

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF COURTNEY S. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. OF PRAC. 2E.

IN RE INTEREST OF COURTNEY S. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

DANA S., APPELLANT.

Filed June 17, 2008. No. A-07-1295.

INBODY, Chief Judge, and IRWIN and CARLSON, Judges.

IRWIN, Judge.

I. INTRODUCTION

Dana S. appeals from an order terminating her parental rights to Courtney S., Jaden S., Payton S., Grace P., and Hannah P. In her appeal, Dana challenges both the statutory grounds for termination of her parental rights and the juvenile court's finding that termination of her parental rights is in the best interests of the children. In addition, Dana assigns as error the juvenile court's "improper delegation" of the parameters of her supervised visitation with the children. For the reasons set forth below, we affirm.

II. BACKGROUND

These proceedings involve Dana's five children: Courtney, born February 28, 1996; Jaden, born October 21, 1998; Payton, born January 17, 2001; Grace, born January 25, 2005; and Hannah, born December 24, 2005. Dana's involvement with the juvenile court began in February 2004 and continued through October 2007 when the court terminated her parental rights to all five of her children. The lengthy and complex procedural history of this case includes numerous petitions, amended petitions, and supplemental petitions; multiple court orders requiring Dana to comply with the components of a rehabilitation plan; and voluminous evidence regarding Dana's continuous lack of compliance with the rehabilitation plan and with the court's efforts to reunite her with her children. Accordingly, a thorough discussion of this procedural history is necessary to our determination of the issues raised in Dana's appeal.

On February 24, 2004, the State filed a petition alleging that Courtney, Jaden, and Payton were children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004) because on February 23, 2004, Dana failed to pick up Courtney from school and Jaden and Payton from daycare. The petition also generally alleged that Dana had failed to provide necessary care and support for the children which placed the children at risk for harm.

On that same day, the State filed a motion for temporary custody of Courtney, Jaden, and Payton. The motion alleged that the children had been removed from Dana's home on February 23 because Dana was under the influence of drugs and was unable to care for the children. The juvenile court entered an order finding that placement and detention was a matter of immediate and urgent necessity for the protection of the children. The children were placed in the custody of the Department of Health and Human Services (DHHS).

At a hearing on March 8, 2004, Dana denied the allegations in the petition. The court ordered that the children remain in the custody of DHHS and provided for supervised visitation between Dana and the children. In permitting Dana to have supervised visitation, the court placed some parameters on the availability of the visitation sessions. Notably, the court ordered that the visitation must occur in a neutral setting and that Dana must comply with a visitation schedule as arranged by DHHS.

On May 15, 2004, the State filed an amended petition regarding Courtney, Jaden, and Payton. In this petition, the State alleged that the three children were within the meaning of § 43-247(3)(a) because Dana had failed to take her prescribed medication for depression.

On August 10, 2004, an adjudication hearing was held. At the hearing, Dana admitted to some of the allegations in the petition and the amended petition. Dana admitted that she had failed to pick up Courtney from school on February 23, 2004; that she failed to take her depression medication; and that her children were at risk for harm because of her actions. The remaining allegations were dismissed. As a result of Dana's admissions, the children were adjudicated pursuant to § 43-247(3)(a). The court ordered the children to remain in the care and custody of DHHS and ordered Dana to (1) complete an updated psychiatric evaluation, (2) provide DHHS with a progress report from her individual therapist, and (3) complete affidavits of paternity as to each child.

On October 15, 2004, a disposition hearing was held. After the court heard evidence, it found that reasonable efforts had been made, but that it would be in the best interests of the children to remain in the custody of DHHS. Additionally, the court supplemented the previous rehabilitation plan for Dana to include orders that Dana (1) obtain and maintain safe, stable, and adequate housing and provide monthly proof of that housing to DHHS; (2) obtain and maintain a legal, stable source of income and provide monthly proof of that income to DHHS; (3) complete updated chemical dependency, psychiatric, and psychological evaluations within 30 days; (4) submit to urinalysis testing that day; (5) continue to take prescribed medication; and (6) have reasonable rights of visitation with the children.

On January 19, 2005, another disposition hearing was held. At the hearing, the court again ordered that the children remain in the custody and care of DHHS and supplemented Dana's rehabilitation plan to include the following requirements (1) complete a family medical history within five days; (2) "forthwith" complete the psychiatric, psychological, and chemical dependency evaluations; and (3) submit to urinalysis testing by 3 p.m. that day.

On January 27, 2005, the State filed a supplemental petition, which included newborn Grace and which alleged that Courtney, Jaden, Payton, and Grace came within the meaning of § 43-247(3) because Dana's use of alcohol and/or controlled substances placed the children at risk for harm. In addition to the supplemental petition, the State also filed a motion for temporary custody as to Grace. In the motion, the State alleged that Grace needed to be placed in the custody of DHHS because Dana had admitted to using methamphetamines during her pregnancy. The court entered an order for immediate custody.

On February 8, 2005, the State filed an amended supplemental petition. The amended supplemental petition alleged that Grace was a child within the meaning of § 43-247(3)(a) because Dana's use of alcohol and/or controlled substances placed Grace at risk for harm, Dana had failed to follow through with services offered by DHHS, and Dana had failed to complete requested urinalysis testing.

On April 15, 2005, an adjudication hearing was held regarding the allegations in the supplemental petition and the amended supplemental petition. At the hearing, Dana admitted that she had failed to follow through with the services offered to her by DHHS and that because of this failure, Grace was at risk for harm. The remaining allegations in the supplemental petitions were dismissed. As a result of Dana's admission, Grace was adjudicated pursuant to § 43-247(3)(a). The court ordered that Grace was to remain in the care and custody of DHHS and ordered Dana to comply with the provisions of her rehabilitation plan as delineated in previous court orders.

In June, July, and October 2005 and April 2006, the court held multiple disposition and review and permanency planning hearings. At these hearings, the court noted that reasonable efforts had been made to facilitate reunification of the family, but that the best interests of all four children required continued placement with DHHS. The court ordered Dana to comply with the previously ordered requirements of her rehabilitation plan. The court also supplemented the rehabilitation plan as follows: On July 18, 2005, the court stated that Dana was to "have reasonable rights of visitation pursuant to a written schedule and as arranged by [DHHS, which] may require the mother to call in advance and confirm her visits." On April 14, 2006, the court specifically ordered that Dana's individual therapy sessions were to address problem-solving strategies. In addition, the court ordered Dana to complete an updated assessment with DHHS and to provide information as to her compliance with the rehabilitation plan.

On December 24, 2005, Hannah was born. On April 14, 2006, the State filed a second supplemental petition regarding Hannah. The second supplemental petition alleged that Hannah was a child within the meaning of § 43-247(3)(a) because Dana had failed to provide her with safe, stable, and appropriate housing; had failed to follow through with services offered by DHHS which were designed to facilitate reunification with Dana's other children; had failed to complete requested urinalysis testing; and had generally placed Hannah at risk for harm. In addition to the supplemental petition, the State also filed a motion for temporary custody of Hannah. In its motion, the State alleged that Hannah needed to be placed in the custody of DHHS because Dana had not complied with the court's rehabilitation plan. Specifically, the State alleged that Dana did not comply with requested urinalysis testing, did not consistently participate in individual therapy, had not provided evidence to demonstrate that she was meeting with her psychiatrist and/or was taking her prescribed medication, had been homeless since

August 2005, had been unemployed throughout the pendency of the case, and had not obtained medical insurance for Hannah. Based on the State's allegations, the court ordered that Hannah be placed in the custody and care of DHHS.

On May 9, 2006, the State filed an amended second supplemental petition regarding Hannah. In the amended petition, the State reiterated its allegations to demonstrate that Hannah was a child within the meaning of § 43-247(3)(a). In addition to these allegations, the State alleged that Hannah came within the meaning of Neb. Rev. Stat. § 43-292(2) and (6) (Reissue 2004) and that termination of Dana's parental rights would be in Hannah's best interests.

Also on May 9, 2006, the State filed a motion for termination of Dana's parental rights as to Courtney, Jaden, Payton, and Grace. In the motion, the State alleged that Grace came within the meaning of § 43-292(1) and that Courtney, Jaden, Payton, and Grace came within the meaning of § 43-292(2), (3), (6), and (7). The State also alleged that termination of Dana's parental rights would be in the children's best interests.

A hearing on the State's amended second supplemental petition and motion for termination of parental rights was held on various dates from March to October 2007. While we have reviewed the bill of exceptions from this lengthy termination hearing in its entirety, we do not present the extensive evidence offered by both sides in detail here. Rather, we will set forth the facts as necessary in our analysis below.

At the conclusion of the termination hearing, the juvenile court found that the State proved by clear and convincing evidence that Hannah was a child within the meaning of § 43-247(3)(a) and § 43-292(2) and (6); that Grace was a child within the meaning of § 43-292(1); and that Courtney, Jaden, Payton, and Grace were children within the meaning of § 43-292(2), (3), (6), and (7). The court also found that it would be in all five children's best interests if Dana's parental rights were terminated. The court then entered an order terminating Dana's parental rights with regard to Hannah, Grace, Courtney, Jaden, and Payton. Dana timely appeals from this order.

III. ASSIGNMENTS OF ERROR

Dana challenges the juvenile court's finding that the State proved the statutory grounds for termination of her parental rights and the juvenile court's finding that termination of her parental rights was in the best interests of the children. In addition, Dana assigns as error the juvenile court's "improper delegation" of the parameters of her supervised visitation with the children.

IV. 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 juvenile 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 Jagger L.*, *supra*. The state must prove these facts by

clear and convincing evidence. *Id.* Clear and convincing evidence 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.*

V. ANALYSIS

1. DELEGATION OF CONDITIONS FOR SUPERVISED VISITATION

We first address Dana's assignment of error that the juvenile court "improperly delegated" the parameters of her supervised visitation with the children. In her brief, Dana asserts that her visits with her children were placed on "confirmation status" by DHHS. Dana also asserts that in allowing DHHS to create such "restrictions" on her visitation rights, the juvenile court improperly delegated its judicial authority and that, as a result, her subsequent sporadic attendance at visitations should not have been considered as a basis for terminating her parental rights. Because we find that Dana did not properly object to the policy of requiring her to call and confirm her visits, we conclude that the juvenile court did not err in considering evidence of her infrequent attendance at visitation sessions.

Neb. Rev. Stat. § 43-284 (Reissue 2004) permits the court to place children who have been adjudicated pursuant to § 43-247 in the custody of DHHS "[w]hen any juvenile is adjudged to be under subdivision (3) . . . of section 43-247, the court . . . may make an order committing the juvenile to . . . the care and custody of [DHHS]." Neb. Rev. Stat. § 43-285 (Reissue 2004) provides DHHS with the authority "to determine the care, placement, medical services, psychiatric services, training, and expenditures" for the juveniles within their care and custody. This provision does not authorize DHHS to determine or place restrictions on parental visitation rights. Parental visitation rights, as a subject within the Nebraska Juvenile Code, are matters for judicial determination. *In re Interest of C.A.*, 235 Neb. 893, 457 N.W.2d 822 (1990).

In this case, the juvenile court permitted Dana to have supervised visitations with her children. DHHS facilitated Dana's visitation by contracting with visitation agencies to provide transportation for the children to and from the visitation site and to supervise the sessions. The visitation agencies reported to DHHS that Dana was not attending the visitation sessions and that the children were being driven for 30 minutes to 1 hour each way simply to find out that Dana was not going to appear.

Because of the concerns regarding Dana's attendance and the effect of her absences on the children's behavior and emotional well-being, the visitation agencies required Dana to call and confirm her visits before the children would be transported. After the agencies imposed this restriction on Dana, Dana's consistency in attending the visitations did not improve. There were times when Dana would timely confirm the visits, but would still fail to show up at the visitation site. As a result, the children would have been transported for no reason. The agencies decided to place Dana on "dual confirmation" status so that she was required to confirm the visit by 8 a.m. on the day of the visit and was required to confirm again 2 hours prior to the start of the visit. Dana was still inconsistent with her attendance at visitations, so the agency again changed the requirements for her visitations. Dana was required to contact her visitation worker 2 days prior to the visitation, 24 hours prior to the visitation, and 2 hours prior to the visitation. Evidence at the termination hearing revealed that Dana struggled to confirm her visits in a timely manner and

that, as a result, there were times when she wanted a visitation, but was told that the children were unable to attend because of her late confirmation.

In July 2005, DHHS informed the court of Dana's sporadic attendance at visitations, and the court included in its July 18, 2005, order a provision stating that Dana was entitled to "reasonable rights of supervised visitation pursuant to a written schedule and as arranged by [DHHS, which] may require the mother to call in advance and confirm her visits." After this order, the agencies continued to require Dana to confirm her visits multiple times before the children would be transported to see her. Dana did not raise the issue of her "confirmation status" with the court again until after the time that the motion for termination of her parental rights was filed.

Assuming without deciding that the juvenile court improperly delegated the authority to determine Dana's right to visitation, we find that Dana was represented by counsel at all times during the juvenile court proceedings and that she could, and should, have requested that the juvenile court examine DHHS' directive that she timely confirm her visits prior to the children's being transported to see her. See *In re Interest of C.A.*, *supra*. However, Dana chose only to vent her frustration with DHHS caseworkers and with the agency employees who supervised her visits.

We also note that Dana did not appeal from the court's July 18, 2005, disposition order. Adjudication and disposition orders are final, appealable orders. See *In re Interest of Enrique P. et al.*, 14 Neb. App. 453, 709 N.W.2d 676 (2006). An appeal of a final order must be made within 30 days of the issuance of the order. Neb. Rev. Stat. § 25-1912 (Cum. Supp. 2006). Because Dana did not appeal from the court's order permitting DHHS to require her to confirm her visitations, she cannot now claim that the court's order was invalid.

Because we find that Dana did not properly object to DHHS' requirements regarding her visitation rights and that she did not timely appeal the juvenile court's order permitting DHHS to impose such requirements, we find no merit to her assignment of error on appeal. The court did not err in considering evidence of her sporadic attendance at visitations in determining that her parental rights should be terminated.

2. STATUTORY GROUNDS FOR TERMINATION

We next discuss Dana's assignments of error which allege that the juvenile court erred in terminating her parental rights. Dana first argues that the juvenile court erred in finding that the State presented clear and convincing evidence to prove the statutory grounds for termination of her parental rights. Specifically, Dana alleges that there was insufficient evidence to support the court's finding that all five children were within the meaning of § 43-292(6) and that Grace was within the meaning of § 43-292(1).

The juvenile court found that the State proved by clear and convincing evidence that Hannah was a child within the meaning of § 43-292(2) and (6); that Grace was a child within the meaning of § 43-292(1), (2), (3), (6), and (7); and that Courtney, Jaden, and Payton were children within the meaning of § 43-292(2), (3), (6), and (7). Because the court found different statutory provisions applicable to the children depending on their length of time out of the home and their continuing relationship with Dana, we discuss separately the court's findings as to Hannah, Grace, and the three older children.

(a) Hannah

The juvenile court found that Hannah was a child within the meaning of § 43-292(2) and (6). Dana challenges the court's findings with regard to § 43-292(6). She specifically asserts that the rehabilitation plan ordered by the court was unreasonable and did not provide her with effective mental health assistance. Upon our de novo review of the record, we find that the court did not err in terminating Dana's parental rights as to Hannah pursuant to § 43-292(2). Because we need only determine that termination of parental rights is proper pursuant to one of the statutory provisions found in § 43-292, we need not discuss the juvenile court's determination regarding § 43-292(6).

Section 43-292 provides that a court may terminate parental rights when such action is in the best interests of the child and one or more of the statutorily specified conditions exist. If an appellate court determines that the lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds set forth in § 43-292, the appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006).

Section 43-292(2) provides for termination of parental rights when "[t]he parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection." The record in this case provides clear and convincing evidence that Dana was unable or unwilling to provide necessary parental care and protection for Hannah and her four siblings. As we noted above, Dana's involvement with the juvenile court began in February 2004, when her three oldest children were removed from her home after she neglected to pick up Courtney from school. At the time of the termination hearing, Courtney, Jaden, and Payton had been in an out-of-home placement for over 3 years.

In January 2005, Dana's fourth child, Grace, was removed from Dana's care shortly after her birth. The State alleged that Dana had admitted to using methamphetamines while she was pregnant with Grace. At the time of the termination hearing, Grace had been in an out-of-home placement for approximately 2 years.

Evidence in the record demonstrates that despite the length of time that had passed since her oldest children were removed from her home and despite the efforts of DHHS and the juvenile court, at the time of the termination hearing, Dana had not taken adequate steps toward achieving reunification with her children. In an effort to facilitate reunification, the juvenile court ordered Dana to comply with a rehabilitation plan. Some of the plan's requirements were to (1) obtain and maintain stable housing and employment, (2) comply with urinalysis testing, (3) pursue mental health counseling and take prescribed medication, and (4) complete a psychological, psychiatric, and chemical dependency evaluation.

From February 2004 to May 2006 when the State filed its motion for termination of parental rights, Dana did not complete any portion of the rehabilitation plan. She did not obtain and maintain stable housing or employment. In fact, at the time of Hannah's birth in December 2005, Dana was homeless and moving from place to place to stay with various friends. Dana did not comply with urinalysis testing. Dana's caseworker testified that since July 2005, Dana had only complied with one request for a urinalysis test. Dana did not provide any verification that

she was actively seeking any sort of counseling services or regularly taking her prescribed medication. Dana attended only two individual therapeutic sessions and then stopped appearing at her scheduled appointments until her therapist formally discharged her as a patient.

Finally, Dana did not fully comply with the court's repeated orders that she complete a psychological, psychiatric, and chemical dependency evaluation. The record demonstrates that the mental health professionals who administered the evaluations struggled to maintain contact with Dana, to schedule appointments with Dana, and to receive accurate and complete information from Dana. The mental health professionals testified that Dana would complete only certain portions of the diagnostic testing and that they were concerned about whether or not Dana was being entirely truthful during their interviews. As a result, most of the evaluations that were completed were inconclusive and warranted further testing. However, Dana did not cooperate with the court's orders for her to complete this further testing because she did not think it was "fair."

While Dana argues in her brief that her rehabilitation plan did not take into account her mental health needs or provide her with adequate support, the record reveals that both the juvenile court and DHHS diligently attempted to provide Dana the help she needed. The court repeatedly ordered Dana to submit to various mental health evaluations in order to gain insight into Dana's specific needs and limitations. However, Dana frustrated the court's efforts time and time again. As discussed above, her lack of cooperation with the mental health professionals hindered their ability to diagnose Dana or to recommend services. DHHS provided Dana with multiple referrals for counseling services, but Dana simply did not attend her scheduled appointments. DHHS also provided Dana with a family support worker to help her to work on her timeliness and her employment and housing situation. Dana denied she needed any help and refused the services. Contrary to Dana's assertions, her rehabilitation plan was appropriately designed to meet her mental health needs and to effectuate reunification. Dana simply failed to cooperate or comply with the plan. As one caseworker noted in her testimony at the termination hearing, "[The caseworker] can't physically do what the parent is supposed to be doing. [The caseworker] can't physically make them go."

In addition to Dana's failure to comply with the court-ordered rehabilitation plan, Dana also failed to take advantage of visitations with her children. As we discussed more thoroughly above, the record provided voluminous evidence of Dana's sporadic attendance at visitation sessions. Dana would not show up to visitation sessions, despite her knowledge that the children had been driven for over 1 hour to meet with her. When Dana was required to confirm her visits prior to the children being transported to her, Dana repeatedly confirmed the visits too late or would confirm the visits in a timely manner and still fail to appear at the visitation. Testimony at the termination hearing revealed that Dana attended only about 50 percent of her permitted visitation sessions.

In summary, the record reflects that Dana had been given more than 3 years to demonstrate that she was capable of caring for her children. Despite the amount of time that had passed since her children were removed from her care, she continuously and repeatedly failed to provide the children with necessary parental care and protection. Thus, there is clear and convincing evidence that Dana has substantially and continuously or repeatedly neglected and refused to give Hannah and Hannah's siblings necessary parental care and protection.

Accordingly, the assignment of error challenging the statutory basis for termination of Dana's parental rights to Hannah is without merit.

(b) Grace

The juvenile court found that Grace was a child within the meaning of § 43-292(1), (2), (3), (6), and (7). Dana specifically challenges the court's findings with regard to § 43-292(1) and (6). Upon our de novo review of the record, we find that the evidence clearly and convincingly demonstrates that Grace was in an out-of-home placement for at least 15 of the most recent 22 months, pursuant to § 43-292(7). As such, we need not specifically address whether or not the State met its burden under § 43-292(1) or (6).

Termination of parental rights is warranted whenever one or more of the statutory grounds provided in § 43-292 is established. Section 43-292(7) provides for termination of parental rights when "[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months." This section operates mechanically and, unlike the other subsections of the statute, does not require the State to adduce evidence of any specific fault on the part of a parent. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

In this case, the State alleged and the juvenile court found that termination of Dana's parental rights as to Grace was warranted pursuant to § 43-292(1), (2), (3), (6), and (7). The record contains uncontradicted evidence that Grace was removed from Dana's custody almost immediately after her birth on January 27, 2005, and that she continuously resided in an out-of-home placement throughout the duration of the proceedings. As a result, at the time the State filed its motion to terminate parental rights on May 9, 2006, Grace had been in an out-of-home placement for just over 15 months. We also note that at the time the hearing on the State's motion for termination of parental rights began in March 2007, Grace had been in an out-of-home placement for over 2 years. Accordingly, the evidence clearly supports the court's conclusion that Grace was a child within the meaning of § 43-292(7). Grace had been in an out-of-home placement for 15 or more of the most recent 22 months, pursuant to § 43-292(7).

There is clear and convincing evidence that termination of Dana's parental rights as to Grace was appropriate pursuant to § 43-292(7). In light of this fact, we need not, and do not, further address the sufficiency of the evidence to demonstrate that termination of Dana's parental rights as to Grace was also appropriate pursuant to § 43-292(1), (2), (3) and (6). Dana's assignment of error is without merit.

(c) Courtney, Jaden, and Payton

The juvenile court found that Courtney, Jaden, and Payton were children within the meaning of § 43-292(2), (3), (6), and (7). Dana challenges the court's findings with regard to § 43-292(6). Upon our de novo review of the record, we find that the evidence clearly and convincingly demonstrates that Courtney, Jaden, and Payton were in an out-of-home placement for at least 15 of the most recent 22 months, pursuant to § 43-292(7). As such, we need not specifically address whether or not the State met its burden under § 43-292(6).

As discussed above, termination of parental rights is warranted whenever one or more of the statutory grounds provided in § 43-292 is established. Section 43-292(7) provides for

termination of parental rights when “[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months.”

Courtney, Jaden, and Payton were removed from Dana’s home on February 24, 2004, and continuously resided in an out-of-home placement throughout the entire duration of the juvenile court proceedings. As a result, at the time the State filed its motion for termination of parental rights in May 2006, the three children had been in an out-of-home placement for over 2 years. Furthermore, at the time of the start of the termination hearing in March 2007, the children had been in an out-of-home placement for over 3 years. Accordingly, there is no dispute that the children were in an out-of-home placement for 15 or more of the most recent 22 months, pursuant to § 43-292(7).

Because there is clear and convincing evidence that termination of Dana’s parental rights was appropriate pursuant to § 43-292(7), we need not, and do not, further address the sufficiency of the evidence to demonstrate that termination of her parental rights as to Courtney, Jaden, and Patyon was also appropriate pursuant to § 43-292(2), (3), and (6). Dana’s assignments of error relating to the sufficiency of the statutory authority to support termination are without merit.

2. BEST INTERESTS OF CHILDREN

Dana also contends that the juvenile court erred in finding clear and convincing evidence that termination of her parental rights as to all five children was in the children’s best interests. She argues that she made “considerable and significant strides” by the time of the conclusion of the termination hearing and that these efforts prove that she is capable of parenting her children. We disagree. Upon our de novo review of the record, we affirm the decision of the juvenile court and find Dana’s assignment of error to be without merit.

When a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. *In re Interest of Joshua M.*, 251 Neb. 614, 558 N.W.2d 548 (1997). Furthermore, the Nebraska Supreme Court has previously recognized that children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *Id.*

In this case, the record reflects that despite more than 3 years of rehabilitation plans, opportunities, and assistance from DHHS, Dana has been unable or unwilling to rehabilitate herself. Testimony from the termination hearing shows that Dana had made little to no progress from the time that her oldest three children were removed from her home to the time that the State filed its motion to terminate parental rights over 2 years later.

While Dana asserts that she made “considerable and significant” strides after the time the motion for termination of parental rights was filed, the record tells a different story. Evidence from the termination hearing revealed that beginning in April 2007, almost 1 year after the motion for termination of her parental rights was filed, Dana began working on complying with her rehabilitation plan. Dana provided verification of her employment to her caseworker in April 2007. She informed the caseworker that she had found stable housing and had obtained a driver’s license in June 2007. Other evidence revealed that Dana had begun to comply with urinalysis testing, was regularly taking her medication and seeing a mental health professional, and was trying to become more active in her children’s lives.

However, the record also shows that by October 2007, Dana had been fired from her job because she was late to work on too many occasions. Additionally, Dana left her previous residence and began living somewhere new in September 2007. When we consider this evidence demonstrating Dana's continuing instability, in conjunction with the evidence of her efforts at compliance, we cannot say that Dana made much progress toward reunification with her children. Last minute attempts by parents to comply with the rehabilitation plan do not prevent termination of parental rights. *In re Interest of Kassara M.*, 258 Neb. 90, 601 N.W.2d 917 (1999). Dana had been provided with 3 years of opportunities and chances, and she failed to take advantage of those until the very last hour.

Caseworkers involved with Dana and her children testified that it would be in the children's best interests if Dana's parental rights were terminated. In providing their opinions, the caseworkers cited to Dana's lack of success with complying with the court orders and with demonstrating any sort of stability or independence. The caseworkers testified that there are no other services to offer Dana to aid her in the reunification process and that "there [is] no way the children could return to Dana's care."

We agree. Given the length of time that Dana has been provided to effectuate compliance with her rehabilitation plan and given the voluminous evidence from the termination hearing which we have reviewed de novo, we conclude that there exists clear and convincing evidence that terminating Dana's parental rights is in the best interests of Hannah, Grace, Courtney, Jaden, and Payton. This assigned error is without merit.

VI. CONCLUSION

We find no merit to Dana's appeal. There was sufficient evidence to support the juvenile court's order to terminate Dana's parental rights, and Dana did not properly object to DHHS' directive that she call and confirm her attendance at visitations with the children. The juvenile court order is affirmed.

AFFIRMED.