

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

IN RE INTEREST OF MONCHU A.

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

STATE OF NEBRASKA, APPELLEE,

V.

ARIEL A., APPELLANT,

AND PONCA TRIBE OF NEBRASKA, INTERVENOR-APPELLEE.

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Filed October 13, 2026. No. A-26-034.

Appeal from the Separate Juvenile Court of Lancaster County: REGGIE L. RYDER, Judge.
Affirmed.

Megan E. McDowell, of Morrow, Poppe, Watermeier & Lonowski, P.C., for appellant.

Alisha Jimenez, Deputy Lancaster County Attorney, for appellee.

Rosalynd J. Koob, of Heidman Law Firm, P.L.L.C., for intervenor-appellee.

BISHOP, WELCH, and FREEMAN, Judges.

BISHOP, Judge.

INTRODUCTION

Ariel A. appeals from an order of the separate juvenile court of Lancaster County that terminated her parental rights to her son, Monchu A. We affirm.

BACKGROUND

PROCEDURAL BACKGROUND

Ariel is the biological mother of Monchu, born in January 2024, and four other children. In February 2024, Ariel and her five children (ranging in age from infant to 8 years old) were in a running vehicle in an enclosed garage for an extended period of time; they were transported to the hospital for evaluation and treatment for carbon monoxide poisoning. The State filed a juvenile petition alleging that all five children were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2016) because they lacked proper parental care by reason of the fault or habits of Ariel and/or were in a situation dangerous to life or limb or injurious to their health or morals. However, upon motions by the State, the petition was dismissed as to all the children except Monchu. Because Monchu's siblings are not part of this appeal, we will only discuss them as necessary.

Ja'Shuane S. is Monchu's biological father. Ja'Shuane is an enrolled member of the Ponca Tribe of Nebraska (the Tribe), and Monchu is either an enrolled member or eligible for membership. As such, Monchu is an "Indian child" pursuant to the federal Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq. (2024), and the Nebraska Indian Child Welfare Act (NICWA) Neb. Rev. Stat. § 43-1501 et seq. (Reissue 2016). The State sought to terminate Ja'Shuane's parental rights to Monchu during these same juvenile proceedings below, but Ja'Shuane ultimately relinquished his parental rights. Because Ja'Shuane is not part of this appeal, we will only discuss him as necessary.

In its petition filed on February 14, 2024, and its amended petition filed on April 18, the State alleged that Monchu was a child within the meaning of § 43-247(3)(a) because he lacked proper parental care by reason of the fault or habits of Ariel and/or was in a situation dangerous to life or limb or injurious to his health or morals based on the following:

- a. Ariel . . . is the biological mother of said juvenile.
- b. Ariel . . . failed to provide adequate or appropriate care and/or supervision for said juvenile[], and/or Ariel . . . failed to provide a safe and stable environment for said juvenile[].
1. On or about February 6, 2024, Ariel . . . removed and/or dismantled the carbon monoxide detector(s) located in the family home. Ariel . . . together with [her children], sat in a running vehicle in an enclosed garage for an extended period of time, placing said juveniles at risk of harm or death.
2. Ariel . . . and [her children] had elevated levels of carbon monoxide. [The oldest child, 8 years old], passed out as a result of the extended carbon monoxide exposure. Ariel . . . and [her children] were hospitalized and treated for carbon monoxide poisoning.
3. As a result of the February 6th events, Ariel . . . was arrested and cited for five counts of felony child abuse.
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- c. The above matter places said juvenile[] at risk for harm.
- d. The juvenile[] [is] located in Lancaster County, Nebraska.

(Emphasis omitted.) Also on February 14, the State filed a motion for emergency temporary custody of Monchu. The juvenile court entered an order that same day and placed Monchu in the

temporary custody of the Nebraska Department of Health and Human Services (DHHS). Monchu has since remained in DHHS' custody and in relative or kinship foster home placements.

Following a hearing in February 2024, the juvenile court found that ICWA may apply and ordered the State to provide notice to the Tribe.

On February 23, 2024, a guardian ad litem was appointed for Ariel.

Following a hearing on February 28, 2024, the juvenile court allowed Ariel to have supervised visits with Monchu.

In March 2024, the Tribe filed a petition to intervene, stating that Monchu was eligible for membership once Ja'Shuane's paternity was established. Although the Tribe's petition to intervene had not yet been granted, the Tribe began appearing at hearings in March.

On April 18, 2024, Monchu was adjudicated to be a child within the meaning of § 43-247(3)(a) based on Ariel's answer of "no contest" to the allegations in the amended petition. The juvenile court ordered DHHS to arrange an initial diagnostic interview for Ariel. If the initial diagnostic interview recommended a psychological evaluation and/or a parenting assessment, DHHS was to arrange said evaluation and/or assessment and any recommended services.

On June 12, 2024, the juvenile court found that Ja'Shuane was Monchu's father and that NICWA applied to this case. The court sustained the Tribe's "motion" to intervene. The court also ordered that Ariel's parenting time with Monchu was suspended pending further order of the court; Ariel's parenting time remained suspended for the duration of the case.

In a disposition order entered on June 14, 2024, the juvenile court found that Ariel was incarcerated and "has shown serious signs of mental health instability." The court ordered Ariel to maintain employment or other legal means of support for herself and Monchu; maintain safe and suitable housing and allow DHHS to complete a walkthrough of her home to ensure its safety; complete a co-occurring evaluation; notify DHHS of any changes in her employment, address, or phone number within 24 hours; and notify DHHS of any police contact within 24 hours. DHHS was ordered to arrange any services recommended by Ariel's co-occurring evaluation. Additionally, if recommended by Ariel's initial diagnostic interview, DHHS was to arrange a neuropsychological evaluation and thereafter arrange any recommended services.

Following subsequent review hearings, Ariel was also ordered to cooperate with the recommendations of her co-occurring evaluation; verify employment with DHHS; cooperate with a family support worker as arranged by DHHS; sign releases of information for services, service providers, medical and therapy providers; not have any unapproved contact with Monchu; and participate in individual outpatient therapy as approved by DHHS.

On June 3, 2025, the State filed a motion to terminate Ariel's parental rights to Monchu pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2016). The State alleged that Ariel had substantially and continuously or repeatedly neglected and refused to give the child, or a sibling of the child, necessary parental care and protection; reasonable efforts failed to correct the conditions leading to the adjudication of the child under § 43-247(3)(a); the child had been in an out-of-home placement for 15 or more months of the most recent 22 months; and termination of Ariel's parental rights was in the child's best interests.

TERMINATION HEARING

A hearing on the motion to terminate Ariel's parental rights was held on November 25 and December 18, 2025. The State called three witnesses to testify, and numerous exhibits were received into evidence. Ariel did not testify in her own behalf and did not call any witnesses to testify on her behalf.

Taylor Moore, formerly known as Taylor Hegwood, testified that she was the DHHS case manager assigned to this case for several months. She did not recall the month that she was assigned to the case, but she was the case manager at the time of adjudication (April 2024) and disposition (June 2024); according to exhibits received in evidence, Moore was involved in the case by March 8. She authored the DHHS court report dated June 5, 2024.

According to that June 2024 court report, Ariel's children were exposed to carbon monoxide in February when she put them in a vehicle in a closed garage and then started the vehicle. When Moore spoke to Ariel following a court hearing on March 8, Ariel reported that she had started parenting classes, was employed as a "PRN temp worker," and had "set up an intake at CenterPoint." Other than an encounter at a juvenile court hearing, Moore's attempts to set up a meeting with Ariel in April were not successful; Ariel either would not respond to Moore's text messages or would not set a date and time to meet. In May, Moore received confirmation that Ariel completed parenting classes. Ariel had visits with Monchu from March through May; Ariel cancelled three visits in April, and she cancelled or did not show up for five visits in May. Also in May, Moore met with Ariel at a visit with Monchu and tried to ensure that Ariel understood what was occurring and what was expected of her. When asked about her appointment with CenterPoint, Ariel reported that she did not sign any releases; Moore informed Ariel that she needed to sign releases for Moore to access the information and provide collateral information. Moore asked Ariel if there was anything she needed at that time, including family support, and Ariel said she did not need anything from Moore and did not need family support. Ariel stated that neither Moore nor the judge had power over her and she would do what was best for her child. On May 24, Ariel was cited for violating a custody order regarding two of her other children and was arrested. Moore met with Ariel at the jail on June 3, and Ariel thought Moore was her attorney; when Moore explained that she was her DHHS caseworker, Ariel responded that it was not appropriate for Moore to be at the facility and that she would follow up with Moore after she was released. Ariel remained incarcerated as of June 5, the date of the court report.

According to a certified copy of a criminal case from the county court for Lancaster County (case No. CR24-2603), on March 11, 2024, Ariel was charged with one count of child abuse, a Class I misdemeanor, for the February incident involving her children. As part of her bond in that case, she was ordered to have no contact with the children except as allowed by the juvenile court. On April 17, Ariel pled no contest to the charged count. On September 26, she was sentenced to 24 months' probation, subject to various terms and conditions, including a 47-day jail term (with credit for 1 day previously served) to be served in waivable monthly 2-day jail terms. In January 2025, the State filed a motion to revoke Ariel's probation and alleged that she had violated various terms and conditions of her probation. In February, the county court granted Ariel's motion for a competency evaluation. The outcome of any competency evaluation or the motion to revoke Ariel's probation does not appear in our record.

According to a certified copy of another criminal case from the county court from Lancaster County (case No. CR24-5661), on May 28, 2024, Ariel was charged with two counts of “Violation of Custody,” a Class II misdemeanor. On July 25, Ariel pled no contest to an amended complaint charging her with one count of “Violation of Custody.” On September 26, she was sentenced to 24 months’ probation, subject to various terms and conditions, including a 47-day jail term (with credit for 1 day previously served) to be served in waivable monthly 2-day jail terms. In January 2025, the State filed a motion to revoke Ariel’s probation, alleging that she violated various terms and conditions of her probation. In February, the county court granted Ariel’s motion for a competency evaluation. The outcome of any competency evaluation or the motion to revoke Ariel’s probation does not appear in our record.

Laura Chastain, a DHHS child and family services specialist, was assigned as the case manager on this case in July or August 2024 and was the ongoing case manager at the time of the termination hearing. When Chastain took over this case, she had a transfer meeting with the previous caseworker (Moore). Chastain first met with Ariel in August and discussed the court orders, including the need for Ariel to complete a co-occurring evaluation and sign releases of information. According to a DHHS court report, Ariel would not sign a release at the August meeting because she said she had already signed a release with her therapist; upon questioning by the DHHS supervisor, Ariel remembered that she had revoked that release and then said she would provide DHHS the results herself. The court report also states that Ariel declined offered resources such as family support and gas vouchers.

Chastain testified that in September 2024, she met with Ariel “at her criminal case.” Chastain, along with Ariel’s criminal and juvenile attorneys, tried to get Ariel to sign a release of information for the co-occurring evaluation. Ariel signed the release for her criminal case but refused to sign a release for DHHS in the juvenile court case. According to Chastain, Ariel did not seem to understand the importance of the releases.

Chastain stated that contacting Ariel was “difficult at times” and her efforts to contact Ariel resulted in “minimal successes.” Chastain’s efforts to contact Ariel included calls, texts, and emails, and Chastain also went to the last known address that Ariel’s probation officer had for Ariel. And Ariel reached out to Chastain at “random times.”

Chastain testified that in October 2024, Ariel “showed up [to the DHHS office] without notice.” At that time, Chastain and Ariel discussed her case and expectations, and Chastain “offered several services to [Ariel] including family support, bus passes, . . . gas vouchers, anything required by active efforts.” However, Ariel “stated that she did not want assistance from [DHHS].” Chastain also offered to arrange individual therapy, but Ariel “insisted on sourcing her own therapy.” Ariel provided a name and website, but did not sign a release, so Chastain could not confirm whether Ariel attended therapy. (According to a DHHS court report, Chastain was not able to find and meet with Ariel in October, but Ariel unexpectedly showed up at DHHS in November.)

Ariel provided a copy of her co-occurring evaluation to Chastain in October 2024. And Chastain received a copy of the evaluation from the provider after Ariel signed the release of information in November. According to Chastain, there was no specific diagnosis due to the lack of information Ariel provided to the therapist, and Ariel did not agree with the results of the evaluation.

Ariel's co-occurring evaluation appears in a DHHS court report. The evaluation occurred on September 12, 2024. Ariel was diagnosed with an "[u]nspecified mental disorder because of insufficient information to make a more specific diagnosis." It was recommended that Ariel participate in individual outpatient mental health therapy. However, "[Ariel] was reluctant and hesitant to provide information regarding her involvement with DHHS, her mental health, and substance use throughout this evaluation," and "[h]er guarded behavior and reluctance to provide information may present a barrier for her participation in individual therapy services." The evaluation report notes that Ariel did not agree with various aspects of the report, including the diagnosis and recommendation; the report included information from email communications from Ariel.

A DHHS court report states that Chastain met with Ariel in November 2024 when Ariel arrived at DHHS unexpectedly. At that meeting, Ariel said she had a therapist but needed to schedule an appointment, she was living with family but could not provide an address, and she wanted to set up family support.

Chastain testified that in December 2024, she learned that Ariel checked herself into the hospital "due to malnutrition and some mental health concerns." Ariel stayed in the hospital for 2 to 3 days. (According to a DHHS court report, Chastain met with Ariel in the hospital to discuss the case and asked her to sign a release of information so that Chastain could speak to the doctors; Ariel did not think it was appropriate for Chastain to be at the hospital and did not sign a release of information.) Following her hospital stay, Chastain's communications with Ariel were "[s]poradic."

Chastain's last in-person visit with Ariel was at Ariel's attorney's office; according to a DHHS court report, this meeting occurred on January 17, 2025, with Ariel's attorney present and an ICWA specialist present via Webex. Chastain testified that the intent of the meeting was to discuss the releases of information and case progression. Chastain was not able to confirm Ariel's living situation or her reported telehealth therapy. (Chastain did receive an email from Ariel's "alleged therapist" in late January; it "did not seem to be a professional email." Chastain "attempted to email that therapist back" but "never received another response.") Ariel repeatedly requested that her visits with Monchu be reinstated, but she had not addressed any of the recommendations or court orders. Chastain tried to explain to Ariel that it was up to the judge, not DHHS, whether visits would be reinstated. Ariel eventually agreed to participate in family support services. And according to the DHHS court report, at the January 17 meeting, Ariel said she wanted to be referred to Nebraska Mental Health Services because she found them online and "they will be (the) most beneficial."

Chastain testified that family support services began in late January or early February 2025. Family support did not include goals pertaining to Ariel's mental health because of the "unspecified mental health diagnosis" in the co-occurring evaluation. Ariel's family support goals were safe and suitable housing, a legal means of support, and other budgeting and financial goals. However, Ariel was never able to successfully complete those goals.

DHHS court reports revealed the following. In mid-February 2025, Chastain was informed that Ariel had been arrested for burglary and a search of "NDEN" showed Ariel was to be charged with misdemeanor theft by unlawful taking. Then, a March 3 search of NDEN showed Ariel had been arrested in Ogallala, Nebraska, on February 27, "two days after being released from Lancaster

County jail.” “Ariel had been arrested for driving under suspension, resisting an officer, obstructing police, escape, and theft by unlawful taking.” “It had been reported that Ariel had stolen a vehicle, refused to identify herself, and escaped custody briefly.”

According to a certified copy of a criminal case from the district court for Keith County (case No. CR25-23), on March 21, 2025, the State filed an information charging Ariel with five counts: count I, “theft by receiving >\$5,000,” a Class IIA felony; count II, “escape (felony/conv.),” a Class III felony; count III, resisting arrest, a Class I misdemeanor; count IV, obstructing a peace officer, a Class I misdemeanor; and count V, failing to obey a lawful order, a Class III misdemeanor. All charged events were alleged to have occurred on or about February 28. On March 28, the district court granted Ariel’s motion for a competency evaluation. (No report from a competency evaluation appears in our record.) In June and August, the district court ordered Ariel to be committed to the Lincoln Regional Center for inpatient treatment. The certified copy of the Keith County case did not contain subsequent information on the ordered commitment or the status of the case.

Chastain testified that she had difficulty contacting Ariel after her incarceration and did not always know where she was located. Chastain “sent multiple letters,” “continuously checked . . . NDEN to see if they had updated . . . the system as to her whereabouts,” and maintained communication with Ariel’s attorney to see if the attorney was able to contact Ariel. There were several times Chastain found out after the fact that Ariel had been transferred from a facility, and there were times that the system showed that she was in multiple facilities at the same time.

According to Chastain, Monchu had not seen Ariel since June or July 2024, and he had never been able to be returned to Ariel. Ariel had not addressed her mental health concerns, had not maintained safe and suitable housing, and had not acquired and sustained employment or other legal means of support. Additionally, Ariel had been incarcerated since February or March 2025, making her unavailable to parent Monchu. DHHS believed that permanency was in Monchu’s best interests.

Chastain stated that “DHHS’s policy for placement, especially when it comes to Indian children, is to be with family”; the purpose of the policy is to ensure that that child maintains cultural connections. When asked if DHHS made all efforts to place Monchu with a family member, Chastain responded affirmatively. He was placed with family and maintained cultural ties to the Tribe.

Richard England, an enrolled member of the Yurok Tribe, is a licensed clinical social worker and an ICWA expert witness throughout the United States. England testified that “the Ponca tribe designates [him] as their [qualified expert witness] in many states . . . across the nation . . . in these types of cases.”

Exhibit 40, titled “Declaration of [England], ICWA Expert Witness,” contains England’s written assessment in this case and it was received without objection. In his “Declaration,” England stated that he was familiar with Monchu’s files and records, and he had reviewed the various documents. He had been in communication with DHHS and the Tribe, and he had attempted to contact Ariel. England opined that “active efforts are being made to provide remedial services and rehabilitative programs that were designed to prevent the breakup of this Indian family,” and “there have been affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite the Indian children with their family.” Services provided to the family included

Substance abuse assessments and participation in any recommended treatment, mental health assessment and participation in any recommended treatment, outpatient treatment, diligent efforts to locate relatives for placement of the child, parenting education, safety plans, transportation, gas vouchers, bus passes, team meetings, ongoing efforts to collaborate with the Ponca Tribe, extended family, and case collateral, visitation, efforts to work with both parents, and ongoing efforts to ensure the safety, health, and overall well-being of the child.

According to England, Monchu “is actively engaged in his tribal culture and will continue to participate in cultural practices, ceremonies, and traditions.” England also stated that based on the information he reviewed, “there is evidence beyond a reasonable doubt that continued custody of MonChu by [Ariel] is likely to result in serious emotional or physical damage to him.” England noted the family’s “child welfare history” and the February 2024 incident that resulted in Monchu’s removal from Ariel, as well as concerns about Ariel’s “criminal activity, substance abuse, behavior, and lack of stability.” Despite being offered a case plan that included support, resources, and services, Ariel “failed to fully comply with the parameters of the case plan and she has not made significant efforts to make changes to her behavior, circumstances, or parental deficiencies.”

According to his testimony at trial, England believed the services provided by DHHS in this case were appropriate. When asked if there were additional services that should have been implemented, England responded, “No,” “I feel like [DHHS] was diligent in their efforts to try to engage [Ariel] in the services that were offered and unfortunately, they were not successful.” England believed that there were “active efforts,” “[a]nd part of active efforts include engaging with the Tribe and bringing them into the planning,” and from his communications with the Tribe “they were involved in these processes and again, unfortunately, . . . they weren’t successful.” Additionally, “part of active efforts are finding a preferred placement with family” and in this case there was “placement with family who’s also native.” Monchu was getting access and exposure to his culture and was connected to his tribe.

JUVENILE COURT’S DECISION

In its order entered on December 19, 2025, the juvenile court found that active efforts had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and those efforts proved unsuccessful. The court further found that continued custody by Ariel was likely to result in serious emotional or physical damage to Monchu, and that Ariel was unfit to parent Monchu. The court terminated Ariel’s parental rights to Monchu after finding “beyond a reasonable doubt” that statutory grounds existed pursuant to § 43-292(2), (6), and (7), and that termination of Ariel’s parental rights was in the child’s best interests.

Ariel appeals.

ASSIGNMENTS OF ERROR

Ariel assigns, restated, that the juvenile court erred in finding that (1) statutory grounds exist to terminate her parental rights under § 43-292(2) and (6); (2) active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the

Indian family, and those efforts proved unsuccessful; (3) continued custody by Ariel was likely to result in serious emotional or physical damage to Monchu; and (4) termination of her parental rights was in Monchu's best interests.

STANDARD OF REVIEW

An appellate court reviews juvenile cases, including those under ICWA, de novo on the record and reaches its conclusions independently of the juvenile court's findings in a termination of parental rights case. *In re Interest of Cameron L. & David L.*, 32 Neb. App. 578, 3 N.W.3d 376 (2024).

ANALYSIS

To terminate parental rights, it is the State's burden to show by clear and convincing evidence both that one of the statutory bases enumerated in § 43-292 exists and that termination is in the child's best interests. *In re Interest of Cameron L. & David L.*, *supra*.

NICWA adds two additional elements the State must prove before terminating parental rights in cases involving Indian children. *In re Interest of Cameron L. & David L.*, *supra*. First, the State must prove by clear and convincing evidence that active efforts have been made to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. *Id.* See, also, § 43-1505(4); *In re Adoption of Micah H.*, 301 Neb. 437, 918 N.W.2d 834 (2018) (NICWA active efforts requirement applies to cases involving termination of parental rights over Indian children, even when parent is not of Native American descent). Second, the State must prove by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *In re Interest of Cameron L. & David L.*, *supra*. See, also, § 43-1505(6).

STATUTORY GROUNDS FOR TERMINATION

The State sought to terminate Ariel's parental rights to Monchu under § 43-292(2), (6), and (7). The juvenile court found that statutory grounds existed pursuant to all three grounds. On appeal, Ariel assigns error only to the court's findings as to § 43-292(2) and (6). She does not assign error to the court's finding as to § 43-292(7).

Section 43-292(7) allows for termination when "[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months." The existence of the statutory basis alleged under § 43-292(7) should be determined as of the date the petition or motion to terminate is filed. *In re Interest of Jessalina M.*, 315 Neb. 535, 997 N.W.2d 778 (2023). By the plain and ordinary meaning of the language in § 43-292(7), there are no exceptions to the condition of 15 out of 22 months' out-of-home placement. *In re Interest of Mateo L. et al.*, 309 Neb. 565, 961 N.W.2d 516 (2021). Section 43-292(7) operates mechanically and, unlike the other subsections of the statute, does not require the State to adduce evidence of any specific fault on the part of a parent. *In re Interest of Mateo L. et al.*, *supra*. In other words, if the 15-out-of-22 months' period is met, § 43-292(7) is met. See *In re Interest of Mateo L. et al.*, *supra*.

Monchu was removed from Ariel on February 14, 2024, and remained in foster care thereafter. By the time the motion to terminate Ariel's parental rights was filed on June 3, 2025,

Monchu had been in an out-of-home placement for 15 months. Thus, the 15-out-of-22 months' period was satisfied.

The State has shown clearly and convincingly that § 43-292(7) exists as a statutory basis for terminating Ariel's parental rights to Monchu. And since any one of the bases for termination codified in § 43-292 can serve as the basis for termination, we need not consider the sufficiency of the evidence concerning any other statutory basis for termination. *In re Interest of Mateo L. et al., supra.*

ACTIVE EFFORTS

NICWA provides that prior to the court ordering the termination of parental rights, "the court shall make a determination that active efforts have been provided or that the party seeking . . . termination has demonstrated that *attempts were made to provide active efforts to the extent possible under the circumstances.*" § 43-1505(4) (emphasis supplied). Section 43-1503(1) states:

Active efforts shall mean and include, but not be limited to:

(a) A concerted level of casework, both prior to and after the removal of an Indian child, exceeding the level that is required under reasonable efforts to preserve and reunify the family described in section 43-283.01 in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe or tribes to the extent possible under the circumstances;

(b) A request to the Indian child's tribe or tribes and extended family known to the department or the state to convene traditional and customary support and services;

(c) Actively engaging, assisting, and monitoring the family's access to and progress in culturally appropriate and available resources of the Indian child's extended family members, tribal service area, Indian tribe or tribes, and individual Indian caregivers;

(d) Identification of and provision of information to the Indian child's extended family members known to the department or the state concerning appropriate community, state, and federal resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing such community, state, and federal resources;

(e) Identification of and attempts to engage tribally designated Nebraska Indian Child Welfare Act representatives;

(f) Consultation with extended family members known to the department or the state, or a tribally designated Nebraska Indian Child Welfare Act representative if an extended family member cannot be located, to identify family or tribal support services that could be provided by extended family members or other tribal members if extended family members cannot be located;

(g) Exhaustion of all available tribally appropriate family preservation alternatives; and

(h) When the department or the state is involved in a proceeding under the act, the department or the state shall provide a written report of its attempt to provide active efforts to the court at every hearing involving an Indian child. This report shall be sent to the Indian child's tribe or tribes within three days after being filed with the court and shall be

deemed to be admissible evidence of active efforts in proceedings conducted under the act[.]

However, there is no precise formula for active efforts; the active efforts standard requires a case-by-case analysis and should be judged by the individual circumstances. *In re Adoption of Micah H.*, 301 Neb. 437, 918 N.W.2d 834 (2018). The Nebraska Supreme Court has observed that efforts made under § 43-1503 should generally be “‘culturally relevant.’” *In re Adoption of Micah H.*, 301 Neb. at 450, 918 N.W.2d at 846.

In this case, Monchu was placed in relative and kinship foster placements, and those placements were paternal family members. According to England, Monchu “is actively engaged in his tribal culture and will continue to participate in cultural practices, ceremonies, and traditions.” The Tribe appeared at hearings even before paternity was established and its petition to intervene was sustained.

DHHS attempted to contact and meet with Ariel every month, but those efforts were not always successful either because Ariel would not respond to messages or could not be located. Ariel did complete a co-occurring evaluation but delayed in signing releases of information for DHHS. DHHS offered to arrange individual therapy for Ariel but she “insisted on sourcing her own therapy.” DHHS also offered Ariel services including bus passes, gas vouchers, and family support, but Ariel did not want assistance from DHHS. When Ariel later requested family support, that was arranged and began in January or February 2025. However, Ariel was subsequently incarcerated in February and remained incarcerated at the time of the termination hearing.

Ariel claims that there were “no meaningful efforts to assist [her] with addressing her mental health, and the blame was put on [her] for choosing to be difficult without any regard for contributing factors, like mental health or level of understanding.” Brief for appellant at 27. “There were no attempts to accommodate, and [she] was essentially written off and classified as difficult.” *Id.* We disagree. Ariel’s delay in signing releases of information as well as her incarceration resulted in “self-inflicted barriers.” Brief for appellee at 33. DHHS had difficulty locating and contacting Ariel while she was incarcerated. And, as noted by the State, “There is no evidence that [Ariel] made efforts to engage while she was in and out of incarceration.” *Id.* at 33.

Based on the specific facts and circumstances of this case, we find by clear and convincing evidence that active efforts were made to prevent the breakup of the Indian family and that those efforts proved unsuccessful.

SERIOUS EMOTIONAL OR PHYSICAL DAMAGE

Monchu was removed from Ariel after she and her children remained in a running vehicle in an enclosed garage. There were ongoing concerns about Ariel’s mental health, which were never fully addressed because there was insufficient information in the co-occurring evaluation to make a more specific diagnosis, a delayed signing of releases, and periods of incarceration.

England, the qualified expert witness in this case, stated that based on the information he reviewed, “there is evidence beyond a reasonable doubt that continued custody of MonChu by [Ariel] is likely to result in serious emotional or physical damage to him.” England noted the family’s “child welfare history” and the February 2024 incident that resulted in Monchu’s removal from Ariel, as well as concerns about Ariel’s “criminal activity, substance abuse, behavior, and lack of stability.” Despite being offered a case plan that included support, resources, and services,

Ariel “failed to fully comply with the parameters of the case plan and she has not made significant efforts to make changes to her behavior, circumstances, or parental deficiencies.”

Based on our de novo review of the record, we find that the State proved beyond a reasonable doubt that the continued custody of Monchu by Ariel is likely to result in serious emotional or physical damage to Monchu.

BEST INTERESTS AND UNFITNESS

Under § 43-292, in addition to proving a statutory ground, the State must show that termination is in the best interests of the child. *In re Interest of Noah C.*, 306 Neb. 359, 945 N.W.2d 143 (2020). A child’s best interests are presumed to be served by having a relationship with his or her parent. *In re Interest of Leyton C. & Landyn C.*, 307 Neb. 529, 949 N.W.2d 773 (2020). This presumption is overcome only when the State has proved that the parent is unfit. *Id.* Although the term “unfitness” is not expressly stated in § 43-292, the Nebraska Supreme Court has said that it derives from the fault and neglect subsections of that statute and from an assessment of the child’s best interests. *In re Interest of Mateo L. et al.*, 309 Neb. 565, 961 N.W.2d 516 (2021). In the context of the constitutionally protected relationship between a parent and a child, parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child’s well-being. *In re Interest of Leyton C. & Landyn C.*, *supra*. The best interests analysis and the parental fitness analysis are separate inquiries, but each examines essentially the same underlying facts as the other. *Id.* We have previously set forth the evidence presented at the termination hearing, and we will not recount it again here.

Notably, Ariel had not addressed her mental health concerns, had not maintained safe and suitable housing, and had not acquired and sustained employment or other legal means of support. Additionally, Ariel had been incarcerated since February or March 2025, making her unavailable to parent Monchu.

At the time of the termination hearing Monchu had been in an out-of-home placement for the past 21 months. And Ariel had not seen Monchu since the juvenile court suspended her parenting time in June 2024. DHHS believed that permanency was in Monchu’s best interests. We agree. “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, 872, 744 N.W.2d 55, 65 (2008). And when a parent is unable or unwilling to rehabilitate himself or herself within a reasonable period of time, the child’s best interests require termination of parental rights. *In re Interest of Leyton C. & Landyn C.*, *supra*. The State proved that Ariel was unfit, meaning that she has a personal deficiency or incapacity which has prevented, or will prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to the child’s well-being. See *id.* We further find that there is clear and convincing evidence that it is in Monchu’s best interests to terminate Ariel’s parental rights.

CONCLUSION

For the foregoing reasons, we affirm the order of the juvenile court terminating Ariel’s parental rights to Monchu.

AFFIRMED.