

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF KENYETTA C.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF KENYETTA C., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

CRYSTALYNN C., APPELLANT.

Filed November 29, 2011. No. A-11-356.

Appeal from the County Court for York County: CURTIS H. EVANS, Judge. Affirmed.

Steven B. Fillman and, on brief, Amanda Hoffman, of Fillman Law Offices, L.L.C., for appellant.

Candace L. Dick, Deputy York County Attorney, for appellee.

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

PIRTLE, Judge.

INTRODUCTION

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. Crystalynn C. appeals from an order of the county court for York County, sitting as a juvenile court, continuing out-of-home placement of her child, Kenyetta C., with the Department of Health and Human Services (the Department) pending adjudication. Based on the reasons that follow, we affirm.

BACKGROUND

Kenyetta was born in March 2011. The next day, the juvenile court entered an ex parte order removing Kenyetta from Crystalynn's care and ordering that the Department have temporary custody and placement of Kenyetta pending a placement hearing. Kenyetta was immediately placed in a traditional foster home. On the same date, the State filed a petition

alleging that Kenyetta is a juvenile as defined by Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) based on Crystalynn's history of drug abuse and her history with the Department in regard to her other children.

At the time of Kenyetta's birth, Crystalynn was an inmate at the Nebraska Correctional Center for Women (NCCW), having been convicted of burglary. Prior to Kenyetta's birth, Crystalynn had been approved to have the child live with her in the nursery program at NCCW. The nursery program is a program for inmates who are pregnant when they come to NCCW. If a pregnant inmate meets a number of criteria, including a reasonable expectation that the inmate mother and child will leave within 18 months of the child's birth, the inmate may be accepted into the nursery program. The inmate mothers must abide by the nursery rules, including paying attention to the child, nurturing the child, and attending parenting classes.

A placement hearing was held on April 12, 2011. Crystalynn presented evidence to support her position that Kenyetta should be placed with her in the nursery program at NCCW pending adjudication. The warden at NCCW testified that Crystalynn had been accepted into the nursery program at NCCW and that the nursery program is a safe and controlled environment for infants. He also testified that Crystalynn's scheduled release date was 2 years 6 months from the date of the placement hearing, but that she may be eligible for parole in 1 year 2 days, depending on Crystalynn's fulfilling certain criteria.

The State presented evidence to support its position that Kenyetta should remain in a traditional foster home. Melissa Martin, Crystalynn's caseworker from the Department, testified that the Department's decision to place Kenyetta in traditional foster care instead of the nursery program at NCCW was based on Crystalynn's history of drug use, her history with the Department in regard to her other children, and the fact that she had not corrected the behaviors precipitating the adjudications of her other children. Martin's testimony revealed that Crystalynn had three other children that she no longer has parental rights to. Her first child was removed from her care in 2002, because Crystalynn had abandoned him. He was adopted by Crystalynn's mother in 2005. Crystalynn's second child was removed shortly after her birth in April 2007, because she tested positive for methamphetamines at birth and because Crystalynn had a history of drug abuse and a prior history with the Department. Crystalynn's third child, who was born in 2009, was removed from Crystalynn's care in May 2010. The third child was included in the juvenile case involving the second child in Lancaster County. Crystalynn relinquished her parental rights to these two children on December 10, 2010, just 3½ months before Kenyetta was born.

Martin also testified that in September 2010, Crystalynn admitted to other caseworkers that she had used methamphetamine and cocaine while she was pregnant with Kenyetta. Specifically, Crystalynn admitted to using methamphetamine every day for the 3 weeks prior to her September 2010 admission of drug use. Martin testified that Crystalynn's drug use has been a continual issue since 2002.

Martin also testified that the Department took Crystalynn's criminal history into account when deciding to place Kenyetta in foster care, which included two drug convictions in addition to the burglary conviction for which she was incarcerated at the time of the placement hearing. Crystalynn was incarcerated from October 28, 1999, to April 11, 2001, for intent to deliver a

controlled substance. She was again incarcerated from April 1, 2003, to March 1, 2006, for delivery of methamphetamine, possession of methamphetamine, and second degree forgery.

Following the placement hearing, the juvenile court entered an order continuing temporary custody of Kenyetta with the Department and continuing her placement in foster care. The court found that returning Kenyetta to Crystalynn would be contrary to Kenyetta's welfare and that reasonable efforts were made, prior to placement, to prevent or eliminate the need for removal and to make it possible for Kenyetta to return to her home. The court found that prior findings made by the court have not changed which continue to require placement under previous orders.

ASSIGNMENTS OF ERROR

Crystalynn assigns that the juvenile court erred in determining that placing Kenyetta in Crystalynn's care would be contrary to Kenyetta's welfare and that reasonable efforts were made to preserve and reunify the family.

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 Justin H. et al.*, 18 Neb. App. 718, 791 N.W.2d 765 (2010). 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.*

ANALYSIS

Crystalynn argues that the State failed to prove that placing Kenyetta in Crystalynn's care would be contrary to Kenyetta's welfare and that reasonable efforts were made to preserve and reunify the family.

Neb. Rev. Stat. § 43-254 (Cum. Supp. 2010) provides in pertinent part:

[T]he court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of section 43-283.01.

The State must prove the requirements of § 43-254 by a preponderance of the evidence. *In re Interest of Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009). See, also, *In re Interest of Stephanie H. et al.*, 10 Neb. App. 908, 639 N.W.2d 668 (2002) (in order to demonstrate that pre-adjudication detention should continue, State must prove by preponderance of evidence that custody of juvenile should remain in care of department pending adjudication).

The State's evidence showed that Crystalynn has had a drug problem for over 10 years that she has not been able to overcome. Crystalynn admitted to using methamphetamines while pregnant with Kenyetta.

The State also showed that the Department has been involved with Crystalynn since 2002 as a result of her drug abuse, which included the removal of three other children from her care. Crystalynn failed to correct the issues that precipitated those removals, and she ultimately

relinquished her parental rights to those children. Crystalynn's relinquishment of two of the children occurred just 3½ months before Kenyetta was born.

Further, the State's evidence showed that in addition to the burglary conviction that Crystalynn was incarcerated for at the time of the placement hearing, she has also been incarcerated for intent to deliver a controlled substance and, at another time, for delivery of methamphetamine, possession of methamphetamine, and second degree forgery.

As the juvenile court recognized, although Kenyetta would be in a safe environment if she was in the NCCW nursery program, the court needed to consider Crystalynn's ability to parent outside of a controlled environment and the reality that Crystalynn may relapse when she is no longer incarcerated. Crystalynn has a lengthy history of drug abuse that has caused three children before Kenyetta to be removed from Crystalynn's care, and she no longer has parental rights to those children.

As previously stated, the State proved by a preponderance of the evidence that placing Kenyetta in Crystalynn's care would be contrary to Kenyetta's welfare and that custody should continue to be withheld from Crystalynn pending adjudication. Crystalynn's assignment of error is without merit.

CONCLUSION

We conclude that the juvenile court did not err in determining that placing Kenyetta in Crystalynn's care would be contrary to Kenyetta's welfare and that reasonable efforts were made to preserve and reunify the family. The juvenile court's order continuing out-of-home placement of Kenyetta with the Department is affirmed.

AFFIRMED.