

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

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

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

ANTONIO H., APPELLANT, AND VICTORIA A., APPELLEE AND CROSS-APPELLANT.

Filed May 18, 2010. No. A-09-1060.

Appeal from the Separate Juvenile Court of Lancaster County: TONI G. THORSON, Judge.
Affirmed.

Jason L. Scott, of Scott Law Firm, for appellant.

Gary E. Lacey, Lancaster County Attorney, Shellie D. Sabata, and Michelle Clarke,
Senior Certified Law Student, for appellee State of Nebraska.

Lisa Ferguson Lozano for appellee Victoria A.

IRWIN and CARLSON, Judges.

CARLSON, Judge.

INTRODUCTION

Antonio H. and Victoria A. appeal and cross-appeal, respectively, from an order of the separate juvenile court for Lancaster County, adjudicating their minor child, Justice H., as a juvenile within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008), and terminating their parental rights to Justice. For the reasons set forth herein, we affirm.

BACKGROUND

Antonio and Victoria are the parents of Justice, born in November 2007. Antonio and Victoria have three other children, Bianca H., born in February 2003; Eternity H., born in December 2004; and Antonio A., Jr. (Antonio Jr.), born in October 2008. On November 16,

2007, the State filed a petition seeking to adjudicate Justice under § 43-247(3)(a). On the same day, the juvenile court entered an ex parte order for temporary custody placing Justice in the custody of the Department of Health and Human Services (the Department). Justice is an Indian child as defined in the Nebraska Indian Child Welfare Act, Neb. Rev. Stat. §§ 43-1501 to 43-1516 (Reissue 2008).

On September 8, 2008, the State filed an amended petition and a motion for termination of Antonio's and Victoria's parental rights to Justice. The State alleged in the amended petition that Justice was within the meaning of § 43-247(3)(a) in that she lacked proper parental care by reason of the faults or habits of Antonio and Victoria. The amended petition alleged that Bianca and Eternity have previously been adjudicated as children defined by § 43-247(3)(a) based upon the actions of the parents; that they continue to be placed in the custody of the Department, outside the home of their parents, for over 3 years; that Antonio and Victoria have failed to comply with the plan developed and adopted by the court to correct the issues that led to the adjudication; that motions for termination of parental rights are pending in regard to Bianca and Eternity and that visitation between Bianca and Eternity and the parents has been suspended; and that the actions of Antonio and Victoria relating to Bianca and Eternity place Justice at risk of harm. In regard to the motion for termination of Antonio's and Victoria's parental rights, the State alleged that statutory grounds to terminate existed pursuant to Neb. Rev. Stat. § 43-292(2) and (4) (Reissue 2008) and that termination was in Justice's best interests. The State further alleged that active efforts had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts had proved unsuccessful. The State also alleged that continued custody by the parent is likely to result in serious emotional or physical damage to the child.

The hearing on the amended petition to adjudicate and motion to terminate was held on four dates in January 2009. The evidence presented shows that Victoria began a relationship with Antonio in June 2001. Their relationship was marked by severe violence and abuse. In February 2002, Antonio became angry when Victoria provided him assistance when he started to overdose on methamphetamine. In the home that they shared, Antonio punched and kicked Victoria and then hit her with a piece of wood and burned her with a cigarette. Victoria also reported that Antonio injured her nose when he kicked her in the head. Victoria had her older son in her care at that time. He was born in January 2002, just a few weeks prior to these incidents. Antonio is not his father. Victoria also described another incident where Antonio threatened to put a plastic bag around her older son's head if Victoria did not locate Antonio's cellular telephone within 30 seconds.

Victoria's older son and her older daughter, who was born in November 1999, were both removed from Victoria's care and placed in the custody of the Department. In 2002, Victoria relinquished her parental rights to her older son and her older daughter, and they were adopted by relatives.

In May 2005, Victoria contacted the police and reported a series of violent acts by Antonio that occurred in February 2005. Victoria indicated that she waited to report this violence because Antonio kept Bianca with him at all times when he left the home, knowing that Victoria would not leave him without both Bianca and Eternity. Victoria testified that on or about

February 6, Antonio drove her north of Lincoln, pulled over to the side of the road, and proceeded to beat and strangle her.

Specifically, Victoria testified that Antonio hit her with his open and closed fists, causing swelling to her entire face. Victoria also reported that Antonio attempted to strangle her with an extension cord and that he pinned her down between the seats of their van, punching and kicking her in the face. Antonio also used a key to “carve” Victoria “up and down the side of [her] body.”

Additionally, as part of the same incident, Victoria reported that Antonio stabbed her over 50 times in the leg with what looked like an ice pick. Antonio broke Victoria’s thumb in two places and broke her wrist while she was trying to block the blows to her head using her hands. Antonio also hit Victoria with a broken brush, causing a gash on her stomach. Although nearly 3 months had passed by the time Victoria reported these incidents to the police, Victoria still had visible bruising and scabs that were observed by the police. Shortly after Antonio and Victoria returned home from this incident, Antonio squeezed Victoria’s fingers with a pair of pliers.

After Antonio was arrested for the above-described acts, Victoria did not cooperate with the criminal prosecution of Antonio and wrote letters to the Lancaster County Attorney’s Office, Antonio’s attorney, and the judge to request that the charges be dropped. Given Victoria’s lack of cooperation, Antonio was not convicted of any crimes stemming from these acts of violence against Victoria.

In February 2006, Victoria reported that Antonio hit her in the back of the head. Victoria went to the hospital for treatment, and law enforcement was contacted by hospital personnel. Earlier that same evening, Antonio also struck Victoria with a broom and a closet pole. The record shows that Antonio’s beating of Victoria was so severe that the broom handle eventually broke. Again, Victoria refused to cooperate with the prosecution of Antonio. Subsequently, the court deemed Victoria to be in contempt of court for failure to appear and testify pursuant to a subpoena. Antonio was incarcerated from June 27, 2006, to January 12, 2007, for the assault and for possession of methamphetamine.

Victoria has never obtained a protection order against Antonio even though the court ordered her to do so. Victoria testified that at some point, she attempted to obtain a protection order but did not follow through. Victoria also testified that shortly before the hearing she filled out an application for a protection order and mailed it, but she had not heard anything back from the court. Victoria testified that Antonio’s violence poses a risk to her but not to her children because no incidents have ever occurred in front of the children.

At the time of the adjudication and termination hearing, Victoria was incarcerated. Victoria was sentenced in September 2008 by the district court for Lancaster County to 12 to 18 months’ imprisonment for felony theft by shoplifting. Victoria testified that she committed the offense in June 2007 and that Antonio’s sister was with her at the time of the offense. Victoria was also pregnant with Justice at the time. In addition to Victoria’s September 2008 conviction, Victoria has two other convictions for theft, one of which resulted in incarceration and the other resulted in a fine.

Victoria testified that Antonio was present when she was sentenced in September 2008 and that as a result of his disruptive behavior in the courtroom, he was sentenced to 7 days in jail

for contempt of court. At the time of the adjudication and termination hearing, there were several outstanding warrants for arrest on Antonio.

The record shows that Bianca is aware of the physical abuse inflicted upon Victoria by Antonio. Bianca has expressed to her psychologist, Dr. Corrie Davies, that Antonio has hurt Victoria and that it made Bianca sad and scared. Bianca has talked about “mean daddy” making Victoria’s hand bloody or hurting Victoria and has stated “Dads hit, Dads go to jail.”

Bianca and Eternity began seeing Davies in July 2006, and Davies usually meets with them once or twice per month. When Davies first started working with Bianca and Eternity, Bianca was refusing to go to daycare, was having long tantrums, and was exhibiting aggressive behavior. Eternity had severe biting and aggressive behaviors at daycare. Davies testified that at the time of the adjudication and termination hearing, Bianca’s and Eternity’s progress had been good. She testified that Bianca’s and Eternity’s behaviors are still more extreme than what is expected for their developmental stage, but that there have been improvements. Davies testified that Bianca was still having tantrums, but they were of shorter duration and more appropriate for her age, and she willingly walks into daycare. Davies testified that Eternity’s aggressive behavior had improved and that it had been a long time since she bit anyone.

Davies testified that before contact can resume between Antonio and Victoria and any of their children, Antonio and Victoria must be able to provide a safe, secure, and healthy living environment. She testified that as of the date of trial, she has not received any information indicating that they could provide such an environment. She explained that for this requirement to be met, Antonio and Victoria would have to obey the law and not be incarcerated, refrain from using illegal substances, and maintain a safe and secure home, which includes a home free from domestic violence. Davies stated that in her professional opinion, it was critical that a permanency plan be implemented for Bianca and Eternity so they can experience a safe, secure, and permanent home as soon as possible. She also testified that children need to feel safe; that without a sense of safety, it is hard for children to develop a positive and nurturing relationship with a caregiver; and that it affects future relationships and their psychological functioning. Davies testified that all children, including Justice, need a safe and secure living arrangement and relationship with a caregiver.

Davies testified that it would likely cause serious emotional damage to Bianca and Eternity to be placed back in the custody of Antonio or Victoria. Her opinion was based on the amount of time they have been out of the home and have had no contact with either parent and because trying to form a positive relationship with Antonio and Victoria in a setting that is not safe and secure would be detrimental to their development.

Diane Arpan, the children’s caseworker with the Department, testified that in 2006, Victoria was participating in supervised visitation with Bianca and Eternity. In early 2007, visitation was changed to therapeutic visitation, a more restrictive visitation, to involve a therapist with the girls’ behaviors and Victoria’s redirection. Shortly thereafter, Arpan and Davies recommended a suspension of Victoria’s visitation because Bianca’s behavior outside of family therapy had escalated significantly.

The court suspended Victoria’s visitation with Bianca and Eternity in April 2007. Arpan testified that since that time, the Department has never recommended that visitation resume because it feels that visitation with Victoria is not in the children’s best interests. The record

shows that both Bianca's and Eternity's behaviors improved after visits were discontinued and have continued to improve during the time visits have been suspended.

Arpan testified that she first met with Victoria in July 2006. Antonio was incarcerated at that time, and as a result, the Department was unable to arrange services for him. Arpan testified that Victoria told her that she had broken off her relationship with Antonio, that she wanted nothing to do with him, and that she was trying to put her life back together. Victoria told Arpan that Antonio was "violent and crazy and capable of doing anything." Victoria acknowledged that Antonio had been violent and abusive toward her. Victoria told Arpan that she was afraid of Antonio and that she wanted to move to Sidney, Nebraska, before Antonio was released from prison in January 2007 to ensure her safety. Arpan testified that she was supportive of Victoria's plan to relocate and started searching for a foster home in the Sidney area, as well as looking for therapeutic services for Bianca and Eternity.

Arpan testified that in December 2006, she discovered that Victoria was not being honest about her plan to move to Sidney. Arpan testified that she learned that Victoria had visited Antonio in prison. When Arpan asked Victoria about her visit, Victoria claimed that she was merely bringing diapers to Antonio's sister who was visiting Antonio in prison. Victoria denied that she had been to the prison more than that one time.

Arpan testified that at a January 2007 team meeting Victoria was again asked about whether she had been visiting Antonio in prison and Victoria admitted that she had been visiting Antonio twice per week, which was as often as the prison would allow. Victoria explained that she went to visit Antonio because she wanted to know why he had abused her. Victoria changed her reason for visiting Antonio at a hearing in August 2007, where she testified that she went to visit Antonio so they could discuss matters involving their children. Victoria told Arpan that she got to the prison either by walking or by getting a ride from Antonio's sister. Arpan testified that Victoria's visiting Antonio defeated her whole plan of making a new start in Sidney and that Arpan stopped her efforts to move Bianca and Eternity to Sidney because she could not maintain their safety.

Arpan testified that after the Department was given temporary custody of Justice, which was just days after her birth, Antonio and Victoria were given weekly supervised visitation. However, each visit was contingent on each parent passing a urinalysis (UA) test prior to the visit. The Department also tried to have each parent submit to a random UA test once a week. Arpan testified that initially both Antonio and Victoria were compliant with the UA tests before the visits. In February 2008, Antonio stopped cooperating with the UA tests before visits with Justice, and consequently, he was not allowed his weekly visits. Arpan also testified that both Antonio and Victoria were difficult to contact for the random UA tests and that as a result, the random testing often did not occur. Arpan testified that Antonio's last visit and last contact with Justice was in February 2008, when Justice was just a few months old. She testified that Victoria continued having visits with Justice until she was incarcerated in September 2008. Both Antonio's and Victoria's visits were suspended at this time.

Arpan testified that Victoria and Antonio made poor progress to correct the conditions that led to the removal of their children over the 3 years that their children have been in the custody of the Department. Other than participating in some initial evaluations, Victoria never successfully completed any of the requirements set out in her court-ordered plan, including

receiving individual therapy, obtaining employment, maintaining an appropriate residence, and completing a psychological evaluation. Additionally, the Department often did not know how to reach Victoria and did not know where she lived. Antonio was also ordered to maintain employment and appropriate housing, neither of which he has done. Antonio also failed to complete the requirement that he participate in long-term residential drug and alcohol treatment and that he participate in weekly psychotherapy and Alcoholics Anonymous or Narcotics Anonymous classes. Antonio did complete a couple initial evaluations, but did not continue past the evaluation phase to complete any services or treatment related to the evaluations.

Arpan testified that during the time she has been involved with this family's case, which began in July 2006, she has never been able to recommend to the court that Antonio and Victoria be reunified with their children because they have not complied with services. She testified that compliance with services is important because if domestic violence and drug use are still unresolved issues, it would be unsafe to put the children back in the home. Arpan testified that the Department cannot maintain the children's safety if the parents have not complied with services. She testified that both parents' overall progress has been poor. Arpan acknowledged that technically the parents are not ordered to comply with any rehabilitative plan related specifically to Justice, but testified that their participation in the services ordered in regard to Bianca and Eternity would benefit Justice as well.

Arpan testified that Justice is in need of permanency because at the time of the hearing, she had been out of the home for over a year, since just days after her birth, and she does not have a bond with either Antonio or Victoria. She testified that she does not believe Antonio and Victoria can meet Justice's need for permanency because neither of them has cooperated with services or given any indication that they want to cooperate with services.

The evidence shows a pattern of Victoria saying that she wants Antonio out of her life, but continuing to keep him in her life. After Bianca and Eternity were removed from her care due to her abusive relationship with Antonio, she had two more children with him, Justice and Antonio Jr. The period of time when Victoria was visiting Antonio in prison while at the same time telling Arpan she wanted to move away from him has already been set forth. In addition, at a team meeting in April 2007, where Antonio and Victoria were both present, Victoria requested that her personal information such as her address not be revealed to Antonio. Later that same day, Antonio and Victoria were both seen at the same store. Victoria testified that they did not go to the store together and that it was merely a coincidence that they were at the same place. Further, Victoria testified that she has talked to Antonio "a couple of times" while she has been incarcerated, but stated that the last time was sometime before October 10, 2008.

Victoria gave birth to Antonio Jr. in October 2008, while she was incarcerated. Antonio Jr. was removed from her care immediately after his birth, and Victoria again claimed that at that time she realized that she wanted nothing to do with Antonio. However, Victoria chose to name her child after Antonio. On October 14, 2008, the State filed a petition seeking to adjudicate Anthony Jr. under § 43-247(3)(a).

On September 23, 2009, the juvenile court entered an order finding that the allegations in the amended petition in regard to the adjudication were true and that Justice was a child as defined by § 43-247(3)(a). In regard to the motion to terminate parental rights, the juvenile court found that § 43-292(2) existed in regard to both Antonio and Victoria, and that § 43-292(4)

existed in regard to Antonio. The court found that these allegations were true beyond a reasonable doubt and found that termination is in the best interests of Justice beyond a reasonable doubt. Further, the juvenile court found that active efforts had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that these efforts had proved unsuccessful, and that continued custody of Justice by Antonio and Victoria is likely to result in serious emotional or physical damage to Justice.

On the same day that the trial court entered the order in the present case, it also entered an order terminating Antonio's parental rights to Bianca and Eternity, an order terminating Victoria's parental rights to Bianca and Eternity, and an order adjudicating Antonio Jr. In three separate opinions, we affirmed the termination of Antonio's and Victoria's parental rights to Bianca and Eternity, see *In re Interest of Bianca H. & Eternity H.*, case No. A-09-1057, and *In re Interest of Bianca H. & Eternity H.*, case No. A-09-1056, and affirmed the adjudication of Antonio Jr. related to both parents, see *In re Interest of Antonio A., Jr.*, case No. A-09-1055.

ASSIGNMENTS OF ERROR

Antonio assigns that the juvenile court erred in (1) finding that Justice came within the meaning of § 43-247(3)(a); (2) finding that active efforts have been made to preserve and reunify the Indian family and that those efforts have proved unsuccessful; (3) finding that continued custody by the parent is likely to result in serious emotional or physical damage to the child; (4) finding that he has substantially and continuously or repeatedly neglected and refused to give Justice, or a sibling, necessary parental care and protection; (5) finding that he is unfit by reason of habitual use of intoxicating liquor or narcotic drugs, and that his conduct is seriously detrimental to the health, morals, and well-being of Justice; and (6) finding that termination of his parental rights is in the best interests of Justice.

On cross-appeal, Victoria assigns that the juvenile court erred in finding that she has substantially and continuously or repeatedly neglected and refused to give Justice, or a sibling, necessary parental care and protection, and finding that termination of her parental rights is in the best interests of Justice.

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 Shayla H. et al.*, 17 Neb. App. 436, 764 N.W.2d 119 (2009). When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

ANALYSIS

Adjudication.

Antonio assigns that the juvenile court erred in finding that Justice was a juvenile within the meaning of § 43-247(3)(a). Victoria does not assign this as error. Following our de novo review of the record, we conclude that the juvenile court did not err in finding that the State proved that Justice lacked proper parental care by reason of the fault or habits of Antonio for purposes of § 43-247(3)(a).

In the State's amended petition, it alleged that Justice came within the meaning of § 43-247(3)(a) because siblings of Justice had been previously adjudicated and Antonio had failed to correct the conditions that led to those adjudications. The evidence adduced at the hearing indicated that notwithstanding the fact that Bianca and Eternity were adjudicated due to Antonio's inability to provide proper care and support, and the fact that Bianca and Eternity have been placed in the custody of the Department and outside the home of their parents for over 3 years, Antonio had failed to correct the conditions that led to these adjudications. The evidence at the hearing also established, as alleged in the amended petition, that a plan to correct the issues that led to the adjudications relating to Bianca and Eternity was developed and adopted by the court and that Antonio had failed to comply with the plan in order to correct the conditions that led to the adjudication and have the children reunified in the parental home. Therefore, we conclude that the portion of the juvenile court's order that adjudicated Justice to be a child within the meaning of § 43-247(3)(a) should be affirmed.

Active Efforts to Preserve and Reunify Indian Family.

Antonio next argues that the juvenile court erred in finding that active efforts have been made to preserve and reunify the Indian family and that those efforts have proved unsuccessful. Victoria does not assign this as error. Section 43-1505(4) requires:

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Antonio argues that there was insufficient evidence of the active efforts made to provide remedial services and rehabilitative programs. We disagree. From December 2007 to February 2008, Antonio was provided with supervised visitation with Justice. Visitation between Antonio and Justice stopped in February 2008 because he was unwilling to submit to UA testing before each visit to ensure he was not under the influence of drugs or alcohol. Visits would have continued if Antonio had submitted to the UA testing.

Although there has not been a rehabilitative plan adopted by the court related specifically to Justice, Arpan testified that Antonio's and Victoria's participation in the services ordered in regard to Bianca and Eternity would benefit Justice as well. The evidence showed that Antonio has failed to complete the requirement that he participate in long-term residential drug and alcohol treatment and that he participate in weekly psychotherapy and Alcoholics Anonymous or Narcotics Anonymous classes. Although Antonio did complete a couple initial evaluations, arranged and paid for by the Department, he did not continue past the evaluation phase to complete any services or treatment recommended as a result of the evaluations. Arpan testified that Antonio has not cooperated with services that were provided or given any indication that he wants to cooperate with services. Arpan testified that Antonio has made poor progress on the case plan in the 3 years that Bianca and Eternity have been out of the home.

The evidence also shows that services were difficult to provide because the Department often did not know where to locate Antonio. At the time of the adjudication and termination hearing, Arpan was uncertain where Antonio was residing.

The State provided sufficient evidence that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts proved unsuccessful based on Antonio's choosing not to participate in the services the Department was offering to assist him in reunifying with his children. Accordingly, we conclude that the juvenile court did not err in finding that active efforts have been made to preserve and reunify the Indian family and that those efforts have proved unsuccessful.

Risk of Emotional or Physical Harm.

Antonio next assigns that the juvenile court erred in finding that there was sufficient evidence to conclude that Justice was at risk of emotional or physical harm if returned to Antonio's and Victoria's custody. This assignment of error is not raised by Victoria. Section 43-1505(6) states:

No termination of parental rights may be ordered in [a proceeding regarding an Indian child] in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Davies testified that before any contact can resume between Antonio and Victoria and any of their children, Antonio and Victoria must be able to provide a safe, secure, and healthy living environment. She testified that as of the date of trial, she has not received any information indicating that they could provide such an environment. She explained that for this requirement to be met, Antonio and Victoria would have to obey the law and not be incarcerated, refrain from using illegal substances, and maintain a safe and secure home, which includes a home free from domestic violence. She also testified that children need to feel safe; that without a sense of safety, it is hard for children to develop a positive and nurturing relationship with a caregiver; and that it affects future relationships and their psychological functioning. Davies testified that all children, including Justice, need a safe and secure living arrangement and relationship with a caregiver and that Antonio and Victoria are unable to provide that. Davies also testified that it would likely cause serious emotional damage to Bianca and Eternity to be placed back in the custody of Antonio or Victoria. Her opinion was based on the amount of time they have been out of the home and have had no contact with either parent and because trying to form a positive relationship with Antonio and Victoria in a setting that is not safe and secure would be detrimental to their development.

As previously established, the environment from which Bianca and Eternity were removed has not changed. Davies testified that as of the date of trial, she had no reason to believe that Antonio and Victoria could provide their children with a safe, secure, and healthy living environment. She testified that she would not even recommend any contact between Antonio and Victoria and their children until they could provide a safe environment, let alone continued custody. If continuing custody would be detrimental to Bianca's and Eternity's development as Davies testified, it would also be detrimental to the development of Justice as she would be in the same environment.

Based on the expert testimony, as well as the totality of the evidence, we conclude that there was evidence beyond a reasonable doubt that continued custody of the children by Antonio

and Victoria was likely to result in serious emotional or physical damage to Justice. This assignment of error is without merit.

Statutory Grounds for Termination of Parental Rights.

Antonio and Victoria both argue that the juvenile court erred in terminating their parental rights to Justice, specifically that the court erred in finding that statutory grounds existed under § 43-292. For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). The State alleged that termination of Antonio's and Victoria's parental rights was warranted pursuant to § 43-292(2) and (4). The juvenile court found that the State had proved beyond a reasonable doubt that Antonio's rights should be terminated under § 43-292(2) and (4) and that Victoria's rights should be terminated under § 43-292(2).

Termination of parental rights is warranted whenever one or more of the statutory grounds provided in § 43-292 is established. Section 43-292(2) provides for termination of parental rights when "[t]he parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection." Upon our de novo review of the record, we find that the evidence establishes that § 43-292(2) exists beyond a reasonable doubt in regard to Antonio and Victoria. Therefore, we do not address whether the trial court erred in terminating Antonio's rights on other grounds.

As established above, Antonio and Victoria's relationship, which began in June 2001, was marked by severe violence and abuse. The violence and abuse was perpetrated by Antonio with Victoria being the victim. The evidence establishes that Antonio is a violent and abusive person and that his abusive behavior often occurs when he has been using drugs. Antonio has a history of drug use, and there is no evidence indicating that he is no longer using drugs. Antonio failed to complete the court-ordered requirement that he participate in long-term residential drug and alcohol treatment and that he participate in weekly psychotherapy and Alcoholics Anonymous or Narcotics Anonymous classes. In addition to Antonio's failure to get treatment for his drug use, he has also failed to complete any of the treatments or services recommended as a result of his psychological evaluation.

Dr. Robert Arias performed a neuropsychological evaluation of Antonio in February 2007. Arias testified that Antonio specifically denied that he had physically abused anyone. Arias testified that such denial is concerning because it indicates an inability or unwillingness by Antonio to change his behavior. He testified that in his report he recommended that Antonio's parental rights to Bianca and Eternity be terminated based on the severity and repetitive nature of Antonio's violent, abusive behavior and his failure to accept responsibility for his actions. Arias also testified that based on Antonio's abusive behavior, in conjunction with the lack of responsibility for his actions, Antonio's rehabilitation potential for changing his behavior is poor.

Antonio's history of drug use and abusive behavior toward Victoria, the mother of his children, establishes that Antonio has substantially and continuously or repeatedly neglected and refused to give Justice or a sibling of Justice's necessary parental care and protection. There is no evidence of any effort or willingness by Antonio to change his habits and behavior. Accordingly,

the evidence establishes beyond a reasonable doubt that termination of Antonio's parental rights to Justice is warranted under § 43-292(2).

In regard to Victoria, despite the abuse at the hands of Antonio which she described, she continued to be involved with Antonio. After Bianca and Eternity were removed from her care due to her abusive relationship with Antonio, she had two more children with him, Justice and Antonio Jr., the latter being named after Antonio.

After Antonio assaulted Victoria in February 2005, Victoria did not cooperate with the State in prosecuting Antonio and even asked that the charges related to the assault against Antonio be dropped. After Victoria was assaulted by Antonio in February 2006, she again refused to cooperate with the prosecution of Antonio and was found in contempt of court for failure to appear and testify pursuant to a subpoena. Victoria has never obtained a protection order against Antonio. Victoria does not believe that Antonio's violence poses a risk to her children because no incidents have ever occurred in front of the children. However, the evidence shows that Bianca was aware of the physical abuse inflicted upon Victoria by Antonio and has been affected by it.

Victoria tells others that she wants Antonio out of her life and does not want any contact with him, but her actions show otherwise. Between July and December 2006, Victoria indicated that she wanted to move to Sidney to get away from Antonio. However, the Department discovered in January 2007 that Victoria had been visiting Antonio in prison for several months. At the time of trial, there was no evidence that Victoria was going to keep Antonio out of her life. She admitted to talking to him on the telephone while she was incarcerated at the time of trial. Victoria also testified that Antonio had verbally threatened her shortly before she became incarcerated, yet she still chose to have contact with him.

Based on our de novo review, the record establishes that Victoria has substantially and continuously or repeatedly neglected and refused to give Justice or a sibling necessary parental care and protection. Given the violent history and continued contact between Victoria and Antonio, the evidence establishes beyond a reasonable doubt that Victoria's parental rights should be terminated under § 43-292(2).

Best Interests.

Antonio and Victoria also assign that the juvenile court erred in finding that termination of their parental rights is in Justice's best interests. Arpan testified that Justice is in need of permanency because at the time of the hearing, she had been out of the home for over a year, since just days after her birth, and she does not have a bond with either Antonio or Victoria. Arpan testified that she does not believe Antonio and Victoria can meet Justice's need for permanency because neither of them has cooperated with services or given any indication that they want to cooperate with services. Antonio and Victoria have made poor progress on their case plan since 2005.

Antonio has made no progress on working to correct the serious problems of domestic violence and drug use. Arias testified that based on Antonio's abusive behavior, in conjunction with the lack of responsibility for his actions, Antonio is unlikely to change his behavior. Victoria is either unable or unwilling to break ties with Antonio, and based on the evidence presented in this case, there is no way to know when or if she will ever do so.

Nebraska jurisprudence holds, generally, that it is in a child's best interests that a final disposition be made without delay. *In re Interest of Brettany M. et al.*, 11 Neb. App. 104, 644 N.W.2d 574 (2002). Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights; children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999). Justice was placed in the custody of the Department in November 2007, shortly after her birth, and has not been returned to Antonio's or Victoria's care since. Justice deserves stability and permanency, which does not appear to be possible with her parents. We conclude that the evidence before us establishes beyond a reasonable doubt that termination of Antonio's and Victoria's parental rights is in Justice's best interests.

CONCLUSION

After our de novo review of the record, we conclude that the juvenile court did not err in finding that Justice came within the meaning of § 43-247(3)(a), that active efforts have been made to preserve and reunify the Indian family and that those efforts have proved unsuccessful, that continued custody by Antonio and Victoria is likely to result in serious emotional or physical damage to the child, that Antonio's and Victoria's parental rights should be terminated under § 43-292(2), and that termination of Antonio's and Victoria's parental rights is in the best interests of Justice. Accordingly, the juvenile court's order adjudicating Justice and terminating Antonio's and Victoria's parental rights to Justice is affirmed.

AFFIRMED.

SIEVERS, Judge, participating on briefs.