

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Elijah F.)
and Penelope F.,)
children under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Shonda F.,)
)
Appellant.)

No. A-11-832
No. A-11-833

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

APR 10 2012

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

IRWIN, SIEVERS, and CASSEL, Judges.

SIEVERS, Judge.

Shonda F. appeals from an order of the county court for Platte County, sitting as a juvenile court, terminating her parental rights to her children, Elijah F. and Penelope F. We affirm.

BACKGROUND

Elijah, born in November 2004, and Penelope, born in May 2003, are the natural children of Shonda F. Neither child's father has been a part of Elijah's or Penelope's life. Both fathers had their parental rights terminated in this case because of abandonment and that such action was in the child's best interest. Neither father is part of this appeal and thus will not be discussed any further.



On November 10, 2009, the State filed a motion for ex parte order for temporary placement. In support of its motion, the State attached the affidavit of Claire Berreckman, a children and family services specialist with the Nebraska Department of Health and Human Services (DHHS). In her affidavit, Berreckman alleged: DHHS received an intake on October 1, 2008, from Texas stating that Shonda had moved to Grand Island, Nebraska, and may be living with Edward H., a person with whom Shonda has experienced domestic violence; the Texas report stated that an affidavit would have been filed for the removal of Penelope and Elijah but Shonda left the state; and the Texas child protective services (CPS) caseworker had concerns for the children's immediate safety if Shonda and the children are residing or having contact with Edward H., as he is extremely violent toward Shonda and the children. Berreckman alleged that: a safety assessment was completed in response to the Intake received on October 1, 2008; Shonda and the children were staying with Edward H. in Grand Island; law enforcement and DHHS determined that it was not safe for Shonda and her children to stay with Edward H. due to an extensive history of domestic violence; Shonda and the children were taken to a shelter for one day and then were put on a bus to a domestic violence shelter in Colorado; and Shonda was not provided any further services. Berreckman alleged that: DHHS received an intake on February 10,

2009, from Texas stating that Shonda was brought to a shelter there by police due to family violence after Shonda disclosed that her common-law husband was physically abusing her child; Shonda and her children were at the shelter from February 6 to February 8, 2009; and the Texas report stated that Shonda and her children were currently living in North Platte, Nebraska. Berreckman alleged that DHHS received a report on August 14, 2009, stating that a worker in North Platte was preparing to request a filing on Shonda but she left the area prior to the filing being done. Berreckman alleged that Shonda has disclosed to Columbus Public School personnel that she is now married to Edward H. and just recently moved with him to a home in Columbus, Nebraska. Berreckman alleged that concerns have been raised by Columbus Public School personnel regarding Penelope's inappropriate behavior, i.e., coming out of the bathroom naked, kissing boys, and incontinence. Berreckman alleged that there is reason to believe that without placing the children in the custody of DHHS prior to completing the initial assessment, Shonda and her children will flee. The juvenile court entered an ex parte order for temporary placement on November 10, 2009. The children were placed in the custody of DHHS on November 10 and have remained in such custody ever since.

The State filed separate juvenile petitions in Platte County Court on November 20, 2009, alleging that Elijah and

Penelope were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) by reason of the faults or habits of Shonda. The State alleged that: Shonda had a history of being involved with men who physically abuse her, including Edward H., whom she currently had a protection order against, and whom she married while that protection order was in effect; Edward H. was living with Shonda at the time the children were removed from the home and her children were at risk due to his extreme violence; and Shonda's parental rights to two other children were terminated in 1997, and her rights to a third child were terminated in 1999.

On December 28, 2009, the county court adjudicated Elijah and Penelope to be within the meaning of Neb. Rev. Stat. § 43-247(3)(a) based on Shonda's admissions to the allegations in the petition.

On February 17, 2011, the State filed separate second supplemental petitions for termination of Shonda's parental rights to Elijah and Penelope pursuant to Neb. Rev. Stat. § 43-292(2), (4), (5), (6), and (7) (Reissue 2008). The State alleged that: Shonda had substantially and continuously or repeatedly neglected and refused to give the children necessary parental care and protection; Shonda is unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is

seriously detrimental to the health, morals, or well-being of the children; Shonda 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; reasonable efforts to preserve and reunify the family had failed to correct the conditions leading to the adjudication; the children had been in an out-of-home placement for 15 or more months of the most recent 22 months; and termination was in the children's best interests. The State also alleged that reasonable efforts to preserve and reunify the family were not required because Shonda's parental rights to a sibling of Elijah and Penelope had been terminated involuntarily.

The termination hearing was held on August 11 and 12, 2011. Little testimony was given at the termination hearing, but what was will be set forth below. The majority of the evidence was presented in exhibits, which were largely received without objection.

Evidence was produced regarding Shonda's three older children. Court records from the Colorado cases were received into evidence over objection. Exhibit 112 is an "Order Terminating Parent-Child Legal Relationship" from the district court for Weld County, Colorado. The order, dated February 18, 1997, concerned Christian W. and Ambrosia W., children of

Shonda, and stated "The children's mother plans to relinquish her parental rights so they can be adopted. The court finds that this plan is in the best interest of the children." While the record is not completely clear, all indications are that Shonda did in fact relinquish these children for adoption and there is no evidence that they have ever been in her custody since then. The Colorado district court terminated the parental rights of Christian and Ambrosia's father.

Exhibit 111 is an "Order Terminating Parent-Child Legal Relationship" also from the district court for Weld County, Colorado. The order, dated October 15, 1999, concerned Shawna E., a child of Shonda. The order stated "The Respondent mother was present with counsel . . . and chose to confess the motion, and then to leave." Shawna's father was present without counsel. The district court found that the parents did not comply with the treatment plan, noting that Shonda attended visitation but her visits "were not very good and there was not adequate improvement in her relationship with the child." The district court also found that the parents were unfit, citing Shonda's "emotional deficits" and the history of violence between the parents. The district court terminated the "parent-child legal relationship" existing between Shawna and the "respondent parents."

Debra Milligan, a licensed mental health therapist, conducted pre-treatment assessments for Elijah and Penelope in November 2009. Although Milligan did not testify at the termination hearing, her assessments were received into evidence without objection. Milligan noted that there had been "numerous reports" to CPS in at least three states, and that at least one other state, Texas, planned to remove the children but the family left the state before the children could be removed. Milligan reported that Elijah and Penelope had witnessed domestic violence and have reportedly witnessed Shonda having sex on at least one occasion. Milligan stated that Penelope is significantly behind in her academic functioning, has been inappropriate with her peers, has drawn pictures of genitalia at school, and has made inappropriate comments to boys. Milligan noted that sexual abuse is suspected, but not confirmed. Milligan stated that Elijah lacks age-appropriate knowledge, used inappropriate language, and made inappropriate drawings in school. She stated that Elijah lacks age-appropriate social skills and has been aggressive with other children at daycare. Milligan recommended play therapy for both children. She also recommended family therapy.

Milligan conducted a bonding and attachment assessment for this family from November 2009 to March 2010. Although Milligan did not testify at the termination hearing, her assessment was

received into evidence without objection. In her assessment, Milligan noted that Shonda had a long history of involvement with CPS in at least four states and that there had been 21 intakes regarding Shonda and her children in Nebraska since 1999. She also noted that Shonda had relinquished her rights to two children and had her rights terminated to a third child. Milligan also noted that the family had been chronically homeless and Shonda had been in an extremely violent relationship. Milligan interviewed Shonda and the children separately, and then observed them all together.

Milligan's assessment states that both Elijah and Penelope played out high levels of aggression in the therapy room. Penelope played with dolls and had them engage in "very explicit" sexual activity and violence. Milligan noted that both children demonstrated behaviors typical of insecure or disorganized attachment to Shonda, but that Penelope seems to have an emotional connection with Shonda. Milligan stated that Shonda seems to love her children but her "concern seems to be for the children to meet her need for love, affection, and belonging rather than vice versa." Milligan stated "[i]n order to provide the stability, structure and security that children need, [Shonda] would need instruction and assistance with all aspects of parenting." Milligan noted that Shonda's discipline techniques are "sadly lacking." Milligan stated that Shonda

needs to learn independent living skills and she needs to demonstrate the ability to be free from domestic violence, maintain a home, and maintain employment for a minimum of a year, at which time her ability to parent could be reevaluated.

Dr. Glenda Cottam, a licensed clinical psychologist, did a psychological and bonding assessment for this family in May 2010 and then did an updated assessment in January 2011. Although Dr. Cottam did not testify at the termination hearing, her two trial depositions, which included her assessment reports, were received into evidence without objection. During her 2010 report and deposition, Dr. Cottam stated that Shonda had anxiety, depression, ADHD, learning disorders, and a probable personality disorder with dependent features noted. She stated that Shonda has a history of abusive relationships with men and that there is some suggestion that the men were abusive to some of Shonda's children--Dr. Cottam was referring to all five of Shonda's biological children, not just Elijah and Penelope. Dr. Cottam is concerned that Shonda did fail, and would fail in the future, to protect her children. Dr. Cottam testified that Shonda's parental rights to Elijah and Penelope should be terminated. However, Dr. Cottam noted that it could be difficult to find a family who wants Elijah and Penelope, given their "special needs." Thus, Dr. Cottam suggested that it might not be a bad idea to give Shonda some more time to see if she can improve.

That said, Dr. Cottam said that Shonda's prognosis is "very guarded" and that it would take at least one more year for Shonda to show sufficient progress.

During her 2011 trial deposition and assessment report, Dr. Cottam stated that Shonda appeared worse, not better. Dr. Cottam stated that Shonda had a negative and entitled attitude, and seemed irritable and distracted with the children. Dr. Cottam noted that Penelope seemed uncomfortable seeing Shonda and that the children were struggling and having a rough time. Dr. Cottam noted that during the January 2011 assessment, Shonda's parenting skills were "very disturbing and distressing." She stated that Shonda acted inappropriately and was somewhat bizarre in her tone of voice. Dr. Cottam reported that she observed Shonda and the children through the observation mirror, and while doing so, Shonda threatened to put Penelope in time-out if she would not play with Shonda. Shonda also seemed more intent on directing the children to activities she wanted to do rather than giving the children choices. Shonda also told Penelope that she needed to tell people that she wanted to live with Shonda "NOW." Dr. Cottam wrote that she believed Penelope was scared and Dr. Cottam was "very concerned about the children's welfare at this point."

In her January 2011 assessment, Dr. Cottam wrote "[Shonda] did not demonstrate improvement in her parenting abilities --

from when previously seen in May." She also wrote that "I do not believe that, in the near future [Shonda] could improve her status" regarding mental health and parenting skills. Dr. Cottam testified that Elijah and Penelope need permanency and they cannot wait for Shonda to get her act together. Dr. Cottam testified that terminating Shonda's parental rights is in the children's best interests.

Dr. Daniel Fudge, a licensed psychologist did a psychological and parenting evaluation for this family in March 2011. Although Dr. Fudge did not testify at the termination hearing, his trial deposition, which included his evaluation report, was received into evidence without objection. Dr. Fudge interviewed Shonda individually and then observed her for 1 hour with her children. Dr. Fudge diagnosed Shonda with major depressive disorder, recurrent mild chronic; anxiety disorder, not otherwise specified; and ADHD by report. Dr. Fudge testified that he did not observe any of the parenting issues that Dr. Cottam observed in her January 2011 evaluation. Dr. Fudge testified that there appeared to be a good bond between Shonda and her children. His report noted that Shonda reprimanded and talked to her children in an appropriate way. Dr. Fudge stated that Shonda loves her children, is concerned about their welfare, and wants to get her children back. Dr. Fudge disagrees with Dr. Cottam's opinion regarding termination. Dr. Fudge

testified that Shonda's parental rights should not be terminated at this point. He stated that Shonda needs to continue individual therapy until her therapist says otherwise, that she should stay on her medications, and that she should take a parenting class. Dr. Fudge stated that Shonda will have to show and sustain significant improvement before her children are transitioned back to her, and he was uncertain as to how long that would take. Dr. Fudge stated that he did not review Doug Draeger's clinical notes regarding Shonda--Draeger is Shonda's therapist.

Draeger, a licensed mental health professional, testified that he has been treating Shonda since April or May 2010. Draeger testified that his supervisor, Dr. Rhonda Somerhiser, a clinical psychologist, had diagnosed Shonda as having a borderline personality disorder. Draeger testified that he later learned that Shonda had also been diagnosed with depression, anxiety, and ADHD. Draeger testified that Shonda made some "great progress" in some areas of her life--she found and sustained employment, and she found housing. However, she did not make progress in other areas. Draeger testified that Shonda has trouble managing her emotions, especially her anger; she reacts very strongly and in a very negative way to even mild suggestions; and she does not receive constructive criticism very well. Draeger testified that Shonda does not like to look

at her problems and only likes to hear about where she is making progress. Draeger testified that if Shonda is not willing to look at her weaknesses and past issues, then she will not be able to progress in therapy.

Draeger testified that Shonda does not benefit much from therapy because of her personality issues. He said that she is not gaining insight into the issues she should be addressing. Draeger testified that he does not believe that therapy is helpful to Shonda, but that if further therapy could help her it would take another 1½ to 2 years to address her personality disorder. Draeger testified that Shonda is "probably not" able to parent her children over the long term. He testified that short visits would be fine, but that he does not believe she could do an adequate job of parenting long-term. In his therapy notes, which were received into evidence, Draeger stated that while Shonda might be able to provide for the children's physical needs, he does not see how she can meet and/or nurture their social, educational, and emotional needs.

Lindsay Schwartz, a child and family service specialist with the DHHS, testified at the hearing. At the time of the termination hearing, Schwartz had been working with Shonda and the children for 1 year 9 months. Schwartz testified that the children were removed from the home in November 2009 after DHHS received a hotline call from the school regarding concerns they

had about the children. DHHS then did a safety assessment. DHHS's research suggested that Shonda was fleeing a domestic violence situation involving a male that she was living with at the time. Schwartz testified that after the children were removed, the family received numerous services including case management, pretreatment assessments, bonding assessments, supervised visitation, therapy, and family support. Schwartz testified that visitation notes showed that visits were chaotic, the children appeared to be in charge, and that Shonda had inappropriate conversations with, or in front of, the children. Visitation notes, which were received into evidence, show that Shonda is rude and uncooperative with caseworkers; the children do not listen to Shonda and she struggles to discipline them; and Shonda struggles to tell her children "no." The foster parents have also reported that the children's behavior issues increase after they have visits with Shonda.

Schwartz testified that DHHS's ongoing concerns include erratic behaviors during visits, Shonda's lack of follow-through with budgeting, and past domestic violence. Schwartz testified that she has never been in a position to recommend that the children be returned to Shonda. She testified that the children need permanency and that it is in their best interests that Shonda's parental rights be terminated. However, Schwartz testified that the children are not currently in a prospective

adoptive home, and that two different prospective adoptive placements fell through in the last year.

Jodi Bodnar testified that from April to June 2011 she was employed at Better Living Counseling and provided family support to Shonda. Bodnar testified that Shonda made progress and was always receptive to advice. Bodnar said that Shonda needed the most support with disciplining her children. Bodnar testified that she is supportive of Shonda getting her children back. Bodnar's visitation records, which were received into evidence most recently state that Shonda struggles to remain in control of her children and that Shonda is often too passive in correcting the children's behaviors.

Laura Kudrna testified that she worked at Better Living Counseling and had been providing family support to Shonda for 6 weeks. Kudrna testified that there is a warm relationship between Shonda and her children. Kudrna testified that Shonda has "absolutely" made progress and should have increased visits with the children. We note that the evidence is that Bodnar and Kudrna both only worked with Shonda briefly--two months or less.

Shonda had been in a relationship with Edward H. since 2005. Shonda testified that she filed restraining orders against Edward during their relationship because he was mentally, emotionally, and physically aggressive. However, she continued the relationship. The record reveals that Shonda filed for five

protection orders from 2005 to 2010. She testified that the children were not around when Edward was "aggressive" towards her. However, Shonda testified that Edward was "aggressive" towards Elijah. Shonda married Edward H. on November 3, 2009. She filed for divorce on December 15. Shonda testified that she visited Edward when he was in jail in February and March 2010, but she has "moved on." The decree of dissolution was filed on April 9, 2010. Shonda testified that to prevent domestic violence in the future she has joined a church, follows the Bible, she goes to counseling, she has received a parenting certificate, and she has a nice place to live and a car. She testified that the Center for Survivors told her to stop coming to meetings because she was not in a violent relationship. Shonda testified that she has no plans to seek out a male relationship and instead wants to focus on her children.

Shonda testified that her children have issues taking directions from adults. Shonda said that redirection and follow through is what she struggles with regarding the children, but that she is working on it. She said she no longer allows the children to dictate what happens during visits. Shonda testified that she is willing to participate in individual and family counseling. She said she is willing to address her anger issues in counseling. Shonda testified that she feels capable of handling the children for long periods of time.

In separate orders filed on September 30, 2011, the juvenile court found that the children had been in an out-of-home placement for 15 or more months of the most recent 22 months (§ 43-292(7)). The juvenile court found that "[a]lthough reasonable efforts were undertaken, even before a formal court report and case plan was adopted at the dispositional hearing held November 1, 2010," those efforts were not required because Shonda's parental rights to another child were involuntarily terminated in 1999 by a court in Colorado. The juvenile court terminated Shonda's parental rights to Elijah and Penelope after finding that such was in the children's best interest. Shonda has timely appealed to this court.

ASSIGNMENTS OF ERROR

Shonda alleges that the juvenile court erred in: (1) determining that reasonable efforts to reunify the family were not necessary pursuant to Neb. Rev. Stat. § 43-283.01 and (2) concluding that the State and Guardian ad Litem presented clear and convincing evidence that it is in the children's best interest that Shonda's 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 Hope L.*, 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

Grounds for Termination.

In Nebraska statutes, the grounds for termination of parental rights are codified in Neb. Rev. Stat. § 43-292 (Cum. Supp. 2010). Section 43-292 provides 11 separate conditions, 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. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

In its order terminating Shonda's parental rights to Elijah and Penelope, the juvenile court found that the children had been in out-of-home or home placement for 15 or more months of the most recent 22 months (§ 43-292(7)). Shonda does not assign or argue that the juvenile court erred in finding that grounds for termination existed under § 43-292(7). And our de novo review of the record clearly and convincingly shows that grounds for termination of Shonda's parental rights under § 43-292(7) were proven by sufficient evidence.

Elijah and Penelope were removed from Shonda's home on November 10, 2009. At the time the second supplemental petition to terminate parental rights was filed on February 17, 2011, the

children had been in an out-of-home placement for 15 months. At the time the termination hearing began on August 11, 2011, the children had been in an out-of-home placement for 21 months. Clearly grounds for termination of Shonda's parental rights under § 43-292(7) were proven by sufficient evidence. Once a statutory basis for termination has been proved, the next inquiry is whether termination is in the children's best interests.

We note that because we need not consider whether termination of Shonda's parental rights was proper pursuant to § 43-292(6), Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2010), which requires reasonable efforts to reunify families, is not applicable to the instant case. *In re Interest of Andrew M.*, 11 Neb. App. 80, 643 N.W.2d 401 (2002). Section 43-283.01 is only incorporated into § 43-292(6), not into the remaining subsections of § 43-292. *Id.*

Best Interest of the Children.

Shonda argues that the juvenile court erred in finding that terminating her parental rights was in the best interest of the children. Neb. Rev. Stat. § 43-292 requires that parental rights can only be terminated when the court finds that termination is in the child's best interest. A termination of parental rights is a final and complete severance of the child from the parent and removes the entire bundle of parental rights. See *In re*

Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004). Therefore, with such severe and final consequences, parental rights should be terminated only "in the absence of any reasonable alternative and as the last resort." See *In re Interest of Kantril P.*, 257 Neb. 450, 467, 598 N.W.2d 729, 741 (1999). However,

Where 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 Andrew M. et al.*, 11 Neb. App. 80, 643 N.W.2d 401 (2002). Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Phyllisa B.*, 265 Neb. 53, 654 N.W.2d 738 (2002).

In re Interest of Stacey D., 12 Neb. App. 707, 717, 684 N.W.2d 594, 602 (2004).

Shonda has either relinquished or had her parental rights terminated to three other children. She has been involved, on and off, with child protective services for over 15 years. And she has had 21 intakes in Nebraska since 1999. Elijah and Penelope were removed from the home due to risk of harm from domestic violence at home and inappropriate behaviors occurring at school. DHHS had to get an ex parte order for temporary custody before completing an intake on the family because there

was a concern that Shonda would flee as she had done in the past.

Despite her long history with the system, Shonda has been uncooperative with caseworkers and therapists. She does not like to focus on any of her past issues, such as domestic violence, and only wants to focus on the things she is doing well. Draeger, her long-time therapist, testified that if Shonda is not willing to look at her weaknesses and past issues, then she will not be able to progress in therapy. While Shonda has maintained employment and a nice home, she has failed to make progress in regards to her children. She is unable to control them and struggles to use appropriate discipline. Although her children have been out-of-home since November 2009, Shonda has failed to progress beyond supervised visitation. Shonda has been diagnosed with several mental health conditions which interfere with her ability to parent, and those conditions are not easily or quickly remedied. Schwartz, the child and family service specialist with the DHHS who worked with Shonda for nearly 2 years, testified that the children need permanency and that it is in their best interests that Shonda's parental rights be terminated.

Draeger testified that Shonda is "probably not" able to parent her children over the long term. Draeger stated that while Shonda might be able to provide for the children's

physical needs, he does not see how she can meet and/or nurture their social, educational, and emotional needs. In her 2011 report, Dr. Cottam wrote that "I do not believe that, in the near future [Shonda] could improve her status" regarding mental health and parenting skills. Dr. Cottam testified that Elijah and Penelope need permanency and they cannot wait for Shonda to get her act together. Dr. Cottam testified that terminating Shonda's parental rights is in the children's best interests.

Those who spoke positively of Shonda were two family support workers and Dr. Fudge. The support workers only worked with the family for 6 weeks and 2 months, respectively. Dr. Fudge, unlike Dr. Cottam and Draeger, only met with Shonda one time and only observed her with her children for one hour. Although Dr. Fudge said that he did not think Shonda's parental rights should be terminated "at this point," he stated that Shonda will have to show and sustain significant improvement before her children are transitioned back to her, and he was uncertain as to how long that would take.

At the time of the termination hearing, Elijah and Penelope had been in foster care for 21 months. 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). Elijah and Penelope need a stable, able and willing caregiver and unfortunately

Shonda has not proved herself to be such a caregiver. Shonda is an unfit parent. Therefore, the juvenile court did not err in finding that it is in Elijah and Penelope's best interest that Shonda's parental rights be terminated.

CONCLUSION

We find that grounds for termination of Shonda's parental rights exist under Neb. Rev. Stat. § 43-292(7) and that termination of Shonda's parental rights is in Elijah and Penelope's best interest. Therefore, we affirm the decision of the juvenile court terminating Shonda's parental rights to Elijah and Penelope.

AFFIRMED.