

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF JAY S. & PAIGE B.

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IN RE INTEREST OF JAY S. AND PAIGE B., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

TAMMY S., APPELLANT, AND DANIEL B.,
APPELLEE AND CROSS-APPELLANT.

Filed November 8, 2011. No. A-11-282.

Appeal from the Separate Juvenile Court of Lancaster County: REGGIE L. RYDER, Judge.
Affirmed.

Mark T. Bestul, of Legal Aid of Nebraska, for appellant.

Joe Kelly, Lancaster County Attorney, Alicia B. Henderson, and James J. Krauer, Senior
Certified Law Student, for appellee State of Nebraska.

Sanford J. Pollack, of Pollack & Ball, L.L.C., for appellee Daniel B.

Julianne M. Spatz, guardian ad litem.

IRWIN, MOORE, and CASSEL, Judges.

CASSEL, Judge.

I. INTRODUCTION

Tammy S. appeals and Daniel B. cross-appeals from the order of the separate juvenile court of Lancaster County which terminated their parental rights to their children. On appeal, the parents challenge the juvenile court's finding that their parental rights should be terminated pursuant to Neb. Rev. Stat. § 43-292(2) and (6) (Cum. Supp. 2010) and the court's finding that termination of their parental rights was in the children's best interests. Upon our de novo review of the record, we find that the State established by clear and convincing evidence a statutory

ground for termination of parental rights and that termination was in the children's best interests. Accordingly, we affirm the order of the juvenile court.

II. BACKGROUND

Tammy is the biological mother of Jay S., born in February 1997, and Paige B., born in September 2007. Daniel is Paige's biological father. On September 22, 2008, the State filed a petition to adjudicate the children as being within Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to Daniel's history of assaultive behavior toward Tammy and others and due to both parents' failure to take appropriate steps to ensure that the children do not continue to be exposed to the effects of domestic violence. On October 10, the court entered an ex parte order placing the children's temporary custody and placement with the Nebraska Department of Health and Human Services (DHHS). Shortly thereafter, the court entered an order finding that Tammy and Daniel shall have reasonable rights of supervised visitation with the children. On November 20, the State filed an amended petition to adjudicate the children, which added that Daniel had other children who have been adjudicated due in part to Daniel's history of violence and incarceration and who were never returned to his care despite reasonable efforts to correct the adjudicated conditions. The juvenile court adjudicated the children on March 20, 2009.

In April 2009, the court entered an order to immediately suspend Daniel's visitation due to Daniel's threats to an employee of DHHS. On May 4, the juvenile court entered an order of disposition. The court found that reasonable efforts had been made to return the children home, but that out-of-home placement continued to be necessary. The court ordered Tammy and Daniel to each cooperate with DHHS, including returning telephone calls, meeting with the caseworker on a monthly basis, and notifying DHHS of any changes of telephone number, address, or employment, and to refrain from any type of verbal or physical altercations. It ordered Tammy to have reasonable rights of supervised visitation, to participate in individual therapy, to participate in a domestic violence support group, and to continue participation with Jay in family therapy. The court ordered Daniel to refrain from threatening or assaultive behavior toward anyone, to participate in a pretreatment assessment, to refrain from use or possession of drugs or alcohol, to submit to random substance abuse testing, to not have any visitation with the children pending further order, to successfully complete a men's domestic violence program, and to cooperate with a substance abuse evaluation.

In an October 19, 2009, order of review of disposition, the court found that good progress was being made to alleviate the causes of out-of-home placement. The court additionally ordered Tammy to complete the treatment goals set by her individual therapist and ordered Daniel to complete the recommendations of his substance abuse evaluation and to refrain from threatening behavior toward those involved in the case.

In a January 15, 2010, order of review of disposition, the court found that fair progress was being made to alleviate the causes of out-of-home placement. The court ordered Tammy to comply with the same items earlier ordered. It additionally ordered Daniel to attend a minimum of 90 days of weekly individual therapy that can address anger management and aspects of domestic violence and to participate in family support to assist him in finding a legal means of employment. In an April 12 order of review of disposition, the court found that poor progress was being made to alleviate the causes of out-of-home placement. The court ordered Tammy to

refrain from discussing permanency issues in the vicinity of the children, except in an approved therapeutic setting. The court ordered Daniel to comply with the same things earlier ordered and to not have “contact of any kind with the children.”

On September 29, 2010, the State filed a motion to terminate the parental rights of Tammy and Daniel. The State alleged that Tammy and Daniel had substantially and continuously or repeatedly neglected and refused to give the children necessary care or protection, that the children had previously been adjudicated and reasonable efforts under the court’s direction had failed to correct the conditions leading to that determination, that the children had been in an out-of-home placement for 15 or more months of the most recent 22 months, and that termination of Tammy’s and Daniel’s parental rights was in the children’s best interests.

The court conducted a hearing on the motion beginning on January 6, 2011. At that time, the children remained in foster care, where they had been since October 2008.

Katy Rawhouser became familiar with this case through her employment with DHHS, when she was assigned to be the ongoing worker for the family in October 2008. She testified that in November, Tammy participated in a pretreatment assessment. According to the assessment, Tammy adamantly denied any physical abuse between her and Daniel. The assessment recommended that Tammy participate in a domestic violence support group, participate with Jay in family therapy, and participate in individual psychotherapy to address grief issues stemming from her father’s rejection and to address her lack of self-worth. Rawhouser immediately set up individual therapy for Tammy. She encouraged Tammy to attend support groups, but Tammy did not do so to Rawhouser’s recollection. They also had team meetings, which usually included Rawhouser, family support or visitation workers, a foster parent, and the parents.

Rawhouser offered Daniel a pretreatment assessment, but he kept saying that he had just completed one and did not want to do another one. At that point, the court had not ordered Daniel to participate in a pretreatment assessment; Rawhouser simply offered it in order to determine what services would be necessary and to move the case along quicker. Rawhouser obtained Daniel’s clinical assessment from May 2008. That assessment recommended psychotherapy to assist Daniel with (1) managing requirements for visits with two of his other children, (2) management of his agitation and frustration related to his interpersonal experiences, and (3) parenting practices. Rawhouser testified that because Daniel said he would not participate in therapy, she did not make any referrals. Daniel participated in visitation and family support services. Rawhouser testified that Daniel had appropriate interactions with the children and did not miss or come late to visitations.

Rawhouser testified that during a team meeting on April 23, 2009, Daniel pointed at her, tried to repeat some of her testimony from the adjudication hearing, said that nobody was going to keep him from his kids, and left the meeting. She was concerned by his mannerisms during the meeting. After Rawhouser spoke with her supervisor, they determined that visitations should be moved back to the “Visitation Center.” Rawhouser left Daniel a telephone message informing him of the decision, and he returned her call and left a threatening and inappropriate message in a hostile tone, which included, “The first [expletive] that tries . . . to stop me is going to die. I’m armed and dangerous.” Rawhouser then wrote an affidavit in support of the immediate suspension of Daniel’s visitation, which the court approved.

Christine Jones, a family outcomes monitor with DHHS and formerly a child and family service specialist, was assigned the case on September 11, 2009. At that time, Daniel was not complying with services such as random drug and alcohol testing, men's domestic violence class, or a pretreatment assessment. She was not aware of Daniel's participation in any substance abuse treatment during the time she worked on the case. Jones testified that Daniel had at least two positive tests for marijuana between December 2009 and January 2010. Jones' December 1, 2009, court report stated that Daniel had attended appointments for his pretreatment assessment and psychological evaluation. Jones never recommended that Daniel's visitation be reinstated due to Daniel's lack of progress and lack of cooperation with DHHS and court-ordered services.

At the time of Jones' October 13, 2009, court report, she suspected that Tammy and Daniel were still involved in an intimate relationship and that Daniel was frequently at Tammy's home. In a March 25, 2010, exception hearing report, Jones documented her concerns that Tammy had been allowing Jay to speak to Daniel on the telephone. Jones stated that it "demonstrates Tammy's absolute refusal to protect her children from Daniel . . . despite being aware that mental health professionals have deemed him unsafe in the presence of children until further evaluation and therapeutic intervention can occur." DHHS found that there was no exception and took the position that it was no longer in the children's best interests to be returned to Tammy or Daniel. Jones testified about concerns that Tammy's interpersonal relationship with male partners was "directly related to a history of domestic violence and the potential to engage in domestic violent relationships in the future." Jones was concerned that Tammy did not share information about her relationships with her therapist. Jones noted that "there was a large gap" in Tammy's attendance in individual therapy--she attended no appointments between December 16, 2009, and February 22, 2010. She then attended regularly from February 22 to April.

Jacqueline Gregory provided the majority of supervision for the visits. Gregory testified that Daniel was not to have contact with the children. In June 2009, Gregory documented several instances of Tammy's having contact with Daniel. Gregory testified that during the children's visit with Tammy on October 31, Tammy was on the telephone with Daniel and then Daniel showed up with another child of his. Gregory also documented instances of contact in November and December 2009 and January 2010. She testified that on January 3, Daniel had called Tammy and they argued. Gregory heard Tammy accuse Daniel of lying and of making her look bad by leaving beer bottles in her garage and told him that she did not "need him around with his stupidity and lying." On that occasion, Gregory observed that Tammy had bruises on her jawline, throat, and chin, which Tammy said were the result of falling on a shovel the night before. Gregory testified that on February 20, Tammy called to reserve a U-Haul for Daniel. Gregory observed bruising on Tammy's face and arm, which Tammy said resulted from falling on ice. According to documentation, Tammy continued to have telephonic contact with Daniel during visitations in March and April. On June 23, Gregory observed that Tammy had injuries and a swollen face. Tammy explained that her face was swollen due to an allergic reaction to something she had eaten and that the bruises were from some clients at work.

Robert Troyer, a licensed independent mental health practitioner, met Daniel in November 2009 in order to perform a pretreatment assessment. Troyer recommended that Daniel participate in a neuropsychological evaluation, but to Troyer's knowledge, Daniel had not followed through. Troyer also recommended that Daniel meet with him on a weekly basis for

therapeutic services. The therapeutic goals for Daniel included anger management, improving impulse control, and becoming more compliant with authority figures. Daniel attended a few sessions, but after January 25, 2010, he did not show for a scheduled appointment. On April 7, Daniel “just showed up” and Troyer made room for him in his schedule. Then, on November 20, Daniel called Troyer and asked if they could meet. Daniel did not show up on December 4, but did appear on December 11. Troyer testified that Daniel exhibited characteristics of antisocial personality disorder such as not listening and being combative with authority figures.

Paul Ries, a licensed independent mental health practitioner and licensed clinical social worker, had been Jay’s therapist since September 2010. At that time, Jay was in foster care and had been there “for some time.” Ries testified that the treatment goals for Jay included defiance issues, anger management, and addressing “how things are going with regard to his view of his family.” Ries testified that Jay’s defiance seemed to be more frequent since treatment commenced. Ries testified that Jay reported to him having witnessed domestic violence in the home and that some of Jay’s behaviors were consistent with having experienced domestic violence in the home. He testified that Jay had “clear interactions with his foster mom that . . . in [Ries’] experience as a therapist, would be consistent with . . . an identified batterer.”

Ries had concerns about reunifying Jay with Tammy because Tammy was denying being the victim of Daniel’s domestic violence. Thus, Ries would be concerned about returning a child to a situation where the domestic violence issues have not been resolved. Ries’ understanding was that Tammy had not followed through with treatment. According to Ries, it would not be in Jay’s best interests to return to a situation where there remained an elevated risk of exposure to violence. He testified that the “non-offending” parent could help a child who had witnessed a domestic violence situation by providing safety, supporting and encouraging the child to be open and honest, and following through with treatment.

Ries testified that Jay had been involved with treatment since age 6, which was about the time that Daniel and Tammy began a relationship. A baseline child assessment functional scale--which assists in developing treatment plans and identifying emotional and mental issues--was performed on Jay at that time, then another when Jay was 12 years old. According to Ries, the larger the score, the more impairment. At age 6, Jay scored a 50; at age 12, he scored a 130. Ries would not expect a child who has been in treatment for 6 or 7 years to continue to deteriorate. But Ries testified that if Jay continued to be exposed to domestic violence and unpredictability, Ries “would anticipate that [Jay’s] ongoing emotional state would continue to deteriorate.” Ries testified, “The primary issue for Jay’s best interest is to have a permanent, enduring person in his life who can help him become an adult.” Ries testified that Jay was “extremely bonded” with Tammy and that it would be “an extreme trauma for him to learn that he may not go home with his mom.” But he testified that it would be better to terminate Tammy’s parental rights and provide Jay an opportunity to seek a permanent and stable adult relationship than to be faced with the possibility of returning to Tammy’s home.

Tammy testified that she moved to her current residence a little over 2 years prior to trial. She admitted having an intimate relationship with Daniel since that time, but she denied that such a relationship was continuing at the time of trial and testified that they were last in an intimate relationship in October or November 2010. She was not aware that Daniel had been

listing her address as his address. Tammy testified that she ended her relationship with Daniel because he cheated on her, not because he physically abused her.

Tammy did not believe that Daniel was a threat to the children. She testified that if she had her children back, she would allow Daniel to have contact with them. Tammy denied any domestic violence in front of the children. She believed that she could safely resume the care and custody of her children. Tammy testified that she was reluctant to attend a domestic violence support group because she did not feel she needed it and because “it’s an embarrassment to have to go [to] one of those things.”

Susan Meyerle, a licensed mental health practitioner, has worked with Tammy since September 2, 2009. Initially, they scheduled therapy sessions every 1 to 2 weeks. Tammy’s treatment goals with Meyerle were to (1) identify events that led her to be in an unhealthy relationship; (2) describe a healthy intimate relationship; (3) identify how her relationship with her father affects her adult relationship decisions; (4) address her own grief/loss from her father’s rejection; (5) address her low self-esteem, rebuild her self-worth, and learn assertiveness skills to use in her relationships; (6) provide information regarding visitation with her children and any concerns from those visits; and (7) provide information regarding any contacts with adult males with whom she is having or has had an intimate relationship. Meyerle felt that failing to address any of the seven treatment goals would affect the safety of the children if they were placed with Tammy.

Meyerle testified that they worked on the goal to identify events that led Tammy to be in an unhealthy relationship the entire time and that Tammy made some progress. Meyerle testified that Tammy indicated her relationship with Daniel was unhealthy at times and he was unpredictable, but that Tammy consistently maintained there was no domestic violence in the relationship. Meyerle, who was aware that Daniel had a history of domestic violence with other women with whom he was involved, tried to use that information to speak with Tammy about her relationship with Daniel. But Tammy maintained that she had no concerns with domestic violence in her relationship and that the children’s having a relationship with Daniel was better than no relationship with him. Meyerle felt that Tammy’s desire to have a father’s presence for the children--which she did not experience in her own childhood--has led to her continued involvement in an unhealthy relationship. Meyerle testified that “Tammy certainly had an awareness that the reason that the kids were away from the home was because of Dan[iel’s] behavior to begin with.”

Meyerle testified that the goal to build Tammy’s self-esteem related to Tammy’s ability to offer protection and safety for her children if they were in an abusive situation. Meyerle also included a goal for Tammy to provide information regarding intimate relationships because Meyerle wanted to talk to Tammy about her continued involvement with Daniel, whether those interactions were getting any healthier, and whether Tammy was able to set any limits with him. Meyerle testified that on at least one occasion, she received information that Daniel had been involved with Tammy at times when Meyerle was unaware of it.

In a June 1, 2010, progress note, Meyerle stated that Tammy acknowledged continuing to speak with Daniel periodically but reported trying to pull away from him, which was very difficult for her. Although Tammy stated that she would call the police on Daniel if necessary to keep the children safe, Meyerle had “grave concerns about Tammy’s ability to identify when it

may be necessary to do so.” Meyerle also stated in the progress note that Tammy had stopped addressing the issues outlined in the therapy plan and that Tammy’s recent therapy sessions had focused on her frustrations with “the system.”

According to Meyerle, Tammy continued to maintain that there were no concerns in her relationship with Daniel of any physical or verbal abuse. Meyerle testified that denial is one of the most consistently observed behaviors in abused women. Tammy had not followed through with the recommendation that she participate in a domestic violence support group.

Tammy’s lack of consistency in attending appointments with Meyerle was an impediment to Tammy’s progress. Meyerle explained that they would be making progress on certain goals, but then there would be a period of time before Tammy would come back in for the next appointment. Meyerle testified that all canceled appointments were by Tammy. As of June 1, 2010, Tammy had participated in nine therapy sessions since September 15, 2009. Meyerle testified that Tammy never reached the point that she no longer needed to be in therapy and that Meyerle was never in a position to recommend that the children be placed back with Tammy because Tammy had not made sufficient progress on the outlined goals. Thus, Meyerle never felt confident that Tammy would be able to keep her children safe if there was a concern about the children being in harm’s way.

The court received a partial transcript of the proceedings in this case during the adjudication hearing. During this hearing, Tammy testified that Daniel was incarcerated from 2003 to 2005 for an alleged assault on an intimate partner. She did not believe that Daniel had assaulted the victim with an iron and stated, “Their relationship has nothing to do with me.” Tammy was also aware that Daniel was fined for an incident that began as an assault on a female friend of his. Tammy was also aware that Daniel had to go to court for an alleged assault on one of his younger sisters. Tammy testified that she was also aware of incidents of violence between Daniel and the mother of two of his children. She did not think that Daniel needed counseling to address his issues with assaulting women.

Daniel admitted that he was convicted of second degree assault on A.N. She subsequently obtained a protection order against Daniel, and Daniel received a ticket for violating the protection order. He admitted that he tried to slap his 14-year-old sister as hard as he could across her face; however, his sister put her arm up and received a defensive wound on her forearm. Daniel testified that what he did to his sister “was every bit of right. And [he] would not change that instance not once if [he] had to do it over again.” Daniel also was convicted in 2000 for another assault on A.N. During that incident, Daniel punched two other females, hit A.N. with a hanger, and struck A.N. in the head with a shoe that he threw at her. Daniel testified that he received a disturbing the peace ticket for fighting with the mother of two of his children. Daniel also was convicted of an incident involving a female neighbor with whom Daniel spent the night a couple of times, when he kicked the side of her car as hard as he could, she spit in his face, and he then struck her.

The court noted that Daniel had only appeared during the entirety of the termination trial for 5 minutes. While Daniel was present, the court had told him that he needed to appear at the next trial date, but Daniel then failed to do so.

On March 18, 2011, the juvenile court entered an order terminating the rights of Tammy and Daniel to their children. The court stated that Daniel’s absence during the trial was

symbolic of his participation in this case and in his daughter's life. He has been absent from this case, absent from cooperating with [c]ourt-ordered services, absent from accepting any responsibility for his actions, and absent from his daughter's life since his visitation with her was suspended nearly two years ago.

The court stated that Tammy had failed to take any significant steps to protect her children from Daniel or to even acknowledge that there was a problem. The court found grounds to terminate each parent's rights under § 43-292(2), (6), and (7) and found that termination was in the children's best interests.

Tammy timely appeals, and Daniel cross-appeals. 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.

III. ASSIGNMENTS OF ERROR

Tammy and Daniel each assign the same four errors to the juvenile court's judgment. They allege that the court erred in (1) terminating their parental rights to the children, (2) finding that they substantially and continuously or repeatedly neglected the children and refused to give the children necessary care and protection, (3) finding that reasonable efforts under the direction of the court failed to correct the conditions leading to adjudication, and (4) determining that termination of their parental rights was in the children's best interests.

IV. STANDARD OF REVIEW

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 Thomas M.*, 282 Neb. 316, 803 N.W.2d 46 (2011). However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

V. ANALYSIS

1. STATUTORY GROUNDS FOR TERMINATION

In order to terminate an individual's parental rights, the State must first prove by clear and convincing evidence that one of the statutorily enumerated grounds for termination exists. See *In re Interest of Sir Messiah T. et al.*, *supra*. The juvenile court found that the State proved grounds for termination under § 43-292(2), (6), and (7). Tammy and Daniel do not contest the existence of grounds under § 43-292(7).

Under § 43-292(7), the State must show that the children have been in an out-of-home placement for 15 or more of the most recent 22 months. The children were removed from Tammy's and Daniel's care in October 2008 and have remained in out-of-home placements since that time. Accordingly, the State proved § 43-292(7) by clear and convincing evidence.

Because the State need only prove one ground for termination, we decline to address Tammy's and Daniel's assigned errors relevant to the court's determination that the State proved the grounds enumerated in § 43-292(2) and (6). 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). We will therefore consider evidence relevant to the other grounds in our analysis of the children's best interests.

2. BEST INTERESTS

In order to terminate an individual's parental rights, the State must also prove by clear and convincing evidence that termination is in the children's best interests. *In re Interest of Sir Messiah T. et al.*, *supra*. In analyzing this issue, we bear in mind that the children were removed from Tammy's and Daniel's care and adjudicated based upon Daniel's violence and Tammy's failure to protect the children from the risk of violence. The numerous rehabilitative plans and court orders that followed were designed to correct those conditions.

(a) Daniel

We first address Daniel's argument that the court erred in finding that termination of his parental rights was in Paige's best interests. Daniel has a documented past of assaulting women, especially women with whom he has had an intimate relationship. He threatened Rawhouser more than once, including leaving her a voice message in which he claimed to be "armed and dangerous" and said that the first person who "tries . . . to stop [him] is going to die." Daniel's visits were suspended due in part to Daniel's threats which involved the children.

Jones opined that termination of Daniel's parental rights was in Paige's best interests. She based her opinion upon the adjudicated matter, the reasons for Paige's removal from the home, and the length of time that had lapsed since Daniel had contact with Paige. By and large, Daniel's compliance with the court's orders was lacking. Although he participated in visitation with the children before it was suspended, he only sporadically attended therapy sessions and submitted to urinalysis testing for only a brief period of time. He did not participate in substance abuse treatment or a psychological or neuropsychological evaluation. Daniel's lack of participation in court-ordered services has led to little to no progress to address the adjudicated conditions. We conclude that the State proved by clear and convincing evidence that termination of Daniel's parental rights is in Paige's best interests.

(b) Tammy

Finally, we address Tammy's argument that termination of her parental rights was not in the best interests of Jay and Paige. Tammy promptly participated in a pretreatment assessment. But she did not consistently attend her therapy sessions with Meyerle, which hindered progress. Jones testified that she was never in a position to recommend anything less than supervised visitation with the children due to degradation of Tammy's attendance in therapy and of her commitment to address therapy goals. Further, Jones testified that Tammy failed to understand the cycle of domestic violence and how it affects her ability to safely parent the children. Jones was also bothered by Tammy's continued communication with Daniel and the withholding of such contact with him from Jones and from Meyerle. Tammy's visits remained fully supervised, but she continued to speak to Daniel during visits. It is troubling that Tammy continued to have a relationship with Daniel when it was Daniel's behavior that led to the children's removal.

Jay began receiving treatment for behavioral problems at about the time that Tammy and Daniel began their relationship. His behaviors include hitting, kicking, and choking peers and hitting teachers. Significantly, child assessment functional scales showed that Jay's behavior deteriorated over his many years of treatment. Ries testified that Jay reported witnessing Daniel assault Tammy and that Jay's behaviors were consistent with behaviors of children who have witnessed such violence. Further, Ries testified that Jay's interactions with his foster mother were consistent with that of a batterer.

Tammy consistently maintained that there was no domestic violence between her and Daniel. Meyerle testified that denial is one of the consistent behaviors that she has observed in abused women. Further, Jay reported witnessing such violence. Tammy had bruises on her face on several occasions, which bruises she attributed to such things as falling on a shovel, falling on ice, and her clients at work. Tammy viewed Daniel's assaults on other females, including other intimate partners, as having "nothing to do with [her]." Although Tammy was aware of several such assaults, she did not believe that Daniel needed counseling. Her determination to have Daniel involved in her children's lives showed an utter lack of comprehension of the risk that Daniel posed to them, not only as potential victims but also as to the effect that witnessing domestic violence can have on them.

Tammy failed to sufficiently make progress to address the adjudicated issues. Her visitation remained supervised. Meyerle testified that Tammy never reached the point that Meyerle would recommend returning the children to Tammy's care. 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). As Jones testified, Tammy "does not understand her protective role as the caregiver while she still maintains a relationship and contact with [Daniel] and how that places her children at risk." Ries testified that it was in Jay's best interests for Tammy's parental rights to be terminated, and Meyerle testified that returning the children to Tammy was not in their best interests. Jones also opined that it was in the children's best interests for Tammy's parental rights to be terminated. In reaching her decision, Jones considered the adjudicated issue, the case plans that DHHS had prepared and implemented to assist Tammy in correcting the issues which led to adjudication, the failure to successfully correct those conditions, and the fact that the children have remained out of the home for 2 years and nearly 5 months since their initial removal in October 2008. We conclude that clear and convincing evidence establishes that termination of Tammy's parental rights is in the best interests of Jay and Paige.

VI. CONCLUSION

We conclude upon our de novo review that the State proved by clear and convincing evidence the existence of a statutory ground for termination and that termination of Tammy's and Daniel's parental rights was in the children's best interests.

AFFIRMED.