

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Dusti M.,)
A child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Sandi L.,)
)
Appellant.)

No. A-13-0342

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

NOV 08 2013

INBODY, Chief Judge, and MOORE and RIEDMANN, Judges
INBODY, Chief Judge.

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

INTRODUCTION

Sandi L. appeals the order of the Scotts Bluff County Court sitting as a juvenile court terminating her parental rights to her minor child, Dusti M. On appeal, Sandi does not argue the statutory grounds for termination of parental rights, only that termination of her parental rights is not in Dusti's best interests.

STATEMENT OF FACTS

Dusti was born in January 2011, to Sandi and Terry S. The Nebraska Department of Health and Human Services (DHHS) received a report regarding Dusti's birth based upon allegations of past physical neglect as a result of Terry's previous involvement and eventual termination of parental rights case involving two of

his other biological children, both girls. Sandi is not the biological parent for those girls and was not involved in that case.

That case arose in 2008, upon allegations of sexual abuse of the girls beginning in 2005, when the girls were 2 and 4 years old and involved Terry as the abuser. A juvenile petition was filed and numerous services were provided to Terry, from which little progress was made. In 2008, Terry was diagnosed with antisocial personality disorder, with significant psychopathy and marked defect of character, personality, and moral sense. In 2009, Terry's parental rights were terminated based upon circumstances of the children living in a filthy home and Terry's sexually deviant lifestyle which also included himself and the children's mother frequently engaging in bizarre sexual behavior in front of the children.

In 2011, when DHHS received the report of Dusti's birth, Sandi was unaware of Terry's past involvement and a safety plan was put in place to allow DHHS to assess the situation, as Sandi believed that Terry had changed. In order to further ensure Dusti's safety, DHHS paid all of the expenses for Sandi and Dusti to move to Arizona and live with Sandi's parents. However, in January 2012, Dusti and Sandi were seen with Terry at a local grocery store in Scottsbluff, and it was discovered that they had returned to live with Terry earlier in 2011.

On January 23, 2012, the State filed a petition with the juvenile court seeking an adjudication of Dusti and the termination of Terry's parental rights, and also for the removal of Dusti from the home. The petition alleges that Dusti is a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) as a result of Terry's diagnosis and behavior resulting in the termination of his parental rights to his two other children. The petition indicated that Sandi had been informed of Terry's past, had been offered assistance to remove herself and Dusti from Terry, but had chosen to continue the relationship with Terry. On May 9, a trial was held on the matter of adjudication and Dusti was determined to be a child within the meaning of § 43-247(3)(a). Thereafter, on October 1, 2012, the State filed a motion to terminate Sandi's parental rights pursuant to § 43-292(2) and (6), and alleged that Dusti's best interests also require termination.

At trial, Dr. Alan Smith, a licensed psychologist, testified that he conducted a psychological evaluation of Terry in 2008, in which he diagnosed Terry with antisocial personality disorder with significant psychopathy. Dr. Smith testified that antisocial personality is one of the most difficult disorders to treat insomuch as it is a slow and difficult process that requires commitment to treatment, to engage in a long-term cognitive behavioral program in order to find ways to channel

the impulses. Dr. Smith testified that personality disorder research suggests that the accuracy of such a diagnosis is accurate for up to 10 years post diagnosis. Dr. Smith testified that Terry was offered treatment through Dr. Smith, which DHHS was willing to pay for, but that Terry declined. Dr. Smith had recommended that Terry's parental rights to his two other daughters be terminated and that children were not safe with Terry. Dr. Smith testified that he would further be concerned with Terry's involvement with his new child, Dusti, due to specific behaviors that might place the child in danger.

Sandra Raney, a provisionally licensed mental health provider testified that Sandi was her client from August through December 2012, to address trauma-related issues. Raney testified that Sandi was scheduled to meet with her once a week, but did not regularly attend those sessions and missed the majority of her appointments. Raney testified that she was unable to address the trauma-related issues because most of the time was spent working on crisis management.

Sandi reported to Raney that Terry was not a threat to her because she had not experienced any of the circumstances of what had occurred in his past and because he could change. Raney recommended that Sandi continue treatment to learn what healthy relationships look like, resolve some of the trauma issues, and develop healthy coping skills. Raney testified that treatment

with Sandi ended as a result of poor attendance and lack of progress in treatment.

Josh Stout testified that he had provided supervised visitations for Sandi since April 2012. Since that time, Stout testified that he had seen Terry, Sandi, and Terry's father outside of a local home improvement store talking. Stout later decided to drive by Sandi's home, where he then observed Terry's father sitting in a vehicle in Sandi's drive-way. Stout testified that since that time, he had not seen Terry and Sandi together and that Sandi reported to him that she was dating another man.

Kelly Case, a DHHS social services supervisor, testified that she completed a safety assessment on January 7, 2011, which involved reviewing the documentation regarding Terry's previous history of intakes regarding domestic violence, sexual abuse, and an unsanitary home. Case indicated that there were several substantiated intakes regarding Terry sexually abusing his daughters and other relatives, and engaging in inappropriate sexual behaviors in front of children. On that same day, Case reviewed all of this information with Terry and Sandi, and gave Sandi the actual documentation of Terry's history. Case held a second meeting with Sandi, Terry, and Terry's mother on January 8, wherein they insisted that Terry had changed because he had not shown any signs of domestic violence and was no longer

drinking or using drugs. Case testified that during those meetings, Sandi revealed that she has three other children from different relationships and that her parents had guardianship of two of those children, and that the father of the third child had taken that son and left. Sandi had not seen that child in several years. At the conclusion of the meetings, the family agreed to a safety plan and 24-hour supervision.

Case testified that Dusti was allowed to leave the hospital with Sandi and Terry, who lived with Terry's parents. In addition to 24-hour supervision, the family was also provided programming to assess and teach skills. Sandi then decided that she would move to Arizona with Dusti, to live with her family and provide for Dusti's safety. DHHS made the arrangements and provided Sandi with plane tickets to Arizona.

Case explained that she had been involved in Terry's previous juvenile cases which caused her concern for Dusti's safety. Case testified that Terry's history provided a clear pattern for his behaviors such that,

[w]hen Terry's children were first born, he had limited contact with them, but the older they became, the more they became involved with the mothers, the more Terry would become jealous of his daughters. Once the daughters took the attention away from Terry, Terry had a tendency to act out.

Lisa Collins, a DHHS children and family services specialist, testified that she received the January 12, 2012 intake regarding Dusti after Terry, Sandi, and Dusti were seen at a local grocery store together. Collins interviewed Sandi, who assured Collins that Terry's past was not "all that relevant" and that Sandi did not agree with DHHS' concerns. Sandi indicated to Collins that she moved with Dusti to Arizona and then to Wyoming, after which she began seeing Terry again. Sandi reported to Collins that she, Dusti, and Terry were living together because they were helping each other financially. Sandi further told Collins that Dusti was not at risk with Terry and that Terry was a good father. Thereafter, a safety plan was instituted, which both Terry and Sandi agreed upon, which required that Terry live outside of the home and not have contact with either Sandi or Dusti. Collins testified that she remained concerned because Sandi indicated that she was happier than she had ever been with Terry. After 3 weeks of trying to work through the safety plan, Dusti was removed from the home because DHHS supervisors felt as though Dusti's safety was not guaranteed because Sandi did not understand the concerns regarding Terry.

Rickie Wynne testified that he was the DHHS children and family services specialist for this family from February to October 2012. Wynne testified that at his first meeting with

Sandi, she was upset that she wanted more visitations and indicated that her relationship with Terry was finished. However, Sandi's visitation remained consistently at 28 hours of supervised visitation a week. Sandi had begun attending group meetings and one-on-one sessions with the DOVES agency, participating in family support services during visitations, and parenting courses. DHHS provided Sandi with family support in the form of budgeting, housing, job applications, referrals, and gas vouchers. DHHS also provided ongoing safety planning, out-of-home placement for Dusti, clothing vouchers, evaluation referrals, and payment for those services. Wynne testified that over the following months, Sandi was compliant and progressed with case plan, goals, and strategies. However, Wynne remained concerned because Sandi continued to deny Terry's past and stated that she was the happiest with him. In March 2012, Sandi requested that Terry's mother and grandfather be allowed to be included in the visitations, which concerned him because Sandi continually reported that she had cut all ties with Terry. Sandi continued to believe that Terry had not done anything wrong, was not a bad parent, and that Terry had nothing to do with his parents and relatives.

When Sandi was questioned by Wynne about leaving Arizona, Sandi indicated to him that she received a letter stating that the allegations against Terry were unfounded and so she called

DHHS who indicated that she could resume her relationship with Terry, that Dusti would be safe, and that there were no concerns, although Sandi could not remember the name or position of who reported that information to her. Sandi reported that she and Dusti had moved in with Terry in November 2011.

Since Dusti's removal, Wynne testified that Sandi remained compliant, but that there were still concerns with her ability to keep Dusti safe. Wynne testified that after the adjudication hearing, Sandi began to make statements which indicated that she may have begun to understand Terry's past, but that Wynne believed the statements to be superficial because reports of Sandi being with Terry continued to surface. Sandi continued to report to Wynne that she would not maintain a relationship with Terry if DHHS required such. Wynne indicated that in June 2012, a new roommate had moved in with Sandi, which she failed to report to DHHS because she had only very briefly known the man and did not know his name. Sandi was only able to provide the man's name and information that he was sleeping on her couch and that he paid her \$200 per month in rent.

Wynne testified that at visitations with Dusti, Sandi is frequently on her phone, but is generally attentive to Dusti and meets her needs. Wynne explained that Sandi's continued denial of Terry and his actions was difficult for Sandi. Sandi believed that Terry was a different man and would not acknowledge that he

was the type of man which had been frequently discussed with her. Wynne testified that Sandi did not understand her protective role as a parent and could not demonstrate that she understood what made a person safe to be around Dusti, and for those reasons, Sandi's visitations with Dusti remained supervised. Wynne explained that not only was Terry's involvement with Sandi a concern, but also concerning was how Sandi dealt with relationships in general including entering into relationships quickly and moving in together after only a few weeks which happened twice during the pendency of the case.

Breanna Bird, the current DHHS case manager for the family, testified that she has had monthly in-home team meetings with Sandi. Bird testified that on September 18, 2012, the permanency goals for the family changed, but DHHS continued to provide Sandi with 28 hours of supervised visitation each week and any necessary home services. Bird testified that Sandi was attending individual therapy, but had been discharged for lack of progress and attendance. Sandi's visitation with Dusti remained supervised due to the continued concern for Sandi making inappropriate relationship choices and that she had again quickly entered into another relationship with a man she knew very little about, including his last name.

Bird testified that Sandi has failed to demonstrate any understanding of the danger of a relationship with Terry or

similar men might present to her daughter. Bird explained that Sandi had been involved with DOVES and individual sessions and was unable to identify any "red flags" regarding her safety plan and Terry. Bird was further concerned with Sandi's continued involvement with Terry's family and her recent indications that she was contemplating moving out of state again. Further, Bird testified that Sandi had been employed at the Loaf 'n Jug in Gering, Nebraska, which had ended in October 2012, and that she still was employed with the Star-Herald holding paper routes, but that employment was not sufficient to support herself.

Jordin Curtis testified on Sandi's behalf. Curtis who, at the time of trial, was 17 years old, testified that Dusti was like a little sister to her because she had known her since she was born. Jordin testified that she babysat Dusti on Saturdays when she was 5 months old, but that she had only seen Dusti on one occasion in 2012. Jordin testified that Sandi treated Dusti right, changed her diapers, and provided her with plenty of food. Jordin testified Sandi is a good mother. Jordin testified that she met Sandi through her biological mother's ex-boyfriend, Terry.

Sandi's cousin, Dana Benjamin, also testified that Sandi and Dusti stayed with her in Douglas, Wyoming, in the summer of 2011. Benjamin observed that Sandi was a good mother who always fed and bathed Dusti, and cleaned all of the time. On one

occasion during those few months, Terry visited Dusti and Sandi for a short period of time but did not cause any trouble. Benjamin testified that Sandi and Dusti were bonded and that Sandi should be allowed to be a full-time mother to Dusti.

Several individuals who had provided supervised visitation for Sandi and Dusti testified that visitations were held at Sandi's home and that Sandi did not miss any visitations. The supervisors testified that the visitations went well and that there were no concerns at any of the visitations. Each testified that the interactions between Sandi and Dusti were normal parent-child interactions, that Sandi provided appropriately for Dusti, and that there were no concerns at those visitations. Visitation workers described that Dusti and Sandi were bonded and that Sandi provided for all of Dusti's needs.

Dr. Mark Hald, a licensed psychologist, testified that he completed a child-parent interaction assessment with Sandi in May 2012 resulting in the June 16, 2012 assessment report. The assessment report indicated that Dusti had normal development and that her interaction with Sandi was indicative of secure attachment between Sandi and Dusti. Dr. Hald testified that he recommended to Sandi that she receive psychotherapy to deal with the reality of who Dusti's father was and to work to better understand her own emotional reactivity. Dr. Hald testified that Sandi attended and participated in an 8-week parenting program.

Dr. Hald testified that the circumstances in this case caused concerns because, when an individual puts their partner first, their ability to keep the children safe is compromised. Dr. Hald testified that he offered Sandi a session to go through the report regarding Terry in detail, but she did not show up for that session.

Dr. Anne Talbot, a licensed psychologist, testified that she conducted a psychological evaluation and a parenting capacity evaluation for Sandi to determine her ability to parent and protect Dusti. The evaluation took place over several days in February, April, and May 2012. Dr. Talbot concluded that Sandi was of average-range intellectual function with a significant trauma history that contributed to personality traits and affected her ability to establish healthy male relationships. Dr. Talbot testified that initially Sandi was emotionally reactive, suspicious, paranoid, defensively hostile, but became more calm as she became reassured that she would not be treated badly. Dr. Talbot recommended intensive psychotherapy for Sandi to address the past trauma issues and to learn how to establish healthy relationships. Dr. Talbot also recommended that Sandi complete a parenting class and continue to participate in individual psychotherapy. Dr. Talbot testified that it was clear that Sandi and Terry's relationship was distressing to her and that she had a difficult time accepting

his history and that he was a risk to her. Dr. Talbot testified that she was concerned that Sandi continued to see Terry after she had indicated to Dr. Talbot that the relationship was over because he was identified as a high risk and that any association with her put her ability to parent in direct jeopardy.

On March 6, 2013, the county court entered an order finding that Terry's parental rights to Dusti had been terminated on August 1, 2012, and he was ordered to have no contact with Dusti. The court found that Terry had two previous terminations involving atrocities that he committed against his daughters. The court indicated that in Sandi's case, she had shown that she was capable of achieving the case objectives, but had failed to address the concerns leading to removal, which was her continued contact with Terry. The court found that the evidence indicated that Sandi had lied to the court about her continued contact with Terry, that her therapists testified that Sandi lacked insight and understanding of the danger Terry presented to Dusti and Sandi, and that Sandi believed that Terry was no longer a threat and not relevant to Dusti's case. The court found that Sandi had failed to attend and complete therapy and lacked progress in those sessions she did attend.

The court found that based upon the totality of the evidence, it was apparent that Sandi would continue to reunite

with Terry and place Dusti in danger, and that Sandi failed to complete therapy that would assist her in finding a safe and healthy partner that would keep Dusti in a safe and healthy environment. The court concluded that it need not wait for a catastrophic event to occur before termination and that termination was appropriate pursuant to § 43-292(2) and (6) and was also in the best interests of Dusti. It is from this order that Sandi has timely appealed to this court.

ASSIGNMENT OF ERROR

Sandi assigns that the juvenile court erred by finding that the State established by clear and convincing evidence that termination of her parental rights was in the child's best interests.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independent of the juvenile court findings. *In re Interest of Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012).

ANALYSIS

We first note that although Sandi has not argued any error as to the juvenile court's determinations regarding the statutory grounds for termination, we have reviewed the record and find that the State proved by clear and convincing evidence that termination of Sandi's parental rights was warranted

pursuant to § 43-292(2). The juvenile court was correct in its finding that termination was appropriate under § 43-292(2).

However, Sandi argues on appeal that the juvenile court erred by finding there was clear and convincing evidence that termination of her parental rights was in Dusti's best interests. Sandi alleges that Dusti's best interests were not directly addressed by the State.

In addition to proving a statutory ground for termination, the State must show that termination is in the best interests of the child. *In re Kendra M., supra; In re Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). In this case, Sandi does not contest statutory grounds under which the juvenile court found that termination was appropriate.

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. *In re Kendra M., supra*. There is a rebuttable presumption that the best interests of a child are served by having a relationship with his or her parent. *In re Kendra M., supra*. Based on the idea that fit parents act in the best interests of their children, this presumption is overcome only when the State has proved that the parent is unfit. Although the term "unfitness" is not expressly used in § 43-292, the concept is generally encompassed by the fault and neglect subsections of

that statute and through a determination of the child's best interests. *In re Kendra M., supra.* In the context of the constitutionally protected relationship between a parent and a child, the Nebraska Supreme Court has stated, "'Parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child's well-being.'" *In re Kendra M.*, 283 Neb. 1014, 1033-34, 814 N.W.2d 747, 761 (2012) quoting *Uhing v. Uhing*, 241 Neb. 368, 488 N.W.2d 366 (1992). The best interests analysis and the parental fitness analysis are fact-intensive inquiries and, although they are separate inquiries, each examines essentially the same underlying facts as the other. *In re Kendra M., supra.*

This case presents a very unfortunate set of circumstances for Sandi and Dusti. By many accounts, Sandi has bonded with, and has a good relationship with, Dusti. During the supervised visitations, Sandi provided appropriately for Dusti and caused no problems for visitation workers. Sandi attended all of her visitations with Dusti and requested more time at visitations. However, in the context of the idea of parental fitness in acting in the best interests of the child, Sandi has time and again demonstrated an incapacity which, at some point in time, will prevent the performance of a parental obligation which will

result in a detriment to Dusti's well-being. That incapacity is her relationship with Terry and continued inability to recognize, not only with Terry, but with other men, the negative impact which unhealthy relationships have on Dusti's safety.

The record is replete with professionals and DHHS caseworkers testifying that over and over, Sandi was warned about the danger which Dusti's biological father Terry presented. These warnings were not in the form of speculation of what might happen in the future, but real evidence of Terry's pattern of domestic violence, inappropriate sexual behaviors, and sexual abuse of his own biological children. The record indicates that Terry has had his parental rights terminated to two of his daughters as a result of his perpetration of sexual abuse upon those girls, in addition to allegations of sexual abuse of other relatives, wildly inappropriate sexual behaviors exhibited in front of young children, and domestic abuse. Sandi was given documented evidence of Terry's pattern of behavior, but clearly refused to believe his history, stating to those individuals that Terry had changed and would not do the same to her or Dusti. The record indicates that Sandi was aware of the consequences of her continued involvement with Terry as far as DHHS was concerned, exhibited by her willingness to move out of state to ensure Dusti's safety. However, that willingness to protect Dusti at all costs was short-lived, as Sandi quickly

returned to Wyoming and then back to Nebraska, to be in a relationship with Terry. Meanwhile, Terry had been refusing to undergo any further treatment to address his issues. Reports continued to surface of Sandi and Terry being seen together, even though Sandi assured people that she was done with Terry, all the while continuing in her defense of Terry that he was changed and would never do what he did in the past to her or Dusti.

Sandi followed through with many of the directives of the case plan and goals by attending visitations, completing evaluations, and participating and completing parenting classes. However, it was also recommended that Sandi attend individual therapy, which she did for a short time, to address trauma in her life and learn about having and being involved in healthy relationships, but was subsequently discharged for poor attendance and lack of progression. Further, Sandi was never fully able to commit to staying away from Terry in order to protect Dusti and herself from his behaviors and continued to engage in unhealthy relationships with other men by moving very quickly in and out of relationships with men she barely knew.

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. *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d (2008). Children cannot,

and should not, be suspended in foster care or be made to await an uncertain parental maturity. *Id.* Although Sandi has followed through with most of the goals, she continues to jeopardize Dusti's safety by maintaining unhealthy relationships, most alarmingly of which is Terry, who poses a significant threat to both Dusti and herself. Sandi is unable to recognize the clear and imminent threat these men impose and is, therefore, unfit to parent Dusti. Termination of Sandi's parental rights is in Dusti's best interests and the record clearly and convincingly supports that determination.

CONCLUSION

Upon our de novo review, we find clear and convincing evidence that termination of Sandi's parental rights is in the best interests of Dusti. Therefore, we affirm the order of the juvenile court.

AFFIRMED.