

**FILED**

**SEP 24 2014**

**CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS**

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Aveah N., )  
 a child under 18 years of age. )  
 )  
 State of Nebraska, )  
 )  
                   Appellee, )  
 )  
                   v. )  
 )  
 Jessica N. and Casey N., )  
 )  
                   Appellants. )

No. A-13-604.

**MEMORANDUM OPINION  
AND  
JUDGMENT ON APPEAL**

In re Interest of Natasha N., )  
 Nico N., Mason N., Taggart N., )  
 and Raini N., )  
 children under 18 years of age. )  
 )  
 State of Nebraska, )  
 )  
                   Appellee, )  
 )  
                   v. )  
 )  
 Jessica N. and Casey N., )  
 )  
                   Appellants. )

No. A-13-605.

**MEMORANDUM OPINION  
AND  
JUDGMENT ON APPEAL**

IRWIN, MOORE, and BISHOP, Judges.

IRWIN, Judge.

I. INTRODUCTION

Jessica N. and Casey N. appeal from two orders of the county court of Cass County, sitting as a juvenile court. In case No. A-13-604, they appeal from the court's order terminating their parental rights to their youngest child, Aveah N. In case No. A-13-605, they appeal from the court's order terminating their



parental rights to their five older children, Natasha N., Nico N., Mason N., Taggert N., and Raini N. The two cases have been consolidated on appeal and, as such, we decide both cases in this opinion.

On appeal in both cases, Jessica and Casey challenge the statutory grounds for termination of their parental rights and the juvenile court's finding that termination of their parental rights is in the children's best interests. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Jessica's and Casey's parental rights. As such, we affirm the orders of the county court terminating Jessica's and Casey's parental rights to their six children.

## II. BACKGROUND

Jessica and Casey's appeal centers on their ability to parent their six children: Natasha, born in May 2000; Nico, born in May 2002; Mason, born in August 2003; Taggert, born in February 2005; Raini, born in April 2007; and Aveah, born in November 2010.

The current court proceedings were initiated in February 2010. However, this is not the first time that the family has been involved with the juvenile court system. In 2007 and 2008, the family was involved with the court when three different petitions were filed, each alleging that Jessica and Casey had subjected their children to inappropriate discipline and had neglected the children due to the conditions of the family home. Jessica and

Casey ultimately admitted to the allegations in each of the petitions. As a result of the admissions, the family was provided with various services, including, individual and family therapy; psychiatric assessments; psychological assessments; parenting assessments; family support; and visitation services. The last of these three previous cases was closed in January 2009.

A little over a year later, in February 2010, law enforcement officers were dispatched to Mason's elementary school, after he was observed to have bruises on his face. When confronted by his school principal, Mason reported that the bruises were a result of Casey hitting him. That same day, law enforcement officers visited the family's home and observed it to be in an "unclean and unwholesome state" due to the amount of clutter on the floors and due to the strong odor of animal urine permeating through the house. As a result of Mason's report to law enforcement about Casey hitting him and as a result of the condition of the family's home, the children were removed from Jessica's and Casey's care and placed in the temporary custody of the Department of Health and Human Services.

Immediately after the children's removal from Jessica's and Casey's home, on February 10, 2010, the State filed a petition alleging that Natasha, Nico, Mason, Taggert, and Raini were within meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008), due to the faults or habits of Jessica and Casey. This petition initiated

the current court proceedings. It alleged, specifically, that the children were at risk for harm because of Casey's use of inappropriate physical force and/or discipline; Jessica's failure to protect the children from Casey; and the family's home being unclean.

Subsequently, in May 2010, the State filed an amended petition. This petition again alleged that Natasha, Nico, Mason, Taggart, and Raini were within meaning of § 43-247(3)(a), due to the faults or habits of Jessica and Casey. However, the specific assertions within the petition were altered to allege that the children were at risk for harm because of "Casey and Jessica['s] use of inappropriate parenting skills and discipline techniques" and because "[o]n February 8th, 2010, law enforcement officers found the [family's] home to be in an unclean state that the officers felt was not appropriate for the . . . children." Both Jessica and Casey admitted to the allegations within the amended petition.

A few months after Jessica and Casey admitted to the allegations in the petition concerning their five oldest children, their youngest child, Aveah, was born. Aveah was removed from their care immediately after her birth and placed in the custody of the Department. The State then filed a petition alleging that Aveah was within the meaning of § 43-247(3)(a) due to the faults or habits of Jessica and Casey. The basis of the State's allegation

was Jessica's and Casey's failure to have made any significant progress towards achieving reunification with their five older children. After a hearing, the county court found the allegation in the State's petition to be true and adjudicated Aveah as being within the meaning of § 43-247(3)(a).

After the adjudication of the children, the Department created a rehabilitation plan, which was subsequently adopted by the court, in order to effectuate timely reunification of the family. The rehabilitation plan focused on two goals created for Jessica and Casey: to create and maintain a clean and safe living environment for the children and to care for the children without utilizing physical discipline and in a manner which makes the children feel safe and which provides for all of their needs. In order to accomplish these goals, Jessica and Casey were ordered to participate with family support; individual and family therapy; psychological and psychiatric assessments; and a parenting assessment.

In addition to adhering to the tenets of the rehabilitation plan, Jessica and Casey were also to participate in visitation with the children. Their visitation with the children was initially supervised, but by January 2011, they were permitted "semi-supervised" visitation time. This less restrictive visitation time did not last long, however, as the family's visitation was temporarily suspended altogether in April 2011, after Casey

verbally attacked and threatened a Department case worker during a visitation session when his children were present. In May 2011, the court ordered that the family participate in therapeutic visitation sessions. The visitations remained therapeutic for approximately one year. During the spring of 2012, the visits were transitioned to supervised and, a few months later, were further transitioned to semi-supervised. Again, though, the less restrictive visitation time did not last long. By November 2012, the court ordered that the visitation time between Jessica, Casey, and the children return to fully supervised after the parties' oldest child, Natasha, raised concerns about the safety of the family home when no one was around to monitor her parents' behavior or disciplinary techniques.

In December 2012, the State filed motions to terminate Jessica's and Casey's parental rights to all six of their children. In the motions, the State alleged that termination was warranted pursuant to Neb. Rev. Stat. § 43-292(2) (Cum. Supp. 2012), because they had substantially and continuously or repeatedly neglected and refused to give the children necessary parental care and protection; § 43-292(6), because reasonable efforts to preserve and reunify the family failed to correct the conditions that led to the determination that the children were within the meaning of § 43-247(3)(a); and § 43-292(7), because the children had been in an out-of-home placement for at least 15 of the most recent 22

months. The motions also alleged that termination of Jessica's and Casey's parental rights was in the children's best interests.

In May 2013, a hearing was held on the State's motions to terminate Jessica's and Casey's parental rights. While we have carefully reviewed the evidence presented at the hearing in its entirety, we do not set forth the specifics of the voluminous testimony and exhibits here. Instead, we will set forth more specific facts as presented at the hearing as necessary in our analysis below.

After the hearing, the county court entered detailed orders finding that the State proved by clear and convincing evidence that grounds for termination of Jessica's and Casey's parental rights existed pursuant to § 43-292(2), (6), and (7). The court also found that termination was in the children's best interests. The court then ordered that Jessica's and Casey's parental rights to their six children be terminated.

Jessica and Casey appeal from the court's orders here.

### III. ASSIGNMENTS OF ERROR

On appeal, Jessica and Casey allege that the county court erred in finding that the State proved the statutory factors for termination of their parental rights and in finding that termination of their parental rights was in the children's best interests.

#### 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. STATUTORY FACTORS

The county court found that termination of Jessica's and Casey's parental rights was warranted pursuant to § 43-292(2), (6), and (7). On appeal, Jessica and Casey argue only that the county court erred in its finding that termination was warranted pursuant to § 43-292(6). In fact, in their brief to this court, they concede that the county court was correct in finding that

termination was warranted pursuant to the provisions of § 43-292(7). Brief for appellants at 10.

As we stated above, termination of parental rights is warranted whenever one or more of the statutory grounds provided in § 43-292 is established. See *In re Interest of Jagger L.*, *supra*. Jessica and Casey do not specifically contest the county court's finding that they had neglected their six children pursuant to § 43-292(2) or that the children had been in an out-of-home placement for at least 15 of the most recent 22 months pursuant to § 43-292(7). Because Jessica and Casey do not challenge the county court's finding that termination of their parental rights was warranted pursuant to § 43-292(2) and (7), we conclude that there was sufficient statutory authority to support termination of their parental rights. This assignment of error is without merit.

Although Jessica's and Casey's assignment of error regarding the sufficiency of the statutory authority to support termination of their parental rights lacks merit, we do feel compelled to call attention to the overwhelming and uncontradicted evidence presented by the State at the termination hearing that all six children had been in an out-of-home placement for fifteen or more months of the most recent twenty-two months, as § 43-292(7) provides. In fact, the oldest five children had been in an out-of-home placement for approximately 39 months by the time of the termination hearing in May 2013. And, Aveah, the youngest child,

had been in an out-of-home placement for her entire life, or approximately 29 months, by May 2013.

The children's extended time away from their parents' home and their parents' care is an important factor we must consider as we move on to discuss Jessica's and Casey's assertions concerning the children's best interests.

### 3. BEST INTERESTS

Jessica and Casey argue that termination of their parental rights is not in the children's best interests. Specifically, they argue that the evidence presented at the termination hearing demonstrated that they had complied with the tenets of their rehabilitation plan and that they had made a great deal of progress towards reunification with their children. They also assert that the actions of the Department case workers and service providers had hindered, rather than helped with their efforts and that those actions should not be held against them.

Jessica's and Casey's assertions have no merit. Upon our de novo review of the record, we find the evidence presented at the termination hearing overwhelmingly demonstrated that after years of court and Department involvement with the family, Jessica and Casey are still not capable of providing their children with a safe and stable environment, and that thus, they are not capable of appropriately parenting their children. We affirm the orders of the county court which found that termination of Jessica's and

Casey's parental rights was in the best interests of Natasha, Nico, Mason, Taggert, Raini, and Aveah.

By the time of the termination hearing in May 2013, the current case had been pending in the county court for over three years. During this time period, Jessica and Casey had been provided with numerous services, including, family support, individual and family therapy, psychological and psychiatric assessments, and a parenting assessment. In addition to these services, Jessica and Casey were also provided with the expertise of multiple visitation specialists who assisted them with learning and implementing appropriate parenting and disciplinary techniques. All of these services were designed to assist Jessica and Casey with maintaining a safe and stable home for the children and with practicing appropriate disciplinary techniques.

Jessica and Casey were also provided with some of these same services in 2007 and 2008 when the family was previously involved with the court and with the Department. One Department caseworker testified at the termination hearing that, due to the length of time that the family had been involved with the court, that the Department had gone out of its way to identify new or additional services and programs for the family which had not previously been provided in order to identify the services that would work best for Jessica and Casey. There was also evidence presented at the termination hearing that Jessica and Casey had been provided and

had received all of the services available to them through the Department.

Although Jessica and Casey generally participated with all of the services provided to them, none of these services have improved their parenting skills or disciplinary techniques on a permanent basis. In its orders terminating Jessica's and Casey's parental rights, the county court found:

Over the course of this case [Jessica and Casey] have been provided a multitude of services, literally all the services that are available to the [Department] to provide to parents in order to make successful reunification of parents and children occur. The evidence is clear and convincing that no real progress has been made in implementation of any of the services provided nor have the parents been able to demonstrate that they can apply what they have learned through the multiple therapies and classes provided to them.

Upon our de novo review of the record, we conclude that the county court's statement correctly summarizes the evidence presented at the termination hearing.

The State presented evidence that after years of services, Casey and Jessica still struggled to control their behavior, particularly their anger, with both their children and the service providers who were trying to help them. They were often uncooperative, resistant to help, and intimidating or threatening. There was evidence that during visitations, Casey and Jessica

regularly used vulgar language in front of their children, spoke in hostile tones, and discussed inappropriate topics. At one point early on in the case, the family's Department case worker created a contract for Casey and Jessica to sign to improve the tenor of visitations. This contract included an agreement from Jessica and Casey that they would not use vulgar language during visits and would model appropriate behaviors. The contract was not successful.

Jessica's and Casey's anger and poor parenting skills would worsen whenever the children acted out in any way. Casey once told a Department case worker that it was his "right" to hit his children when they did not behave. In addition, Jessica was observed to physically force Nico to the floor after he misbehaved during a visitation. While she was holding Aveah, who was just an infant, Jessica held Nico on the floor and told him, that she was "done with his fucking shit" and that she was going to send him to Boys Town when he came home to them. During another visitation, Casey got frustrated with his children's behavior and yelled, "Nothing works. You show me what fucking works."

When Jessica and Casey were not angry and yelling at the children during visitation, they were often ignoring the children altogether. One visitation worker testified that sometimes it appeared the parents were "just there" rather than interacting with the children. This behavior escalated just prior to the time

of the termination hearing. Jessica and Casey stopped accepting any sort of redirection and instead argued with the visitation workers and demonstrated threatening behavior towards them. In fact, by the time of the termination hearing, visitations focused more on the presence of the visitation workers than they did on the children.

As a result of Jessica's and Casey's behaviors during visitations, the family never moved beyond monitored, or semi-supervised, visitation sessions during the three years the case was pending. In fact, the monitored visitations proved to be completely unsuccessful and did not last longer than a few months at a time. The visitation sessions were always returned to fully supervised or therapeutic after Jessica and Casey acted inappropriately toward the children and service providers when they weren't being constantly watched. Essentially, Jessica and Casey exhibited a regular and on-going pattern of acting appropriately with the children when they wanted to gain more freedom or when they needed to prove themselves, but then quickly reverting to inappropriate and physically aggressive parenting practices when no one was watching them. This pattern is probably best exhibited by the family's repeated involvement with the court and with the Department after only short periods of independence.

At the termination hearing, both Jessica and Casey testified. Portions of their testimony reveal that they still do not

understand the effects of their behavior and their inappropriate disciplinary techniques. Although Casey testified that he would no longer physically discipline his children, he also did not appear to truly support the parenting techniques he had learned during the course of the case. He testified that even during the court proceedings, he believed that disciplinary decisions should be under the parents' control. In addition, Casey repeatedly blamed others for his family's circumstances and did not accept responsibility for his children's lengthy time out of his home. He did admit that his attitude had been somewhat of a barrier to his family's success. Jessica testified that she believed that she and Casey just needed a little more time to prove they were capable of being appropriate parents, despite acknowledging the length of time they had already been given.

The State presented evidence that the children exhibited serious behavioral problems. There was also evidence that the children's behavioral problems improved when they did not see Jessica and Casey for an extended period of time and that the problems escalated markedly whenever Jessica and Casey exercised semi-supervised visitation. Oftentimes, these problems were manifested by the children acting aggressively with each other or at school; destroying property in their foster homes; acting frustrated or angry; and refusing to listen to their foster parents.

Each of the five oldest children have seen a therapist during the pendency of these proceedings. The therapists agreed that the children need stability and permanency in their lives and that Jessica and Casey are not able to provide this to their children. In particular, Natasha's therapist testified that Natasha has made a great deal of progress since being placed outside of her parents' home, even though Natasha still struggles with her relationship with Jessica and Casey. Similarly, Nico's therapist testified that he has been traumatized by his parents' behavior, but that he has started to make some improvements. The therapists testified that termination of Casey's and Jessica's parental rights would be in the children's best interests. The family's current case worker provided an identical opinion.

We agree. When we consider the totality of the evidence presented at the termination hearing, it is clear that Jessica and Casey are not ready to be effective parents to their children. Despite the court's and the Department's efforts for over three years, Jessica and Casey have failed to demonstrate consistent improvement in their parenting skills and have failed to prove that they are capable of interacting with their children without resorting to inappropriate verbal or physical aggression. Jessica's and Casey's failure to demonstrate appropriate parenting techniques are particularly concerning in this case where the evidence revealed that their children suffer from behavioral

problems and desperately need consistency and stability in their lives.

We recognize that there was evidence which showed that Jessica and Casey love their children and that they desire to parent them. However, it is also clear that Jessica and Casey are just not capable of parenting the children at this time. The children have been out of their parents' home for over three years and, in Aveah's case, for her whole life. They deserve, and truly need a permanent placement. We affirm the decision of the county court finding that termination of Jessica's and Casey's parental rights is in their children's best interests.

#### V. CONCLUSION

Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Jessica's and Casey's parental rights. As such, we affirm the orders of the county court terminating their parental rights to Natasha, Nico, Mason, Taggert, Raini, and Aveah.

AFFIRMED.