

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF MARCUS C. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
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IN RE INTEREST OF MARCUS C. ET AL.,  
CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

v.

DEBRA C., APPELLANT.

Filed April 3, 2012. No. A-11-565.

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

Joseph Kuehl for appellant.

Donald W. Kleine, Douglas County Attorney, Jennifer C. Clark, and Erin K. Hurley,  
Senior Certified Law Student, for appellee.

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

PIRTLE, Judge.

**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. Debra C. appeals from an order of the separate juvenile court of Douglas County, Nebraska, changing the permanency objective from reunification to adoption with a concurrent plan of guardianship for LaCroy G., Lela G., Daniel G., and Precious G., and guardianship with a concurrent plan of independent living for Cameron C. Debra alleges the court erred in changing the permanency plan. Based on the reasons that follow, we affirm.

## BACKGROUND

Debra is the mother of Marcus C., born in August 1992, and Cameron, born in May 1995. She is also the legal guardian of her four minor grandchildren: LaCroy, born in August 1999; Lela, born in February 2001; Daniel, born in September 2002; and Precious, born in May 2004. Marcus was removed from the case, as he is no longer a minor child.

The State of Nebraska filed a petition on June 8, 2009, alleging that the minor children lacked proper parental care by reason of the faults or habits of Debra and that the children came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). The State's amended petition was filed June 10, 2009, alleging that LaCroy, Lela, Daniel, and Precious also came within the meaning of § 43-247(3)(a) and were at risk of harm due to Debra's use of alcohol and/or controlled substances, failure to provide a safe environment and/or appropriate housing, and failure to provide the children with proper support and/or supervision. The children were alleged to be living in a filthy home.

In an order dated July 22, 2009, the court found that Debra admitted her use of alcohol and/or controlled substances placed the children at risk for harm; she failed to provide the children with safe, stable, and/or appropriate housing; and due to the above allegations, the children are at risk for harm. Additionally, the court found that all of the minor children came within the meaning of § 43-247(3)(a), insofar as Debra is concerned, by a preponderance of the evidence.

The court's order dated May 5, 2010, required Debra to abstain from the use of controlled substances; participate in weekly Alcoholics Anonymous meetings and provide proof to the Department of Health and Human Services (DHHS) of her attendance; participate in outpatient chemical dependency treatment; participate in urinalysis screenings as requested by DHHS; participate in family support work services; obtain and maintain safe and stable housing, as well as a legal source of income that is enough to support herself and her children and grandchildren; have reasonable rights of visitation as arranged and supervised by DHHS; and participate in family therapy with the minor children.

Debra contends she completed almost everything the court ordered, including maintaining a stable home, obtaining a legal source of income, completing outpatient therapy, completing urinalysis screenings, and attending Alcoholics Anonymous meetings. She also has participated in chemical dependency, psychological, and psychiatric evaluations.

At the review and permanency planning hearing on November 2, 2010, the State presented a DHHS report dated October 28, 2010. While Debra has participated in support sessions to address housing, employment, and budgeting, the report also includes documentation from service providers stating that Debra is "not learning or truly changing from these services and more just going through the motion." The DHHS report states Debra continued to avoid taking responsibility and has failed to hold herself accountable for her own actions. Debra has not acknowledged that she has a problem with alcohol or that alcohol has affected her ability to parent the children.

A report prepared by KVC Behavioral Healthcare was presented at the hearing, indicating that Debra believed the children were taken from her home without cause and that she refused to change her behavior because she believed nothing was wrong. The family support

worker stated that he met with Debra weekly and that she was very set in her ways. He said Debra failed to make any progress during weekly family support meetings. The State presented a safety and inhome services report, indicating the family support worker provided financial resources to Debra to help with her mortgage and past-due rent and utility bills. Debra did not use these resources, and her financial status has not improved. Debra has continually received warnings that her gas and electricity will be shut off if her bills remain unpaid. The report indicates that Debra has maintained a full-time job, but that her income is not enough to cover her bills or support the household. The family support worker recommended Debra find other employment, but she refused to do so because she said she enjoys the flexibility of her hours and wants to keep the downtime her work schedule provided.

At that hearing, DHHS recommended a change from out-of-home visitation to inhome visitation. However, the guardian ad litem stated that she has serious concerns about the progress of the family and the well-being of the children. The guardian ad litem stated that Debra told the children not to discuss family issues during therapy and had inappropriate discussions with the children during visitation. The guardian ad litem also recommended that visitation remain in a neutral location, outside of the home, because Debra had not taken responsibility for her actions and blamed the court for her situation.

The court stated that Debra has not made the necessary changes and that the changes cannot be achieved until she takes responsibility for her actions. Additionally, numerous people stated concerns regarding the suitability of the home and the number of people present. Debra cannot or will not identify or keep track of the number of visitors and/or residents in her home. Debra stated that if she was forced to keep certain people out of her home, then no one would come over to visit her anymore. Due to concerns regarding the number of visitors, the court stated the home is not a “setting that is ready for reunification or even close to it after a year and a half.”

At the review and permanency planning hearing on April 25, 2011, the court read a statement from a DHHS worker. This statement recognized Debra’s completion of outpatient treatment, but stated further concerns that Debra does not seem to be parenting the children, she displayed unwillingness to have case professionals in her home, and she continued to be in denial of why this case came into the system. She also continued to allow unauthorized individuals into her home and made excuses as to why she turned down additional visits with the children. The report asked the court to find that reasonable efforts had been made to rehabilitate and reunite the family and that the changes to Debra’s behaviors have not been achieved.

In the June 7, 2011, order, the court found that the minor children had been in out-of-home placement for 24 months and the court did not adopt the permanency plan of reunification. The court ordered DHHS to submit an alternative permanency plan for the children. The court’s order, issued June 28, found (1) the permanency objective is adoption with a concurrent plan of guardianship for the minor children LaCroy, Lela, Daniel, and Precious; (2) the permanency objective is guardianship with a concurrent plan of independent living for Cameron; (3) that no more reasonable efforts toward reunification with Debra are required; (4) that reasonable efforts have been made to finalize permanency to include but not limited to placement and case management; (5) that it would be contrary to the health, safety, and welfare of the minor children to be returned home at this time; and (6) that it is in the best interests and

welfare of the minor children to remain in the temporary custody of DHHS for continued care and placement.

Debra timely appealed.

#### ASSIGNMENT OF ERROR

Debra alleges the juvenile court erred in changing the permanency plan.

#### 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 Cornelius K.*, 280 Neb. 291, 785 N.W.2d 849 (2010).

#### ANALYSIS

Debra alleges the juvenile court erred in changing the permanency plan from reunification to adoption/guardianship. The juvenile court's order, issued June 6, 2011, ordered DHHS to submit an alternative permanency plan. Debra asserts that this order "had the ultimate result of putting [DHHS] into a position where it was resigned to make a recommendation that the Court would accept" and that the amended recommendation was not supported by the evidence. Brief for appellant at 8.

This court has stated:

Neb. Rev. Stat. § 43-285(2) (Cum. Supp. 2010) granted a juvenile court discretionary power over a recommendation proposed by DHHS, but it granted preference in favor of such proposal, and in order for the juvenile court to disapprove of DHHS' proposed plan, a party had to prove by a preponderance of the evidence that DHHS' plan was not in the child's best interests.

*In re Interest of Ethan M.*, 19 Neb. App. 259, 267, \_\_\_ N.W.2d \_\_\_, \_\_\_ (2011). See *In re Interest of Sarah L. et al.*, 17 Neb. App. 203, 758 N.W.2d 48 (2008). The statute was amended in 2011 to remove the language requiring a party to prove that the plan is not in the child's best interests. This court stated: "Under the amendment, the State has the burden of proving that a case plan is in the child's best interests." *Id.* at 268, \_\_\_ N.W.2d at \_\_\_. Therefore, we must look at whether the state met its burden to show the reunification was not in the children's best interests and determine whether the court's decision to change the permanency objective was supported by the evidence.

The evidence shows DHHS became involved with Debra and the children in June 2009, because there were concerns regarding Debra's use of alcohol, the condition of the home, the numerous people residing in and/or visiting the home, and the lack of supervision and parental care provided to the children. The children were removed because continuation in Debra's home would have been contrary to the children's health and welfare. At that time, Debra's case plan included participation in weekly Alcoholics Anonymous meetings, chemical dependency treatment, and urinalysis screenings. It also required Debra to participate in individual and family therapy, abstain from controlled substances, and obtain and maintain a legal source of income.

The evidence shows the court changed the permanency objectives of the children because Debra had not made progress toward the goals set for her in the case plan. At that point, the court changed the permanency objective to adoption with a concurrent plan for guardianship.

Debra contends she fulfilled most of the court requirements, including obtaining a legal source of income, participating in outpatient therapy, completing urinalysis screenings, participating in Alcoholics Anonymous meetings, and participating in chemical dependency, psychological, and psychiatric evaluations.

The State argues that Debra has failed to take advantage of the programs offered to her, that she has made no progress on her dependency and debt issues, and that she cannot provide safe and stable housing for the children. Further, reports from support workers indicate Debra is just going through the motions--not making changes to her behavior or learning from the situation. The evidence shows Debra has not held herself accountable for her own actions and continues to avoid taking responsibility.

Support workers report that Debra failed to make progress during weekly family support meetings and that she told the children not to discuss family issues during therapy. She has not utilized financial resources to improve her financial status and is at risk for losing her home and utility services due to nonpayment. Debra refuses to change jobs, against the recommendations of her family support worker. By doing so, she maintains a legal source of income, but this income is not sufficient to pay her bills and support the minor children. She states she enjoys her job because she has flexibility. Despite this flexibility, she has declined to increase the number of visits with her children and grandchildren, stating she has no time.

Further, support workers also cite concerns regarding the number of visitors to the home. Debra admitted that she cannot identify who comes in and out of her home because there are so many people, but she does not want to force anyone out because no one would visit her anymore. In June 2011, the separate juvenile court found that changing the permanency objective to adoption with a concurrent plan of guardianship was proper.

The State has shown the continued goal of reunification is not in the minor children's best interests due to Debra's continued failure to provide a safe, stable home for the children and refusal to take advantage of multiple services provided for her benefit. Reasonable efforts have been made, and Debra has failed to make lasting changes and take responsibility for the situation and her actions.

The Nebraska Supreme Court has held that where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. See *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999). Despite Debra's participation in some court-ordered services, she has demonstrated she is either unwilling or unable to make the necessary changes and is only going through the motions. We find that it was not an error by the juvenile court to change the permanency objective to adoption/guardianship rather than reunification after 2 years of reasonable efforts yielded little progress.

## CONCLUSION

It was not error for the separate juvenile court of Douglas County to change the permanency objectives for the minor children to adoption/guardianship rather than reunification in this case.

AFFIRMED.