

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Jontaia W.,)
a child under 18 years of age.)
)
State of Nebraska,)
)
Appellee and cross-appellee,)
)
v.)
)
John W.,)
)
Appellant,)
)
and)
)
Melissa P.,)
)
Appellee and cross-appellant.)

No. A-11-851

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

MAY 03 2012

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

MOORE, CASSEL, and PIRTLE, Judges.

CASSEL, Judge.

INTRODUCTION

John W. appeals, and Melissa P. cross-appeals, from the order of the separate juvenile court of Lancaster County which terminated their parental rights to their child. Upon our de novo review of the record, we find that the State established by clear and convincing evidence a statutory ground for termination of parental rights and that termination was in the child's best interests. Accordingly, we affirm the order of the juvenile court.



BACKGROUND

John and Melissa are the biological parents of Jontaia W., born in January 2009. In October, the State filed a petition seeking to adjudicate Jontaia. Initially, the parents were offered services such as family support and drug and alcohol testing on a voluntary basis. The goal was to stabilize the home environment so that Jontaia would not have to be removed. On December 1, the juvenile court placed Jontaia's temporary custody with the Department of Health and Human Services (DHHS), because the parents had, among other things, engaged in ongoing acts of domestic violence, failed to cooperate with voluntary services, denied access to the child, threatened to remove the child from the state, and tested positive for marijuana. Prior to adjudication, both parents voluntarily participated in a pretreatment assessment in December and psychological and substance abuse evaluations in January 2010.

John and Melissa pled no contest to the allegations of an amended petition, which alleged that they failed to demonstrate an ability to consistently provide a safe and stable environment for Jontaia, due in part to their use or possession of drugs or alcohol, their involvement in acts of violence, and their erratic behavior and anger management issues. On January 25, 2010, the juvenile court adjudicated the child.

In a March 2010 order, the court found that Jontaiia's out-of-home placement should continue and that fair progress was being made to alleviate the causes of out-of-home placement. The court ordered John and Melissa to (1) participate in individual therapy as recommended by their psychological evaluations; (2) have reasonable rights of supervised parenting time; (3) refrain from domestic violence; (4) abstain from the use of unprescribed mind-altering drugs and from being involved with persons who are known to use drugs or alcohol, who commit crimes, or who are in abusive relationships; (5) participate in random drug and alcohol testing; (6) participate in family therapy when determined appropriate by their individual therapists; (7) attend AA/NA meetings as recommended by their treatment programs and obtain sponsors; and (8) complete parenting education. The court ordered John to complete intensive outpatient treatment and ordered Melissa to complete a gender specific dually diagnosed intensive outpatient program and to take her medication as prescribed. An August order of review additionally ordered Melissa to participate in a group therapy program for individuals with personality disorders and ordered John to cooperate with a parenting assessment. Both parents were prohibited from having contact with each other and from using cellular telephones during parenting time. In February 2011, the court ordered John to complete a residential substance abuse

treatment program followed by an intensive outpatient substance abuse treatment program. In a May order of review, the court ordered both parents to obtain and maintain a legal means of support.

On May 23, 2011, the State filed motions to terminate each parent's parental rights. Each motion alleged grounds for termination under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2010) and that termination was in the child's best interests. A trial on the termination motions commenced on August 26.

Jana Hoppe, a service coordinator and assistant program manager at Cedars, was assigned to this family's case from November 2009 to July 2010. Initially, the family appeared to be living together and Hoppe implemented intensive family preservation. That service lasted less than a week due to a determination that Jontaia was not safe in the home. According to Hoppe, there were concerns about domestic violence, substance abuse, instability, and Melissa's possible mental health issues. Both parents had tested positive for marijuana, and Hoppe observed Melissa nurse Jontaia after Melissa was informed of her positive drug test. When Hoppe asked Melissa to stop nursing, Melissa replied that she "will nurse her child when she wants to" and that she did not think drugs would pass through breast milk. Hoppe testified that she went to the family's home on

December 1, 2009, to discuss a service where a worker would be in the home at all hours to ensure that the behavior in the home was safe for the child. John and Melissa each declined the around-the-clock worker. Hoppe testified that both parents were frustrated, that "Melissa was kind of escalated," and that John left with Jontaia even though Hoppe told him that he needed to stay. John did not return with Jontaia, and a search ensued over the next couple of days before the child was eventually located at a motel. DHHS placed Jontaia with a foster family on December 3, where she has remained.

John and Melissa frequently engaged in visitation. It appears that Melissa did not miss any visits, but her visitation was suspended at the time of trial. There was evidence that John missed visits when incarcerated. Initially, they had supervised visitation with Jontaia together, but their visits were separated in March 2010 due to their interactions and continued arguing. For example, one visit ended with Melissa throwing a telephone at a wall in anger when she was arguing with John during the visit. Hoppe testified that the parents never made sufficient progress to where she could recommend a lower level of supervision.

Hoppe testified that John was frequently on the telephone during his visits rather than focusing his full attention on Jontaia. He also provided the child with a lot of candy and

soda, which did not change even though the parents were advised to provide more nutritious food. Nicole Lemke, a family permanency specialist with KVC Behavioral HealthCare, testified that John had improved on providing proper nutrition for Jontaia and that visitation notes from 2011 indicated that he cooked her meals and was focused on her during visits. Lynn Ford worked with the family from mid-October 2009 to January 1, 2011, in her capacity as a child and family services specialist and ongoing case manager with DHHS. She had no immediate safety concerns about John's interactions with Jontaia, but she never recommended moving his visits to monitored due to concerns throughout the case of either parent absconding with the child. Ford testified that even prior to Jontaia's removal, John mentioned fleeing with Jontaia if he thought DHHS was going to place her in foster care. She testified that there were other reports during the case about plans for one or both of the parents to flee with Jontaia. Lisa Ahmann, a program support worker with KVC Behavioral HealthCare and formerly a family support worker at Cedars, supervised approximately two 2-hour visits a week for John between October 2010 and August 2011. Ahmann testified that Jontaia was always excited to see John, that Ahmann had no safety or nutritional concerns, and that she would not have any concerns about leaving the child alone with John. Ahmann felt that John's visits could have moved to

monitored in April. A family support worker who supervised visits between John and Jontaia on a consistent basis beginning on April 19, 2011, spent approximately 36 hours with them and never had any safety or parenting concerns. The worker believed that John and Jontaia had a very close bond, and she would have felt comfortable having the level of supervision of John's visits changed to monitored.

Ford testified that Melissa provided the child with fast food and candy at almost every visit. Hoppe testified that Melissa tried to have the child do things that were above her developmental capabilities. The evidence established that Jontaia was happy to see Melissa and that there was a bond between them. Ford never saw sufficient progress from Melissa to recommend that the level of supervision be reduced. A family support worker who supervised Melissa's visits beginning in May 2011 testified that she had to redirect Melissa on almost every visit, sometimes more than once during a visit. Ahmann testified that Melissa's heating the apartment with the stove was a safety concern. Another concern occurred when Jontaia turned on the hot water while she was being bathed in the sink and while Melissa was distracted. Ahmann testified that sometimes Melissa would get frustrated with Jontaia and raise her voice. Ford testified that while at a doctor's appointment, Melissa became frustrated and grabbed Jontaia by the arms and jerked her on two occasions.

Lemke testified that during a visit at the end of April, Melissa mentioned fleeing with the child. In response, Lemke moved Melissa's visitation to the KVC visitation center for 4 to 6 weeks. During a supervised visit on August 19, Melissa took Jontaia into a bedroom and locked the door. After receiving no audible response, Ahmann forced open the door and discovered that Melissa had fled with Jontaia. They were later found in New Mexico. Because of that incident, Melissa was in jail at the time of trial and she testified that she faced up to 5 years' imprisonment.

Neither parent had consistent employment. Lemke testified that John had been primarily unemployed the last 2 years and that he had not been able to demonstrate legal means of financial support. John testified that he held numerous jobs during the pendency of the case, working at one place for 4 to 5 months, working approximately 2 months elsewhere, and working for three to four temporary agencies at short-term positions. He was not employed at the time of trial; rather, he enrolled at a community college on July 13, 2011, as a full-time student. Melissa had employment for brief periods of time. Ford knew of three fast food restaurants where Melissa worked and testified that Melissa "was relieved of working at each," at least two of which were due to Melissa's anger. Melissa testified that she worked for a house cleaning company for "[q]uite awhile" before

quitting, that she worked for about a month at a telemarketing company before being fired, and that she worked at a grocery store for 2 to 4 weeks, but stopped because it was too difficult to work at night while going to school. She was not employed at the time of trial and could not remember approximately when she was last employed. Melissa testified that she had looked for employment "[t]o an exten[t]," but that she did not feel it was necessary to have employment. She explained that employment affects her Social Security disability payments.

John and Melissa were ordered to complete parenting education. There is no dispute that John had not completed a parenting class. John testified that he started a class, but was told he could not complete it due to a jail sentence. He testified that he was told he would be enrolled in the next class upon his release from jail, but he had not heard anything about the class from Lemke. Melissa completed the 8-week program in 2010, but Ford continued to have concerns about Melissa's parenting.

In November 2010, a psychologist received a referral to perform a parenting assessment and a psychological evaluation on John. The psychologist found that John had a substance abuse disorder, an anxiety disorder, and a personality disorder. He recommended that John participate in individual and group counseling to prevent relapse, maintain sobriety, and support

pro-social thinking and behaviors. The psychologist thought that John needed mental health counseling, employment, frequent and random drug testing, and a parenting class to learn additional parenting skills. John's scores on the parenting assessment were "within the average range." The psychologist observed John and Jontaia at John's apartment for an hour in January 2011 and observed "no yellow flags of any poor parenting. I thought he was very appropriate."

There is no dispute that John had not completed a substance abuse program. John began intensive outpatient treatment at First Step in approximately February 2010, but Ford testified that he was unsuccessfully discharged after a few months due to attendance issues and testing positive for alcohol. John testified that he was discharged due to his incarceration. In July, John signed up for another round of intensive outpatient treatment at First Step, but he was discharged in August due to attendance issues and testing positive for K2, which is synthetic marijuana. John admitted to relapsing. The second discharge summary recommended residential treatment.

On January 3, 2011, John obtained an updated substance abuse evaluation, which recommended short-term residential treatment. Lemke testified that she received the evaluation on February 7 and that she faxed it to Touchstone on February 9 and had John's name put on the waiting list for short-term

residential treatment. Lemke testified that when John was incarcerated on February 11 or 12, she informed Touchstone of John's incarceration so that the facility could remove his name from the waiting list. Lemke testified that John was released from incarceration on April 9 or 10 and that she called Touchstone on April 26 to have John's name placed back on the waiting list. She also placed his name on the waiting list at Cornhusker Place. At the time of trial, Lemke did not think any of the facilities had called her about an opening for John. The executive director of Cornhusker Place testified that the waiting time in 2011 for short-term treatment was 2 to 3 weeks and that he did not find John's name in the center's records for the preceding year. The director of Touchstone testified that the waiting time was usually 8 to 10 weeks and that she did not have any referrals for John to participate in the program in 2011. According to the program's records, John's request to be placed on the waiting list was made on September 9.

John obtained a drug and alcohol evaluation on August 3, 2011. The evaluator believed that John arranged for the evaluation on his own, and the majority of the information upon which she relied came from John. She recommended dual diagnosis outpatient treatment--a lower level than intensive outpatient treatment--to address John's substance abuse and anxiety disorder.

John was also ordered by the court to participate in substance abuse testing and to abstain from the use of drugs or alcohol. Hoppe attempted to arrange ongoing substance abuse testing for John, but he refused to take a test on several occasions, missed some tests, was disrespectful to a worker on one occasion, and provided a cold sample on another occasion. Ford testified that John tested positive for marijuana, K2, alcohol, and an opiate substance--which John said he was given while hospitalized--but documentation showed that he was hospitalized after the testing. John thought that he tested positive once for alcohol and twice for K2. Hoppe believed that January 2010 was the last time John tested positive for marijuana while she was assigned to the case. Lemke testified that John did not submit to a single drug test between January 1, 2011, and mid-May, but he was incarcerated for a period of time from February until April. Lemke testified that John began sporadic drug testing in the middle of May and that he became consistent with drug testing approximately 3 weeks before trial.

Melissa failed to complete any form of substance abuse treatment. In February 2010, she began attending intensive outpatient therapy at First Step--the same facility that John was attending. John and Melissa did not abide by First Step's "no contact rule" while in their treatment programs. Melissa was unsuccessfully discharged in approximately March. Hoppe then

began assisting Melissa in locating short-term residential treatment, which was a higher level of treatment and was consistent with the recommendation from First Step. Melissa enrolled at a different facility on approximately April 1, but she did not successfully complete the treatment. Hoppe testified that Melissa was there for less than 2 months when she was advised that some of her behavior was inhibiting her from being successful in the program, asked to go to a respite facility, but told that she would not be able to have visits with Jontaia over the weekend. Melissa then voluntarily left the program. Hoppe testified that Melissa appeared to be more focused on her relationship with John than on treatment. Shortly before Hoppe left the case, she was assisting Melissa in getting into another residential treatment facility. A substance abuse evaluation from July 25, 2011, recommended a dual diagnosis intensive outpatient treatment program for Melissa. Melissa testified that she was willing to engage in intensive outpatient treatment again.

Melissa regularly participated in substance abuse testing. Most of Melissa's drug tests came back negative, but she had tested positive for marijuana, alcohol, and K2. Hoppe testified that Melissa tested positive for marijuana around the time of the December 2009 removal and that she continued to test positive for the drug for the next couple of months. According

to Lemke's February 2011 court report, Melissa had not tested positive for any drugs since November 23, 2010.

John testified that he last attended AA/NA meetings between January to March 2011 and that he attended meetings while incarcerated. He had not obtained a sponsor. Hoppe and Ford each testified that Melissa provided documentation regarding her attendance at AA/NA meetings. Lemke testified that Melissa sporadically attended the meetings. Melissa testified that she has a sponsor, but Hoppe did not believe that Melissa ever provided the name of a sponsor. Ford testified that Melissa identified a sponsor, but Ford did not know if Melissa still had that sponsor.

Lemke testified that John had not completed the individual therapy component of the rehabilitative plan. Barbara Onnen, a mental health therapist, conducted a pretreatment assessment on January 17, 2011, and determined that John had an anxiety disorder and cannabis dependence. Onnen identified issues such as anger management, anxiety, chemical dependency, and impulse control. She recommended that John have individual therapy to work on his anxiety and anger control and to participate in residential substance abuse treatment. But Onnen recommended that John participate in intensive outpatient treatment while waiting for residential treatment. Onnen began providing John with individual therapy on a regular basis in May. Since that

time, he had attended 17 sessions and had missed 4 sessions. Onnen felt that John had been cooperating with the things she was asking him to do. She testified that she would be concerned from a treatment standpoint if there was evidence that John and Melissa continued to have contact despite a protection order. Onnen testified that John told her that he has nothing to do with Melissa. She would also be concerned if the parents continued to yell and scream at each other in telephone calls because it would mean that John was not using the coping strategies and skills they had been working on with regard to John's anxiety and anger control.

Melissa voluntarily participated in several individual therapy sessions until approximately January 18, 2010, when she was no longer able to see the same therapist. After being ordered to participate in individual therapy, Melissa saw an individual at First Step while in intensive outpatient treatment. On her own initiative, Melissa saw a therapist who indicated that Melissa needed a higher level of care. Melissa regularly engaged in therapy with Kay Konz from May through July 2010. Konz observed Melissa interact with Jontaia because Melissa wanted Konz to recommend monitored visits, but Konz was never able to make that recommendation. Melissa admitted that she became frustrated when Konz did not recommend a lower level

of supervision for visits and that she had walked out of therapy sessions with Konz.

Lynn Buchanan, a licensed mental health practitioner, began working with Melissa on her substance abuse and mental health issues in August 2010 and continued to see her at the time of trial. Buchanan testified that she provided substance abuse treatment to Melissa under the assumption that she had successfully completed residential treatment. Buchanan also testified that Melissa said she had not had contact with John after March 2011. According to Buchanan, Melissa was capable of learning and improving her parenting skills, but due to Melissa's cognitive learning disorder, it takes her longer than others to learn and make changes. She felt that Melissa could make more progress if given additional time. Buchanan testified that Melissa was starting to improve her ability to control her anger and that she noticed Melissa using coping methods that she had learned. Buchanan generally did not have safety concerns when observing Melissa with Jontaia.

Melissa maintained the same apartment throughout the pendency of the case. She testified that a payee uses her Social Security disability income to pay her rent. Apparently, Melissa received an eviction notice in early 2011 and planned to live with her boyfriend. Ford testified that Melissa's boyfriend was in drug court, so he would not be approved to be at a visit.

Melissa was able to keep her apartment. John was not able to maintain stable housing, and he had several addresses through the case.

John and Melissa have an unstable relationship. Melissa testified that she suffered emotional abuse from John, both in the past and more recently. John denied any domestic violence with Melissa but testified that "arguments have gotten too crazy" which often resulted in yelling and that some of these arguments took place in front of Jontaia. Hoppe testified that on the day prior to Jontaia's removal, John and Melissa had a verbal disagreement and Melissa jumped on a female's car and broke the windshield wipers. Hoppe testified that the incident was triggered by John's talking to another female and having her drop him off at Melissa's residence that day. Ford's court report from January 19, 2011, noted several police contacts involving John and Melissa in February to May 2010. Melissa testified that she had started anger management classes in July or August 2011.

In January 2011, Melissa sought a domestic abuse protection order against John. In March, she filed a petition for a harassment protection order against him. In support of that order, she listed three events which occurred in January or February 2010. Melissa testified that she obtained the latter protection order because she was angry at John and "thought it

would be a lot better for me." She has been trying to get the protection order dropped because she is "not in no harm" and because John "is all the help" she has while incarcerated. Melissa testified that she did not have any contact with John from March to August, but later recalled going to the mall with him in August. She admitted to calling John while in jail in New Mexico in order to ask him to help take care of things at her apartment. And she has spoken with John on the telephone almost daily while in jail in Lancaster County. In the telephone calls since September 4, John and Melissa regularly indicate that they love each other. Lemke testified that she listened to 15 to 20 of their telephone calls and that they spoke about continuing their relationship upon Melissa's release. Lemke testified that John and Melissa were angry during most of the calls, that they frequently called each other derogatory names, and that John often reminded Melissa that he is the "only one she has." Melissa admitted that they have had a number of arguments--sometimes involving screaming and yelling--during the telephone calls, some of which are about her "mistake" of choosing Jontaia over John. Lemke stated that it appeared the parents were aware of the protection order and were making arrangements to not be caught violating it. Melissa admitted to using other inmates' PIN number so the calls to John looked like

they were from that inmate rather than from Melissa. John denied talking to Melissa on the telephone while she was in jail.

Evidence was presented regarding other protection orders against John. In June 2007, a female sought a harassment protection order and alleged that John chased her with a tire iron and, on a different occasion, hit her in the face. In April 2010, the mother of one of John's children filed a petition to obtain a domestic abuse protection order, alleging incidents where John choked her.

John did not complete a domestic violence program. He explained that he could not afford the \$40-per-class cost and that DHHS refused to pay for it. When John did pay the money and was set to start the program the following day, a judge sentenced him to 105 days in jail instead of starting the program. John testified that once he was ordered to go to jail, he "had no reason to" complete the program.

At the time of the August 26, 2011, trial, John testified that he planned to marry his fiancée--who had just been paroled from prison on August 24--on September 11. He testified that he was in the process of divorcing his current wife. John testified that if allowed to reunify with Jontaia, his fiancée would relocate with relatives and John would have the residence to himself. When John testified again in September, he was still married to his wife in Illinois. John has three biological

children in Illinois, ages 22, 18, and 15. He also has a biological child who turned 3 years old in September, and Jontaia, who turned 3 in January 2012.

John has a criminal history. It appears that his convictions for a burglary offense and attempted possession of a controlled substance predated Jontaia's birth. In 2009, John was convicted of an assault on the mother of one of his children and was sentenced to 30 days in jail. John testified that he had twice been convicted of driving under the influence--once in 2009 and the other in 2010 or early 2011--and he thought both convictions resulted in 30 days of house arrest and fines. In August 2010, John was arrested for assault on his fiancée. He testified that he pled to the offense and was sentenced to 105 days in jail, but that he had not served the sentence yet due to appeals. In March 2011, John was accused of assaulting another inmate and lodged into jail on the offense. He testified that he had been informed that charges were not going to be brought against him. John had been convicted of possession of marijuana at least twice in Lincoln, Nebraska, and once in Seward, Nebraska, the latter of which occurred during the pendency of this case. John has not had a valid driver's license for 1 or 2 years, and he estimated that he had been convicted of driving on a suspended or revoked license four or more times. John believed that his incarceration from February to April 2011, may have

been for driving under suspension. He recalled serving jail time in December 2010, which he thought was for the domestic violence against his fiancée. John testified that he had been incarcerated in the Lancaster County jail five or more times in the last 3 years. John testified that since his most recent release from incarceration, he had stopped socializing with his friends from the past. To Ford's knowledge, John continued to be cited for violations of law.

Melissa testified that she was assessed a fine for an offense involving possession of methamphetamine in May 2009 when methamphetamine was located in the car during a traffic stop. In June, she was cited for child abuse and later paid a fine upon conviction. Melissa testified that the incident involved her chasing after John with Jontaia in her arms. As noted above, Melissa was in jail at the time of trial.

On September 23, 2011, the juvenile court entered an order terminating the parental rights of John and Melissa to Jontaia. The court stated that the evidence showed John and Melissa lacked insight and motivation to address the issues upon which the adjudication was based and that both parents failed to "understand the anger management, domestic violence, substance abuse and mental health issues . . . needed to be addressed in a meaningful manner to prevent future trauma to the child." The court also found termination was in Jontaia's best interests.

John timely appeals, and Melissa cross-appeals. 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.

ASSIGNMENTS OF ERROR

John and Melissa each assign the same two errors to the juvenile court's judgment. First, they allege that the court erred in finding statutory grounds for termination under § 43-292(2), (6), and (7). Second, they claim that the court erred in finding that termination of their parental rights was in the child's best interests.

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. 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 Karlie D.*, 283 Neb. 581, ___ N.W.2d ___ (2012).

ANALYSIS

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.*, 279 Neb. 900, 782 N.W.2d 320 (2010). The juvenile court found that the State proved grounds for termination under § 43-292(2), (6) and (7).

Under § 43-292(7), the State must show that the child has been in an out-of-home placement for 15 or more months of the most recent 22 months. There is no dispute that Jontaia was removed from the home in December 2009 and has remained in an out-of-home placement since that time. Accordingly, the State proved § 43-292(7) by clear and convincing evidence.

Because the State need only prove one ground for termination, we decline to address John's and Melissa's assigned errors relevant to the court's determination that the State proved the grounds enumerated in § 43-292(2) and (6). Generally, when termination is sought under subsections of § 43-292 other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). We will consider evidence relevant to the other grounds in our analysis of Jontaia's best interests.

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.*, *supra*. The evidence established that Jontaia had a bond with John and Melissa and that the child was happy to see them during visits. But Lemke testified that Jontaia had also formed a bond with her foster family and that she may have issues of reactive attachment disorder if she were to remain in long-term foster care. Lemke testified that Jontaia needed a permanent and stable home and that she did not believe John or Melissa would be in any position to care for Jontaia in the near future. We are mindful that a child should not languish in foster care waiting to see if the parent will mature. See *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007).

John argues that he was denied a reasonable opportunity to rehabilitate himself in accordance with the court-ordered plan. He asserts that after August 2010, he was never offered an opportunity to complete substance abuse treatment. However, Lemke testified to her efforts in getting John into short-term residential treatment in 2011. She testified that John's name was placed on a waiting list. But then John became incarcerated, which led to the removal of his name from the waiting list. Upon John's release, Lemke again placed his name on a waiting list for treatment. Of course, John could have avoided this problem by successfully completing one of his two times in treatment in 2010.

The evidence supports the juvenile court's finding that John "engaged in few, and has completed none, of the services he was ordered to complete." There is evidence that John's visitations improved and some visitation workers believed that the level of supervision could have been changed to monitored. But John failed in most every other area. He did not complete a parenting education program. He did not successfully complete any substance abuse treatment program, regularly attend AA/NA meetings, or consistently submit to substance abuse testing. Lemke pointed out that John had not maintained a stable home or employment and that he had an extensive criminal history and history of domestic violence. John's criminal activity led to incarceration, and as Ford testified, "There's no stability in parenting if the parent is constantly incarcerated." The evidence amply established that John made minimal progress in correcting the adjudicated conditions.

Melissa argues that she did not willfully fail to comply with the rehabilitative plan. She points to her repeated attempts to comply and her seeking out additional services. But the State is not required to show that noncompliance with a court-ordered rehabilitation plan is willful. *In re Interest of Kantril P. & Chenelle P.*, 257 Neb. 450, 598 N.W.2d 729 (1999). Lemke testified that Melissa had fairly long periods of compliance with services and that she initiated certain

services. But Lemke also testified that Buchanan expressed concerns about Melissa's parenting abilities throughout the times that they met, that Melissa was still periodically very unstable mentally and emotionally, that she has not been able to maintain employment, and that she remains "very much obsessed" with John. Further, Melissa never made enough progress to have any level less than supervised visitation and redirection was still needed at most visits. She did not complete any substance abuse treatment, did not refrain from having contact with John, and did not consistently take medications for her mental health diagnoses. Ford testified that Melissa did not complete the vast majority of the services offered to her and that Ford never saw any marked ability by Melissa to control her emotions or anger. In Ford's opinion, Melissa made minimal or poor progress in correcting the adjudicated conditions. We agree.

We conclude that clear and convincing evidence establishes that termination of John's and Melissa's parental rights is in the best interests of the child.

CONCLUSION

We conclude upon our de novo review that the State proved by clear and convincing evidence the existence of a statutory ground for termination and that termination of John's and Melissa's parental rights was in Jontaiia's best interests.

AFFIRMED.