

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Marcus C., )  
Cameron C., Precious G., )  
Daniel G., Lela G., and )  
LaCory G., )  
children under 18 years of age. )  
State of Nebraska, )  
Appellee, )  
v. )  
Telea G., )  
Appellant. )

No. A-14-0191.

MEMORANDUM OPINION  
AND  
JUDGMENT ON APPEAL

**FILED**

SEP 29 2014

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

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

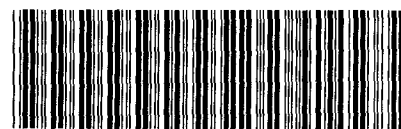
INBODY, Chief Judge.

INTRODUCTION

Telea G. appeals the order of the Douglas County Separate Juvenile Court terminating her parental rights to her four minor children pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2012), and finding that termination was in the children's best interests. For the following reason, we affirm the order of the juvenile court terminating Telea's parental rights to all four minor children.

STATEMENT OF FACTS

Telea is the biological mother of LaCory G., born August 10, 1999; Lela G., born February 7, 2001; Daniel G., born September 10, 2002; and, Precious G., born May 27, 2004. Marcus C. and



000047733NSC

Cameron C. are the biological children of Debra C., who is also the legal guardian for LaCory, Lela, Daniel, and Precious. Both Marcus and Cameron are not Telea's biological children, were dismissed from the docket by the juvenile court, and are not involved in this appeal.

In July 2009, the juvenile court found that LaCory, Lela, Daniel, and Precious were children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) who lacked proper parental care by the reason of the faults or habits of Debra, as a result of Debra's admitted use of alcohol and/or controlled substances and that Debra failed to provide the children with safe, stable, and appropriate housing which placed the children at risk for harm. Thereafter, the juvenile court ordered Debra to engage in a number of services provided by the Department of Health and Human Services (DHHS).

Over the next few years, Debra made progress on some of the orders given by the juvenile court, but DHHS workers and the guardian ad litem continually noted serious concerns regarding stability, parenting, willingness to cooperate, ability to provide safe and stable housing, and having a legal source of income sufficient to provide for both herself and the children. In 2011, the juvenile court modified the permanency objective from reunification to adoption with a concurrent plan of guardianship for LaCory, Lela, Daniel, and Precious. Debra appealed that order

to this court, which was affirmed in its entirety as a result of Debra's unwillingness to make actual changes instead of merely going through the motions for the juvenile court. See *In re Interest of Marcus C., et al.*, case No. A-11-565.

In December 2011, Telea filed a complaint to intervene in the case as the biological mother of LaCory, Lela, Daniel, and Precious, which was sustained by the juvenile court on January 20, 2012. In October, the State filed a supplemental petition alleging that LaCory, Lela, Daniel, and Precious were children within meaning of § 43-247(3)(a) who lacked proper parental care by the reason of the faults or habits of Telea. The petition alleged that Telea had placed the children at risk of harm as she failed to provide appropriate care, support, and supervision; failed to participate in a DHHS assessment; engaged in domestic violence with her significant other and had been convicted of domestic violence assault in July 2011 and September 2012; used alcohol and/or controlled substances which placed the children at risk for harm; and had been convicted of possession of drug paraphernalia in October 2010 and May 2011.

In January 2013, Telea admitted to the allegations contained within the petition as to her failure to provide appropriate care, support, and supervision; her use of alcohol and/or controlled substances; and that she placed the children at risk for harm. Based on Telea's admission plea, the juvenile court found that the

children were defined within the meaning of § 43-247(3)(a) by a preponderance of the evidence. Telea was ordered to complete a pre-treatment assessment and chemical dependency evaluation; participate in a domestic violence class and a parenting class; submit to random urinalysis; cooperate with the family support worker; and meet with the children's therapist to initiate therapeutic visits with the children.

In March 2013, the juvenile court ordered Telea to therapeutic visits and contact with the children as arranged by DHHS; participate in dual diagnosis outpatient therapy; obtain and maintain stable employment; complete a psychiatric evaluation; and participate in AA and NA meetings.

In July 2013, the State filed an amended motion to terminate Telea's parental rights to LaCory, Lela, Daniel, and Precious. The petition alleges that Telea had failed to comply with the orders of the juvenile court by substantially and continuously or repeatedly neglecting and refusing to give the children necessary parental care and protection. The petition alleges that termination of Telea's parental rights was appropriate pursuant to § 43-292(2), (6), and (7) and was in the children's best interests.

The record indicates that all four children participate in therapy services through Hill Counseling and Consulting which included individual therapy and joint family sessions on a monthly basis. Lela was diagnosed with ADHD and oppositional defiant

disorder. Lela's oppositional defiant disorder involved difficulties with authority, following directions, unwillingness to take responsibility for her actions, blaming others, and disrespect. The therapist testified that Lela has made progress in her goals, but still continues to work on trusting adults and decision making. At the time of the termination hearing, Lela's participation in therapy had decreased, but Lela failed to make any progress with her goal of increasing the parent/child relationship with Telea. Precious was diagnosed with ADHD and adjustment disorder unspecified due to removal and placement into foster care, and was having difficulty with impulse control and decision making in the school setting. In June 2013, Precious was successfully discharged from therapy entirely.

On March 24 and 30, 2013, the children participated in therapeutic visitation with Telea, with all four at the first session and only Lela and Precious at the second session. At those sessions, it was noted that Telea received feedback well but had a complete disregard for rules and that any therapeutic sessions thereafter were ended due to Telea's incarceration. The girls' therapist reported that the children have all stabilized in their living environments without major concern and recommended that the children should not be disrupted by any further visitation with Telea because said visitation would cause the children trauma and psychological and/or emotional harm.

The therapist for LaCory and Daniel testified that he had provided therapy for the boys since 2013, and had recently been involved in Lela and Precious' therapy through joint sessions with all four children. The therapist testified that LaCory was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. The therapist opined that LaCory's disturbances stem from his removal from his grandmother's home, but has been improving significantly by doing well in school and having no behavior issues. LaCory currently has therapy sessions once a month. Daniel also had the same diagnosis as LaCory, but Daniel's issues were more behavioral. Daniel's behaviors have greatly improved, although he had recently been involved in an altercation at school. Daniel's anxiety is mainly caused by a lack of permanency. The therapist indicated that he had been very open with both boys about stability and their future and that both boys had wanted to live with their sisters in their current placement. The therapist opined that permanency and stability was very important for both boys.

Another therapist, Justin Reed, testified that he provided two therapeutic sessions for this family. Reed testified that on March 24, 2013, all four children and Telea were involved in the first session. The second session was held on March 30, and only Precious, Lela and Telea were in attendance. Session notes indicate that Telea talked negatively about the court system and the

children's foster parents, brought an unauthorized male to the session, and made future promises about future living arrangements to the children. Reed noted that Telea was positive and compliant with redirection when asked to follow the therapeutic rules.

Family permanency specialist, Courtney Jaros, testified that she was the service coordinator for the family beginning in June 2010. Jaros testified that beginning in June 2011, she sent letters to Telea until October 2011, when Telea finally contacted her asking her to intervene. Jaros testified that she did not prepare a case plan for Telea because the focus of the case was on Debra and her efforts and Telea was not involved.

Family permanency specialist, Kimberly Kunz, became the family's case manager in June 2012, and had remained in that capacity since that time. Kunz explained that the children were removed from Debra's home in 2009, after concerns arose about safety, lack of supervision, people coming in and out of the home, and suspected drug and alcohol use. Since 2009, none of the children had been in Telea's care and, initially, Telea was not involved in any of the proceedings. Kunz testified that Telea was ordered by the juvenile court to have no contact with the children. Lela and Precious were placed together in Omaha and LaCory and Daniel were placed together in Plattsmouth.

Kunz testified that by January 2013, no therapeutic visitations were occurring between Telea and the children, but

Telea was being offered bus passes, family support services, urinalysis testing, domestic violence classes, and a pretreatment assessment. Family support services were provided to assist Telea with obtaining employment, housing, and clothing for interviews. At the time, the court ordered Telea to complete domestic violence classes, complete a chemical dependency evaluation, attend AA and NA meetings, and to participate with parenting classes and therapy.

In March 2013, DHHS recommended that therapeutic visitation occur between Telea and the children in order to reintroduce the children to Telea due to the long amount of time that they had been separated. Kunz reported that Telea was making progress and was participating in services.

Urinalysis records indicates that initially, Telea did not cooperate with requests for testing, but was eventually contacted and cooperated with requests for testing on March 16, 26, and 30, 2013. Telea also was consistently participating with family support workers. The record shows that in February 2013, Telea participated in five AA or NA meetings; in March she participated in one AA meeting; and in May and June 2012, Telea participated in 38 AA or NA meetings. Telea also completed the following classes: Friends, Family, & Myself; Restorative Justice, Victim Empathy/Impact; Anger Management Skills; Chemical Dependency Class; Taking Care of Me; the Foundations Program at the Women's Center for Advancement (domestic violence education); and Real



Talk for Parents (two parenting classes and one class on family financial matters).

However, shortly thereafter, Telea was discharged from her individual therapy because she was unable to sustain progress in compliance with court orders. Kunz testified that in making recommendations and preparing reports, she looks at safety of the children in the parental home, permanency, well-being of the children, and the amount of time the children spent in out-of-home care. In March 2013, Telea began canceling meetings with family support workers. On March 26, Kunz had contact with Telea at Debra's home and was concerned that Telea was under the influence of alcohol. Telea indicated that she had been out partying the night before and she smelled of an alcoholic odor. On March 31, Telea was incarcerated for domestic violence, where she remained for 6 months.

Kunz was concerned for several reasons, such as the effect on the children who were excited to see Telea and would not be able to continue visitation due to her incarceration. Kunz testified that since 2008, Telea had only had two visitations with the children. Kunz was also concerned that Telea had not followed the therapist's direction and rules at therapy, had been unsuccessfully discharged from individual therapy, had been incarcerated, was unemployed, and had begun to cancel and miss appointments with the family support worker.

While Telea was incarcerated, Kunz continued to meet with Telea at the corrections center. Kunz testified that during that time, Telea took a domestic violence course, an empowerment class, attended AA meetings and possibly began studying for her GED. Since being released from jail in August, Telea had not provided DHHS with any proof of attending AA or NA meetings, or any progress reports regarding treatment. Telea had made contact with Kunz after her release, but testified that the contact was only because Telea needed bus passes.

Based upon the factors previously discussed, Kunz testified that after 5 years in the system, the children needed stability. Kunz testified that the children did not have an adequate relationship with Telea and do not express any interest in living with Telea. Kunz opined that the children's best interests would be served with the termination of Telea's parental rights.

In September 2013, peer-to-peer mentor, Billie Barber, received a referral to work with Telea on housing, employment, and transportation. Barber provided Telea with resources for housing and employment, including places that were hiring and applications, but Telea did not follow up with any of the applications. Barber testified that he met with Telea twice a month and that Telea attended all but one of her scheduled appointments with him. Barber testified that Telea had not met the goal of finding employment, housing, or securing transportation.

On January 20, 2014, the juvenile court found that clear and convincing evidence had been presented warranting the termination of Telea's parental rights pursuant to § 43-292(2), (6), and (7). The court further found that termination of Telea's parental rights was in the children's best interests. It is from this order that Telea has timely appealed to this court.

#### ASSIGNMENTS OF ERROR

Telea assigns that the juvenile court erred by terminating her rights pursuant to § 43-292(2) and (6), by implicitly finding that Telea was unfit and that termination was in the children's best interests. She also contends that minimum due process standards were not met.

#### 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 Karlie D.*, 283 Neb. 581, 811 N.W.2d 214 (2012). 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. *Id.*

The determination of whether the procedures afforded an individual comport with constitutional requirements for procedural due process presents a question of law. In reviewing questions of law, an appellate court in termination of parental rights

proceedings reaches a conclusion independent of the lower court's ruling. *In re Interest of Davonest D. et al.*, 19 Neb. App. 543, 809 N.W.2d 819 (2012).

#### ANALYSIS

##### *Due Process.*

Telea argues that minimum due process standards were not met by the juvenile court. Telea contends that she was not notified that her children were wards of the State until two years after it occurred.

The parent-child relationship is afforded due process protection. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992). Consequently, procedural due process is applicable to a proceeding for termination of parental rights. *Id.* Procedural due process requires notice to the person whose right is affected by the proceeding; reasonable opportunity to refute or defend against the charge or accusation; reasonable opportunity to confront and cross-examine witnesses and present evidence on the charge or accusation; representation by counsel, when such representation is required by the Constitution or statutes; and a hearing before an impartial decision maker. *In re Interest of Landon H.*, 287 Neb. 105, 841 N.W.2d 369 (2013).

The record in this case indicates that these proceedings have been ongoing since June 2009. At that time, Debra was the children's legal guardian and the record indicates that some type

of no-contact order was in effect for Telea. On December 7, 2011, Telea filed a complaint to intervene in the juvenile court. Thereafter, it appears that Telea was given notice of each and every hearing in the case and that either she, and/or her counsel, attended every hearing. The children were adjudicated as children defined by § 43-247(3)(a) in October 2012, due to the faults or habits of Telea and, accordingly, the court has jurisdiction over the children. Telea received notice of the supplemental petition for adjudication and also attended the hearing, at which time she admitted to portions of the petition. The same follows for the amended motion for termination and proceedings thereafter.

At the inception of this case, Telea was not involved with the children because her mother was the children's legal guardian at that time. As soon as Telea filed a motion to intervene in 2011, she was provided with the requisite procedural due process at each stage of the proceedings and this assignment of error is wholly without merit.

*Statutory Grounds.*

Telea asserts that the juvenile court erred by terminating her parental rights pursuant to § 43-292(2) and (6), as the evidence presented by the State was insufficient under those statutory grounds.

For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed

in that section have been satisfied and that termination is in the child's best interests. See *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). The State must prove these facts by clear and convincing evidence. *Id.* Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of the fact to be proved. *Id.*

If an appellate court determines that the lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds set forth in § 43-292, the appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. *In re Interest of Justin H. et al.*, 18 Neb. App. 718, 791 N.W.2d 765 (2010).

In this case, the juvenile court found that the State proved grounds for termination under § 43-292(2), (6), and (7). In her brief, Telea does not address the court's termination under § 43-297(7). The evidence presented at the termination hearing showed that all four children had been placed outside of the home since their removal in June 2009. At no time, either when Debra was still the legal guardian or after Telea filed her motion to intervene, have the children been placed with Telea, well over the statutorily required "fifteen or more months of the most recent twenty-two

months." § 43-292(7). Therefore, the State proved grounds for terminating under § 43-292(7) by clear and convincing evidence.

Because the State must prove only one ground for termination, we need not address the court's analysis of the other grounds for termination. See *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012). Section 43-292(7) operates mechanically and, unlike the other subsections of the statute, does not require the State to adduce evidence of any specific fault on the part of a parent. *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). Telea's assignment of error which relates to the sufficiency of the statutory authority to support termination is without merit.

*Best Interests.*

Telea argues that the juvenile court erred in implicitly finding that she is unfit and that termination of her parental rights is in the children's best interests.

In addition to proving a statutory ground for termination of parental rights, the State must show that termination is in the best interests of the child. See, *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012); *In re Interest of Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). A parent's right to raise his or her child is constitutionally protected; so before a court may terminate parental rights, the State must also show that the parent is unfit. *In re Interest of Kendra M. et al.*, *supra*. There

is a rebuttable presumption that the best interests of a child are served by having a relationship with his or her parent. Based on the idea that fit parents act in the best interests of their children, this presumption is overcome only when the State has proved that the parent is unfit. *Id.* Although the term "unfitness" is not expressly used in § 43-292 the concept is generally encompassed by the fault and neglect subsections of that statute and through a determination of the child's best interests. See *In re Interest of Kendra M. et al., supra.* In the context of the constitutionally protected relationship between a parent and a child, the Nebraska Supreme Court has stated, ""Parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child's well-being."" *Id.* at 1033-34, 814 N.W.2d at 761, quoting *Uhing v. Uhing*, 241 Neb. 368, 488 N.W.2d 366 (1992). The best interests analysis and the parental fitness analysis are fact-intensive inquiries, and although they are separate inquiries, each examines essentially the same underlying facts as the other. See *In re Interest of Kendra M. et al., supra.*

The four children in this case, came under the jurisdiction of the juvenile court in June 2009, when they were removed from their grandmother, Debra's home, who was their legal guardian at



the time. From our previous opinion, *In re Interest of Marcus C., et al.*, case no. A-11-565, there were serious concerns regarding stability, Debra's parenting, willingness to cooperate, ability to provide safe and stable housing, and having a legal source of income enough to provide for both herself and the children. The children were separated and removed from Debra's home. Telea was not involved in those proceedings and testimony from the termination hearing indicated that Telea was ordered to have no contact with the children at that time.

Nearly 2½ years after the children's removal from Debra's home, Telea filed a complaint to intervene which was sustained by the juvenile court in January 2012. The record indicates that beginning in June 2011, DHHS attempted to contact Telea by sending letters to her regarding the case and situation, but that she did not respond until October 2011.

DHHS offered Telea bus passes, family support services, urinalysis testing, domestic violence classes, and a pretreatment assessment. Family support services were provided to assist Telea with obtaining employment, housing, and clothing for interview and the juvenile court ordered Telea to complete domestic violence classes, complete a chemical dependency evaluation, attend AA and NA meetings, and to participate with parenting classes and therapy.

In March 2013, DHHS finally recommended that therapeutic visitation should occur between Telea and the children in order to

reintroduce the children to Telea due to the long amount of time that they had been separated and after reports that Telea was making progress and was participating in services. Until this time, the children still had no visitation or contact with Telea. There was no evidence presented that Telea had been sending any letters, gifts, or support to the children at this time.

Urinalysis records indicates that, initially, Telea did not cooperate with requests for testing, but was eventually contacted and cooperated with requests for testing on March 16, 26, and 30, 2013, which were all found to be negative. Telea also continued participating with family support workers. The record shows that in February 2013, Telea participated in five AA or NA meetings; in March she participated in one AA meeting; and in May and June 2012, Telea participated in 38 AA or NA meetings. Telea also completed the following classes: Friends, Family, & Myself; Restorative Justice, Victim Empathy/Impact; Anger Management Skills; Chemical Dependency Class; Taking Care of Me; the Foundations Program at the Women's Center for Advancement (domestic violence education); Real Talk for Parents (two parenting classes and one class on family financial matters).

Two therapeutic visitations took place with Telea and the children, one with all four children and one with the two girls. The therapist indicated that the children were excited to see Telea and that while Telea was mostly positive and responded well to

feedback, she was unable to follow therapeutic rules and brought gifts to the children and made various promises to them during the session. However, shortly thereafter, Telea was discharged from her individual therapy because she was unable to sustain progress in compliance with court orders and she was also incarcerated in Douglas County jail for domestic violence until August 2013. After her release and through the termination proceedings, no further visitation or contact occurred between the children and Telea. Further, the children's therapists opined that the children had stabilized and were doing well in their placement and that any further visitation with Telea was not recommended. At the time of the termination hearing, Telea had not obtained housing, employment, or transportation and had not reinstated herself in therapy.

We have repeatedly stated that where a parent is unable or unwilling to rehabilitate himself or herself with a reasonable amount of time, the best interests of the child require termination of the parental rights; children cannot and should not be suspended in foster care to await parental maturity. See, e.g., *In re Interest of Sunshine A., et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999). These children have been in out-of-home placement for approximately 5 years and the overwhelming testimony was that the children need permanency and stability. While Telea may love these children, it is clear that she cannot provide them with stability

or permanency. Telea has been unable to remain in or complete therapy, unable to obtain or maintain safe and stable housing or a legal source of employment, and is unfit to parent these children. Therefore, we find that the juvenile court did not err by finding that termination was in the best interests of the children and that the State had proved such by clear and convincing evidence. This assignment of error is without merit.

#### CONCLUSION

Upon our review of the record, we find that Telea was afforded due process and the State proved by clear and convincing evidence that termination of her parental rights was appropriate pursuant to statutory grounds and, also, in the best interest of the children. Therefore, we affirm the order of the juvenile court in its entirety.

AFFIRMED.