

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF NYLANG M. ET AL.

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 NYLANG M. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

PAUL B., APPELLANT, AND NYALAUK K., APPELLEE AND CROSS-APPELLANT.

Filed November 10, 2009. No. A-09-505.

Appeal from the Separate Juvenile Court of Douglas County: WADIE THOMAS, Judge.
Affirmed.

Mariette C. Achigbu for appellant.

Michael Matthews for appellee Nyalauk K.

Donald W. Kleine, Douglas County Attorney, and Lindsey Grove for appellee State of
Nebraska.

SIEVERS and CASSEL, Judges, and HANNON, Judge, Retired.

HANNON, Judge, Retired.

INTRODUCTION

Paul B. appeals and Nyalauk K. cross-appeals from an order of the separate juvenile court of Douglas County, terminating their parental rights to seven children. Paul is the father of four of the children, and Nyalauk is the mother of all seven. Both parents argue that the juvenile court erred in terminating their parental rights and in finding that the termination of their rights is in their children's best interests. For the reasons set forth below, we affirm.

BACKGROUND

On January 13, 2006, the State filed a petition to adjudicate Yiech Y., born in October 1994; Gach Y., born in June 1996; Nyakueth Y., born in August 1997; Bijany M., born in

February 1999; Nylang M., born in December 2000; Kang B., born in June 2002; and Nyaleak B., born in September 2004, due to the faults or habits of their mother, Nyalauk, under Neb. Rev. Stat. § 43-247(3) (Reissue 2004). The State alleged that Nyalauk left Nyang and Kang alone with no adult supervision, that she was incarcerated and unable to provide proper care and support for the children, and that the children were at risk for harm.

On the same date, the State filed a motion for temporary custody and the court issued an order removing the children from Nyalauk's home. After a hearing, the court adjudicated all seven children under § 43-247(3)(a) (Cum. Supp. 2006) in respect to Nyalauk.

On May 22, 2007, Paul filed a complaint to intervene and the trial court granted Paul's request. On August 8, the State filed a supplemental petition to adjudicate the children under § 43-247(3)(a) as lacking proper parental care by reason of the faults or habits of their fathers. The petition alleged that Paul had not had contact with his children since February 16, 2007. Paul is the father of Bijany, Nylang, Kang, and Nyaleak. The record shows that Peter Y. is the father of Yiech, Gach, and Nyakueth, and Peter is not involved in this appeal. On March 27, 2008, the juvenile court adjudicated the children in regard to Paul under § 43-247(3)(a) after a hearing.

On May 15, 2008, the State filed a petition to terminate Nyalauk's and Paul's parental rights to the children and stated that termination of the parents' rights is in the children's best interests. The State sought to terminate Nyalauk's rights under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2008) and Paul's rights under § 43-292(1), (2), and (7).

A hearing was held on November 13 and 14, 2008. April Carlson, a children and family services specialist with the Department of Health and Human Services (Department), testified that she became the children's caseworker in February 2006 and that she continued to be the children's caseworker at the time of trial. Carlson testified that the children were placed in protective custody after two of the children were left home alone. Carlson testified that all of the children were in foster care and that none of the children had been returned home since they entered foster care in January 2006.

The record shows that the Department set up a plan for the parents and required the parents to do the following: maintain safe and adequate housing and a legal source of income, remain cooperative with all case professionals, participate in all services as arranged by the Department, continue to participate in therapeutic services as recommended to include family therapy with Nyalauk, and participate in therapeutic visitation. Furthermore, Paul was required to complete an anger management class and undergo a psychological evaluation. The record also shows that the six oldest children became involved in individual therapy through the Department.

Carlson stated that the parents' visitation with the children was inconsistent from the beginning. Nyalauk started visitations with the children soon after their removal in January 2006. Paul did not immediately begin visitation because he was living out of state. When Paul returned to Nebraska in March 2006, he began visitations with the children. In April 2006, Nyalauk and Paul requested that their visits with the children stop because they had a very difficult time saying goodbye to the children after visits.

Carlson stated that visits resumed in June 2006, at the parents' request. Carlson stated that she observed three of the parties' visits with the children prior to July 2006 and was concerned about the meals the children were given and the violent and inappropriate television shows the parents allowed the children to watch. Carlson stated that she was also concerned that

the parents did not interact with the children during visits. Carlson stated that she expressed her concerns to both Nyalauk and Paul. Carlson stated that Nyalauk brushed aside her concerns and that Paul became defensive and stated it was not in his culture to interact with his children. The record shows that both Nyalauk and Paul are Sudanese. Carlson testified that Nyalauk completed a parenting class but Paul did not. Carlson testified that in July 2005, the agency assisting the Department with visitation determined that it was no longer able to provide visitation services because both parents had threatened the agency's visitation workers. Carlson stated that the Department then found another agency to facilitate visitations between the children and their parents.

Carlson stated that in the fall of 2006, she was present at a visit between the parents and the children because the parents were refusing to speak English during the visits. The record shows that all of the children speak English and that only the oldest two or three children understand when the parents speak Nuer, their native language. Carlson stated that she offered a translator for the visits but both parents stated that they did not require a translator. Carlson stated that she continued to offer both parents the services of a translator but both refused. Carlson testified that at one point, Nyalauk stated that if a translator came to her home, she would kill him or her.

Carlson testified that at another visitation in the fall of 2006, Nyalauk became very angry with Nyakueth and attacked her with a toy cassette player, hitting her on the forehead and shoulder. Carlson stated that she and the visitation worker attempted to remove the children from the home and that both parents locked the door and blocked it so that they could not leave. Carlson stated that she then called the police for the children's safety.

Carlson testified that after September 2006, both parents still visited the children, but the parents' attendance at visitation was very inconsistent because the parents would often cancel visits. Carlson stated that by December 2006, the parents were visiting with the children once a week. Carlson stated that during a visitation in February 2007, Nyalauk was giving Kang a bath and poured very hot bathwater on Kang, causing Kang to scream out in pain. Carlson stated that Nyalauk refused to stop pouring the hot water over Kang even after the family support worker told her to stop.

Carlson stated that visits between the parents and children were suspended at a hearing on February 16, 2007. The record shows that in April, Nyalauk and Paul moved to Seattle. Subsequently, Carlson set up telephone visitations for both Nyalauk and Paul. Carlson stated that neither Nyalauk nor Kang participated in the telephone visitations because they had no interest in speaking with their parents.

Carlson testified that Nyalauk visited the children twice in August 2007 and that Paul was not present. Carlson stated that she was concerned about these visits because Nyalauk was not interacting with the children and because Nyalauk refused to intervene when one of the children began hitting the visitation workers. Carlson testified that by the end of 2007, she was concerned that the parents were not consistently making themselves available for telephone visitations and because the parents continued to speak to the children in Nuer and refused the services of a translator.

Carlson testified that in May 2008, both Nyalauk and Paul stated that they no longer wanted to visit with the children on the telephone and that they were no longer going to

participate in services offered by the Department. Carlson stated that between January and June 2008, Nyalauk saw the children once in person, on March 11, and Paul saw the children once, on February 29.

Carlson testified that she attended Paul's visitation on February 29, 2008, and was concerned because Nyaleak did not recognize her father and did not want to interact with him. Carlson testified that all of the children were very hesitant to go to Paul or talk to him. Carlson stated that the Department provided Paul with a translator for this visitation and that Paul utilized the translator. Carlson stated that Paul would not speak with her at the visit and told her that he was not going to cooperate with her. Carlson stated that after the parents moved to Seattle, she offered to assist the parents with transportation on several occasions. Carlson stated that neither parent has had any contact with the children since June 2008.

Carlson stated that in her opinion, termination of Nyalauk's and Paul's rights is in the best interests of their children. Carlson stated that Nyalauk has been unable to show that she can parent children because she refuses to see the children and refuses to cooperate with the services the Department has provided. Carlson stated that Paul has also been unable to show he can parent the children and that Paul has abandoned the children by refusing to visit them. Carlson also stated that Paul has refused to cooperate with the services provided by the Department.

The first witness to testify for the State was Dr. Joseph Stankus, a clinical psychologist. Stankus testified that he conducted psychological evaluations on the four oldest children. Stankus interviewed each child and performed psychological testing. Stankus testified that he relied on the information obtained from the foster parent, the collateral information from the case manager, and the test results in formulating a treatment plan and diagnosis for each of the children. Stankus testified that the purpose of the evaluations was to get an idea of any psychological problems the children had and what the best treatment plan would be.

Stankus stated that Nyakueth suffered from behavioral problems, including the need for a lot of attention, resentment of authority, and not taking responsibility for her actions. Stankus testified that during his evaluations, Nyakueth told him that her mother had a temper control problem and that her mother had beaten her and left bruises on her body several times. Stankus also diagnosed Nyakueth as being a victim of physical abuse and neglect and required that Nyakueth's therapist rule out sexual abuse. Stankus recommended that Nyakueth not return to the parents' home because it seemed like a case of abandonment.

Stankus also conducted a psychological evaluation on Bijany. Stankus testified that Bijany was very passive-aggressive, had problems with bed-wetting, is prone to lying and stealing, experiences difficulty with her speech; and eats large amounts of food, much more than a typical child. Bijany was also not taking care of herself properly in terms of personal hygiene and was not using proper toilet procedures. Stankus testified that Bijany was also the victim of sexual molestation by two of her brothers, Yiech and Gach.

Bijany told Stankus that Nyalauk and Paul had moved to Seattle and that she had not seen them since they left. When asked about discipline, Bijany stated that her mother would spank her and that the spankings would leave bruises. As a result of being neglected and sexually and physically abused in the past, Stankus diagnosed Bijany as a victim of child neglect, sexual abuse, and child abuse. Finally, because of ongoing problems with Nyalauk and Paul, Stankus diagnosed Bijany with parent-child relational problem. Stankus testified that as a result of her

adjustment disorder, Bijany would often shut down when she got upset rather than engage with the adult. Stankus recommended that Bijany stay in foster care because she had made good adjustments with her foster parents.

Stankus also conducted a psychological evaluation of Gach. When asked about his mother, Gach stated that he was upset with her a great deal and stated that he did not like being in foster care. Gach also indicated that when he disobeyed, his mother would spank him. Regarding visitations, Gach stated that he had not seen his mother since she departed to Seattle. Based on testing, interviews, and collateral information, Stankus diagnosed Gach as a victim of physical abuse and neglect. Stankus recommended that Gach stay in foster care because of the progress he made there.

Stankus conducted a psychological evaluation on Yiech. When asked about his mother, Yiech stated that he had not seen her since she moved to Seattle. When discussing discipline, Yiech stated that if he disobeyed, his mother would "whoop him with a belt." As a result of interviewing Yiech, his therapist, and the standardized testing, Stankus diagnosed Yiech with adjustment disorder, child neglect, and possible physical abuse. Stankus recommended that Yiech remain in foster care.

Staci Leach, a therapist, testified that she began working with all the children and Nyalauk in October 2006, as a family support worker. Leach testified that she held family support sessions in the parents' home. Leach testified that Paul was present and invited to participate when working on parenting goals, but that he would rarely participate. Leach testified that she had in-person contact with the parents until they moved away at the beginning of 2007. During the time that Leach was the family support worker, the goals for the family included parenting skills, finding appropriate caregivers for the children, and appropriate discipline. Leach testified that these goals were never completed because the parents continuously canceled the sessions or said that they did not want to visit the children on a particular day. From October 2006 until early 2007, Leach testified that she had approximately 10 sessions with the family and that they failed to accomplish any of the goals set out in the plan.

Leach testified that after Nyalauk and Paul moved to Seattle, she continued to provide sessions to allow the siblings to see each other. Leach testified that she was also present during the telephone calls to the parents, both when she was the family support worker and then also as the therapist for one of the children. Leach testified that it was the children, not the parents, who initiated the telephone contact. Leach stated that part of the arrangement was that the parents had to speak in English, but occasionally they would slip into their native language.

Leach testified that Paul would get angry that the children could not speak his language. Leach testified that the parents were offered translating services numerous times and refused. Leach testified that the telephone calls were terminated multiple times when the parents would begin talking about the court case or adult matters, which they were advised not to do on several occasions.

Once Leach became a provisional therapist, she continued to supervise the telephone calls between the parents and minor children. Leach testified that since April 2007, only five to eight telephone calls took place between the parents and the children, and that the telephone calls stopped altogether in May 2008. Leach testified that since May 2008, the parents had not contacted her for telephone visitations with the children.

Leach also testified that she had been Nylang's therapist since April 2008. Leach testified that when she began therapy with Nylang, Nylang was experiencing nightmares and anxiety. Leach stated that she has also been working with Nylang to increase her self-esteem. Leach stated that Nylang is no longer suffering from nightmares and anxiety and that Nylang is about to be discharged from therapy. Leach testified that Nyalauk's rights should be terminated because Nylang's relationship with her mother is hurting Nylang's self-esteem. Leach also stated that Paul's rights should be terminated because Paul has not made any effort to reach out to Nylang or get to know her.

Andrea Young, a mental health therapist, testified that she had been Kang's counselor since May 2007. Young testified that she had diagnosed Kang with posttraumatic stress disorder. Young stated that Kang has symptoms of extreme fear and anxiety when something triggers a memory of his past. Young stated that Kang's stress relates to his relationship with his mother. Young testified that Kang told her that he had been abused in the past by his mother and that Kang copes by pretending his past does not exist. Young stated that for several years Kang insisted that he was born at age 3 and did not exist at ages 1 and 2. The record shows that Kang was removed from his mother's home at age 3.

Young stated that Kang chose to discontinue telephone visitations with his mother and that when his mother would call, he would go into the corner and play by himself while his siblings talked to their mother. Young testified that after Kang would talk to his mother on the telephone, he would start having nightmares and would experience behavior problems in school on the day of the visit and the next day. Young stated that Kang does not want a relationship with his mother.

Young testified that Kang brings up his father once in a while and that he told her that although Paul did not abuse him, his father refused to intervene when his mother was abusive. Young testified that Kang has a few memories of Paul doing fun things with him.

Young testified that Kang was not currently having contact with either parent. Young testified that it is in Kang's best interests that his mother's rights to Kang be terminated because Kang regresses and has a lot of issues whenever he hears his mother's voice. Young stated that if Kang's mother's rights were not terminated, Kang would not thrive or do as well mentally. Young also stated that Kang's mother had shown a lack of interest in resuming a relationship with Kang. Young also testified that it would be in Kang's best interests to terminate Paul's parental rights due to Kang's lack of bonding with Paul. Young testified that Kang has a few good memories of his father but nothing that would constitute an appropriate father-son relationship. Young also based her opinion on Paul's lack of interest in really fighting for or trying to maintain a relationship with Kang.

Julie Allen, a licensed mental health professional, testified that she had been Yiech's and Gach's therapist for a little over a year. Allen testified that Yiech was disappointed with both his parents because they would promise to visit or call and would not follow through. Allen stated that when she began seeing Yiech, he was experiencing adjustment disorder as a result of being removed from his mother's home and placed in foster care. Allen testified that Yiech was currently doing well in his foster home.

Allen testified that Gach was also experiencing adjustment disorder in addition to some depression. Allen testified that Gach told her that he was depressed, frustrated, and hurt because

he expected to have communication with his mother and that did not happen. Allen testified that it is in Yiech's and Gach's best interests that Nyalauk's parental rights be terminated. Allen based her opinion on the inconsistency of Nyalauk's contact with the boys and the negative effect Nyalauk's inconsistency has on both boys. On cross-examination, Allen stated that she did not understand what termination of parental rights means, but on redirect, Allen stated that the termination of a parent's rights is a legal forfeiture of a parent's rights between the time of termination and the age of majority.

Joe Ezui, a mental health therapist, testified that he had been the therapist for Nyakueth and Bijany since July 2006. Ezui testified that Nyakueth and Bijany are both upset with their mother because she moved to Seattle and because she no longer calls them on the telephone. Ezui testified that both girls refuse to talk about their mother during counseling. Ezui stated that neither girl is bonded with her mother and that it is in the girls' best interests to terminate their mother's rights. Ezui testified that Nyalauk had been offered several chances to get her children back. Ezui stated that it is in Bijany's best interests to terminate Paul's rights because Paul had not made an effort to see Bijany or have a relationship with her.

In orders filed April 20, 2009, the trial court terminated Nyalauk's parental rights to her seven children under § 43-292(2), (6), and (7) and Paul's rights to his four children under § 43-292(1), (2), and (7). The trial court found that the termination of Nyalauk's and Paul's parental rights is in the children's best interests. Paul appeals, and Nyalauk cross-appeals.

ASSIGNMENTS OF ERROR

On appeal, Paul argues that the juvenile court erred in (1) failing to hold a detention hearing following its ex parte order for immediate custody on August 8, 2007; (2) finding that his parental rights should be terminated under § 43-292(1), (2), and (7); (3) finding that reasonable efforts under Neb. Rev. Stat. § 43-283.01 (Reissue 2008) are not required; and (4) finding that it is in the best interests of his children that his parental rights be terminated.

In her cross-appeal, Nyalauk argues that the trial court erred in finding that her parental rights should be terminated under § 43-292(2), (6), and (7) and that termination of her parental rights is in the children's best interests.

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 Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). When the evidence is in conflict, however, an appellate court may give weight to the fact that the juvenile court observed the witnesses and accepted one version of the facts over the other. *Id.*

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. The State must prove these facts by clear and convincing evidence. *In re Interest of Jagger L.*, *supra*. Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of the fact to be proved. *Id.*

ANALYSIS

Termination of Parental Rights.

Both Nyalauk and Paul argue that the trial court erred in terminating their parental rights. In this case, the State alleged that termination of Nyalauk's parental rights was warranted pursuant to § 43-292(2), (6), and (7) and Paul's under § 43-292(1), (2), and (7). After the hearing on the State's motions, the juvenile court found that the State had proved by clear and convincing evidence that the parents' rights should be terminated under the sections alleged.

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 clearly and convincingly establishes that both Nyalauk and Paul neglected the children under § 43-292(2). Therefore, we do not address whether the trial court erred in terminating the parents' rights on other grounds.

Carlson stated that the parents' visitation with the children was inconsistent from the beginning. Nyalauk started visitations with the children soon after their removal in January 2006. Paul did not immediately begin visitation because he was living out of state. When Paul returned to Nebraska in March 2006, he began visitations with the children. In April 2006, Nyalauk and Paul requested that their visits with the children stop because they had a very difficult time saying goodbye to the children after visits.

Carlson stated that visits resumed in June 2006, at the parents' request. Carlson stated that she observed three of the parties' visits with the children prior to July 2006 and was concerned about the meals the children were given and the violent and inappropriate television shows the parents allowed the children to watch. Carlson stated that she was also concerned that the parents did not interact with the children during visits. Carlson stated that she expressed her concerns to both Nyalauk and Paul. Carlson stated that Nyalauk brushed aside her concerns while Paul became defensive and stated that it was not in his culture to interact with his children. The record shows that both Nyalauk and Paul are Sudanese.

Carlson testified that in July 2005, the agency assisting the Department with visitation determined that they were no longer able to provide visitation services because both parents had threatened the agency's visitation workers. Carlson stated that the Department then found another agency to facilitate visitations between the children and their parents.

Carlson stated that in the fall of 2006, she was present at a visit between the parents and the children because the parents were refusing to speak English during the visits. The record shows that all of the children speak English and that only the oldest two or three children understand when the parents speak their native language. Carlson stated that she offered a translator for the visits but both parents stated that they did not require a translator. Carlson stated that she continued to offer both parents the services of a translator but both refused. Carlson testified that at one point, Nyalauk stated that if a translator came to her home, she would kill him or her.

Carlson testified that at another visitation in the fall of 2006, Nyalauk became very angry with Nyakueth and attacked her with a toy cassette player, hitting her on the forehead and shoulder. Carlson stated that she and the visitation worker attempted to remove the children from the home and that both parents locked the door and blocked it so that they could not leave. Carlson stated that she then called the police for the children's safety.

Carlson testified that after September 2006, both parents still visited the children but the parents' attendance at visitation was very inconsistent because the parents would often cancel visits. Carlson stated that by December 2006, the parents were visiting with the children once a week. Carlson stated that during a visitation in February 2007, Nyalauk was giving Kang a bath and poured very hot bathwater on Kang, causing Kang to scream out in pain. Carlson stated that Nyalauk refused to stop pouring the hot water over Kang even after the family support worker told her to stop.

Carlson stated that visits between the parents and children were suspended at a hearing on February 16, 2007. The record shows that in April, Nyalauk and Paul moved to Seattle. Subsequently, Carlson set up telephone visitations for both parents. Carlson stated that neither Nyalauk nor Kang participated in the telephone visitations because they had no interest in speaking with their parents.

Carlson testified that Nyalauk visited the children twice in August 2007 and that Paul was not present. Carlson stated that she was concerned about these visits because Nyalauk was not interacting with the children and because Nyalauk refused to intervene when one of the children began hitting the visitation workers. Carlson testified that by the end of 2007, she was concerned that the parents were not consistently making themselves available for telephone visitations and because the parents continued to speak to the children in their native language and refused the services of a translator.

Carlson testified that in May 2008, both Nyalauk and Paul stated that they no longer wanted to visit with the children on the telephone and that they were no longer going to participate in services offered by the Department. Carlson stated that between January and June 2008, Nyalauk saw the children once in person, on March 11, and Paul saw the children once, on February 29.

Carlson testified that she attended Paul's visitation on February 29, 2008, and was concerned because Nyalauk did not recognize her father and did not want to interact with him. Carlson testified that all of the children were very hesitant to go to Paul or talk to him. Carlson stated that the Department provided Paul with a translator for this visitation and that Paul utilized the translator. Carlson stated that Paul would not speak with her at the visit and told her that he was not going to cooperate with her. Carlson stated that after the parents moved to Seattle, she offered to assist the parents with transportation on several occasions. Carlson stated that neither parent has had any contact with the children since June 2008.

Leach testified that beginning in October 2006, she held family support sessions in the parents' home. Leach testified that Paul was present and invited to participate when working on parenting goals, but that he would rarely participate. Leach testified that she had in-person contact with the parents until they moved away at the beginning of 2007. During the time that Leach was the family support worker, the goals for the family included parenting skills, finding appropriate caregivers for the children, and appropriate discipline. Leach testified that these

goals were never completed because the parents continuously canceled the sessions or said that they did not want to visit the children on a particular day. From October 2006 until early 2007, Leach testified that she had approximately 10 sessions with the family and that they failed to accomplish any of the goals set out in the plan.

Leach testified that it was the children, not the parents, who initiated the telephone contact. Leach stated that part of the arrangement was that the parents had to speak in English, but occasionally they would slip into their native language. Leach testified that Paul would get angry that the children could not speak his language. Leach testified that the parents were offered translating services numerous times and refused. Leach testified that the telephone calls were terminated multiple times when the parents would begin talking about the court case or adult matters, which they were advised not to do on several occasions.

Leach testified that since April 2007, only five to eight telephone calls took place between the parents and the children and that the telephone calls stopped altogether in May 2008. Leach testified that since May 2008, the parents had not contacted her for telephone visitations with the children.

The psychologist who examined the four oldest children, and all of the children's therapists, provided further evidence of both parents' neglect of the children. Stankus stated that Nyakueth suffered from behavioral problems, including the need for a lot of attention, resentment of authority, and not taking responsibility for her actions. Stankus testified that during his evaluations, Nyakueth told him that her mother had a temper control problem and that her mother had beaten her and left bruises on her body several times. Stankus diagnosed Nyakueth as being a victim of physical abuse and neglect and required that Nyakueth's therapist rule out sexual abuse. Stankus recommended that Nyakueth not return to the parents' home because it seemed like a case of abandonment.

Stankus testified that Bijany was very passive-aggressive, had problems with bed-wetting, is prone to lying and stealing, experiences difficulty with her speech, and eats large amounts of food, much more than a typical child. Bijany was also not taking care of herself properly in terms of personal hygiene and was not using proper toilet procedures. Stankus testified that Bijany was also the victim of sexual molestation by two of her brothers, Yiech and Gach.

When asked about discipline, Bijany stated that her mother would spank her and that the spankings would leave bruises. As a result of being neglected and sexually and physically abused in the past, Stankus diagnosed Bijany as a victim of child neglect, sexual abuse, and child abuse. Finally, because of ongoing problems with Nyalauk and Paul, Stankus diagnosed Bijany with parent-child relational problem. Stankus testified that as a result of her adjustment disorder, Bijany would often shut down when she got upset rather than engage with the adult. Stankus recommended that Bijany stay in foster care because she had made good adjustments with her foster parents.

When Stankus asked Gach about his mother, Gach stated that he was upset with her a great deal and stated that he did not like being in foster care. Gach also indicated that when he disobeyed, his mother would spank him. Regarding visitations, Gach stated that he had not seen his mother since she departed to Seattle. Based on testing, interviews, and collateral information,

Stankus diagnosed Gach as a victim of physical abuse and neglect. Stankus recommended that Gach stay in foster care because of the progress he made there.

When asked about his mother, Yiech stated that he had not seen her since she moved to Seattle. When discussing discipline, Yiech stated that if he disobeyed, his mother would “whoop him with a belt.” As a result of interviewing Yiech, his therapist, and the standardized testing, Stankus diagnosed Yiech with adjustment disorder, child neglect, and possible physical abuse. Stankus recommended that Yiech remain in foster care.

Leach testified that when she began therapy with Nylang, Nylang was experiencing nightmares and anxiety. Leach stated that she has also been working with Nylang to increase her self-esteem. Leach stated that Nylang is no longer suffering from nightmares and anxiety and that Nylang is about to be discharged from therapy.

Young testified that she had been Kang’s counselor since May 2007. Young testified that she had diagnosed Kang with posttraumatic stress disorder. Young stated that Kang has symptoms of extreme fear and anxiety when something triggers a memory of his past. Young stated that Kang’s stress relates to his relationship with his mother. Young testified that Kang told her that he had been abused in the past by his mother and that Kang copes by pretending his past does not exist. Young stated that for several years Kang insisted that he was born at age 3 and did not exist at ages 1 and 2. The record shows that Kang was removed from his mother’s home at age 3.

Young stated that Kang chose to discontinue telephone visitations with his mother and that when his mother would call, he would go into the corner and play by himself while his siblings talked to their mother. Young testified that after Kang would talk to his mother on the telephone, he would start having nightmares and would experience behavior problems in school on the day of the visit and the next day. Young stated that Kang does not want a relationship with his mother.

Young testified that Kang brings up his father once in a while and told her that although Paul did not abuse him, his father refused to intervene when his mother was abusive. Young testified that Kang has a few memories of Paul doing fun things with him. Young testified that Kang was not currently having contact with either parent.

Allen testified that Yiech was disappointed with both his parents because they would promise to visit or call and would not follow through. Allen stated that when she began seeing Yiech, he was experiencing adjustment disorder as a result of being removed from his mother’s home and placed in foster care. Allen testified that Yiech was currently doing well in his foster home.

Allen testified that Gach was also experiencing adjustment disorder in addition to some depression. Allen testified that Gach told her that he was depressed, frustrated, and hurt because he expected to have communication with his mother and that did not happen.

Ezui testified that Nyakueth and Bijany are both upset with their mother because she moved to Seattle and because she no longer calls them on the telephone. Ezui testified that both girls refuse to talk about their mother during counseling.

On this record, the evidence overwhelming establishes that both Nyalauk and Paul have substantially and continuously or repeatedly neglected and refused to give their children necessary parental care and protection. Because the evidence clearly and convincingly

establishes that both Nyalauk and Paul neglected the children, we conclude that the trial court did not err in terminating both parents' rights under § 43-292(2).

Best Interests.

Nyalauk and Paul also argue that the court erred in finding that termination of their parental right is in their children's best interests. Carlson stated that in her opinion, termination of Nyalauk's and Paul's rights is in the best interests of their children. Carlson stated that Nyalauk has been unable to show that she can parent the children because she refuses to see the children and refuses to cooperate with the services the Department has provided. Carlson stated that Paul has also been unable to show he can parent the children and that Paul has abandoned the children by refusing to visit them. Carlson also stated that Paul has refused to cooperate with the services provided by the Department.

Young testified that it is in Kang's best interests that his mother's rights be terminated because Kang regresses and has multiple issues whenever he hears his mother's voice. Young stated that if Kang's mother's rights were not terminated, Kang would not thrive or do as well mentally. Young also stated that Kang's mother had shown a lack of interest in resuming a relationship with Kang.

Young also testified that it would be in Kang's best interests to terminate Paul's parental rights due to Kang's lack of bonding with Paul. Young testified that Kang has a few good memories of his father but nothing that would constitute an appropriate father-son relationship. Young also based her opinion on Paul's lack of interest in really fighting for or trying to maintain a relationship with Kang.

Leach testified that Nyalauk's rights to Nylang should be terminated because Nylang's relationship with her mother is hurting Nylang's self-esteem. Leach also stated that Paul's rights should be terminated because Paul has not made any effort to reach out to Nylang or get to know her.

Ezui stated that neither Nyakueth nor Bijany is bonded with her mother and that it is in the girls' best interests to terminate their mother's rights. Ezui testified that Nyalauk had been offered several chances to get her children back. Ezui stated that it is in Bijany's best interests to terminate Paul's rights because Paul had not made an effort to see Bijany or have a relationship with her.

Allen testified that it is in Yiech's and Gach's best interests that Nyalauk's parental rights be terminated. Allen based her opinion on the inconsistency of Nyalauk's contact with the boys and the negative effect Nyalauk's inconsistency has on both boys.

Nebraska jurisprudence holds, generally, that it is in the 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). The children were removed from Nyalauk's home in January 2006 and have not been returned to Nyalauk and Paul's home since. The children deserve stability and should not have to be suspended in foster care any longer. We conclude that the evidence before us clearly and

convincingly establishes that termination of both Nyalauk's and Paul's parental rights is in the children's best interests.

Paul's Due Process Rights.

Paul argues that the court erred in failing to hold a detention hearing following the court's order filed August 8, 2007, which granted the State's motion for temporary custody of the children, placement to exclude the home of Paul. The State filed its motion pending a hearing on its motion to adjudicate the children as lacking proper parental care by Paul under § 43-247(3)(a).

Neb. Rev. Stat. § 43-248(3) (Reissue 2008) allows the State to take temporary custody of a juvenile without a warrant or order of the court when a juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection. Neb. Rev. Stat. § 43-284 (Reissue 2008) states that a court may continue to detention or placement "upon a written determination that continuation in the home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01."

In the instant case, the State's motion for temporary custody was granted on August 8, 2007. The juvenile court then set a detention hearing for August 10. Paul failed to appear at the detention hearing. The State alleges that it attempted multiple times to serve process on Paul but that these attempts were unsuccessful because Nyalauk and Paul moved out of state. Prior to this time, the court placed the children in the custody of the Department pursuant to a court order dated January 9, 2006. This order removed the children from Nyalauk's home. Although Paul was not residing with Nyalauk in January 2006 because he was working out of state, Paul returned to Nebraska in March 2006 and began residing with Nyalauk.

Paul relies on *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232, 674 N.W.2d 442 (2004). In that termination case, the Supreme Court found that the mother's due process rights were violated because the mother was never notified of the nature of the action taken against her. In the instant case, reasonable efforts to preserve and reunify Nyalauk and Paul with their children had been ongoing since January 2006. The record shows that Paul was well aware of the proceedings. Although given notice of the detention hearing, Paul failed to appear. Additionally, because Paul was residing with Nyalauk, the children could not have been placed with Paul. For these reasons, the juvenile court did not err in finding that the children should remain in the temporary custody of the Department.

Reasonable Efforts.

Paul also argues that the trial court erred in finding that reasonable efforts were not required to reunite him with his children. In its petition to terminate Paul's rights, the State alleged that reasonable efforts were not required to reunite Paul with his children. In its order terminating Paul's rights, the trial court agreed.

Section 43-283.01(2) generally provides that reasonable efforts to preserve and reunify families are required in juvenile cases. However, § 43-283.01(4)(a) specifically provides that such reasonable efforts are not required if a court of competent jurisdiction determines that the parent has subjected the juvenile to aggravated circumstances, including abandonment.

This court has specifically recognized that the requirement to provide reasonable efforts to reunify families pursuant to § 43-283.01 is incorporated into a termination of parental rights case under only § 43-292(6), related to assertions that parental rights should be terminated because of the failure of a parent to successfully rehabilitate himself or herself. *In re Interest of Brittany S.*, 12 Neb. App. 208, 670 N.W.2d 465 (2003). See, also, *In re Interest of DeWayne G. & Devon G.*, 263 Neb. 43, 638 N.W.2d 510 (2002).

In the instant case, the State sought termination of Paul's parental rights under § 43-292(1), (2), and (7), and the juvenile court ordered the termination of Paul's parental rights based on these subsections. As such, reasonable efforts under § 43-283.01 were not required in Paul's case, and the juvenile court's finding to that effect was correct. Therefore, Paul's argument is without merit.

CONCLUSION

After reviewing the record, we conclude that the juvenile court did not violate Paul's due process rights. Furthermore, the trial court did not err in finding that Paul's parental rights should be terminated under § 43-292(2) or in finding that it is in the best interests of his children that his rights be terminated. Similarly, the juvenile court did not err in finding that Nyalauk's parental rights should be terminated under § 43-292(2) and that termination of her parental rights is in the children's best interests. For these reasons, the trial court's order terminating Paul's rights to Bijany, Nylang, Kang, and Nyaleak and terminating Nyalauk's rights to Yiech, Gach, Nyakueth, Bijany, Nylang, Kang, and Nyaleak is affirmed in all respects.

AFFIRMED.