

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Lilybelle H., )  
Sarah S., Jennifer G., Jesse V., )  
and Samuel V., )  
children under 18 years of age. )  
State of Nebraska, )  
Appellee, )  
v. )  
Kristen H., )  
Appellant. )

No. A-11-1087

MEMORANDUM OPINION  
AND  
JUDGMENT ON APPEAL

**FILED**

SEP 04 2012

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

INBODY, Chief Judge, and MOORE and RIEDMANN, Judges.

INBODY, Chief Judge.

INTRODUCTION

Kristen H., the biological mother of Jennifer G., Samuel V., Jesse V., Sarah S., and Lilybelle H., appeals from an order of the Lancaster County Separate Juvenile Court terminating her parental rights to the five minor children. For the following reasons, we affirm.

STATEMENT OF FACTS

*Background.*

This case involves the termination of Kristen's parental rights to her five children. At the time of trial, Kristen was the biological mother to a total of six children and was pregnant with her seventh child. During the proceedings, the



youngest child, who was not involved in the case, drowned. Jennifer was born in 1997, Samuel in 2000, Jesse in 2001, Sarah in 2003, and Lilybelle in 2007. The children have different biological fathers, except for Samuel and Jesse, who share the same father. Samuel and Jesse's father resides in Texas, and at the time of the trial had been actively involved in seeking placement of the two boys with him. Lilybelle's and Sarah's fathers relinquished their parental rights, although Kristen and Lilybelle's father, Christopher H., remained married, but separated on and off throughout the pendency of the case, and Jennifer was engaging in visitation with her father. None of the fathers are involved in this appeal.

*Family History with Nebraska Department of Health and Human Services.*

Kristen and her family have been involved with the Nebraska Department of Health and Human Services (DHHS) since 2006, and the children have been removed from Kristen's care on four occasions. Prior to 2006, amidst reports of parental neglect, Kristen voluntarily placed the children with a relative and voluntary services were provided by DHHS.

The first court-ordered removal took place in July 2006, when the children were removed by law enforcement due to the unsanitary and unsafe conditions in which she and Jennifer's father were living. At that time, Kristen and the children were

residing in a trailer that housed a total of 12 people and various animals. The residence was littered with clutter, trash, feces, and mold. Kristen obtained a new residence and the children were returned to her home. Intensive family services were instituted, and near the end of the month, the parties stipulated to returning placement of the children with Kristen. In early October, the children were adjudicated as children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to a lack of proper parental care through the faults or habits of Kristen.

In late October 2006, the children were again removed from Kristen's care due to unsanitary and unsafe conditions in the home. The children, with the exception of Lilybelle, who was born during this time and resided with Kristen, remained in foster care. DHHS continued to provide services for the family and in December 2007, the court found that poor progress was being made to alleviate the causes for out-of-home placement of the children. However, later in the month, DHHS made a motion to place Jennifer back in the home with Kristen which was ordered by the juvenile court on December 21, 2007. Samuel was similarly placed with Kristen in January 2008. Lilybelle first became involved in the case in September 2008, when Kristen was involved in a hit-and-run collision with some of the children in

her vehicle, but Lilybelle remained in the physical custody of Kristen.

Throughout the pendency of the 2006 case, Kristen continued to receive services which included family therapy, individual therapy, psychiatric care, medication monitoring, supervised visitation, transportation, family team meetings, daycare, psychological evaluations, substance evaluations, urinalysis and breathalyzer testing, drop-in visits, home visits, care coordination, and case management.

On December 23, 2008, the juvenile court entered an order terminating the jurisdiction of the juvenile court over the children. The order indicates that all parties were in support of the termination of jurisdiction, based upon the recommendations of Dr. Diane Marti, Kristin's therapist. Dr. Marti recommended that the case be closed as a result of Kristin's progress. Dr. Marti's recommendation letter indicates that Kristin was consistently attending therapy and had "successfully addressed and processed issues that supported the transition of her home full time." The letter indicates that Kristin maintained a positive and structured environment for the children. Dr. Marti further indicates that Kristen had "demonstrated skill, good decision-making, excellent parental control, and excellent knowledge of her children's safety, physical, emotional and social needs."

*Present Case.*

On July 2, 2009, the State filed a motion for an ex parte order of temporary custody of Jennifer, Samuel, Jesse, Sarah, and Lilybelle. All five children were removed by law enforcement after police caught Samuel and Jesse, ages 9 and 8 at the time, burglarizing a residence several miles from their home. The two boys had left Kristen's residence at 6:00 a.m. and, as of 10:30 a.m. had not been reported missing. Kristen initially denied law enforcement access into the family home, but upon entry later in the day, the conditions of the home were observed as unsanitary and unsafe. The home was dirty and cluttered with hazardous items and had a strong odor of urine and feces.

On July 9, 2009, the State filed a motion to adjudicate all five children pursuant to § 43-247(3)(a) due to Kristen's failure to provide a safe, stable, and sanitary home; failing to adequately supervise and/or report one or more of the children missing; and by placing the children at risk of physical and emotional harm. At a hearing on July 27, the parties stipulated that Jennifer, Sarah, and Lilybelle be placed back in the home with Kristen, again based upon a letter from Dr. Marti. Dr. Marti's letter indicates that she "had never had concerns regarding [Kristen's] ability to protect her children's welfare and safety." At that time, Kristen was married and living with Lilybelle's father, Christopher, who was also involved in the

proceedings until just before the termination hearing, when he relinquished his parental rights to Lilybelle. As such, during the pendency of this current case Christopher was involved with DHHS and the services provided, but we do not further discuss his actions in this opinion since he is not involved in the appeal.

In August 2009, DHHS filed a motion for placement change of Samuel and Jesse back to Kristen's home as a result of Samuel and Jesse's behaviors while in foster care. The juvenile court sustained the motion, conditional upon the 24-hour/7-day supervision by an agency working with DHHS. On August 14, an amended petition was filed and Kristen entered a no contest plea. The juvenile court found that the allegations contained within the amended petition were true and all five children were adjudicated as within the meaning of § 43-247(3)(a). Continued placement of the children with Kristen was conditioned upon Kristen allowing DHHS access to the home and children, the continued usage and participation with in-home services, providing adequate supervision of the children, and cooperation in ensuring that the children attend school due to Kristen removing the children from public schools in April 2009. In July 2009, Kristen gave birth to her sixth child, who was not placed under the jurisdiction of the juvenile court; however, in

February 2011, the child died as a result of a drowning accident at Kristen's home.

In December 2009, after several dispositional hearings, a rehabilitative plan was entered and Kristen requested review of said order by a three-judge panel. Eventually the request for review was later withdrawn and on January 6, 2010, Kristen filed a notice of appeal, which appeal was dismissed by this court on July 7, 2010, for lack of jurisdiction pursuant to Neb. Ct. R. App. P. § 2-107(A)(2). See *In re Interest of Lilybelle H., et al.*, case No. A-10-0052.

On July 28, 2010, the children's guardian ad litem filed a motion to change placement of the children from Kristen's home to agency-based foster homes as a result of Kristen's failure to cooperate with the juvenile court orders and failing and refusing to provide for the children's mental health needs. The juvenile court determined that reasonable efforts had been made in the form of numerous services provided for the family, but the continued maintenance of the children's placement with Kristen was contrary to the children's welfare. The juvenile court found that placement outside the home was necessary as a result of Kristen's repeated refusal to allow access into the home to DHHS and service providers, the continued appearance of the children as unclean, the unsanitary conditions of the home,

failure to cooperate with individual therapy, history of evictions, lack of communication, and indifference by Kristen.

The children have remained placed outside of Kristen's home since July 2010, and Kristen has been provided with numerous services which include family support services, individual and family therapy, financial assistance, transportation assistance, team meetings, rent assistance, in-home safety support, medication, child care, lice removal, gas assistance, trash removal, cleaning services, service coordination, and case management.

*Motion to Terminate Parental Rights.*

On March 14, 2011, the children's guardian ad litem filed a motion to terminate Kristen's parental rights to the five minor children. The motion alleges that termination of Kristen's parental rights was proper pursuant to Neb. Rev. Stat. § 43-292(2), (5), and (6) (Reissue 2008) and in the best interests of the children. The hearing on the motion to terminate was held over many days and included the testimony of therapists, mental health providers, caseworkers, visitation workers, community treatment aides, and medical and school personnel. Voluminous exhibits were received by the juvenile court which included DHHS case plans and court reports, school and health records, psychological evaluations, previous juvenile orders, and criminal conviction records. Much of the testimony given by

various individuals at trial is very similar and would be repetitive in this opinion. Therefore, we shall not specifically set forth and address each individual's testimony, but only what is necessary to properly address the merits of this appeal.

Jason Brownell, an investigator with the Lincoln police department, testified that he investigated complaints of child neglect involving Kristen and her children in both 2006 and 2009. In 2006, Brownell recalled that he was called to the children's daycare. Reports to Brownell revealed that the children were very dirty, had been wearing the same clothes for numerous days in a row, and were not wearing the appropriate type or size of clothing. Brownell testified that the children had been wearing the same socks for days, if not weeks, at a time and had food stuck in their hair. Brownell testified that Kristen and the children were homeless, but were living at a campsite near a lake. Kristen later gave him the address of a residence where she indicated they had been staying. Brownell testified that upon arriving at this residence, he observed "the most deplorable conditions" he had ever seen in a home environment. Brownell explained that the residence was a trailer in which 12 people were residing with several animals. Brownell testified that you could not see the ground because it was covered in feces and clutter. Feces were floating in the toilet and mold covered the bathroom and kitchen.

In July 2009, Brownell was again involved with searching for one of Kristen's boys who were involved in the burglary. Brownell explained that he went to her home to speak to her and was told by Kristen that he was the reason her children were removed in 2006, and shut the door. Kristen was uncooperative with Brownell and his supervisor and refused to answer the door. Brownell testified that after 45 minutes he was allowed into Kristen's home, although he explained that he could hear Kristen cleaning the apartment during that time.

Brownell testified that upon entry into the home, he observed feces and the smell of feces and urine and that the house was very dirty. Brownell explained that there were piles of wet and dry clutter and dirty clothes piled in the corners. The kitchen was stained and had mold and mildew growing. There was no fresh food in the house and the food that was there was old and had been sitting out for some time.

A family friend, who also provided foster care for Jesse and Sarah, testified that in July 2010 she had been called to assist Kristen in moving out of the home from which she had been evicted, even though Kristen did not assist in the process. The home was very dirty with piles of dirty clothing, dirt covering the carpet in the living room, and a pile of medicine bottles in the corner of the room. The kitchen was infested with bugs and mold and was covered in chicken feed. The table was piled high

with dishes, the refrigerator was full of moldy and expired food and the pad on the highchair had to be cut off because it was soaked with urine. The kitchen cabinets were filled with trash and dirty diapers.

The testimony given by medical professionals and evidence in the form of various psychological evaluations and case notes indicates that Kristen suffers from Asperger's disorder, which is characterized by difficulty with communication and social interaction, executive functioning deficits, and problems with prioritizing, organizing, and managing time.

Dr. Diane C. Marti, a licensed psychologist specializing in the area of autism, testified that she had been providing Kristen with clinical treatment since June 2007, and the children in July 2007. Dr. Marti served the family until December 2008, when the first case closed and had no contact with the family from April to July 2009. In February 2009, Dr. Marti performed assessments on Samuel and Jesse, and Samuel was diagnosed with adjustment disorder with mixed anxiety and depressed mood, and Asperger's disorder. Jesse was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct, and attention deficit/hyperactivity disorder (ADHD). Dr. Marti also diagnosed Jennifer with Asperger's disorder. Dr. Marti explained that in children, Asperger's affects a child's ability to manage their emotions, understand social

environments, and causes difficulty in executive functioning. Dr. Marti testified that Asperger's can also affect sensory intake and that Jennifer had difficulties with too much stimulation and noise, in addition to sensory defensiveness. Samuel was most affected by noise. Dr. Marti testified that in regards to Kristen's diagnosis of Asperger's, the disorder affected Kristen's ability to respond to life transitions, stressful events, and made it difficult for Kristen to deal with anything unexpected. Dr. Marti testified that Kristen struggles with multiple stressors. Dr. Marti testified that Kristen was relatively consistent in attending therapy, although Kristen missed five weeks in March 2010, four weeks in July 2010, and several times in September 2010. In total, Dr. Marti testified that Kristen had missed 25 appointments from July 2009 through the time of the trial in July 2011.

In August 2009, Dr. Marti, at the request of DHHS, provided Kristen and the children with an intensive family preservation treatment plan which contained recommendations and goals necessary for Kristen to maintain the children in her home. Dr. Marti explained that the children needed a high level of predictability and consistency, which in addition to structured scheduling, included regular schooling, therapy, living environments, and medical care. Dr. Marti testified that she observed that Kristen had "extremely strong parenting skills."

Dr. Marti testified that the children were excited to see Kristen and that the children were bonded with her. Dr. Marti testified that she thought Kristen's visitation times should be increased to promote a more normal routine. Dr. Marti testified that, in this case, there was no benefit to the termination of Kristen's parental rights.

Several medical professionals from the Mental Health Associates group testified regarding the therapeutic services provided to the family. The providers, specifically Natalie Nystrom and Drs. Gail Ihle and James Carmer, from Mental Health Associates worked closely with the family and facilitated weekly meetings with family support and visitation workers.

Nystrom, a counselor, provides individual therapy for Jesse and Sarah and also provided therapeutic visitation in March and April 2011. Nystrom testified that she recommended weekly therapy for Jesse, but from December 2009 until he was removed from Kristen's placement in August 2010, Nystrom only saw Jesse for a total of 7 appointments. When therapy began for both Jesse and Sarah, they demonstrated increased anxiety and out-of-control behaviors that required redirection. Nystrom testified that both children attend weekly sessions and have progressed. Jesse and Sarah are now able to focus on other issues such as loss and being in and out of the home. However, Nystrom explained that Sarah, diagnosed with impulse control

disorder and anxiety, still demonstrates anxiety. Nystrom testified that both children have a "fairly high level of special needs" which requires a high need for consistency, stability, structure, routine, calm environments, and clear modeling of good behavior and reactions from adults.

As mentioned, Nystrom also conducted therapeutic visitation between Kristen and the children on six occasions in March and April 2010. Nystrom testified that Kristen had come to her on at least one occasion regarding concerns about the children. Nystrom explained that Kristen understood the children's needs and had the ability to demonstrate positive parenting skills. Nystrom testified that the children were excited to see Kristen and that there was a bond between them. Although Nystrom testified that there are different types of bonding between a child and parent, some of which are not appropriate or healthy bonds, Nystrom opined that the children might be harmed if Kristen's parental rights were terminated because of the bond between Kristen and the children and because of the nature of the bond for children with Asperger's disorder.

Dr. Gail Ihle, a psychologist, testified that she had been treating Jennifer with individual therapy since March 2010. Dr. Ihle testified that from March through August 2010, she only saw Jennifer 2 or 3 times. Dr. Ihle indicated that Kristen attended the first session and told Dr. Ihle that Jennifer needed to

focus on hygiene, completing chores, and assertiveness. Since September 2010, she has been meeting with Jennifer weekly and Jennifer has improved in each of those areas and has become more emotionally mature. Dr. Ihle also testified that she facilitates weekly meetings with family support and visitation workers for the family. Dr. Ihle testified that Jennifer's relationship with Kristen had fluctuated over the years and Dr. Ihle recommended that Jennifer not be returned to Kristen's care, but opined that termination would not be of any benefit to the children. Dr. Ihle testified, "It would be detrimental and totally changing the relationship that they have with their mother. And even if they can't live with her, it seems to make much more sense that they retain their parent/child relationship."

Dr. Carmer, a psychologist, testified that he began treating Samuel, and in the summer of 2010, he performed evaluations for Kristen, Jennifer, Samuel, and Jesse. Dr. Carmer mirrored the testimony given throughout the trial of the Asperger's disorder and anxiety disorder diagnoses for Kristen and the children. Dr. Carmer agreed that Kristen struggled with executive functioning, had a difficult time making and keeping appointments, struggled with maintaining structure and routine, struggled with managing her emotions and behaviors, had difficulty with the unexpected, and with communication. Dr. Carmer testified that Kristen's struggles with developing

self-management skills was a "long-term process" and that reunification with Kristen was "not a realistic goal, not good for the children." However, Dr. Carmer also testified that it was best for the children to have ongoing contact with Kristen. Dr. Carmer suggested, especially for the three oldest children, that the juvenile court find some type of middle ground where the children could be parented by a committee to work with placements and providers, with Kristen involved.

Many individuals who were foster parents since the 2009 removal also testified at trial. The foster mother for Jennifer, Sarah, and Lilybelle during the summer of 2009 testified that the girls came to her with lice. Jennifer was doing the majority of the parenting for Lilybelle and, while Lilybelle was described as being unattached, she did stay close to Jennifer. Foster parents frequently reminded Jennifer that it was not her responsibility to parent Lilybelle. Jennifer and Sarah also both reacted to being moved back with Kristen by becoming very emotional and begging not to have to go.

Kim White, an employee with the Lincoln Public Schools, testified that in the summer of 2010 the children frequented the breakfast program at the middle school and came every single day for lunch over the summer. White testified that Kristen's children were the only children who came every single day all summer. White testified that she and her staff observed the

children in the same clothing and noticed body odor and hygiene concerns. Some of the children would arrive without shoes and they did not interact with other children. White testified that Jennifer, who was a sixth grader at that time, took a caregiver role over the children and often pushed Lilybelle to lunch in a stroller. White explained that not once did the children come with a parent and they walked there each day. White testified that Jennifer often appeared overwhelmed with attempting to control all of the children and that Lilybelle was not wearing diapers, but was wrapped in layers of clothing which smelled like urine and were damp. As the summer of 2010 progressed, White and several other employees purchased shoes and clothing for the children so they would have clean clothes.

The children's principal, Mary Bates, testified that in 2009/2010, while the children were placed back in Kristen's home, Samuel, a fourth grader, was absent from school 18 days and tardy on 27 occasions; Sara, a first grader, was absent 20 days with 20 days tardy; and Jesse, a third grader, was absent 21 days with 20 days tardy. There were also serious hygiene concerns with the children. Samuel often came to school with clothing that was too small and not clean. Jesse frequently came to school with clothes that smelled of urine and that also were too small. Bates explained that many times Jesse was sent home

to shower and then return to school. Sarah would come to school in clothes that were too big or too little.

Bates testified that each of the children had behavior issues. Samuel refused to follow directions and often stole things from home and hid them at school. When Samuel would exhibit stress, he would place his coat over his head to hide. Jesse exhibited defiant behaviors, demonstrated a lack of trust for any adult aside from his parents, was aggressive, would not follow directions, and would hide in small spaces if he was upset. Sarah experienced difficulty when she had hurt feelings or felt outcast and would often stand in the middle of the room screaming. Sarah would also stand in one place and refuse to move. All three children had been suspended throughout the year on at least one occasion.

Bates testified that she discussed the concerns and issues with both hygiene and behaviors with Kristen on numerous occasions and, although Kristen's responses were inconsistent, she was always willing to talk. Bates testified that Kristen was cooperative and appeared bonded with the children. Bates explained that Kristen was knowledgeable about the children and able to control them.

In the 2010/2011 school year, Bates testified that there were marked improvements for the children. Samuel functioned with other students by participating in activities and was not

disruptive. Bates testified that Samuel would struggle when he was transferred to a new foster home, but there was an overall improvement. Samuel also was better dressed and groomed, arrived to school on time, and attended every day, although Samuel was suspended on several occasions for behaviors. Bates explained that there had been several IEP meetings which Kristen was invited to and did not attend, but Kristen did attend a chorus concert, the science fair, and fifth grade recognition.

Kristen testified that since June 2009 she has lived in five different residences. Kristen testified that she had lived in her current residence for 3 months and had been employed as a cashier since December 2010, working an average of 24 to 60 hours a week. Kristen testified that in March 2011, she was incarcerated for 2½ days for driving with a suspended license and had also been convicted of possession of marijuana. Kristen testified that from August 2010 through March 2011, she attended approximately 4 to 6 visitations with the children a month, but was late to visits and missed visits. Kristen explained that those missed visitations would be from missed communications by DHHS or failure by the agency to respond to her request for an accommodation. At the time of trial, Kristen had visitation with the children on Tuesdays from 3:30 p.m. to 6:30 p.m. and every other Sunday from 12:30 p.m. to 3:30 p.m.

In April 2009, Kristen removed the children from the public school system with the intention of home-schooling them herself. Kristen explained that Jennifer was removed because she was experiencing disruptive trouble with a teacher and bullying by other children. Kristen explained that she had the home-schooling structured to provide each child with 2 hours of individual lessons and usage of other media such as computers and instructional DVDs. Kristen testified that she was also a part of a home-schooling group which provided physical education, music, and crafts.

Kristen testified that she attended only one IEP meeting since the children had been removed, and that she had only been to one meeting because she had not been informed of when the meeting was occurring. Kristen then explained that her recollection was that she had actually attended 3 IEP meetings. Kristen also explained that she had not attended any of the team meetings since August 2010 because she had not been informed of any scheduled meetings.

When asked why the children were removed from her care in 2006, Kristen testified that the "officer believed that I was lying about whether or not we were moving into a home instead of staying with their in-laws the following day." Kristen testified that she had been living in that trailer with the children for about a month and that the home may have been cluttered, but was

not unsanitary. Kristen admitted that when the children were removed in October 2006, the home was "pretty unclean." When asked about the removal in August 2010, Kristen testified that the accusations included that the children were removed because of soccer injuries and being tardy to school.

Kristen explained that she, like Jennifer, Samuel, and Jesse, had also been diagnosed with Asperger's disorder and testified that she had difficulties communicating with people. Kristen testified that her disorder affects her ability to prioritize and with time management. Kristen testified that she felt as though she had a unique understanding of Samuel's needs because of the related diagnosis and that she always advocated for him at school by assisting the school when they were having difficulties with Samuel. Kristen testified that she was close with Sarah and Lilybelle, and felt that those two children always wanted Kristen around and wanted to play with her.

Kristen testified that in September 2010 she started one job and shortly thereafter, a second job, and was having extreme difficulty working with the caseworkers to get visitations scheduled around her work schedule. Kristen explained that she could not get a visitation schedule change to make all the times work for visitation, work, and the children's therapy. Kristen testified that she experienced difficulty contacting the caseworker and that most times the caseworker would never call

back. Kristen testified that in October 2010, visitations were moved to the service provider's office and it was her belief that it was because the service provider refused to transport the kids 13 miles from the edge of town to her apartment.

Kristen testified that she used to take the children to the free summer lunch program and did not send Jennifer there with the younger children for breakfast. Kristen indicated that she would take the children to the school and wait outside in the van. Kristen testified that she loves her children and feels that termination of their relationship would harm the children because of the bond they share.

Jennifer, who was 13 at the time of the trial, testified that she felt as though Kristen could not take care of all of the children because of the incident of the death of her brother and that it was not safe. Jennifer testified about life with Kristen, explaining that she was disciplined by being spanked with a wooden shelf for crying, running away, and stealing bread and cereal from the kitchen cupboards. Jennifer testified that she would also get slapped in the mouth. Jennifer explained that she and the children had cereal and toast for breakfast, usually skipped lunch, and when the chores were not done, were only given sandwiches for dinner. If the children wanted a "warm dinner" they had to clean the kitchen and the living room. Jennifer testified that she took care of Lilybelle by changing

her diapers, dressing her, and feeding her. Jennifer explained that if she did not follow Kristen's directions in taking care of Lilybelle, she would be "whipped" with the wooden board.

Jennifer testified that she did not want to live with Kristen and that she was glad when she was removed in 2010, because she knew she would not be treated badly anymore. Jennifer testified that she first refused to have visitations with Kristen, but eventually began attending visitations only so she could see her siblings and would prefer to have visitations with her siblings without Kristen. Jennifer testified that she would not feel safe if she were to have unsupervised visitations with Kristen because Jennifer might get "whipped" or have to skip meals.

The DHHS case manager for the family from 2006 to 2008, testified that Kristen's intensive family preservation goals were to maintain a clean home, time management, structure, and scheduling. The caseworker testified that Kristen was not entirely cooperative and DHHS had difficulty maintaining contact with her. Kristin was not allowing drop-in checks, and told DHHS that the children were current on medical exams, when in fact Kristen was not taking them to any type of appointments. During this time, Kristen was late for visits, missed some visits entirely, and was not prepared for visits with enough food or activities for the children to do. The caseworker testified that

the missed visitations caused emotional problems for the children, who, at that time, enjoyed visitation with Kristen.

The caseworker testified that in 2007, Kristen improved in her participation in visitations and in therapy. Visitations increased and Kristen was cooperating and allowing drop-ins. At this time, transition of the children back into the home was recommended. Kristen was involved in the children's school and activities, was taking the children to all of their regular check-ups and medication checks, allowing drop-ins, and was maintaining proper cleanliness and supervision of the children. The caseworker testified that the children's behavior was better managed by Kristen during visitations than it was when the children were at their foster parents' homes. As a result, DHHS recommended that the court terminate jurisdiction, which occurred in December 2008.

The numerous case management, visitation, and support workers involved in the present case each testified at trial. Much of the testimony given is repetitive of other testimony, but comes to the same conclusions: Kristen and the children are bonded, Kristen was a good parent and was capable of utilizing parenting skills, but was highly inconsistent in many areas, was difficult to communicate with, and had difficulty with all of the children together. Further, Kristen's visitations did not increase in time or decrease in supervision throughout the

pendency of the case. Kristen was with the children for 4 to 6 hours each week.

Specific testimony came from Samuel Nathan Jameson, a family specialist with KVC Behavioral Health, who testified that he began working with Kristen and the children in July 2009. Jameson testified that the intensive family preservation goals for this family were to address the reasons why the children were removed: supervision of the children and the unsanitary living conditions. Jameson provided Kristen assistance with scheduling, cleaning, and organizing her home. Kristen was provided financial support with hiring a cleaning company, purchasing clothing and paying for rent. Jameson testified that the family was cooperative during the 2-month duration of intensive family support assistance, during which time he spent approximately 1 to 4 hours a day in the home. Jameson testified that from July through October 2009, it appeared that the only person who could control Samuel and Jesse was Kristen because these behaviors did not occur when they were returned to Kristen. Jameson explained that at that time, Kristen was able to effectively parent her children and had positive parenting skills such as redirection, feedback, and interaction. Jameson testified that Kristen also made positive attempts to work with the children's educational providers. Jameson testified that

Kristen was uniquely aware of her children's needs and had a good understanding of their behaviors.

From December 2009 through March 2010, Kristin received random drop-in checks, family support services, and transportation assistance. The family was also provided family and individual therapy and therapeutic groups for Jennifer and Samuel. Jameson testified that the more intense the service was, the more cooperative Kristen was, but in 2010, when the services became less intensive, there was less cooperation. Jameson explained that, when support was decreased, reports of unsanitary and unsafe conditions increased, supervisor calls during drop-in visits increased, and Kristen failed to consistently attend monthly team meetings. Kristen reported to Jameson that she was not attending the meetings because she was frustrated with the case. Concerns arose with the children's infrequent attendance in school and reports that the children were coming to school in an unclean condition. Jameson testified that once the children were removed in August 2010, Kristen's participation in services did not improve, and actually briefly became worse. Kristen was not consistently attending visitations and was not communicating with service providers.

Amy Moser, a service coordinator for Kristen and the children from April through November 2010, testified that Kristen was not cooperative with court orders such as

cooperating with in-home safety services, intensive family support, giving access to the children and home, attendance in school, and therapy. Kristen was also provided financial support through rent, laundry and cleaning services, and garbage disposal. Moser testified that there were concerns with drop-in providers not being able to contact the family for long periods of time, situations when the family was home but did not answer the door, and also circumstances when access was denied entirely. Moser testified that when access was given, the conditions of the home became a concern with reports of food in the home on the floor, piles of dishes, the odor of urine, and bugs in the home. The children were again being sent home from school to change their clothing and Kristen did not attend a meeting requested by the school to address cleanliness.

Moser testified that once removed from Kristen's home, the children's hygiene and behaviors improved and Lilybelle was able to receive an early childhood evaluation. Initially, after the removal of the children, Kristen attended a team meeting, but continued to miss school meetings and doctor appointments.

Other caseworkers testified that Kristen did a "very good job of parenting" but had difficulty with follow-through and intervening with the children, following medication directions, not behaving appropriately, and not meeting the needs of the children. Caseworkers testified that on numerous occasions,

Kristen denied caseworkers entry into her home, would exhibit angry behaviors, and threaten to call the police. On other occasions, Kristen would deny access by indicating that she had an appointment to go to or a medical emergency to tend to.

Melissa Mager has been the family permanency specialist with Kristen and the children since February 2011. Mager testified that the children had been in several different placements since the August 2010 removal. Mager testified that Jennifer had been in three placements and, at the third and most recent placement, had settled and was not having any issues with hygiene. DHHS had discussed the possibility of a guardianship with the current foster mother for Jennifer and Jennifer was also having visitations with her biological father, although Mager testified that he would not be able to provide Jennifer with a stable living environment at the time of trial. Samuel had been placed in six different homes, twice with his maternal grandfather. Jesse had similarly had multiple placements, but Samuel and Jesse's father had demonstrated an interest in having full-time placement of both boys with him in Texas. Mager testified that the two boys had recently had an extended visit with their father and placement with him had been recommended. Sarah had also been placed in different homes, but had settled into her most recent home, which was also transitioning

Lilybelle into the home. That family had indicated they are willing to adopt both girls.

Mager testified that reunification was not an appropriate goal for the family and that she had never been in a position to recommend that returning the children to Kristen's care would be in their best interests. Mager also testified that she had not been able to recommend increasing the visitation or lowering the level of supervision. Mager described Kristen's progress as minimal to moderate with ongoing concerns about Kristen's ability to provide a safe and stable residence and to adequately supervise the children. Mager testified that she was unsure whether or not Kristen would be able to provide structure without support from outside resources and was concerned about Kristen's inconsistent participation.

*Juvenile Court's Order.*

On November 9, 2011, the juvenile court entered a lengthy and descriptive order finding that DHHS had gone through extraordinary efforts to assist Kristen and the family to correct the conditions which led to the adjudication and that virtually each and every service which could be provided or is available had been provided to Kristen, often on multiple occasions. The court found that those services provided included: 30 days of 24/7 in-home safety services, intensive family preservation services, payment of rent, evaluations and

therapy for all of the children, individual therapy for Kristen, family therapy, family support, community treatment aides, supervised parenting time, financial assistance, transportation assistance, team meetings, and mental health professional assistance.

The court found that since the last removal in August 2010, Kristen had become disinterested and sporadic in her participation in services, and she had not consistently exercised visitation with the children which included frequent canceling or concluding visitations early. Further, Kristen lived in numerous residences, was unable to hold stable employment, and was inconsistent with therapy. The court also found that Kristen has taken no responsibility for the situation, instead blaming others for the situation. The court found that she had not learned or improved upon any parenting skills which would allow her to consistently care for her children without an in-home monitor.

The court found that the recommendations of Drs. Carmer and Marti to continue the juvenile court's jurisdiction of the children indefinitely and to allow a team of mental health professionals to continue to monitor the family was not in the best interests of the children. The court explained that although Kristen had a mental health diagnosis which makes parenting more challenging, she had demonstrated that she has

the intellectual skills to learn and had the ability to meet the children's basic and specialized needs, but only when she chooses to do so. The court indicated that while in Kristen's care, the children did not attend scheduled therapy sessions, but after their removal in August 2010, there were drastic improvements for all the children with their hygiene, and school and therapy attendance.

The juvenile court found that there was a bond between Kristen and the four oldest children, but that parenting by committee was not in the children's best interests, and that Kristen's unwillingness to discharge her parenting responsibilities resulted in the substantial and continuously or repeated neglect of the children. The court terminated Kristen's parental rights based upon § 43-292 (2), (5), and (6). It is from this order that Kristen has timely appealed to this court.

#### ASSIGNMENT OF ERROR

Kristen assigns that the juvenile court erred by finding that termination of her parental rights was in the best interests of the children.

#### 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 Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). 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.*

#### ANALYSIS

In this case, the juvenile court found that the State had proven grounds for termination of Kristen's parental rights under § 42-292(2), (5), and (6), and that termination is in the best interests of the children. Kristen does not appeal the statutory grounds for termination and argues only that the juvenile court erred in finding that there was clear and convincing evidence that termination of her parental rights was in the best interests of the children. In her brief, Kristen concedes that her children were not likely to be placed with her in the near future, but argues that a visitation-only relationship was appropriate for the children. Brief for appellant at 21.

The children's best interests are a primary consideration in determining whether parental rights should be terminated. *In re Interest of Sir Messiah T. et al*, 279 Neb. 900, 782 N.W.2d 320 (2010). Neb. Rev. Stat. § 43-292 (Reissue 2008) requires clear and convincing evidence that termination of parental rights is in the best interests of the children.

In support of her argument, Kristen relies heavily upon the case of *In re Interest of Heather G.*, 12 Neb. App. 13, 664

N.W.2d 488 (2003). In *Heather G.*, the juvenile court terminated the parental rights of Teresa S. and Kevin G., divorced and separated parents. The three children involved in *Heather G.*, ages 15, 14, and 12, each had special needs as a result of being diagnosed with cerebral palsy and ADHD and the family had a long history of contact with DHHS.

On appeal to this court, both parents admitted that they could not care for the children appropriately at the time of the termination hearing, but appealed the termination in order to retain visitation rights. This court determined that the State failed to prove by clear and convincing evidence that termination was in the children's best interests. This court determined that in consideration of the children's best interests, two aspects should be analyzed:

It would seem that any consideration of the issue of whether termination of parental rights is in the best interests of a child involves consideration of two aspects: (1) what, if anything, the child might gain or lose by a continued relationship with the parent and (2) what, if anything, the child might gain by the prospects of new relationships which the termination of parental rights might open for the child. In many termination cases, it is clear that the child stands to gain very little, if anything, by a continued relationship with the parent. In a few cases, the evidence shows that even continued visitation will possibly be harmful to the child. In the cases where adoption is a possibility, the child has the

prospect of gaining a normal homelife by adoption which is not possible without the termination of parental rights of the natural parent.

*In re Interest of Heather G.*, 12 Neb. App. at 31, 664 N.W.2d at 502. This court determined that the State had presented no evidence of what the intended placement of the children would be if parental rights were terminated or not terminated. *Id.*

Our review of *Heather G.* indicates that the factual circumstances of that case were quite unique in relation to other termination cases, including the one at hand. The family in *Heather G.* lived in a small town and one of the children was severely handicapped. The case worker in the case testified that she did not believe there were any options for adoption and that the children would remain in foster care. The record indicated that the parents, despite their obvious weaknesses, maintained a close relationship with the children, and that relationship and visitation would continue even after termination due to the lack of adoption options. Thus, the ultimate result of the termination of the parents' parental rights would be only the severance of the parents' formal parental rights, every other aspect would remain the same. *Id.*

These are not the same circumstances that we are presented with in Kristen's case. Jennifer, Samuel, and Jesse all suffer from Asperger's disorder and anxiety disorder which have been

categorized as moderate to severe disability. All of the children have been in numerous placements for various reasons, such as difficulty maintaining behaviors, interaction with existing children of the foster placement, and moving back and forth between Kristen's home. The record also indicates that Samuel and Jesse's father had been actively involved in gaining placement of the boys and had been exercising extended visits of both boys in preparation. Sarah and Lilybelle were placed together with a family who was willing to adopt them, and Jennifer had settled into a placement which had discussed the possibility of guardianship so that she could maintain a relationship with her father.

The testimony of the medical professionals indicates that termination is not in the children's best interest due to the bond between Kristen and the children. The testimony given by the medical professionals from Mental Health Associates indicates that there is a solution to this family's problems, which Kristen's argument supports: parenting by committee. Essentially, to allow Kristen to keep her parental rights intact, while allowing medical professionals, case workers, school officials, and other service providers to all participate in parenting these children. At the time of trial, Lilybelle was only 4 years old, which would suggest to this court that Kristen is essentially requesting that the juvenile case remain open for

the next 14 to 15 years with the State providing all of Kristen's services and relieving her of all her parental duties, aside from the 4 to 6 hours a week which she is involved. The record clearly shows that Kristen does not consistently, if at all, participate in team meetings, school meetings, visitation, or any type of appointments for herself or the children. It is important for children to be safe and secure, and in this case, given the nature of Jennifer, Samuel, and Jesse's disorder, consistency and stability is of the utmost importance.

One can only imagine the instability that team parenting or parenting by committee would provide these children. Therapists and counselors changing jobs and the frequency at which case workers and service providers change positions would not provide the children with any consistency or structure, and would continue to facilitate Kristen by allowing others to parent for her. The record is clear that given the number of times and the circumstance under which the parties stipulated to placing the children back with Kristen, Kristen knows how to use the proper parenting skills to take care of her children. Medical professionals testified that Kristen's disorder could be categorized as moderate to severe, and yet no party disputes that she has the ability to control the children and relates better than any person with the oldest three who also share the same diagnosis. Nonetheless, given that information, Kristen

fails to make any progress to keep her children placed with her. The unsanitary and unsafe condition of any of the numerous households in which she has resided is a repeating pattern. The failure to supervise and take responsibility for the children and for her actions occurs over and over. Kristen repeatedly blames anyone and everyone else for her repeated failures to care for these children. What is most concerning to this court is despite the testimony regarding the bond between the children and Kristen and that she is a good parent, the fact that not a single medical professional or caseworker involved with this family over the previous 6 years is willing to allow Kristen to exercise more than 4 to 6 hours of fully supervised visitation with these children, much less place them all back in her home. In fact, most of the testimony is clear that placement of the children with her is unrealistic in the near future.

The foremost purpose and objective of the juvenile code is to protect the juvenile's best interests, and the code must be construed to assure the rights of all juveniles to care and protection. *In re Interest of Karlie D.*, 283 Neb. 581, 811 N.W.2d 214 (2012).

When a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the child's best interests require termination of parental rights. *In re Interest of Walther W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). Children

cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *Id.*

Kristen has been involved with the juvenile court system over the past 6 years. Kristen has shown on numerous occasions that she can rehabilitate herself just enough to have the children placed back in her home, but nothing more. At which point, her circumstances and actions decline until the children are again removed from her care. Kristen is unable or unwilling to rehabilitate herself with a reasonable amount of time and parenting these children by committee for the remainder of their juvenile years, waiting for that day when Kristen may or may not make changes permanently, is not protecting the best interests of these children.

Thus, upon our de novo review of the record, we find the evidence presented at the termination hearing overwhelmingly demonstrated that Kristen is not capable of providing her children with a safe and stable environment and thus, she is not capable of appropriately parenting her children.

#### CONCLUSION

Upon our de novo review of the record we find that the record contains clear and convincing evidence that termination of Kristen's parental rights is in the best interests of the five minor children. Therefore, we affirm.

AFFIRMED.