

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF FATIMA S.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF FATIMA S., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

AMALIA C., APPELLANT.

Filed July 27, 2010. No. A-09-1274.

Appeal from the County Court for Dawson County: CARLTON E. CLARK, Judge.
Affirmed.

Brian J. Davis, of Berreckman & Davis, P.C., for appellant.

Kurt R. McBride, Chief Deputy Dawson County Attorney, for appellee.

MOORE and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Amalia C. appeals from an order terminating her parental rights to Fatima S. In this opinion, we address two preliminary matters before turning to the fundamental issues. First, our standard of review makes it unnecessary to determine whether the county court erred in admitting a psychological report into evidence. Second, the court's oral pronouncements at the conclusion of the trial and its written order, considered together, provide sufficient specific findings. Finally, we conclude that the State proved by clear and convincing evidence both that a statutory ground for termination existed and that the child's best interests required the termination of Amalia's parental rights.

BACKGROUND

Fatima is the child of Amalia and Emanuel S. Emanuel died in June 2009 and therefore is not a party to this appeal. Amalia has three additional minor children. Two of these children have been placed with their father, and one has been placed in a guardianship.

At the time of Fatima's birth, she tested positive for amphetamines. On September 15, 2008, Fatima was removed from Amalia's care and placed in temporary custody. Fatima was approximately 3 months old at that time. On September 16, the county court ordered that Fatima remain in temporary custody based on its findings that Amalia did not maintain a permanent home for the child and that Amalia had within the previous month, among other things, overdosed on prescription medication, stated that she planned to throw Fatima out the window of a moving vehicle, stated that she would kill the minor child if Emanuel did not come to a specified location, refused to take mental health medications, and stated that she would take the child to Kansas.

On October 21, 2008, Fatima was adjudicated to fall within the jurisdiction of the county court pursuant to Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to neglect as a result of Amalia's pleading no contest to the adjudication allegations. The court also ordered a parenting assessment and a psychological assessment pending further proceedings.

The initial case plan ordered by the court on December 17, 2008, provided for Amalia to work on managing her mental health difficulties and being able to provide for Fatima's needs of food, clothing, and shelter, as well as Fatima's physical and emotional health. As we further explain below, Amalia has mental health difficulties which impair her ability to function on a daily basis when she is not medicated, and perhaps even to some extent when she is medicated. Regarding mental health, the plan provided for Amalia to work with a therapist to manage her mental health; work with a doctor and therapist for medication management; sign releases for her therapist to provide progress reports; submit to random urinalysis testing; work to "demonstrate behaviors that are non threatening, non accusatory, and assist in developing a positive relationship with others"; participate in a comprehensive family assessment; and follow providers' treatment recommendations. Regarding providing for Fatima's needs, the plan provided for Amalia to work with a therapist to develop skills to alleviate anxiety and frustration so she could focus on daily activities, work on maintaining a clean home, provide the names of individuals who reside with her or spend time with Fatima, work on developing a nurturing relationship with Fatima, work on using appropriate language with Fatima, work on feeding Fatima appropriately, and work on developing a budget.

On September 22, 2009, the State filed a motion to terminate Amalia's parental rights on the grounds enumerated in Neb. Rev. Stat. § 43-292(2), (4), (5), and (6) (Supp. 2009). The evidence at the termination hearing showed that Amalia had mental health problems which impaired her ability to provide for Fatima and parent her appropriately.

Amalia has had mental health problems in the past and continues to have such problems. At trial, Amalia admitted that she had been previously hospitalized for mental health problems.

Susan Kloch was the mental health worker who administered the drug and alcohol portion of a court-ordered comprehensive family assessment. Three other mental health workers completed the remainder of the assessment, which was performed during the period from

October 28 to November 4, 2008. Kloch testified that Amalia became hostile, irritable, and defensive when discussing substance abuse as related to mental health symptoms. Based on her observations of Amalia at the assessment, Kloch opined that Amalia needed a medication evaluation because either her medication was ineffective or she was not taking her medication. Kloch also testified that the assessment concluded that Amalia suffered from “bipolar I disorder, mixed, moderate” and “suspected drug abuse.” The other individuals who participated in the assessment did not testify.

Dr. Tamara Johnson, a medical director at Region II Human Services, testified regarding her treatment of Amalia’s mental health condition. Johnson testified that she provided Amalia with medication management services on an intermittent basis from December 5, 2006, until February 3, 2009, when Amalia last consulted Johnson. Johnson testified that she diagnosed Amalia with “schizo affective disorder, bipolar type,” which means that Amalia “has a chemically induced mood disorder which is characterized primarily by a psychosis, meaning hallucinations, delusions, but also at times can have depression and mania.” Johnson stated that Amalia’s condition “presented with delusional thinking paranoia, thinking that she had cameras in her head and microphones in her head [and with] depression, [and] anxiety.” Johnson stated that the condition affects Amalia as a parent by “impair[ing] judgment, memory, the ability to make proper decisions, and also [the] ability to distinguish fact from fiction and non-reality from reality.” Johnson also testified that Amalia’s condition was lifelong. According to Johnson, Amalia was supposed to have a monthly appointment with her for medication management and was to visit Johnson’s office every 2 weeks to receive an injection. Johnson advised that she had also prescribed Risperdal for Amalia, which was not an injection. Regarding the effect of the medications, Johnson stated that “[w]hen taking the medications offered, usually there is a dramatic improvement in the ability to distinguish reality and non-reality, to keep her more stable, to get rid of the hallucinations of thinking that her mind is controlled, and those kinds of things.”

Johnson stated that she had seen Amalia a total of only six times since she began treating Amalia and that the last time she saw Amalia prior to February 3, 2009, was in July 2008. Johnson testified that although Amalia was supposed to meet with her every month, this typically did not happen. Johnson testified that Amalia had injections every 2 weeks for a 3-month period in 2006, had nine injections total, and now refuses to receive injections. Johnson also stated that Amalia generally took the oral medication for 1 to 2 months but would fail to return for further treatment. Johnson testified that in February 2009, Amalia resumed taking medication but would not take injections. Johnson stated that Amalia also should have been receiving psychotherapy with a mental health counselor, but that Amalia received counseling for only a short period of time.

Dana Gellerman, Amalia’s caseworker from March 13 to June 4, 2009, corroborated Johnson’s testimony about counseling. Gellerman testified that Amalia had attended therapy briefly but was terminated as a patient because she failed to attend appointments. Gellerman then unsuccessfully attempted to locate a new therapist for Amalia.

Amalia’s next caseworker, Jodi Simants, testified that Amalia did not accomplish the mental health goal that was stated in the case plan. Simants stated that Amalia informed her that she was taking her medication. Simants also stated that she did not know of any doctor who was

providing Amalia with medication management services and that Amalia was supposed to sign waiver forms so the Department of Health and Human Services (DHHS) could obtain her mental health treatment records, but Amalia generally refused to sign the forms. Simants testified that Amalia was supposed to obtain a therapist by June 1, 2009, but failed to do so. Simants also stated that Amalia was supposed to share some of the responsibility for procuring mental health care at that point. A case report indicated that in September, Simants arranged a meeting to secure mental health care services from Region II for Amalia, but that Amalia expressed at the meeting she was not open to receiving such services. In contrast, Amalia testified that she had tried to obtain mental health treatment but was not able to do so.

Regarding Amalia's mental health, it is apparent from the record that she had difficulty conducting herself appropriately in the courtroom. Amalia repeatedly interjected during courtroom proceedings despite being directed not to do so on several occasions. Additionally, a number of Amalia's answers during examination were not responsive to the questions that were asked. For example, when the State's attorney conducted a direct examination of Amalia, the following exchange occurred:

Q: And, in order to do that, to complete the goals [of the case plan], you were to work with a therapist to gain insight and understanding of your mental health needs.

A: Uh-huh.

Q: To manage your mental health needs and to learn about the impact it has on your ability to parent your daughter.

A: Yes. Okay. You've told me that I have to take care of myself. I do take care of myself. I get my stuff stolen. I have people break in my trailer. I have my electricity -- How much did they say again? \$418 for one month. Where?

Q: [Amalia], do --

A: Where -- Where in the hell do they charge me \$418 for electricity in a trailer? Okay. Now my furnace is broken and my mother's was broken, too.

The State's counsel then requested that the court direct the witness to be responsive to the questions. Other such exchanges occurred during the course of Amalia's examination.

The evidence regarding Amalia's relationship with Fatima is generally that they had bonded and that Amalia genuinely cares for Fatima. However, Amalia has had numerous difficulties in caring for Fatima--even while she was under supervision. Further, visitation was often problematic for a host of other reasons, which we further elucidate below.

Visitation was supervised by Lutheran Family Services, which, from the time Fatima was removed until September 2009, had nine different workers supervise visitation. This was because Amalia made accusations against visitation workers and refused to work with them. At times, two visitation workers were present due to concerns about Fatima's safety.

Two separate visitation workers testified regarding the visitation each had supervised. Sherri Rhone testified that she supervised visitation for approximately 3 weeks from September 22 to October 11, 2008. Rhone stated that she was concerned because Amalia would generally leave Fatima in her car seat and take her out for only a short time. She also expressed concern that Amalia attempted to overfeed Fatima, fell asleep during visitation (sometimes while holding Fatima), and would sometimes get aggressive and start yelling. Rhone stated that on one

occasion, she had to call the police to have Amalia removed due to her behavior. Rhone also testified that visitation occurred outside of the home because Fatima did not have a home at that time. Rhone stated that at Amalia's request, she stopped supervising visitation.

Melissa Hergenrader testified that she was the home safety coordinator for Lutheran Family Services and normally supervised family support workers but provided direct visitation service to Amalia beginning in March 2009. Hergenrader explained that she supervised visitation because she was the only remaining visitation worker with whom Amalia would work. Hergenrader stated at the time she began to supervise visitation, it was supposed to occur in Amalia's trailer home. Hergenrader explained that at Amalia's request, visitation was moved to the premises of Lutheran Family Services when Amalia's utilities were shut off and she was unable to maintain a clean home. Hergenrader testified that visitation was scheduled to occur on 3 days a week for 6 hours on each day and that during visitation, Amalia was supposed to provide diapers, wipes, food, milk, and toys for the child. However, Hergenrader observed that Amalia only occasionally provided these items. In contrast, Amalia testified that she had always provided these items. Hergenrader stated that sometimes Amalia did not attend visits, Amalia would end visits early, and visits would be terminated due to safety concerns. Hergenrader testified that visits were terminated for safety concerns when Amalia became volatile, angry, or screaming and could not control her behavior. At least in part, such incidents arose as a result of Hergenrader's redirecting Amalia. Hergenrader stated that law enforcement had to be called on occasion and that Amalia also called law enforcement. Hergenrader testified that visitations were also terminated when Amalia had to be directed three times to follow rules that had been specifically set out for her. For example, one visitation was terminated because Amalia called Fatima a pig in Spanish three times.

Hergenrader also testified about the ways in which Amalia failed to properly care for the child during visitation. Hergenrader stated that Amalia would not feed Fatima properly or change her diaper without being prompted to do so. She also stated Amalia had allowed the child to play with a dirty baby wipe, in a trash can, and with an eyeliner pencil and sharpener. Hergenrader had also observed that Amalia did not react when Fatima fell, rolled, or hit her head. She testified that Amalia had left the child alone on the sofa when the child could not walk and placed the child in a swing that was too small and could have allowed the child to fall out.

DHHS caseworkers also testified about visitation. Gellerman testified that visitations were sometimes ended because Amalia failed to bring food or diapers. Gellerman also stated that a plan had been developed to defuse arguments which occurred during visitation and to redirect Amalia's behavior, but that nothing worked. Overall, Gellerman observed that there was a temporary period of improvement in the visitation in early 2009, but that Amalia then regressed. Gellerman summarized these changes as follows:

[W]e went from visitation in the home, longer visitation, appropriate feeding, to visitation that was out of the home, inconsistency in length of visitation, inconsistency in showing up for visits, reports of being bored or cold, other things to do to end visits, showing up at visits without food to feed [Fatima], without diapers, so that visits had to be ended. We just saw a downward trend in Amalia's attention to what is necessary to take care of Fatima.

Simants, the case manager from June 2009 until the time of trial, testified that Amalia had not been consistent in visitation and that on many occasions, she would not call in or appear. Simants also stated that Amalia would arrive at visitation late, would end visitation early, and was not able to have visitation during 2 weeks in July when she was incarcerated. Simants noted that Amalia's last visitation occurred on September 3, 2009, and that Amalia ended it after only an hour. Amalia did not subsequently visit the child, and visitation was terminated on September 23, 2009.

Gellerman and Simants opined that Amalia's overall ability to parent did not improve while Fatima was removed from Amalia's care. Both believed that Amalia had failed to follow the prescribed mental health treatment regimen. Gellerman believed that when she initially took the case and the visitation had improved, Amalia was taking her medication consistently but that Amalia then ceased taking medication.

We also note that Amalia received additional services to help her comply with her case plan. Lutheran Family Services provided Amalia with additional support by helping her work on a budget, educating her about proper nutrition for Fatima and how to maintain a clean household, and working with Amalia on appropriate voice tone and the appropriate words to use with Fatima and other people.

In addition, while Fatima was removed from Amalia's care, Amalia failed to comply with the terms of probation for an assault conviction. On June 27, 2008, Amalia was placed on probation for a conviction for third degree assault and violation of a protection order. This was not an assault on Fatima. On September 30, 2009, Amalia was discharged from probation for noncompliance. Amalia's probation officer, Jennifer Howerter, testified that Amalia failed to comply with the terms of her probation by failing to notify her of an address change, failing to report weekly, failing to attend classes, admitting to drug use on three separate occasions, failing to keep appointments to get her medications refilled, and failing to take medication. We note that at trial, Amalia admitted that she had told Howerter she used methamphetamine on three occasions. A foster care review board report for a September 2009 meeting indicates that probation was being revoked because Amalia was reported to have a bag of methamphetamine in her trunk but claimed it was not hers. Howerter testified that when Amalia reported drug use, she gave Amalia a referral for treatment but that Amalia did not follow up. Howerter also testified that Amalia's mood was not stable and that on one occasion, Amalia "flew off the handle and was yelling and screaming" in her office. Thereafter, Howerter would not permit Amalia to go into her office and had Amalia meet her at the front door for safety reasons.

Further, the record indicates that Amalia was not able to maintain a suitable residence. Amalia resided in a trailer home in Lexington, Nebraska, and the utilities were turned off when she failed to pay for them. At one point, the toilet consisted of a bucket. Amalia testified that she sometimes resided in Grand Island, Nebraska, or stayed with friends (whom she was unable to name) or with an aunt. Amalia stated that people break into her trailer, steal her keys, and destroy her home.

Amalia has had difficulty in supporting herself. During early 2009, at a time when Amalia was taking medication, she briefly held a job. Now her sole income consists of Social Security disability benefits. Amalia has refused food assistance when she did not have food, did not budget her income, and refused to pay bills.

At the conclusion of the proceeding, the court pronounced its decision to terminate Amalia's parental rights. The court specifically announced that it was terminating parental rights based on the grounds enumerated in § 43-292(2), (4), and (6) and due to "mental illness" and that the court had determined that termination was in the child's best interests. The court also specifically stated that "there is clear and convincing evidence that a statutory basis under the provisions of [Neb. Rev. Stat. §] 43-292.01 [(Reissue 2008)] exists for the termination of the parental rights of the mother." Subsequently, the court announced that "all parental rights between [Amalia] and Fatima . . . are terminated by clear and convincing evidence." In its written judgment, which consisted of a printed form on which the court checked boxes and filled in blanks, the court checked a box which stated that there was "clear and convincing evidence that a statutory basis under . . . § 43-292.01 exists for terminating the parental rights of [checked box] mother" The court's written order also states that "[checked box] All parental rights between [checked box] mother:_____ . . . and the child(ren) are terminated by clear and convincing evidence."

Amalia timely appeals.

ASSIGNMENTS OF ERROR

Amalia assigns, restated and reordered, that the county court erred in (1) admitting hearsay evidence; (2) failing to make a specific finding that there was clear and convincing evidence under § 43-292 for the termination of Amalia's parental rights; (3) finding that the State proved by clear and convincing evidence the grounds for termination enumerated in § 43-292(2), (4), (5), and (6); and (4) finding that the State proved by clear and convincing evidence that it was in Fatima's best interests to terminate Amalia's parental rights.

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 Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009). However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *Id.*

ANALYSIS

Hearsay Evidence.

Amalia argues that the county court erred in admitting into evidence the comprehensive family assessment. She asserts that it was hearsay because only Kloch, the individual who performed the drug and alcohol portion of the assessment, testified at trial.

The Nebraska Evidence Rules do not apply in cases involving the termination of parental rights. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007). Instead, due process controls and requires that the State use fundamentally fair procedures in an attempt to prove that a parent's rights to his or her child should be terminated. *Id.*

In our de novo review of the evidence, we assume without deciding that the comprehensive family assessment is not admissible. Because the exclusion of this evidence does not affect our ultimate conclusion, we need not determine the admissibility of the evidence.

However, we do consider Kloch's testimony regarding the assessment, which we have summarized in the background section above, because Amalia did not object to this testimony. To preserve a claimed error in the admission of evidence, a litigant must make a timely objection which specifies the ground of the objection to the offered evidence. *In re Petition of SID No. 1*, 270 Neb. 856, 708 N.W.2d 809 (2006).

Specific Findings.

Although Amalia assigns that the county court erred in failing to make a specific finding that there was clear and convincing evidence under § 43-292 for the termination of her parental rights, her argument consists of only a few lines which merely restate her assignment. Amalia's argument simply states that the county court's finding, which cited to Neb. Rev. Stat. § 43-292.01 (Reissue 2008), was insufficient, and Amalia does not cite to any legal authority or provide any other reasoning to support her argument. Although Amalia's brief provides us with little assistance in this regard, we nevertheless address the argument as we understand it.

Amalia seems to be arguing that the county court erred in making a finding referring to § 43-292.01 rather than § 43-292. We note that § 43-292.01 pertains to the appointment of a guardian ad litem where a parent is alleged to be unable to discharge parental duties due to mental illness or mental deficiency and that § 43-292 is the section pursuant to which a court may terminate parental rights. However, this argument lacks merit for two reasons.

First, 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). Because Amalia has assigned error both as to the grounds for termination and as to whether Fatima's best interests required termination of Amalia's parental rights, our independent conclusions will entirely supplant the county court's findings regarding § 43-292.

Second, the court did more than simply cite to § 43-292.01 as the basis for its decision to terminate Amalia's parental rights. Without referring to § 43-292.01, the court both announced and stated in its written order that Amalia's parental rights were terminated by clear and convincing evidence. The court also pronounced specific findings on the record regarding the various grounds for termination under § 43-292 alleged by the State and in three of four instances, specifically referred to § 43-292. Paragraph 9.a. of the written order recites that specific findings were made on the record. The court's oral pronouncements at the conclusion of the trial and its written order, considered together, provide sufficient specific findings.

The county court evidently relied upon a printed form promulgated by the State Court Administrator's office, which erroneously substituted § 43-292.01 for § 43-292 in paragraph 10 of the preprinted language. The form was obviously intended to refer to § 43-292, which states the grounds for termination of parental rights. This error has now been corrected, and an updated version of the form can be found at <http://supremecourt.ne.gov/forms/juvenile/Fill-inJC-14-11-8.pdf> (last visited June 15, 2010).

Grounds for Termination.

Amalia assigns that the county court erred in determining that there were grounds to terminate parental rights under four separate subsections of § 43-292. In order to affirm the termination, we need affirm the county court's determination that the State has proved by clear

and convincing evidence only one of the four grounds for termination and that termination was in the child's best interests. See § 43-292.

We conclude that the State proved by clear and convincing evidence the ground for termination enumerated in § 43-292(6). Under this subsection, the State must prove by clear and convincing evidence that "following a determination that the juvenile is one as described in subdivision (3)(a) of [§] 43-247, reasonable efforts to preserve and reunify the family if required under [Neb. Rev. Stat. §] 43-283.01 [(Supp. 2009)], under the direction of the court, have failed to correct the conditions leading to the determination." § 43-292(6). Section 43-283.01(2) requires that "reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home" except under certain circumstances which are not present in the instant case.

Amalia's primary argument is that reasonable efforts were not made because the State did not provide her with sufficient help in complying with the case plan. We disagree. In general, reasonable efforts were made to secure mental health treatment for Amalia. The State provided Amalia with a mental health assessment, and Gellerman and Simants sought to procure mental health treatment for Amalia. Amalia argues that Simants failed to take sufficient action to secure services for Amalia. Simants did testify that part of the plan was to place some responsibility on Amalia to obtain such services. However, Simants also testified that Amalia informed her she was taking her prescribed medication, that Simants arranged a meeting on September 1, 2009, with Region II to help her obtain mental health services, and that, according to the case report, Amalia expressed at the meeting that she was not open to receiving such services. Amalia also briefly received counseling in early 2009 but neglected to return after two visits. In addition, Amalia was supposed to receive medication management services from Johnson but simply chose not to do so. The problem was not that the State failed to provide adequate resources. Rather, with the exception of a brief period in early 2009, Amalia refused to utilize the mental health services that were readily available to her.

In addition, reasonable efforts were made to help Amalia be able to provide food, clothing, and shelter for Fatima and provide for Fatima's physical and emotional health. Lutheran Family Services provided Amalia services designed to help her meet these objectives. This included helping Amalia make a budget and educating Amalia regarding nutrition, the developmental stages of a child, how to maintain a clean house, how to use appropriate voice tone, and how to use appropriate words with Fatima and other people. In addition, Lutheran Family Services helped Amalia to develop her parenting skills during supervised visitation. Lutheran Family Services also provided Amalia with referrals to other agencies for additional services. When Amalia was briefly on her medication, she took advantage of these services and benefited from them. However, Amalia generally did not take her medication and consequently did not derive much of a benefit from these services.

For these reasons, we conclude that the State proved by clear and convincing evidence that reasonable efforts were made to reunify Amalia with Fatima. We further conclude that the State has proved by clear and convincing evidence that these efforts have not alleviated the conditions which led to the adjudication. The primary problem that led to the adjudication was that Amalia had an uncontrolled mental health condition. This in turn prevented Amalia from

adequately providing for Fatima or parenting Fatima appropriately. These problems have not been remedied. Amalia has not obtained necessary mental health treatment and still is not able to provide for Fatima's basic needs. Amalia does not have adequate housing because her utilities have been shut off, since she refuses to pay the bills. Further, although Amalia was supposed to provide food and diapers for Fatima during visitation, she did not always do so and at times provided foods that were not appropriate for Fatima. Amalia also continued to demonstrate poor parenting skills. During visitation, Amalia repeatedly called Fatima inappropriate names, overfed her, allowed her to play with dangerous objects, did not pay much attention to her at times, and did not change her diaper without being prompted to do so. On many occasions, visitation was terminated because Amalia became very angry and volatile and could not control her behavior. Although Amalia did show some improvement around the time she took her medication, the improvement was only temporary. None of the witnesses, except for Amalia herself, expressed an opinion that Amalia's ability to care for Fatima had improved. Indeed, the testimony was that her ability had not improved. Thus, the State's reasonable efforts have not remedied the situation.

We do recognize that only 11 months expired from the time the court adopted a case plan until Amalia's parental rights were terminated. However, with the exception of one brief period, Amalia entirely disregarded the case plan and failed to make any progress toward reunification.

Best Interests.

Amalia argues that the court erred in determining that it was in Fatima's best interests to terminate Amalia's parental rights. We disagree. We acknowledge that Amalia has bonded with her daughter and has exercised some visitation. However, as we have discussed in the above section, Amalia has not demonstrated the ability to parent Fatima appropriately and provide for her basic needs. These problems stem from Amalia's failure to consistently receive mental health treatment. According to Johnson, Amalia's condition is lifelong. Because Amalia's track record in consistently attending mental health treatment and taking medications has been poor, even after she had compelling reasons to do so, it seems unlikely that Amalia will consistently seek such treatment in the future. These reasons include that other children had been removed from Amalia's care, Fatima was adjudicated to be within the county court's jurisdiction, and Amalia was required to receive such treatment as a term of her probation and Fatima's case plan. Amalia had the additional incentive to seek sufficient treatment so that she could display appropriate behaviors during the 1-day termination hearing when it was most critical for her to do so in the context of the instant case. In short, because the threat of serious consequences has not caused Amalia to consistently follow a mental health treatment regimen in the past, we do not foresee any future circumstances which would induce or compel Amalia to do so.

There are additional problems which raise concerns regarding Amalia's ability to care for Fatima. Amalia was convicted of third degree assault and failed to successfully complete probation. Further, Amalia has possessed and used methamphetamine. Fatima tested positive for amphetamines at birth, and Amalia admitted to having used methamphetamine on three occasions while she was on probation. A foster care review board report stated that Amalia's probation was being revoked because she was reported to have a bag of methamphetamine in her truck but claimed it was not hers. Amalia did pass the random urinalysis tests which were

administered, but at times Amalia could not be located when such tests were desired. Amalia's involvement with methamphetamine could easily lead to future incarceration or impede Amalia's ability to care for Fatima.

For all these reasons, we conclude that the State has proved by clear and convincing evidence that the termination of Amalia's parental rights is in Fatima's best interests.

CONCLUSION

We conclude that the county court's judgment effectively terminated Amalia's parental rights. We affirm the county court's decision to terminate Amalia's parental rights, because the State's reasonable efforts did not remedy the conditions leading to Fatima's adjudication and the termination of Amalia's parental rights is in Fatima's best interests.

AFFIRMED.

INBODY, Chief Judge, participating on briefs.