

In re Interest of Jania W. et al.

Caselaw No.

A-16-177 through A-16-181

Filed on

Tuesday, September 20, 2016

SUMMARY: Denesia W. appeals the order of the county court for Kearney County which terminated her parental rights to five minor children (Jaina W., Trystan W., Sebastyen R., Selena R., and Evelyn R.) which she is the biological mother. Denesia asserts the court's decision is contrary to the law and the evidence. The Court of Appeals affirms the lower court.

Denesia's children were removed from Denesia's care on December 31, 2013 after a report to police and DHHS that the children had been left for a long period with caregivers that had little-to-no contact with Denesia. The children have remained out of home since their removal. A petition filed on the same day alleged that the children had been abandoned, neglected, and lacking proper care.

In February 2014, Denesia was arrested for and pled guilty to possession of methamphetamine for which she was sentenced to 180 days in jail to begin on July 16, 2014 and a period of probation. Denesia was arrested again in March 2014 when she used a motor vehicle to avoid arrest. She was subsequently sentenced to 90 days in jail to begin in July 2014.

At a March 17, 2014 adjudication hearing, the children were found to be within the meaning of § 43-247(3)(a). Denesia was taken from jail for inpatient residential treatment which she successfully completed on June 10, 2014 and was followed up with enrollment in a halfway house program. Denesia completed a chemical dependence and psychological evaluations. Five supervised visits occurred during this time at the halfway house and the staff reported Denesia was receptive to feedback and positive.

On July 15, 2014, Denesia left the halfway house before completing the program and at a July 24 hearing she was ordered to comply with the DHHS case plan, which laid out nine strategies to help meet the needs of her children. A review hearing was held on October 23, 2014 and a case plan with the same strategies was adopted by the court, but noted that little progress had been made. As a result, a review and permanency hearing was held on November 17, 2014 during which the permanency goal was changed to adoption with a concurrent plan of reunification.

However, Denesia continued to have compliance and additional legal problems. When she

was released from jail, she was ordered to produce negative drug screens for one month before visitation with her children would be allowed, which she did not participate. In October 2014, Denesia pled no contest to a charge of theft by unlawful taking and she was sentenced to thirty months' probation, running concurrent to a prior sentence in another county. In December 2014, Denesia was cited for marijuana and paraphernalia possession and the State revoked her probation in January 2015 and she was resentenced to one year of incarceration in March 2015. In response to Denesia's continued legal entanglements, the guardian ad litem for her children filed petitions to terminate her parental rights. A review hearing was held on May 28, 2015 and the court adopted the new DHHS case plan on May 6, 2015.

On August 17, 2015, a trial was held on the petition to terminate Denesia's parental rights. At that time, Denesia was incarcerated and awaiting sentencing on a conviction for theft by unlawful taking and resentencing on a probation revocation.

Denesia testified that prior to the children's removal, she had been employed and had not used drugs since October 2014. When confronted with the fact that she had been arrested during this period with meth in her possession, Denesia admitted she possessed the meth but was not using it. Denesia also told the court she was attending AA meetings and church while in jail and intended to continue doing so upon her release to help her maintain sobriety. Further, she said jail had motivated her to finish her GED, take business courses, and wanted attend college with the hopes of starting her own business. Denesia waved off the need for a halfway house upon her release because she claimed family members would provide her with employment, childcare, and the rigidity needed to keep her sober. Specifically, she mentioned an uncle that lives in a two-bedroom trailer and was later revealed to have a criminal history, including the sexual assault of a minor, and a sister whose own children were removed from her care by the courts. Several friends and family members also testified on Denesia's behalf and described her as a good mother. Many described Denesia as not herself since the children were removed from her care.

The court also heard testimony from a GAL assigned to the children during a 2012 juvenile case that resulted in their removal from Denesia's care when she lost her housing. The GAL detailed Denesia's submission to drug testing and having maintained employment during this period.

However, the children's therapists testified that the children were benefitting from the stability of their current foster placement. A clinical psychologist recalled his diagnosis of Denesia as having an adjustment disorder complicated by substance abuse and dependency and a personality disorder with antisocial and narcissistic features. The psychologist deemed her outlook as "not good" due to the large number of drastic changes that Denesia would need to make and the difficulties she was having making any progress. As a result, he recommended against returning the children to her care until one to two years of stability could be demonstrated.

A family services specialist for DHHS echoed this assessment with her own. She described a plethora of resources that had been provided to Denesia but had not netted any "sufficient progress" towards achieving the goals laid out in the case plan. The specialist also explained that the children had been in out-of-home placements since removal in 2013 and that nothing but fully supervised visits could have been recommended in the meantime. The specialist concluded that Denesia was not in a position warranting reunification.

Consequently, on January 25, 2016, the Kearny County Court terminated Denesia's parental rights with respect to her minor children and she filed this appeal alleging that the decision of the court was not in keeping with the law. Denesia asserts that the evidence does not demonstrate clearly and convincingly that grounds for termination existed, nor that termination was in the children's best interests. Specifically, Denesia points out that the lower court did not provide a particular statutory ground for termination, but only identified habitual drug use as a primary concern.

In its review, the Court of Appeals examines whether the evidence at the hearing demonstrated sufficient statutory grounds for termination under § 43-292(2), (4), & (6). The Court initially sidesteps the appellant's argument regarding substance abuse and § 43-292(4) and focuses on § 43-292(6) which allows termination if the juveniles involved are as described in § 43-247(3)(a) where reasonable efforts to preserve and reunify the family have failed to correct the conditions leading to the determination.

To this end, the Court recalls that the children had not been returned home since their removal and that, despite being given ample opportunities and services, the conditions which had warranted removal initially had not been corrected. The Court also cites Denesia's repeated law violations as counter to the DHHS case plan that required her to resolve legal issues, become gainfully employed, have positive visitations with her children, as well as provide safe and adequate housing for them. Instead, Denesia was incarcerated, had no steady job, did not submit to drug screens required for visitation resulting in no face-to-face interactions with her children for more than a year, and wished to house them in a small trailer with a relative who had been previously convicted of sexual assaulting a minor.

Turning back to the issue of substance abuse, the Court states that Denesia was ordered to abstain from drug use and ordered to undergo drug screens. However, she: left the halfway house early without fully completing her programming; stated she had no intention of returning to complete that program; was arrested and found in possession of methamphetamine; did not consistently participate in counseling and support groups; and has not demonstrated an ability to achieve long periods of ?stable functioning in her work, relationships, finances, or emotions.?

The Court concludes that Denesia had ample time to work towards these goals and reasonable efforts to preserve and reunify family have failed. Thus, the Court finds that the State proved, by clear and convincing evidence, that grounds for termination existed under § 43-292(6).

The Court also considers Denesia?s assertion that termination is not in the best interests of her children, arguing instead that her children?s best interests are served by having a relationship with her and there is no evidence that she is an unfit parent.

In its review, the Court cites *In re Interest of Jahon S.* which outlines a presumption that a child?s best interests lie with maintaining a relationship with their parent can be overcome when the State is able to prove that the parent is unfit. 291 Neb. 97 (2015). The Court uses the concept of lacking parental fitness provided in *In re Interest of Jahon S.*: ?a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which caused, or probably will result in, detriment to a child?s wellbeing.? *Ibid.*

The Court then concludes that Denesia lacks parental fitness, which is evidenced by her choice to use and possess drugs, as well as having committed other crimes that resulted in her incarceration. Her refusal to undergo drug screening, failure to complete aftercare, and nonparticipation in counseling are other choices Denesia had made which reflect poorly on her parental fitness. Moreover, at the time of her termination hearing Denesia was awaiting sentencing on two additional criminal charges and the revocation of her probation.

With this revelation, the Court considers the assessments given by therapists to the lower court in order to determine the needs and interests of the children in this case. Those witnesses testified that the children needed permanency, stability, and structure. When assessing the best interests of the child, progress in developing better parent skills can be taken into consideration by the court to determine if a beneficial relationship has resulted. In *re Interest of Eden K.*, 14 Neb. App. 867 (2006). Additionally, courts can use the evidence of progress itself to determine whether the parent is willing or able to rehabilitate themselves in a reasonable amount of time. In *re Interest of DeWayne G., Jr.*, 263 Neb. 43 (2002).

The Court concludes that there is little to no evidence that Denesia is willing to rehabilitate herself and this has had a negative impact on her ability to create a meaningful relationship with her children. Therefore, the Court of Appeals finds there was clear and convincing evidence to support a finding that termination of Denesia's parental rights is in the children's best interests and affirms the order of the county court.
