

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF SAUNIA T. ET AL.

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

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

AMBER S., APPELLEE AND CROSS-APPELLANT, AND PAULA G., INTERVENOR-APPELLANT.

Filed November 27, 2012. No. A-12-321.

Appeal from the Separate Juvenile Court of Douglas County: CHRISTOPHER KELLY,
Judge. Affirmed.

Joan Garvey, P.C., L.L.O., for intervenor-appellant.

Donald W. Kleine, Douglas County Attorney, Shakil A. Malik, and Emily H. Anderson,
Senior Certified Law Student, for appellee State of Nebraska.

Thomas C. Riley, Douglas County Public Defender, and Allyson A. Mendoza for
appellee Amber S.

IRWIN, PIRTLE, and RIEDMANN, Judges.

IRWIN, Judge.

I. INTRODUCTION

Amber S. cross-appeals from the order of the separate juvenile court of Douglas County which terminated her parental rights to her three daughters, Saunia T., Mataya H., and Makiya H. On cross-appeal, Amber challenges the juvenile court's finding that terminating her parental rights was in her children's best interests. Upon our de novo review of the record, we find that the State adduced sufficient evidence to clearly and convincingly demonstrate that termination of Amber's parental rights was in her children's best interests and affirm. Paula G., Amber's mother, appeals the juvenile court's order which overruled her motion of intervenor for visitation and denied her continued visitation following the termination of Amber's parental rights. On

appeal, Paula argues that such visitation is in the children's best interests. Upon our review, we conclude that it is not in their best interests and affirm.

II. BACKGROUND

1. TERMINATION OF PARENTAL RIGHTS

(a) Procedural Background

Amber is the mother of Saunia, born in May 2004, and twins Mataya and Makiya, born in March 2009. The children's fathers are not involved in this appeal. Saunia's father is deceased, and the twins' father, whose parental rights were terminated along with Amber's, did not appeal.

In March 2010, the State filed petitions in Douglas County alleging that the children came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) because Amber had left the children, then ages 5 and 1, home alone within arm's reach of marijuana and because Amber was incarcerated and unable to provide proper care, support, and/or supervision for the children, placing the children at risk of harm.

The children were placed with the Department of Health and Human Services and were later adjudicated on May 21, 2010. They lived with Saunia's paternal grandmother during these proceedings. They did not return to their parents' custody after their removal in March 2010.

The adjudication order required Amber to submit to random drug testing and to undergo a chemical dependency evaluation. Following a disposition and permanency planning hearing on September 21, 2010, the court further ordered that Amber complete a "Level I Outpatient Treatment Program," attend and participate in Alcoholics Anonymous and Narcotics Anonymous (AA/NA) meetings, complete a parenting class, and maintain a legal source of income and safe and adequate housing. Amber was required to provide written proof of her compliance with each component of the order. After a review and permanency planning hearing on March 15, 2011, the court additionally ordered Amber to participate in individual therapy and provide written verification. The court repeated these orders following a review and permanency planning hearing on July 25.

On August 16, 2011, the State filed a motion for termination of Amber's parental rights pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2012) and alleged that termination of parental rights was in the children's best interests. Trial on the motion commenced on January 27, 2012.

(b) Evidence at Trial

Jennifer Lindner, a licensed psychologist, testified that she conducted an initial diagnostic evaluation of Amber in May 2010. Lindner did not recall having any difficulty getting Amber to show up for the evaluation. She did not note any concerns about Amber being open and honest during the evaluation. Lindner diagnosed Amber with depressive disorder, not otherwise specified, and with a provisional diagnosis of cannabis use. Amber reported her cannabis use to Lindner, but Lindner did not recall the frequency of that use. Lindner recommended individual therapy and a chemical dependency evaluation.

Tia Goodwin, a licensed mental health therapist and a provisionally licensed chemical dependency therapist, testified that she conducted a pretreatment assessment of Amber on May

12, 2010. She testified that Amber appeared to be forthright, cooperative, and motivated by her children. Goodwin provisionally diagnosed Amber with depressive disorder, not otherwise specified; cannabis abuse, provisional; and alcohol dependence, early partial remission. According to Goodwin, Amber reported feeling depressed about her children having been removed and the death of Saunia's father. Goodwin recommended dual outpatient counseling for the depressive disorder and cannabis use.

Goodwin conducted a chemical dependency evaluation of Amber in June 2010. She stated that Amber was cooperative during the evaluation. Goodwin diagnosed Amber with cannabis abuse and alcohol dependence, early partial remission. Amber reported to Goodwin that she had attended chemical dependency treatment programs in the past, including attending weekly AA/NA meetings since March 2009. Goodwin recommended that Amber complete dual outpatient counseling to address mental health and substance abuse issues and random drug testing and that she continue with AA/NA.

Sallie Rada, a visitation specialist, testified that she supervised visits for Amber and her children from January to June 2011. Amber had visitation with her children three times per week for 2 hours each time. The majority of visits took place at Amber's residence.

Rada testified that Amber was not consistent in her visitation with her children. At first, Amber's attendance was very good, and she did not miss any visits in February 2011. Rada testified that Amber canceled one visit in March and that Amber's visitation attendance progressively declined in April and May. In April, Amber attended 48 percent of the visits. In June, Amber did not attend any visits.

Rada admitted that two visits were canceled because of work conflicts; one visit was canceled because the foster mother had made prior arrangements; and one visit was canceled because of a burglary in Amber's home, where the visits typically took place. Rada reminded Amber that visits could take place at any community setting approved by Rada, but Amber declined.

Rada admitted that Amber had a part-time job that required her to work overnight on Thursdays and that it was interfering with visitation. She testified that they discussed changing the visitation schedule, but that Amber ultimately decided not to change it.

Rada testified that on two or three occasions, Rada brought the children to Amber's residence for a scheduled visitation, but Amber was not there. Rada testified that Amber was required to call and confirm the scheduled visit 2 hours before it commenced and that usually Amber did not call at all.

Rada testified that she did not know why Amber did not confirm the visits but that Amber had mentioned something about being in school. Rada testified that she knew that Amber was going to school, but that it did not affect the visitation schedule. Rada testified that she regularly attempted to call Amber and leave messages and that from time to time, Rada had the impression that Amber received the messages. When Rada attempted to discuss the matter with Amber in person, Amber was unresponsive.

Rada testified that during her time supervising visitation, Amber was verbally abusive toward her on a regular basis in front of the children and would not accept advice or redirection. Amber would raise her voice and tell Rada that Rada could not tell her what to do. Rada testified

that the twins were too young to understand when Amber raised her voice but that Saunia was sensitive to it and wanted to get away from it.

Rada admitted that at times, Amber displayed appropriate parenting. Rada testified that the meals Amber provided for the children were "fine." Rada observed that Amber showed appropriate affection toward the children. She recalled Amber's letting Saunia play a video game that required her to move and be active. However, Rada testified that at other times, Amber did not parent appropriately. In Rada's opinion, Amber had not made any progress in her parenting skills while Rada was supervising visitation. Amber did not participate in the twins' "potty-training." Rada stated that sometimes visits were rushed because Amber told the children to hurry up frequently, saying "hurry up, hurry up, hurry up, eat, eat, eat, eat, eat." Sometimes Amber ended the visits 5 to 20 minutes early, one of those occasions being for a hair appointment.

Rada testified that Amber did not maintain contact with her after May 23, 2011. Rada attempted to contact Amber regularly but could not reach her. Amber contacted Rada in mid-June and provided her new address. Amber set up a visit at that time but Amber did not call to confirm the visit as required, and it was canceled.

Rada testified that in trying to contact Amber concerning missed visits, she always had the same telephone number for Amber. Rada stated that at times, she attempted to call Paula, Amber's mother, and left at least one message after May 23, 2011. Rada denied having a personality conflict with Amber.

Rada testified that while working with Amber, she suspected that Amber was under the influence of drugs or alcohol based on Amber's rushed behavior and sporadic attendance. However, Rada did not observe Amber to have bloodshot eyes or to have an odor consistent with alcohol or drugs.

Amber's urinalyses summary showed that between April 27, 2010, and June 29, 2011, the administering agency had tried unsuccessfully to reach Amber by telephone 19 times and in person 21 times. During that period, Amber refused testing three times, submitted nine negative tests, and submitted one positive test for codeine on April 12, 2011.

The children's foster parent, who was Saunia's paternal grandmother, testified that Saunia seemed angry after Amber missed visits. The foster parent testified that she supervised visitation between Amber and the children from March until May 2010. According to the foster parent, those visits went well. She testified that when Amber was incarcerated, the children were taken to visit Amber at the prison two times. The foster parent testified that generally, the children reacted positively to visits that occurred after Amber's release in January 2011.

Carleen Rietz, a family permanency specialist, testified that she was the family permanency specialist and case manager for Amber's case from May 2010 until July 2011 and again from October 2011 until November 2011, after returning from medical leave. Rietz first met with Amber on April 28, 2010, in Amber's home. They discussed initiating a pretreatment assessment, working toward the case plan goals, and identifying the needs of the children. Amber was not employed at the time. Rietz testified that Amber had completed a parenting class, as ordered by the court.

Rietz testified that she attempted to meet with Amber every month, but there were months when Rietz could not make contact with Amber or Amber would schedule meetings and

cancel them. Rietz explained that sometimes Amber would call her and leave a message, but when Rietz returned the call, there was no voicemail for her to leave a message or Amber's telephone was shut off. Rietz testified that at some point in 2010, Amber lost her housing, and that for about a month, Rietz did not know Amber's whereabouts.

Rietz testified that she sent a referral for Amber to obtain a pretreatment assessment. Amber completed the assessment, and it was updated a year later, but Amber did not follow through with a Lutheran Family Services outpatient program, for which Rietz sent a referral in April 2011, nor did she follow through with the Heartland Family Services outpatient program for which she was referred in May or June 2011. When Rietz asked Amber why she was not completing these programs, Amber responded that she did not have time because she was a student. Rietz discussed the matter with Amber at each meeting they had and reviewed with her the court order that she needed to fulfill and who she needed to contact. Rietz emphasized to Amber the importance of completing the program to be reunified with her children, and Amber always responded positively, saying she would do it.

Rietz admitted that from the time she started working on the case until October 2010, Amber reported attending AA/NA meetings, as required by the court order. Rietz admitted that from April until October 2010, Amber participated in visits, had completed a pretreatment assessment and a psychological evaluation, and had started therapy. She also participated in urinalyses, which were mostly negative. Rietz testified that monthly scheduled team meetings did not occur because Amber would not show up and that Amber only attended a few. The meetings were productive when Amber was present, and Amber acted appropriately, despite being frustrated with the situation.

Amber was incarcerated from August 2010 to January 2011. Rietz testified that she was not able to assist Amber with services while Amber was incarcerated because Rietz was not on Amber's contact list. Rietz did contact the prison's parenting program and request that she be placed on the contact list, which required Amber to sign a release. Rietz was never placed on the contact list. Visitation with the children was limited at that time because of the distance they would have to travel and the visitation times allowed by the prison.

After Amber's release from prison in January 2011, Rietz spoke to her on the telephone and discussed visits, resuming drug testing, and outpatient therapy. Rietz testified that Amber was having difficulty attending AA/NA meetings because she was a student. According to Rietz, from October to mid-November 2011, Amber did not consistently submit to her weekly drug testing, often failing to follow through on appointments she had made. Rietz testified that after Amber's release from prison, Amber did not utilize the family support services offered to her for finding employment and housing.

Rietz testified that at some point after Amber's release from prison, she lost her housing, but she did not inform Rietz of her new address. Without an address, Rietz was not able to determine whether Amber's housing would be appropriate for the children. Rietz admitted that she had Amber's telephone number, but when she called to obtain an address for Amber, Amber refused to provide it. Rietz testified that Amber told her that after she lost her home, she did not want to use the address of the place she was staying because it was not her home.

Rietz was unable to contact Amber via telephone or the previous address from October to mid-November 2011. Rietz testified that Amber's voicemail was sometimes shut off, but that

Amber had told her she still had caller identification. Rietz attempted to locate Amber through Paula, Amber's mother, which she had done in the past, but she could not reach Paula. Visits were not occurring between Amber and the children from October to mid-November 2011. Rietz testified that during October and November 2011, she and Amber essentially played "phone tag," but the two did not speak and Rietz was not able to provide Amber with any services, including visitation, because she could not reach Amber.

Rietz testified that throughout her involvement with Amber's case, Rietz' telephone number and work address did not change.

Rietz admitted that she had difficulty working with Amber because Amber did not communicate well or follow through with her commitment to follow the parenting plan and court orders. Amber canceled meetings, would not leave voicemail messages, had a telephone that made contact difficult, and would not share her address. Rietz testified that at times, Amber would use inappropriate language with Rietz and raise her voice.

Rietz testified that Amber did not make any progress after July 2011. Rietz testified that based on Amber's lack of progress, the fact that it was Saunia's second time in care, and the length of time the children had been in care, she believed that it was in the children's best interests that Amber's parental rights be terminated. Rietz explained that Amber had been given sufficient time to meet court orders, but had not done so. When Rietz left the case, she had no information as to where Amber was residing or whether she could provide for the children. Rietz opined that there was nothing else she could have offered Amber to reunify her with her children due to Amber's noncompliance with the services offered to her.

April Ingram, a family permanency specialist, testified that she worked with Amber's family from July 15 to October 1, 2011, during Rietz' medical leave. Ingram spoke to Amber on the telephone, let Amber know that she would be working on the case, provided Amber with her contact information, and processed a visitation referral. Ingram met twice with Amber at Paula's home, where she was residing, but telephone contact with Amber was sporadic because Amber's telephone was often disconnected or her voicemail was not working. Ingram described her contact with Amber as "fair," but not consistent. She denied trying to reach Amber through Paula because Amber had told Ingram that she could always leave a message on her voicemail, and Ingram admitted that she was aware that Amber was residing with Paula.

Ingram informed Amber that she needed to contact Heartland Family Services to schedule her "Level I outpatient substance abuse treatment" evaluation. She informed Amber that she needed to meet with Rietz first to complete a budget because Amber reported that she had an income. Amber made an appointment without informing Ingram. Amber called Ingram from Heartland Family Services and requested financial assistance for the evaluation fee, but Ingram could not provide payment without 24 hours' notice and without having discussed Amber's budget. To Ingram's knowledge, Amber did not return to Heartland Family Services during Ingram's time on the case, and Ingram was never able to verify whether her agency could assist Amber with the fee because Amber did not provide documentation of her employment, as Ingram requested.

Ingram testified that during her time on the case, Amber was not consistent in submitting to urinalyses as required by court order. The agency performing the tests had difficulty reaching Amber at times, and sometimes Amber told the agency that she was at work or school and would

come later. Ingram testified that Amber was not attending AA/NA meetings while Ingram was working on the case so she could focus on visitation and treatment.

Ingram testified that Amber was not consistent with visitation. Amber attended visitation consistently for 2½ or 3 weeks, but thereafter, Amber was not confirming visits 24 hours in advance as required. According to Ingram, the agency supervising visitation worked with Amber to implement a feasible visitation schedule, but it did not help Amber's consistency or her adherence to visitation confirmation guidelines. Ingram admitted that one visit in August was canceled by the foster parent.

Ingram opined that Amber had not made any progress on her case from July to October 2011. Amber was inconsistent, despite having services in place and her own assertions that she wanted to be consistent. In Ingram's opinion, Amber did not "give it her all."

Joy Higgins testified that she supervised six or seven visits for Amber's family from December 2011 until February 2012 for 2 hours each week. Higgins testified that Amber showed love toward the children and that the children appeared fond of Amber. Amber and her children appeared to have a strong bond. The children seemed excited to see Amber, especially Saunia, and they seemed to enjoy their time with her. Higgins described Amber's parenting skills as "decent." According to Higgins, Amber did a good job redirecting the children when they misbehaved. During visits, Amber and the children played games and ate appropriate snacks and a meal provided by Amber. At the end of the visits, Amber helped the children put on their coats and helped secure them in their car seats. At times, the children seemed sad when visits ended.

Higgins testified that Paula was present at every other visit. Higgins observed that the children appeared to enjoy their visits with Paula and that they were excited to see her.

Higgins testified that Amber missed one visit during her time on the case. Amber called to confirm the visit, and the children were brought to the visitation site. However, Amber did not come. Higgins testified that Saunia was very upset. Higgins did not receive an explanation from Amber.

Paula testified that Amber and Saunia lived with her before the twins were born. Prior to the adjudication, Paula saw the children four to five times a week. According to Paula, Amber was the children's primary caretaker. Amber prepared the children for daycare, prepared their meals, watched movies with them, read books to them, colored and did puzzles with them, and had birthday parties and picnics. Paula testified that the children enjoyed spending time with Amber and that they had a bond.

Paula testified that the children seemed to enjoy visitation with Amber prior to Amber's incarceration. Paula testified that after Amber's release, Paula left messages with caseworkers and visitation workers. However, her telephone calls were never returned, and it took 3 weeks to 1 month for them to reply and set up visits.

Paula said that caseworkers would not communicate with her because she was not a party to the case, but even after she intervened, they did not return her calls.

Paula testified that Amber had been living with her since July 2011. Amber had her own residence until May 2011. Amber had tried living with a friend, but could not pay her rent and was evicted. Paula testified that neither she nor Amber had a car and that they used the bus. Paula testified that she had been helping Amber comply with court orders after her release from prison by reminding her about appointments and locating evaluations.

Amber testified that from April to August 2010, she had visitation three or four times a week for 2 or 3 hours per visit. She testified that prior to her incarceration in August 2010, she participated in a chemical dependency evaluation, weekly AA/NA meetings, parenting classes, and therapy, but she denied submitting to urinalyses because the referral began just before her incarceration. Amber admitted that she did not provide documentation of her AA/NA attendance to her caseworker because she “[j]ust never got them to her.”

Amber testified that the children visited her two or three times during her 5-month incarceration for 2 or 3 hours per visit. Amber testified that she had a chemical dependency evaluation while in prison but did not qualify for chemical dependency treatment in prison because she was there for a short duration. Amber denied having contact with her caseworkers while she was incarcerated, despite her caseworkers’ being aware that she was sentenced. Amber claimed that she informed her caseworkers before she was going to be sentenced. She denied receiving instructions from her caseworkers prior to her incarceration on how to contact them once she was in prison, and she denied receiving instruction on how to comply with court orders during her incarceration. Amber received her caseworkers’ contact information from her attorney in October or November 2010. Amber testified that she called Rietz on a daily basis and left several messages and that Rietz left a message with the parenting supervisor at the prison once or twice.

Amber testified that when she was released from prison, she returned to the same residence she had had before her incarceration. She attempted to contact Rietz at least once a week to set up visitation, and Rietz returned her call after 3 weeks. Amber admitted that Rietz set up urinalyses and visitation for her at that time, but she did not set up chemical dependency evaluations or therapy. It was Amber’s understanding that she would have to make an appointment and then Rietz would send the referral. Amber admitted testing positive for illegal substances after her incarceration.

Amber testified that after her release from prison, she had supervised visitation with the children at her residence three or four times per week for 2 or 3 hours per visit.

Amber testified that she talked to Rietz about going to Heartland Family Services before she made the appointment, and Rietz made the referral. Amber did not have the appointment because of the payment issue.

Amber testified that she tried to make an evaluation appointment at Heartland Family Services a second time, but again, she did not have payment for the fee and had to cancel. Having been unable to provide payment two times, Amber had to wait 60 days before scheduling another appointment at Heartland Family Services. Amber denied that Ingram informed her that she needed 24 hours’ notice before making the appointment.

Amber testified that rather than waiting 60 days, on her own initiative, she tried to set up an evaluation with Lutheran Family Services and paid the \$30 fee herself. Amber testified that she informed Ingram after she had completed that evaluation and that Ingram was aware that Lutheran Family Services was awaiting payment. According to Amber, Ingram was going to meet with Amber to refund Amber’s money, but Ingram never arranged the meeting. Amber never obtained a completed evaluation report from Lutheran Family Services because when she finally returned to get the report, Lutheran Family Services did not have it on record.

After trying to have an evaluation with Lutheran Family Services, Amber tried to set up an evaluation at A-1 Health Care. She testified that she first informed her caseworker, Betsy Miller, and that she completed an evaluation there sometime in December 2011 and informed Miller. Amber claimed that she did not receive a completed evaluation report from A-1 Health Care because it was still waiting for payment. Amber informed Miller, and Miller told Amber that she had requested payment from her supervisor and was waiting for approval. Amber later learned from Miller that because Amber did not use an agency that utilized a sliding-scale fee, she could not get approval for the \$140 payment. According to Amber, Miller told her that because she was working two jobs, she should be able to afford the fee. Amber testified that she was not aware she had to choose an agency with a sliding-scale fee. She testified that it was her understanding that the Department of Health and Human Services should pay for all of her treatment because the department was requiring her to have treatment.

Amber testified that at the time, she was working a total of 50 to 60 hours per week at two fast-food restaurants for \$7 to \$8 per hour. She was living with Paula and helping with bills, and she also had to pay child support. Amber testified that at the time of trial, she was in the process of getting her own apartment. Amber admitted that Miller had asked her about her employment but denied that Miller had asked for any proof of employment.

Amber testified that she did not attend visits from June to July 2011 because she moved out of her residence to a friend's house and that it was a "terrible situation." In August, visits resumed, twice a week for 2 to 3 hours per visit. Amber admitted that she was aware that visits did not have to take place at her residence. In October 2011, visitation stopped because the agency handling visitation canceled the referral due to Amber's noncompliance. Amber testified that she informed the visitation worker a month in advance that the visitation schedule needed to be changed to accommodate her class schedule, which included 11 to 13 credit hours, but the visitation worker forgot about her request, and her failure to attend was considered noncompliance. After two missed visits, the agency canceled Amber's referral.

Amber testified that from December 2011 until the time of trial, she missed one visit with her children because she missed the bus and was not able to contact anyone.

Amber testified that when she visited her children, they would play games, color, read, and talk with each other. Amber testified that the children seemed happy to see her.

Amber admitted that at times throughout the case, her telephone was turned off, and that her telephone number had not changed.

Miller testified that she became the caseworker in Amber's case in December 2011. She first met with Amber in February 2012. Miller admitted that Amber very rarely returned her calls. Prior to that, Miller had called Amber several times and left several messages and eventually called Paula. Miller had received secondhand information that Amber wanted to resume visitation. Visits started one time per week in January 2012 and were increased to twice per week in February because Amber was being consistent.

Miller testified that visitation workers reported that Amber's visits were always very positive. She was always appropriate with the children, showing them love and affection, and visitation workers had never observed any safety concerns.

Miller testified that she spoke with Amber about helping her pay for the evaluation she received at A-1 Health Care. Miller explained the proper payment procedure to Amber after she

learned that Amber had obtained the evaluation. Miller made efforts to help Amber obtain payment for the evaluation, despite Amber's history with failing to follow through on referrals. Amber did not provide Miller with evidence of her actual take-home pay, and she reported to Miller that she worked a total of 30 to 40 hours per week at her jobs at the fast-food restaurants.

(c) Resolution

On April 2, 2012, the trial court found that Amber's parental rights should be terminated pursuant to § 43-292(2), (6), and (7) and that termination was in the children's best interests. Amber appeals.

2. GRANDPARENT VISITATION

On April 13, 2010, after the initial petitions were filed and before adjudication, Paula, the maternal grandmother, filed a complaint for leave to intervene requesting visitation and that she be considered for placement while proceedings were pending. The court sustained the intervention and awarded supervised visitation. Following adjudication, Paula withdrew her request for placement but continued to attend hearings associated with the case and have contact with the children.

On November 21, 2011, after the petition to terminate Amber's parental rights had been filed but before her parental rights were terminated, Paula filed a motion of intervenor for visitation, requesting that her visitation recommence and continue regardless of Amber's parental rights.

At the hearing on the motion, Paula testified that she was present at the births of all of the children. Prior to removal, Amber and the children lived with her intermittently and she was involved in their day-to-day lives. After Saunia's birth, Amber and Saunia lived with Paula for 4 months and Paula helped care for Saunia. In 2005, Amber and Saunia lived with Paula for 6 months. Paula lived at Amber's residence for approximately 6 months before the twins were born and helped care for Saunia, including preparing Saunia for school and picking her up from school.

After the twins were born, Paula helped Amber care for the children and helped with meals, cleaning, and laundry. When Amber was employed, Paula provided childcare or prepared the children for daycare. Paula testified that she spoke to Saunia on the telephone and sometimes took Saunia to work with her. Paula was involved with birthdays and holidays. Occasionally, the children would stay with Paula overnight, and once the children stayed with her for 2 weeks when Amber was struggling after the birth of the twins. Before the removal, she saw the children every day or every other day, and they seemed to enjoy seeing her.

Paula continued to have some contact with the children after removal. Paula occasionally helped the children's foster mother, Saunia's paternal grandmother. She continued to have visitation twice a week during Amber's incarceration from May through December 2010. Paula also participated in visitation after Amber's incarceration. She stated in an affidavit that she loves the children and described her relationship with them as significant.

Amber testified that Paula had been involved with her children and that Paula and the children had a good relationship that benefited the children.

The court overruled the motion. Paula appeals.

III. ASSIGNMENTS OF ERROR

Amber assigns that the trial court erred in finding that there was clear and convincing evidence that terminating her parental rights was in her children's best interests.

Paula assigns that the trial court erred in overruling her motion of intervenor for visitation and in denying her continued visitation following the termination of Amber's parental rights.

IV. ANALYSIS

1. TERMINATION OF PARENTAL RIGHTS

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 Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010). In Nebraska statutes, the bases for termination of parental rights are codified in § 43-292. Section 43-292 provides 11 separate conditions, any one of which can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

Amber does not contest the statutory factors supporting termination. She argues only that the trial court erred in finding that termination was in her children's best interests. She contends that she has a bond with her children, continues to make progress in her parenting skills, and has made good faith attempts to follow court orders.

Section 43-292 requires that parental rights can be terminated only when the court finds that termination is in the child's best interests. A termination of parental rights is a final and complete severance of the child from the parent and removes the entire bundle of parental rights. See *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004). Therefore, with such severe and final consequences, parental rights should be terminated only "[i]n the absence of any reasonable alternative and as the last resort" See *In re Interest of Kantril P. & Chenelle P.*, 257 Neb. 450, 467, 598 N.W.2d 729, 741 (1999). However,

[w]here 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. *In re Interest of Andrew M. et al.*, 11 Neb. App. 80, 643 N.W.2d 401 (2002). Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Phyllisa B.*, 265 Neb. 53, 654 N.W.2d 738 (2002).

In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 717, 684 N.W.2d 594, 602 (2004).

It is evident from the record that for the most part, Amber is a loving mother who shares a bond with her children. However, despite her professed desire to be reunified with her children, the record also shows that Amber was inconsistent in cooperating with caseworkers, in making herself available to receive the help they offered for fulfilling court orders, and in attending visitation. There were times when she missed visitation with insufficient explanation or with no explanation at all. This inconsistency on Amber's part caused distress for Saunia and did nothing to foster her relationship with the young twins. Amber had difficulty fulfilling court orders relating to her substance abuse, something she certainly needed to address for the sake of her children. The record before us shows that the caseworkers involved made appropriate efforts to help Amber, sometimes going beyond the call of duty.

The children were removed from Amber in March 2010. At the time of trial, they had been in an out-of-home placement for approximately 2 years. During that significant portion of her children's young lives, Amber was unable to rehabilitate herself, despite the services made available to her. We acknowledge that Amber's incarceration did not help the progress of her case, but Amber lacked consistency before and after she was in prison. The evidence clearly and convincingly shows that Amber is unable to provide the permanency and stability her children need. Based on our de novo review, we conclude that termination of Amber's parental rights is in the children's best interests.

2. GRANDPARENT VISITATION

Cases arising under the Nebraska Juvenile Code are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the trial court's findings. *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002). In reviewing questions of law arising in such proceedings, an appellate court reaches a conclusion independent of the lower court's ruling. *Id.*

Paula argues that the juvenile court had jurisdiction to address her request for visitation because she filed it prior to the termination of Amber's parental rights. Paula asserts that the juvenile court retained continuing jurisdiction to enter orders concerning visitation after termination and that the juvenile court should have concluded that visitation with her was in the children's best interests.

We have concluded that it is within the juvenile court's statutory jurisdiction to determine a motion for visitation asserted by a grandparent who has properly intervened. See *In re Interest of Dylan W.*, 8 Neb. App. 1039, 606 N.W.2d 847 (2000). However, regardless of the juvenile court's jurisdiction, once parental rights have been terminated as to a natural parent, the natural parents of the parent whose rights have been terminated are not entitled to continue visitation with their grandchildren as a matter of right. *In re Interest of Ditter*, 212 Neb. 855, 326 N.W.2d 675 (1982). This conclusion is based on the "generally accepted view" that

if we are principally concerned with the best interests of the child . . . and by terminating parental rights we intend to divest any tie between the parent and child so that we may, as quickly as possible, find an adoptive family for the child and permit the child to begin anew, then little purpose would be served in continuing family ties between the grandparents and the child to be adopted. . . .

. . . .

. . . We believe that even under the "best interests of the child" theory we must conclude as a matter of law that the best interests of a child require us to find that where a natural parent's rights to a child have been terminated, the grandparents should not have a legal right to seek visitation. To hold otherwise would only make the adoption and subsequent adjustment more difficult.

In re Interest of Ditter, 212 Neb. at 857-59, 326 N.W.2d at 676-77 (citations omitted).

Therefore, in this case, any right to visitation that Paula had by virtue of her biological connection to the children ceased when Amber's parental rights were terminated. See *In re Interest of Destiny S.*, *supra*. However, Paula attempts to distinguish this case from *In re Interest of Ditter*, *supra*, in basing her claim on the positive relationship she shared with the children, a

positive relationship that she claims did not exist in *In re Interest of Ditter*. Paula essentially argues that the best interests of the children require that her relationship with them continue through visitation.

We acknowledge that the record shows a very good relationship between Paula and her grandchildren, which included Paula's involvement in many aspects of the children's lives. However, as explained in *In re Interest of Ditter*, Paula has no right to visitation, and the children's best interests are not served by continued contact with Paula, when it has been determined that severing ties with Paula's daughter, Amber, who resided with Paula at the time of trial, is in their best interests.

Paula points out that the State allowed her to have visitation with the children during the pendency of the case. However, once Amber's parental rights were terminated, it was no longer a question of Paula's suitability, but, rather, maintaining separation between the children and the parent whose rights had been terminated. Allowing Paula visitation would not serve that interest. We conclude that the juvenile court did not err in overruling Paula's motion of intervenor for visitation and in denying her continued visitation following the termination of Amber's parental rights.

V. CONCLUSION

For the foregoing reasons, we conclude that the juvenile court did not err in terminating Amber's parental rights or in overruling Paula's motion for visitation and denying her visitation with the children following such termination. We affirm.

AFFIRMED.