

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF MARQUESHA C. ET AL.

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IN RE INTEREST OF MARQUESHA C. ET AL.,
CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

v.

LISA C., APPELLANT.

Filed July 13, 2010. No. A-09-1229.

Appeal from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge.
Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Timothy F. Shanahan for
appellant.

Donald W. Kleine, Douglas County Attorney, and Amy Schuchman for appellee.

IRWIN, SIEVERS, and CARLSON, Judges.

IRWIN, Judge.

I. INTRODUCTION

Lisa C. appeals from the order of the juvenile court which terminated her parental rights to six of her children. On appeal, Lisa challenges the juvenile court's finding that termination of her parental rights is in the children's best interests and the court's finding that her parental rights should be terminated pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2008). Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Lisa's parental rights. As such, we affirm the order of the juvenile court terminating Lisa's parental rights.

II. BACKGROUND

These proceedings involve seven children: Marquesha C., born in September 1992; Fate B., born in December 1996; Tylesha M., born in May 1999; Fernandez M., born in July 2000; Denisha M., born in August 2001; Myesha M., born in November 2005; and Aleshia C., born in February 2009. Lisa is the biological mother of all seven children. The children's biological fathers are not parties to this appeal, and thus their participation in this case will not be discussed further.

On August 15, 2006, Marquesha, Fate, Tylesha, Fernandez, Denisha, and Myesha were removed from Lisa's home and placed in the custody of the Department of Health and Human Services (the Department) after Lisa was arrested on charges of abuse of a vulnerable adult and felony possession of a forged instrument. Subsequently, the State filed a petition alleging that each of the children was within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Cum. Supp. 2006), because Lisa was unable to provide the children with proper care and support as a result of her arrest and because the children were at risk for harm.

Although there is no transcription of the adjudication hearing in our record, other evidence included in the record reveals that in October 2006, Lisa pled no contest to that portion of the petition which alleged that she had failed to provide the children with proper care and support. The remaining allegations in the petition were dismissed and the children were adjudicated to be within the meaning of § 43-247(3)(a). The juvenile court ordered that the children remain in an out-of-home placement.

In March 2007, a disposition hearing was held. At the hearing, the juvenile court ordered that all six children remain in the custody of the Department. The court ordered that the placement of Tylesha, Fernandez, and Denisha continue to exclude Lisa's home. However, the court ordered that Marquesha, Fate, and Myesha could be placed back in Lisa's home. Also at the hearing, the court ordered that Lisa shall, among other things, obtain and maintain safe, stable, and adequate housing; obtain and maintain a legal, stable source of income; participate in a parenting program; and participate in individual therapy.

In March 2008, a review and permanency planning hearing was held. At this hearing, the juvenile court again ordered that all six children remain in the custody of the Department. The court ordered the placement of Tylesha, Fernandez, Denisha, and Fate to exclude Lisa's home. The court indicated that Fate's placement should include "the treatment group home level of care." The court further ordered that Marquesha and Myesha remain in Lisa's home. The court ordered Lisa to obtain and maintain safe, stable, and adequate housing; obtain and maintain a legal, stable source of income; participate in individual therapy; participate with a parent coach; and participate in therapeutic visitation with Fate, Tylesha, Fernandez, and Denisha.

In September 2008, the State filed a motion for temporary custody of Marquesha and Myesha. The State alleged that since March 2007, when Marquesha and Myesha returned to Lisa's home, Lisa had failed to take appropriate action in regard to Marquesha's health problems and had permitted Marquesha to be the primary caregiver for Myesha. The juvenile court granted the State's motion for temporary custody and held a hearing on the issue on September 30, 2008. At that hearing, the court ordered that Marquesha be placed outside of Lisa's home. The court took Myesha's placement under advisement.

On January 5, 2009, the State filed a motion to terminate Lisa's parental rights to Marquesha, Fate, Tylesha, Fernandez, Denisha, and Myesha. The State alleged that termination of Lisa's parental rights to Fate, Tylesha, Fernandez, and Denisha was warranted pursuant to § 43-292(2), (6), and (7) and that termination of Lisa's parental rights to Marquesha and Myesha was warranted pursuant to § 43-292(2) and (6). The State also alleged that it was in each child's best interests to terminate Lisa's parental rights.

In February 2009, while the motion for termination of Lisa's parental rights to the six older children was pending, Lisa gave birth to Aleshia. Aleshia was removed from Lisa's custody immediately after her birth. On February 6, 2009, the State filed a petition alleging that Aleshia was a child within the meaning of § 43-247(3)(a), because Lisa was unable to provide appropriate care and support for her; because Aleshia's six siblings had been in the Department's custody for over 2 years, and Lisa had failed to correct the conditions which led to such placement; and because Lisa had failed to obtain prenatal care while pregnant with Aleshia. The State also alleged that termination of Lisa's parental rights to Aleshia was warranted pursuant to § 43-292(2) and that termination of her parental rights was in Aleshia's best interests.

On February 11, 2009, the juvenile court entered an order finding it would be in Myesha's best interests to be removed from Lisa's home pending the hearing on the State's motion for termination of parental rights.

On June 25, 2009, a hearing was held concerning the State's motions to terminate Lisa's parental rights to all seven children. The hearing continued on June 26, July 9 and 31, August 20, and October 22. Prior to the start of the hearing on June 26, the State made an oral motion to dismiss the motion to terminate Lisa's parental rights as it related to Marquesha. The juvenile court granted the motion.

We have reviewed the evidence presented at the hearing in its entirety; however, we do not set forth the specifics of the voluminous testimony and exhibits here. Rather, we simply note that the evidence presented at the hearing demonstrated that in the approximately 3 years that the juvenile court proceedings were pending, Lisa was unwilling and unable to appropriately parent her children on a consistent basis. We will set forth the specific facts as presented at the hearing as necessary in our analysis below.

At the conclusion of the termination hearing, the juvenile court found that the State proved by clear and convincing evidence that grounds for termination of Lisa's parental rights existed under § 43-292(2), (6), and (7) and that it would be in the children's best interests to terminate Lisa's parental rights. The court then entered an order terminating Lisa's parental rights to Fate, Tylesha, Fernandez, Denisha, Myesha, and Aleshia.

Lisa appeals here.

III. ASSIGNMENTS OF ERROR

On appeal, Lisa challenges the juvenile court's finding that termination of her parental rights is in the children's best interests and the court's finding that her parental rights should be terminated pursuant to § 43-292(2), (6), and (7).

IV. ANALYSIS

1. 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 Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). 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.*

For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. See *In re Interest of Jagger L.*, *supra*. 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 proven. *Id.*

2. CHILDREN'S BEST INTERESTS

We first address Lisa's assertion that the juvenile court erred in finding that termination of her parental rights was in the children's best interests. Lisa argues that she was making improvements in her parenting skills and that she just needed more time to continue to make such improvements. Upon our de novo review of the record, we find sufficient evidence to conclude that termination of Lisa's parental rights was in the children's best interests. We affirm.

At the time of the termination hearing, the juvenile court proceedings had been pending for well over 2 years. During this time period, Lisa was provided with numerous opportunities to improve her parenting skills, including therapeutic visitation with the children, individual therapy, a parenting coach, and general assistance from the Department. Despite these resources, however, Lisa failed to make any substantial, consistent progress toward reunification with her children. 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. *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999). Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *Id.*

Throughout the duration of this case, Lisa was provided with therapeutic visitation with her children. Initially, she was scheduled to have two visitation sessions per week. However, Lisa was not consistent with attending these visits and requested that the visits be reduced to one visit per week. Although the visits were reduced to one time per week, Lisa continued to miss visits. Lisa missed so many visits that she was required to call ahead of the scheduled visitation time to confirm her attendance so that the children would not have to be transported if Lisa was not going to attend. This plan improved Lisa's visitation for a time, but her attendance eventually became inconsistent and sporadic again.

When Lisa did attend visitations, there was little structure. The children were chaotic and often spent their time running around the room and screaming. Lisa did not consistently redirect the children and was not able to keep control of the situation. Lisa would yell at the children or threaten them with ending the visits early. If the children had a problem, they would go to the

visitation workers rather than to Lisa. Although the visitation sessions were scheduled around dinnertime, Lisa often failed to bring nutritious meals to the visits.

Lisa failed to put her children's needs first. Evidence presented at trial revealed that all of the children suffered from health and/or behavioral problems. Lisa failed to learn about the children's problems and failed to understand how such problems have an effect on her parenting techniques. Lisa did not stay in contact with the children's therapists or medical doctors to gain information about the children's physical and mental health.

Lisa did not properly prepare for the birth of her youngest child, Aleshia. In fact, Lisa did not even inform the Department caseworker that she was pregnant until just weeks prior to giving birth. At that time, she refused any assistance from the Department in preparing for Aleshia's birth or in helping care for Aleshia after she was born. Aleshia was born with Down syndrome. Lisa chose not to attend Aleshia's medical appointments and, as a result, was unable to demonstrate that she understood Aleshia's special needs or that she was capable of parenting Aleshia.

When the children's birthdays came, Lisa failed to remember or acknowledge the day during visitation. Lisa forgot Tylesha's and Denisha's birthdays. Both girls were extremely upset and hurt. Tylesha told the visitation worker that this was the second year in a row that her mother had forgotten her birthday. Because Lisa forgot the girls' birthdays, the visitation specialist reminded her about Myesha's birthday. Lisa still failed to acknowledge the day.

Lisa was unable to keep her emotions under control. At one visitation session in May 2009, Lisa got into a confrontation with a visitation specialist. Lisa yelled at the worker and threatened to hurt her. Lisa stated, "I will kill you. I will go to jail for 20 to 30 years. I don't care." The confrontation lasted approximately 15 minutes. During this time, the children were just down the hall and could hear Lisa screaming. The police were called, and Lisa left the visit.

Other evidence presented at trial revealed that Lisa did not make significant progress with her individual therapist; did not have adequate income to provide for her children; and struggled to maintain a safe, stable, and adequate home.

We note that Lisa appeared to make progress during the time between August 2006, when the children were first removed from her home, and March 2007, when Marquesha, Fate, and Myesha were permitted to return to Lisa's home. However, the children were not permitted to stay with Lisa permanently because she demonstrated an inability to appropriately care for the children. In fact, evidence in the record reveals that while Marquesha lived with Lisa, Lisa consistently failed to address Marquesha's problem with her weight despite the express advice of a doctor. As a result, Marquesha's weight problem became more serious while she remained with Lisa. When Marquesha was removed from Lisa's home, her health began to improve and she began to lose weight.

The evidence shows that Fate was removed from Lisa's home again in March 2008. Marquesha was removed from Lisa's home again in September 2008. Myesha was removed from Lisa's home again in February 2009. As such, by the time of the start of the termination hearing in June 2009, all of the children were in an out-of-home placement. Such evidence does not demonstrate consistent improvement in Lisa's parenting skills or consistent efforts toward rehabilitation with her children.

Both caseworkers who worked with the family during the 2½ years the case was pending testified that it would be in the children's best interests to terminate Lisa's parental rights. The family's caseworker from March 2007 to March 2009 testified that she believed it was in the children's best interests to terminate Lisa's parental rights. She stated:

Over the time that the children had come into care, there's been a lack of progress in the case. They need permanency. They've been out of the home since 2006. There[] seems to be an inability to move forward and make progress in this case. And I didn't witness a lot of active parenting by this family.

Her opinion was based on her personal experience with the family over a 2-year period.

The family's caseworker from March 2009 through the termination hearing testified that she believed it was in the children's best interests to terminate Lisa's parental rights, because Lisa had failed to follow through on improving her parenting skills and had failed to work to understand the children's health and behavioral problems.

We agree with the opinions of the family's caseworkers. The children deserve permanency and stability, and it is clear that Lisa is not able to provide this for them. Lisa was provided with well over 2 years of services from the Department, but failed to avail herself of such services and failed to demonstrate any consistent or significant improvement in her parenting skills. As such, we affirm the findings of the juvenile court that termination of Lisa's parental rights is in the children's best interests.

3. STATUTORY GROUNDS

Lisa also assigns as error the juvenile court's finding that the State presented clear and convincing evidence to prove the statutory grounds for termination of her parental rights. Specifically, she challenges the juvenile court's determination that termination of her parental rights was warranted pursuant to § 43-292(2), (6), and (7). Upon our de novo review of the record, we find that the State presented clear and convincing evidence to prove that termination of Lisa's parental rights was warranted pursuant to § 43-292(2). As such, we need not specifically address the juvenile court's determination as to § 43-292(6) or (7).

Section 43-292(2) provides that a court may terminate parental rights when, "The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection."

As we discussed more thoroughly above, the evidence presented at the termination hearing revealed that the juvenile court proceedings were pending for well over 2 years at the time of the start of the termination hearing in June 2009. During the pendency of the case, Lisa failed to consistently attend visitation with the children; failed to provide proper supervision when she did attend visitation; failed to learn about her children's physical and behavioral health problems; failed to attend to her children's medical needs; and failed to put the needs of her children above her own needs. In addition, she failed to properly prepare for Aleshia's birth, failed to avail herself of the Department's assistance during her pregnancy, and failed to make any effort to learn about Aleshia's health problems after she was diagnosed with Down syndrome.

Taken together, the evidence presented at trial reveals that Lisa was unable to provide proper support and care to her children despite the services offered to her. She did not make

significant efforts to improve her parenting skills and did not make any strides toward obtaining reunification with the children.

Upon our review of the record, we find that the juvenile court did not err in finding that termination of Lisa's parental rights was warranted pursuant to § 43-292(2). Because we find that termination of Lisa's parental rights was warranted pursuant to § 43-292(2), we decline to address whether termination of her rights was also warranted pursuant to § 43-292(6) and (7). We affirm the order of the juvenile court.

V. CONCLUSION

Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Lisa's parental rights. As such, we affirm the order of the juvenile court terminating her parental rights to Fate, Tylesha, Fernandez, Denisha, Myesha, and Aleshia.

AFFIRMED.