

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF LOKANI M.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE INTEREST OF LOKANI M., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

VERONICA M., APPELLANT.

Filed April 19, 2011. No. A-10-1112.

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

Thomas C. Riley, Douglas County Public Defender, and Jami L. Birkel for appellant.

Donald W. Kleine, Douglas County Attorney, Amy Schuchman, and Shakil Malik,
Senior Certified Law Student, for appellee.

Lynnette Z. Boyle, of Tietjen, Simon & Boyle, guardian ad litem.

IRWIN, SIEVERS, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Veronica M. appeals from an order terminating her parental rights to her minor child. We conclude that the State proved by clear and convincing evidence that termination of Veronica's parental rights is in the child's best interests. Accordingly, we affirm the order of the juvenile court.

BACKGROUND

Veronica is the biological mother of Lokani M., born in July 2003. On August 26, 2008, the State filed a petition to adjudicate Lokani. The petition alleged that Lokani came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to Veronica's use of alcohol or

controlled substances, which placed Lokani at risk for harm. On that same day, the juvenile court entered an order for immediate custody, granting the Nebraska Department of Health and Human Services (DHHS) custody of Lokani for placement in foster care. The court adjudicated Lokani on September 18.

On November 18, 2008, the juvenile court entered an order following a disposition and permanency planning hearing. The court ordered Veronica to (1) participate in and successfully complete a dual diagnosis inpatient treatment program and follow all aftercare recommendations, (2) undergo a full psychiatric evaluation and follow up as arranged by DHHS, (3) take all medications as prescribed by her attending physician, (4) submit to random urinalysis testing, and (5) engage in supervised visitation three times per week for 3 to 4 hours per visit.

During an April 1, 2009, visit, Veronica yelled at the visitation specialist in Lokani's presence and took Lokani to Veronica's house, which led the visitation specialist to call the police. Based on that incident, the child and family support specialist requested that visitation be temporarily limited to 1 day per week to occur at a neutral location. On May 5, the juvenile court entered an order allowing Veronica supervised visitation at a neutral location as arranged by DHHS. It again ordered Veronica to successfully complete a dual diagnosis inpatient program as arranged by DHHS, to undergo a full psychiatric evaluation as arranged by DHHS, and to submit to urinalysis testing three times per week.

On November 9, 2009, Veronica was arrested on several charges and lodged in the Douglas County jail. She has remained incarcerated since that time.

A court report prepared on November 12, 2009, stated that Veronica had not submitted to a psychiatric evaluation, that she was not submitting to urinalysis testing on a consistent basis, and that she had not gained admission to an inpatient dual diagnosis treatment facility. On November 16, the juvenile court ordered Veronica to comply with essentially the same provisions contained in its November 2008 and May 2009 orders, but changed the visitation provision to supervised visitation one time per week for 3 to 4 hours.

An April 12, 2010, court report stated that Veronica had made no progress toward reunification because none of the court-ordered items had been accomplished and Veronica's incarceration was a barrier to helping Veronica take rehabilitative steps to reunite with Lokani. On April 16, the juvenile court ordered Veronica to comply with the same terms as those contained in its November 2009 order.

On May 27, 2010, the State filed the operative motion for termination of parental rights. It alleged the statutory grounds for termination enumerated in Neb. Rev. Stat. § 43-292(1), (2), (6), and (9) (Cum. Supp. 2010) and alleged that termination was in Lokani's best interests. The juvenile court conducted a trial on September 24.

Alyson Goedken, a child and family service specialist with DHHS, has been working with Veronica and Lokani since early November 2009. She testified that Lokani became a State ward on August 25, 2008, due to Veronica's use of methamphetamines and inability to control her behaviors. Goedken testified that Veronica last visited with Lokani on July 10, 2009. Veronica's whereabouts were unknown from that time until her incarceration in November. According to Goedken, Veronica did not want visits while incarcerated because Veronica "didn't want Lokani to see her while she was incarcerated and wanted to wait until she was out of jail to have face-to-face visits." However, Goedken testified that approximately once a month since

July 7, 2010, Veronica had communicated her desire for visits with Lokani. Goedken testified that Veronica had not received visits due to being incarcerated at York, Nebraska, and due to Goedken's belief that reintroduction of visits needed to be in a therapeutic environment.

Goedken believed that termination of Veronica's parental rights was in Lokani's best interests. As of the time of trial, Veronica had not completed a dual diagnosis residential treatment program, participated with a parenting coach, had visitation since July 2009, participated in a psychiatric evaluation, or submitted to random urinalysis tests. Goedken was concerned that Lokani had been in State care for 25 consecutive months, because children deserve permanency and Goedken did not foresee rehabilitation happening in a timely manner based on Veronica's lack of progress. Goedken opined that Veronica was in a worse position at the time of trial than in August 2008. Goedken testified that since April 14, 2010, Veronica had sent a letter to Goedken about every 2 weeks to give to Lokani, but Goedken had not passed them on to Lokani because of the lack of visitation and Lokani's instability.

Bonnie Sarton Mierau has worked with Lokani since May 18, 2010. Mierau is a licensed mental health practitioner, a licensed independent mental health practitioner, and a certified master's social worker. Her specialty is attachment and early childhood trauma, and the majority of her clients are between the ages of 3 and 18. Mierau diagnosed Lokani with reactive attachment disorder of early childhood. Mierau testified that a child with a diagnosis of reactive attachment disorder needs stability and permanency to withstand the anxiety of relationships. Mierau explained that Lokani is "almost always in a fight or flight mode" which makes it difficult to learn, to have relationships, and to receive redirection. Mierau testified that Lokani needs "a stable place with someone who will patiently and calmly help her learn to do those things, to be frustrated and act appropriately and accept no and relinquish control." According to Mierau, Lokani's prognosis was dependent on her stability and Lokani needed a stable and consistent placement. At the time of trial, Mierau was more positive about Lokani's prognosis because Lokani's current foster home provided stability and structure and Lokani was showing significant improvement in her cognitive, emotional, and behavioral abilities. Mierau also provided a provisional diagnosis of posttraumatic stress disorder. She testified that Lokani exhibited some symptoms of posttraumatic stress disorder, including "significant nightmares" on a nightly basis and "dissociating, which means that she is not fully present in the room."

Mierau testified that Lokani needed permanency immediately. She testified that it would be more difficult for Lokani "to create and sustain change in her relationship skills" as she grew older. Mierau testified that Lokani had mentioned that she loves and misses Veronica, but Mierau believed that Lokani "needs a calm, consistent caregiver who is able to meet Lokani's needs without expecting reciprocity in the relationship in the beginning."

Veronica testified that she took classes while at the Douglas County jail. She took a cognitive renewal class, which was supposed to train a person to deal with situations differently, and completed a women's wellness program to learn how to relax and care for herself. Veronica testified that the classes taught her to think more calmly. Veronica also attended Alcoholics Anonymous meetings weekly. On June 2, 2010, a district court sentenced Veronica to 20 to 30 months' incarceration for an attempted burglary conviction, and Veronica has been incarcerated at the correctional facility in York since June 30. Veronica had not completed any classes during her time at York despite her requests due to an "extensive list" for many of the classes. Veronica

testified that whenever she goes to the medical department to see a doctor, the department takes a urine specimen to test. She testified that the urinalysis tests had all been negative. Veronica's projected release date was approximately April 2011.

On October 20, 2010, the juvenile court entered an order which terminated Veronica's parental rights to Lokani. It found Lokani to be a child within the meaning of § 43-292(1), (2), (6), and (9) and found that termination of Veronica's parental rights was in Lokani's best interests.

Veronica timely appeals. Pursuant to Neb. Ct. R. App. P. § 2-111(E)(6) (rev. 2008), the parties elected to waive oral argument and submit the case solely on the briefs.

ASSIGNMENT OF ERROR

Veronica's sole assignment of error alleges that the juvenile court erred in finding that the State proved by clear and convincing evidence that termination of her parental rights was in the best interests of Lokani.

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 Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010).

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).

ANALYSIS

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in § 43-292 exists and that termination is in the children's best interests. *In re Interest of Sir Messiah T. et al.*, *supra*. The juvenile court found that the State proved grounds for termination under § 43-292(1), (2), (6), and (9), and Veronica does not contest this finding on appeal. The sole issue for our consideration is whether the State proved by clear and convincing evidence that termination of Veronica's parental rights was in Lokani's best interests. We conclude that the State met its burden.

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 Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009). It is always the State's burden to prove by clear and convincing evidence that the parent is unfit and that the child's best interests are served by his or her continued removal from parental custody. *Id.*

Lokani became a State ward on August 25, 2008, due to Veronica's use of methamphetamines and inability to control her behaviors. Lokani has been in an out-of-home placement since that time. Veronica last visited with Lokani on July 10, 2009. Veronica then was unable to be located until she committed a crime in November. She has remained incarcerated since that time and did not expect to be released until April 2011.

Veronica has failed to comply with the orders of the juvenile court. Since as early as November 2008, the juvenile court ordered Veronica to complete a dual diagnosis inpatient treatment program, undergo a full psychiatric evaluation, submit to random urinalysis testing, and participate in visitation. At the time of the September 2010 trial, Veronica had not completed a dual diagnosis program nor had she obtained a psychiatric evaluation. Prior to her incarceration, she had not consistently submitted to urinalysis testing. Further, Veronica last visited with Lokani in July 2009 and did not communicate a desire to see Lokani until a year later--and after the filing of the motion for termination of parental rights. Goedken discussed Veronica's lack of progress toward reunification and how her incarceration was a barrier to achieving that goal. Despite making little progress toward reunification in the 2 years between Lokani's removal and the termination trial, Veronica argues that "reunification efforts will be fruitful" when she is released from incarceration in April 2011. Brief for appellant at 12. However, where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007).

Veronica claims that she has made significant strides since being incarcerated. She points out that she has remained sober and drug free while incarcerated. The State responds that "sobriety under incarceration is a far cry from sobriety out of incarceration where there is dramatically more access to controlled substances." Brief for appellee at 14. We agree with the State. Veronica also completed cognitive renewal classes, completed a women's wellness class, and attended Alcoholics Anonymous meetings, but as the State counters, Veronica did not engage in similar activities prior to incarceration. The steps Veronica has recently begun taking, while commendable, amount to "too little, too late."

Lokani needs permanency and stability. Mierau testified that Lokani suffers from reactive attachment disorder and that she needs an attachment figure in order to progress. Mierau further testified that Lokani needed to have permanency immediately because it will be harder for her to create and sustain change in her relationship skills as she ages. Goedken opined that termination of Veronica's parental rights was in Lokani's best interests. She mentioned Lokani's 25 months in the State's care along with Veronica's lack of progress toward reunification and continued incarceration. We are loath to prolong Lokani's time in foster care in the hope that Veronica will one day comply with the court's orders such that reunification will be possible. The system cannot and should not allow children to languish in foster care waiting to see if the parent will mature. *In re Interest of Destiny A. et al.*, *supra*. Upon our de novo review of the record, we conclude that it is in the best interests of Lokani that Veronica's parental rights be terminated.

CONCLUSION

Because the State proved by clear and convincing evidence that termination of Veronica's parental rights is in the best interests of Lokani, we affirm the juvenile court's order which terminated Veronica's parental rights.

AFFIRMED.