

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF CHEYENNE C.

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

STATE OF NEBRASKA, APPELLEE,

V.

MELODY S., APPELLANT.

Filed September 6, 2011. No. A-11-215.

Appeal from the Separate Juvenile Court of Lancaster County: TONI G. THORSON, Judge.
Affirmed.

Scott E. Sidwell, of Legal Aid of Nebraska, for appellant.

Joe Kelly, Lancaster County Attorney, and Shellie D. Sabata for appellee.

IRWIN, CASSEL, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Melody S. appeals the decision of the separate juvenile court of Lancaster County terminating her parental rights to her daughter, Cheyenne C. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Melody's parental rights. As such, we affirm the order of the juvenile court terminating Melody's parental rights to Cheyenne. 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.

STATEMENT OF FACTS

On December 29, 2008, the State filed a petition alleging that Cheyenne should be adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults and habits of Melody. Specifically, the State alleged that Cheyenne, born in December 2005, had been left in

the care of other individuals in June 2008, purportedly for a short time, but that Melody had not returned for the child. Melody had kept only minimal contact with Cheyenne, and her caregivers were no longer able or willing to care for the child. The State alleged that Melody also did not have a safe or stable home for Cheyenne and that her actions placed the child at risk of harm. At a hearing in January 2009, Melody pled no contest to the allegations and the juvenile court adjudicated Cheyenne under § 43-247(3)(a).

Subsequent dispositional and permanency hearings resulted in several court-ordered requirements for Melody, including that she participate in individual therapy, attend scheduled psychiatric appointments, take all psychotropic medications as directed, cooperate with family support services to develop parenting skills, maintain a legal means of income to support herself and Cheyenne, and secure suitable housing. Most of these orders concluded that reasonable efforts were being made to preserve and unify the family but that Melody was making poor progress to alleviate the causes of out-of-home placement.

In August 2010, the State filed a motion to terminate Melody's parental rights to Cheyenne on the basis that (1) Melody had substantially and continuously or repeatedly neglected and refused to give Cheyenne necessary parental care and affection; (2) reasonable efforts to preserve and reunify the family, under the direction of the court, had failed to correct the conditions leading to Cheyenne's adjudication; and (3) Cheyenne had been in out-of-home placement for 15 months of the most recent 22 months. The State further alleged that termination of Melody's parental rights was in Cheyenne's best interests.

Lynn Ford, a case manager for the Department of Health and Human Services (DHHS), testified that DHHS formally removed Cheyenne from Melody's care on December 27, 2008, although Cheyenne had not been in Melody's care since June 2008. Cheyenne had not been returned to Melody since that time, nor had Melody ever had overnight or extended visits with Cheyenne, as all of her visitations were required to be supervised. In fact, most of the visitations were "family support" visitations, a higher level of supervised visitation in which the support worker would actively intervene if Melody required redirection in her behavior. Ford acknowledged that Melody had been treated for anxiety and depression and that she had been diagnosed with bipolar II disorder, posttraumatic stress disorder, and a personality disorder not otherwise specified. She stated that she believed that DHHS workers understood Melody's deficiencies and made allowances for her explosive temper and tendencies to "stomp off in a huff" or hang up on people. Ford testified in great detail as to the intensive and extensive efforts and services provided to Melody over the years in the hope that Melody would gain the skills needed to parent Cheyenne. Despite these efforts, according to Ford, Melody remained financially and emotionally unstable to the point that Melody's visitation had recently been suspended. Ford stated that it was not in Cheyenne's best interests to be reunited with Melody, noting that the following month would mark 2 full years that Cheyenne would be in an out-of-home placement, that Cheyenne was now in her third foster home, and that Melody remained unprepared to care for her.

Rhonda Wright, Cheyenne's mental health therapist, testified that she diagnosed Cheyenne with an adjustment disorder and that Cheyenne also had problems with emotions and conduct as well as possibly some dissociative behavior and an attachment disorder. Wright stated that she has recently seen significant improvement in Cheyenne's behavior with her current

foster parents. Wright noted that Cheyenne was about to turn 5 years old, an age that Wright felt was significant with regard to the need for a stable, consistent, and permanent living environment. Wright described Cheyenne's need for permanency as "urgent."

Melody testified that she had quit her last job at a fast-food restaurant to begin work making lawnmowers at a company that was located an hour's drive from her residence. Because of her hours and the commute, Melody said that she was unable to complete many of her court-ordered goals to obtain therapy and other services. However, she admitted that she had not participated in some services even before she began working at her current job, blaming her lack of participation on the therapist's failure to call her to set up appointments. Melody and her current boyfriend were living in a motel at the time of the hearing.

The juvenile court terminated Melody's parental rights on the basis of all three alleged statutory grounds. As summarized, the court noted that Cheyenne had been in an out-of-home placement for 15 months of the most recent 22 months and that Melody's current circumstances were largely unchanged since the case began. The court stated that Melody "is no more ready to assume the responsibility for consistently parenting her daughter than when she dropped her off with friends in 2008."

ASSIGNMENTS OF ERROR

Melody asserts that the juvenile court erred in (1) finding that she had substantially and continuously or repeatedly neglected and refused to give Cheyenne necessary parental care and affection or that Melody had failed to correct the conditions leading to Cheyenne's adjudication, (2) finding that it was in Cheyenne's best interests to terminate Melody's parental rights, and (3) failing to determine that the efforts of DHHS were not reasonable given Melody's known and treatable mental health diagnosis.

STANDARD OF REVIEW

An appellate court reviews juvenile cases *de novo* on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010).

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. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

ANALYSIS

The juvenile court found that the State proved grounds for termination under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2010). Under § 43-292(7), the State must show that the child has been in an out-of-home placement for 15 or more months of the most recent 22 months. The evidence was unchallenged that Cheyenne has remained in out-of-home placements since Melody left her with friends in June 2008. Accordingly, the State proved § 43-292(7) by clear and convincing evidence.

Because the State need prove only one ground for termination, we decline to consider Melody's assigned errors 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 Cheyenne's best interests.

Melody acknowledged that she was not currently taking court-ordered medications or receiving parenting education and that her visitations had been recently suspended. Nonetheless, she testified that she completely disagreed with the State that her parental rights should be terminated, blaming her inability or unwillingness to complete court-ordered goals on her job and on the failure of others. Upon our de novo review of the record, we conclude that termination of Melody's parental rights is in Cheyenne's best interests.

The record shows that Melody essentially abandoned Cheyenne with friends in June 2008 and that she has since failed to reach a point where she could be allowed even unsupervised visits despite extensive help from DHHS. Cheyenne is only beginning to improve in her behaviors now that she had adjusted to a new foster family that has provided her with the stability she seriously needs. Meanwhile, as stated by the juvenile court, Melody remains unable to provide even the most minimal requirements for parenting and clearly cannot provide permanency or stability, and her current circumstances are very similar to those when this case began. A parent may as surely neglect a child of whom she does not have possession by failing to put herself in a position to acquire possession as by not properly caring for a child of whom she does have possession. *In re Interest of J.N.V.*, 224 Neb. 108, 395 N.W.2d 758 (1986).

Melody argues that DHHS did not take her mental health issues into account when finding that she did not fulfill court-ordered requirements. However, Ford testified that DHHS workers were all made aware of Melody's issues and knew to expect that Melody would exhibit anger and impulsivity and would not always be prepared to properly parent Cheyenne. Ford stated that "[e]verybody now that has worked on this case recognized that there have been issues with Melody and have tried to accommodate Melody and work with her to make the visits work." For example, DHHS did not require Melody to attend parenting classes, instead providing her with hands-on training in a family support setting so that the DHHS workers could model behavior for Melody. Unfortunately, despite years of involvement with the juvenile justice system, Melody did not benefit from any such arrangements. The system cannot and should not allow children to languish in foster care waiting to see if the parent will mature. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007). Cheyenne's therapist characterized her need for stability as "urgent." We conclude that clear and convincing evidence demonstrates that termination of Melody's parental rights is in Cheyenne's best interests.

CONCLUSION

Because the State proved a statutory ground for termination under § 43-292 and that termination of Melody's parental rights is in the best interests of Cheyenne, we affirm the juvenile court's order terminating Melody's parental rights.

AFFIRMED.