

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF N.R. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF N.R. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

JESSICA R., APPELLANT AND CROSS-APPELLEE, AND NICHOLAS V.
AND RONY P., APPELLEES AND CROSS-APPELLANTS.

Filed May 26, 2009. No. A-08-1217.

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

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

Donald W. Kleine, Douglas County Attorney, Jennifer Chrystal-Clark, and Carolyn H.
Curry, Senior Certified Law Student, for appellee State of Nebraska.

Joseph Kuehl, of Kuehl Law Office, for appellee Nicholas V.

Rex J. Moats, of Moats Law Firm, P.C., L.L.O., and Douglas D. Dexter for appellee
Rony P.

IRWIN, CARLSON, and MOORE, Judges.

MOORE, Judge.

I. INTRODUCTION

The separate juvenile court for Douglas County entered an order which terminated the
natural parents' rights to six minor children. Jessica R., the children's natural mother, appeals the
termination order. Rony P. and Nicholas V., fathers of the children, filed cross-appeals. We
conclude that the juvenile court did not err when it terminated Jessica's parental rights to N.R.,

E.R., M.R., Al.R., and S.R. and Nicholas' parental rights to M.R., Al.R., and S.R. However, because the juvenile court erred when it terminated Rony's and Jessica's parental rights to Ay.R. without satisfying the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), we reverse the order insofar as it relates to Ay.R. and remand the cause for further proceedings which comply with the UCCJEA.

II. BACKGROUND

Jessica is the natural mother of N.R., E.R., Ay.R., M.R., Al.R., and S.R. (the children). Nicholas is the natural father of M.R., Al.R., and S.R. Rony is the natural father of Ay.R. Neither N.R.'s nor E.R.'s natural father was named as a party in this proceeding.

On March 13, 2006, Ay.R. reported to her teacher that her stepfather Nicholas and another male relative had touched her inappropriately on more than one occasion. Ay.R. was approximately 11 years old at the time she reported the sexual abuse. Ay.R. had reported the abuse to her mother previously, but Jessica told Ay.R. to "just be quiet about it and don't tell anyone" and "stay away from them."

On March 15, 2006, the State filed a petition in the separate juvenile court for Douglas County, which alleged that the children were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008), Nicholas had had inappropriate sexual contact with Ay.R., Jessica failed to protect the children from harm, and the children were at risk for harm. All of the children were removed from Nicholas and Jessica's home and placed in the custody of the Department of Health and Human Services (DHHS), which placed the children in foster care.

On August 30, 2006, the juvenile court held an adjudication hearing with regard to Jessica and Nicholas. With regard to Jessica, the court found the allegations of the petition to be true based upon her plea of no contest. With regard to Nicholas, the court found, by a preponderance of the evidence, that the allegations in the petition were true. The juvenile court adjudicated the children as within § 43-247(3)(a) insofar as Jessica and Nicholas were concerned.

On November 13, 2006, the juvenile court held a review hearing. The juvenile court ordered Jessica to follow and complete the recommendations of her psychological evaluation, attend supervised visitation, work with the family support team with no rude comments or actions, and continue her individual therapy and complete the treatment plan. The court ordered Nicholas to complete a sex offender risk assessment. On December 12, the juvenile court appointed an attorney for Rony to aid him in intervening in the juvenile proceedings involving Ay.R.

On June 8, 2007, Rony filed a complaint to intervene. He requested visitation with Ay.R. and stated that he was "able-bodied and capable of providing for the care of [Ay.R.]"

On June 15, 2007, the court held a review and permanency planning hearing. The court report stated that Jessica had been only "minimally compliant" with the court's orders as she was "fairly consistent in visitation" and attended family team meetings, but was not fully engaged in therapy. With regard to visitation, the report noted that Jessica provides "very little redirection and structure" for the children during visitation and that Jessica either ignored or minimized the children's negative behaviors and was not able to protect Ay.R. from N.R. when N.R. is verbally and physically aggressive during visits. The report noted that Nicholas had completed only two

of the eight sessions required to complete the court-ordered sex offender risk assessment and that he was scheduled to be sentenced on June 14. The juvenile court ordered that Ay.R. attend a Daughters and Sons United Group for children victims of sexual abuse and that she be referred to the RSAFE program for therapy. RSAFE is a program provided through Lutheran Family Services which specializes in cases involving children victims of intrafamily sexual abuse. The court also ordered Jessica to be referred to the RSAFE program for assessment of her therapeutic needs, including failure to protect the children from sexual abuse by Nicholas; continued refusal to acknowledge, accept or believe that Ay.R. had been sexually abused; refusal to participate in therapy; refusal to attend Parents United; refusal to control the children's behavior, even when children were placed at risk by their behavior toward each other; and Jessica's continued contact with Nicholas. Jessica was ordered to complete the assessment within 30 days or show cause why she should not be held in contempt of court. The court further ordered Jessica to attend Parents United on a regular basis and allowed Jessica only "therapeutic visits" with her children "unless and until demonstrated compliance with the Court's Orders is shown with observable changes in parent/child interactions." The court ordered Nicholas to complete the previously-ordered sex offender evaluation within 30 days, or show cause why he should not be held in contempt of court. Nicholas was further ordered to have no contact with the children.

Due to the court's order allowing Jessica only therapeutic visits with her children, Jessica was not allowed regular visitation from June through December 2007. Jessica requested visitation during that time, but the record reflects that she did not address her concerns with the court until November 8, 2007. The record reflects that therapeutic visitation between Jessica and the children could not occur until a therapist who could conduct visitation with six children was available. The court report which was prepared on December 3 stated that "Jessica is not currently having any contact with her children per the court's order." The court reinstated Jessica's right to supervised visitation on December 14.

On July 20, 2007, the juvenile court heard and sustained Rony's complaint to intervene in the juvenile proceeding. Also at that hearing, the court received exhibit 22 into evidence. Exhibit 22 is captioned "Findings of Fact and Conclusions of Law (Parentage)" and was filed in the Superior Court of Washington state on November 23, 1998. Exhibit 22 established the paternity of Rony to Ay.R., designated Jessica as the custodian, established that Ay.R. is to reside with Jessica, and reserved the determination of "residential time" with Rony for further determination.

In approximately July 2007, Nicholas was incarcerated, apparently as a result of the sexual assault on Ay.R.

On December 4, 2007, the juvenile court held a review and permanency planning hearing. The court report stated that Jessica was attending Parents United, although she missed the first two meetings because she was confused about where the group met. She had also attended her weekly individual therapy sessions. The report noted that Nicholas had been sentenced to 4 to 5 years in the Nebraska State Penitentiary and had not completed any of the court's orders. Jessica was living with her mother and was unemployed, even though the caseworker gave Jessica a list of employers with whom to apply. The court ordered Jessica to maintain safe and stable housing, obtain and maintain employment, participate in therapy, participate in Parents United, and have supervised and therapeutic visitation as arranged by DHHS.

Jessica stopped consistently attending individual therapy in January or March 2008.

On May 19, 2008, the State filed a motion to terminate Jessica's and Nicholas' parental rights to N.R., E.R., M.R., Al.R., and S.R. The motion made no allegations regarding Ay.R.

On May 28, 2008, the juvenile court held a reasonable efforts, review and permanency planning hearing. The court report stated that poor progress was being made to alleviate the causes of out-of-home placement, and Jessica's lack of progress and inconsistency since the December 2007 hearing was a concern. The report disclosed that due to Jessica's inconsistency at visitation, she was at risk of having her visits put on hold. Although Jessica was allowed supervised visitation with her children two times per week, visitation had been reduced to one visit per week due to Jessica's inconsistent attendance. The report advised that on March 9, Jessica arrived at visitation with a black eye and stitches above her eye, and that she attributed her injuries to an assault perpetrated by her boyfriend. On March 20, the same boyfriend appeared at the visitation, although he was not authorized to attend visitation. On March 13 and 27 and May 3, 2008, visits between Jessica and the children were scheduled but canceled when Jessica was more than 20 minutes late to the visit. The agency also canceled two scheduled visits on April 2 and May 8, 2008, because Jessica was required to call and confirm that she would attend the visit and she failed to do so. The court report advised that on March 9, Jessica asked N.R. to pay for the skating activity at the visit, and on March 29, Jessica asked N.R. and Ay.R. for money because she did not have the fare to take the bus home from the visit. The report also noted that Jessica had not paid her court-ordered child support since May 2007, though Jessica reported that she had recently gained employment. Jessica had also not attended her individual therapy sessions since March 2008 and had not attended the Parents United group since the fall of 2007.

On July 21, 2008, the State filed a supplemental petition which alleged that Rony was informed on November 15, 2006, that Ay.R. was in foster care; despite such information, Rony failed to make contact with Ay.R. until the end of 2007; Rony failed to provide information to DHHS which would allow DHHS to place Ay.R. with Rony; and as such, Ay.R. was at risk for harm. The supplemental petition further alleged that Ay.R. was within Neb. Rev. Stat. § 43-292(1), (6), and (7) (Reissue 2008), termination of Rony's parental rights was in Ay.R.'s best interests, and reasonable efforts to reunify Ay.R. with Rony were not required pursuant to Neb. Rev. Stat. § 43-283.01 (Reissue 2008) because Rony subjected Ay.R. to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. The State was unable to locate Rony's address in order to serve him, and the juvenile court ordered that notice to Rony be published in a newspaper of general circulation in Douglas County, Nebraska, and Spokane County, Washington, and the location of Rony's last known address.

Also on July 21, 2008, the State filed an amended motion to terminate Jessica's and Nicholas' parental rights. With regard to Jessica, the amended motion alleged that all six children were within § 43-292(2), (6), and (7) and that it was in the children's best interests to terminate her parental rights to the children. In support of the allegation pursuant to § 43-292(6), the State alleged that Jessica failed to (1) maintain consistent visits with the children, (2) attend and participate in individual therapy, (3) attend and participate in Parents United, (4) provide proof of consistent employment, (5) progress to family therapy in order to reunify with the children, and

(6) participate in services in order to reunify with the children. The State also alleged that M.R., Al.R., and S.R. were children within § 43-292(2), (6), and (7) with regard to Nicholas and that it was in the children's best interests to terminate his parental rights to the children. To support its allegation pursuant to § 43-292(6), the State alleged that Nicholas failed to complete the sex offender assessment and attend and participate in Parents United.

On August 18, 2008, Jessica contacted the Parents United group coordinator and arranged to begin attending meetings again. Jessica's first session of family therapy with Ay.R. was on September 9, during the hearing on the State's motion to terminate her parental rights.

On September 5, 11, and 12 and October 3, 2008, the juvenile court held hearings for adjudication of the supplemental petition relating to Rony and on the State's motion for termination of Jessica's, Nicholas', and Rony's parental rights.

April Blevins is a therapist who has treated Ay.R. and M.R. since January 2008 and August 2007, respectively. Blevins was referred to work with Ay.R. and M.R. through the RSAFE program. Blevins' therapeutic focus with Ay.R. was to help her deal with the issues she encountered as a victim of intrafamily sexual abuse. Blevins testified that consistent parental contact is extremely important to Ay.R.'s therapeutic progress. Ay.R. worries about her mother's safety and has anxiety when she does not have consistent contact with her mother, which hinders her progress in therapy. Blevins reported that when Ay.R. did not have consistent visits with her mother, Ay.R. was unable to concentrate and focus in therapy and felt anxious and depressed, sometimes spending time alone, crying in her room. Ay.R. was also defiant and noncompliant in her foster home. According to Blevins, Jessica's role in Ay.R.'s progress would ideally include believing Ay.R.'s claim of sexual abuse, being supportive of Ay.R., and participating in the therapy process by attending family therapy. Blevins was not sure whether Jessica believed that Ay.R. was abused. Blevins testified that Jessica had not participated in family therapy until September 9, 2008, during the termination hearing, and opined that Jessica's lack of involvement could be part of the reason that Ay.R. had had some behavioral issues. Blevins opined that it was in Ay.R.'s best interests not to be reunited with her mother, but, rather, to terminate Jessica's parental rights.

Beginning in approximately March 2008, Blevins conducted 8 to 10 telephonic family therapy sessions between Ay.R. and Rony. Rony admitted to Blevins that he had not seen Ay.R. for approximately 8 years, since she was 4 or 5 years old. Rony stated, however, that he had been trying to find Ay.R. during that time and that each time he thought he knew where Ay.R. was, Jessica moved with the children to another city. Rony has continued to pay child support and maintained Ay.R. on his health insurance. He indicated to Blevins that he wanted to see Ay.R. and was willing to come to Omaha to do so. Blevins observed that the family therapy sessions with Rony had a positive effect on Ay.R.--she was in a better mood, had higher self-esteem, and was happy to come to therapy. In August 2008, Blevins called Rony while Ay.R. was present for therapy and Rony did not answer. Blevins left messages for Rony that went unreturned; therefore, the family therapy sessions between Ay.R. and Rony ended. The lack of contact with Rony disappointed Ay.R., and her attitude worsened. Blevins opined that consistent contact with Rony was important to Ay.R.'s progress in therapy. Blevins testified that Ay.R.'s overall prognosis was good and attributed it to Ay.R.'s consistent foster home environment, stating that permanency was critical to Ay.R.'s progress. Blevins opined that it was not in Ay.R.'s best

interests to terminate Rony's parental rights because she did not have enough information to determine whether a continued relationship with Rony would be in Ay.R.'s best interests.

M.R. was referred to Blevins for therapy because she was experiencing guilty feelings and anger issues. Blevins testified that M.R. feels guilty because Ay.R. told M.R. that Ay.R. was being sexually abused and M.R. did not report it. M.R. also felt that she was partially to blame for Ay.R.'s abuse because M.R. is biologically related to Nicholas, who perpetrated the abuse. Blevins testified that Jessica's sporadic visitation also affected M.R.'s therapeutic progress and that as a result, M.R. became worried and anxious and physically displayed angry feelings by slamming doors, hitting, throwing things, and having tantrums. Blevins stated that due to her consistent foster home, M.R. also had a good therapeutic prognosis.

During their therapy sessions with Blevins, Ay.R. and M.R. individually discussed their visits with Jessica. The girls were concerned when Jessica came to visitation with bruises on her face and arms and "hickeys" on her neck because they worried that Jessica was involved in domestic violence. Blevins discussed these concerns and encouraged the girls to focus on themselves and not to worry about what Jessica was doing at home. The girls also expressed concern for Jessica's safety after a man came to visitation with Jessica in the spring of 2008.

Nancy Cyr was Jessica's individual therapist. Cyr testified that she began therapy with Jessica on September 4, 2007. During the time Jessica attended therapy, Jessica made progress. In late February or early March 2008, Jessica wrote a letter to Ay.R., which Cyr testified was passed along to Blevins. Jessica consistently attended individual therapy until March 17, when she failed to attend without notifying Cyr. Jessica contacted Cyr on July 1 to reinstate therapy sessions. Jessica stated that her lapse in attendance was because she had been ill, she had been looking for employment, and she had also spent some time in jail for an old traffic warrant.

Three visitation workers testified about their observations during visitation between Jessica and the children. Jessica was scheduled to have visits with the children approximately twice per week for 2 hours each. Jessica's visits were supervised, family support visits, which means that the visitation workers are "hands-on" during the visits as opposed to simply supervisors. Once family support is achieved, the visits can progress to supervised visits, which is considered an improvement. Jessica's visits did not progress from family support to supervised visits. Between February and May 2008, approximately three to four visits were terminated because Jessica did not arrive within 20 minutes of the time scheduled for the visit. Because of these incidents, Jessica was required to call at least 24 hours prior to a visit to confirm that she was planning to attend. In March and April 2008, Jessica attended approximately 50 percent of her scheduled visits. In May and June 2008, Jessica attended only one of the six scheduled visits over a 3-week period. Jessica called and confirmed that she would attend some of those visits, but still did not show up. In those instances where Jessica had confirmed, the children were taken to the visit and were frustrated that they had been taken away from their activities to attend a visit to which their mother did not attend. The children stated "they knew this was going to happen again."

A visitation worker testified that the children were often unruly and disrespectful to Jessica during visits, Jessica did not discipline the children, and the workers often intervened to do so. One worker testified that Jessica's disciplining skills improved over time, while another

worker testified that they did not. The worker often redirected Jessica as to how to discipline the children, and Jessica did not take redirection well.

Jessica also interacted inappropriately with the children at times. In one instance, Jessica told Ay.R. and M.R. how to go to the school nurse and fake an illness so they could get out of school. On another occasion, Ay.R. told Jessica about some trouble she was having with a teacher, to which Jessica responded by calling the teacher an inappropriate name. Jessica also arrived for a visit once with “hickeys” on her neck and chest area. The visitation worker advised Jessica that it was inappropriate to come to visits with that appearance because the children are impressionable.

One visitation worker stated that Jessica often would not respond to the worker’s direction or suggestions, or would “roll her eyes, walk off or tell me it’s not any of my business.” The worker indicated that it is difficult to aid a parent in the activities necessary to reunify the family if a parent is unwilling to cooperate and learn the things that can help the family move toward reunification. The worker testified that Jessica made some progress during family support visits. For instance, Jessica was sometimes able to provide meals during visits and to give all of the children appropriate attention during visits, whereas in the past she sometimes gave M.R. most of her attention. Jessica and the children were always appropriately affectionate toward one another during visits.

On October 3, 2008, the last day of the termination hearing, the State reoffered exhibit 22 into evidence and it was received.

On October 28, 2008, the juvenile court entered an order which terminated Jessica’s, Nicholas’, and Rony’s parental rights to the children. With regard to Jessica, the juvenile court found that the State proved by clear and convincing evidence that all six children were within § 43-292(2), (6), and (7) and that it was in the children’s best interests to terminate Jessica’s parental rights. With regard to Nicholas, the juvenile court found that the State proved by clear and convincing evidence that M.R., Al.R., and S.R. were within § 43-292(2), (6), and (7) and that it was in the children’s best interests to terminate Nicholas’ parental rights. With regard to Rony, the juvenile court found that (1) notice, service, and jurisdiction was proper; (2) the supplemental petition was true; (3) Ay.R. was within § 43-247(3)(a) with respect to Rony, by a preponderance of the evidence; (4) Ay.R. was within § 43-292(1), (2), and (7) with respect to Rony, by clear and convincing evidence; and (5) it was in Ay.R.’s best interests to terminate Rony’s parental rights.

Jessica timely filed this appeal, and both Rony and Nicholas cross-appealed.

III. ASSIGNMENTS OF ERROR

Jessica asserts that the juvenile court erred when it found that it was in the children’s best interests to terminate her parental rights.

On cross-appeal, Nicholas asserts that the juvenile court erred when it found statutory grounds to terminate his parental rights pursuant to § 43-292(2) and (6) and that it was in the children’s best interests to terminate his parental rights.

Also on cross-appeal, Rony asserts, restated, that (1) the juvenile court lacked jurisdiction to adjudicate Ay.R. because the court did not comply with the UCCJEA; (2) the juvenile court did not have jurisdiction to adjudicate Ay.R. because Rony was not joined in the petition and was

a necessary party; (3) the juvenile court erred when it found statutory grounds pursuant to § 43-292(1), (2), and (7) and that it was in Ay.R.'s best interests to terminate Rony's parental rights; (4) the juvenile court erred when it allowed certain opinion testimony without foundation which conformed to the principles of *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001); and (5) the juvenile court erred when it terminated Rony's parental rights because reasonable efforts to reunify him with his child were required, but not made.

IV. STANDARD OF REVIEW

A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law. *In re Interest of Dakota L. et al.*, 14 Neb. App. 559, 712 N.W.2d 583 (2006).

In an appeal from an order terminating parental rights, an appellate court tries factual questions de novo on the record. Appellate review is independent of the juvenile court's findings. However, when the evidence is in conflict, an appellate court may give weight to the fact that the juvenile court observed the witnesses and accepted one version of facts over another. *In re Interest of Stacey D. & Shannon D.*, 12 Neb. App. 707, 684 N.W.2d 594 (2004).

V. ANALYSIS

1. RONY'S CROSS-APPEAL

Because Rony's cross-appeal asserts a jurisdictional issue which also affects Jessica's appeal, we first address Rony's cross-appeal. While we note that Jessica did not assign this issue as error, the issue of subject matter jurisdiction can be raised by a court sua sponte. See *In re Interest of Dakota L. et al.*, *supra*. As such, our discussion and determination regarding the juvenile court's jurisdiction with regard to Ay.R. applies to both Jessica and Rony.

Rony asserts, restated, that the separate juvenile court erred when it adjudicated Ay.R. because the court did not comply with the UCCJEA, Neb. Rev. Stat. § 43-1226 et seq. (Reissue 2008), and therefore, the juvenile court lacked subject matter jurisdiction to adjudicate Ay.R. Although the jurisdictional issue was not raised during the juvenile court proceedings, as we noted previously, the issue of subject matter jurisdiction can be raised at any time by any party or by a court sua sponte. See, *In re Interest of Dakota L. et al.*, *supra*; *In re Interest of Jaden H.*, 263 Neb. 129, 638 N.W.2d 867 (2002). In a juvenile case, as in any other appeal, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005).

We first determine whether the UCCJEA applies to this proceeding. Although the Nebraska Juvenile Code grants the juvenile courts of Nebraska "exclusive original jurisdiction as to any juvenile defined in [§ 43-247(3), (5), and (6)]," the jurisdictional requirements of the UCCJEA must also be satisfied for a court to have jurisdiction to render a custody order. § 43-247. See, also, *In re Interest of Maxwell T.*, 15 Neb. App. 47, 721 N.W.2d 676 (2006).

Section 43-1238 provides the jurisdictional requirements necessary for a state to make an initial child custody determination, which is defined in § 43-1227(8) as "the first child custody determination concerning a particular child." A "child custody determination" means "a judgment, decree, or other order of a court providing for the legal custody, physical custody, or

visitation with respect to a child” and that the term includes a “permanent, temporary, initial, and modification order.” § 43-1227(3). In the present case, a custody order regarding Ay.R. was entered on November 23, 1998, by a State of Washington court as evidenced by exhibit 22. Exhibit 22 confirms that the Washington court established Rony’s paternity of Ay.R. and ordered that Jessica “be designated as the custodian of the child, and that the child reside with [Jessica] at all times.” That order provides for legal custody and physical custody with respect to Ay.R., and therefore, the State of Washington made a “child custody determination.” On our record, the Washington proceeding was an initial child custody determination under the UCCJEA. See § 43-1227(8).

The UCCJEA provides that “[c]hild custody proceeding” shall mean “a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue” and that the term “includes a proceeding for . . . neglect, abuse, dependency, . . . paternity, [and] termination of parental rights . . . in which the issue may appear.” § 43-1227(4). We previously held that a case brought pursuant to § 43-247(3)(a) is a “child custody proceeding” under the UCCJEA because the decisions made by the juvenile court in the course of these proceedings affect the parent’s legal and physical custody and therefore the UCCJEA is applicable to such proceedings in the juvenile court. See *In re Interest of Maxwell T.*, 15 Neb. App. 47, 57, 721 N.W.2d 676, 686 (2006). See, also, § 43-1227(4). Because the present matter is a “child custody proceeding,” the UCCJEA applies and the Nebraska juvenile court must comply with the UCCJEA, including its jurisdictional limitations and procedural requirements.

We next determine the requirements of the UCCJEA and whether or not the juvenile court complied with those requirements in this case. If another state has made a child custody determination which deprives a Nebraska court of jurisdiction to enter an initial child custody determination, see §§ 43-1238 through 43-1240, the UCCJEA allows a court to exercise temporary emergency jurisdiction in certain circumstances. § 43-1241. Section 43-1241(a) provides:

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling . . . of the child, is subjected to or threatened with mistreatment or abuse.

In the present case, the State filed a petition which alleged that Ay.R. was “living or to be found in Douglas County, Nebraska” and that “[Ay.R.] has been subjected to inappropriate sexual contact by her step-father Nicholas.” Such allegations are within the purview of § 43-1241(a), and therefore temporary emergency jurisdiction was conferred upon the juvenile court in the present case.

However, even if a court has temporary emergency jurisdiction, § 43-1241 further provides:

(c) If there is a previous child custody determination that is entitled to be enforced under the act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 43-1238 to 43-1240, *any order issued by a court of this state under this section shall specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having*

jurisdiction under such sections. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, *upon being informed* that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 43-1238 to 43-1240, *shall immediately communicate with the other court.* A court of this state which is exercising jurisdiction pursuant to such sections, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(Emphasis supplied.)

Exhibit 22, which we determined earlier to be a child custody determination, was filed in the Superior Court of Washington state on November 23, 1998. As we noted previously, the court first received exhibit 22 into evidence at the hearing on July 20, 2007. At that time, the juvenile court was informed of the prior custody determination in Washington and was required to comply with the UCCJEA which mandates the court to “immediately communicate with the other court” pursuant to § 43-1241(d) and “specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under such sections” pursuant to § 43-1241(c). Our record contains no evidence which indicates that the juvenile court complied with § 43-1241(c) and (d) after being informed of the Washington court’s jurisdiction via receipt of exhibit 22. As such, although the juvenile court did have temporary emergency jurisdiction, because the juvenile court has not complied with the UCCJEA, it was without jurisdiction to render a permanent custody order unless the Washington court affirmatively declines jurisdiction or fails to take appropriate action. See *In re Interest of Maxwell T., supra*.

Accordingly, we conclude that while the juvenile court did have temporary emergency jurisdiction over Ay.R., we reverse the juvenile court’s order to terminate Rony’s and Jessica’s parental rights to Ay.R. and remand the cause with directions to comply with the UCCJEA. Because we conclude that the juvenile court did not comply with the UCCJEA and remand the cause for further proceedings, we do not address Rony’s additional assignments of error. An appellate court is not obligated to engage in an analysis which is not necessary to adjudicate the case and controversy before it. *Curtis v. Curtis*, 17 Neb. App. 230, 759 N.W.2d 269 (2008).

2. JESSICA’S APPEAL

Insofar as Jessica was concerned, the juvenile court found, by clear and convincing evidence, that the children were within the meaning of § 43-292(2), (6), and (7) and that it was in their best interests to terminate Jessica’s parental rights. Jessica does not challenge the court’s determination that statutory criteria for termination was satisfied; rather, she asserts that the court erred in finding that it was in the children’s best interests to terminate her parental rights. Because we remand the cause with regard to Ay.R., we address the termination of Jessica’s rights to only N.R., E.R., M.R., Al.R., and S.R.

To terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in § 43-292 exists and that termination is in the child's best interests. § 43-292; *In re Interest of Stacey D. & Shannon D.*, 12 Neb. App. 707, 684 N.W.2d 594 (2004). Clear and convincing evidence means that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved. *Id.*

The children's best interests are a primary consideration in determining whether parental rights should be terminated as authorized by the Nebraska Juvenile Code. *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007). The presumption that the best interests of a child are served by reuniting the child with his or her parent is overcome only when the parent has been proved unfit. *Id.* The law does not require perfection of a parent; rather, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children. *Id.* In a juvenile proceeding to terminate parental rights, evidence adduced to prove termination on any statutory ground other than § 43-292(7) is highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse. *In re Interest of Shelby L.*, 270 Neb. 150, 699 N.W.2d 392 (2005).

In the instant case, there was clear and convincing evidence to support the juvenile court's finding that terminating Jessica's parental rights was in the children's best interests. The State presented evidence that Jessica had substantially and continuously or repeatedly neglected or refused to give the children or a sibling of the children necessary parental care and protection. See § 43-292(2). The children were first brought within the jurisdiction of the juvenile court because Jessica's husband Nicholas sexually abused Ay.R. and Jessica failed to protect her. In fact, when Ay.R. reported the abuse to her mother, Jessica told Ay.R. not to say anything, but, rather, to merely stay away from the men who abused her. There is no evidence in the record to suggest that Jessica has shown that she can now protect her children from abuse; to the contrary, the record suggests that the opposite is true. Jessica appears to have continued to maintain a relationship with a man who domestically abuses her. On at least one occasion, Jessica arrived at visitation with a black eye and stitches to her eye. Additionally, a visitation worker testified that in June 2007, more than a year after the children were removed from the home, Jessica had not shown that she could protect Ay.R. from N.R. when N.R. was verbally and physically aggressive during visits.

In determining what is in the children's best interests, we also consider whether Jessica has made an effort to preserve and reunify the family and correct the conditions leading to the children's adjudication. See, § 43-292(6); *In re Interest of Shelby L.*, *supra*. When a parent is unable or unwilling to rehabilitate herself within a reasonable time, the best interests of the child require termination of parental rights; children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Stacey D. & Shannon D.*, *supra*. At the time of the termination hearing in September 2008, the children had been in DHHS custody for approximately 28 months. During this time, the court allowed Jessica regular visitation with the children, ordered her to attend individual counseling, ordered her to attend the Parents United group, and ordered her to comply with the recommendations of her therapeutic

evaluation, which recommended family counseling. DHHS arranged for these services to rehabilitate Jessica and reunite her with the children; however, Jessica did not successfully complete any of the items that the court ordered. The June 2007 DHHS court report stated that Jessica had been only “minimally compliant” with the court’s orders and that she was “fairly consistent in visitation” and attended family team meetings, but was not fully engaged in therapy. As time progressed, Jessica’s attendance at individual therapy, Parents United, and visitation with her children declined. Jessica completely stopped attending court-ordered therapy by at least March 2008 and resumed therapy in July 2008--only after the State filed its motion to terminate her parental rights. Jessica also stopped attending the Parents United group sometime in late 2007. In the 3 weeks directly prior to the termination hearing, Jessica attended only one of six scheduled visitations with her children.

Additionally, Jessica has demonstrated that she is not willing to put her children’s interests before her own, which further supports the court’s decision that it is in the children’s best interests to terminate her parental rights. Jessica arrived late to visitation with her children on more than one occasion, and as a result, some of those visits were canceled and the children were disappointed. At the time the State filed its motion to terminate Jessica’s parental rights, Jessica did not have independent housing and had only recently become employed. Jessica did not consistently attend individual therapy and did not begin family therapy until the time of the termination proceedings.

In light of this evidence, we conclude that the juvenile court did not err in finding, by clear and convincing evidence, that termination of Jessica’s parental rights was in the children’s best interests.

3. NICHOLAS’ CROSS-APPEAL

The juvenile court found by clear and convincing evidence that M.R., A.I.R., and S.R. were within the meaning of § 43-292(2), (6), and (7) insofar as Nicholas was concerned and that it was in their best interests to terminate Nicholas’ parental rights. Nicholas asserts that the court erred in finding that there was clear and convincing evidence to support the findings that the children were within the meaning of § 43-292(2) and (6) and that it was in their best interests to terminate his parental rights.

(a) Statutory Grounds to Terminate Nicholas’ Parental Rights

The State’s petition to terminate Nicholas’ parental rights alleges that § 43-292(2), (6), and (7) have been met. Nicholas asserts that the juvenile court erred when it found that there was clear and convincing evidence before the court to find that the children were within the meaning of § 43-292(2) and (6). Nicholas does not argue that the court erred with regard to its finding pursuant to § 43-292(7).

As stated previously, pursuant to § 43-292, the court may terminate a parent’s rights to a child when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the statutory conditions exists. Once one ground for termination has been established, an appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. *In re Interest of DeWayne G. & Devon*

G., 263 Neb. 43, 638 N.W.2d 510 (2002). Section 43-292(7) provides that a parent's right to his children may be terminated upon a showing that sufficient evidence exists that the juvenile has been in an out-of-home placement for 15 or more months of the most recent 22 months. § 43-292(7). Section 43-292(7) operates mechanically and, unlike the other subsections of the section, does not require the State to adduce evidence of any specific fault on the part of a parent. *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

The record supports that the requirements of § 43-292(7) have been satisfied in the instant case, and in fact, Nicholas does not challenge the juvenile court's finding in this regard. M.R., Al.R., and S.R. have been placed outside the home from March 2006 through the time of the hearing in September and October 2008, which is at least 28 continuous months. As such, the juvenile court did not err in finding, by clear and convincing evidence, that M.R., Al.R., and S.R. had been in out-of-home placement for at least 15 of the most recent 22 months. Since one statutory ground for termination has been satisfied, we need not address Nicholas' argument that the court erred in finding statutory grounds for termination pursuant to § 43-292(2) and (6). An appellate court is not obligated to engage in an analysis which is not necessary to adjudicate the case and controversy before it. *Curtis v. Curtis*, *supra*.

(b) Best Interests Determination

In a juvenile proceeding to terminate parental rights, evidence adduced to prove termination on any statutory ground other than § 43-292(7) is highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse. *In re Interest of Shelby L.*, 270 Neb. 150, 699 N.W.2d 392 (2005). Therefore, in the present case, the evidence presented in support of § 43-292(2) and (6) is also highly relevant to our determination of the children's best interests.

As we noted in our discussion regarding Jessica, a parent's rights to his or her child can be terminated upon a showing that following a determination that a juvenile is one as described in § 43-247(3)(a), reasonable efforts to preserve and reunify the family, under the direction of the court, have failed to correct the conditions leading to the determination. § 43-292(6). 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 parental rights; children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Stacey D. & Shannon D.*, *supra*.

The record provides almost no evidence that Nicholas has made any effort to rehabilitate himself in order to correct the circumstances that brought his children within the juvenile court's jurisdiction. Nicholas has not completed any of the court's orders. As noted above, the children were removed from Nicholas and Jessica's home in March 2006. On November 28, 2006, the juvenile court ordered Nicholas to complete a sex offender risk assessment. On June 19, 2007, the court ordered Nicholas to attend the Parents United Perpetrator's Group on a regular basis and again ordered him to complete the sex offender risk assessment within 30 days or show cause why he should not be held in contempt of court. The caseworker testified that in March or April 2007, she sent a referral for both the sex offender risk assessment and the Parents United program and that both referrals were good for 6 months. In approximately July 2007, Nicholas was incarcerated after being sentenced to 4 to 5 years in the Nebraska State Penitentiary. At that

time, Nicholas had attended only two of the eight sessions required to complete the court-ordered sex offender risk assessment. There is no evidence that Nicholas ever attended the Parents United group. Although Nicholas was incarcerated, he had between November 2006 and July 2007 to comply with the orders and chose not to comply. He also gave no reason for his noncompliance, despite the court's order to show cause.

We also note that Nicholas has been incarcerated since July 2007 and has not been in a position to provide care and support to his children. Although parental rights may not be terminated solely for a parent's incarceration, parental incarceration and the parent's consequent unavailability are factors which may be considered in determining whether parental rights should be terminated. *In re Interest of Tabatha R.*, 255 Neb. 818, 587 N.W.2d 109 (1998); *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992). We also consider the circumstances which apparently led to Nicholas' incarceration, which were that he sexually assaulted a half sibling of his children. See *In re Interest of Kalie W.*, 258 Neb. 46, 601 N.W.2d 753 (1999) (in termination of parental rights cases, it is proper to consider parent's inability to perform his parental obligations because of imprisonment, nature of crime committed, as well as person against whom criminal act was perpetrated).

Upon our de novo review, we conclude that the juvenile court did not err when it found, by clear and convincing evidence, that the statutory grounds had been met and that it was in M.R.'s, Al.R.'s, and S.R.'s best interests to terminate Nicholas' parental rights.

VI. CONCLUSION

For the foregoing reasons we conclude that the juvenile court did not err when it terminated Jessica's parental rights to N.R., E.R., M.R., Al.R., and S.R. and Nicholas' parental rights to M.R., Al.R., and S.R., and we affirm the juvenile court's order in that regard. However, we conclude that while the juvenile court had temporary emergency jurisdiction with regard to Ay.R., the juvenile court erred when it terminated Rony's and Jessica's parental rights to Ay.R. without satisfying the requirements of the UCCJEA. Therefore we reverse the juvenile court's order terminating Rony's and Jessica's parental rights to Ay.R. and remand the cause for further proceedings which comply with the UCCJEA.

AFFIRMED IN PART, AND IN PART REVERSED AND
REMANDED FOR FURTHER PROCEEDINGS.