

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF JUSTICE B.

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

STATE OF NEBRASKA, APPELLEE,

V.

CHANTE B., APPELLANT.

Filed January 31, 2012. No. A-11-417.

Appeal from the Separate Juvenile Court of Douglas County: ELIZABETH CRNKOVICH,
Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Christine D. Kellogg for
appellant.

Donald W. Kleine, Douglas County Attorney, Amy Schuchman, and Erin Hurley, Senior
Certified Law Student, for appellee.

IRWIN, MOORE, and CASSEL, Judges.

IRWIN, Judge.

I. INTRODUCTION

Chante B. appeals from the order of the juvenile court which terminated her parental rights to her daughter, Justice B. On appeal, Chante challenges the juvenile court's finding that termination of her parental rights is in Justice's best interests. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Chante's parental rights. As such, we affirm the order of the juvenile court terminating Chante's parental rights to Justice. 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.

II. BACKGROUND

These juvenile court proceedings involve Justice, born in January 2003. Chante is Justice's biological mother. Justice's biological father is not a party to this appeal, and his involvement in the juvenile court proceedings will not be discussed further.

In November 2008, when Justice was 5 years old, she was removed from Chante's care after arriving at school with a bloody nose. Justice told school officials that Chante had punched her in the nose when she told Chante that she had left her coat at her grandmother's house. Justice also reported that Chante had recently hit her in the stomach and that she was afraid to go home. When police and school officials confronted Chante about the allegations, she became verbally abusive and began cursing and yelling. Chante was then cited for disorderly conduct.

After Justice was removed from Chante's care, the juvenile court entered an order, placing Justice in the immediate custody of the Department of Health and Human Services (the Department) and indicated that placement of Justice was not to include Chante's home. Justice has remained in the custody of the Department in an out-of-home placement since the entry of that order in November 2008.

On November 13, 2008, the State filed a petition with the juvenile court, alleging that Justice was within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) as a result of Chante's physically injuring Justice and verbally assaulting police and school officials. Later, in December 2008, the State filed an amended petition with the juvenile court, which, in addition to the original allegations, alleged that Chante's use of alcohol and/or controlled substances placed Justice at risk for harm.

On April 1, 2009, an adjudication hearing was held. After the hearing, the juvenile court entered an order finding that Justice was a child within the meaning of § 43-247(3)(a) due to Chante's physically injuring Justice and verbally assaulting police and school officials.

Further hearings were held in June and November 2009 and June, July, and August 2010. At these hearings, Chante was ordered by the juvenile court to participate in a plan designed to achieve reunification with Justice. Specifically, Chante was ordered to participate in individual therapy, participate in substance abuse treatment, submit to random urinalysis testing, obtain and maintain employment, and complete a psychological evaluation. In addition to these orders, Chante was ordered to participate in supervised visitation with Justice.

On October 5, 2010, the State filed a motion for termination of Chante's parental rights to Justice. In the motion, the State alleged that termination of Chante's parental rights was warranted pursuant to Neb. Rev. Stat. § 43-292(2) (Cum. Supp. 2010), because she had substantially and continuously or repeatedly neglected and refused to give Justice necessary parental care and protection; § 43-292(6), because reasonable efforts to preserve and reunify the family failed to correct the conditions that led to the determination that Justice was within the meaning of § 43-247(3)(a); and § 43-292(7), because Justice had been in an out-of-home placement for 15 or more months of the most recent 22 months. In addition, the State alleged that termination of Chante's parental rights was in Justice's best interests.

On April 5, 2011, a hearing was held on the State's motion for termination of parental rights. The hearing continued on April 15. While we have reviewed the evidence presented at the lengthy hearing in its entirety, we do not set forth the specifics of the voluminous testimony and

exhibits here, other than to note that a majority of the evidence presented at the termination hearing revealed that during the almost 2½ years this case was pending in juvenile court, Chante repeatedly and continuously failed to comply with the court's and the Department's efforts to reunify her with Justice. We will set forth more specific facts as presented at the hearing as necessary in our analysis below.

After the termination hearing concluded, the juvenile court entered an order finding that the State proved by clear and convincing evidence that grounds for termination of Chante's parental rights existed under § 43-292(2), (6), and (7). The court also found that it would be in Justice's best interests to terminate Chante's parental rights. The court then entered an ordering terminating Chante's parental rights to Justice.

Chante appeals from the juvenile court's order.

III. ASSIGNMENTS OF ERROR

On appeal, Chante alleges that the juvenile court erred in finding that termination of her parental rights is in Justice's best interests.

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 lower 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. 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 proven. *Id.*

2. STATUTORY FACTORS

In its order terminating Chante's parental rights, the juvenile court found that termination was warranted pursuant to § 43-292(2), (6), and (7). On appeal, Chante does not challenge the court's determination that the statutory criteria for termination were satisfied. Specifically, Chante does not challenge the juvenile court's finding that she had substantially and continuously or repeatedly neglected and refused to give Justice necessary parental care and protection pursuant to § 43-292(2); that reasonable efforts to preserve and reunify the family failed to correct the conditions that led to the determination that Justice was within the meaning of § 43-247(3)(a), pursuant to § 43-292(6); or that Justice had been in an out-of-home placement for 15 or more months of the most recent 22 months pursuant to § 43-292(7).

3. BEST INTERESTS

Chante focuses her appeal on the juvenile court's finding that termination of her parental rights is in Justice's best interests. She alleges that despite the juvenile court's finding that there was ample statutory authority pursuant to § 43-292 to warrant termination of her parental rights, that termination is not in Justice's best interests because she has shown improvement in her parenting skills and has expressed a desire to make changes in her life. In addition, she alleges that she and Justice have a very strong bond. Chante indicates that she can achieve reunification with Justice if only she is provided with additional time to address her problems.

Chante's assertions on appeal have no merit. Upon our de novo review of the record, we find that the evidence presented at the termination hearing overwhelmingly demonstrated that Chante is not capable of providing Justice with a safe and stable environment, and thus, Chante is not capable of appropriately parenting Justice. We further find that the evidence shows that Chante will be unable to provide a safe and stable environment for Justice well into the future. We affirm the order of the juvenile court which found that termination of Chante's parental rights is in Justice's best interests.

During the 2½ years that this case was pending in the juvenile court, Chante was repeatedly ordered to comply with the tenets of a plan designed to assist her in achieving reunification with Justice. As a part of this plan, Chante was ordered to participate in individual therapy, participate in substance abuse treatment, submit to random urinalysis testing, and obtain and maintain employment. Chante did not actively comply with any of the tenets of the reunification plan.

The juvenile court ordered Chante to participate in individual therapy in order to address her issues with anger management and in dealing with grief associated with Chante's mother's death. Chante did not comply with the court's order. Evidence presented at the termination hearing revealed that Chante attended therapy beginning in March 2009, but by August, she had stopped attending altogether. Chante agreed to resume her participation in therapy in January 2010, but she never appeared for her scheduled appointments and her file was closed. Chante's therapist testified that although Chante did make some progress during her attendance at therapy, she still had areas that needed improvement. As a result, she was not successfully discharged from therapy.

Evidence presented at the termination hearing revealed that Chante regularly and continually used marijuana. At one point, she informed the Department that she had used marijuana since she was 16 years old and that she did not view her use as a problem. In order to assist Chante in terminating her use of marijuana, the juvenile court ordered her to complete outpatient substance abuse treatment. Although Chante did enroll in various outpatient programs, she was discharged unsuccessfully from each program because she refused to stop using marijuana during her treatment. Beginning in January 2011, Chante began to lie to the Department workers about completing treatment. She indicated at one point that she had successfully completed a program. When the worker discovered Chante's statement to be false, Chante indicated that she had actually enrolled in and was working with a different program. This statement also proved to be untrue.

Ultimately, the juvenile court ordered Chante to attend an inpatient treatment program. Chante failed to successfully complete an inpatient program. She did enroll in one program and began working with a therapist, but she was soon unsuccessfully discharged from the program after she verbally assaulted some of the other patients in the program.

The juvenile court ordered Chante to regularly submit to urinalysis testing in order to ensure that she was not continuing to use marijuana during the pendency of the proceedings. Chante did not consistently submit to the testing, and when she did, the tests indicated that she continued to use marijuana on a regular basis. Evidence presented at the termination hearing revealed that Chante submitted to weekly urinalysis testing from May 2010 through September 2010. During this time period, every single test indicated the presence of a fairly high level of marijuana in Chante's system. These tests indicated that Chante continually used marijuana. After September 2010, Chante failed to comply with requests for urinalysis testing. She did not submit to any requested testing from January 2011 through April 2011. Chante did agree to submit to a urinalysis test on April 5, 2011, after the first day of the termination hearing. Evidence revealed that although the official results of the test had not been received by the Department by the second day of the termination hearing, preliminary testing demonstrated that Chante had marijuana in her system at the time of that test.

The juvenile court ordered Chante to obtain and maintain employment in order to be able to support Justice financially. Chante did not consistently maintain employment during the pendency of the proceedings. In 2010, she was employed full time as a customer service representative. However, this employment did not last long term. At the termination hearing in April 2011, Chante testified that she had been unemployed since December 2010, but that for the previous 30 days, she had been working for a temporary job agency. As a result of being unemployed for long periods of time, Chante has been unable to consistently pay child support for Justice's benefit.

In addition to the other orders in the reunification plan, the juvenile court also ordered Chante to participate in visitation with Justice. Chante did not comply with the court's order concerning visitation. She did not attend visitation on a regular, consistent basis. When the juvenile court proceedings were first initiated, Chante was permitted to visit with Justice three to four times per week. While there was evidence to indicate that during most visitations, Chante parented Justice appropriately, showed affection for Justice, and generally displayed positive parenting techniques, other evidence indicated that Chante would often cancel visits or fail to appear at previously scheduled visits. For example, in June 2009, 22 visits between Chante and Justice were scheduled. Chante canceled 17 of those visits. Because of the amount of missed visits, the Department reduced the number of scheduled visits per week between Chante and Justice. However, Chante continued to have sporadic attendance at the visitations. For example, in August 2009, nine visits between Chante and Justice were scheduled. Chante canceled five of those visits. Similarly, in October 2009, nine visits between Chante and Justice were scheduled. Chante canceled six of those visits. At some point after this time, Chante requested that she have only one visit per week with Justice. This schedule continued through the time of the termination hearing in April 2011.

Evidence at the termination hearing indicated that Justice's bond with Chante is not as strong as it should be because Justice does not see Chante often and because she has some

negative memories associated with Chante. Justice has confusion and anxiety about what her future holds. She questions whether she will continue to reside in her current foster care placement or whether she will eventually be returned to Chante's home. This uncertainty has led to some behavioral issues. Justice's therapist testified that Justice needs permanency and stability in order to successfully work through her issues and to stop worrying about what the future holds.

Taken as a whole, the evidence presented at the termination hearing reveals that Chante has not made significant progress toward reunification with Justice despite the length of time that has passed since Justice was removed from her home in November 2008. Chante has failed to participate in individual therapy to address her anger and grief issues; such issues presumably contributed to the initial reasons this case was commenced after Chante struck Justice, giving her a bloody nose, and verbally assaulted police and school officials. Chante has failed to discontinue her use of marijuana and has failed to complete any substance abuse treatment to address her obvious dependence on the drug. Chante has also failed to obtain and maintain a steady source of income and, as a result, has failed to consistently provide financially for Justice. Perhaps most important, Chante has failed to take advantage of the visitation with Justice offered to her. Instead, she has regularly missed or canceled visits and has voluntarily scaled back visitations to one time per week.

Contrary to Chante's assertions on appeal, this is not a situation where Chante was given an unreasonable reunification plan or was given an inadequate opportunity for success. Rather, this is a situation where Chante failed to avail herself of the many opportunities presented to her and failed to try to achieve reunification with Justice. In fact, we agree with the family permanency specialist who testified at the April 2011 termination hearing that Chante simply does not appear to be motivated to work toward reunification with Justice. Chante has not made Justice's needs a priority in her life.

At the time of the termination hearing in April 2011, Justice had been out of Chante's home for approximately 2½ years. During those 2½ years, Chante failed to make any significant progress toward reunification. Based upon our de novo review of the record, we affirm the finding of the juvenile court that termination of Chante's parental rights is in Justice's best interests.

V. CONCLUSION

Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Chante's parental rights to Justice. As such, we affirm the order of the juvenile court terminating her parental rights to the minor child.

AFFIRMED.