

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF DEZIREE K. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF DEZIREE K. ET AL.,
CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,
v.
RICHARD K. AND JESSICA K., APPELLANTS.

Filed March 27, 2012. No. A-11-751.

Appeal from the Separate Juvenile Court of Sarpy County: ROBERT B. O'NEAL, Judge.
Affirmed.

Colleen D. Bergren for appellant Richard K.

Ann W. Davis for appellant Jessica K.

Sandra K. Markley, Deputy Sarpy County Attorney, and Elizabeth Gregory, Senior
Certified Law Student, for appellee.

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

PIRTLE, Judge.

INTRODUCTION

Richard K. and Jessica K. appeal from the order of the separate juvenile court of Sarpy County that terminated their parental rights to their four children: Deziree, born in September 1998; Lily, born in May 2002; Lucas, born in January 2006; and Harley, born in September 2009. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Richard's and Jessica's parental rights. 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 October 26, 2009, the State filed a petition alleging that Richard and Jessica's children should be adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults and habits of the parents. As later amended, the petition alleged that on October 21, 2009, Jessica, under the influence of methadone and cocaine, drove on a suspended license with her 3-week-old infant in an unsecured car seat. The petition alleged that, in the previous year, Jessica had been arrested eight times on charges of shoplifting or possession of a controlled substance. Jessica was further alleged to be unemployed and without independent housing. As to Richard, the petition alleged that he had medically neglected the newborn infant, admitted to the use of prescription drugs, and had a long history of use of illegal drugs.

An affidavit for removal of the children from the home recounted a number of incidents in October 2009, including a report from a local elementary school stating that the parents came to the school with Harley and that Jessica exhibited slurred speech and dropped the infant carrier with Harley in it. The following day, a Nebraska State Patrol trooper noticed a vehicle stalled on a highway in Cass County. The trooper discovered Jessica in the driver's seat, attempting to feed Harley but having trouble doing so while not properly supporting the newborn's head and neck. The trooper stated that Jessica appeared to be under the influence of alcohol or drugs and was confused and disoriented. Jessica eventually passed out and was hospitalized, where hospital personnel discovered a baggie containing 35 pills in her vagina.

The children were removed from the home within days of the filing of the petition, and only supervised visitation, and sometimes therapeutic visitation, was thereafter permitted with their parents. The children were adjudicated under § 43-247(3)(a) in an order filed January 27, 2010.

On January 26, 2011, the State filed a motion to terminate Richard's and Jessica's parental rights on the basis that (1) under Neb. Rev. Stat. § 43-292(6) (Cum. Supp. 2010), reasonable directions under the direction of the court had failed to correct the conditions leading to the adjudication under § 43-247(3)(a); and (2) under § 43-292(7), the children had been in out-of-home placement for 15 or more months of the most recent 22 months. The State further alleged that terminating parental rights was in the children's best interests.

In April 2011, the juvenile court ordered that visitation between the infant, Harley, and his parents would cease until further order. On June 24, the court suspended visitation between the parents and children.

At the July 2011 hearing on the motion to terminate parental rights, Jamie Anderson, a caseworker with the Department of Health and Human Services (DHHS), testified that the children were removed from their parents' home following a number of hotline calls in October 2009. Anderson stated that after the children were removed, there were additional concerns about the parents' extensive criminal histories, including shoplifting sprees and drug runs that included the children. She stated that the children were very fearful because of the Satanic worship occurring in the home. There were specific concerns about Harley, who was extremely medically fragile at the time and was diagnosed as a failure-to-thrive baby. Harley required a feeding tube as well as weekly occupational and physical therapy appointments. Anderson stated that the parents did not always attend Harley's therapy visits and that when they did, Jessica would often

fall asleep and Richard seemed disinterested. The parents denied the concerns expressed about their drug use.

Anderson testified that Lucas exhibited seriously disturbed behaviors indicating a need for therapeutic attention, that Deziree has an adjustment disorder and posttraumatic stress disorder, and that Lily also has posttraumatic stress disorder. All three older children are receiving mental health therapy. Anderson noted that DHHS had to supply transportation to the parents in July 2010 after Richard totaled his car and claimed that Satan had taken over his body and wrecked the car. Anderson described some chaotic visitations between Richard and the children, including one in which he told Deziree that she was to blame for the family's problems with DHHS, and one in which Deziree overheard a heated argument between Richard and another caseworker in which Richard claimed that Deziree was not his child and that he wanted to relinquish his rights to her. Anderson testified that over the past 20 months, she was unable to recommend unsupervised visitation between the parents and children, noting that the children are still very fearful of returning home and do not want unsupervised visits. Anderson testified that the children have been in out-of-home foster care since their removal from the home in October 2009. She stated that in her opinion, both parents are unfit, and that it is in the children's best interests that parental rights be terminated.

Maggie Greving was a family support worker who supervised visits with Jessica and Richard and their children for approximately 17 months. Greving testified as to the extensive services provided for the parents, including support with their job searches, housing searches, budgeting, parenting skills, and transportation. She stated that the parents never met their goals in these areas nor did they consistently implement the techniques being taught them. Greving noted that the parents did not interact or play with the children much during visitations, often seeming sleepy and "out of it." Greving testified that Richard once spoke of demons inside him, stating he could be a serial killer, and that he spoke of putting curses on caseworkers. Greving stated that during the 17 months that she was the visitation specialist on this case, she was never able to recommend unsupervised visitation. She testified that neither Richard nor Jessica were fit parents.

Tenora Mead, a mental health therapist, testified that she performed family therapy services until June 2011, when she chose to end her participation because of some of the behaviors she witnessed. She stated that she did not believe that the parents were making progress during the sessions. Mead continued to provide individual therapy for Deziree, who told Mead that she had to care for the younger children in the family car for hours while her parents were apparently obtaining drugs. Deziree told Mead that her parents advised her to call on demons for help if she got scared in such situations. Mead stated that Deziree does not wish to return to her parents' care. Mead stated, to a reasonable degree of therapeutic certainty, that it was not in Deziree's best interests to return to her parents' care and that "the damage done to this little girl is just so severe" that Mead did not think it in her best interests to have even supervised contact with her parents.

Jessica testified that she took Harley for his required medical appointments unless she had not been informed of the appointment or had other transportation problems. She denied reports of Satanic rituals or shoplifting in the presence of the children. She stated that she was attending Alcoholics Anonymous meetings and was about to be released from her probation

status. Richard's certificate of completion of an anger management course was introduced into evidence, as well as his Alcoholics Anonymous attendance cards.

The juvenile court terminated Richard's and Jessica's parental rights on the basis of both alleged statutory grounds and also found that termination of their parental rights was in the best interests of the children. Richard and Jessica appeal from this order.

ASSIGNMENTS OF ERROR

Richard and Jessica assert that the juvenile court erred in finding that the State proved by clear and convincing evidence that their parental rights should be terminated under § 43-292(6) and (7) and in finding that it was in the best interests of the children that their parental rights be terminated.

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. See *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 proved. *Id.*

ANALYSIS

The juvenile court found that the State proved grounds for termination under § 43-292(6) and (7). 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 all four children had remained in out-of-home placements since October 2009. 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 the parents' 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 the children's best interests.

The record shows that the parents have an extensive record of drug and/or alcohol abuse, mental health issues, chronic unemployment, inability to maintain stable housing, involvement in or repeated references to demons or Satanic worship, and a lack of consistent positive interactions with the children or ability to implement the parenting techniques taught them. The parents seemingly were unable to grasp the very serious nature of Harley's medical problems,

and the chaotic circumstances surrounding the older children's upbringing has resulted in all of them undergoing extensive mental health therapy. Since removal of the children from the parental home, the State has not been able to permit even unsupervised visitation with the children, and in the weeks before the hearing to terminate parental rights, visitations ceased altogether pursuant to court order. 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). We conclude that clear and convincing evidence demonstrates that termination of Richard's and Jessica's parental rights is in their children's best interests.

We note here that although the parents concede that the children have been in an out-of-home placement for 15 of the last 22 months, they state that Deziree and Lily were in their grandmother's home from the time of their removal from the parental home until October 2010. They assert that the calculation for out-of-home placement was therefore tolled for those two children, citing Neb. Rev. Stat. § 43-292.03 (Reissue 2008). We disagree. That statute provides that within 30 days after the 15-month period, where the juvenile has been in foster care under the responsibility of the State for 15 or more months of the most recent 22 months, the juvenile court shall hold a hearing on the record and make a determination on the record whether there is an exception under Neb. Rev. Stat. § 43-292.02(3) (Reissue 2008) to the requirement under subsection (1) that the State file or join as a party to a petition to terminate parental rights. In *In re Interest of Clifford M. et al.*, 261 Neb. 862, 626 N.W.2d 549 (2001), the Nebraska Supreme Court stated that the purpose of an exception hearing, derived from the plain language of § 43-292.03(1), is to determine whether the State may be excused from the mandatory requirement of § 43-292.02(1). The statute does not contain any provisions for tolling the time for filing a petition for termination of parental rights because a juvenile is residing with relatives. This argument is without merit.

CONCLUSION

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

AFFIRMED.