

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF DANNIE H.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE INTEREST OF DANNIE H., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

MICHELLE H., APPELLANT.

Filed May 19, 2009. No. A-08-1007.

Appeal from the Separate Juvenile Court of Douglas County: ELIZABETH CRNKOVICH,
Judge. Reversed and remanded for further proceedings.

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, CARLSON, and MOORE, Judges.

MOORE, Judge.

INTRODUCTION

Michelle H. appeals from the order of the separate juvenile court of Douglas County,
which terminated her parental rights to Dannie H. Because we find that the court erred in its
determination that termination of Michelle's parental rights was in Dannie's best interests, we
reverse, and remand for further proceedings.

BACKGROUND

Michelle, now 25 years old, is the natural mother of Dannie, born October 30, 2002.
Dannie's father has relinquished his parental rights and is not a part of the present appeal.

The State filed a petition in the juvenile court on April 26, 2004, alleging that Dannie was
within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Cum. Supp. 2002) by reason of the faults

or habits of Michelle in that on April 23, Michelle admitted to law enforcement officers that she uses methamphetamine and that due to the allegations of the petition, Dannie was at risk for harm.

The juvenile court entered an order for immediate custody, placing Dannie in the custody of the Department of Health and Human Services (Department) for foster care or other appropriate placement on April 26, 2004. Dannie has remained in foster care placement since that time.

On May 24, 2004, the juvenile court entered an order adjudicating Dannie as a child within the meaning of § 43-247(3)(a).

After a dispositional hearing and several review hearings, Michelle participated in the Douglas County Specialized Treatment and Recovery (S.T.A.R.) from January 10 through March 28, 2006. Additional review permanency planning hearings were held between April 3, 2006, and January 9, 2007. Following the January 9 hearing, the juvenile court did not adopt the Department's reunification recommendations and set the matter for an exception hearing.

Prior to the scheduled exception hearing, the State filed a motion for termination of parental rights on March 27, 2007. The State alleged that termination of Michelle's parental rights was proper under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2008). Accordingly, rather than proceeding with the exception hearing on March 29, a hearing on the State's motion was scheduled. Hearings on the State's motion for termination of parental rights were held in 2007 on July 13 and 24 and August 30 and in 2008 on January 10 and 11, April 10, July 9, and August 25.

The record reflects that Michelle suffers from alcohol and methamphetamine dependence and has received a bipolar II diagnosis for which she has been prescribed certain medications. During her early involvement in the juvenile court system, Michelle had difficulty in meeting urinalysis (UA) testing requirements, testing positive for marijuana on several occasions, but from October through December 2006, Michelle completed her required UA testing with the results all being negative. Michelle again completed her required UA tests from January through March 2007. Michelle's UA's have all been negative for methamphetamine. An evaluation of Michelle's progress as of June 19, 2007, reflected that there had been no positive UA test results for the evaluation period and that Michelle continued to complete UA testing as requested. Michelle has not used methamphetamine since October 10, 2005, and has not consumed alcohol since February 7, 2007.

During her initial involvement in the juvenile court system, Michelle had an inconsistent employment history. Michelle became employed at a fast-food restaurant on March 9, 2007, and remained employed there through the time of her testimony on August 25, 2008. Prior to August 2006, Michelle had a succession of short-term, unsuitable living places as well as a period of inpatient chemical dependency treatment, a period of residence at the Salvation Army, and a brief period of incarceration for noncompliance with S.T.A.R. court requirements. Michelle moved into a two-bedroom apartment, located with assistance from the Salvation Army, in August 2006. Michelle was moved into a one-bedroom apartment in approximately August 2007, where she continued to reside as of August 2008.

Michelle began attending classes at ITT Technical Institute (ITT) in Omaha, Nebraska, during the course of this case, and at the time of her testimony, she anticipated graduating from ITT in July 2009 with an associate's degree of applied science in computer-aided drafting.

Michelle has consistently exercised her supervised visitation with Dannie throughout this case.

On July 13, 2007, the State presented testimony from Denise Gaines and Susan Larson. Larson's testimony continued on July 24 and August 30. On August 30, the State also presented testimony from Tayla Dickey. Dickey's testimony concluded on January 10, 2008, on which date the State also presented testimony from Dannie's foster parent.

Gaines, a licensed psychotherapist, worked with Michelle at Williams Prepared Place (WPP) beginning in October 2005. WPP is a transitional living facility that provides substance abuse services and recovery for homeless persons. The goal for the program is to assist individuals to find permanent housing and to be able to recover from addictions to drugs and alcohol. WPP has both inpatient and outpatient client programs. The key components of the inpatient WPP program are that clients agree to stay for the minimum 6-month period, complete random drug and alcohol testing, remain accountable, find work in a minimum amount of time, pay fees for housing and treatment in a timely manner, and "aggressively work" the chemical dependency component of the program. Clients receive an efficiency apartment, in which their children can reside if necessary. Clients may be terminated from the program if they engage in disruptive behavior, use drugs or alcohol, do not find a job, or exhibit unwillingness to participate in the program. Michelle's participation in WPP programming was addressed at a later hearing in testimony from the WPP executive director.

Gaines testified that, during therapy sessions, she and Michelle focused on tasks vital to keeping a routine, including the necessity for Michelle to complete daily chores, wake up on time, visit Dannie, and maintain employment. Gaines has had concerns about Michelle's ability to consistently complete these activities.

After Michelle was discharged from the WPP inpatient program in April 2006, Gaines and Michelle met weekly at the Salvation Army during the 4 months Michelle resided at the Salvation Army. During therapy sessions, Michelle and Gaines discussed the effect of Michelle's depression on her daily life. Michelle informed Gaines that there were times she did not have the energy to do things. Gaines provided Michelle with different techniques for coping with depression symptoms and helped Michelle focus on maintaining her sobriety. Although Michelle attended some support group meetings at WPP following her inpatient discharge, Gaines expressed concerns about Michelle's ability to maintain a consistent lifestyle. Gaines noted that Michelle did not keep her small room at the Salvation Army clean and sometimes would not attend support group meetings because she "didn't feel up to it." Michelle also missed some therapy sessions with Gaines because Michelle had work conflicts, failed to find transportation, or was not interested in contacting Gaines.

Gaines observed Michelle and Dannie interact on several occasions while Michelle was enrolled in the WPP inpatient program and at least once while Michelle was living at the Salvation Army. Gaines testified that she witnessed positive interactions between Michelle and Dannie.

Gaines continued to meet with Michelle during August and September 2006 after Michelle left the Salvation Army. After Michelle moved into her own apartment in the fall of 2006, Gaines and Michelle continued to meet every other week. The primary focus of Gaines' sessions with Michelle from August 2006 to March 2007 was to help Michelle keep from being overwhelmed by work, school, therapy, and other obligations. At the time of the July 13, 2007, hearing, Gaines testified that she was still working with Michelle to address the same issues regarding chemical dependency and depression that she addressed with Michelle initially.

Gaines testified that during the course of Michelle's treatment with her, Michelle had at times made improvements in her lifestyle but that Michelle has had difficulty in maintaining those gains. Positive changes noted by Gaines included Michelle's employment at the fast-food restaurant and enrollment at ITT. As negatives, Gaines noted things including Michelle's periodic difficulties in keeping her apartment clean and Michelle's relapse with alcohol in early 2007. Gaines was concerned by Michelle's relapse. Michelle reported to Gaines that the relapse occurred because Michelle "felt under pressure."

Gaines testified, based on working as Michelle's mental health therapist and speaking with Dannie's caseworkers at monthly team meetings, that termination of Michelle's parental rights would be in Dannie's best interests. Gaines asserted that termination would also be in Michelle's best interests because of Michelle's past history of "not being able to follow through and be consistent" and because "being a mother [is] overwhelming."

Larson is a protection and safety worker for the Department and was Michelle's caseworker from May 2004 to October 2005. Larson testified at length concerning the services provided to Michelle during her time as Michelle's caseworker and to Michelle's general lack of progress during that period. Larson described the relationship between Michelle and Dannie, during Larson's involvement in the case, as "very positive." Larson recommended that Michelle's visits with Dannie should continue to be supervised until Michelle produced negative drug screens. According to Larson, the main issues preventing reunification were the fact that Michelle continued to use drugs, needed appropriate housing, and suffered psychiatric problems. In connection with the psychiatric issues, during her testimony on August 30, 2007, Larson referenced the fact that "it appears today that [Michelle's] on medication" and that "she can't even stay awake in these proceedings," which Larson found to be "a concern."

Dickey is a protection and safety worker in the Department's "Ongoing Unit" and had worked primarily on S.T.A.R. court cases in the 1½ years preceding her first date of testimony. Dickey testified that the S.T.A.R. court program involves three phases.

Dickey began working with Michelle in February 2006 when Michelle was already a S.T.A.R. court participant and was in phase one. Dickey continued as Michelle's case manager until September 11, 2006. During the course of Dickey's case management, Michelle was noncompliant at times with her UA testing requirements, having UA's with low creatinine, which is considered a positive result, missing scheduled UA's, and sometimes failing to timely submit to her regularly scheduled UA's. Dickey attributed Michelle's difficulty in meeting UA testing requirements to the possibility of having a "dirty UA." Dickey attributed Michelle's compliance with UA requirements at other points to provider assistance in transporting Michelle for testing. During Michelle's S.T.A.R. court participation, she did not progress beyond phase one and was discharged from the program on April 4, 2006, due to her noncompliance with

scheduled UA testing. Dickey had no record of Michelle's attending Alcoholics Anonymous (AA) meetings during the time she was a S.T.A.R. court participant.

Dickey testified that while Michelle was residing at the Salvation Army, she was minimally compliant with court orders and lacked motivation. Dickey felt that Michelle had not made enough progress for reunification to occur and that termination of Michelle's parental rights was in Dannie's best interests.

Dannie's foster parent became licensed as a foster parent in January 2007. She and her husband have been Dannie's foster parents since March 2007 and were still Dannie's foster parents at the time of the foster parent's testimony. The foster parent testified that when Dannie first came to live with them, Dannie exhibited behaviors such as "meltdowns," "breakdowns," "fits," kicking, and yelling. Dannie's foster parent attributed Dannie's behavior to the fact that Dannie suffers from reactive attachment disorder (RAD). Dannie had been participating in therapy since August 2007 to help alleviate some of the behaviors she exhibited both in the foster home and at school. The foster parent testified that Dannie "requires and requests to have full attention upon her at all times." The foster parent testified further that Dannie interrupts constantly at school and is disruptive. At the time of the foster parent's testimony, Dannie was having visitation with Michelle 6 hours a week. The foster parent testified that Dannie's behavior varied from quiet to talkative upon returning from visits with Michelle.

On January 11, 2008, the State presented testimony from Patricia S. Williams and Katie Wear.

Williams is the executive director of and a case manager at WPP. Williams testified about Michelle's participation in WPP programming from October 2005 until March 2007. Michelle was terminated from the inpatient program in March 2006 and continued in the outpatient program thereafter. During Michelle's first 2 to 3 months in the inpatient program, she was mostly compliant with what was being asked of her although she consumed alcohol on the WPP premises a few weeks into the program. During the remainder of Michelle's inpatient stay, Williams and other staff observed Michelle to have difficulty maintaining her personal hygiene, keeping a clean apartment, fulfilling her daily program requirements, and maintaining employment. WPP enrolled Michelle in Community Alliance for vocational rehabilitation services prior to her termination from the inpatient program, upon determining that "regular work" was difficult for Michelle. WPP also located housing for Michelle at the Salvation Army as she was falling behind on her rent payments to WPP. The primary reasons for Michelle's dismissal from WPP's inpatient program were concerns with Michelle's hygiene, living space cleanliness, and employment. Michelle was terminated from the WPP outpatient program because her enthusiasm decreased and because Community Alliance reported Michelle's lack of attention to its programming. Williams opined that Michelle learned basic life skills during her enrollment in WPP programs.

Wear became Michelle and Dannie's case manager in October 2006. Wear and Michelle initially discussed Michelle's need to find stable housing and employment and to follow through with providers.

In late December 2006, Michelle reported to Wear that she was not taking her medications as prescribed. Wear wanted Michelle to speak with her community support worker at Community Alliance to help Michelle form a plan for taking her medications regularly and

also suggested that she contact the nurse practitioner who was prescribing the medications at Douglas County Community Mental Health Center (DCCMHC). From that point on, Wear and Michelle frequently discussed the importance of Michelle's prescribed medications and attempted to come up with strategies to encourage her to continue to take them regularly. Wear had no further reports from Michelle, after their first discussion of the issue, that Michelle was not taking her medications.

Wear felt that Michelle's length of employment at the fast-food restaurant was a positive step toward reunification. But the fact that Michelle had maintained that employment for 10 months at the time of Wear's testimony did not negate Wear's concern about Michelle's inconsistent employment in prior years. Wear agreed that Michelle's recent UA results, the fact that she had obtained a driver's license and was maintaining her living arrangements, and Michelle's pursuit of educational efforts were all positive things supporting reunification. Wear testified that, in rendering her opinion against reunification, she did not take Michelle's educational efforts into consideration, but agreed that this would be something important to consider.

Wear completed a court report on January 4, 2007, relying on information gathered from Community Alliance, Gaines, and the Child Saving Institute. Prior to Wear's completion of the report, she had received some negative reports about Michelle's supervised visits with Dannie. Wear learned that Michelle fell asleep during a Christmas program of Dannie's. Wear also received reports that, during visitations, Dannie would try to spend time with the visitation worker rather than interacting or playing with Michelle. Wear testified that when she took over the case in October 2006, her primary goal for Michelle and Dannie was reunification but that she had since changed her opinion as to whether reunification was possible based on "the pattern that has been established with reviewing the file and also with [Wear] being the case manager, seeing the inconsistent progress being a pattern since the beginning, [Michelle's] admitted relapse, [and Michelle's] not completing services." Wear opined that Michelle's parental rights should be terminated because of the lack of interaction during visitations, lack of progress in rehabilitating herself, and Wear's concerns for Dannie's safety.

On April 10, 2008, the State formally rested, and Michelle presented testimony from Heidi Groenjes, Jodi Deane, Peggy Hawkins, and Thomas Mays, Jr.

Groenjes had been Michelle's AA sponsor for about 1½ years at the time of her testimony. According to Groenjes, Michelle had been sober about 14 months, was staying connected to Groenjes on a daily basis, and was regularly attending AA meetings. Groenjes had no concerns about Michelle's sobriety or drug dependency issues at the time of her testimony. Michelle has consistently expressed to Groenjes her desire to continue being Dannie's parent. Groenjes has never seen Michelle and Dannie interact.

Deane is employed at Community Alliance, which Deane described as an outpatient mental health rehabilitation facility. Deane has a bachelor of science degree in sociology with a minor in psychology and an associate's degree in criminal justice. Deane has been working with Michelle at Community Alliance since December 2006. Deane's role is to assist Michelle in stabilizing and maintaining her mental health in the community. Deane assists Michelle with insurance, medication management, getting to appointments, daily living skills, budgeting, housing, and other needs. During Deane's oversight of Michelle's case, Michelle has been

consistent in going to appointments with her psychiatrist and taking her prescribed medications. Michelle provides Deane with her pay stubs, and Deane testified that after approximately January 2008, Michelle's hours at the fast-food restaurant increased so that she was averaging 15 to 20 hours per week and earning around \$125 every 2 weeks. Michelle has reported regular and consistent AA meeting attendance to Deane but does not show Deane cards or receipts indicating her attendance. Community Alliance helped place Michelle in a two-bedroom apartment, though she was later moved to a one-bedroom apartment because Dannie was not residing with her. Deane testified that if Michelle and Dannie were reunified, a two-bedroom apartment would again be available to Michelle. Deane testified that Michelle is able to maintain her overall budget based on her employment income and a rent subsidy for her apartment. Deane testified that if reunification occurred, Deane would have no concerns about Michelle's budget. Deane reports on Michelle's progress to Michelle's Department caseworker on a monthly basis, and since 2006, her reports have generally been positive. Deane expressed no concerns regarding Michelle's alcohol and drug dependency issues.

Hawkins is Michelle's aunt. Hawkins had seen Michelle and Dannie interact during supervised visits approximately two or three times a year in the last couple of years preceding her testimony. Hawkins last saw Dannie at her birthday party in the fall of 2007. Hawkins has witnessed Michelle reading to Dannie and feeding her balanced meals, playing games with and hugging Dannie, and performing other parenting activities during family gatherings approved for visitation purposes such as birthdays or holidays. On those occasions, Hawkins did not observe Michelle to behave in any way that would endanger Dannie. Hawkins saw Michelle frequently in the year preceding her testimony, and during that time, she did not observe any incidents of drinking or any concerning behaviors by Michelle. Hawkins testified that she would not have any concerns if Dannie were to be placed with Michelle and expressed her belief that Michelle is committed to being the best mother that she can be.

Mays is a professor at ITT. Michelle has been Mays' student at ITT in two classes during the period that Michelle has been attending ITT. Michelle is in the top 10 percent of her class, which contains 87 people. Mays testified that Michelle should be able to complete her degree in 6 to 9 months following the date of his testimony. Mays testified that Michelle's course of study allows students to be part of the workforce immediately, either during their study or after degree completion, working in areas such as mechanical architectural drafting, interior design, 3-D modeling, and prototyping. Mays stated that ITT graduates in Michelle's degree program had a 100-percent employment rate, meaning that every single person that graduated from the program had been hired. Mays testified that with her excellent grades, Michelle could expect full-time employment earning \$15 to \$22 an hour.

On July 9, 2008, Michelle presented testimony from Lyle Bye, Rachel Kozol, and Traci Penrod.

Bye, a licensed alcohol and drug counselor, performs alcohol and drug evaluations at Rizzo & Associates in Omaha, where he has worked since 2003. Bye also facilitates group therapy sessions on an as-needed basis. Bye performed an alcohol and drug evaluation of Michelle in late October 2007 at the request of Michelle's attorney and, at that time, set out some parameters which he thought were important for Michelle's continued recovery. In the "RECOMMENDATIONS" section of his report, dated November 11, 2007, Bye stated:

In terms of therapy, it appears what she is currently involved in [is] very helpful and going into the right direction. It also appears that the major factor that has contributed to her being involved in recovery was losing custody of her daughter. I do believe she is active in her recovery because she wants to be able to be responsible to take care of herself and she has very strong feelings that she is capable or will be capable of being [a] mother to her child and for her child to live with her.

In a followup report dated January 4, 2008, Bye stated:

Currently, we are working on relapse issues and triggers that could send her into becoming preoccupied with using alcohol or other drugs. She does seem to have a good awareness about keeping a good schedule in terms of work and school and preparation for visitation with her daughter, Dannie. She states attending AA is an important obligation that she has. It appears that Michelle is cooperative with the court systems that are currently in her life and her prognosis looks very good.

The plan at that time was for Michelle to continue sessions at Rizzo & Associates once every 2 weeks. Bye testified that subsequent to his January 2008 report, Michelle had been in regular attendance at the treatment sessions at Rizzo & Associates and had been following Bye's recommendations. Bye opined that Michelle has substantially rehabilitated herself from drugs and alcohol. Bye opined further that Michelle has the capability to provide what is necessary for Dannie and that Dannie would thrive while living with Michelle. On cross-examination, Bye agreed that most of the information that he has utilized with regard to his treatment of Michelle comes from either Michelle or her AA sponsor.

Kozol is a psychiatric nurse practitioner employed at DCCMHC. Kozol's licensing allows her to diagnose psychiatric conditions and prescribe medication for such conditions. Kozol has treated Michelle since February 2006. Michelle was referred to DCCMHC by WPP, and the plan was for Michelle to continue her chemical dependency treatment at WPP and to see Kozol for psychiatric medication management while undergoing treatment. Kozol diagnosed Michelle with bipolar II, which means that Michelle has a history of mood swings, depression, and anxiety and reports periods of decreased need for sleep, changes in energy and activity level, and changes in impulse control. Kozol has prescribed Michelle medications for her bipolar condition, depression, and sleep disruptions. Kozol indicated that they had tried several different sleep medications for Michelle because she was complaining of fatigue during the day and not being able to sleep at night. When asked about Michelle's consistency in taking her prescribed medication from February 2006 to the time of Kozol's testimony, Kozol testified that Michelle had never missed an appointment and had never expressed to Kozol that she was not taking her medications. Kozol did not think that a bipolar II diagnosis would prevent a person from parenting a young child, so long as the person was compliant with taking any prescribed medication. Kozol's assessment of Michelle as compliant with taking her medications was based on Michelle's self-reporting. Kozol was unaware of Michelle's report to her case manager in December 2006 that she was not taking her medications, and this discrepancy concerned Kozol.

Penrod is employed as an early childhood therapist and consultant at the Child Saving Institute. Penrod, who has a master's degree in social work and a provisional mental health license, had been providing in-home therapy to Dannie and her foster parents since August 2007

and had also begun family therapy with Dannie and Michelle. Penrod was working with the foster parents and Dannie on coping skills, identifying feelings, problem-solving and other skills. Penrod's goals with Dannie and Michelle were to help strengthen the mother/daughter relationship and Michelle's parental role. Penrod testified that her treatment of Dannie related to Dannie's separation from Michelle as well as her separation from multiple subsequent caregivers. Penrod testified that her therapy was designed to increase Dannie's ability to cope with and identify her feelings, increase appropriate self-soothing skills, give Dannie healthy relationships with caregivers and peers, increase Dannie's positive relationship with Michelle, and increase Michelle's ability to be attuned to Dannie's needs. As of the date of her testimony, Penrod had had three family therapy sessions with Dannie and Michelle, with the primary goal being for Penrod to get to know Dannie and Michelle together. Penrod testified that Michelle had so far been consistently available for and cooperative in the treatment process. In response to questioning by the court, Penrod stated that RAD can result from emotional or psychological loss or from "any sort of trauma within that relationship," usually occurs within the first 3 to 5 years of a child's life, and could result from a parent being unavailable because of drug use.

On August 25, 2008, Michelle presented testimony from Dr. John Wineman and testified in her own behalf.

Wineman, a licensed clinical psychologist, conducted a pretreatment assessment of Dannie in August or September 2007 at the Child Saving Institute, where he is a supervising practitioner. Wineman met with Dannie for approximately half an hour and has not seen her since that time. After his assessment, Wineman verified the preliminary diagnosis of RAD and prescribed individual and family therapy for Dannie. Wineman described RAD as a disruption of the parent/child relationship and testified that for children with a RAD diagnosis, consistency is important. Wineman expected that because some family therapy with Michelle and Dannie had been done, Dannie would suffer negatively if Michelle's parental rights were terminated. Wineman testified that he had "[t]o a large degree" arrived at an opinion as to what had caused Dannie's RAD. Wineman stated that the fact that Dannie had been in five foster homes from the age of 18 months to 4 or 5 years in and of itself would create attachment issues but indicated that separation from Michelle also contributed to Dannie's RAD. Wineman could not ascertain what would happen to Dannie's progress if reunification occurred. Wineman asserted that Dannie's prognosis if she remained in the foster parents' care would be good because the home is compassionate, caring, and predictable. Again, based on questioning by the court, Wineman confirmed that RAD can derive from a parent's emotional absence or chemical dependency in addition to physical separation between parent and child.

Michelle testified that she and Dannie had had "a couple of breakthroughs" in their family therapy. Michelle indicated that the family therapy is held after school on Thursdays from 3:30 to 4:30 p.m. Michelle described the ways in which she participates in family therapy and her efforts to follow Penrod's instructions in that regard.

At the time of her testimony, Michelle was exercising visitation with Dannie 3 hours a day, twice a week, for a total of 6 hours. Michelle testified that Dannie hugs her and wants to sit in her lap and that they play games together. Michelle stated that during visitations, she and Dannie eat dinner every day at 5:30 p.m. and expressed that she was capable of preparing all of Dannie's meals if reunification were to occur.

With respect to her employment at the fast-food restaurant, Michelle testified that she earns \$6.75 an hour and earns generally \$400 to \$475 per month. Michelle is usually scheduled for 25 to 30 hours per week, but she “take[s] up other people’s shifts if they want a day off.” Michelle testified with regard to her budget that if Dannie were living with her, she would be “just making it.” At the time of her testimony, Michelle was looking for employment in her ITT career field, which would “put [her] at \$20 an hour for 40 hours plus a week.” Michelle had gone on a few interviews related to computer-aided drafting jobs prior to her testimony and had further interviews scheduled.

According to Michelle, she missed scheduled UA tests while a S.T.A.R. court participant because one of her medications caused insomnia, making her want to “sleep all day.” Michelle testified that her current sleep medication has resolved that issue. Michelle testified that she has been consistent in attending AA meetings and that she continues to meet with Bye for drug treatment counseling on an as-needed basis. Michelle admitted to still using methamphetamine after Dannie had been in foster care for 18 months and alcohol after Dannie had been in foster care for 3 years.

When asked what changes she noticed in her life as a result of now maintaining her sobriety, Michelle testified, “I actually want to get up in the morning and go to work and work my full shift and everything. And I enjoy spending time with Dannie. When I was using, she was more of a burden, but now she’s just all pleasure.” Michelle testified further that she now likes to socialize, has the motivation to get up and go to school and work, and is motivated to accomplish things in life. When she was using alcohol and methamphetamine, Michelle “wasn’t too interested in [parenting].”

Michelle recalled Gaines’ July 2007 testimony and agreed that at that time, it probably was in Dannie’s best interests for Michelle’s parental rights to be terminated, asserting, however, that “now it’s not.” Michelle has taken three parenting classes and a “readiness class” to prepare her for living on her own and taking care of Dannie. Michelle discussed the concerns raised in earlier hearings about her housekeeping and personal hygiene. According to Michelle, when she was living at WPP, her living space was messy due to lack of space and her hygiene problems occurred during a time when her arm was in a cast, making it difficult to care for herself. Michelle testified that she does not keep her current apartment in the same condition in which she kept her room at WPP and that she currently bathes daily and takes care of her personal hygiene needs.

The juvenile court entered an order on September 11, 2008, terminating Michelle’s parental rights. The court found clear and convincing evidence that termination was proper under § 43-292(2), (6), and (7) and that termination of Michelle’s parental rights was in Dannie’s best interests. Michelle subsequently perfected her appeal to this court.

ASSIGNMENT OF ERROR

Michelle asserts that the juvenile court erred in finding that termination of Michelle’s parental rights was in Dannie’s best interests.

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 C.H.*, 277 Neb. 565, 763 N.W.2d 708 (2009).

ANALYSIS

Best Interests.

Michelle asserts that the juvenile court erred in finding that termination of her parental rights would be in Dannie's best interests.

Clearly, Michelle's road toward rehabilitation and Dannie's stay in foster care placement have been lengthy. The State argues that this supports the juvenile court's finding that termination of Michelle's parental rights was in Dannie's best interests, noting that when a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the child's best interests require termination of parental rights. See *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). Clearly, children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity; however, the law does not require perfection of a parent. *Id.*; *In re Interest of Deztiny C.*, 15 Neb. App. 179, 723 N.W.2d 652 (2006). Instead, we should look for the parent's continued improvement in parenting skills and a beneficial relationship between parent and child. *Id.*

One of our considerations in resolving this appeal is determining how much emphasis to place on Michelle's progress toward rehabilitation that occurred after the State filed its motion for termination of parental rights. Because the primary consideration in determining whether to terminate parental rights is the best interests of the child, a juvenile court should have at its disposal the information necessary to make the determination regarding the minor child's best interests regardless of whether the information is in reference to a time period before or after the filing of the termination petition. *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

The evidence presented by the State over the course of the lengthy termination hearing in this case focused primarily on Michelle's actions in 2004 and 2005. The State urges that not too much weight should be given to Michelle's "last minute" efforts after the motion for termination was filed. The State's arguments in this regard might have had more merit had the State sought to terminate Michelle's parental rights in 2005 or 2006, a period in which Michelle clearly struggled, or even if the termination hearing had been concluded in a relatively short time after the termination motion was filed in March 2007. However, we are faced with a case in which 17½ months elapsed between the filing of the motion for termination and the date of the termination order, with termination hearings taking place over the course of approximately 13½ months. We will not repeat here the details of Michelle's odyssey toward rehabilitation, simply noting that the record reflects Michelle's cyclic pattern of progress toward lifestyle rehabilitation followed by relapse during her first 3 years of involvement in the juvenile court system.

However, the un rebutted evidence reflects that since early 2007, Michelle has made considerable progress toward a healthy, stable, and consistent lifestyle. Michelle has maintained consistent housing since August 2006 and consistent employment since March 2007. She has shown the ability to maintain her overall budget, and she is eligible for additional housing

assistance should Dannie be placed back in her care. She has been drug-free since October 2005 and alcohol-free since February 2007. An alcohol and drug evaluation of Michelle shows that she has substantially rehabilitated herself and that her prognosis looks very good. She has been consistent in therapy and attendance at AA. She has been able to find an appropriate regime of medications for her psychiatric condition and has been compliant in taking those medications. Michelle has been enrolled in a technical program which would result in better prospects for employment.

Michelle has been consistent in her visitation with Dannie, they have positive interactions at visitation, and they have a good bond. Michelle and Dannie began family therapy sessions in 2008, during which Michelle had been consistently available and cooperative in the process. One psychologist opined that because family therapy had occurred between Michelle and Dannie, Dannie would suffer negatively if Michelle's parental rights were terminated.

By all accounts, Michelle's progress over the 17 months following the filing of the termination motion has been consistent and substantial, and given the length of time elapsed, cannot be considered "last minute." The concerns expressed by the State's witnesses do not address Michelle's progress in the last year prior to the conclusion of the hearings.

Termination of parental rights is permissible only in the absence of any reasonable alternative and as the last resort to dispose of an action brought pursuant to the Nebraska Juvenile Code. *In re Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007) (reversed termination of parental rights where State failed to prove that termination was in child's best interests).

Upon our de novo review and under the circumstances presented by this case, we are not clearly convinced that termination of Michelle's parental rights was in Dannie's best interests.

CONCLUSION

The juvenile court erred in finding that termination of Michelle's parental rights was in Dannie's best interests.

REVERSED AND REMANDED FOR
FURTHER PROCEEDINGS.