

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF MADDISON T.

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

STATE OF NEBRASKA, APPELLEE,

V.

TASHA T., APPELLANT.

Filed October 26, 2010. No. A-10-423.

Appeal from the Separate Juvenile Court of Douglas County: LINDA S. PORTER, Judge.
Affirmed.

Thomas K. Harmon and Kelly M. McFall, Senior Certified Law Student, of Law Offices
of Thomas K. Harmon, for appellant.

Donald W. Kleine, Douglas County Attorney, Jennifer C. Clark, and Daniel Gubler,
Senior Certified Law Student, for appellee.

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

IRWIN, Judge.

I. INTRODUCTION

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. Tasha T. appeals from the order of the juvenile court which terminated her parental rights to her daughter, Maddison T. On appeal, Tasha challenges the juvenile court's finding that termination of her parental rights is in Maddison's best interests. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Tasha's parental rights. As such, we affirm the order of the juvenile court terminating Tasha's parental rights to Maddison.

II. BACKGROUND

Tasha has struggled with a drug addiction and with mental health problems for a number of years. As a result of Tasha's struggles, she has a lengthy history with the juvenile court. This history began in March 2004, when Tasha's two oldest children, Desiree T., born in January 1998, and Antonio C., born in September 2000, were removed from Tasha's care and placed in the custody of the Department of Health and Human Services (DHHS). Desiree and Antonio are not the subject of this appeal, but they are relevant to our discussion because Tasha's parental rights to these two children were ultimately terminated in 2006.

In March 2004, the State filed a petition alleging that Desiree and Antonio should be adjudicated due to, among other things, Tasha's continued drug use and her failure to provide the children with safe, stable, and independent housing. See Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). Subsequently, Tasha admitted that her drug use placed the children at risk for harm and the children were adjudicated to be within the meaning of § 43-247(3)(a). The children remained in an out-of-home placement.

In December 2006, almost 3 years after Desiree and Antonio were removed from Tasha's care, the juvenile court entered an order terminating Tasha's parental rights to the children. In the order, the court found that Tasha had substantially and continuously or repeatedly neglected and refused to give the children necessary parental care and protection. See Neb. Rev. Stat. § 43-292(2) (Supp. 2009). The court also found that Tasha had failed to complete chemical dependency treatment to address her drug problem, had failed to comply with court-ordered urinalysis testing, and had failed to consistently attend visitation with Desiree and Antonio. The court ultimately found that termination of Tasha's parental rights was in Desiree's and Antonio's best interests.

In January 2008, approximately 1 year after the termination proceedings involving Desiree and Antonio, Maddison was born. The current proceedings concern Tasha's ability to parent Maddison. The proceedings were initiated in October 2009, when DHHS received a telephone call on its abuse and neglect hotline which concerned Tasha and Maddison. As a result of this telephone call, a worker from the hotline, Evonne Nelson, met with Tasha on October 22, 2009. During this meeting, Tasha admitted that she had a "relapse" earlier in the month and had used methamphetamines. Tasha indicated that the relapse occurred because she was upset after losing her job and after her car broke down.

Tasha indicated that this relapse occurred during the weekend of October 17, 2009. She told Nelson that the time period was a "blur," but that she was eventually picked up from the streets by someone she did not know and taken to her sister's home. Maddison was with Tasha during this episode. Tasha's sister took Tasha to the hospital where she was transferred to a recovery center. Tasha left the recovery center, presumably without treatment, because she "did not feel comfortable." Tasha admitted that she had not received any further drug treatment since she left the recovery center.

During the interview with Nelson, Tasha indicated that the incident on October 17, 2009, was the only time she had used methamphetamines in the recent past. Tasha also indicated that she did not have a current drug problem and that she did not need any drug-related treatment.

Tasha admitted that she was not currently taking her prescribed antidepressant medication and expressed an interest in mental health services offered to her by Nelson.

Contrary to Tasha's reports about her drug use, Tasha's therapist, Kim Clark, reported that Tasha had used methamphetamines on October 21, 2009, the day before the interview with Nelson.

Clark reported that on October 21, 2009, she received a telephone call from Tasha. Tasha seemed confused and scared, and Clark was concerned that Tasha was suffering from psychosis. Tasha agreed to meet Clark at a hospital, where Clark discovered that Tasha was suffering from symptoms related to methamphetamine use.

Upon Nelson's request, Tasha agreed to submit to random urinalysis testing. Tasha submitted to the first test a few days after the interview with Nelson. This test came back positive, indicating that Tasha had used methamphetamines within the last 72 hours. When confronted with the results of the test, Tasha again denied any methamphetamine use after October 17, 2009.

Based on Nelson's interview with Tasha and Tasha's positive drug test, Maddison was removed from Tasha's care on October 30, 2009. Around that same time, the State filed a petition alleging that Maddison was within the meaning of § 43-247(3)(a) due to Tasha's use of controlled substances, to the previous termination of Tasha's parental rights to Desiree and Antonio, and to Tasha's continuing struggle with depression and her failure to take her prescribed medication. The State also alleged that Maddison was within the meaning of § 43-292(2) because Tasha substantially and continuously or repeatedly neglected Maddison's siblings, Desiree and Antonio, and because the same risks that existed for Desiree and Antonio now exist for Maddison. The State alleged that termination of Tasha's parental rights is in Maddison's best interests.

In March 2010, a hearing was held concerning the allegations in the petition. After the hearing, the juvenile court entered an order finding that Maddison was a child within the meaning of § 43-247(3)(a) due to Tasha's use of controlled substances. The court also found that Maddison was within the meaning of § 43-292(2) because Tasha had previously neglected Maddison's older siblings, Desiree and Antonio. The court found that termination of Tasha's parental rights is in Maddison's best interests. The juvenile court terminated Tasha's parental rights to Maddison.

Tasha appeals here.

III. ASSIGNMENTS OF ERROR

On appeal, Tasha assigns numerous errors. However, in the argument portion of her brief, Tasha addresses only the assigned error that alleges the juvenile court erred in finding that termination of her parental rights is in Maddison's best interests. As such, this is the only assigned error that we address in this appeal. See *In re Interest of Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009) (to be considered by appellate court, alleged error must be both specifically assigned and specifically argued in brief of party asserting error).

IV. 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.*

V. ANALYSIS

Tasha challenges the juvenile court's finding that termination of her parental rights is in Maddison's best interests. Specifically, Tasha alleges that the juvenile court erred in basing its decision about Maddison's best interests on the prior termination of Tasha's parental rights to Maddison's siblings, Desiree and Antonio. Tasha argues that the juvenile court should have focused its decision on Tasha's current circumstances and the improvement she has made since the prior termination. In addition, Tasha asserts that DHHS should have provided her with rehabilitative services to assist her in obtaining reunification with Maddison. Upon our review of the record, we find sufficient evidence that termination of Tasha's parental rights is in Maddison's best interests. As such, we affirm the order of the juvenile court.

Tasha first asserts that the juvenile court erred in basing its decision about Maddison's best interests on the prior termination of Tasha's parental rights to Maddison's siblings, Desiree and Antonio. Tasha argues that a decision about Maddison's best interests should be based on Tasha's current circumstances.

It is clear from the juvenile court's order that it did consider Tasha's history in making a decision about Maddison's best interests. The court considered Tasha's history with drug abuse, with mental health problems, and with the juvenile court. However, it is also clear that in considering Tasha's history, the court did not ignore or disregard Tasha's current circumstances. The juvenile court's order provides a very detailed and thorough review of all of the evidence presented at the March 2010 hearing.

We first note that the juvenile court did not err in considering Tasha's history, and in particular, her history with the juvenile court, in determining Maddison's best interests. The Nebraska Supreme Court has previously recognized that one's history as a parent speaks to one's future as a parent. *In re Sir Messiah T.*, 279 Neb. 900, 782 N.W.2d 320 (2010). The court has held that even though a court must review evidence of a parent's current circumstances in determining a child's best interests, prior neglect of a sibling is relevant to the current inquiry. See *id.* A court need not ignore past parenting outcomes. See *id.*

In this case, Tasha's history with the juvenile court is particularly relevant because Maddison was removed from Tasha's care for the same reasons that the juvenile court previously terminated Tasha's parental rights to Desiree and Antonio. The evidence presented at the March

2010 hearing reveals that Tasha continues to struggle with the same drug problems and mental health issues that made her unable to appropriately parent her two older children.

Tasha argues that despite her past problems, there was evidence presented at the March 2010 hearing which demonstrated that since the prior termination proceedings, she has made significant progress in her life, including obtaining a job, a house, and a car. She asserts that she was participating in counseling and was compliant with her antidepressant medication.

Contrary to Tasha's assertions, the record reveals that beginning in October 2009, Tasha began using drugs again and stopped taking her antidepressant medication. Sometime around October 17, 2009, Tasha used methamphetamines. After using the drug, she became disoriented and began to wander around the streets with Maddison. Eventually, she was picked up by someone she did not know and dropped off at her sister's home. Tasha's sister took Tasha to the hospital, where she was transferred to a recovery center. Tasha left the recovery center without treatment because she "did not feel comfortable." Tasha did not seek any other drug treatment.

On October 21, 2009, Tasha used methamphetamines again. Tasha called her therapist at the time, Clark, who noted that Tasha seemed scared and confused and appeared to be suffering from psychosis. Tasha agreed to go to the hospital.

Approximately 1 week after this incident, Tasha agreed to submit to random drug testing. Her first test came back positive for methamphetamines. Although Tasha repeatedly stated that she had not used methamphetamines since October 17, 2009, evidence in the record demonstrates that methamphetamines stay in a person's system for only 72 hours. There was also evidence that after this first drug test, Tasha often did not respond to requests for drug testing and sometimes refused testing. Her former therapist testified that such behavior is often a "red flag" indicative of continued drug use.

In addition, the evidence revealed that Tasha was not employed, was forced to vacate her housing in December 2009, and did not have reliable transportation.

Tasha asserts that DHHS should have provided her with rehabilitative services to assist her in addressing her problems and in obtaining reunification with Maddison. In the State's petition, it alleged that reasonable efforts to preserve Tasha's relationship with Maddison and to reunify Tasha with Maddison were not required in this case as a result of the language in Neb. Rev. Stat. § 43-283.01 (Supp. 2009).

Section 43-283.01 states in relevant part, "Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that . . . parental rights of the parent to a sibling of the juvenile have been terminated involuntarily." In its order, the juvenile court found that because Tasha's parental rights to Desiree and Antonio were previously terminated involuntarily, the State was relieved of "the statutory requirement that reasonable efforts be made to preserve and reunify families." Based on the language of § 43-283.01, the court did not err in making such a finding.

Although the State was relieved of its responsibility to make reasonable efforts, DHHS did make efforts to provide services to Tasha between November 2009 and the time of the hearing in March 2010. In fact, the DHHS caseworker assigned to the case told Tasha on two different occasions that a motion for termination of her parental rights had been filed by the State and that Tasha needed to be making efforts prior to the termination hearing. The caseworker

repeatedly indicated her willingness to provide Tasha with services. However, Tasha did not avail herself of these services.

DHHS offered Tasha the opportunity to participate in therapeutic services. Tasha indicated that she wanted to attend therapy through a different agency; however, as late as February 2010, Tasha was not participating in therapy. DHHS offered Tasha assistance in accessing substance abuse treatment and provided her with random urinalysis testing to support and verify her assertions that she was abstaining from the use of controlled substances. Tasha was unwilling to participate in any substance abuse treatment. She believed that she did not have a drug problem. In addition, as we discussed above, Tasha was inconsistent in her participation with random urinalysis testing. In some instances, she apparently refused to submit to a requested test.

Tasha testified at the March 2010 hearing. Although she testified that she loved Maddison very much and wanted to parent her, she offered no testimony as to her intentions with regard to treatment, as to her current situation, or as to whether she would participate in any services offered by DHHS if given additional time.

Upon our review of all of the evidence presented at the March 2010 hearing, we find sufficient evidence to demonstrate that termination of Tasha's parental rights is in Maddison's best interests. The evidence reveals that Tasha continues to struggle with a drug addiction and with mental health issues. Tasha's struggles affect her ability to appropriately parent Maddison. Perhaps the best example of how Tasha's struggles affect her parenting is Tasha's admission that in October 2009 she used methamphetamines and was later found on the streets by a stranger in a confused state. Maddison was with Tasha during this incident. While it is not clear how long Tasha was on the streets or what exactly happened during that time because it is a "blur" to Tasha, it is clear that this is a very dangerous situation for Maddison.

Tasha has not availed herself of any services offered to her by DHHS. She continues to believe that she does not have a drug problem and does not need help. Moreover, Tasha has not provided any indication that she ever intends to avail herself of the services offered by DHHS. Her unwillingness to participate in services was part of the reason her parental rights to her two older children, Desiree and Antonio, were terminated after the children were out of the home for almost 3 years. During that 3-year time period, Tasha failed to utilize the services offered to her and failed to make any progress toward reunification.

Based on all of the evidence presented at the March 2010 hearing, we affirm the juvenile court's finding that termination of Tasha's parental rights is in Maddison's best interests and the juvenile court's decision to terminate Tasha's parental rights.

VI. CONCLUSION

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

AFFIRMED.