

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF JAL C. ET AL.

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

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

LAZARUS L., APPELLEE AND CROSS-APPELLANT, AND RACHEL M., APPELLANT.

Filed January 10, 2012. No. A-11-262.

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

Thomas C. Riley, Douglas County Public Defender, and Zoë R. Wade for appellant.

Donald W. Kleine, Douglas County Attorney, Jennifer C. Clark, and Erin Hurley, Senior
Certified Law Student, for appellee State of Nebraska.

Aleta S. Allen for appellee Lazarus L.

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

CASSEL, Judge.

I. INTRODUCTION

Rachel M. appeals and Lazarus L. cross-appeals from orders of a separate juvenile court terminating their parental rights to their respective children. Because the State proved by clear and convincing evidence the existence of a statutory ground for termination of parental rights and that termination was in the children's best interests, we affirm the orders.

II. BACKGROUND

Rachel is the biological mother of Jal C., born in July 1995; Goar C., born in October 1997; Nyakong C., born in September 1999; Sijin C., born in September 2000; Benjamin C., born in July 2005; Makuach L., born in November 2007; and Isaiah L., born in March 2009.

Lazarus is the biological father of Makuach and Isaiah. Jal, Goar, Nyakong, Benjamin, and Makuach were removed from Rachel's home and placed in protective custody in April 2008 due to allegations of a dirty home and alcohol abuse by Rachel. At that time, Lazarus was incarcerated, Sijin was in Canada with his guardians, and Isaiah was not yet born. The children have not returned to the care of Rachel or Lazarus.

On November 19, 2008, the State filed a petition alleging that Jal, Goar, Nyakong, Benjamin, and Makuach came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). It alleged, among other things, that a representative of the Nebraska Department of Health and Human Services (DHHS) and law enforcement officers observed Rachel to be intoxicated on March 25, 2008; that Makuach had sustained two leg fractures and injury to his head; and that Rachel had failed to utilize and work with services offered by DHHS. On January 7, 2009, the State filed a supplemental petition alleging that Sijin came within the meaning of § 43-247(3)(a) and lacked proper parental care because he was in a legal guardianship which was dissolved in September 2008, DHHS' efforts to reach Rachel since December had been unsuccessful, and there was no appropriate person to provide proper care and support for Sijin at that time. Sijin was placed into protective custody in January 2009 and was adjudicated on April 25. Isaiah was placed in protective custody in March.

Lazarus filed a complaint for leave to intervene on April 8, 2009. Two days later, the State filed a petition alleging that Makuach and Isaiah were children under § 43-247(3)(a) due to Lazarus' faults in failing to make himself available in order to reunify with Makuach; utilize services offered by DHHS in order to reunify; provide proper parental care, financial support, and emotional support; and provide the children with safe, stable, and appropriate housing. On May 12, the juvenile court adjudicated Makuach and Isaiah as to Lazarus.

On June 25, 2009, the juvenile court adjudicated all of the children as to Rachel. It ordered Rachel to undergo "fresh" psychological and chemical dependency evaluations. On July 2, the court ordered Lazarus to cooperate with family support worker services, to undergo a pretreatment assessment, to obtain safe and independent housing, to maintain a legal source of income, and to be allowed reasonable rights of supervised visitation.

A September 1, 2009, court order stated that the permanency objective for Sijin, Benjamin, Makuach, and Isaiah was reunification with a concurrent objective of adoption. The permanency objective for Jal, Goar, and Nyakong was family preservation with their father, Sandro J. The court ordered Rachel to undergo a chemical dependency evaluation and psychiatric evaluation upon her release from incarceration, to take all medications as prescribed, to submit to drug and alcohol testing as requested by DHHS, to cooperate with family support worker services, and to participate in individual and family therapy. The court ordered Lazarus to cooperate with family support worker services and to participate in individual therapy.

On June 15, 2010, the State filed the operative motions to terminate parental rights. The motion seeking to terminate Rachel's parental rights alleged statutory grounds for termination under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2008), the last of which was not alleged to apply to Isaiah. The motion to terminate Lazarus' parental rights alleged that Makuach and Isaiah came within the meaning of § 43-292(2) and (6) and that Makuach also came within the meaning of § 43-292(7). The juvenile court conducted a termination hearing over several days commencing on September 15 and concluding on December 14.

Sharon Friend, a case manager with DHHS, has worked with the family since April 2008. At that time, Rachel lived in an apartment and had employment as a translator. Friend's first interaction with Lazarus occurred in May or June, after his release from incarceration. He then began living with Rachel.

Friend testified that Sijin had been placed in a guardianship with his grandmother, but the grandmother died in September 2006. At that time, DHHS consented to a guardianship for Sijin with his aunt and uncle, who took the child to Canada for 2 years. However, they were unable to obtain immigration status for Sijin, so he was returned to Nebraska. Friend testified that none of the information she reviewed indicated that Rachel was advised of the latter guardianship proceeding or consented to Sijin's moving to Canada. Since Sijin was made a part of the case in January 2009, the permanency objective had been reunification. Friend testified that Rachel requested visitation be set up with Sijin in January, but it was not set up until approximately 6 months later because DHHS was trying to figure out if Rachel's parental rights were intact.

Jal, Goar, and Nyakong were placed with Sandro from October 2009 to the time of trial. Friend testified that the permanency plan for those children was family preservation and that terminating Rachel's parental rights would not free those children for adoption or further any of the permanency objectives outlined in DHHS' policy. Friend testified that the three children are bonded to Rachel and still want to be able to visit her, but that they do not want to live with her.

Friend testified that Rachel had different visitations for different groups of her children. The visitation with Jal, Goar, and Nyakong was initially two to three times a week at a neutral site, then it moved to Rachel's apartment. From approximately November 2008 to January or February 2009, the children did not visit Rachel due to a court order. In the spring of 2009, visitation decreased to twice a week due to missed visits, which upset the children. Then visitation decreased to once a week during family therapy. When Rachel entered chemical dependency treatment at the Stephen Center in June 2010, she has had visitation with Jal, Goar, and Nyakong once a week.

At some point, Benjamin, Makuach, and Isaiah began having visitation together with Rachel, and at times Sijin also participated. Benjamin, Makuach, and Isaiah had visitation with Rachel three times a week, but the visitation decreased to twice a week in approximately March 2010 because of Rachel's absence and Benjamin's "acting-out behaviors." Friend testified that documentation from the visits showed that visitation was not consistent because Rachel missed some visits and ended others early. Rachel told Friend that sometimes she missed visits or ended them early because of transportation issues or problems with the dosages of her medication.

When Friend observed visits with the family, Lazarus provided the majority of the care to the children: he would get them food, play with them, and change diapers and the children's clothing. Meanwhile, Rachel sat on the couch the majority of the time. Friend testified that Rachel would talk to the children and play with them, but that Lazarus participated more during the visitations.

Friend testified that the only allegation relating to alcohol use in the initial adjudication petition was that Rachel was observed to be intoxicated on March 25, 2008. Rachel agreed to voluntarily participate in services prior to adjudication, and she completed a chemical dependency evaluation on May 24. The evaluation recommended an 8-hour educational class,

but there was no indication of alcohol dependence and there was no recommendation for chemical dependency treatment.

Therapist Antoinette Bell received authorization on July 16, 2008, for Rachel to participate in a parenting class, which usually takes 7 weeks to complete. Bell had one-on-one sessions with Rachel in Rachel's home, and Bell thought that Lazarus was present for two sessions. Bell believed that she and Rachel had met four times and were a little over halfway through when Bell had to get an extension on the authorization due to "gaps" in their meetings because Rachel was not home on several occasions even though the appointments were set for the same day and time every week. The extension lasted through December 7, 2009, but the last time Bell met with Rachel was in 2008. Although Bell believed that Rachel had retained some of the information, Bell was never able to observe Rachel interacting with her children to see if she applied any of the information she had received.

Friend provided a family support worker to Rachel to assist with community resources, immigration status, and parenting skills. However, Rachel told Friend in June 2008 that she no longer wanted to participate in that program. Friend testified that Rachel complained about the provider's changing visitation workers frequently and missing and canceling visits, which complaints Friend believed to be valid. In March 2009, Rachel began working with a different provider for family support work and visitation and had not reported any problems with that provider.

Friend testified that Rachel completed a psychological evaluation in October 2008. According to the evaluation, it was imperative for Rachel to receive culturally appropriate therapeutic services and three of the five recommendations suggested the implementation of services with some kind of cultural component. Friend agreed that it was important for services to be culturally appropriate because Rachel "has a very strong history in Sudanese culture." In an effort to implement culturally appropriate services, Friend worked with Visinet, which subcontracted with the Caring People of Sudan (CPS). However, CPS worked with Rachel for a short period of time before Rachel asked to have them removed because they were either tardy or not showing up at all. According to Friend, there was a dramatic difference in the reports regarding Rachel's parenting skills by CPS in comparison with other providers. The CPS reports were "glowing" regarding Rachel's ability to parent, commented that she had excellent communication with her children, and noted that she disciplined them appropriately and effectively. Once the services were contracted back to Visinet, the reports regarding Rachel essentially returned to the way that they were prior to being contracted with CPS. Friend testified that Rachel had consistently struggled with discipline.

Elizabeth McNeill, a family consultant with Boys Town, worked with Rachel since March 2009 and was also a family consultant for Lazarus. She provided family support in the home and visitation for Benjamin, Makuach, and Isaiah. Sijin began visitation with the family in June 2010. McNeill believed that they were initially focusing on parenting skills, such as discipline, boundaries, and prompting to feed and change. Initially, McNeill afforded Rachel and Lazarus at least 6 hours of visitation a week. She was authorized to meet with them once a week for family support, which usually lasted 1 hour. McNeill testified that Rachel was fairly consistent in making weekly appointments for both family support and visitation between March and June 2009. After that time, McNeill testified that there were times that she went to Rachel

and Lazarus' home with the children in the vehicle and nobody would answer the door, even though the visitation was a set schedule to occur at the same day and time every week. The children would cry when the visit did not occur. The inconsistency lasted until June 2010. McNeill began doing the family support during the visitation, but that affected her ability to provide support because the young children needed to be monitored. McNeill testified that Rachel's parenting was inconsistent and that Rachel had to be prompted for feeding, changing, and timeouts. McNeill testified that Lazarus did well in his parenting. Rachel's and Lazarus' level of visitation always remained supervised.

McNeill testified that Lazarus was incarcerated around the time of the eviction, and she was unable to provide services for him when he was incarcerated. After that time, Rachel's participation became inconsistent because she struggled with transportation to get to visits and visits could not occur in Rachel's home because she did not have a permanent residence. McNeill testified that Rachel struggled in visitations without Lazarus' presence, saying that she felt overwhelmed and that it was difficult for her to monitor all of the children. McNeill noted family barriers for Rachel and Lazarus, including defensiveness, irresponsibility, lack of insight, and need for close supervision. McNeill testified that between January and April 2010, she still encountered the same family barriers and still noted inconsistencies in Rachel's parenting. But from June to the time of trial, visitation had been consistent. McNeill testified that Rachel's communications with her children had become more appropriate, that her ability to follow through had become better, and that her ability to discipline her children had improved.

Friend put in a referral for Rachel to have individual therapy in April 2009, and the referral was good for 6 months. Friend received verbal reports that Rachel was attending the therapy, but was not able to speak with the therapist very often because he was very difficult to reach. Friend testified that Rachel said her attendance at therapy was very sporadic due to difficulties in reaching the therapist to set up sessions. Friend offered Rachel a different therapist, but it was not until near the end of the referral that they agreed to find one.

Friend testified that people associated with Beneficial Behavioral Health Services informed her that Rachel would miss appointments and be tardy. Friend testified that Rachel blamed the missed appointments on the arranged transportation's failing to pick her up. When Friend followed up with the transportation provider, she was informed that nobody was at the address when the provider arrived. Friend testified that she has had difficulty reaching Rachel at times, and she also testified about difficulties due to Rachel's medication not being regulated. A drug specialist who tried to arrange for random urinalysis testing of Rachel in December 2009 testified about her difficulties in trying to schedule testing. The specialist called Rachel at different times of the day and left voicemails but was never able to speak to her or schedule testing. A different agency took over urinalysis testing, and its records showed that between December 21, 2009, and July 21, 2010, 84 urinalysis tests were requested of Rachel. There were 30 telephone attempts which meant that Rachel was called before noon and either the telephone was disconnected, there was no voicemail to leave a message, or a message was left giving Rachel until 4:30 p.m. that day to call back and Rachel failed to do so. On two occasions, Rachel set an appointment but did not show up. She had 49 negative tests. An exhibit also showed three refusals, which were explained as follows: (1) Rachel attempted to submit a sample but was

unable to produce one, (2) Rachel was unable to produce a sufficient sample, and (3) Rachel missed the collection cup.

Friend testified that visitation reports did not reflect any concern regarding ongoing alcohol use by Rachel from the beginning of the case up until Rachel's hospitalization following an automobile accident which Friend believed occurred in January 2009. Rachel was hospitalized for a few days, then admitted to a psychiatric ward, and then sent to a recovery center for several weeks. Friend further testified that there had not been any reported concerns about Rachel's consuming alcohol from the time of Rachel's hospitalization until the time of trial.

In June 2009, DHHS was offering Rachel family support work, visitation, individual therapy, and family therapy. DHHS was offering Lazarus family support and visitation. At the June hearing, Rachel was ordered to complete a new psychological evaluation and chemical dependency evaluation.

Joseph C. Stankus, Ph.D., a clinical psychologist, conducted a psychological evaluation on Rachel in August and September 2009. Based upon the Kinetic Family Drawing, Stankus concluded that Rachel had a strong emotional bond with her children and "hoped that things could work out for the better." Stankus testified that based on the Adult-Adolescent Parenting Inventory, Rachel had potential to be a positive parent. Stankus' report stated that Rachel's score placed the children at low risk for neglect or abuse. She obtained an above-average score on the construct for inappropriate parenting expectations of children, which suggested that Rachel understood growth and development of children. She had a low score on the oppressing children's power and independence construct, which suggested that she tended to view children with power as threatening. Parents with similar scores on that construct expect strict obedience from their children on demands made by the parent. Stankus diagnosed Rachel with bipolar disorder and posttraumatic stress disorder. He also diagnosed her as alcohol dependent and as a "neglect of child perpetrator." She also met the criteria for "partner relational problems." He further testified that she had a personality disorder, not otherwise specified, with antisocial and passive-aggressive features. Based on the evaluation, Stankus felt that Rachel needed individual therapy, medication to treat her mood disorder, and a chemical dependency evaluation to see if she needed treatment. Stankus testified that Rachel admitted having a fairly serious alcohol dependence problem. He recommended participation in family therapy, Alcoholics Anonymous, and programs for the chronically mentally ill. With regard to child custody, Stankus stated that Rachel needed to maintain sobriety for a minimum of 6 months and up to 1 year. Further, with regard to controlling her bipolar disorder, Stankus testified that sometimes it takes 6 months just to get the right combination of medications.

Lazarus met with Stankus in August 2009 for a pretreatment assessment. Stankus' diagnostic impression was "an adjustment disorder with mixed anxiety, depressed mood, worried about his children, worried about [Rachel,] and . . . saddened about lost custody of the children." Stankus recommended that Lazarus undergo a chemical dependency evaluation, engage in couple's therapy, and participate in a parenting course.

While Rachel was incarcerated from August 11 to approximately October 25, 2009, she completed programs in cognitive renewal, applied cognitive renewal, anger management, boundaries, nurturing, parenting, and "taking care of me." She also completed the psychological

evaluation with Stankus, which recommended a chemical dependency evaluation. Friend testified that Rachel appeared very motivated following her release and more invested in her case and accomplishing the goals. Rachel completed a pretreatment assessment at the Douglas County Hospital in December. Friend made a referral on November 25 for a substance abuse evaluation, but there was delay in receipt of a letter of authorization, so Rachel was not able to complete it until January 2010. Friend testified that Rachel completed a mental status examination and a psychiatric evaluation in February at the Douglas County Hospital.

Mary Kuehl conducted Rachel's January 2010 substance abuse evaluation. Kuehl testified that Rachel "had a high face value for alcohol score" and "a high symptom score, which means that she was able to identify this problem within herself and was admitting that she had a problem with alcohol." Kuehl testified that Rachel's unresolved mental health issues, homelessness, and social network could interfere with sobriety. Kuehl recommended that Rachel enter a residential treatment program and participate in a program for people with persistent mental illness. Kuehl testified that it was extremely important for Rachel to deal with her alcohol dependence and her mental health issues at the same time. She testified that it would be preferable for a client to be able to participate in a dual diagnosis program rather than complete a therapeutic program and then enter into a separate chemical dependency program. If Rachel could not get into a residential program, Kuehl recommended that Rachel enter a halfway house, which would be a supportive community for someone working toward sobriety.

A February 2010 report of McNeill stated that Rachel had "been making small improvements on her skills" during January 2010 and that Lazarus had "made significant progress in his parenting skills." The report further stated that Rachel appeared sober during visits, that there were no concerns with her behavior as if she was under the influence, that Rachel had not reported using alcohol, and that Rachel had expressed a desire to attend a treatment facility. McNeill reported that Rachel had applied, interviewed, and been accepted into a "Family Works" program, but was waiting for DHHS' approval. McNeill testified that Rachel was very motivated to get into the program at that time. Friend testified that she wanted to first check out the program, which she did in February or March. One of the requirements to enter the program was placement of a child with the parent after 30 days, and Friend then told Rachel that she was very nervous about placing a child with Rachel at that time because Rachel was still having supervised visitation. Friend testified that Rachel spent approximately 5 months on the waiting list for the Family Works program, but Friend did not send a referral. She explained that her understanding was that once Rachel had a spot in the program, Family Works would notify Friend, and Friend would then issue a referral. They eventually began looking for a different treatment program, and Friend testified that Rachel was on the waiting list for approximately 1 month for chemical dependency treatment at the Stephen Center before being accepted in June 2010.

McNeill's April 2010 report stated that Rachel and Lazarus had made minimal progress toward learning and utilizing parenting skills, establishing a monthly budget, attending weekly individual therapy, and establishing independent housing. McNeill explained that "[t]here are areas of progress, but overall it's not significant enough for me to change the rating." The report further stated, "During this reporting period, Lazarus was sentenced to 100 days in jail and is no

longer attending visits. This has been difficult for Rachel because she does not feel she can care for the children without Lazarus.”

Friend testified that she had worked with Rachel for the last 2½ years and that the goals she needed to attain in order for her children to be returned to her care were housing, employment, addressing mental health concerns, and addressing chemical dependency issues. Friend testified that Rachel had never provided verification of employment. She had consistent housing until December 2009. From that time until June 2010, Rachel stayed with various friends.

After June 2009, the only thing Lazarus was ordered to do was a pretreatment assessment, which he completed in August. Friend noted in a January 2010 report that Lazarus had not shown up for individual therapy appointments and that visits had ended early or been canceled at the last minute upon his request.

Karla Sextro, a family consultant at Boys Town, worked with Lazarus. She thought he was her client for “[n]o more than a month” because “the case ended” when he was incarcerated. The main goal was to find housing, and Sextro assisted Lazarus by providing transportation and assisting in filling out applications to the various places. Sextro testified that Lazarus already had full-time employment. She testified that she filled in twice for the visitation worker to help supervise visits for the family. She testified that she had no recommendations for the visitation specialist based on her observations of Lazarus’ parenting skills because “[h]e was an excellent father. He prepared all the food. He played with the kids. He would bring videos of his culture. He really wanted to make sure that the kids knew . . . where their background came from.” Sextro testified that the children were “really loving towards Lazarus.” She redirected Lazarus once and testified that he took the redirection well and followed through.

Friend was concerned about Lazarus’ housing situation because he had not had housing since being evicted in December 2009. Friend testified that Lazarus completed a chemical dependency evaluation in February 2010, and Friend worked to implement some of the recommendations contained in the evaluation, but some could not be done when Lazarus became incarcerated that month. He was incarcerated for 30 days in the Douglas County jail in early 2010. He was incarcerated at the Cass County jail for 5 or 6 months for reckless driving or driving under the influence. Lazarus participated in a pretreatment assessment in August, which was needed in order to begin therapy. While in the Cass County jail, Lazarus engaged in counseling twice a week. Lazarus was released on October 29, and Friend was unsure whether Lazarus was continuing with the therapy and counseling sessions. She testified that Lazarus did not provide her with updated information upon his release. However, Lazarus testified that he called Friend the same day he was released from jail, but her voicemail was full. He then called McNeill, and he also called a coordinator with DHHS. Lazarus testified that he had been living in an apartment with a cousin since approximately November. Friend did not believe that Lazarus was participating in family support work through Boys Town or participating in individual therapy. Lazarus had consistently attended visitations with the children since his release from incarceration, and Friend had received information from the visitation specialist that the visits were going very well. Friend also had concerns about Lazarus’ ability to financially provide for his children because she “did not see any paycheck stubs.” Lazarus testified that he

was employed before going to jail. At the time of the December 14 trial, he was going into his second month of employment, which was full time.

Stephanie Knoebe, a licensed independent mental health practitioner, provided individual therapy for Benjamin. She testified that Benjamin's "startle response was greatly exaggerated" and that it became apparent to her that he had posttraumatic stress disorder. She testified that it is important for children with posttraumatic stress disorder to have routine, structure, discipline, and follow through and that it was important for the parent to nurture and be consistent in parenting. Knoebe testified that Benjamin had abandonment issues and that a sense of permanency was very important for a child with such issues. Knoebe testified that Benjamin needed an environment where he felt safe and was "able to have freedom with limits so that he can continue to grow."

Bill Hehner, a provisionally licensed therapist at Beneficial Behavioral Health Services, worked with Jal, Goar, and Nyakong from January 2009 to April 2010. Hehner testified that Jal, Goar, and Nyakong were each angry about being removed from Rachel's home. He testified that Nyakong had anxiety about returning to Rachel's home "[i]f there would be drinking in the home." Hehner testified that since the children left foster care and began living with Sandro, they have done well. Jal appeared to be happier and more willing to talk, performed better in school, and got along better with his siblings. Hehner testified that Goar was doing well at the foster home, so his behavior did not change too much when he went to live with his father. Hehner observed progress in Nyakong both before and after placement with Sandro. Hehner initially met with the children once a week, but the frequency was reduced in 2010 to twice monthly based upon the children's progress. By April, Hehner was considering the possibility that the children no longer needed individual therapy, and he testified that custody with Sandro sufficed to meet the children's therapeutic needs and afford them adequate safety, protection, and security.

Hehner met with Rachel in approximately February to April 2010 while providing family therapy. The family therapy was to occur once a week, but only five sessions actually occurred. He recalled that Rachel did not attend one session due to being ill and missed another due to transportation difficulties.

Rachel began her stay at the Stephen Center, a chemical dependency treatment program, in June 2010, and she remained there as of the December trial. McNeill testified that Rachel's consistency with visitation began to occur around the same time that she entered the Stephen Center. The Stephen Center does its own urinalysis testing, and Rachel was attending group therapy and individual therapy there. Friend also testified that Rachel had dramatically improved in her parenting, but that it would be difficult to assess how Rachel would do in an unsupervised environment, explaining that Rachel is receiving support, supervision, and encouragement at the Stephen Center.

On February 28, 2011, the juvenile court entered separate termination orders for each parent. As to Rachel, the court found by clear and convincing evidence that all of the children came within the meaning of § 43-292(2) and (6). It found that Sijin, Benjamin, and Makuach were children under § 43-292(7). It further found that it was in all of the children's best interests for Rachel's parental rights to be terminated. With regard to Lazarus' parental rights, the court found that Makuach came within the meaning of § 43-292(2), (6), and (7), and that Isaiah came

within the meaning of § 43-292(2) and (6). The court similarly found that termination of Lazarus' parental rights was in his children's best interests.

Rachel and Lazarus each filed a timely appeal. 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.

III. ASSIGNMENTS OF ERROR

Rachel assigns, reordered, consolidated, and restated, that the juvenile court erred in finding by clear and convincing evidence that (1) grounds for termination existed under § 43-292(2) and (6) and (2) termination of her parental rights was in the children's best interests.

Lazarus assigns, reordered and restated, that the juvenile court erred in finding by clear and convincing evidence that (1) reasonable efforts had failed to correct the conditions leading to the children's adjudication and (2) termination of his parental rights was in the children's best interests.

IV. STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Thomas M.*, 282 Neb. 316, 803 N.W.2d 46 (2011). 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. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

V. ANALYSIS

1. STATUTORY GROUNDS FOR TERMINATION

In order to terminate an individual's parental rights, the State must first prove by clear and convincing evidence that one of the statutorily enumerated grounds for termination exists. See *In re Interest of Sir Messiah T. et al.*, *supra*. A court may not properly deprive a parent of the custody of his or her minor child unless the State affirmatively establishes that such parent is unfit to perform the duties imposed by the relationship, or has forfeited that right. *In re Interest of Angelica L. & Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009). The juvenile court found that the State proved grounds for termination under § 43-292(2) and (6) as to all children and under (7) as to some of the children.

When a court adjudicates a juvenile under § 43-247(3)(a), a termination under § 43-292(6) requires a finding that reasonable efforts to preserve and unify the family under the direction of the court have failed to correct the conditions leading to the determination. *In re Interest of Shelby L.*, 270 Neb. 150, 699 N.W.2d 392 (2005). It is the burden of the State, and not the parent, to prove by clear and convincing evidence that the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the case plan. *In re Interest of Angelica L. & Daniel L.*, *supra*.

The evidence demonstrates that Rachel's participation in services had been inconsistent until she entered the Stephen Center in June 2010. She had failed to consistently attend visits, failed to consistently attend individual or family therapy, and failed to consistently submit to

urinalysis testing. Those seeking to help Rachel had difficulties reaching her by telephone or having their voice messages returned. And while Rachel remained in treatment at the Stephen Center, she was not working toward obtaining employment or appropriate housing.

Lazarus' incarceration hindered his ability to participate in services. In termination of parental rights cases, it is proper to consider a parent's inability to perform his or her parental obligations because of imprisonment. *In re Interest of Kalie W.*, 258 Neb. 46, 601 N.W.2d 753 (1999). However, a parent's incarceration, standing alone, does not provide grounds for termination of parental rights. *Id.* Although Lazarus was able to maintain some visitation while incarcerated at the Douglas County jail, he was not able to do so while in the Cass County jail. Further, Lazarus failed to obtain appropriate housing for the children. After his eviction in December 2009, he was incarcerated for much of the time until November 2010. Then, he began living in an apartment with a cousin.

We conclude that Rachel and Lazarus failed to make sufficient progress toward reunification with their respective children despite the efforts of DHHS. Accordingly, we affirm the juvenile court's determination that the State proved the statutory ground for termination set forth in § 43-292(6). Because the State need prove only one ground for termination, we decline to address Rachel's and Lazarus' assigned error relevant to the court's determination that the State proved the ground enumerated in § 43-292(2).

2. BEST INTERESTS

In order to terminate an individual's parental rights, the State must also prove by clear and convincing evidence that termination is in the children's best interests. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010). Rachel and Lazarus challenge the court's finding that termination of each of their parental rights was in the children's best interests. We are mindful that when a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the children require termination of the parental rights. See *In re Interest of Shelby L.*, 270 Neb. 150, 699 N.W.2d 392 (2005).

(a) Rachel

We first address Rachel's argument that the court erred in finding that termination of her parental rights was in the children's best interests.

As we recognized above, up until June 2010, Rachel was largely inconsistent with attendance at therapy, visitation, and a parenting class. Her visitation with the children--which never progressed beyond fully supervised--actually had to be reduced due to her inconsistency in attending the visits. She was often overwhelmed by visitations when Lazarus was not present. Rachel has failed to maintain an appropriate home for the children. She was evicted in December 2009 and then lived with various friends before entering treatment in June 2010. Stankus' report from September 2009 stated that she was "in no position whatsoever at this time to resume custody of her children for the foreseeable future." Stankus recommended that the children remain in foster care until Rachel was "able to establish, and maintain for an extended period of time, complete sobriety, better control over her Bipolar I Disorder, and can learn to cope without any further violence or other forms of anti-social behavior." He testified that such timeframe was 6 months to 1 year.

Hehner testified that at the time that he completed therapy with the children in April 2010, he would have supported terminating Rachel's parental rights based on the children's continuing improvement at Sandro's home and their continuing improvement with school and with their siblings. Hehner did not have an opinion as to whether Rachel's parental rights should be terminated at the time of trial because he had not been involved with the family for a length of time. Knoebe testified that based upon her work with Benjamin and his "blossoming" during that time, Rachel's parental rights should be terminated. She attributed Benjamin's progress to his work in her presence and to the work that has occurred in his foster placement.

Friend testified that it would be in the children's best interests for Rachel's parental rights to be terminated. She pointed out that the children have been out of Rachel's care for 2½ years. Further, Rachel did not enter a chemical dependency treatment until June 2010 even though her alcohol abuse had been a problem since the children were removed in 2008. Friend also testified that Rachel's medication is still being adjusted, that she is not going to have housing on her own for another 3 to 6 months, and that she is going to need additional support in order to sustain and maintain her mental health and chemical dependency sobriety. Friend did not believe that Rachel had demonstrated enough progress for the last 6 months, and Friend testified that Rachel still had progress that needed to be made at the Stephen Center. As the juvenile court reasoned, "[Rachel], despite some positive progress in dealing with her chemical dependency issues in recent months . . . , has a long road to travel before being able to parent her children effectively, perhaps up to a year if she did all things well from this point forward." Children 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, 744 N.W.2d 55 (2008). Even though three of Rachel's children have been placed with their father and are not in foster care, it is unknown when, or if, Rachel will be rehabilitated and able to properly parent the children. We conclude that termination of her parental rights is in the best interests of all of her children.

(b) Lazarus

Lazarus challenges the juvenile court's finding that termination of his parental rights was in the best interests of Makuach and Isaiah. At the time of Stankus' August 2009 pretreatment assessment, Stankus felt that Lazarus was not in a position to assume custody of the children and that the children needed to remain in foster care. He testified that Lazarus' codependency issue could affect Lazarus' ability to protect his children because a codependent person tends to lose objectivity. Further, Friend testified that termination of Lazarus' parental rights would be in Makuach's and Isaiah's best interests. She based her opinion on the length of time his children have been in foster care and, in part, on Lazarus' lack of a home for the children. Lazarus had no housing from the time of his December 2009 eviction until shortly before the December 2010 trial. He spent much of the time in the interim in jail. Like Rachel, Lazarus was never able to progress beyond supervised visitation with his children. Because the children have not been able to be returned to Lazarus' care and because they need permanency, we conclude that termination of Lazarus' parental rights is in Makuach's and Isaiah's best interests.

VI. CONCLUSION

We conclude that the State proved by clear and convincing evidence statutory grounds for termination under § 43-292(6) and that termination of Rachel's and Lazarus' parental rights was in the best interests of their children. Accordingly, we affirm the juvenile court's orders.

AFFIRMED.