In re Interest of Cristalyla C. et al., children under 18 years of age

Caselaw No.
Nos. A-15-1170 through A-15-1172
This Opinion not designated for permanent publication
Filed on
Tuesday, August 30, 2016

SUMMARY: Melissa M. appeals and Izrael C. cross-appeals from an order of the Scotts Bluff County Court, sitting in its capacity as a juvenile court, terminating Melissa?s parental rights to three of her children (Cristalyla C., Nathaniel M., and Angel M.) and Izrael?s parental rights to the daughter he shares with Melissa (Cristalyla C.). Melissa and Izrael argue that there was not sufficient evidence present to justify the termination of rights under the statute, nor enough to show termination to be in the children?s best interests. The Court of Appeals affirms the order of the county court, finding that sufficient evidence exists to warrant termination of parental rights as stated above.

In March 2013, Melissa was incarcerated for a shoplifting conviction and her six youngest children placed with Melissa?s mother. While in the care of their grandmother, DHHS received reports that the children were not being properly cared for and, after an investigation, were removed from the home in favor of foster placements.

On March 4, 2013, the State filed petitions alleging that Cristalyla, Nathaniel, and Angel were children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) due to the faults or habits of Melissa. Melissa was released from jail shortly after this filing and the State filed a second amended petition on May 23, 2013 alleging that § 43-247(3)(a) applied to the children through no fault of Melissa. This petition claimed that the children?s grandmother was ?unable to meet [their needs]? and had been ?overwhelmed by the behaviors of? the children. Melissa admitted to the allegations in the amended petition and the children were adjudicated to be within the meaning of § 43-247(3)(a).

Less than a month later, Melissa returned to jail for additional shoplifting charges where she remained until October 2013. After her release, DHHS described her as noncompliant with reunification efforts due to methamphetamine use, sporadic visits with her children, and eventual refusal to visit in March 2014.

Thus, at an April 2014 hearing the county court changed the permanency goal for the children from reunification to adoption, which Melissa appealed. This change was affirmed by the

Supreme Court in April 2015 and Melissa then filed a motion in the county court to change the objective back to reunification which was denied. While the appeal was pending, Melissa was arrested for and convicted of carrying a concealed weapon, resulting in her incarceration from January to March 2015. On May 29, 2015, the State filed motions to terminated Melissa?s parental rights under § 43-292(2), (4), (6), & (7), alleging that termination was in the best interests of the children.

With regard to Cristalyla and her father, Izrael knew of her removal and placement in a foster home and stated to a DHHS caseworker in May 2013 that, while he wanted to be involved in his daughter?s life, he had ?a lot going on.? In June 2013, Izrael began a period of federal incarceration in Colorado where he remained until August 2014. The State subsequently filed a supplemental petition alleging Cristalyla was within the meaning of § 43-247(3)(a) in relation to Izrael?s failure to maintain contact and substance abuse issues. This petition was granted in January 2014 due to the faults or habits of Izrael.

Upon his release, Izrael resided in a halfway house and participated in a parenting evaluation in October 2014. Shortly thereafter, Izrael moved to Colorado where he remains presently and maintains no contact with Cristalyla, nor has he engaged services recommended by DHHS. On May 12, 2015, the State filed a motion to terminate Izrael?s parental rights under § 43-292(2), (3), (6), & (7), alleging that termination of these rights was in the best interests of Cristalyla.

Termination hearings took place in August and September 2015 and the State presented evidence demonstrating Melissa?s lack of progress towards reunification with her children. This included: the significant periods of incarceration; numerous arrests involving dangerous behavior, drugs, and weapons; refusal to participate in regular drug screening; positive screens for methamphetamines; Melissa?s own admissions of recent methamphetamine use; frequent periods of unemployment and dishonestly with DHHS about her employment status; housing instability; sporadic visitation with her children; lack of parenting by Melissa during visits; and a therapist recommendation that Cristalyla and Nathaniel stop attending visits.

Further, the court heard testimony from Cristalyla and Nathaniel?s therapist. She indicated that the children needed a stable home, which Melissa could not provide. Time spent with Melissa resulted in the children exhibiting negative behaviors afterward that ceased after not seeing their mother for a time. The therapist reported that Cristalyla stated she does not want to live with her mother because she no longer trusts her.

The State also presented a psychological and parenting assessment of Melissa which revealed: a lack of key parenting skills; a personality disorder that often places Melissa?s needs in front of those of her children; and an inability to sustain any progress in her life for long periods.

In response, Melissa contended that in the months prior to the hearing she had: obtained employment and received a raise; began renting a house that she was preparing for the children; regularly and consistently seen a substance abuse counselor since her release from jail in March 2015; been participating in substance abuse groups; enganged her family support worker; completed a parenting class; and been more consistent with visitation resulting in better interactions with her children.

As for Izrael, the State produced evidence to demonstrate a lack of involvement in Cristalyla?s life except for infrequent phone calls and couple of visits, largely due to his incarceration. A parenting assessment was also produced which found a strong relationship did not exist between the two and that Izrael had a lack of empathy towards Cristalyla. Izrael did not present any evidence to the contrary.

Consequently, the lower court determined that termination of Melissa?s parental rights was warranted and in the best interests of the children because the ?overall pattern of conduct shown by clear and convincing evidence is a continued failure to put the needs of the children above her own, and absence of consistent sustained progress to become an appropriate parent.? Likewise, the court terminated Izrael?s parental rights in consideration of Cristalyla?s best interests since she had never resided with her father and because his very limited contact with her ?demonstrates a failure to place himself in a position to become an appropriate parent.?

As a result, Melissa filed this appeal claiming that the lower court terminated her parental rights in error and inappropriately found termination to be in the best interests of the children. Izrael?s cross-appeal makes similar arguments regarding the court?s finding regarding Cristalyla.

Addressing Melissa?s claims first, the Court of Appeals looks at the evidence used by the lower court to assess whether § 43-292(2), (4), (6), and (7) warranted termination. In doing so, the Court cites In re Interest of Jospeh S. where the Supreme Court held that ?a parent?s failure to provide an environment to which his or her children can return can establish substantial, continual, and repeated neglect. 291 Neb. 953 (2015).

Looking at the evidence here, the Court recalls the evidence presented by the State showing the children had been in foster placements for the first two years this case was pending and that Melissa failed to provide an environment to which the children could return. This was largely due to her: being incarcerated repeatedly; regular drug use; lack of steady employment or independent housing; and lack of cooperation with DHHS and forgoing their services, including mental health and/or substance abuse treatment.

The Court concludes that Melissa has not made any changes, nor taken opportunities to obtain help. Instead and with her children already two years removed from her care, she continues to get arrested and use methamphetamines. Testimony from DHHS staff and Melissa?s assessments further support this outlook on her ability to change and progress towards reunification. Thus, termination via the statute is appropriate.

Turning towards an analysis of the best interests of the children, the Court draws a parallel with a conclusion in In re Interest of Tabitha J.: ?[l]ast minute attempts by parents to comply with the rehabilitation plan do not prevent termination of parental rights.? 5 Neb. App. 609 (1997). The Court calls Melissa?s actions in the five months prior to the termination hearing a matter of compliance only when ?she knew that the filing of the motion to terminate her parental rights was imminent,? despite having ample time and opportunity prior. There is no indication of the long-term change needed for her children and reunification to be a viable goal. As the children have had little to no healthy relationship with Melissa and, instead, show signs of bad behavior after coming into contact with her, the Court concludes that termination is indeed in the best interests of the children.

With regard to Izrael?s cross-appeal, the Court of Appeals notes that Cristalyla had been in out-of-home placement for nearly two and one-half years. This satisfies the requirement of § 43-292(7). As for Izrael?s argument for the best interests of Cristalyla, the Court finds no mention in his brief and does not discuss the matter in depth as a result. However, the Court cites the existence of clear and convincing evidence that termination is in Cristalyla?s best interests due to Izrael?s ?very minimal contact? with her during her life because of his incarceration, lack of support or parental care, and failure to demonstrate he is willing or able to be a parent to his daughter.

Thus, the Court of Appeals affirms the order by the lower court to terminate Melissa?s parental rights to Cristalyla, Nathaniel, and Angel and Izrael?s parental rights to Cristalyla.