

In re Interest of Lizabella R.

Caselaw No.

A-17-401

Filed on

Tuesday, January 9, 2018

Summary: Elizabeth L., the mother, appeals from an order of the Separate Juvenile Court of Douglas County terminating her parental rights to her children, Lizabella and Jose. Lizabella's father's rights were terminated and Jose's father is relinquishing his rights.

In 2015, a petition was filed against Elizabeth on behalf of Lizabella. At that time, Lizabella was living with her aunt and aunt's boyfriend. She was found unresponsive and unclean. Elizabeth was incarcerated at the time on federal drug charges. Lizabella was placed in foster care.

Elizabeth was released, awaiting sentencing. At this time, she gave birth to Jose, who was not immediately removed from her care. The Court adjudicated Elizabeth as to Lizabella and also went to disposition soon after, but allowed her unsupervised visitation with the ability to transition to overnight visits, and ordered her to comply with her federal probation.

In May 2016, Elizabeth was found guilty on federal drug charges and sentenced to two concurrent 10-year prison sentences. Following her sentence, a petition was filed on behalf of Jose, who was removed and placed into foster care. Elizabeth was also adjudicated as to Jose. In November of 2016, the State filed to terminate Elizabeth's parental rights and the trial was held in March of 2017.

At trial, caseworkers testified as to the many services Elizabeth completed, including addressing Lizabella's special medical needs ? she is blind, immobile, has permanent brain damage, and is fed through a ?G-tube.? Lizabella consistently visited, as she could. The caseworker testified that the only thing that made her an inappropriate parent was that she was incarcerated.

The Court found by clear and convincing evidence that the State had met its burden and terminated Elizabeth's rights.

Elizabeth assigns that the Court erred in finding her children to come within the meaning of § 43-292(2) and finding her children come within the meaning of § 43-292(6) and determining that it would be in her children's best interests to terminate her parental rights. An Appellate Court reviews a Juvenile Court's findings de novo. *In re Interest of Noah B. et al.*, 295 Neb. 764 (2017).

The Court here addresses each child separately. As to Jose, the Court finds that there was plain error in finding that Jose came within the meaning of § 43-292(7), as he had only been in care for 9 months at the time of the hearing. As to § 43-292(2), the Court here finds that incarceration alone cannot constitute a ground for termination. See *In re Interest of Kalie W.*, 258 Neb. 46 (1999). Because there was no other evidence as to Elizabeth's neglect of her children in the absence of her incarceration, the Court cannot find that her incarceration justifies a TPR. The Court finds that the State did not find by clear and convincing evidence

that Elizabeth neglected Jose pursuant to § 43-292(2). And, as to § 43-292(6), the Court here finds that there was not clear and convincing evidence that reasonable efforts failed to correct the conditions leading to Jose's adjudication, and in fact that she was a very good caretaker when not incarcerated. Because the Court finds that there is no ground for TPR of Jose, it does not address whether it would be in his best interests to terminate Elizabeth's rights.

As to Lizabella, the Court finds that there is clear and convincing evidence as to § 43-292(7) in that Lizabella was in care for 15/22 months and so does not address the other statutory grounds for TPR and instead addresses whether it is in Lizabella's best interests to terminate Elizabeth's rights. To find that it is in her best interests, the State must overcome the presumption that fit parents act in the best interests of their children. *In re Interest of Jahon S.*, 291 Neb. 97 (2015). The law does not require perfection of a parent. See *In re Interest of Aaron D.*, 269 Neb. 249 (2005). Here, evidence was presented that Elizabeth participated in numerous services and was a good caretaker. Therefore the Court finds that it is not in Lizabella's best interests to terminate Elizabeth's parental rights.

The order of the Juvenile Court is reversed and remanded for further proceedings.
