

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF PATRICK N. ET AL.

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IN RE INTEREST OF PATRICK N. ET AL.,
CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

v.

LATONYA N., APPELLANT.

Filed April 24, 2012. No. A-11-663.

Appeal from the Separate Juvenile Court of Douglas County: DOUGLAS F. JOHNSON,
Judge. Affirmed.

Patrick R. Runge for appellant.

Donald W. Kleine, Douglas County Attorney, Jennifer Clark, and Sarah Breen, Senior
Certified Law Student, for appellee.

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

MOORE, Judge.

INTRODUCTION

LaTonya N. appeals from the order of the separate juvenile court of Douglas County which terminated her parental rights to her children. On appeal, LaTonya challenges the juvenile court's conclusion that reasonable efforts were made to reunify the family, that termination of her parental rights was in the children's best interests, and that termination of her parental rights was a last resort with no reasonable alternative. On our de novo review, we conclude that the evidence clearly and convincingly supports the findings of the juvenile court. As such, we affirm the order of the juvenile court terminating LaTonya's parental rights to her children.

BACKGROUND

LaTonya is the biological mother of Patrick N., born in January 1999; Dakota N., born in February 2002; and Makenzy N., born in July 2000. The children's father is not a party to this case; however, we note that LaTonya's boyfriend referred to below was eventually determined to be the children's father.

On March 30, 2006, the Douglas County Attorney's office filed a petition in the juvenile court alleging that Patrick was lacking proper parental care by reasons of the faults or habits of LaTonya and that thus, he was a child within the juvenile court's jurisdiction pursuant to Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004). The petition alleged that Patrick was observed with bruises on his body, that LaTonya took insufficient steps to protect him, and that Patrick missed 29 days of school during the 2005-06 school year.

An amended petition was filed on July 10, 2006, which alleged that Patrick was homeless or destitute, or without proper support through no fault of LaTonya. The petition further alleged that due to Patrick's diagnoses of epilepsy and attention deficit hyperactivity disorder (ADHD), he displayed uncontrollable behavior and could not be safely maintained in the home. On the same day, LaTonya admitted to the counts contained in the amended petition at an adjudication hearing. Patrick remained in the custody of the Department of Health and Human Services (DHHS).

On August 11, 2006, Makenzy and Dakota were also placed in the custody of DHHS after an emergency protective custody hearing. Evidence was presented regarding the physical condition of LaTonya's house and concerns of possible physical abuse by LaTonya's boyfriend, who resided in the house. The State filed a supplemental petition on August 23, alleging that the children were within the juvenile court's jurisdiction pursuant to § 43-247(3)(a). The petition alleged that the children were at risk for harm due to LaTonya's boyfriend's residing in the family home and using alcohol and/or controlled substances, LaTonya's use of alcohol and/or controlled substances, and LaTonya's failure to provide the children with safe and stable housing. Makenzy and Dakota were returned to LaTonya's care, but the juvenile court required that LaTonya's boyfriend reside elsewhere and not have access to the children.

On October 5, 2006, the juvenile court dismissed the supplemental petition, leaving in effect the amended petition which pertained to Patrick only. On October 10, the juvenile court entered an order to transition Patrick from DHHS' custody back to LaTonya's care as long as LaTonya followed the court-ordered services.

Despite the services provided to LaTonya, another supplemental petition was filed on November 13, 2006, again alleging the children were lacking proper parental care. The petition further alleged that Patrick had been subjected to inappropriate physical discipline, that LaTonya failed to provide safe and stable housing, and that LaTonya had not complied with services from DHHS to prevent the removal of the children. DHHS also alleged that Patrick had arrived at school with additional bruises which he attributed to LaTonya's boyfriend, who was not supposed to be living in the home. In addition, LaTonya missed multiple appointments with the intensive family preservation therapist in the previous 2 weeks, and she had no form of income or employment. Finally, the heat and electricity were shut off in LaTonya's home during the month of October, and LaTonya had to move the children into her mother's home until services

could be restored. Patrick, Makenzy, and Dakota were removed from LaTonya's home due to these continued concerns.

On December 18, 2006, the juvenile court heard evidence for adjudication on the supplemental petition. After hearing the State's evidence, the juvenile court granted LaTonya's oral motion to dismiss and found that the State did not meet its burden of proof. On December 20, the children were returned to LaTonya's home with continued support from DHHS.

On April 2, 2007, the State filed a second supplemental petition alleging that LaTonya neglected or refused to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of Makenzy. Makenzy was absent from school 23½ days and was tardy 53 days out of 128 school days during the 2006-07 school year. On June 1, the State filed an amended second supplemental petition alleging all three children were lacking proper parental care by reason of the faults or habits of LaTonya. The petition cited Makenzy's missed school days and noted that Patrick was absent from school 41 morning sessions and 27 afternoon sessions and was tardy 16 out of 170 school days of the 2006-07 school year. Further, the petition alleged that LaTonya failed to (1) address her mental health needs; (2) provide safe, stable, and adequate housing; (3) address Patrick's medical needs; and (4) failed to participate in the services designed to prevent the removal of her children. The juvenile court ordered that the children could remain in LaTonya's home as long as she participated in the services ordered.

LaTonya admitted to the allegations in the second supplemental petition at the adjudication hearing on August 4, 2008. The juvenile court's order, entered on the same day, allowed the children to remain in LaTonya's home.

On September 17, 2008, the children were again removed from LaTonya's care due to her noncompliance with the court-ordered services and her failure to communicate with DHHS. The juvenile court continued to order services that were designed to reunify LaTonya with her children, including visitation, individual therapy, outpatient treatment, drug screens, and a psychological evaluation.

On August 17, 2009, the State filed a motion for termination of LaTonya's parental rights pursuant to Neb. Rev. Stat. § 43-292(2) and (6) (Reissue 2008). Specifically, it alleged that LaTonya had substantially and continuously or repeatedly neglected and refused to give her children necessary parental care and protection and that reasonable efforts to preserve and reunify the family failed to correct the conditions leading to the adjudication of the children in that LaTonya failed (1) to consistently maintain contact with the DHHS case manager; (2) to obtain and maintain safe, suitable, and appropriate housing; (3) to obtain and maintain a legal source of income; (4) to establish regular communication with the children's schools; (5) to attend individual therapy; (6) to consistently submit to random urinalysis testing; (7) to participate in an updated psychological evaluation; and (8) to utilize the services offered by DHHS to reunify with her children. Finally, it alleged that termination of LaTonya's parental rights was in the children's best interests.

On January 14, 2010, the State filed a motion to dismiss the termination of parental rights and the juvenile court sustained said motion. The children remained in foster care and had supervised visitation with LaTonya.

On December 3, 2010, the State filed a second motion for termination of LaTonya's parental rights pursuant to § 43-292(2) and (6). On April 11, 2011, LaTonya filed a motion for visitation after termination of parental rights relying on *In Re Interest of Stacy D. & Shannon D.*, 12 Neb. App. 707, 684 N.W.2d 594 (2004).

On May 2, 2011, a hearing was held on the second motion for termination of parental rights. Evidence was presented spanning the 4 years the case had been open.

Rhiannon Bartlett was LaTonya's family support worker from February to June 2009. During that time, the goals for LaTonya were to attend and participate in family support sessions, develop an afterschool routine in her home, establish age appropriate consequences that are understandable in nature, develop a daily household and personal hygiene routine, and access community resources as needed. Bartlett and LaTonya met only four times, although Bartlett attempted to contact LaTonya once a week to work on the goals. Bartlett testified that LaTonya did not make progress due to her lack of attendance. The last time LaTonya utilized family support work services was in September 2010. LaTonya stopped calling the family support worker to schedule appointments, but she did not indicate why she stopped the services.

Angela Ertzner was the DHHS case manager for LaTonya and the children from March 6, 2009, to November 19, 2010. At the time she started working with the family, the children had been in foster care for 6 months and the case had been open for 3 years.

After several unsuccessful attempts to contact her by telephone, Ertzner first met LaTonya on March 25, 2009, at one of the court hearings. Ertzner testified that throughout the time they worked together, she frequently had difficulty in contacting LaTonya. LaTonya did not consistently utilize the family support worker provided to her. Telephone calls often were not returned, so services would be suspended until contact was initiated again. LaTonya would tell Ertzner that she did not get the messages, her telephone did not ring, or she had scheduling conflicts which influenced her ability to utilize the family support work services.

Ertzner testified that LaTonya did not make progress during the time she worked on her case. Other than one job from April to September 2009, LaTonya never informed Ertzner of any other stable employment. LaTonya also never obtained stable housing. In December 2009, Ertzner was in LaTonya's home, but LaTonya expressed that it was not a permanent situation and showed Ertzner only the living room of the residence.

Ertzner also noted that LaTonya was often late for visitation with her children or did not show up at all. She asked LaTonya at a team meeting what DHHS could do to assist her with the attendance issues, but LaTonya was unable to identify why she was arriving late or what kind of assistance she required. At that time, LaTonya's visits with the children were reduced from three to two visits per week due to her attendance issues.

The juvenile court required LaTonya to have continued contact with the children's school and to make DHHS aware of her contacts. LaTonya was supposed to be calling the school to get updates, attend any individualized education program meetings, attend school conferences, and attend any extracurricular activities. Ertzner testified that LaTonya failed to make her aware of any such contacts with the children's school, although at times Ertzner would receive some school information from LaTonya at a meeting or by directly asking LaTonya.

LaTonya also failed to consistently participate in the required random drug testing. Mary Garcia, a drug specialist and family support worker, performed drug testing with LaTonya from

September 2008 until April 2009 based on a referral from DHHS. During this time period, LaTonya completed 49 tests and missed 52 tests. The drug tests typically needed to be completed within 2 hours of notification to prevent tampering with the results. Sometimes LaTonya did not return Garcia's calls until late in the evening or was unable to meet with Garcia at the specified time, but the majority of the missed tests were due to unreturned telephone calls. LaTonya's reasons for not returning telephone calls ranged from work-related issues, being tired, or simply no reason at all. LaTonya had several positive tests for opiates due to hydrocodone, a medication that was prescribed to LaTonya by a physician. Additionally, on February 17 and 19, 2009, LaTonya tested positive for methamphetamines. LaTonya's last completed drug test was in July 2010.

Ertzner set up a psychological evaluation for LaTonya as ordered by the juvenile court. Ertzner was having difficulties contacting LaTonya, so she sent letters informing LaTonya how she could complete the evaluation and gave her the contact information to do so. It took several months for LaTonya to complete the first part of the evaluation. Although there were delays in getting the second part of the evaluation authorized and approved, it took another few months to connect with LaTonya to get it scheduled and completed.

Dr. Stephanie Peterson performed the psychological assessment with LaTonya. Peterson reviewed the previous evaluations LaTonya had participated in as well as team reports and provider notes. LaTonya's data implied that she was not being honest during the course of Peterson's assessment. Peterson testified that the validity scale indicated that LaTonya was presenting herself in a consistently favorable light and was unwilling to acknowledge even common problems and shortcomings. However, LaTonya's overall profile showed no psychopathology. Peterson also conducted the adult adolescent parenting inventory with LaTonya which showed her as a well-informed and concerned parent with a commonly socially accepted set of parenting values.

Based upon the information Peterson was provided, she diagnosed LaTonya with adjustment disorder with mixed anxiety and depression, as well as personality disorder not otherwise specified. Peterson recommended that LaTonya's parental rights be terminated if she had been offered all of the services recommended in her previous evaluation and not made progress. The primary barriers to reunification identified by Peterson were LaTonya's ongoing failures to secure stable employment and adequate housing.

Ertzner also testified that LaTonya was inconsistent in her participation in individual therapy and did not make progress. Teresa Lenzen, a mental health therapist, saw LaTonya for individual therapy from November 16, 2006, until August 6, 2008. LaTonya missed two appointments prior to her first meeting with Lenzen. The intention was for LaTonya to meet with Lenzen weekly or twice a month, but Lenzen testified that "[t]here was a distinct pattern of missed appointments." In 2 years, LaTonya attended only 22 appointments. In 2008, LaTonya missed 7 of 10 scheduled sessions. Three were canceled on the day of the appointment, and four were missed with no notice given. Lenzen reviewed bus schedules with LaTonya when her car broke down and told her how to get vouchers if needed. Lenzen also worked with LaTonya on using a calendar and improving her organizational skills in order to help her address the attendance issues.

LaTonya was not successfully discharged from therapy with Lenzen. Lenzen testified that there was some limited progress, but it was not sustained due to LaTonya's failure to attend appointments. Lenzen saw that LaTonya began to trust her more, seemed to take more responsibility for her actions, and felt better about herself. However, LaTonya's motivation was inconsistent and her insight limited. Lenzen questioned if LaTonya would be able to meet the needs of her children as they grew older and their emotional needs became more complex.

Ertzner referred LaTonya to a new therapist, Ian Severes. Severes reported that he had one or two sessions with LaTonya, but she had not returned due to financial reasons. Ertzner provided LaTonya with gas and grocery vouchers to supplement the cost of therapy on a sliding fee scale. However, LaTonya still did not resume therapy with Severes. Several months later, LaTonya reported to Ertzner that she did not want to resume therapy with Severes because she did not feel comfortable with him.

Ertzner thereafter referred LaTonya to another new therapist, Nanon Vegen. Again, LaTonya stopped therapy, and Ertzner referred her to Terra Goodwin, a mental health therapist and drug and alcohol counselor, in April 2010.

LaTonya completed a pretreatment assessment with Goodwin on June 18, 2010. Goodwin wanted to meet with LaTonya at least once a week to work on anxiety, depression, and possible substance abuse problems. After a total of six sessions, Goodwin's last session with LaTonya was on August 29. At that time, LaTonya told Goodwin that she feared that she may have cancer, but she did not indicate that it would prevent her from contacting Goodwin further. Goodwin did not receive any additional contact from LaTonya, and LaTonya did not respond to Goodwin's letter dated October 12, 2010, asking if LaTonya wanted to resume therapy. LaTonya was never successfully discharged from therapy.

Ertzner testified that in her opinion, it is in the children's best interests that the parental rights of LaTonya be terminated. During the 1½ years that they worked together, LaTonya never put herself in a position to be able to parent her children. Ertzner testified that the children need permanency and need to know what their permanent plan is going to be. Ertzner preferred adoption over guardianship for the children due to the permanency that adoption would provide. At the time she was the case manager, DHHS fully supported continued contact between LaTonya and the children because of the relationship between them.

Angie Williams, a family permanency specialist, started working with LaTonya in November 2009. Williams testified that the last face-to-face contact that she had with LaTonya was in August 2010. Although Williams made weekly telephone calls to LaTonya from October through December 2010, they did not connect on the telephone until January 2011. At that time, LaTonya told Williams that she was diagnosed with breast cancer. Williams continued to make weekly telephone calls to LaTonya through February 2011, but she was unable to reach LaTonya again.

Williams testified that during the time that she worked with LaTonya, she did not see any progress toward reunification. Family support and therapy ended, LaTonya's housing was still unstable, and she still had no employment. The only thing that Williams saw LaTonya do with some consistency was visitation. However, LaTonya canceled visits due to her illness. On the visits she did attend, LaTonya was usually 10 to 15 minutes late, and numerous visits were canceled because LaTonya was more than 15 minutes late. Williams testified that in her opinion,

it is in the best interests of the children for LaTonya's parental rights to be terminated because the children need permanency and have spent the last 4 years in foster care.

We note that the record contains exhibits which document that LaTonya was diagnosed with breast cancer in November 2010 and had a bilateral mastectomy sometime before March 2011, followed by chemotherapy. She was also diagnosed with endometriosis for which she was taking medication.

The children's therapist, Amanda Gurock, started working with Makenzy and Dakota in March 2010 and Patrick in May 2010.

Makenzy was diagnosed with ADHD and adjustment disorder with depressed mood. Gurock worked with Makenzy to help her with low self-esteem, motivation, making friends, staying on task, and the irregular visits with LaTonya. Gurock testified that Makenzy has held back in her relationships because she is holding onto the hope that she may go home with LaTonya. One of the difficult factors for Makenzy is the uncertainty of her placement because she is "very close" to LaTonya. Gurock testified that in order for Makenzy to succeed in her placement, she needs to know that she is going to be staying there.

Dakota was also diagnosed with ADHD. Dakota had trouble in school and temper tantrums. Gurock attributed Dakota's improvement to having consistency in his current placement.

Patrick was diagnosed with adjustment disorder with mixed emotion and conduct. Patrick had problems with anger management and impulse control. Patrick has been identified as mentally handicapped and receives special education services at school. He was also diagnosed with a seizure disorder. At the time of the hearing, Gurock testified that Patrick's aggressive stages are very rare. Gurock attributed Patrick's progress to his current placement. Gurock testified that permanency would be important for Patrick to know what the rules and consequences are and to know where he is going to be.

Gurock testified that the inconsistency in visitation negatively affected the children and that although the children were close with LaTonya, they were thriving with consistency and limit setting. Gurock testified that the inconsistency played a role in their mental health and hindered their progress and that the children needed permanency sooner rather than later. Because Makenzy and Dakota had been moved so much, Gurock was concerned that a delay in permanency could lead to reactive attachment disorder and their being unable to fully bond with any future caregiver. Gurock testified that in her opinion, it was in the children's best interests to terminate LaTonya's parental rights in order to obtain and maintain permanency for them sooner. Gurock thought that adoption would be the best form of permanency.

Gurock opined that the children should maintain contact with LaTonya after termination of parental rights because they have an "extremely strong bond." Gurock believed that telephone calls, letters, and pictures would be appropriate, as well as visitation once per week.

At the time of the termination hearing, the children had been placed with Bonnie J., their paternal grandmother, since July 24, 2010. When the children first arrived, Bonnie described their behavior as rowdy and "wired up," but she saw their behavior improve. Bonnie testified that they are listening better and behaving in school. Bonnie testified that the children's contact with LaTonya was a positive experience for them. When the children were first placed with Bonnie, they would get mad and cry if their visit with LaTonya was canceled. At the time of the

trial, Bonnie testified that the children were not bothered by the cancellations as much because they had missed so many visits with LaTonya. Besides face-to-face visitation, the children also speak with LaTonya on the telephone once or twice per week. Bonnie tries to ensure that LaTonya is aware of the children's medical appointments. Although LaTonya attended a few appointments, she did not assist with the scheduling or help with transportation.

On June 30, 2011, the juvenile court issued an order which found that the allegations contained in the second petition for termination of parental rights were true by clear and convincing evidence. The juvenile court also found that termination was in the children's best interests and allowed for ongoing supervised family time and contact with LaTonya. LaTonya appeals from this order.

ASSIGNMENTS OF ERROR

LaTonya assigns, restated, that the juvenile court erred (1) by terminating her parental rights pursuant to § 43-292(6), (2) by concluding that termination was in the children's best interests, and (3) by finding that termination of LaTonya's parental rights was the last resort with no other reasonable alternative.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Jamyia M.*, 281 Neb. 964, 800 N.W.2d 259 (2011). However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

ANALYSIS

Statutory Basis for Termination.

For a juvenile court to terminate parental rights under § 43-292, it must find that termination is in the child's best interests and that one or more of the statutory grounds listed in this section have been satisfied. *In re Interest of Phoenix L.*, 270 Neb. 870, 708 N.W.2d 786 (2006), *disapproved on other grounds, In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007). The State must prove these facts by clear and convincing evidence. *Id.* Clear and convincing evidence is that amount of evidence that produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved. *Id.*

In its order terminating LaTonya's parental rights, the juvenile court found that termination was warranted pursuant to § 43-292(2) and (6). On appeal, LaTonya does not challenge the juvenile court's conclusion that she substantially and continuously or repeatedly neglected and refused to give the children necessary parental care and protection pursuant to § 43-292(2). LaTonya only appealed the juvenile court's termination of her parental rights pursuant to § 43-292(6) and finding that reasonable efforts were made to reunify her with her children.

Only one ground for termination need be proved in order for the parents' parental rights to be terminated. *In re Interest of Lisa W. & Samantha W.*, 258 Neb. 914, 606 N.W.2d 804

(2000). Because LaTonya does not challenge the termination of her parental rights as to § 43-292(2), we need not consider her assigned errors relating to the sufficiency of evidence under § 43-292(6).

Best Interests.

We next consider LaTonya's argument that the State failed to show that termination of her parental rights would be in the best interests of the children. The children's best interests are a primary consideration in determining whether parental rights should be terminated. *In re Interest of Sir Messiah T.*, *supra*.

We are mindful that when a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the children require termination of the parental rights. See *In re Interest of Shelby L.*, 270 Neb. 150, 699 N.W.2d 392 (2005). Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). Upon our de novo review of the record, we find the evidence presented at the termination hearing overwhelmingly demonstrated that LaTonya is not capable of providing her children with a safe and stable environment and that thus, she is not capable of appropriately parenting her children.

LaTonya argues that because testimony showed that continued contact between LaTonya and the children after the termination would be in the children's best interests, such evidence was contrary to a finding that termination of her parental rights was in the children's best interests. LaTonya argues that it is possible that such continued contact could be stopped by the adoptive parent. LaTonya also suggests that the children, because of this posttermination contact, will continue to hope for reunification.

LaTonya focuses her argument on a portion of the testimony provided by Ertzner and Gurock. Specifically, LaTonya points to a court report authored by Ertzner dated June 23, 2010, in which Ertzner states that the children

need a sense of permanency in their life and one that they know is not going to change or have the possibility of changing, because if there is even a possibility of it changing then they will continue to hope for reunification with their mother and not be able to move on and heal emotionally.

The portion of Gurock's testimony cited by LaTonya is that guardianship would look the same to the children as adoption.

We have read both Gurock's testimony and Ertzner's testimony in their entirety, and we must view the portions relied upon by LaTonya in the context of their testimony as a whole. In doing so, we disagree with LaTonya that their testimony does not support the conclusion that termination is in the children's best interests. The majority of their testimony indicates that LaTonya is not capable of appropriately parenting her children.

Ertzner's testimony is filled with examples of LaTonya's failure to follow through, return telephone calls, or fully participate in the services designed to reunite the family. Ertzner testified that LaTonya did not make progress during the time she worked on the case. LaTonya never obtained stable employment or housing. Ertzner also testified that LaTonya either was often late for visitation with her children or failed to show up at all. LaTonya also failed to keep DHHS informed of her contacts with the children's schools. Ertzner testified that in her opinion, it was

in the children's best interests that the parental rights for LaTonya should be terminated. The children need permanency; she preferred adoption over guardianship as the best means to provide that permanency.

Gurock's full testimony also highlights the permanency needs of the children and how it affects their mental health. Gurock believed that the children required permanency sooner rather than later. In her opinion, termination of LaTonya's parental rights would do just that. Further, she believed that adoption would be the best form of permanency for the children. She also testified that she supported contact between LaTonya and the children after termination because of their strong bond with each other.

In addition to Gurock's testimony and Ertzner's testimony, we must also consider the rest of the evidence presented in this case in determining whether termination of LaTonya's parental rights was in the children's best interests. The vast majority of the evidence presented at the hearing revealed that LaTonya was not capable of putting herself in a position to parent her children.

Bartlett, one of LaTonya's family support workers, met LaTonya only four times despite calling her weekly for nearly 4 months. Williams, LaTonya's family permanency specialist at the time of the trial, had not had face-to-face contact with LaTonya since August 2010. They had not spoken on the telephone since January 2011. Williams saw no progress toward family reunification. In her opinion, it was in the children's best interests to terminate LaTonya's parental rights because they had been in foster care for 4 years.

Peterson, who had performed LaTonya's most recent psychological assessment, also testified that she recommended LaTonya's parental rights be terminated, based upon LaTonya's lack of progress.

Finally, the evidence showed that the children were showing improved behaviors while living with Bonnie, their paternal grandmother. Bonnie testified that she noticed that the children were listening to her better and were behaving in school. She also noted that the children did not become as upset when LaTonya canceled visits with them.

Upon our de novo review of the record, we find that there is a great deal of evidence demonstrating that LaTonya cannot currently provide a safe and stable environment for her children and that she will be unable to provide such an environment at any time in the foreseeable future. Such evidence clearly outweighs the rather small amount of evidence that LaTonya relies upon to suggest otherwise. While we acknowledge that the children have a bond with LaTonya, we must also consider that the children need permanency, stability, and safety that LaTonya is simply not able to provide. The children have been out of LaTonya's home since September 2008. The children need and deserve permanency, which LaTonya has proved she is incapable of providing. We conclude the State provided clear and convincing evidence that terminating LaTonya's parental rights was in the children's best interests.

Termination of Parental Rights as Last Resort.

Finally, LaTonya argues that her parental rights should not have been terminated because it was not the last resort for her family. The Nebraska Juvenile Code must be liberally construed to accomplish its purpose of serving the best interests of the juveniles who fall within it. *In re Interest of Gabriela H.*, 280 Neb. 284, 785 N.W.2d 843 (2010). This includes promoting

“adoption, guardianship, or other permanent arrangements for children in the custody of [DHHS] who are unable to return home.” *Id.* at 288, 785 N.W.2d at 847, quoting Neb. Rev. Stat. § 43-246(6) (Reissue 2008).

In the absence of any reasonable alternative, termination of parental rights is permissible when the basis for such termination is proved by clear and convincing evidence. *In re Interest of K.M.S.*, 236 Neb. 665, 463 N.W.2d 586 (1990). LaTonya argues that guardianship was a reasonable alternative to terminating her parental rights.

Guardianship is specifically designated as a means of providing permanency where other means, such as adoption, are not feasible. *In re Interest of Antonio S. & Priscilla S.*, 270 Neb. 792, 708 N.W.2d 614 (2005). The Nebraska Supreme Court has noted that a guardianship does not achieve the degree of permanency equivalent to parenthood or adoption. *Id.* A guardianship under the Nebraska Juvenile Code is subject to the continuing jurisdiction of the juvenile court, which retains the power to terminate the guardianship. *Id.* Legal custody is not parenthood or adoption, and the person appointed guardian is subject to removal at any time. *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972); *In re Interest of Amber G. et al.*, 250 Neb. 973, 554 N.W.2d 142 (1996). When a guardianship is established, a parent retains the right to petition the court for restoration of custody and full parental rights in the event of a change in the circumstances which justified the guardianship and supported the finding of the parent’s unfitness. *In re Interest of Amber G. et al.*, *supra*. However, termination of parental rights is a final and complete severance of the child from the parent and removes the entire bundle of parental rights. *Id.*

In its order terminating LaTonya’s parental rights, the juvenile court ordered that supervised visitation could continue between LaTonya and the children. See *In re Interest of Stacey D. & Shannon D.*, 12 Neb. App. 707, 718, 684 N.W.2d 594, 603 (2004) (finding that “the juvenile court has authority, based upon its continuing jurisdiction over the children, to enter orders that are in the best interests of the children, including an order with respect to continued contact with a natural parent whose parental rights are being terminated”).

Regardless of what the children may perceive, a guardianship is different than termination and has different legal effects and consequences. As previously discussed, although guardianship was considered, it was ultimately determined that the permanency of adoption was in the children’s best interests. Ertzner preferred adoption over guardianship for the children due to the permanency that adoption would provide. Gurock also thought that adoption would be the best form of permanency. Even though these witnesses admitted that a guardianship and adoption would look the same from the children’s perspective, clearly their opinions were that guardianship was not a reasonable alternative.

Further, the evidence shows that termination was the last resort. LaTonya’s children have been out of her care since September 2008. She was offered many services by DHHS which were designed to reunify her with her children, but LaTonya failed to utilize these services. Several different petitions were filed over the years based upon the hope that reunification would happen for this family; however, LaTonya never put forth the effort to make it successful.

Based on the evidence presented to the juvenile court, we cannot say that it erred in terminating LaTonya’s parental rights. Therefore, we affirm.

CONCLUSION

In our de novo review of the record, we conclude that sufficient statutory grounds existed for the juvenile court to terminate LaTonya's parental rights to her children. We also conclude that terminating LaTonya's parental rights was in the children's best interests and that guardianship was not a reasonable alternative to termination. We affirm the judgment of the juvenile court.

AFFIRMED.