



a month later, the home was properly cleaned and the children were returned.

Shortly after the children's return, Angel was arrested on federal drug charges. While Angel was in federal custody, the Nebraska Department of Health and Human Services (DHHS) developed a safety plan with Jason which prohibited Angel from having any contact with Zakery or Freyja until DHHS received information related to Angel's federal charges. Angel was released on bond and DHHS arranged for her stay at an area motel. During her short stay at the motel, Angel attempted to obtain prescription pain medication from the motel staff. This led to the motel refusing DHHS's request to extend Angel's stay. While at the motel, Angel met with Jason and the children in her room for extended periods of time.

After leaving the motel, Angel and Jason packed up their belongings and attempted to leave the state with their children. A tip led DHHS to locate the family in a trailer in Central City, Nebraska on November 12, 2008. When DHHS arrived to investigate the tip, it located the trailer and found the family inside. The DHHS caseworker entered the trailer and discovered Zakery and Freyja under a pile of clothes in a back room. DHHS immediately removed the children from the home.

On January 21, 2009, Angel was sentenced to 77 months in prison for conspiracy to manufacture methamphetamine. While in

prison, Angel gave birth to Seth on July 2, 2009, and he was immediately removed from her care. Since entering prison, Angel has not had any physical contact with any of her children.

The State filed its amended motion to terminate parental rights on June 30, 2010. The State alleged that grounds for termination existed under Neb. Rev. Stat. § 43-292(1), (2), (5), (6), and (7) (Cum. Supp. 2012). Because Jason had voluntarily relinquished his rights, only Angel's rights were affected by the motion. The juvenile court began hearing evidence on the State's motion on June 20, 2011.

During its case, the State detailed the reasons the children were initially removed from Angel's care. This evidence included the unsanitary and unsafe condition of the home when the two oldest children were initially removed, Angel's long history of alcohol and prescription drug abuse, Angel's disappearance with the children after their removal from her home, and Angel's continued search for drugs and resulting expulsion from St. Monica's after her arrest on federal charges. In December 2008, Dr. John Meidlinger, a certified clinical psychologist, diagnosed Angel with panic disorder without agoraphobia and alcohol dependence. Dr. Meidlinger testified that this diagnosis may prevent Angel from being able to adequately parent her children.

The State also adduced evidence that the children need continuous care that Angel may not be able to provide. Dr. Bruce Buehler's deposition was received in evidence. Dr. Buehler diagnosed Zakery, Freyja, and Seth with teratogen exposure. Although Dr. Buehler could not specifically state to what substance each child was exposed during Angel's pregnancies, after studying the children's physical appearances and observing their behaviors, he concluded that they had been exposed to something which affected their brain development. The record contains information that Angel used alcohol and/or prescription pain medications during each of her pregnancies. Common effects of impaired brain development include high impulsivity and learning disability. Dr. Buehler stated that these children will need consistency in their lives and parents who continuously monitor behaviors.

Finally, the State focused on the fact that the children have been in foster care for an extended periods of time. The children have all been together in one foster home since their removal from Angel's custody and this foster home has been able to provide the children with the stability and consistency that they require.

Angel called a number of witnesses during her opportunity to present evidence. Two of her neighbors from the trailer park testified that Angel was a good parent to Zakery and maintained

a clean home. A witness from Angel's church testified that he and his family were willing to give Angel and her children a place to stay after her release from prison.

At the conclusion of the live witness testimony, Angel received a copy of the proceedings. She reviewed the transcript of the proceedings and her deposition was taken telephonically from prison. Throughout her deposition, Angel maintained that she continued to care for her children and believed she could adequately parent them upon her release from prison. Angel believed that she would be released from prison in March 2013 and enter a halfway house.

The case was submitted to the court for decision on November 8, 2012. On December 18, 2012, the juvenile court entered an order terminating Angel's parental rights. In its decision, the court found that the State had proved grounds for termination under § 43-292(2), (6), and (7), and found termination to be in the children's best interests. Following an unsuccessful motion for a new trial, Angel has appealed to this court.

#### ASSIGNMENTS OF ERROR

Restated, Angel argues that the trial court erred (1) in concluding the State had proved that she had substantially and continuously or repeatedly neglected and refused to give her children necessary parental care and protection, (2) in

concluding the State had proved that reasonable efforts to preserve and reunify the family have been unsuccessful, and (3) in finding that termination of Angel's parental rights was in the children's best interests.

#### 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 Aaliyah M.*, 21 Neb. App. 63, \_\_\_ N.W.2d \_\_\_ (2013).

#### ANALYSIS

##### *Statutory Grounds for Termination.*

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 children's best interests. *In re Interest of Kendra M.*, 283 Neb. 1014, 814 N.W.2d 747 (2012). Here, the juvenile court found that the State proved grounds for termination under § 43-292(2), (6), and (7).

Under § 43-292(7), the State must prove that the children have been in placement outside the home for 15 or more of the most recent 22 months. The record shows that Zakery and Freyja have been continuously placed outside Angel's home since November 12, 2008. Additionally, Seth has been in foster care since July 6, 2009, five days after his birth. Angel does not

dispute the State's assertions that the children have been placed outside the home for 15 or more of the most recent 22 months. Therefore, the State proved grounds for termination under § 43-292(7) by clear and convincing evidence.

Because the State must only prove one ground for termination, we need not address Angel's arguments that the State did not prove grounds for termination under § 43-292(2) or (6). See *In re Interest of Emerald C.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012). However, when the State seeks termination 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. *Id.* We will consider evidence relevant to the other grounds in our analysis of the children's best interests.

*Best Interests of Children.*

Angel claims that the juvenile court erred when it found that termination of her parental rights was in the children's best interests. Focusing on her efforts to maintain contact with her children and her rehabilitative efforts in prison, Angel asserts that she will be able to capably and sufficiently care for her children when she is released from prison. Throughout her brief, Angel also argues that the fact that she is in prison should not be grounds for termination of her parental rights.

We are aware of the well-established rule that a parent's incarceration, standing alone, does not provide grounds for termination of parental rights. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992); *In re Interest of Leland B.*, 19 Neb. App. 17, 797 N.W.2d 282 (2011). Here, however, Angel's incarceration, which was due to her voluntary criminal conduct, has clearly rendered her incapable of providing any care to her children. Further, the record shows that Angel was unable to care for the children prior to her incarceration as evidenced by the initial state of her home, her continued abuse of prescription drugs, her decision to abscond with the children, and her expulsion from St. Monica's after her arrest.

While incarcerated, Angel has successfully completed a drug abuse education class and a parenting class. In addition, she has obtained various employment positions while in prison. Angel has also made continuous and extensive efforts to maintain contact with her children since their removal. These efforts have included telephone calls with Zakery, letters and gifts to all three children, and various communications with her children's treatment teams. In fact, the caseworker stated at the hearing that Angel has done more than any other parent on her caseload to maintain contact with her children.

Despite these efforts to maintain contact with her children and address her drug and alcohol issues, significant doubts

remain as to whether it is in the children's best interests to persist in their current status. First, there is evidence that Angel's issues with drugs and alcohol continue. Angel's prison progress report demonstrates that Angel has been disciplined for possessing intoxicants while in prison, leading to the conclusion that she has not completely addressed these problems. Additionally, there is nothing definitive in the record to support that Angel's release from prison is as imminent as she believes. The only documented evidence in the record pertaining to her sentence demonstrates that Angel was sentenced to serve a 77-month period, which if fully served would end in approximately April 2015, followed by 5 years of supervised release. Upon her release from prison, Angel admittedly will not be in a position to be immediately reunited with her children. Angel submits that a gradual transition would be appropriate. As such, regardless of when Angel's release from prison actually occurs, it appears that substantial additional efforts will be required before reunification could occur, particularly considering the fact that these children have not resided with, and have not even seen, Angel for well over 4 years. Zakery, Freyja, and Seth have spent significant portions of their lives in foster care. In fact, Freyja has spent the majority of her life outside of Angel's care and Angel has never parented Seth. The DHHS caseworker testified that because of this length of

time outside the home, termination was in the children's best interests. Zakery's therapist also believed that termination of Angel's parental rights was in his best interests as he needs permanency and to know that he belongs somewhere.

The record shows that Angel loves her children and has met many of the goals set by DHHS. However, the record also demonstrates that her children have not spent any time with her since 2008 because of her incarceration. Further, there is some indication that Angel may not have fully treated her drug and alcohol issues. The need for stability in their lives requires that these children receive a permanent placement. Children should not be suspended in foster care or be made to await uncertain parental maturity. See *In re Interest of Emerald C.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012). Upon our de novo review, we find that termination of Angel's parental rights was in the children's best interests.

#### CONCLUSION

The juvenile court did not err in terminating Angel's parental rights.

AFFIRMED.