

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF AKOL M. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE INTEREST OF AKOL M. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

NYAROUT N., APPELLANT.

Filed March 20, 2012. No. A-11-594.

Appeal from the Separate Juvenile Court of Douglas County: CHRISTOPHER KELLY,  
Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Zoë R. Wade for appellant.

Donald W. Kleine, Douglas County Attorney, and Jennifer C. Clark for appellee.

INBODY, Chief Judge, and MOORE and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Nyarout N. appeals from an order of the separate juvenile court of Douglas County, Nebraska, terminating her parental rights. Nyarout alleges the juvenile court erred in finding clear and convincing evidence that (1) reasonable efforts have failed to correct the conditions leading to adjudication, (2) termination was in the children's best interests, and (3) Nyarout substantially and continuously abused or neglected her children under Neb. Rev. Stat. § 43-292(2) (Cum. Supp. 2010). For the reasons that follow, we affirm.

## BACKGROUND

Nyarout is the biological mother of the minor children: Akol M., born in June 1998; Amuk M., born in February 2001; and Tong M., born in January 2002. On September 28, 2008, the State filed a petition alleging Akol lacked proper parental care by reason of the faults or habits of Nyarout and came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) in that (1) Akol had been diagnosed with perinatally acquired human immunodeficiency virus infection, (2) medical professionals involved in Akol's case recommended a specific medication regimen, (3) Nyarout had difficulty providing the prescribed medication to Akol, (4) Akol failed to thrive, and (5) due to those allegations, Akol was at risk of harm. At the adjudication, Nyarout denied the facts as alleged and the court found that reasonable efforts had been made to eliminate or prevent the removal of Akol from Nyarout's home, but that it would be contrary to the health and safety of Akol to return him home. The court found it would be in the best interests of Akol to remain in the temporary care of the Nebraska Department of Health and Human Services (DHHS) until further order of the court.

On November 5, 2008, Amuk and Tong were removed due to allegations that Nyarout was using improper discipline, including an observation of a family support worker that Amuk was tied up by Nyarout, and that she was verbally abusive toward all three children. On December 8, Nyarout admitted that Akol was diagnosed with failure to thrive and that a family support worker had observed Amuk tied up by Nyarout.

On February 13, 2009, the court ordered Nyarout to maintain safe, stable, and adequate housing for herself and the children; obtain and maintain a legal source of income; complete a court-ordered psychological evaluation; participate in and successfully complete a parenting education program; participate in English as a second language (ESL) classes; cooperate with visitation and family support workers; and submit to random urinalysis testing. During that period, she was allowed reasonable rights to supervised visitation arranged through DHHS. Nyarout was also ordered to participate in individual therapy.

The State's motion for termination of parental rights alleged the minor children came within the meaning of § 43-292(2), because Nyarout had substantially and continuously or repeatedly neglected and refused to give the minor children the necessary parental care and protection; § 43-292(6), because reasonable efforts to preserve and reunify the family failed to correct the conditions that led to the determination that the children were within the meaning of § 43-247(3)(a); and § 43-292(7), because the minor children had been in out-of-home placement for 15 or more months of the most recent 22 months. The State's motion also alleged that termination of Nyarout's parental rights was in the best interests of the minor children. The hearing on the State's motion began on January 3, 2011; was continued on March 10 and 31 and May 19; and concluded on May 22.

Shelly Hug, an initial assessment and family specialist for DHHS, testified regarding her duties in relation to the family. She became the case manager in September 2008 and worked to identify culturally appropriate ways to work with the Sudanese family. She said that she had no trouble identifying these services and that the focus was family preservation. This included an overnight worker at the home whenever the children were present and assistance getting Nyarout to and from work. The family's status changed when Akol was removed from Nyarout's care in

September 2008 after his physician filed an affidavit detailing concerns regarding Akol's health and care in the home. Shortly thereafter, Amuk and Tong were removed from Nyarout's care. The children never returned to their mother's care throughout the duration of the case. Hug testified that services were continually provided to Nyarout and that she and the children were never denied services. These services included providing visitation, providing transportation, paying for ESL classes, paying for parenting and nutrition classes, providing bus tickets, helping with immigration paperwork, assisting with rent, and receiving referrals for therapeutic services. The department also provided a family support worker to help Nyarout find housing, obtain food stamps, and address bug problems in the home, as well as teach Nyarout to give Akol the appropriate medication and help monitor nutrition.

Anna O., the foster parent for Akol, Amuk, and Tong, testified for the State. Anna began working with the family as an in-home family therapist in September 2009. Anna was assigned to provide family support services to Nyarout and the children for 20 hours per week and to provide visitation and parenting time for 15 hours per week. She became the children's foster mother on July 1, 2010. Anna worked with Nyarout to address court requirements, including finding housing, taking parenting classes, taking an ESL course, completing a psychological evaluation, obtaining a legal source of income, and completing a nutrition education course. Anna transported Nyarout to and from these courses and helped Nyarout to obtain her "green card." She is now a permanent resident. Nyarout completed a nutrition education course and a parenting course. However, Nyarout had trouble completing the court's requirements regarding housing, therapy, a legal source of income, and ESL courses.

Anna transported Nyarout to the Omaha Housing Authority, Creighton Apartment Complex, and other private places. Nyarout was accepted to live in Restored Hope's apartments, but Nyarout refused because she did not want to be subject to a curfew and she would not be allowed to have guests. Nyarout participated in the Family Housing Office's self-sufficiency training, but she was evicted from the Omaha Housing Authority's home and was not able to continue the program. Nyarout was evicted in April or May 2010 because she kept numerous guests in her house, some of which slept on the floor. When she told her guests they were no longer welcome to stay, someone fired gunshots in the home, leaving four gunshot holes in Amuk's bedroom window. Nyarout was offered housing in the Creighton apartments, but could not provide a legal source of income. The complex ran her credit history and determined she was not eligible for private housing. Anna introduced Nyarout to the person in charge of Lutheran Family Services refugee housing, but Nyarout declined to attend the scheduled appointment in June 2010 to secure housing.

Though Nyarout participated in a psychological evaluation in February 2010, Nyarout did not consistently attend therapy and it was discontinued. Nyarout also participated in one quarter of the ESL course, from November to December 2009, but Anna testified Nyarout did not return for the second quarter because she believed she did not need it to parent her children. Nyarout testified that Anna refused to transport her once Anna learned she could not stay with Nyarout during the course, because it was too far away to transport her and come back to pick her up when the course was over.

Anna testified that Nyarout also had trouble complying with visitation requirements and connecting with her children. Anna stated Nyarout inconsistently attended her scheduled

visitations, attending approximately 50 percent between September 2009 and February 2010. Anna stated that Nyarout provided no reason why she could not attend and that the visitation locations had to be moved several times. First, the visitations were scheduled to take place in Nyarout's home. However, there were too many visitors in Nyarout's home so the sessions were moved to the public library. Anna reported Nyarout required constant redirection because she was constantly falling asleep. The sleepiness was so severe that Anna was concerned, and Nyarout was tested for "sleeping sickness," a disease transported by tsetse flies in Africa. Eventually, Anna requested the visitations be moved again, to the Lutheran Family Services office, because the library environment did not help keep Nyarout awake. Anna's records did not mention Nyarout's sleeping during visits, and Anna testified that she did not document it because she wanted to help Nyarout get her children back.

Alberta Hassett, a licensed mental health therapist, testified for the State. She was familiar with the family and had met with Akol and Amuk separately to address issues with stealing, noncompliance with rules, trust issues, and outbursts of anger and violence. Hassett also testified that family therapy occurred from November 2009 to July 2010. The sessions were originally scheduled to take place in Nyarout's home, but during one visit, the family support worker was forced to usher the children out of the home and back to the foster home because there were numerous people drinking in Nyarout's home. Hassett expected to conduct 32 sessions, but conducted only 19, because Nyarout canceled the other sessions due to unavailability. The family sessions terminated in July 2010, because Hassett did not believe Nyarout had progressed any closer to regaining custody, the visits and therapy sessions were not consistent, and Hassett believed this hindered progress with the children. Hassett testified the children feared for their mother's welfare when she did not make scheduled visitation or therapeutic sessions. She stated the children were aware of the requirements to be completed by Nyarout, and her lack of progress in satisfying them, and the children had lost their expectations for returning home to her.

Tale Depko, a licensed medical health practitioner specializing in individual and family therapy, also testified. Depko met with Nyarout to conduct a pretreatment assessment and began meeting with her for individual sessions in March and April 2010. Only four sessions were completed before Depko discharged Nyarout for continuous cancellations and no-shows. Nyarout contacted Depko in August 2010 and expressed an interest in individual sessions, but a few weeks later, Nyarout's caseworker e-mailed Depko to say Nyarout was not interested in participating. In December 2010, Nyarout contacted Depko again to initiate therapy sessions, but Nyarout did not have Medicaid and therefore no funding was available for the sessions.

Michelle Ball, a family in-home specialist with family support, also testified about how she assisted Nyarout in complying with court orders, including employment issues and child development. Ball said her services consisted of family support 2 hours a week on Tuesdays and providing visitation with the children for 4 hours on Saturdays. Nyarout and Ball decided on the schedule together, and Nyarout was responsible for determining how to spend her family support time. Ball said that Nyarout was focused on finding employment and that this included driving around and filling out applications either at places of employment or at the library. Ball stated that she normally assisted her family support clients in filling out "a lot more" applications but that Nyarout was on her cellular telephone every time they attempted to fill out an application.

As a result, the total number of applications submitted was low. Ball testified that Nyarout has not made progress in regard to family support. She either canceled or did not show for approximately half of her weekly family support time on Tuesdays, despite Ball's driving to pick her up on time. Anna also testified that she transported Nyarout to numerous local businesses but that Nyarout was unable to secure a legal source of income.

Ball testified that Nyarout did not make progress in regard to parenting during supervised visitation. Nyarout had scheduled visitation every Tuesday, Thursday, and Saturday, but the schedule was modified to Saturday only because Nyarout attended only about 60 percent of her scheduled time. The children became agitated or angry when Nyarout would cancel or fail to show up for visitation. Amuk attempted to run away a few times when she learned Nyarout would not be keeping her scheduled visitation. When the schedule was modified, Nyarout was required to call 24 hours before a visit, and again 2 hours before a visit to confirm that she would attend. Nyarout was provided verbal and written notice of this change, and Ball testified that she confirmed Nyarout understood the arrangement. Ball stated that Nyarout never said she did not understand the new policy. Even with the change from three visits per week to one visit, Nyarout failed to make any appointments in October, missed one in November, and missed three in December, mainly due to not calling to confirm by the required time.

When visitation did occur, Ball stated Nyarout did not engage her children in play; she instead watched them or inquired about school or homework. Ball encouraged Nyarout to become more involved with the children, but this was unsuccessful. Ball said overall working with Nyarout was difficult. When Ball picked up Nyarout, she had to find out where Nyarout had been staying or travel to two or three locations to find her.

Nyarout was the only witness to testify in her behalf, on June 2, 2011. Nyarout stated she was currently residing with a cousin in his two-bedroom apartment, which would not be large enough to accommodate all of the children. Nyarout stated that she found a large home to accommodate herself and the children, but that she was unable to secure it because they required her children to also reside there. Nyarout never provided the name of the apartment complex, and she did not give any further information. Nyarout stated she had secured a job and worked there for the previous 5 months. She said her boyfriend provided her with transportation and also provided transportation to visitation with the children. Nyarout stated she receives financial support from her family in Sudan, in the amount of \$500 per month, and more can be sent if needed.

The court issued an order and notice on June 8, 2011, terminating the parental rights of Nyarout to Akol, Amuk, and Tong. The court determined that the three children came within the meaning of § 43-292(2), (6), and (7) by clear and convincing evidence and that it was in the best interests and welfare of the minor children that the parental rights of Nyarout be terminated. The court stated the children should remain in the custody of DHHS for adoptive planning and placement.

Nyarout timely appealed.

#### ASSIGNMENTS OF ERROR

Nyarout alleges the juvenile court erred in finding clear and convincing evidence that (1) reasonable efforts have failed to correct the conditions leading to adjudication, (2) termination

was in the children's best interests, and (3) Nyarout substantially and continuously abused or neglected her children under § 43-292(2).

#### STANDARD OF REVIEW

Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. *In re Interest of Leland B.*, 19 Neb. App. 17, 797 N.W.2d 282 (2011). The State must prove these facts by clear and convincing evidence which is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of the fact to be proven. *Id.*

#### ANALYSIS

In the instant case, the separate juvenile court of Douglas County found the State proved the facts by clear and convincing evidence and terminated the parental rights of Nyarout for Akol, Amuk, and Tong under § 43-292(2), (6), and (7). Upon review of the evidence, we find that Akol has been in an out-of-home placement since September 2008 and that Amuk and Tong have been out of the home since November 2008. The children have not returned to the custody of Nyarout since removal, meaning the children have been out of the home for at least 15 of the most recent 22 months. This is sufficient to terminate the parental rights of Nyarout under § 43-292(7), if the termination is found to be in the children's best interests. *In re Interest of Leland B., supra.*

The evidence shows that services were continually provided to Nyarout throughout the pendency of this case, but that little progress was made. Services included providing visitation, providing transportation, paying for ESL classes, paying for parenting and nutrition classes, providing bus tickets, helping with immigration paperwork, assisting with rent, and receiving referrals for therapeutic services. DHHS also provided a family support worker to help Nyarout find housing, obtain food stamps, and address bug problems in the home. In addition, DHHS workers provided training to Nyarout to help her monitor nutrition and give Akol appropriate medication. Despite all of the assistance provided, Nyarout was unable to fulfill the court's requirements.

A de novo review of the record reveals that Nyarout was able to complete the parenting and nutrition courses and that she obtained her green card. However, she was unable to fulfill the court's other requirements, including attending therapy sessions and complying with the visitation schedule, obtaining a legal source of income, obtaining adequate and stable housing, and completing an ESL course.

Nyarout asserts she was unable to comply with the scheduled visitation, largely because of the requirement that she check in 24 hours prior to the visit and again 2 hours prior to the visit to confirm she would attend. While this may seem like a hardship, it was put in place because

Nyarout consistently failed to attend visitation with her children even though she was provided transportation to and from the visits. Nyarout's original visitation was in her home, but the home visits could not be continued due to multiple guests drinking around the children. Nyarout did not adhere to the visitation schedule, and eventually it was cut from 3 days down to 1 day per week. Anna testified that when the visits moved to the public library because the home was unsuitable, Nyarout was unable to stay awake to engage with the children. The visits were then moved to the Lutheran Family Services office in an attempt to keep Nyarout awake. Ball also reported that Nyarout did not engage in play with her children, but that she just watched them or asked about school. When Nyarout did not attend visitation, the evidence shows the children became agitated and acted out.

The evidence also shows that Nyarout did not comply with the court orders regarding therapy. While she participated in a psychological evaluation, she did not consistently show up for family therapy or make significant progress when she did attend. Nyarout's individual sessions with Depko were discontinued for continuous cancellations and no-shows, and although she expressed an interest in starting again, she did not follow through. The family sessions with Hassett were no more successful: of the 32 weekly sessions expected, Nyarout attended only 19 and canceled the other sessions due to unavailability, but provided no explanation. In addition, the sessions were originally conducted in Nyarout's home but they were unable to continue at that location because numerous guests were drinking in Nyarout's home when the children and family support worker arrived for one session. Eventually, the family sessions terminated in July 2010 because Hassett did not believe Nyarout progressed any closer to regaining custody and this hindered progress with the children. Hassett said the children were aware of the requirements Nyarout was to complete and her lack of progress in satisfying them. Hassett said the children had lost their expectations for returning to Nyarout's care.

There is evidence that Nyarout was unable to secure a legal source of income. Ball testified that Nyarout chose to focus on applications during her family support time, but that she did not use that time effectively and was constantly talking on her cellular telephone. As a result, the total number of applications submitted was low. At one point, Nyarout stated she had a "call-in job," but she did not provide the necessary documentation of employment. Both Anna and Ball testified that they transported Nyarout to local businesses to complete applications, but that Nyarout was not hired.

There is some dispute regarding the reason Nyarout was unable to complete the ESL course. Nyarout testified that she did not have transportation, but Anna stated Nyarout refused to continue the courses because she did not need them to parent her children.

There is also some dispute regarding housing because Nyarout testified that she was able to secure an apartment but the landlord would not let her live there without the children. She also stated that she requested Renae Hinrichs perform a walk-through of a three-bedroom apartment but that Hinrichs never showed up. Hinrichs testified that she did not perform the walk-through, because Nyarout did not secure a particular apartment and she would be placed on a waiting list for an apartment in the complex. However, the evidence does show that Nyarout had transportation to look for housing and that she refused a suitable home in Restored Hope's apartment because she did not want to be subject to a curfew or limited in the ability to entertain guests. She also was evicted from the Omaha Housing Authority's home because she kept

numerous guests in her home. These guests were directly related to a violent incident occurring in the home which left four bullet holes in a bedroom window of Nyarout's accommodations.

Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

In this case, a review of the evidence reveals Nyarout consistently failed to comply with court orders, despite continued efforts by the State to provide services and support. Where the evidence is in dispute, we must give weight to the fact that the lower court observed the witnesses and came to the conclusion that it was in the best interests of the minor children to terminate Nyarout's parental rights. The evidence does show that Nyarout has not demonstrated a commitment to family therapy and that she continuously failed to make time for her children. The children are negatively affected by this behavior. Further, the evidence shows Nyarout cannot provide a safe and stable environment for her children, and in light of these facts, we find there is clear and convincing evidence that termination of Nyarout's parental rights is in the best interests of the children.

#### CONCLUSION

The separate juvenile court of Douglas County did not err in finding one or more of the statutory grounds listed in § 43-292 has been demonstrated by clear and convincing evidence. It is in the best interests of the minor children to terminate the parental rights of Nyarout.

AFFIRMED.