchallenged that Jamar has remained in out-of-home placements since he was removed from Hasina's care in November 2008. Accordingly, the State proved § 43-292(7) by clear and convincing evidence.

Because the State need prove only one ground for termination, we decline to consider Hasina's arguments regarding the court's determination that the State proved other grounds enumerated in § 43-292. Generally, when termination is sought under subsections of § 43-292 other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). Thus, we will consider evidence relevant to the other grounds in our analysis of Jamar's best interests.

Hasina acknowledged that she had not met a number of the court-ordered goals, and she freely admitted to her marijuana usage. The record shows that DHHS provided an extensive number of programs and services to Hasina and that DHHS made referrals and arrangements for Hasina to meet with attorneys, mental health providers, and family support workers, only to have Hasina ignore or miss many appointments and visits without adequate reason. Hasina made little or no progress in therapy, has had unstable employment, and did not provide appropriate food or supplies for Jamar during visits. Nonetheless, she refused to avail herself of services and, at times, ignored suggestions for improvement or redirection from family support workers. The system cannot and should not allow children to languish in foster care waiting to see if the parent will mature. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007).

Hasina has not shown that she is able or willing to benefit from the extensive services provided by DHHS or that she is able to safely and appropriately parent Jamar. In contrast, at the time of trial, Jamar had spent the past few months with a foster family that had provided him with the stability and permanency that he requires. Pursuant to the mandate of Neb. Rev. Stat. § 43-292.02(2) (Reissue 2008), we have not considered the possibility that the foster family may adopt Jamar. See *In re Interest of Destiny A. et al.*, *supra*. Hasina argues that she has made some recent progress, which we acknowledge, as shown by DHHS' decision to return to its usual system of having one worker supervise her visits instead of two, as well as the fact that she has not recently come to visit Jamar when she was smelling of smoke. Although we acknowledge these small steps by Hasina and that she loves Jamar, we conclude that clear and convincing evidence demonstrates that termination of Hasina's parental rights is in Jamar's best interests.

Recusal of Trial Judge.

Hasina also asserts error in the refusal of the trial judge to recuse herself from the case. Hasina's motion asserted that the judge was biased because she had presided over a juvenile case involving Hasina as well as a case involving Hasina's brother.

There exists a presumption of judicial impartiality, and a party alleging that a judge acted with bias or prejudice bears a heavy burden of overcoming that presumption. *In re Interest of Janyia M.*, 281 Neb. 964, 800 N.W.2d 259 (2011). Other than the bare assertion in Hasina's motion, there is no evidence or statements in the record on the part of the trial judge to lend credence to the assertion that the judge was biased in any way. Hasina's motion is without merit.

CONCLUSION

The State proved a statutory ground for termination of Hasina's parental rights and that termination was in Jamar's best interests. There was no basis shown for recusal of the trial judge. The juvenile court's order terminating Hasina's parental rights is affirmed.

AFFIRMED.