

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF EMILY V.

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IN RE INTEREST OF EMILY V., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

AMANDA V., APPELLANT.

Filed October 8, 2013. No. A-13-224.

Appeal from the Separate Juvenile Court of Douglas County: CHRISTOPHER KELLY,  
Judge. Affirmed.

Peder Bartling, of Bartling Law Offices, P.C., L.L.O., for appellant.

Donald W. Kleine, Douglas County Attorney, and Amy Schuchman for appellee.

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

IRWIN, Judge.

I. INTRODUCTION

Amanda V. appeals from the order of the juvenile court which terminated her parental rights to her daughter, Emily V. On appeal, Amanda challenges the juvenile court's finding that her parental rights should be terminated pursuant to Neb. Rev. Stat. § 43-292(2) (Cum. Supp. 2012) and the court's finding that termination of her parental rights is in Emily's best interests. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Amanda's parental rights. As such, we affirm the order of the juvenile court terminating Amanda's parental rights to Emily.

II. BACKGROUND

Amanda has struggled with a drug addiction and with mental health problems for a number of years. As a result of Amanda's struggles, she has a lengthy history with the juvenile

court systems in both Nebraska and Iowa. Amanda's history with the juvenile court is relevant to the current proceedings, because such history provides insight into her ability to independently parent Emily. As a result, we recount her history here.

Amanda's history with the juvenile court system began in March 2005, when Amanda's oldest child, Samantha L., born in October 1999, was placed in the custody of the Nebraska Department of Health and Human Services (the Department). In March 2005, Samantha was being cared for by a relative and had not resided with Amanda for approximately 6 months. The State filed a petition alleging that Samantha was within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004) due to, among other things, Amanda's use of methamphetamines and her neglect of Samantha.

In January 2007, almost 2 years after Samantha was placed in the Department's custody, the juvenile court entered an order terminating Amanda's parental rights to Samantha. In the order, the court found that despite 17 months of intervention and services, Amanda had failed to make sufficient progress toward reunification with Samantha. The services offered to Amanda during the proceedings included a psychiatric and psychological evaluation, a chemical dependency evaluation, inpatient and outpatient treatment programs, random drug testing, and supervised visits with Samantha. Amanda failed to follow through with any mental health or substance abuse treatment. She did not stop using methamphetamines during the entire pendency of the case. And, Amanda did not attend visitations with Samantha, nor did she even attend the termination hearing.

Amanda's history with the juvenile court system continued in Iowa in December 2007. At this time, Amanda's 4-month-old son, Nathaniel H., was removed from her care and placed in the custody of the Iowa Department of Human Services after Amanda admitted to using methamphetamines. Subsequently, Nathaniel was adjudicated to be a child in need of assistance. See Iowa Code Ann. § 232.2(6)(c)(2) and (n) (West 2007).

Nathaniel was returned to Amanda's care in May 2008; however, by September 2009, Amanda indicated that she was unable to care for him due to her mental health problems, and she relinquished his care to her sister. Nathaniel was subsequently returned to the custody of the Iowa Department of Human Services.

In January 2009, Amanda had a third child, Luis H. At the time of his birth, Luis tested positive for prescription pain medications. Amanda retained custody of Luis, but struggled to care for him. In October 2009, Luis was removed from Amanda's custody and placed in the custody of the Iowa Department of Human Services.

In May 2010, almost 2½ years after the juvenile court proceedings were initiated in Iowa, Amanda's parental rights to Nathaniel and Luis were terminated. During the pendency of those proceedings, Amanda had been offered numerous services, including the assistance of a family support worker, chemical dependency treatment, transportation assistance, parenting classes, and random drug testing. Despite these services, Amanda continued to struggle with an addiction to prescription medication, she was homeless, she was unemployed, and she was not consistent in her visitation with her sons. Amanda indicated that she was unable to cope with her children's behavior and that she did not have a desire to learn how to become an effective parent.

In April 2011, approximately 1 year after the termination proceedings involving Nathaniel and Luis, Emily was born. The current proceedings concern Amanda's ability to appropriately parent Emily.

These proceedings were initiated in August 2012, when the Department received a report that Amanda was abusing prescription medication and that there had been instances of domestic violence between Amanda and Emily's father, Moises V., while Emily was in the home. As a result of this report, an initial assessment worker, Tiffany Shellenberger, met with Amanda on August 30, 2012. During this meeting, Amanda stated that she suffered from chronic neck pain and that she was using prescription pain medication to control the pain. She admitted that she sometimes obtains pills from individuals other than her doctor. In addition, she showed Shellenberger a pill bottle for prescription pain medication that she had obtained approximately 9 days prior to the meeting. The bottle indicated that it had contained 90 pills; however, there were no pills left. Amanda told Shellenberger that her "friend" had stolen the pills.

During the August 30, 2012, meeting with Shellenberger, Amanda admitted that she had been physically violent toward Moises on numerous occasions. She indicated that she had hit him in the head and face, that she had pushed him, and that she had thrown things at him. Amanda reported that Emily was present in the home during these altercations, but that she was in another room. Amanda also informed Shellenberger that she suffers from anxiety and depression and that she is bipolar.

After her meeting with Amanda, Shellenberger determined that Emily could remain in Amanda's care, as long as a safety plan was established and followed. The safety plan implemented by Shellenberger required that either Moises or Amanda's mother would have to be in the home at all times to assist Amanda with caring for Emily. The plan also required Amanda to submit to random drug testing and to obtain a chemical dependency evaluation. Amanda agreed to comply with the safety plan; however, the plan was not successful, because Amanda's mother refused to assist Amanda with Emily after Amanda and her mother got into an argument when her mother refused to bring Amanda prescription medication.

Because the safety plan was not successful, Emily was removed from Amanda's home on August 31, 2012. Emily has remained in an out-of-home placement since that time.

Also on August 31, 2012, the State filed a petition alleging that Emily was a child within the meaning of § 43-247(3)(a) (Reissue 2008) due to the faults or habits of Amanda. Specifically, the petition alleged that Emily was at risk for harm because Amanda used alcohol and/or controlled substances, engaged in domestic violence with Emily's father, failed to provide Emily with safe and stable housing, and had her parental rights to three older children involuntarily terminated.

An initial hearing on the State's petition was held on September 12, 2012. At that hearing, Amanda agreed to voluntarily participate in services which were designed to address her drug use and her mental health problems. Such services included a psychological evaluation, a chemical dependency evaluation, random drug testing, an anger management program, individual therapy, and family support, which was to include a parenting program.

Approximately 1 month after this initial hearing was held, the State filed an amended petition. The amended petition again alleged that Emily was a child within the meaning of § 43-247(3)(a) due to the faults or habits of Amanda. In addition, the petition alleged that Emily

was within the meaning of § 43-292(2), because Amanda had previously substantially and continuously or repeatedly neglected Emily's siblings, Samantha, Nathaniel, and Luis, and because Amanda was now substantially and continuously or repeatedly neglecting Emily. The State alleged that termination of Amanda's parental rights was in Emily's best interests.

In December 2012, a hearing concerning the allegations in the amended petition was held. This hearing continued on multiple dates in January and February 2013. After the hearing, the juvenile court entered an order finding that Emily was a child within the meaning of § 43-247(3)(a). The court also found that Emily was within the meaning of § 43-292(2), because Amanda had previously neglected Emily's older siblings, Samantha, Nathaniel, and Luis. The court found that termination of Amanda's parental rights is in Emily's best interests. The juvenile court then ordered that Amanda's parental rights to Emily be terminated.

Amanda appeals from the juvenile court's order here.

### III. ASSIGNMENTS OF ERROR

On appeal, Amanda challenges the juvenile court's finding that her parental rights should be terminated pursuant to § 43-292(2) and that termination of her parental rights is in Emily's best interests.

### IV. ANALYSIS

#### 1. 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 proven. *Id.*

#### 2. STATUTORY GROUNDS FOR TERMINATION

Amanda assigns as error the juvenile court's finding that the State presented clear and convincing evidence to prove the statutory grounds for termination of her parental rights. Specifically, she challenges the juvenile court's determination that termination of her parental rights was warranted pursuant to § 43-292(2). Upon our de novo review of the record, we find that the State presented clear and convincing evidence to prove that termination was warranted pursuant to § 43-292(2).

Section 43-292(2) provides that a court may terminate 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." At the termination hearing, the State presented uncontradicted evidence that Amanda's parental rights to her three older children

had been involuntarily terminated. The reasons for the termination of Amanda's parental rights to Samantha, Nathaniel, and Luis were Amanda's continued use of illegal drugs and abuse of prescription medication, her failure to cooperate with the numerous services offered to her to help her regain custody of her children, and her lack of desire to be a parent to her children. Essentially, the evidence revealed that Amanda failed to put her children's needs ahead of her own needs and that she was unable or unwilling to rehabilitate herself so that her children could return to her care. Such evidence clearly and convincingly establishes that Amanda substantially and continuously neglected Emily's three older siblings pursuant to § 43-292(2).

In addition, the State presented evidence to establish that Amanda has neglected Emily. The State presented evidence that by August 2012, Amanda was abusing prescription medication again and that because of her abuse of this medication, she was often unable to care for Emily. Emily's father, Moises, testified that Amanda would often just lie on the couch all day when she was supposed to be caring for Emily. There was also evidence that Amanda had been physically violent with Moises, including hitting him in the head and face and throwing things at him, while Emily was in the home. In fact, Moises testified that during these violent episodes, Emily was often in the same room with them. The State also presented evidence that after Emily's removal from Amanda's care, Amanda did not cooperate with the rehabilitative services offered to her and that she was not consistent in her visitation with Emily. Taken together, this evidence is sufficient to establish that Amanda has substantially and continuously neglected Emily pursuant to § 43-292(2).

Because the State presented sufficient evidence to establish that termination of Amanda's parental rights was warranted pursuant to § 43-292(2), Amanda's assigned error concerning the statutory basis for termination of her parental rights is without merit.

### 3. BEST INTERESTS OF CHILD

Amanda also assigns as error the juvenile court's finding that termination of her parental rights is in Emily's best interests. Specifically, Amanda alleges that she was not provided with enough time to demonstrate that she could be an appropriate parent for Emily and that the Department failed to provide her with an effective case plan to assist her in her rehabilitative efforts. In addition, Amanda alleges that despite the insufficient amount of time provided to her and the Department's failure to assist her, that she made some progress during the pendency of the current juvenile court proceedings. Essentially, Amanda argues that we should focus on her current situation and not on her past parenting mistakes. Upon our de novo review of the record, we find sufficient evidence that termination of Amanda's parental rights is in Emily's best interests. As such, we affirm the order of the juvenile court.

The evidence presented at the termination hearing revealed that Amanda has struggled with a pervasive and continuous drug problem since at least 2005. In addition, Amanda has also struggled with mental health problems and with managing her anger and emotions appropriately. Amanda's difficulties have resulted in her having a history with the juvenile court system. In 2005, her oldest child, Samantha, was removed from her care. The juvenile court and the Department attempted to help Amanda regain custody of Samantha, but after almost 2 years of services, Amanda made no progress toward reunification and her parental rights were terminated. Amanda became involved with the juvenile court system again in 2007. This case involved

Amanda's sons, Nathaniel and Luis. During this juvenile court case, Amanda was provided with numerous services and offers of assistance, but, after 2½ years, Amanda had made no progress toward reunification and her parental rights to her sons were terminated.

Amanda's history with the juvenile court system is particularly relevant to the current juvenile court proceedings which involve Emily, because Emily was removed from Amanda's care for the same reasons that eventually led to the termination of Amanda's parental rights to her three older children. The evidence presented at the termination hearing revealed that Amanda continues to struggle with an addiction to prescription medication, with mental health issues, and with domestic violence in her relationships. In addition, the evidence revealed that Amanda was unwilling to comply with the Department's efforts to assist her in seeking treatment and in achieving reunification with Emily.

Amanda initially agreed to voluntarily participate in a plan designed to assist her in achieving reunification with Emily; however, she ultimately failed to cooperate with most of the services available to her. Amanda did not attend any chemical dependency treatment, even though she admitted that her use of prescription medication was a problem. Amanda was not consistent in her participation with random drug testing. For example, in November 2012, she missed three out of the four drug tests that were requested of her. In addition, when Amanda did cooperate with the drug testing, she often tested positive for some type of controlled substance. Amanda did not ever complete a psychological evaluation. Amanda did not attend anger management classes even though the Department caseworker gave Amanda \$80 in cash to pay for her registration fee. Amanda was not consistent in her attendance at visitations with Emily. She missed multiple visits each month, and when she would attend visits, she would often terminate the visit early.

On appeal, Amanda argues that the Department's efforts to assist her were not effective because the Department provided her with the same services she had been offered during her previous juvenile court cases even though the Department knew these services had failed to help her achieve reunification with her three older children. Amanda appears to assert that the Department should be required to offer her different services to address her problems, because she was unable or unwilling to comply with the services previously offered to her. Amanda's assertions in this regard are without merit. During the 8 years that Amanda has been involved with the juvenile court system, she has been offered a variety of services to assist her with her drug use and abuse, with her mental health issues, and with her lifestyle choices. And, no matter what service the Department offered to her, she failed to comply or cooperate with the Department's efforts. Moreover, Amanda has not provided any suggestion for what other services could be offered to her or any indication that she would actually comply with any such service.

Amanda also argues that she was simply not provided with enough time to complete the reunification plan. We agree with Amanda's contention that she was not provided with a lot of time to demonstrate compliance with the plan, given that the initial petition was filed in August 2012 and the State filed an amended petition requesting termination of her parental rights in October 2012. However, we do note that the hearing on the State's motion to terminate did not conclude until February 2013. As such, in actuality, Amanda had an additional 4 months after the motion to terminate her parental rights was filed to demonstrate her compliance with the plan.

Despite this additional time and despite Amanda's knowledge that the State was seeking termination of her parental rights to Emily, she made little progress toward achieving reunification.

Amanda presented evidence that in late December 2012, she admitted herself to a women's shelter to seek assistance. Since she began residing at the shelter, Amanda has attended classes which address such topics as relationships, managing finances, parenting skills, and domestic violence. Amanda also began participating in individual therapy. However, there was evidence that Amanda has not been consistent in her attendance at the classes, and there was no evidence about Amanda's attendance at therapy or about the progress she has made in therapy. Additionally, the shelter where Amanda is residing does not have a chemical dependency program and does not manage or require any monitoring of drug usage. Amanda did not present any evidence concerning her intentions with regard to chemical dependency treatment or whether she was currently abstaining from her use of prescription medication. To the contrary, the evidence presented by the State suggested that Amanda continues to abuse prescription medication and that she is unwilling to seek any treatment.

Although Amanda was not provided with a lot of time to demonstrate compliance with the rehabilitation plan, her lack of compliance during the 6 months she was provided is indicative of her continued unwillingness to address her drug problem and her mental health issues. This lack of compliance is particularly demonstrative given Amanda's history with the juvenile court. During her previous cases, Amanda was given significant amounts of time to make progress toward reunification and she failed or refused to cooperate with the services offered to her. During that time, her children were languishing in foster care with an uncertain future.

The Nebraska Supreme Court has previously recognized that one's history as a parent speaks to one's future as a parent. *In re Interest of Sir Messiah T.*, 279 Neb. 900, 782 N.W.2d 320 (2010). As such, even though we must review evidence of a parent's current circumstances in determining a child's best interests, prior neglect of a sibling is relevant to the current inquiry. See *id.* We need not ignore past parenting outcomes. *Id.*

Upon our de novo review of all of the evidence presented at the termination hearing, including the evidence of Amanda's history with the juvenile court system, we find sufficient evidence to demonstrate that termination of Amanda's parental rights is in Emily's best interests. The evidence reveals that Amanda continues to struggle with a prescription drug addiction and with mental health issues. Amanda's struggles affect her ability to appropriately and effectively parent Emily. Such struggles also affect Amanda's ability to place Emily's needs ahead of her own. Amanda has not availed herself of the services offered to her by the Department, and perhaps more important, she has not provided any indication that she would avail herself of the services if given additional time to comply. Amanda's unwillingness to participate in services was part of the reason her parental rights to her three older children were terminated after the children were out of her home for years. During the pendency of the previous juvenile court cases, Amanda failed to utilize the services offered to her and failed to make any progress toward reunification.

Given the evidence of Amanda's history of drug use and mental health problems and given the evidence of Amanda's current struggles and circumstances, we affirm the juvenile

court's finding that termination of Amanda's parental rights is in Emily's best interests and the juvenile court's decision to terminate Amanda's parental rights.

#### V. CONCLUSION

Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Amanda's parental rights. As such, we affirm the order of the juvenile court terminating her parental rights to Emily.

AFFIRMED.