

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF ARICA S. ET AL.

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IN RE INTEREST OF ARICA S. ET AL.,
CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

v.

RENEE S., APPELLANT.

Filed September 21, 2010. No. A-10-117.

Appeal from the Separate Juvenile Court of Douglas County: ELIZABETH CRNKOVICH,
Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Christine D. Kellogg for
appellant.

Donald W. Kleine, Douglas County Attorney, and Jennifer Chrystal-Clark for appellee.

IRWIN, SIEVERS, and CARLSON, Judges.

IRWIN, Judge.

I. INTRODUCTION

Renee S. appeals an order of the separate juvenile court of Douglas County, Nebraska, terminating her parental rights to her minor children, Arica S., Angel S., Michael S., and Michaela S. On appeal, Renee challenges the juvenile court's finding that termination of her parental rights is in the best interests of the children and alleges that the juvenile court failed to conduct a fair and impartial hearing. We find no merit to Renee's assertions on appeal, and we affirm. Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

II. BACKGROUND

The State filed a motion seeking termination of Renee's parental rights. In the motion, the State noted that the minor children had been found to be within Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008); alleged that Renee had been ordered to comply with various rehabilitation plans; alleged that Renee had substantially and continuously or repeatedly neglected and refused to give the children necessary parental care and protection; and alleged that Renee was unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, seriously detrimental to the health, morals, or well-being of the minor children. Finally, the State alleged that termination of Renee's parental rights was in the best interests of the children.

The hearing on the State's motion to terminate Renee's parental rights was held over the course of several different dates. The State adduced evidence establishing that the children had been removed from and returned to Renee's care on prior occasions. The State adduced evidence that Renee has admitted to using methamphetamine for 20 years, has been through drug court, and has been through a number of different drug treatment facilities.

As an example of Renee's history of involvement with the State, treatment, and relapsing, the State presented evidence that on one occasion the children had been returned to Renee's care in January 2008 and that the Department of Health and Human Services had "closed" its case in August 2008. Renee relapsed in August 2008 and used methamphetamine on a regular basis until the children were removed again in January 2009. Renee completed an inpatient treatment program in April 2009, moved into a halfway house, relapsed in June and July 2009, was kicked out of the halfway house in August 2009, and continued to use methamphetamine until returning to an inpatient treatment program in September 2009.

The State adduced evidence concerning the impact on the children from the instability caused by Renee's pattern of treatment and relapsing and the children's being removed and returned to her care. The State adduced opinion testimony indicating that termination of Renee's parental rights was in the best interests of the children so that they could be provided with more stability and permanency in an adoption setting. The State also adduced testimony opining that the children were making improvements socially, behaviorally, and academically when placed in a more stable foster setting.

On the final date scheduled for hearing on the State's motion for termination of Renee's parental rights, the State rested prior to 11 a.m. At Renee's request, the court recessed until approximately 1:30 p.m. Renee then indicated to the court that she had "just two" witnesses to present. The court indicated on the record its intention to conclude the termination hearing that date, and Renee made no objection or request to continue the adjudication to a later date to allow presentation of other witnesses and evidence. Renee concluded presenting evidence at approximately 2 p.m. Renee then requested a continuance to present additional evidence on a later date, and the court denied the request.

The juvenile court issued an order terminating Renee's parental rights. The court found that the State had proven statutory grounds for termination under both neglect and habitual use of drugs and that it was in the best interests of the children that Renee's parental rights be terminated. This appeal followed.

III. ASSIGNMENTS OF ERROR

Renee has assigned two errors on appeal. First, Renee asserts that the juvenile court erred in finding that there was clear and convincing evidence that terminating her parental rights was in the best interests of the children. Second, Renee asserts that the court failed to conduct fair and impartial proceedings and thereby violated her due process rights.

IV. ANALYSIS

1. BEST INTERESTS

Renee first asserts that the juvenile court erred in finding sufficient evidence to support a finding that termination of her parental rights is in the best interests of the children. We initially note that Renee does not dispute or challenge that the State adduced significant evidence proving the statutory grounds for termination of parental rights, that she has substantially and continuously or repeatedly neglected and refused to give necessary parental care and protection to the children, and that her habitual use of intoxicating liquor or narcotics is detrimental to the health, morals, or well-being of the children. She also has not challenged the opinion testimony presented by the State concerning the need for stability for the children, their improvements in a more stable foster setting, or opining that termination is in their best interests. Rather, Renee argues that there is evidence of a loving relationship, that this case does not require the “last resort” of termination, and that the State failed to sufficiently address her mental health needs. We disagree.

The Nebraska Supreme Court has held that when termination of parental rights is sought under most subsections of Neb. Rev. Stat. § 43-292 (Reissue 2008), 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). To terminate parental rights, the State must prove by clear and convincing evidence that termination is in the best interests of the children. *In re Interest of Marcus W.*, 11 Neb. App. 313, 649 N.W.2d 899 (2002).

We have already recounted above a portion of the evidence adduced by the State establishing Renee’s long history of substance abuse. She has received a variety of treatment alternatives and repeatedly failed to provide a stable and appropriate situation for the children. She does not even dispute this in appealing the finding of best interests. Upon our review of the evidence adduced in this case, both that recounted above and the remainder of the record, we find no merit to Renee’s assertion that there was insufficient evidence that termination of her parental rights is in the best interests of these children. This assignment of error is without merit.

2. DUE PROCESS

Renee next asserts that the juvenile court did not afford her due process because she did not receive a fair and impartial hearing. She challenges statements made by the court and the court’s denial of her request for additional time to adduce evidence. We find no merit to either assertion.

Parents are entitled to procedural due process in termination of parental rights hearings. *In re Interest of Heather R. et al.*, 269 Neb. 653, 694 N.W.2d 659 (2005). In this context,

procedural due process includes notice to the person whose right is affected by the proceeding, a reasonable opportunity to refute or defend against the charge or accusation, a reasonable opportunity to confront and cross-examine adverse witnesses and present evidence on the charge or accusation, representation of counsel, and a hearing before an impartial decisionmaker. *Id.*

Renee first takes issue with a statement made by the court during a disposition hearing. At that hearing, the court stated:

I'm going to ask you to highly consider discussing with your lawyer something like an open adoption or a relinquishment that allows for some sort of contact or something along that line, just to keep all your options open; okay? Now, right now I don't expect you to think about it. Right now you just have to kind of have the feelings.

Renee argues that this statement, at a disposition hearing before the State had filed the motion for termination of parental rights, demonstrates that the court was "advocating for an outcome that includes loss of parental rights" and was not acting in a fair and impartial manner. Brief for appellant at 20. Similarly, Renee takes issue with the court's questioning of a witness.

We find no merit to this assertion by Renee. Although it is accurate to note that the quoted comment from the court came before the State had filed a motion for termination of parental rights, the State had already informed the court that it intended to file additional pleadings and the Department of Health and Human Services, the State, and the children's guardian ad litem had all already recommended to the court that the permanency objective for this case be changed to adoption. The court's comments were not made in a vacuum where the State's intention of seeking to terminate Renee's parental rights had not been made known.

Further, just prior to making the quoted statement, the court also commented that "the State has told me they're [sic] going to file additional pleadings" and stated:

[H]ere's what I'm going to recommend to you, and I know your lawyer will talk to you thoroughly about this, it's not that anything's a done deal, because it isn't. But you have to, at some point - this is - I'm not saying you should, I'm just suggesting that in the face of this possible reality, get through the emotion and think about: Is there a way - not - You need to keep your treatment for yourself.

The comments by the court do not indicate that the court was advocating for an outcome or was not a fair and impartial arbiter. Rather, the comments reflect advisement to Renee that additional filings were going to be made and advice that she speak with her lawyer about all options, while specifically noting that the ultimate outcome had not been decided.

We also find no merit to Renee's assertion that the court's partiality is somehow called into question because the court asked a handful of followup questions to one of the witnesses. When the court asked questions of the witness, Renee made no objection. When the court concluded asking questions, Renee did not further examine the witness or make any objection. Our review of the questions asked and answers given reveals no indication of any partiality or improper motives for the court's examination.

Renee also challenges the court's denial of her request for additional time to present evidence. As noted above, the termination hearing was held over the course of several dates. On the final date scheduled for the hearing, the State completed its case in the morning and Renee immediately requested a recess because her witnesses were not ready. After a recess, Renee was

asked how many witnesses she had and she indicated, “Just two, your Honor.” The court specifically advised Renee that it intended to complete the hearing that date because it was the final date scheduled for the hearing, and Renee made no objection or request for a continuance. Renee presented testimony from one witness and then herself, and she concluded the testimony of both by approximately 2 p.m. Renee then asked for an additional date to present more evidence, indicating to the court that one witness was having outpatient surgery that day and was unavailable. Renee presented no indication to the court what the unavailable witness would have testified about or what potential impact on the outcome of the case would have occurred from having additional time to present evidence on a different date. On the facts of this case, we do not find the court’s denial of this request to be a violation of due process or find that Renee was denied a meaningful opportunity to present her case. This assigned error is without merit.

V. CONCLUSION

We find no merit to Renee’s assignments of error. There was sufficient evidence to support a finding that termination of Renee’s parental rights is in the best interests of the children and that Renee was not denied due process. We affirm.

AFFIRMED.