

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Quintel C.,)
Aision G., Dailon, G., and)
Chariyona G.,)
Children under 18 years of age.)
State of Nebraska,)
Appellee,)
v.)
Latoria C. and Charles G.,)
Appellants.)

No. A-13-0567

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

APR 01 2014

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

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

MOORE, Judge.

INTRODUCTION

Latoria C. and Charles G. appeal from the order of the separate juvenile court for Douglas County, which terminated their parental rights to their minor children. For the reasons set forth herein, we affirm.

BACKGROUND

Latoria is the natural mother of Quintel C., born in February 2004; Aision G., born in January 2007; Dailon G., born in December 2007; and Chariyona G., born in July 2009. Quintel's father has not been identified. Latoria is married to Charles, who is the father of Aision, Dailon, and Chariyona.



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The family had a history of involvement with the Nebraska Department of Health and Human Services (the Department) prior to the filing of the initial juvenile petition in this case. In January 2007, there were allegations that Latoria had a newborn child and no crib or car seat. In July 2008, there were allegations that domestic violence was occurring in the house, that the younger children were not on track developmentally due to neglect, and that Latoria was leaving the younger children alone in the home. In August, there were allegations that Charles was slapping one of the children in the face and leg in a public setting. In September, there were allegations that Latoria's electricity was shut off and that she did not have stable housing. In February 2009, there were allegations that Latoria was 2 hours late picking up the children and only did so after the police became involved. Following this intake, the Department found the children were unsafe, and Charles and Latoria began to work voluntarily with the Department. Latoria voluntarily placed Quintel in foster care on April 9, as she was not able to manage his behaviors. At that time, Quintel exhibited severe self-harming and other aggressive behaviors. Aision and Dailon also exhibited self-harming behaviors. The Department provided intensive family preservation, an in-home safety plan, family support, pretreatment assessments, and case management.

On September 30, 2009, the State filed a petition in the juvenile court, alleging that the children came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults or habits of Latoria. In count I, the State alleged that the children were all under 18 years of age. In count II of the petition, the State alleged that Latoria had been involved with voluntary services provided by the Department since April 2009; that the voluntary services had not corrected the issues within the family home; that Latoria had failed to provide the children with appropriate care, support, and/or supervision; that on September 10, Latoria engaged in domestic violence with Charles; and that the children were at risk for harm due to these allegations. In count III, the State set forth identical allegations with respect to Charles. The juvenile court entered an ex parte order for immediate custody on September 30.

On November 24, 2009, the juvenile court entered an order adjudicating the children as within the meaning of § 43-247(3)(a) with respect to Latoria. Latoria admitted the allegations that the children were under 18 years of age and that the children were at risk for harm because she had failed to provide them with appropriate care, support, and/or supervision, and the court found these allegations true based on Latoria's plea. The other allegations with respect to Latoria were dismissed based on the State's motion. The court continued

the children in the Department's custody for out-of-home placement and ordered Latoria to undergo a psychological evaluation, undergo a pretreatment assessment, cooperate with family support services, participate in and successfully complete a parenting class, participate in individual therapy, undergo a hearing examination, and be allowed reasonable rights of supervised visitation.

On January 27, 2010, following an adjudication hearing on the allegations in the State's petition with respect to Charles, the juvenile court found that count III of the petition should be dismissed for lack of proof by a preponderance of the evidence.

Following a review and permanency planning hearing on August 3, 2010, the juvenile court continued the children in the Department's custody for out-of-home placement and ordered Latoria to undergo a psychiatric evaluation, take all medications as prescribed by her attending psychiatrist, participate in cognitive behavioral therapy, cooperate with family support services, participate in individual therapy and in family therapy with Quintel, attend the children's medical, dental, and educational appointments, obtain and maintain safe and adequate housing, obtain and maintain a legal source of income, and be allowed reasonable rights of supervised parenting time.

On January 7, 2011, the State filed a supplemental petition, alleging that Aision, Dailon, and Chariyona were children under 18 years of age and that Aision and Chariyona were at risk for harm due to the faults or habits of Charles, in that the children had been in the care and custody of the Department since September 2009, that Charles was aware that the children were in the Department's custody but had failed to work with the Department to take steps to alleviate the issues, that Charles had failed to attend visits with the children, and that Charles had failed to provide them with proper parental care, support, and/or supervision. The State also filed a motion for temporary custody. The accompanying affidavit stated that for the duration of the case, Charles had been unable to provide evidence of stable housing or employment. The affidavit stated further that Charles had initially attended visits with the children, but that due to disagreements between Charles and Latoria, the Department recommended separate visits. Separate visits were authorized beginning in January 2010, but Charles attended only one visit between January and the end of May. Charles was in jail from May 25 through October 19 for assault and battery, domestic assault, burglary, theft by shoplifting, counterfeit controlled substance possession, marijuana possession, prostitution solicitation, disorderly conduct, and operation of a vehicle during suspension. After his release, he

only attended one visit to celebrate Christmas. The affidavit further alleged that Charles discounted the seriousness of his children's behavioral issues and developmental delays and continued to disagree with their need for therapy. The juvenile court entered an order for immediate custody on January 7, 2011, and on January 19, entered an order following a first appearance and detention/protective custody hearing on the supplemental petition, awarding Charles reasonable rights of supervised visitation when not incarcerated. The State filed an amended supplemental petition on April 21, adding Dailon's name to the allegations.

On June 28, 2011, following an adjudication hearing, the juvenile court entered an order adjudicating Aision, Dailon and Chariyona as children within the meaning of § 43-247(3)(a) with respect to Charles. The court continued the children in the Department's custody for appropriate care and placement.

On October 27, 2011, following a dispositional hearing with respect to Charles and a review and permanency hearing with respect to Latoria, the juvenile court ordered Charles to undergo a pretreatment assessment and to release his medical records to the Department. The court ordered Latoria to participate in individual therapy and in family therapy with Quintel, cooperate with medication management with her psychiatrist, and take all medications prescribed by her

attending psychiatrist. The court ordered both Charles and Latoria to cooperate with family support services, participate in family therapy with Dailon and Aision, attend their children's medical, dental, and educational appointments, and be allowed reasonable rights of supervised visitation. A similar order was entered on April 25, 2012, following a review and permanency planning hearing with the additional requirement that Charles and Latoria participate in couples counseling. The permanency objective at that time was reunification with a concurrent objective of adoption. The April 25 order also provided that once Charles and Latoria had obtained appropriate housing, upon approval by the Department and others including the family therapist, visits could transition to unsupervised.

On August 22, 2012, the State filed an ex parte motion for supervised visitation. The State alleged that several concerning incidents had occurred since the April review hearing. Specifically, the State alleged that in July, Quintel was returned to his foster home after a visitation with physical injuries, that Quintel reported he had been slapped by Charles during a visitation, and that the Department had substantiated the incident. The State further alleged that Dailon and Chariyona's foster parent had observed Charles dragging Quintel out of a visitation by his arm while Quintel was crying. The State alleged that visitation workers had reported to the

Department that two workers were needed at visits to appropriately supervise all of the children. The juvenile court entered an ex parte order for supervised visitation on that date and scheduled the matter for hearing on October 22.

On September 18, 2012, the guardian ad litem (GAL) for Dailon and Chariyona filed a motion, seeking authorization for Dailon and Chariyona to travel out-of-state with their foster parents for a family vacation from October 17-22 so that the children would not have to be placed in respite care during the vacation. Latoria filed an objection to the motion, alleging that she and Charles had secured suitable and stable housing where visits were being conducted and that it would be in the children's best interest that no more visits be canceled. On September 28, the juvenile court entered an order granting the GAL's motion and overruling Latoria's objection. The court ordered that the hearing on the motion for supervised visitation would be held on October 22 as scheduled. On October 19, the State filed a motion, seeking to continue the testimony of Dailon and Chariyona's foster mother scheduled to be heard at the October 22 hearing, as she would be out of state on that date.

On October 9, 2012, the State filed motions for termination of Charles and Latoria's parental rights, alleging that termination was appropriate under Neb. Rev. Stat. §§ 43-292(2),

(6), and (7) (Cum. Supp. 2012) and that termination was in the children's best interests. With respect to subsection (6), the State alleged that Charles and Latoria had failed to consistently visit the children; to consistently participate in family therapy; to maintain consistent, appropriate, and suitable housing; and that despite the provision of therapy, family support and case management, they could not appropriately parent the children.

At the October 22, 2012 hearing, the juvenile court advised Charles and Latoria of their rights with respect to the motions for termination of parental rights and accepted their pleas of denial. The hearing on the motion for supervised visitation was continued due to time restraints. The court also entered a review/permanency planning order following the October 22 hearing, ordering Charles and Latoria to comply with similar rehabilitation plans to those ordered following previous hearings. The court ordered that Charles and Latoria be allowed reasonable rights of fully supervised visitation as arranged by the Department until further order of the court. The motion for supervised visitation was heard on November 27, and on that date, Charles and Latoria advised the court that they did not resist the State's motion for supervised visitation. The court ordered that Charles and Latoria's visits with the children remain supervised until further order of the court.

The termination of parental rights hearing was held before the juvenile court over the course of six dates in early 2013: on February 5, 7, 14, and 26 and April 4 and 8. The court heard testimony from 17 witnesses; including case workers, visitation workers, family support workers, therapists, and foster parents, and received numerous exhibits into evidence. The bill of exceptions contains more than 1,100 pages of testimony. We have conducted a thorough de novo review of the record, but for the sake of brevity, we summarize the evidence contained therein.

The children all suffer from significant behavioral issues, and it has not been possible to maintain them together in one foster care placement. They were placed in three separate foster homes at the time of the termination hearings. Quintel has always been placed separately from his siblings. Initially, Aision, Dailon, and Chariyona were placed together, but eventually Aision was removed and placed in a separate foster home. Quintel has been diagnosed with attention deficit hyperactivity disorder (ADHD) with oppositional defiance disorder features. He has a borderline IQ and suffers from benign rolandic epilepsy. Aision has been diagnosed with stereotypic movement disorder with self-injurious behavior, ADHD combined type, phonological disorder with disturbance of conduct, diurnal and nocturnal enuresis, and parent-child relational problems. Dailon has been diagnosed with adjustment

disorder with a disturbance of mixed emotions and conduct and anxiety disorder. Chariyona has been diagnosed with disruptive behavior disorder, NOS, and has been given a rule-out diagnosis for ADHD and separation anxiety. All four children participate in individual therapy and also have family therapy with Charles and Latoria.

Charles underwent the pretreatment evaluation ordered by the court, but there is no evidence in the record as to the results of that evaluation. Charles participates in individual therapy. Latoria also participates in individual therapy. Latoria has been diagnosed with bipolar disorder, generalized anxiety disorder, and borderline personality disorder. There is some evidence that Latoria did have her blood drawn to aid in medication management. There is also evidence that she was not cooperating with her psychiatrist for medication management, and it is unclear whether she was taking any medication for these diagnoses at the time of the termination hearings. Both Charles and Latoria are on disability.

The record shows that Charles and Latoria have consistently had difficulty handling the behaviors of all four children simultaneously during visits. Two visitation specialists have been required during visits due to the children's behaviors, but also due to Charles and Latoria's arguments in front of the children. There is some evidence in the record that Charles has

administered inappropriate discipline during several visitations, including concerns of rough handling by Charles and complaints by the children of being struck by Charles when out of sight of the visitation workers. In July 2012, an incident occurred with Charles striking Quintel and leaving a mark on his face, which was substantiated by the Department although Charles was not charged criminally. Charles and Latoria have denied any inappropriate discipline and Latoria has defended Charles and placed the blame on the children's self-harming behaviors.

The record shows evidence of the various children asking at times to not be required to go on visits and there is evidence of the children's behavior issues increasing in foster care following visits. Nonetheless, there was also evidence in the record that Charles and Latoria made progress in the parenting techniques learned and applied, always provided appropriate food during visits, and were prepared with activities to share with the children. There is evidence that Charles and Latoria often showed affection for the children and evidence of bonding between Charles and Latoria and the children.

Testimony was provided showing that Charles and Latoria have not been consistent in attending visitation with the children over time, making approximately 75-percent of scheduled visits. The record shows that some of the visits missed were due to transportation issues faced by Charles and Latoria; however,

the record also shows that the Department worked with Charles and Latoria on transportation issues. Charles and Latoria declined some offered transportation services. At least one visitation was missed because Charles declined to be supervised by a particular individual. Charles and Latoria both missed some visits due to Charles' health issues. Charles was diagnosed with and treated for prostate cancer in 2011 and early 2012. He was hospitalized again in early 2013 and underwent surgery for a hernia.

Charles and Latoria had some housing issues. At some point, Charles was banned from "OHA housing" where he resided with Latoria, apparently due to a verbal altercation with a neighbor. The parties thereafter worked diligently to obtain suitable housing together, which they did in the summer of 2012. Visits were provided in the family home beginning in September 2012. Charles and Latoria's consistency of attendance at visitation then improved as transportation was no longer an issue. Visits were set to transition from supervised to unsupervised prior to the July 2012 incident between Charles and Quintel. Regardless, there is no evidence in the record that Charles and Latoria ever had unsupervised visitation with the children.

Multiple witnesses testified that termination of Charles and Latoria's parental rights was in the children's best interests. The case worker at the time of the termination

hearings testified that there were no further services that the Department could offer Charles and Latoria to help with their parenting issues.

On June 13, 2012, the juvenile court entered an order terminating Charles and Latoria's parental rights. The court found that the State proved by clear and convincing evidence grounds for termination under §§ 43-292(2), (6), and (7) and that termination was in the children's best interests. Charles and Latoria subsequently perfected their appeal to this court.

ASSIGNMENTS OF ERROR

Charles and Latoria assert that the juvenile court erred in (1) finding that termination of their parental rights was in the children's best interests, (2) entering an ex parte order without giving the parents an opportunity to be heard in a timely fashion, and (3) considering hearsay testimony as evidence of abuse.

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 Danaisha W.*, 287 Neb. 27, 840 N.W.2d 533 (2013).

ANALYSIS

Best Interests.

Charles and Latoria assert that the juvenile court erred in finding that termination of their parental rights was in the children's best interests.

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in § 43-292 exists and that termination is in the child's best interests. *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012). 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 proved. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006).

The juvenile court found clear and convincing evidence that termination was proper under §§ 43-292(2), (6), and (7). Charles and Latoria have not challenged any of the statutory grounds for termination. For the sake of completeness, we note that the State clearly proved that termination was proper under § 43-292(7) (child has been in an out-of-home placement for 15 or more months of the most recent 22 months). The evidence was unchallenged that Quintel has been in out-of-home placement continuously since April 2009. Aision, Dailon, and Chariyona have been in out-of-home placement since September 2009. By the

time the motions for termination of parental rights were filed in October 2009, all four children had been in out-of-home placement for over 3 years. Accordingly, the State proved § 43-292(7) by clear and convincing evidence. We have considered evidence relating to the other statutory grounds, §§ 43-292(2) and (6), in addressing Charles' and Latoria's arguments with respect to best interests. Generally, when termination is sought under subsections of § 43-292 other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. *In re Interest of Emerald C.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012).

A juvenile's best interests are a primary consideration in determining whether parental rights should be terminated as authorized by the Nebraska Juvenile Code. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

Charles and Latoria argue that they have made continuous improvements in their parenting skills, and that they and the children have a beneficial relationship, making termination of their parental rights premature and unnecessary. It is clear that Charles and Latoria care deeply about their children. They have made efforts to improve their parenting skills and have succeeded on many levels in that regard. Some of their

visitation difficulties were caused by transportation issues and Charles' medical problems.

Nonetheless, despite the efforts and progress made by Charles and Latoria, it is clear that no real progress has been made toward reunification. During the time the children have been in the Department's custody, the State has provided services including intensive family preservation, case management, individual and family therapy services, transportation and family support services, visitation services, couples therapy, some monetary assistance, and evaluative services for both Charles and Latoria and the children. Evidence was presented that the parents stopped attending family therapy for a time between June 2011 and early 2012 due to their transportation issues, although Latoria did have one session with Quintel in September 2011. The parents had resumed family therapy with the children by the time of the March 2012 court report. The parents were at times unwilling to cooperate or take suggestions from the various therapists and workers involved in the case, and they did not complete the goals established in family therapy.

Despite the services provided, there is evidence that the children continue to exhibit extreme behaviors and that Charles and Latoria are unable to effectively parent all four children during visits. The parents are unable to redirect or control the

children's behavior. The children's behaviors accelerate following visits. Charles and Latoria continue to argue with one another and raise their voices during visits. In addition to the evidence of the July 2012 incident in which Charles allegedly struck Quintel, there is evidence of Charles slapping the children and using excessive force with them.

Clearly, these are four children with a complex set of behavioral problems, and, unfortunately, it may never be possible to maintain all four children in the same home. Charles and Latoria argue that termination is premature, but there is evidence that there are no further services that can be provided by the State which would allow these children to return to their parents' home and custody any time soon, if ever.

In addition, the record shows clear and convincing evidence that termination is in the children's best interests. Testimony of case workers and the family therapist indicates that the best interests of the children would be served by termination of parental rights because there has been a lack of sufficient progress by the parents, the children have been in foster care for a significant amount of time, which has negatively impacted the relationship between the parents and children, and the children need permanency and stability. Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Walter W.*, 274

Neb. 859, 744 N.W.2d 55 (2008). The juvenile court did not err in finding that termination of Latoria's parental rights was in Quintel's best interests or that termination of Charles and Latoria's parental rights was in the best interests of Aision, Dailon, and Chariyona.

Ex Parte Order.

Charles and Latoria assert that the juvenile court erred in entering an ex parte order for supervised visitation on August 22, 2012 without giving them an opportunity to be heard in a timely fashion.

The ex parte order set the matter for hearing on October 22, but it was continued to November 27. We do not have a bill of exceptions from the November 27 hearing, but the court's order from that date shows that Charles and Latoria advised the court at the hearing that they did not resist the State's motion for supervised visitation. This assignment of error is without merit.

Hearsay Testimony.

Charles and Latoria assert that the juvenile court erred in considering hearsay testimony as evidence of abuse. As with their previous assignment of error, their arguments are somewhat vague but appear to relate to evidence of the July 2012 incident in which Charles allegedly slapped Quintel.

The Nebraska Evidence Rules do not apply in cases involving the termination of parental rights. *In re Destiny A.*, 274 Neb. 713, 742 N.W.2d 758 (2007). Instead, due process controls and requires that the State use fundamentally fair procedures in an attempt to prove that a parent's rights to his or her child should be terminated. *Id.* In determining whether admission or exclusion of particular evidence in a parental rights termination case would violate fundamental due process, the Nebraska Evidence Rules serve as a guidepost. *Id.*

Charles and Latoria were both represented by counsel at the termination hearings. They thoroughly cross-examined the State's witnesses who testified concerning the July 2012 incident and presented their own evidence in support of their version of events. We find no due process violation in the juvenile court's admission of evidence concerning the July 2012 incident over Charles and Latoria's hearsay objections. Charles and Latoria's arguments suggest that absent evidence of this incident, there would have been insufficient evidence that termination of their parental rights was in the children's best interests, a suggestion we have rejected in our analysis of their best interests assignment of error above. This assignment of error is without merit.

Charles and Latoria present arguments alleging several other due process violations, but they have not assigned these

as error. In order to be considered by an appellate court, an alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error. *In re Interest of Kodi L.*, 287 Neb. 35, 840 N.W.2d 538 (2013).

Nonetheless, we note that in our de novo review, we have found no due process violations. State intervention to terminate the parent-child relationship must be accomplished by procedures meeting the requisites of the Due Process Clause. *In re Interest of Joseph S.*, 21 Neb. App. 706, 842 N.W.2d 209 (2014). Procedural due process requires notice to the person whose right is affected by the proceeding; reasonable opportunity to refute or defend against the charge or accusation; reasonable opportunity to confront and cross-examine adverse witnesses and present evidence on the charge or accusation; representation by counsel, when such representation is required by the Constitution or statutes; and a hearing before an impartial decisionmaker. *In re Interest of Landon H.*, 287 Neb. 105, 841 N.W.2d 369 (2013). The record shows that these procedural protections were afforded to Charles and Latoria throughout this case.

CONCLUSION

The juvenile court did not err in finding clear and convincing evidence to support the termination of Charles and Latoria's parental rights.

AFFIRMED.