

In re Interest of Leyton C. and Landyn C.

Caselaw No.

No. A-19-423

Filed on

Tuesday, March 3, 2020

Summary:

Madison C., the mother, appeals the order of the Separate Juvenile Court of Lancaster County terminating her parental rights to her children, Leyton and Landon. The Court of Appeals finds that the state did not prove that terminating Madison's rights was in the best interests of the children and so reverses and remands.

Madison, who is now 23, is the mother to Leyton, born in 2015, and Landon, born in 2017. The father has relinquished his rights. A petition was filed in July of 2016 alleging that Leyton lacked proper parental care in that she left him with her mother without making provisions, and also tested positive for methamphetamine. Madison admitted to the allegations and Leyton was adjudicated to be within the meaning of Neb. Rev. Stat. § 43-247(3). Landyn was also adjudicated after his birth. Madison had her children returned to her in January of 2018, but in July they were removed again.

In October of 2018, the State filed a petition to terminate Madison's rights under 43-2929(2), (4), (6), and (7) and that TPR would be in the best interests of the children. The hearing was held over several days and detailed the severe domestic violence Madison suffered during a relationship with a man who is now in jail. During the relationship, she did not participate in services. After the relationship ended, she began therapy with a focus on severe PTSD. During this time, her children were returned to her. Unfortunately, her therapist went on maternity leave and she did not get placed in therapy for some time while her children were home. She relapsed on methamphetamine and also started a relationship with a man with a criminal history with whom she used drugs. Her children were removed again and she started seeing a new therapist. This therapist also recommended substance use treatment. Both therapists testified at the hearing and her current therapist felt she would be capable of parenting and she had a "good" prognosis. The visitation supervisor also testified that she had really good visits and the children were happy to see her. A domestic violence expert testified that Madison's journey to recovery is typical after severe abuse. However, the caseworker continued to recommend termination.

The Juvenile Court terminated Madison's rights after the hearing.

Madison appeals based on the statutory grounds for TPR and that TPR was in the best interests of her children.

The standard of review for juvenile cases is de novo on the record.

The Court here takes up whether termination is in the best interests of the children. In a TPR, the State must prove by clear and convincing evidence that termination is in the children's best interests. In re Interest of Rebecka P., 266 Neb. 869 (2003). Children cannot linger in foster care waiting for their parents to be able to parent. In re Interest of Destiny A., et al., 274

Neb. 713 (2007). However, the parent child relationship is constitutionally protected and the rebuttable presumption is that the child is best served by reuniting with the parent. In re Interest of Xavier H., 274 Neb. 331 (2007).

The Court finds that looking at the situation in light of Madison's age and the abuse she suffered, she has made progress and established a good relationship with her children. Since the second removal, Madison has completed IOP and outpatient treatment, she continued to attend therapy, group, and dv support and her therapist believed she could parent. In considering the context in which she is trying to parent, the Court here finds that TPR came too quickly. See In re Interest of Chloe C., 20 Neb. App. 787 (2013). Because of her trauma and young age, she needs more time to rehabilitate. She also has a strong bond with her children.

Because of the facts, the Court finds that the State did not prove by clear and convincing evidence that TPR is in the best interests of the children and so reverses and remands.

Judge Pirtle dissents, giving weight to the trial court's observation of the witnesses. In re Interest of Jordana H. et al., 22 Neb. App. 19 (2014).
