

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Adrian L.,)
Nyemia R., Markell R., Faith R.,)
and Baby Girl R.,)
Children under 18 years of age.)
State of Nebraska,)
Appellee,)
v.)
Naliesha R.,)
Appellant.)

No. A-13-0992.

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

JUN 19 2014

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

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

BISHOP, Judge.

Naliesha R. appeals from the decision of the separate juvenile court for Douglas County terminating her parental rights to her daughter, Na’Rodshae R. We affirm.

BACKGROUND

Naliesha is the biological mother of Na’Rodshae, born in January 2013. The identity of Na’Rodshae’s father was not definitively established in our record. However, he was not part of the juvenile proceedings and is not part of this appeal; therefore he will not be discussed any further.

Naliesha is also the biological mother of Adrian L., Nyemia R., Markell R., and Faith R. In October 2010, the State filed a petition alleging that Adrian, Nyemia, and Markell were children



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as defined by Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008; Supp. 2013) due to the faults or habits of Naliesha. In December, the State filed a supplemental petition alleging that Faith was a child as defined by § 43-247(3)(a) due to the faults or habits of Naliesha. In both petitions, the State alleged: (1) on or about October 7, Naliesha admitted that she smoked marijuana and PCP while pregnant with Faith; (2) on or about October 7, Naliesha was observed to be under the influence of drugs; (3) Naliesha's use of alcohol and/or controlled substances placed said children at risk of harm; (4) Naliesha failed to provide safe, stable and/or appropriate housing for said children; Naliesha failed to provide proper parental care, support, and/or supervision; and (5) the children are at risk of harm due to the above allegations.

In May 2012, the juvenile court adjudicated Adrian, Nyemia, Markell, and Faith to be within the meaning of § 43-247(3)(a). The juvenile court found the following allegations to be true: on or about October 7, Naliesha admitted that she smoked marijuana and PCP while pregnant with Faith; Naliesha's use of alcohol and/or controlled substances placed said children at risk of harm; Naliesha failed to provide proper parental care, support, and/or supervision; and the children are at risk of harm due to the above allegations. The remaining allegations were dismissed.

Adrian, Nyemia, Markell, and Faith had all become state wards by the end of 2010 when the proceedings discussed above had initially commenced. None of these children were ever returned to Naliesha's home. A termination of parental rights hearing for these four children was set for March 2013.

Three days after Na'Rodshae was born in January 2013, she was removed from Naliesha's care because Na'Rodshae tested positive for PCP at birth; Naliesha tested positive for PCP and other drugs at the time of Na'Rodshae's birth; and Naliesha had previously had four other children removed from her care and had not corrected the conditions leading to the adjudication of those four children (as noted above, a termination of parental rights hearing for those four children was set for March 2013). Na'Rodshae was placed in the temporary custody of the Nebraska Department of Health and Human Services (DHHS), which placed her in foster care. Na'Rodshae has remained in DHHS' custody, and in foster care, ever since.

In January 2013, the State filed a second supplemental petition alleging that Na'Rodshae was a child as defined by § 43-247(3)(a) due to the faults or habits of Naliesha in that: (1) Naliesha was currently involved with the Juvenile Court system regarding Adrian, Nyemia, Markell, and Faith, siblings of Na'Rodshae; (2) Naliesha had been offered and provided with various rehabilitative services to reunify with said child's

siblings to include visitation, urinalysis (UA) testing, therapy, substance abuse treatment, and case management; (3) Naliesha had not been successful in reunifying with said child's siblings and a termination of parental rights to said child's siblings was scheduled for March 2013; (4) Naliesha's use of alcohol and/or controlled substances placed said child at risk; (5) Na'Rodshae tested positive for PCP at birth; and (5) said child is at risk for harm due to the above allegations. The State also sought to terminate Naliesha's parental rights to Na'Rodshae pursuant to Neb. Rev. Stat. § 43-292(2) (Cum. Supp. 2012).

Naliesha relinquished her parental rights to Adrian, Nyemia, Markell, and Faith in February 2013, but she did not relinquish her parental rights to Na'Rodshae.

On July 26, 2013, the State filed an ex parte motion to suspend Naliesha's supervised visits with Na'Rodshae. In support of its motion, the State attached the affidavit of Lauren Apking, Family Permanency Specialist with Nebraska Families Collaborative. In her affidavit, Apking alleged that at approximately 9 p.m. on July 25, Naliesha and an unknown male took Na'Rodshae from her foster home without authorization; law enforcement attempted to find Na'Rodshae and Naliesha; the foster mother was able to make contact with Naliesha, but Naliesha would not accurately disclose her whereabouts; Naliesha

finally returned Na'Rodshae to her foster home between 3 and 4 a.m. on July 26; and that due to the above incident and blatant disregard for the order of supervised visitation, Naliesha put her child in immediate danger. The juvenile court entered an ex parte order on July 26 suspending Naliesha's supervised visits with Na'Rodshae. In an order filed on August 23, after a hearing on the matter, the court ordered that the no contact order was to remain in effect. Visits never resumed.

A hearing on the second supplemental petition was held on September 3 and 26, and October 10, 2013. Evidence was presented regarding Naliesha's progress throughout this case.

Apking testified that she had been the ongoing caseworker for Naliesha and her family since November 2012. She reviewed that family's case file when she was assigned the case. Apking testified that all five of Naliesha's children became wards of state due to Naliesha's illegal drug use. Nyemia and Markell became state wards in February 2009. Adrian became a state ward in April 2009. Faith became a state ward in December 2010, a few days after her birth. Na'Rodshae became a state ward in January 2013, a few days after her birth. (Patricia Studts, a medical technologist/toxicologist at Alegent/Creighton Health testified that both Naliesha and Na'Rodshae tested positive for PCP at the time of Na'Rodshae's birth.) None of the children have ever

returned to Naliesha's home. Naliesha relinquished her parental rights to Adrian, Nyemia, Markell, and Faith in February 2013.

Apking testified that in the case involving Adrian, Nyemia, Markell, and Faith, Naliesha was ordered to submit to random drug screens, participate in intensive outpatient treatment, participate in individual therapy, abstain from alcohol and drugs, maintain safe and stable housing and a legal source of income, and have supervised visitation.

Apking testified that at the time of the termination hearing, Naliesha had appropriate housing and received monthly disability payments (a legal source of income). However, Naliesha had not successfully completed chemical dependency treatment or complied with UAs. When Apking became the family's caseworker in November 2012, Naliesha was participating in UAs with Owens & Associates, but they discharged her for noncompliance in February 2013. Then Heartland Family Services was performing UAs on Naliesha from February to July, when she was discharged from their services. In July, Capstone became the UA provider for Naliesha, and remained the provider at the time of the termination hearing. Apking testified that Naliesha had not completed a UA since July, which showed that she was not compliant with her sobriety. Apking also testified that Naliesha was incarcerated from the end of September to October 4 for DUI and no proof of insurance. On cross-examination, Apking

acknowledged that Naliesha attends Community Alliance, where she goes to drug and alcohol classes, rehabilitation classes for drug treatment, and completed a parenting class. However, Apking's testimony did not reflect when or how long Naliesha had been attending Community Alliance or what her progress had been there.

Apking testified that Naliesha had fully supervised visits with Na'Rodshae via Capstone Behavioral Health and then the Nebraska Children's Home Society. She said that Capstone discharged Naliesha because of her inability to work with providers. Before Nebraska Children's Home Society could take over on February 21, 2013, Apking herself supervised Naliesha's visits, and Naliesha cancelled at least twice. While Nebraska Children's Home Society was supervising visits, Naliesha became inconsistent with her visits--she would often arrive late or leave early--completing only 17 of 40 full visits. Apking testified that Naliesha was initially offered four visits per week for 2 hours per visit. In April, Apking offered to increase her visits so that she could develop a bond with Na'Rodshae and have more time with her. However, Naliesha declined the increased visitation stating that she did not have time in her schedule. Apking testified that Naliesha did not show that she was eager to reunify with Na'Rodshae or that she was willing to put her daughter first. On July 26, Apking recommended

suspending Naliesha's visits because Naliesha "kidnapped" Na'Rodshae from her foster home. Visits were suspended and never resumed after July.

Testimony was given by the foster mother and her daughter regarding the "kidnapping" incident. Rukiya D. is Naliesha's cousin and Na'Rodshae's foster mother. Rukiya's daughter, Dannisha D., was babysitting Na'Rodshae on July 25, 2013, when Naliesha and an unknown male came to the house around 8 or 9 p.m. and took Na'Rodshae without permission. The police were called. Naliesha and "some guy" brought Na'Rodshae back to Rukiya's house between 3 and 4 a.m. on July 26.

Apking testified that before Naliesha relinquished her parental rights to the other children, Adrian and Faith had been in foster care for 100% of their lives and Markell and Nyemia had been in foster care for 3 years. Naliesha was never able to reunify with those children. Apking testified that Na'Rodshae had spent 100% of her life in foster care. Naliesha had not been able to comply with court orders--she had not successfully completed outpatient treatment, had not participated in random UAs, and was inconsistent with visitation. Apking acknowledged that there were no safety concerns during supervised visits. However, Apking cited Naliesha's lack of participation with most services and the kidnapping incident in July, to conclude that Na'Rodshae would be at "major risk" of harm if returned to

Naliesha. Apking testified that Naliesha cannot maintain her sobriety long enough to properly parent. Apking testified that Naliesha's parental rights should be terminated.

Ethne Davis is a family support worker at Capstone Behavioral Health. She testified that Naliesha had been referred to Capstone for visitation services two times, and had been discharged both times for lack of participation or lack of contact. The first referral was received on November 11, 2012, and covered Naliesha's visits with Adrian, Nyemia, Markell, and Faith. Naliesha was to have weekly visits, but the only visits that occurred were on December 1 and December 8. Naliesha was discharged for lack of participation because she had missed three or more consecutive visits. The second referral was received on January 28, 2013, and involved Na'Rodshae. Naliesha was authorized to have daily visits, but only had two visits in the NICU on February 1 and 2. Naliesha was discharged on February 6 because Capstone could not contact her to arrange for visits. On cross-examination, Davis did acknowledge that there were no safety concerns during Naliesha's visits with Na'Rodshae in the NICU on February 1 and 2. However, Davis stated that overall Naliesha had a "very limited" amount of compliance with visitation services.

Davis testified that Naliesha had also been referred to Capstone for drug testing services three times, and had been

discharged twice for lack of participation. The first referral was received on September 19, 2011, and Naliesha was discharged on December 31 because she had not completed any UAs despite 12 attempts. The second referral was received on February 13, 2012, and Naliesha was discharged on April 30 because she had not completed any UAs despite 22 attempts. The third referral was received on August 6, 2013, and was an open referral at the time of the termination hearing. However, Davis testified that since August 6, Naliesha had not completed any UAs despite 8 attempts. Davis testified that overall, Naliesha had a "very limited" amount of compliance with drug testing services.

Kris Siemer is a therapist at Heartland Family Services, and treated Naliesha for substance abuse (cannabis and PCP) and mental health from February 2013 to August. Naliesha was in Siemer's Level 1 Outpatient Substance Treatment program, which involved 2 group sessions and 1 individual session per week; there were also weekly drug tests. Siemer testified that in the beginning, Naliesha was actively participating in the group treatment. However, they were having difficulty getting individual sessions in and there were missed appointments. In June and July, Naliesha started missing group sessions and continued to miss individual sessions (during the course of treatment, Naliesha missed 14 of 42 scheduled group sessions and 11 of 15 scheduled individual sessions). In June and July, there

were 6 times that Naliesha did not complete a drug screen (drug screens were done during group sessions, and if Naliesha missed group, she did not drug test). On July 15, Naliesha tested positive for marijuana, PCP, and cocaine. Naliesha was unsuccessfully discharged from Level 1 Outpatient Treatment in August.

Naliesha, 28 years old at the time of the termination hearing, testified that she lived in a 2-bedroom townhome and received Social Security Income of \$710 per month. Naliesha testified that she was bonded with Na'Rodshae, loved her, and was willing to do whatever it took to parent her. She intended to get into another substance abuse program. Naliesha testified that she had been attending Community Alliance every Tuesday and Thursday for 2½ years, and attended their parenting class, drug and alcohol class, and "other classes."

In its order filed on October 10, 2013, the juvenile court found that Na'Rodshae was a child as defined by § 43-247(3)(a) because she lacked proper parental care by reason of the fault and habits of Naliesha. The juvenile court also terminated Naliesha's parental rights to Na'Rodshae pursuant to § 43-292(2) and found that termination was in the child's best interests. Naliesha has timely appealed the juvenile court's order.

ASSIGNMENTS OF ERROR

Naliesha assigns that the juvenile court erred in finding (1) that the State proved by clear and convincing evidence that her parental rights should be terminated pursuant to § 43-292(2) and (2) that terminating her parental rights was in Na'Rodshae's best interests.

STANDARD OF REVIEW

Cases arising under the Nebraska Juvenile Code are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the trial court's findings. However, when the evidence is in conflict, the appellate court will consider and give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Justine J.*, 286 Neb. 250, 835 N.W.2d 674 (2013).

ANALYSIS

Grounds for Termination.

In Nebraska statutes, the bases for termination of parental rights are codified in Neb. Rev. Stat. § 43-292. Section 43-292 provides 11 separate conditions, any one of which can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

The juvenile court terminated Naliesha's parental rights to Na'Rodshae pursuant to § 43-292(2). Section 43-292(2) provides that parental rights may be terminated when "[t]he 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." The Nebraska Supreme Court has said: "[P]arents may as surely neglect a child of whom they do not have possession by failing to put themselves in a position to acquire possession as by not properly caring for a child of whom they do have possession." *In re Interest of L.C., J.C., and E.C.*, 235 Neb. 703, 713, 457 N.W.2d 274, 281 (1990). And a parent's failure to provide an environment to which his or her children can return can establish neglect. See *id.*

All five of Naliesha's children became wards of the state due to Naliesha's illegal drug use. Before Naliesha relinquished her parental rights to four of those children, Adrian and Faith had been in foster care for 100% of their lives and Markell and Nyemia had been in foster care for 3 years. Naliesha was never able to reunify with those children and she relinquished her rights to those children less than one month after giving birth to Na'Rodshae (and less than one month before a termination hearing was scheduled for those children). Na'Rodshae tested positive for PCP at birth and has spent 100% of her life in foster care. Naliesha has not been able to comply with court

orders--she has not successfully completed outpatient treatment, has not participated in random UAs, and was inconsistent with visitation. When offered additional visitation with Na'Rodshae, Naliesha declined, stating that she did not have time in her schedule. Despite several years of involvement with the juvenile court system, Naliesha has failed to put herself in a position to parent any of her children, including Na'Rodshae. Naliesha has substantially and continuously or repeatedly neglected and refused to give Na'Rodshae, or a sibling of Na'Rodshae, necessary parental care and protection. Our de novo review of the record clearly and convincingly shows that grounds for termination of Naliesha's parental rights under § 43-292(2) were proven by sufficient evidence. Once a statutory basis for termination has been proved, the next inquiry is whether termination is in the child's best interests.

Best Interests.

Under § 43-292, once the State shows that statutory grounds for termination of parental rights exist, the State must then show that termination is in the best interests of the child. *In re Interest of Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). But that is not all. 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. *Id.*

Naliesha has a long history of drug use. Despite several years in the juvenile court system, she has not successfully completed outpatient treatment, has not participated in random UAs, and was inconsistent with visitation. Although Naliesha testified that she had been attending Community Alliance every Tuesday and Thursday for 2½ years, and attended their parenting class and drug and alcohol class, this was during the same time frame when she was noncompliant with UAs and was unsuccessfully discharged from outpatient treatment. Furthermore, Naliesha tested positive for marijuana, PCP, and cocaine on July 15, 2013, and she has not completed a drug test since July. Naliesha was incarcerated from the end of September to October 4 for DUI and no proof of insurance. Apking testified that Naliesha cannot maintain her sobriety long enough to properly parent.

Naliesha was inconsistent with her visitation. She would often arrive late or leave early, and completed only 17 of 40 full visits with Na'Rodshae. Although Naliesha was offered increased visitation with Na'Rodshae, she declined stating that she did not have time in her schedule. Apking testified that Naliesha did not show that she was eager to reunify with Na'Rodshae or that she was willing to per her daughter first. Furthermore, Naliesha showed poor judgment in July 2013 when she took Na'Rodshae from her foster home without permission, and their whereabouts were unknown for several hours. Naliesha's

visits with Na'Rodshae were suspended after the July incident, and never resumed.

Apking testified that Naliesha's parental rights to Na'Rodshae should be terminated. We agree. 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 Ryder J., supra.* Na'Rodshae has been in foster care her entire life, and Naliesha has still not put herself in a position to parent her. "Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity." *In re Interest of Walter W.,* 274 Neb. 859, 872, 744 N.W.2d 55, 65 (2008). Na'Rodshae needs a safe, permanent home, and unfortunately Naliesha cannot provide her with such. Naliesha has not been able to overcome her drug addiction and has never been able to parent Naliesha without supervision. After our de novo review, we find that Naliesha is an unfit parent and it is in Na'Rodshae's best interest that Naliesha's parental rights be terminated.

CONCLUSION

For the reasons stated above, we affirm the order of the juvenile court terminating Naliesha's parental rights to Na'Rodshae.

AFFIRMED.