

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Niko B.,)
a child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Noahlene G.,)
)
Appellant.)

No. A-11-787

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

MAR 23 2012

IRWIN, SIEVERS, and CASSEL, Judges.
SIEVERS, Judge.

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEAL

INTRODUCTION

Noahlene G. appeals from the order of the Scotts Bluff County Court sitting as a juvenile court that terminated her parental rights to her son, Niko B. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Noahlene's parental rights. Pursuant to this court's authority under Neb. Ct. R. of App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

STATEMENT OF FACTS

On December 23, 2009, the State filed a petition alleging that Niko B. should be adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults and habits of his



parents, Nicholas B. and Noahlene G. Specifically, the State alleged, as amended by interlineation, that Nicholas had been violent toward Noahlene and that Noahlene had continued in the relationship; that Noahlene had tested positive for marijuana; and that Nicholas had used violence against his grandmother while she was caring for Niko. Niko was removed from the home at this time. At a hearing in February 2010, Noahlene admitted the allegations, Nicholas pled no contest to the allegations, and the juvenile court adjudicated Niko under § 43-247(3)(a). Nicholas has since relinquished his rights to Niko and is no longer involved in this action.

Subsequent dispositional hearings resulted in several court-ordered requirements for Noahlene, including drug and domestic violence testing, and mostly supervised visitation with Niko. Following a June 2010 hearing, the court noted that minimal progress had been made and that it was concerned with "the apparent inability to break from a drug focused lifestyle," as both parents at that time continued their marijuana use and refused random drug tests. By November 2010, the court acknowledged some progress on Noahlene's part toward reunification with Niko but following a hearing in January 2011, the court stated that it was "discouraged by progress," noting that Niko, 18 months old at the time, had been in out-of-home placement for the past 13 months. The court stated that Noahlene

was not acting like a full-time mother and warned that if significant progress was not made before the next hearing, a change in the permanency objective would be in order.

On March 22, 2011, the State filed a motion to terminate parental rights to Niko on the basis that (1) the parents had substantially and continuously or repeatedly neglected and refused to give Niko necessary parental care and affection; (2) the parents were unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile; (3) Niko had been in out-of-home placement for 15 months of the most recent 22 months; and (4) reasonable efforts to preserve and reunify the family, under the direction of the court, had failed to correct the conditions leading to Niko's adjudication. The State further alleged that termination of parental rights was in Niko's best interests. At a permanency hearing on the same date, the court changed the permanency objective to adoption from the previous goal of reunification. The court further ordered that reasonable efforts were no longer necessary due to the parents' failure to attend or take any personal responsibility for completing the court report and case plan.

At the hearing to terminate parental rights, Hallie Kent, a family support worker with Family Skill Builders, testified that she began working with Noahlene in November 2010, providing services such as supervised visitation and family support with budgeting, finding employment, and finding transportation. Kent stated that Niko was living with his paternal grandmother, Cheryl B. She testified that Noahlene refused family support and was inconsistent in attending the supervised visitations. Kent testified that Noahlene did not follow required protocol, such as not having others present during visits. Kent stated that she would sometimes show up at Noahlene's home with Niko for a scheduled visit but Noahlene would not be there. Other times, Noahlene would sleep during the visits. Kent acknowledged that there was nonetheless a bond between Niko and Noahlene and that, when fully awake during a visit, Noahlene was very affectionate with Niko.

Misty Spangler, a service coordinator, has worked with Noahlene and Niko since December 2009. Spangler stated that she initially supervised some visits between the parents and Niko, which mostly went well. Spangler testified that Noahlene submitted to UA's but was uninterested in learning parenting skills and budgeting.

Phillipe Longoria, a youth and family specialist, provided supervised visitation for Noahlene and Niko from June or July

2010 to November 2010. Longoria stated that Noahlene was mostly consistent with her visits with Niko but often napped with Niko throughout the visit time rather than engaging with him. Longoria said that Noahlene was argumentative and uncooperative with other aspects of Longoria's services, such as budgeting and employment.

Rickie Wynne, a children and family services specialist with the Department of Health and Human Services, testified that she was the case manager for Niko and Noahlene since January 2010. Wynne stated that she developed some specific goals for Noahlene to achieve, including a safe and stable home environment, no further drug use, no further reports of domestic violence, and maintaining adequate anger management. Noahlene was to complete a substance abuse evaluation, a mental health evaluation, and undergo random UAs. Noahlene was also to provide age appropriate and adequate parenting, by working with family support services and following doctor's recommendations for Niko, and to seek employment services.

Wynne testified that Noahlene's visits with Niko were initially sporadic. Noahlene stated that she did not want to be bothered before 11:00 a.m. Noahlene also did not consistently attend drug counseling sessions as she did not like the counselor. Sessions were set up with another counselor who refused to continue working with Noahlene because Noahlene felt

she did not have a problem and did not need counseling. Wynne stated that in March 2010, the court began permitting Noahlene and Nicholas to have some unsupervised visits with Niko. However, many of these visits did not take place because both were required to undergo a UA before such visits and Nicholas refused to do so, and Noahlene said it would be unfair to participate in the visit without Nicholas. Thus, almost no unsupervised visits took place between March and June 2010. During that time frame, Noahlene tested positive for THC on three occasions, and refused to take other UAs.

Wynne testified that Noahlene was making progress in the fall of 2010, passing her UAs and participating in drug and alcohol counseling as required, and visiting Niko consistently. However, she failed a UA in January 2011 and was upset following a review hearing on January 18 because she felt too much was being asked of her. Wynne stated that Noahlene subsequently said she wanted to relinquish her rights to Niko. Noahlene did not see Niko again until March 2011, when she decided to keep trying to regain custody of him. During that period, Noahlene did not participate in substance abuse or domestic violence counseling or any other family support services, nor did she provide any UAs or documentation as to where she was living. At the March 2011 review hearing, the juvenile court changed the permanency objective to adoption and ordered that reasonable efforts were

no longer necessary. Wynne testified that, based on her training and experience, she believed that it was in Niko's best interests that Noahlene's parental rights be terminated.

Noahlene testified that she wanted Niko back and was willing to keep working with a case plan to reach that goal. She acknowledged that she had lost several jobs "because of my mouth," had conflicts with several caseworkers, and was getting evaluated for a bipolar disorder. She admitted to marijuana usage but stated that she never used it around Niko. Noahlene explained that in January 2011 she had "lost hope" that she would get Niko back and so did not see him at all for several weeks.

Following the hearing, the juvenile court noted that it initially appeared that Noahlene could be reunited with Niko, but after a year she had not completed the drug and alcohol or domestic violence programs, and then she disappeared for nearly three months. The court stated that "when I have a child out of the home for 12 plus months, and at that point the parent disappears, there is not much purpose in continuing to try to reunify." The court acknowledged Noahlene's many obstacles in life but stated that its job was to determine whether it was in Niko's best interests to terminate Noahlene's parental rights. The court concluded that the evidence was clear and convincing that termination of Noahlene's parental rights was in Niko's

best interests on the basis that Noahlene has substantially and continuously neglected and refused to give Niko necessary parental care and protection, that she has failed to correct the conditions leading to Niko's original adjudication and failed to make reasonable efforts to preserve and reunify her family, and that Niko has been in out-of-home placement for 15 or more of the most recent 22 months. Noahlene timely appealed from this order.

ASSIGNMENTS OF ERROR

Noahlene asserts that the juvenile court erred in finding clear and convincing evidence to terminate her parental rights.

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

The juvenile court found that the State proved grounds for termination under § 43-292(2), (6), and (7) (Cum. Supp. 2010).

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. The evidence was unchallenged that Niko has remained in out-of-home placements since December 2009, when he was 5 months old. Accordingly, the State proved § 43-292(7) by clear and convincing evidence.

Because the State need prove only one ground for termination, we decline to consider Noahlene's assigned errors regarding the court's determination that the State proved other grounds enumerated in § 43-292. 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). Thus, we will consider evidence relevant to the other grounds in our analysis of Niko's best interests.

Noahlene acknowledged that she struggled to meet the goals set for her by the State and that her frustration with what she saw as unreasonable expectations for her culminated in her failing to visit Niko for nearly three months in early 2011. However, she asked that the court agree to another case plan and stated that she would again try to meet any new goals and expectations.

The record shows that, while Noahlene was bonded with Niko, she was unable to consistently utilize her visitations with him, sometimes refusing unsupervised visitations because of the requirement of a UA before such visits. Noahlene never successfully completed the goals set out for her in the areas of drug and alcohol counseling, domestic violence counseling, and employment. At a point in which Niko had already lived most of his life out of Noahlene's custody, she opted to cut off most contact with him and spoke of relinquishing her parental rights to him. 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.*, 274 Neb. 713, 742 N.W.2d 758 (2007).

Noahlene contends that the court improperly relied on Wynne's testimony, noting that hers was the only testimony opining that termination of Noahlene's parental rights was in Niko's best interests. She complains that Wynne's testimony amounted to "proxy" evidence of a caseworker in the place of expert opinion. We disagree. Wynne worked in close contact with Noahlene almost from the time that Niko was first removed from her care in 2009. Wynne was intimately involved in attempting to shepherd Noahlene through the various services and programs designed to assist her in improving her life skills and parenting skills. There was no error in the admission of Wynne's

testimony. We conclude that clear and convincing evidence demonstrates that termination of Noahlene's parental rights is in Niko's best interests.

CONCLUSION

Because the State proved a statutory ground for termination under § 43-292 and that termination of Noahlene's parental rights is in the best interests of Niko, we affirm the juvenile court's order terminating Noahlene's parental rights.

AFFIRMED.