

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF BRUCE N.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
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IN RE INTEREST OF BRUCE N., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

DEAADA N., APPELLANT.

Filed September 6, 2011. No. A-11-256.

Appeal from the Separate Juvenile Court of Lancaster County: ROGER J. HEIDEMAN,  
Judge. Affirmed.

Brittani Lewit, of Legal Aid of Nebraska, for appellant.

Shellie D. Sabata, Deputy Lancaster County Attorney, for appellee.

IRWIN, CASSEL, and PIRTLE, Judges.

PIRTLE, Judge.

**INTRODUCTION**

Deaada N. appeals from an order of the separate juvenile court of Lancaster County terminating her parental rights to her son, Bruce N. Deaada asserts that there existed a reasonable alternative to termination of her parental rights. Because we find no error in the court's order, we affirm. 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.

**BACKGROUND**

Bruce was born in September 2010. The following day, a children and family specialist with the Nebraska Department of Health and Human Services (DHHS) executed an affidavit in support of an order for temporary custody. The affidavit asserted that Deaada had previously given birth to three other children in 2007, 2008, and 2009. The affidavit also asserted that all of

these children had been the subject of neglect proceedings and placed in the custody of DHHS, that Deaada had eventually signed voluntary relinquishments of them prior to their ever being placed back into her home, and that Deaada had not resolved or corrected the problems leading to the adjudication of those three children. An ex parte order for temporary custody was filed on September 30. Bruce has never been in Deaada's custody.

On October 1, 2010, the State filed a petition seeking termination of Deaada's parental rights to "Baby Boy" N. The petition, later amended to reflect Bruce's name, alleged that none of Deaada's three previous children had ever resided with her and that she has failed to demonstrate an ability to provide a safe and stable home environment. The petition asserted three grounds for termination of Deaada's parental rights: (1) that she had substantially and continuously or repeatedly neglected and refused to give Bruce, or a sibling, necessary parental care and protection; (2) that she is unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period; and (3) that she has subjected Bruce to aggravated circumstances. The petition further alleged that termination of Deaada's parental rights was in Bruce's best interests. A guardian ad litem was appointed for Bruce, and legal counsel and another guardian ad litem were appointed for Deaada on October 7.

At the March 2011 hearing on the petition to terminate Deaada's parental rights, Cynthia Cox, a social services worker for DHHS, testified that she had worked on the cases involving all three of Deaada's other children. Cox recalled that, before Deaada had relinquished her rights to those children, Deaada would bring supplies such as bottles and blankets on her visits with them. However, the supplies sometimes could not be used because the bottles would contain curdled milk and the blankets were grimy. Cox had also been concerned with Deaada's interactions with the infants. She described Deaada as being unable to grasp how to console a crying infant and said that Deaada would often exacerbate the situation by, for example, putting a bottle in the child's mouth, taking it out, and putting it back in again. According to Cox, Deaada would then interpret the child's crying as its attachment to her or that it was missing her.

Cox stated that although Deaada was sometimes employed at fast-food restaurants as well as at some assorted odd jobs, she was never able to maintain employment for more than a couple of weeks and sometimes did not last the day. Cox stated that Deaada might be eligible for some types of government aid but often would not make it to scheduled appointments to provide the necessary documentation despite being provided assistance with transportation. Cox said DHHS spent over \$2,000 in cab vouchers before realizing that Deaada was abusing the vouchers by having the cabs take her places other than those related to her case plan. Cox testified that Deaada was also unable to maintain a residence for any stable period of time, with 4 months at one address the longest stay that Cox was aware of. She stated that Deaada was typically asked to leave a residence by a landlord or roommate and that she had stayed in the past at such places as the City Mission and Lydia House, both of which had asked her not to return.

Cox testified that Deaada's case took more of her time than any other case she was assigned. She stated that she was concerned about Deaada's behaviors, including her ability to listen and accept responsibility for her actions. She said that Deaada tended to rant, and did not track verbally or mentally, and that Deaada did all the talking during their interactions, changing the subject frequently and becoming fixated on a certain subject. Cox testified that there had

been a number of evaluations performed on Deaada but that Deaada had never successfully completed any of the services recommended in the evaluations, including individual therapy goals, although there had been short periods of time in which it appeared that Deaada was engaged and working on her mental health problems.

Cydney Volker is a family permanency specialist with KVC Behavioral Health, and her duties include arranging services for families that become involved with DHHS. Volker testified that Deaada is unemployed and that she has been banned from some homeless shelters. Volker was quite concerned about Deaada's feeding of Bruce during visitations. When Bruce was a newborn, he received 2 or 3 ounces of formula in a feeding, but as he grew, he required 4 to 6 ounces. Volker stated that Deaada had to be constantly redirected to feed Bruce the increased amount of formula but that she would then move the bottle around in his mouth so that he could not latch on to it. Volker noted that Deaada tended to become fixated on purported medical problems of Bruce's, such as his spitting up or Deaada's concern that one leg was longer than the other, despite assurances from doctors and support workers that Bruce was fine.

Volker acknowledged that Deaada would show affection toward Bruce during visits, telling him she loved him and kissing him, but that she would also sometimes go off into another room and slam the door when angered by support workers, leaving Bruce in the care of whoever was there.

Dr. Chris Rathburn, a psychologist, examined Deaada over the course of several appointments in December 2010 and January 2011. A report authored by Rathburn, and rendered with a reasonable degree of psychological probability, was entered into evidence, which report detailed Deaada's history of mental illness and contained Rathburn's diagnosis of Deaada with schizophrenia, paranoid type; anxiety disorder not otherwise specified; cognitive disorder not otherwise specified; and personality disorder not otherwise specified (mixed narcissistic and borderline traits.) Rathburn stated that there is no known cure for a psychotic disorder such as schizophrenia, although such a diagnosis, in and of itself, does not necessarily mean that an individual is unable to fulfill parenting responsibilities as it can be managed through psychiatric monitoring, individual and group therapy, and case management.

In his report, Rathburn noted that Deaada had no history of being able to function with stability in a parenting role since she began having children. He described Deaada as having severe problems with general functioning caused by a combination of psychotic symptoms, anxiety symptoms, and likely characterological symptoms. He expressed significant concern that Deaada lacks any insight into her problems to the point that she denies that she has any significant mental health history. Rathburn concluded that Deaada now has the same functional impairments which led to the removal of her first child in 2007, and he stated that

the presenting data indicate gross misunderstanding of the basic needs of small children as well as significant consistent misinterpretation of the needs of her children. . . . In summary, the data do not support it would be appropriate for [Deaada] to attempt to independently provide for the needs of small children at this time.

The report contained a number of recommendations for Deaada to improve and stabilize her general functioning, including ongoing intensive outpatient individual therapy, group therapy for individuals with personality disorders, participation in independent living and vocational

training, and a psychiatric evaluation to determine the appropriateness of prescriptions and monitoring of psychotropic medications.

Abby Etherton, a children and family outcome monitor with DHHS, testified that she had reviewed Rathburn's proposed treatment plan for Deaada and concluded that it would take as long as 18 months for Deaada to work through the plan. She noted that Bruce had already been in the State system for all of the 5 months of his life and that it would not be in his best interests to be left in the system for the extended period of time required under Rathburn's plan. Etherton had worked with Deaada on one of the prior neglect cases and stated that she had concerns about Deaada's inability to correct the conditions related to the other three adjudications. Etherton was unaware of any rehabilitative services that Deaada had participated in since Bruce was removed from her care.

Deaada testified that she had participated in some individual therapy and in parenting classes. Deaada claimed that she could properly feed Bruce but that she often had insufficient time to do so because she was rushed to return him. She denied making inaccurate reports to Bruce's doctors or ever intentionally upsetting Bruce. Deaada said that she was never provided all of the necessary services to reunify with her other children and that she relinquished custody of them after being told that she had not made good progress. Deaada believes that she could learn to properly parent if given the chance, and she stated that she was willing to participate in any therapy, evaluations, or occupational training required of her.

The juvenile court found that the State proved grounds for termination of Deaada's parental rights under Neb. Rev. Stat. § 43-292(2) and (5) (Cum. Supp. 2010), but that there had been no evidence that she had subjected Bruce or another minor child to aggravated circumstances pursuant to subsection (9). The court noted, that under subsection (2), parental rights may be terminated if the parent has substantially and continuously or repeatedly neglected and refused to give the juvenile, or a sibling of the juvenile, necessary parental care and protection. The court recounted the evidence of Deaada's other three children and found that the evidence shows that she demonstrated an ongoing lack of insight as to the underlying issues which led to their adjudications over a course of 3 years. The court found that the record showed Deaada had made poor progress with court-ordered services in the cases involving the other three children, all of whom were removed from her care, never to be returned, and with regard to whom she eventually relinquished her parental rights. The court further noted that Deaada's lack of parenting skills and lack of motivation to address her mental health problems has continued since Bruce's birth and that efforts to redirect and engage her in addressing these issues have been met with resistance and have proved unsuccessful.

The court found that Deaada's parental rights were also terminated under § 43-292(5) because of her psychiatric diagnoses by Rathburn as well as other functional impairments that directly affect her ability to parent. The court relied on Rathburn's statements that Deaada had been provided treatment and therapeutic services for the past 4 years with little to no progress and on his belief that Deaada's condition would continue into the foreseeable future.

The court stated that Deaada has had a reasonable time to rehabilitate herself, but had not done so, and that it was not in Bruce's best interests to wait any further to see if she can acquire basic parenting skills and mental health stability. Deaada has appealed from this order.

## ASSIGNMENT OF ERROR

Deaada contends that the juvenile court erred in terminating her parental rights because a reasonable alternative to termination existed.

## 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 Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009). However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *Id.*

## ANALYSIS

Deaada claims that there was a reasonable alternative to terminating her parental rights. She points to psychological evaluations and pretreatment assessments that she had completed and asserts that these evaluations and assessments, in conjunction with Rathburn's recommendations for future treatment, could have resulted in a rehabilitation plan designed to increase her general functioning as well as her ability to safely parent. Deaada notes that she testified to her willingness to comply with Rathburn's recommendations, as well as Rathburn's testimony that a schizophrenia diagnosis, alone, did not necessarily mean that a person cannot successfully parent.

In Nebraska statutes, the bases for termination of parental rights are codified in § 43-292. Section 43-292 currently provides 11 separate bases for termination of parental rights, any one of which can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. Section 43-292, which is applicable to each of the 11 bases, states in part:

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist[.]

Section 43-292(5) states that termination is authorized when a parent is "unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period." The evidence in this case is undisputed that Deaada suffers from serious mental illness, that her illness has plagued her for a number of years and resulted in the loss of custody of her three prior children, and that she has not made progress in addressing or treating her illness in the years since she lost custody of her first child.

Despite Rathburn's concession that Deaada's diagnosis, in and of itself, does not mean that she cannot adequately parent Bruce, we cannot ignore the bulk of his testimony that Deaada denies that she has mental health problems, that she currently has the same functional impairments that led to the removal of her other children, that she cannot independently provide for the needs of small children at this time, and that her prognosis is poor. There was also testimony that it would take up to 18 months for Deaada to work through the proposed treatment

plan. Based on the record, we find the State established by clear and convincing evidence that Deaada is unable to discharge her parental responsibilities because of mental illness and that there are reasonable grounds to believe her condition will continue for a prolonged indeterminate period.

Because the State need prove only one ground for termination, we decline to consider Deaada's arguments regarding the court's determination that the State proved other grounds enumerated in § 43-292. Generally, when termination is sought under subsections of § 43-292 other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). Thus, we will consider evidence relevant to the other grounds in our analysis of Bruce's best interests.

The record shows a pattern of extreme instability in Deaada's life, as reflected in her employment and housing records. Efforts to implement any rehabilitative programs have been met with resistance on Deaada's part as she minimizes the extent and severity of her mental health issues. Deaada displays essentially the same functional impairments that she did when she lost custody of her first child 4 years ago. Waiting as long as 18 months for Deaada, whose prognosis is poor, to complete her proposed treatment plan will require Bruce to spend his early years suspended in foster care. And "[c]hildren cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity." *In re Interest of Walter W.*, 274 Neb. 859, 872, 744 N.W.2d 55, 65 (2008).

When a natural parent suffers from a mental deficiency and cannot be rehabilitated within a reasonable period of time, the best interests of the children require that a final disposition be made without delay. *In re Interest of Marcus W.*, 11 Neb. App. 313, 649 N.W.2d 899 (2002). We conclude that Bruce's best interests call for the termination of Deaada's parental rights.

#### CONCLUSION

Upon a de novo review, we conclude there is clear and convincing evidence that Deaada's parental rights should be terminated pursuant to § 43-292(5) and that termination of such rights is in Bruce's best interests. The judgment of the juvenile court is therefore affirmed.

AFFIRMED.