IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF NYAROUT T. ET AL.

IN RE INTEREST OF NYAROUT T. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,
V.
SELINA B., APPELLANT.

Filed October 2, 2012. No. A-11-987.

Appeal from the Separate Juvenile Court of Douglas County: WADIE THOMAS, Judge. Affirmed.

Mariette C. Achigbu for appellant.

Donald W. Kleine, Douglas County Attorney, and Ann Miller for appellee.

IRWIN, SIEVERS, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Selina B. appeals the order of the separate juvenile court of Douglas County terminating her parental rights to her minor children Nyarout T., Nyaliet T., Julius J., Nyariek M., Karbeano B., and Elizabeth B. Selina asserts the juvenile court erred in determining that the children came within the meaning of Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2010) by clear and convincing evidence and that it is in the best interests of the minor children to terminate Selina's parental rights. For the reasons that follow, we affirm.

BACKGROUND

Selina, who previously emigrated from the country of Sudan, is the biological mother of Nyarout, Nyaliet, Julius, Benson J., Anna J., Nyriek, Karbeano, and Elizabeth. On May 23, 2005, the State filed a petition alleging that Nyarout, Nyaliet, Julius, Benson, and Anna were within the

meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004). The court ordered the children to remain in the temporary custody of the State. The State filed an amended petition alleging the same facts, but adding the children were within § 43-247(3)(a) due to the faults and habits of James T., the father of Julius, Nyaliet, and Nyarout. Several review and permanency planning hearings took place ordering Selina to participate in therapy, complete a psychiatric examination, submit to urinalysis and Breathalyzer tests, and cooperate with intensive family preservation services. Selina's visitation with the children was originally supervised, but she was allowed semisupervised visitation starting in April 2006, followed by unsupervised visitation starting in September 2006.

On October 10, 2007, the State filed a motion to terminate the parents' parental rights pursuant to § 43-292(2), (6), and (7), and alleged the termination was in the children's best interests. The court's jurisdiction over Anna and Benson was terminated, because they had reached the age of majority. On October 15, 2008, the court sustained the State's motion to withdraw the motion for termination of parental rights.

The State filed a second motion for termination of parental rights on August 27, 2009, on the same statutory grounds for Nyarout, Nyaliet, and Julius. The State's supplemental petition filed August 27 alleged that Nyariek and Karbeano came within the meaning of §§ 43-247(3)(a) (Reissue 2008) and 43-292(2), and the amended supplemental petition filed November 30 included Elizabeth, who was born in November 2009.

The hearing on the adjudication with a prayer for termination of parental rights on the amended supplemental petition and the second motion for termination of parental rights proceeded simultaneously and commenced on March 4, 2010.

On June 7, 2011, Selina filed a motion to continue the testimony of Dr. Mary Willis to another date and time, and the motion was overruled. The hearing on the amended petition and the second motion for termination of parental rights concluded on June 10.

The issues presented during adjudication on the second motion for termination of parental rights were (1) whether the State presented clear and convincing evidence to terminate Selina's parental rights pursuant to § 43-292(2), (6), and (7); (2) whether termination of Selina's parental rights was in the best interests of the minor children; and (3) whether the minor children were within the meaning of § 43-247(3)(a).

Multiple service providers testified regarding the services provided to Selina and her ability to apply what she had learned. Selina received inhome therapy from an intensive family preservation therapist, and her lack of participation and cooperation caused the services to end after five visits. Selina's family support workers provided visitation support and worked with her to improve parenting skills, make use of community resources, and find a job. One family support worker, Mahalia Botts, testified that during semisupervised visitation, she had to step into the role of parent a lot to prevent the children from wandering outside, fighting, spitting, and cursing. Botts testified Selina would be unable to maintain a level of parenting that the children needed without support.

Selina worked with Holly Israel, a licensed therapist, whose objectives with Selina included finding understanding of the cultural differences between Sudan and America, becoming more assertive at identifying the children's needs and how to meet them, and learning how to be involved in getting the children back.

Selina also worked with a home-based therapist, Jasmine Hermanek, for family therapy, and the children met with the same therapist for individual therapy. Hermanek testified the environment was unstructured and chaotic, and eventually, the sessions had to be moved out of the home. Hermanek said that Selina's reaction to the children worsened over time and that Hermanek became concerned about Selina's ability to parent and meet the needs of her children.

Dr. Rebecca Schmidt, a licensed psychiatrist who worked with Nyarout starting in January 2009, also testified. Dr. Schmidt said Nyarout has attention deficit hyperactivity disorder (ADHD), which has improved with psychotropic medications and a supportive home and school setting. Dr. Schmidt said Nyarout needs patience, consistent discipline, daily medication, appropriate daily structure, and privileges and consequences, all of which had been given by the foster mother.

Dr. Audrey Wiener, a psychologist, also testified about her role in treating Julius for ADHD, oppositional defiant disorder, and adjustment disorder with depressed mood. Dr. Wiener recommended Julius be in a consistent, predictable, and very highly structured home with consistent expectations and predictable routines. Dr. Wiener said it is critical for Julius to be in a consistent environment or his behavioral issues would intensify with acting out, avoidant behaviors, and/or defiance at home as well as in the classroom. Julius' foster mother testified that Julius has been in her home since March 2009 and that he initially had trouble with bedwetting, stealing, lying, rebellion, and anger. Julius' foster mother said that around the summer of 2009, she noticed a difference in Julius' behavior--he was not as aggressive, and prior to acting out, he would talk to one of his foster parents. Julius' foster mother testified that Julius has visitation scheduled twice per week with Selina, but from September 2009 through the end of the year, the visitation was not regular.

A child and family services specialist also testified that Selina participated in supervised visitation, individual therapy, and family group conferencing when the permanency objective for the family was focused on reunification, with a concurrent plan for adoption. The specialist performed a safety assessment of Selina, and the assessment revealed concerns about how Selina handled the children. The specialist believed Selina did not answer the necessary questions honestly. The specialist's concerns included Selina's leaving the children alone and then needing to be directed to check on them, her heavy drinking, and her gambling. In addition, a report was made to the child abuse and neglect hotline regarding Nyariek and Karbeano in July 2009, alleging Selina was drinking excessively, gambling, and not supervising the children. Another safety assessment was performed by two workers, and a translator was present.

After the assessments, Selina's visits became fully supervised at a neutral location. The Department of Health and Human Services (DHHS) also initiated 24-hour-a-day inhome monitoring for a period of 11 days, and the case manager completed an affidavit requesting Nyariek's and Karbeano's removal from the home.

In August 2009, Nyariek and Karbeano were removed from Selina's home due to concerns for the safety of the children, as well as Selina's lack of progress after several years of services. The specialist testified that Selina's parental rights should be terminated to all five children, Nyarout, Nyariek, Julius, Nyaliet, and Karbeano. At that time, Elizabeth was not yet born.

A child and family services supervisor for DHHS also testified that Selina received services since November 2003 and that Selina told her she did not feel there were any reasons the children should have been removed from her care and denied allegations against her. The supervisor stated that Selina was uncooperative, refused to acknowledge there were any issues with the care of her children, and wanted her bills paid for her. Selina's gambling caused financial benefits from the State to be suspended for about 90 days. It was the supervisor's belief that Selina's parental rights should be terminated.

Another child and family services specialist testified that Selina was offered individual and family therapy, supervised visitation, family support services, interpretation services, monthly family team meetings, and drug screenings. The specialist testified that when she spoke to Selina, Selina would turn around, walk off, or never answer the questions. It was her belief that the children's best interests would be served by achieving permanency outside of Selina's home because Selina had received 5 years of services and had achieved very little progress.

Selina's translators testified on Selina's behalf. Gatluak Kang, an employee of Southern Sudan Community Association, said that he observed Selina during visits and that she would talk to the children, watch them play, prepare food for them, and ask about their placements and school. Lam Lul from Caring People of Sudan acted as an interpreter for visitation and family support. Nhial Doap, who was born in Southern Sudan, testified that there are many different tribes and languages in Sudan and different dialects of the Nuer language, the language that Selina speaks. Doap testified to the importance of keeping the Sudanese culture alive through the children, the cultural differences between Sudan and America, and the difficulties Selina faced. Doap provided support sessions with Selina twice a week and help during visitation for 3 hours, three times per week. Doap helped Selina understand the goals set for her by DHHS and helped her locate community resources. Doap also translated for workers during intensive family preservation, visits, and during the safety assessment in July 2009.

The juvenile court entered an order on October 17, 2011, finding that all six minor children came within the meaning of § 43-247(3)(a) by clear and convincing evidence. Further, the court found that Nyariek, Karbeano, and Elizabeth came within the meaning of § 43-292(2) and that Nyarout, Nyaliet, and Julius came within the meaning of § 43-292(2), (6), and (7) by clear and convincing evidence. The court also found it was in the best interests of the children to terminate Selina's parental rights. Selina timely appealed on November 14.

ASSIGNMENTS OF ERROR

Selina's assignments of error, consolidated and restated, are as follows: The juvenile court erred in (1) finding Selina's parental rights should be terminated under § 43-292(2), (6), and (7); (2) finding the allegations in the amended supplemental petition were true by clear and convincing evidence; (3) finding Selina failed to make progress and comply with her rehabilitation plans and that it was in the best interests of the minor children to terminate Selina's parental rights; and (4) declining Selina's request for additional time to call an expert witness to give testimony.

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 Justin V.*, 18 Neb. App. 960, 797 N.W.2d 755 (2011).

When the evidence is in conflict, the 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 Tyler F.*, 276 Neb. 527, 755 N.W.2d 360 (2008).

ANALYSIS

Statutory Grounds for Termination.

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the listed conditions exist. § 43-292.

One such condition is met where the juvenile has been in out-of-home placement for 15 or more months of the most recent 22 months. § 43-292(7). This section is satisfied if the evidence shows the requisite number of months in an out-of-home placement and, unlike other subsections of the statute, does not require the State to adduce evidence of any specific fault on the part of the parent. *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

The testimony of the caseworkers involved with the minor children established that Nyaliet, Julius, and Nyarout were removed from Selina's home on or about May 19, 2005, due to allegations related to neglect of the children. The evidence shows the children have been in out-of-home placement since that time. Nyariek and Karbeano were removed from Selina's home on or about August 26, 2009, and Elizabeth was removed in November 2009. All six children remained in out-of-home placement from the time of their removal.

The court need only find that one of the listed conditions under § 43-292 is present, and the court did not err when it determined the statutory requirements for termination as to Selina were met under subsection (7) with regard to Nyarout, Nyaliet, and Julius.

However, the State did not allege termination under § 43-292(7) was proper with regard to Nyariek, Karbeano, and Elizabeth. At the time of the amended supplemental petition, Nyariek, Karbeano, and Elizabeth had not been in out-of-home placement for the period required by the statute, and the State alleged only the conditions under § 43-292(2) had been met. We must now consider whether these three children came within the meaning of § 43-292(2), before considering the best interests of all of the minor children involved in this case.

Under § 43-292(2), the parental rights may be terminated where the court finds 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. Furthermore, a parent's failure to provide an environment to which her children can return may establish substantial, continuous, and repeated neglect. *In re Interest of L.C., J.C., and E.C.*, 235 Neb. 703, 457 N.W.2d 274 (1990).

Selina has been under the juvenile court's jurisdiction since 2005 and has been offered numerous services including therapy, family support, urinalysis testing, psychological evaluations, and visitation, with the goal of reunifying with her children. However, no such

reunification has happened because Selina has failed to make the necessary adjustments to adequately care for her children.

Botts, a family support worker who assisted Selina, testified that there was no intimacy and bonding between Selina and her children. Botts also testified that when she supervised visits, she was concerned about lack of supervision, discipline deficiencies, positive praise deficiencies, and lack of interest in the children's school or grades. She stated that during semisupervised visitation, she had to step into the role of parent to prevent the children from wandering outside, fighting, spitting, and cursing, and that she did not believe Selina would be able to maintain a level of parenting that the children needed without support.

Hermanek also testified that when she provided suggestions to help Selina structure time with the children and enforce appropriate consequences, Selina would make excuses and fail to implement the suggestions. This observation was echoed by several other DHHS specialists, supervisors, and case managers who worked with the family. The workers had specific concerns about Selina's drinking and gambling habits, as well as her supervision of the children.

Selina has had access to family support services for a number of years. She participated in varying degrees, but did not achieve sustained progress. She gradually worked from supervised to semisupervised or unsupervised visitation with the children, but eventually it was necessary for the visits to be supervised again. Selina worked with several people who tried to help with parenting skills, including attentiveness, discipline, and positive praise, but the workers testified that Selina has not demonstrated the ability to sustain the kind of care the children need. She has continuously failed to make the necessary adjustments to achieve sufficient progress for the children to return to her care permanently. Therefore, we find the district court did not err when it determined Selina has substantially and continuously or repeatedly neglected and refused to give the juveniles the necessary parental care and protection.

Best Interests.

In this case, there is sufficient evidence to conclude there are statutory grounds under § 43-292(2) and (7) to terminate the parental rights of Selina. Next, we must consider whether the termination is in the best interests of the minor children.

Ultimately, the primary consideration in determining whether to terminate the parental rights is the best interests of the children. *In re Interest of J.H.*, 242 Neb. 906, 497 N.W.2d 346 (1993). Generally, where termination is sought under § 43-292, the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile, as it would show: abandonment, neglect, unfitness, or abuse. *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). Therefore, we include our analysis of the statutory grounds in our consideration of the children's best interests.

The Supreme Court of Nebraska held where termination is sought under § 43-292(2), the court is not required to provide the parent with a reasonable opportunity to rehabilitate herself according to a court-ordered plan. *In re Interest of C.D.C.*, 235 Neb. 496, 455 N.W.2d 801 (1990). However, the efficacy of any plan of rehabilitation as well as the parent's effort and progress might be relevant to the issue of whether or not the termination of parental rights is in the best interests of the juvenile. *In re Interest of Clifford M. et al.*, 261 Neb. 862, 626 N.W.2d 549 (2001).

Selina argues the law does not require perfection of a parent; if that were the case, no parent could escape the termination of his or her rights. Instead, one should look for the parent's continued improvement in parenting skills and a beneficial relationship between parent and child. *In re Interest of Angelica L. and Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009).

In this case, although Selina demonstrated some progress in her parenting skills, she failed to maintain any such progress and has not demonstrated a desire to continue using these parenting skills. We agree that the law does not require perfection, but it does require continued improvement and a commitment to fulfill parental responsibilities; these are areas where Selina has been consistently deficient throughout the pendency of this case.

Termination of parental rights is a final and complete severance that should only be issued as a last resort when no reasonable alternative exists. *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004). Selina argues that this situation does not yet call for a last resort. However, Selina has had support and access to resources from the State since 2005. Her children remain in a state of limbo, where they cannot safely be placed with their mother for her lack of progress, and instead, they remain in foster care. The extended period of time the children have been in their respective out-of-home placements gives weight to a finding that the termination of Selina's parental rights is in their best interests. Further, at least two of the children have been diagnosed with ADHD and other such mood disorders which require consistency and enforcement of a daily routine by the supervising adult. The record demonstrates Selina is not able to provide the kind of constant care and patience the children's needs require; therefore, it is in the best interests of the children to terminate the parental rights of Selina so a permanent, stable placement can be sought.

Finally, where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable amount of time, the best interests of the minor require termination of the parental rights; children cannot and should not be suspended in foster care or made to await parental maturity. *In re Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999). As mentioned above, the removal of the oldest three children took place in 2005, Nyariek and Karbeano were removed in 2009, and Elizabeth was removed from Selina's home shortly thereafter. Selina has had access to services and people who were assigned to help her, and her participation has been inconsistent. Further, she argues there was a disconnect due to communication difficulties, but there was often an interpreter present; yet, she demonstrated little commitment to the continued care, discipline, supervision, and interest in her children. Selina argues that she is an uneducated cattle herder and a food gatherer/refugee and that it is detrimental to the children to prevent them from experiencing their native culture. However, Selina has been unable or unwilling to make the necessary changes to adequately care for the children and the detriment to the children due to lack of adequate parental care weighs against a continuation of this case. It is in the best interests of the children to terminate Selina's parental rights.

Motion to Continue.

A judicial abuse of discretion exists when a judge, within the effective limits of authorized judicial power, elects to act or refrains from acting, and the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result

in matters submitted for disposition through a judicial system. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010).

Selina asserts it was an abuse of discretion for the juvenile court to overrule her motion to continue on June 7, 2011. The reason for the motion was to provide further time to call an expert witness, Dr. Willis, who was unable to testify on the scheduled date. Selina states the testimony would have addressed the problems encountered by Sudanese refugees trying to assimiliate into the host culture and the detriment to the children who are removed from the culture.

Selina argues this case has cultural implications regarding the obstacles she faces as a mother, and also the best interests of the children. While we agree there are obvious cultural implications, the juvenile court did not abuse its discretion when it denied Selina's motion to continue, where both sides had adequate time to call all necessary witnesses, between March 4, 2010, and June 13, 2011. Selina was aware that Dr. Willis would be out of the country almost 2 weeks prior to the date of the motion, and she had the opportunity to take the deposition of Dr. Willis, but failed to do so. Further, the subject Dr. Willis was to address was also covered, at least to some extent by Selina's other witnesses. The best interests of the minor children would not have been served by the continuation of an already lengthy adjudication, and the decision by the juvenile court did not deprive Selina of a substantial right, as she had ample time to make the necessary arrangements and she did not do so.

CONCLUSION

We find the district court did not err when it determined there was clear and convincing evidence that the parental rights of Selina should be terminated. The children came within the meaning of §§ 43-247(3)(a) and 43-292(2), and the three oldest children came within the meaning of § 43-292(7). We also find it is in the best interests of the children to terminate the parental rights of Selina. Further, we find it was not error for the district court to overrule Selina's motion to continue. We affirm.

AFFIRMED.