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and remand the cause for a finding whether Norman is subject to SORA consistent with this opinion.

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

HEAVICAN, C.J., participating on briefs.

WRIGHT, J., not participating in the decision.

IN RE INTEREST OF ELIZABETH S., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA AND DEPARTMENT OF HEALTH AND HUMAN SERVICES, APPELLEES, V. VICTORIA G., APPELLANT.

809 N.W.2d 495

Filed January 6, 2012. No. S-11-153.

1. **Juvenile Courts: Appeal and Error.** An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.
2. ____: ____. An appellate court reviews questions of law independently of the juvenile court's conclusions.
3. **Minors: Juvenile Courts.** The foremost purpose and objective of the Nebraska Juvenile Code is to promote and protect the juvenile's best interests.
4. **Juvenile Courts: Parental Rights: Adoption.** Where a juvenile has been adjudicated pursuant to Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) and a permanency objective of adoption has been established, a juvenile court has authority under the juvenile code to order the Nebraska Department of Health and Human Services to accept a tendered relinquishment of parental rights.
5. **Juvenile Courts: Parental Rights: Evidence.** A parent's prior relinquishment of parental rights may be considered as evidence supporting adjudication or termination of parental rights in a future proceeding involving another child.
6. **Juvenile Courts: Parental Rights.** A juvenile court should exercise its authority to order the Nebraska Department of Health and Human Services to accept a valid relinquishment with respect to an adjudicated child when it would be in the best interests of that child to do so.

Appeal from the Separate Juvenile Court of Lancaster County: LINDA S. PORTER, Judge. Affirmed.

Sanford J. Pollack, of Pollack & Ball, L.L.C., for appellant.

Shellie D. Sabata, Deputy Lancaster County Attorney, for appellee State of Nebraska.

James L. Hatheway for appellee Department of Health and Human Services.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

GERRARD, J.

Victoria G., the biological mother of Elizabeth S., appeals from the judgment of the separate juvenile court of Lancaster County overruling Victoria's motion to require the Department of Health and Human Services (Department) to accept her relinquishment of parental rights and instead terminating her parental rights. We find that the court should have ordered the Department to accept Victoria's relinquishment of her parental rights, but we conclude that the issue is moot because we find clear and convincing evidence supporting the court's termination of Victoria's parental rights. We affirm.

I. BACKGROUND

Elizabeth was born 2 months prematurely in Lincoln, Nebraska, in May 2009. On June 2, Crystal Lentell, a child and family services specialist with the Department, was assigned to complete a safety assessment, because Victoria had not been to see Elizabeth in the hospital since May 26. When Lentell met with Victoria on June 9, Victoria said she was living under a bridge on West O Street. She said she had not been to see Elizabeth because she was "stranded" at a nearby recreation area and did not have transportation back to Lincoln. Hospital staff reported that Victoria was not bonding with or caring for Elizabeth. Lentell concluded that Victoria lacked parenting knowledge and the skills and motivation necessary to ensure Elizabeth's safety. Elizabeth was released from the hospital when she was 8 weeks old and immediately placed in foster care.

On July 7, 2009, the State filed a petition alleging that Elizabeth was a child as defined by Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). The petition alleged that Victoria had not demonstrated an ability to provide for Elizabeth's basic needs or a safe and stable home environment. Victoria did not contest the allegations. On September 8, the court entered an order

adjudicating Elizabeth as a child as defined by § 43-247(3)(a). The court ordered that Elizabeth remain in the temporary legal and physical custody of the Department for placement, treatment, and care; that Victoria have reasonable rights of supervised visitation; and that Victoria cooperate with a full psychological evaluation.

Although Victoria was granted visitation with Elizabeth, there were concerns about her ability to parent because she did not understand the basics of childcare, such as how to check the temperature of a bottle. Victoria also seemed to believe that Elizabeth should be walking and talking at 4 months old. Victoria was inconsistent in her visitations, despite being provided with transportation. She would fail to come for visits, fall asleep during them, arrive late, or want to leave early. Victoria's last visit with Elizabeth occurred on September 4, 2009; she stopped visiting after that. At some time around then, Victoria tried to commit suicide by drinking a bottle of peroxide.

After a dispositional hearing on October 29, 2009, the court found that reasonable efforts had been made to return legal custody to Victoria through visitation time, referrals for a pretreatment assessment, psychological and psychiatric evaluations, parenting education, and family support. However, the court determined that returning legal custody to Victoria would be contrary to Elizabeth's welfare due to Victoria's lack of contact and her history of mental health problems and instability. The court ordered Elizabeth's legal custody to remain with the Department and continued her placement in foster care. It directed Victoria to maintain a safe and stable living environment for herself and Elizabeth; to obtain or maintain employment; to have a minimum of two supervised visits per week; to complete a psychological evaluation; and to participate in family support services, a parenting/bonding assessment, a psychiatric evaluation, parenting education, and individual therapy.

Following review hearings on February 1, June 7, and July 12, 2010, the court continued to find that returning legal custody to Victoria would be contrary to Elizabeth's welfare. Victoria did not appear at any of those hearings. The court continued legal custody with the Department and placement

in the same foster home. The same restrictions were placed on Victoria as had been outlined in the earlier order. The court found that services had been provided in compliance with the case plan and that no progress had been made to alleviate the causes of the out-of-home placement. At some point during the proceedings, Victoria had moved to Illinois, but a Department caseworker and a service coordinator each tried to help Victoria access services in Illinois, and there is no evidence that Victoria complied with the court's orders. Nor did Victoria provide any financial support, food, clothing, or gifts for Elizabeth.

On July 30, 2010, Victoria filed a motion to require the Department to accept her relinquishment of Elizabeth. Victoria said she wished to voluntarily relinquish her parental rights, but the Department had advised her that it was not willing to accept a voluntary relinquishment. On September 1, the court conducted a review hearing and considered Victoria's motion. Victoria did not appear at that hearing either. Robin Gibreal, the Department caseworker, testified that the agency was not willing to accept Victoria's relinquishment based on concerns about her ability to parent. Gibreal had learned that while living in Illinois, Victoria had had another child, who was going to live with Victoria's sister in Nebraska. If Victoria continued to have children, Gibreal was concerned about their well-being. Gibreal said it was in Elizabeth's best interests for termination to occur.

In an order entered on September 9, 2010, the court approved a permanency plan of adoption by the current foster parents and continued the hearing on Victoria's motion seeking relinquishment. When the hearing resumed on September 30, Gibreal stated that the Department did not want to accept the relinquishment, because Victoria had not completed a mental health or psychological evaluation and the agency was concerned about whether she had the mental state to agree to relinquishment. Gibreal also said Victoria had never submitted paperwork to the Department to request its approval of relinquishment.

The court overruled Victoria's motion because she was not present at the hearing, the relinquishment had not been tendered to the Department, and it could not be determined

whether Victoria understood the meaning of relinquishment and whether she was willing to enter into it. On October 6, 2010, the court entered an order overruling Victoria's motion and scheduling a review hearing for December 6.

On October 12, 2010, the State filed a motion to terminate Victoria's parental rights to Elizabeth. On December 6, Victoria filed a second motion asking the court to require the Department to accept her relinquishment. At a hearing on December 8, Victoria testified that she was currently living in Illinois. She said that she wanted to relinquish her parental rights to Elizabeth. Victoria stated that she was under the care of a psychologist and was taking medication for clinical depression, "Bipolar Type 2." Victoria admitted that she had given birth to another child who had been voluntarily placed with Victoria's sister through a guardianship entered in the county court for York County, Nebraska. Victoria said she understood that if she relinquished her parental rights to the Department, she could not change her mind or undo the adoption. She also said she was willing to participate in a mental health assessment to determine her competency.

Elizabeth's foster mother testified that she and her husband were willing to adopt Elizabeth as quickly as possible. But Gibreal testified that the Department was not willing to accept the relinquishment because it believed Victoria had abandoned Elizabeth. Victoria said she planned to move back to Nebraska, and the Department did not have a guarantee that she would not take back custody of her subsequently born child. And the Department continued to have concerns about Victoria's ability to parent. The court took Victoria's motion under advisement. Victoria was arrested on outstanding warrants after the hearing and spent 8 days in jail.

On January 4, 2011, Victoria filed a motion asking the court to rule on her relinquishment motion. A formal hearing on the motion to terminate parental rights was held on January 11. Finally, on February 2, the court entered an order terminating Victoria's parental rights to Elizabeth. The court noted that Victoria's contact with Elizabeth had been inconsistent even before Victoria left Nebraska. Victoria had shown minimal interest in Elizabeth and had provided virtually no care,

support, or protection, whether of a physical, financial, or emotional nature. Nor did it appear that she was capable of doing so: Evidence at the termination hearing established that she was living at a city mission. Victoria presented no evidence of compliance with any aspect of her case plan. The court found that the Department had proved the allegations of the termination motion by clear and convincing evidence and that it was in Elizabeth's best interests that Victoria's parental rights be terminated.

On the same date, the court also entered an order overruling Victoria's motion to require the Department to accept her relinquishment. Because the court had terminated Victoria's parental rights, the court found the relinquishment motion was moot.

II. ASSIGNMENTS OF ERROR

Victoria assigns, as consolidated and restated, that the juvenile court erred in (1) failing to require the Department to accept her relinquishment, (2) finding that Victoria had substantially and repeatedly or continuously neglected Elizabeth, (3) finding that reasonable efforts had failed to correct the conditions leading to the adjudication, and (4) finding that the termination of Victoria's parental rights was in Elizabeth's best interests.

III. STANDARD OF REVIEW

[1,2] We review juvenile cases de novo on the record and reach our conclusions independently of the juvenile court's findings.[1] And we also review questions of law independently of the juvenile court's conclusions.[2]

IV. ANALYSIS

1. Victoria's Relinquishment of Parental Rights

The parties to this appeal agree that Victoria has forfeited her parental rights to Elizabeth and that Elizabeth should be

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[1] *In re Interest of Lakota Z. & Jacob H., ante* p. 584, 804 N.W.2d 174 (2011).

[2] See *In re Interest of Tyler F.*, 276 Neb. 527, 755 N.W.2d 360 (2008).

adopted by her foster parents. They disagree about the means by which Victoria should have been deprived of her parental rights. And the Department argues that the issue is moot. With that much, we agree.[3] But the record in this case reflects some disagreement among the parties, both on appeal and in the lower court, about the appropriate analysis to be performed when a parent tenders relinquishment of his or her parental rights. And that issue, while capable of repetition, will evade review absent the unlikely circumstances of both the refusal to accept relinquishment *and* the overruling of a motion to terminate parental rights. It is, therefore, in the public interest for us to address Victoria's argument.[4]

The basis for the parties' dispute is the collateral effect that involuntary termination of parental rights can have on that parent's rights to other children. One of the statutory conditions supporting termination of parental rights is that the 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."[5] And reasonable efforts to reunify a family prior to termination are not required if "[t]he parental rights of the parent to a sibling of the juvenile have been terminated involuntarily."[6] In sum, once the State has successfully terminated a parent's rights to one child, it becomes easier for the State to terminate the same parent's rights to other children. That collateral advantage is what the Department sought to obtain here and what Victoria apparently sought to avoid.

[3] But while the Department's decision makes sense from a strategic point of view, the foremost purpose and objective of the Nebraska Juvenile Code[7] is to promote and protect the

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[3] See, generally, *In re Interest of Thomas M., ante* p. 316, 803 N.W.2d 46 (2011).

[4] See *id.*

[5] Neb. Rev. Stat. § 43-292(2) (Cum. Supp. 2010) (emphasis supplied).

[6] Neb. Rev. Stat. § 43-283.01(4)(c) (Cum. Supp. 2010).

[7] See Neb. Rev. Stat. §§ 43-246 through 43-2,129 (Reissue 2008 & Cum. Supp. 2010).

juvenile's best interests.[8] And we relied upon that principle in *In re Interest of Gabriela H.*,[9] in which we explained the juvenile court's authority to compel the Department to accept a parent's relinquishment of parental rights. In that case, the Department refused to accept a relinquishment because, among other things, the parent was paying a "'substantial amount'" of child support.[10] The juvenile court, however, ordered the Department to accept the relinquishment. We affirmed that order.[11]

[4] We reasoned that although the juvenile code gives the Department a "certain degree of discretion" with respect to children in its custody, "that discretion is subject to the superior right of the juvenile court to determine what is in the child's best interests."[12] Juvenile courts, we noted, are accorded broad discretion in their determination of the placement of adjudicated children and to serve the best interests of the children involved.[13] Because the juvenile in that case had been adjudicated under § 43-247(3)(a), the court was guided by the juvenile code.[14] And, we noted, it would have been inconsistent with other statutory provisions to conclude that the Department "is required to recommend termination of parental rights in the case of an abandoned child but, at the same time, has the authority to prevent such termination by refusing to accept a tendered relinquishment of parental rights."[15] So, we held that where a juvenile has been adjudicated pursuant to § 43-247(3)(a) and a permanency objective of adoption has been established, a juvenile court has authority under the

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[8] See *In re Interest of D.D.P.*, 235 Neb. 864, 458 N.W.2d 193 (1990).

[9] *In re Interest of Gabriela H.*, 280 Neb. 284, 785 N.W.2d 843 (2010).

[10] *Id.* at 286, 785 N.W.2d at 845.

[11] See *id.*

[12] *Id.* at 288, 785 N.W.2d at 847.

[13] *Id.*

[14] See *id.*

[15] *Id.* at 290, 785 N.W.2d at 848.

juvenile code to order the Department to accept a tendered relinquishment of parental rights.[16]

The guiding principle that is apparent from *In re Interest of Gabriela H.* is that the court's authority to order the Department to accept relinquishment is based in, and guided by, the court's responsibility to act in the best interests of the child. And that means that the court's responsibility is to the juvenile who has been adjudicated *in that case*—not some other child over whom the court has no established jurisdiction and whose circumstances are unknown.

[5] We reasoned in *In re Interest of Gabriela H.* that a parent's payment of child support could not "justify the legal perpetuation of a parental relationship which no longer exists in fact, thereby permitting an abandoned child to linger indefinitely in foster care."[17] The same is true when a child is suspended in foster care for the sake of simplifying the State's burden of proof in some other proceeding, for some other child. It was not in Elizabeth's best interests, in this case, to delay permanency for her solely for the sake of its collateral effect on another proceeding. We also note that while a relinquishment of parental rights may not have the same automatic collateral effect as involuntary termination, a prior relinquishment may nonetheless be considered as evidence supporting adjudication or termination in a future proceeding involving another child.[18]

We recognize that in this case, at least initially, the Department also expressed concerns about Victoria's capacity to consent to relinquishment. That, of course, is a different matter, and it is well within the discretion of the Department and the juvenile court to inquire into the capacity of a parent to relinquish his or her parental rights. But those concerns were evidently addressed here when Victoria appeared in court and testified

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[16] *In re Interest of Gabriela H., supra* note 9.

[17] *Id.* at 291, 785 N.W.2d at 848.

[18] See, *In re Interest of Sir Messiah T.*, 279 Neb. 900, 782 N.W.2d 320 (2010); *In re Interest of Andrew S.*, 14 Neb. App. 739, 714 N.W.2d 762 (2006).

to her mental state and her understanding of the consequences of relinquishment. And, at that point, the juvenile court could have (and should have) avoided weeks of further delay and the burden of a termination hearing by directing the Department to accept Victoria's relinquishment.

[6] We cannot see—and the Department does not explain—how it was in Elizabeth's best interests to do otherwise. It is, in fact, difficult to imagine circumstances in which the best interests of a child with a permanency objective of adoption would not be best served by accepting a valid relinquishment of parental rights. So, to be clear: We hold that a juvenile court should exercise its authority to order the Department to accept a valid relinquishment with respect to an adjudicated child, pursuant to *In re Interest of Gabriela H.*, when it would be in the best interests *of that child* to do so.

That having been said, we agree with the Department that in this case, the issue of relinquishment is moot. As we will explain shortly, we find no merit to Victoria's argument that the juvenile court erred in finding sufficient evidence to support termination of her parental rights. The court's failure to order the Department to accept Victoria's relinquishment does not affect the merits of the court's decision to terminate her parental rights, and Victoria cannot relinquish what she no longer has. The prejudice resulting from the court's decision—the delay and burden of the termination hearing—cannot be remedied after the fact.[19] So, while we agree with Victoria that the court should have ordered the Department to accept her relinquishment, we find no basis in that argument for reversing any aspect of the court's judgment.

2. Termination of Parental Rights

Victoria also argues that the court erred in terminating her parental rights. The bases for termination of parental rights are codified in § 43-292, which 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

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[19] See *In re 2007 Appropriations of Niobrara River Waters*, 278 Neb. 137, 768 N.W.2d 420 (2009).

is in the best interests of the child.[20] Such findings must be proved by clear and convincing evidence.[21] Victoria questions the court's conclusions with respect to § 43-292(2) and (6), and its ultimate conclusion that termination was in Elizabeth's best interests. We find no merit to any of Victoria's arguments.

(a) § 43-292(2)

First, Victoria argues that the court erred in finding that she had "substantially and continuously or repeatedly neglected and refused to give the juvenile . . . necessary parental care and protection."[22] This argument is directed at the court's finding that termination was appropriate under § 43-292(2). We note, however, that this was only one of the statutory grounds for termination alleged by the State and found by the juvenile court to have been proved by clear and convincing evidence. Most pertinently, it is undisputed that at the time of the termination hearing, Elizabeth had been in an out-of-home placement for 15 or more of the most recent 22 months.[23] That fact alone would provide a statutory basis for termination,[24] if clear and convincing evidence also showed that termination was in Elizabeth's best interests.

But in any event, the record also supports the court's determination that Victoria substantially and continuously or repeatedly neglected and refused to give Elizabeth necessary parental care and protection. The record, in fact, does not show that Victoria *ever* provided Elizabeth with *any* parental care or protection. Victoria's argument is simply that she never had the opportunity to parent her child because she moved out of state. Her voluntary decision to move, however, does not weigh in her favor. "'A parent may as surely neglect a child of whom [he or] she does not have possession by failing to put [himself or] herself in a position to acquire possession as by

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[20] See *In re Interest of Sir Messiah T., supra* note 18.

[21] § 43-279.01(3).

[22] See § 43-292(2).

[23] See § 43-292(7).

[24] See *In re Interest of Lisa W. & Samantha W.*, 258 Neb. 914, 606 N.W.2d 804 (2000).

not properly caring for a child of whom [he or] she does have possession.'"[25]

(b) § 43-292(6)

Similarly, we find no merit to Victoria's second argument that the court erred in finding that reasonable efforts had been made to correct the conditions leading to the adjudication. Victoria argues that once she moved to Illinois, the Department stopped supporting her and did not arrange or pay for any of the court-ordered services in Illinois. It was, again, Victoria's choice to move away from where the Department could readily provide her with services—most pertinently, proximity to Elizabeth, which would seem to be a necessary aspect of any reasonable efforts at reunification.

And even then, Victoria's argument is unsupported by the record. Victoria did not take significant advantage of her opportunities when she lived in Nebraska and maintained only sporadic communication with the Department; communication became even more difficult after Victoria moved to Illinois. Nonetheless, the Department attempted to locate service providers for Victoria in Illinois that would accept the Illinois Medicaid payments for which Victoria was eligible after she moved. And a provider was located for Victoria that she apparently utilized to some degree, but no evidence was presented at the termination hearing about the extent to which Victoria took advantage of those services. In short, the record clearly establishes that even after Victoria moved to Illinois, the Department made reasonable efforts to preserve and reunify Victoria and Elizabeth. Those efforts failed because of Victoria, not the Department.

(c) Best Interests

Finally, Victoria argues that the court erred in finding that termination was in Elizabeth's best interests. Victoria's argument in this regard is limited to her observation that no witness at the termination hearing literally opined that termination was in Elizabeth's best interests. But such "magic words" are not

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[25] *In re Interest of Kalie W.*, 258 Neb. 46, 50, 601 N.W.2d 753, 756 (1999).

necessary for the record to establish, by clear and convincing evidence, that termination is in a child's best interests. In this case, the record establishes both Victoria's failure as a parent, along with the foster parents' willingness to provide Elizabeth with stability and permanency.

In fact, in arguing for relinquishment, Victoria seems to agree that adoption by the foster parents is in Elizabeth's best interests. And while Gibreal did not specifically opine that termination was in Elizabeth's best interests, she did opine that Elizabeth's needs were being met by her foster parents, that placement with the foster parents was in Elizabeth's best interests, that Elizabeth needed permanency as soon as possible, and that reunification with Victoria was not a realistic goal. In short, the record contains clear and convincing evidence that terminating Victoria's parental rights was in Elizabeth's best interests.

V. CONCLUSION

While we agree with Victoria that the juvenile court should have ordered the Department to accept relinquishment of her parental rights, we also agree with the Department that the relinquishment is moot. And we find no merit to Victoria's claim that the court erred in terminating her parental rights. The juvenile court's judgment is affirmed.

AFFIRMED.

WRIGHT, J., not participating in the decision.

JAN GINAPP, APPELLEE, V. CITY OF BELLEVUE, NEBRASKA, APPELLANT, AND ALEGENT HEALTH MIDLANDS HOSPITAL, APPELLEE.

809 N.W.2d 487

Filed January 6, 2012. No. S-11-193.

1. **Political Subdivisions Tort Claims Act: Appeal and Error.** In actions brought pursuant to the Political Subdivisions Tort Claims Act, the factual findings of the trial court will not be disturbed on appeal unless they are clearly wrong. When determining the sufficiency of the evidence to sustain the trial court's judgment, it must be considered in the light most favorable to the successful party; every