

In re Interest of Steven S., et al

Caselaw No.

A-18-1183 through A-18-1185

Filed on

Tuesday, December 10, 2019

Summary:

Both parents, Steven, Sr. and Jennette, appeal the Scotts Bluff County Court order which terminated their parental rights from three of their children.

The children involved in the instant case came into care on or about October 6, 2017, however the family had an extensive history with the Department that dates back to 2000 that involved two older children who are not a part of this case plus a niece, who Steven, Sr., was convicted of sexually abusing. Steven, Sr., and Jennette's parental rights were terminated as to those two older children. The three children (Steven, Jr., Genevive and Aodhan) in this case, also have an extensive history with the Department dating back to 2013. Steven, Jr., Genevive and Aodhan were found to be within the meaning of § 43-247(3)(a), due to the parents neglect (medical care, dirty home, not bathing the children). At the time of removal it was noted that the parents were still receiving assistance from the Department based on previous issues of neglect. The deputy who entered the home indicated that "this [w]as one of the worst homes he has been in while working for the Sheriff's Department." Both parents ended up admitted to allegations in an amended petition which was filed in November 2017. During the life of the case both parents served time in jail for various offenses, including child abuse for Jennette and writing bad checks for Steven, Sr.

A disposition hearing was held on January 9, 2018. The case plan, developed by the Department, included directives for both Steven and Jennette to participate in a psychological evaluation and a parenting assessment; to take steps to maintain a clean and safe home environment, including working with a family support worker; and to attend supervised parenting time with the children and demonstrate age-appropriate supervision for each child. Both Steven and Jennette had participated in a psychological evaluation and a parenting assessment prior to the dispositional hearing. At a review hearing in April 2018, Steven and Jennette were ordered to "follow the recommendations of the comprehensive parental capacity evaluations." These recommendations included participating with individual and family counseling and medication management. At a July 2018 review hearing, the juvenile court changed the permanency goal from reunification to adoption with a concurrent goal of reunification. Steven and Jennette were again ordered to comply with the Department's case plan. On July 20, 2018, the State filed motions to terminate Steven's and Jennette's parental rights. In the motions, the State alleged that termination was appropriate pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (9) (Reissue 2016). The State also alleged that termination of Steven's and Jennette's parental rights was in the best interests of the children.

The termination hearing was held on September 27, 2018. At the hearing, the State called six witnesses to testify, including two Department caseworkers who had been assigned to the family's case, the clinical psychologist who conducted a psychological evaluation and a parenting assessment for both Steven and Jennette, Genevive and Aodhan's therapist, and Genevive and Aodhan's foster mother. The State's witnesses largely testified regarding

Steven's and Jennette's failure to make any progress toward becoming appropriate parents for the children. Neither Steven nor Jennette fully took advantage of the rehabilitative services they were offered and ordered to complete. The witnesses also testified regarding the children's severe behavioral problems and the progress the children have made while living apart from their parents in foster care. There was also evidence given regarding possible sexual abuse of Genevive by Steven, Sr. In addition to the State's witnesses, Jennette called three witnesses to testify on her behalf. Each of these witnesses indicated that Jennette appeared to be an involved mother who had a bond with her children.

The Court found that there was sufficient evidence to demonstrate that Steven's circumstances have remained virtually unchanged from the time of the children's removal in October 2017 to the time the State filed its motion to terminate his rights in July 2018. In fact, in some respects, Steven's circumstances have declined. The Court also noted that Steven had a lengthy history of involvement with the Department and the juvenile court, but he had not yet demonstrated an ability to maintain any sort of long-term progress toward becoming an adequate parent even with years of assistance. Therefore the Court found that the juvenile court did not err in finding that termination of Steven's parental rights was warranted pursuant to § 43-292(2). The Court also found that it was in the children's best interest to terminate Steven's rights - The children should no longer have to wait for Steven to put them ahead of his own needs and wants. They should no longer have to wait for Steven to decide to make improvements to his current situation.

Before the Court addressed Jennette's portion of the appeal they first addressed the cross-appeal process, the related court rules regarding the process as well as relevant case law. This was due to the fact that Jennette's brief did not completely adhere to the Nebraska Court Rules on Appellate Practice.

In Jennette's case the Court, like in Steven's, did find sufficient evidence to demonstrate that she also made very little progress toward reunification with her children from the time of their removal in October 2017 to the time the State filed its motion to terminate her parental rights in July 2018. In light of the evidence at trial the Court found that Jennette had demonstrated an inability to provide the children with safety and stability. Jennette also could not provide the children with safe and appropriate housing, she was not employed and she had chosen to live with someone who did not have a positive relationship with the children. The Court also highlighted that despite the numerous services offered to Jennette by the Department, both during the current proceedings and over the last decade, Jennette had demonstrated an unwillingness to take the necessary steps to improve her parenting abilities. Therefore the Court agreed with the juvenile court's finding that the State presented sufficient evidence to demonstrate that Jennette had substantially and continuously or repeatedly neglected and refused to give Steven Jr., Genevive, and Aodhan necessary parental care and protection pursuant to § 43-292(2). The Court also found that it was in the children's best interest to terminate Jennette's rights - Jennette is currently not a fit parent, and given her lengthy history of involvement with the Department, it appears that she will not become a fit and capable parent any time in the near future.

Arterburn, Judge, drafted a concurring opinion that addressed the seemingly rampant issue of cross-appeals not complying with the rules in the last few years. He addressed the relevant case law involved and his opinion on how the courts should handle the issue going forward.
