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there is no basis upon which to conclude that the trial court erred in denying Clint's request for a credit against his alimony obligation.

CONCLUSION

We conclude that the trial court did not err in awarding alimony to Angela in the amount of $1,500 per month for a total of 149 months or in denying Clint's request for a credit against his alimony obligation based on the mortgage payments he made during the pendency of the case. Accordingly, the decree of dissolution entered by the district court is affirmed.

AFFIRMED.

IN RE GUARDIANSHIP OF JORDAN M., A CHILD UNDER 18 YEARS OF AGE. MATTICE M., APPELLANT, V. KAAREN H., APPELLEE.

820 N.W.2d 654

Filed September 18, 2012. No. A-12-017.

1. **Guardians and Conservators: Appeal and Error.** Appeals of matters arising under the Nebraska Probate Code, Neb. Rev. Stat. §§ 30-2201 through 30-2902 (Reissue 2008 & Cum. Supp. 2010), are reviewed for error on the record.
2. **Guardians and Conservators: Parent and Child.** The father and mother are the natural guardians of their minor children and are duly entitled to their custody, being themselves not otherwise unsuitable.
3. **Guardians and Conservators: Parental Rights.** The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order.
4. ____: ____. The appointment of a guardian for a minor child does not result in a de facto termination of parental rights; rather, a guardianship is no more than a temporary custody arrangement established for the well-being of a child.
5. **Guardians and Conservators: Child Custody.** Granting one legal custody of a child confers neither parenthood nor adoption; a guardian is subject to removal at any time.
6. **Child Custody: Parental Rights: Presumptions.** The parental preference principle establishes a rebuttable presumption that the best interests of a child are served by reuniting the child with his or her parent.
7. **Guardians and Conservators: Parental Rights: Proof.** As a part of the parental preference principle, an individual who seeks appointment as guardian of a minor child over the objection of a biological or adoptive parent bears the burden of

proving by clear and convincing evidence that the biological or adoptive parent is unfit or has forfeited his or her right to custody.

8. **Parent and Child: Words and Phrases.** Parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child's well-being.

Appeal from the County Court for Douglas County: EDNA ATKINS, Judge. Affirmed.

Martha J. Lemar and Catherine Mahern, of Milton R. Abrahams Legal Clinic, for appellant.

Karen S. Nelson, of Schirber & Wagner, L.L.P., for appellee.

IRWIN, SIEVERS, and PIRTLE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Kaaren H. filed a petition for guardianship of her granddaughter, Jordan M. Jordan's biological mother, Mattice M., objected to the guardianship. Following a trial, the county court granted Kaaren's petition for guardianship. Mattice now appeals, and for the reasons set forth herein, we affirm.

II. BACKGROUND

Kaaren is Jordan's paternal grandmother. Kaaren's son, who is Jordan's father, was incarcerated at the time of the guardianship proceedings and did not object to Kaaren's petition for guardianship of Jordan. As such, he is not a party to this appeal.

Mattice is Jordan's mother. Mattice has five children—four daughters and one son. Jordan is Mattice's youngest child, and these guardianship proceedings involve only Jordan. Mattice has custody of her three older daughters. Mattice's son resides with Mattice's mother, Tricia M., as a result of a permanent arrangement made between Mattice and Tricia at the time of his birth.

At the time of Jordan's birth in October 2010, Mattice and her daughters resided in Tricia's home. Also living in Tricia's home at that time were Tricia; 9 of Tricia's 15 children,

including an adult child and her 3 young children; and Mattice's son, who is cared for by Tricia. In total, then, there were 16 children and 3 adults residing in the home, which has 3 bedrooms and 1 bathroom.

Mattice and her daughters, including Jordan, moved out of Tricia's home and into an apartment sometime around the first part of 2011. In March 2011, shortly after moving into the apartment, Mattice was arrested for hindering the apprehension of a fugitive from justice after she wired money to an escaped convict in Texas and that convict then traveled to Nebraska to stay with Mattice at her apartment.

Mattice pled guilty to the charge. She was incarcerated in Texas and, upon her release, was required to serve 5 years of probation. Prior to her incarceration, Mattice executed a document providing Tricia with a limited power of attorney over Mattice's four daughters, including Jordan. Jordan and her sisters returned to live with Tricia in her home.

After Jordan returned to live with Tricia, Kaaren went to Tricia's home to visit Jordan. Subsequent to this visit, Kaaren filed a petition for the appointment of a temporary and permanent guardian for Jordan. In the petition, Kaaren alleged that she was in a better position than Tricia to provide care and support for Jordan, because she is employed, has stable housing, and has an established and ongoing relationship with Jordan, and because "there are a significant number of young children" residing in Tricia's home and Tricia cannot provide appropriate care and supervision for Jordan.

The county court appointed Kaaren as Jordan's temporary guardian and scheduled a hearing to address Kaaren's request to serve as permanent guardian.

A hearing was held on June 7, 2011. At the time of the hearing, Mattice remained incarcerated in Texas. As such, she did not appear at the hearing, but Tricia did appear to contest the appointment of Kaaren as Jordan's permanent guardian.

At the June 7, 2011, hearing, Kaaren testified that she has had regular and consistent contact with Jordan since Jordan's birth. Prior to Mattice's incarceration, Kaaren and Mattice had an agreement that every other week, Kaaren would care for Jordan for 3 or 4 days at a time.

Kaaren testified that she began having concerns regarding Jordan's safety when Jordan was 3 weeks old and Kaaren observed a burn on Jordan's left wrist the size of an eraser on a pencil. Kaaren testified that she believed the burn was from a cigarette and that she knew Tricia smoked cigarettes. Kaaren also testified regarding her concerns that Tricia does not properly restrain Jordan in a car seat while transporting her. Kaaren indicated that she does not believe that Tricia can properly care for Jordan because of the number of children residing in her home.

Kaaren testified that after Mattice's arrest, she went to Tricia's home to visit Jordan. When she arrived at the home, Tricia was not there and there were teenage children caring for Jordan. Kaaren observed that Jordan was "urine soaked" up to her armpits. Kaaren changed Jordan's diaper and clothes and gave her a bottle and was then told to return Jordan to one of the teenagers. One of these teenagers told Kaaren that Jordan did not have a bed to sleep on at Tricia's house.

Kaaren testified that when she picked up Jordan from Tricia's home after being appointed as her temporary guardian, Jordan was very sick. In fact, Jordan was immediately admitted to a hospital for 4 days for upper respiratory issues.

Tricia also testified at the June 7, 2011, hearing. She testified that currently, 12 children reside with her in her home. She indicated that she is not concerned about her home's being overly crowded, and she stated that Jordan does have a bed in her home, which Tricia referred to as a "Pack 'n Play." Tricia denied that Jordan ever had a cigarette burn on her wrist and denied that Jordan was "urine soaked" when Kaaren came to visit her after Mattice was arrested. Tricia testified that Jordan was never neglected.

After Tricia testified, the guardianship hearing was continued until November 18, 2011. By the time of this second day of the hearing, Mattice had been released from jail and had returned to Nebraska. Mattice appeared at the hearing and contested Kaaren's petition for guardianship of Jordan.

Mattice testified at the November 18, 2011, hearing. She admitted that she had sent $300 to a "fugitive from justice" who had been convicted of attempted murder and who was a

registered sex offender. She also admitted that this man had shown up at her home after she sent him the money and that he stayed with her for 1 day before they were both arrested. However, Mattice testified that she did not invite him to her home and that she did not know the extent of his crimes until after her arrest. She admitted she had made a mistake.

Mattice indicated that she had been released from jail on June 30, 2011, and that she is currently on probation for the next 5 years. She is not employed and lives in a domestic violence shelter with her three older daughters. She testified that she would soon be moving to a transitional apartment. At the time of the hearing, she was taking a parenting class and a class to learn to be self-sufficient.

When Mattice returned to Nebraska after being released from jail, she had sporadic contact with Jordan. On July 4, 2011, she contacted Kaaren about seeing Jordan, but she did not contact her again during that month and could not recall contacting her again in August. In September, Mattice tried to have more regular contact, which Kaaren has facilitated.

Mattice denied that Jordan had ever been burned by a cigarette. She claimed that the mark on Jordan's left wrist identified by Kaaren was either a birthmark or a mark left by a hospital bracelet that had been put on too tightly. Later, she testified that she did not know how the mark got there.

Mattice testified that she was capable of taking care of her children and that she did not want the court to grant Kaaren's request for a permanent guardianship.

At the close of the hearing, the court informed the parties that it was ready to render a decision. The court went on to state that it was granting Kaaren's petition for a permanent guardianship. The court explained:

> [T]he Court finds that this child shall remain with the paternal grandmother for now. I find that the natural mother's conduct constitutes — I don't want to say that she is unfit because I don't think that the evidence clearly shows that she is unfit, but she has made some decisions in her life that [have] come very close to that, which would affect the safety and welfare of each of

> these children, and in particular the one that is Jordan in this case.

After the hearing, the court entered a formal order concerning its findings. In the order, the court indicated its finding that "[c]lear and convincing evidence established that the minor child, Jordan . . . , would be in danger if she were allowed to return to her natural mother . . . ." The court then cited to evidence that Mattice "has engaged in dangerous behavior by recklessly becoming involved with dangerous felons" and that, as a result of this behavior, Mattice is now a convicted felon on probation. The court also cited to evidence that Mattice does not currently have stable housing or employment and that she does not have a strong family support system to help her. Finally, the court pointed to evidence that Jordan had a "burn-like" injury to her wrist and evidence that Jordan has been exposed to cigarette smoke which has exacerbated certain health problems. The court concluded by finding that Mattice's

> reckless behavior causes the court to find that at this time the natural mother, Mattice[']s decision making ability is personally deficient and that she lacks the capacity to parent the child, Jordan . . . , and that her rights to the custody to Jordan . . . have been suspended by circumstances, thereby necessitating the appointment of the paternal grandmother, Kaaren . . . , as Guardian of Jordan.

Mattice appeals from the court's order.

III. ASSIGNMENTS OF ERROR

On appeal, Mattice generally asserts that the county court erred in granting Kaaren's petition for guardianship of Jordan. Specifically, Mattice asserts, restated and consolidated, that the county court erred in failing to properly apply the parental preference principle and in finding sufficient evidence to warrant granting the petition for guardianship.

IV. STANDARD OF REVIEW

[1] Appeals of matters arising under the Nebraska Probate Code, Neb. Rev. Stat. §§ 30-2201 through 30-2902 (Reissue

2008 & Cum. Supp. 2010), are reviewed for error on the record. See, *In re Guardianship of D.J.*, 268 Neb. 239, 682 N.W.2d 238 (2004); *In re Guardianship of Elizabeth H.*, 17 Neb. App. 752, 771 N.W.2d 185 (2009). When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *In re Guardianship of D.J., supra*; *In re Guardianship of Elizabeth H., supra*. An appellate court, in reviewing a judgment for errors appearing on the record, will not substitute its factual findings for those of the lower court where competent evidence supports those findings. *In re Guardianship of Elizabeth H., supra*.

On questions of law, an appellate court has an obligation to reach its own conclusions independent of those reached by the lower courts. *Id*.

V. ANALYSIS

On appeal, Mattice asserts that the county court erred in granting Kaaren's petition for guardianship of Jordan. Before we address Mattice's specific assignments of error, we detail the relevant statutory and case law concerning the appointment of a guardian for a minor child.

[2,3] Section 30-2608(a) provides, in relevant part, "The father and mother are the natural guardians of their minor children and are duly entitled to their custody . . . , being themselves . . . not otherwise unsuitable." Section 30-2608(d) goes on to provide that "[t]he court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order."

Section 30-2611(b) lists the specific criteria that must be met before a court can appoint a guardian for a minor child:

> Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 30-2608 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment.

[4,5] This court has previously recognized that the appointment of a guardian for a minor child does not result in a de facto termination of parental rights. See *In re Guardianship of Elizabeth H., supra*. Rather, a guardianship is no more than a temporary custody arrangement established for the well-being of a child. *Id*. Granting one legal custody of a child confers neither parenthood nor adoption; a guardian is subject to removal at any time. *Id*.

A guardianship gives parents the opportunity to temporarily relieve themselves of the burdens involved in raising a child, thereby enabling parents to take those steps necessary to better their situation so they can resume custody of their child in the future. *Id*.

With these guidelines concerning guardianships in mind, we now address Mattice's specific assigned errors.

1. Parental Preference Principle

In her brief on appeal, Mattice argues that the county court erred in granting Kaaren's request for guardianship, because the court did not first find that Mattice is an unfit parent or has in some manner forfeited her right to custody of Jordan. Mattice argues that the court instead relied solely on its findings concerning Jordan's best interests, which is contrary to the parental preference principle. Upon our review of the record, we find that Mattice's assertion has no merit. A careful reading of the county court's order reveals that it did, in fact, find that Mattice is currently unfit and that she has temporarily forfeited her right to custody of Jordan. As such, it is clear that the court correctly applied the parental preference principle.

[6] The Nebraska Supreme Court held in *In re Guardianship of D.J.*, 268 Neb. 239, 682 N.W.2d 238 (2004), that the parental preference principle applies in guardianship proceedings that affect child custody. The parental preference principle establishes a rebuttable presumption that the best interests of a child are served by reuniting the child with his or her parent. See *id*. The principle provides that a parent has a natural right to the custody of his or her child which trumps the interest of strangers to the parent-child relationship and the preferences of the child. See *id*.

[7] As a part of the parental preference principle, an individual who seeks appointment as guardian of a minor child over the objection of a biological or adoptive parent bears the burden of proving by clear and convincing evidence that the biological or adoptive parent is unfit or has forfeited his or her right to custody. See *In re Guardianship of Elizabeth H.*, 17 Neb. App. 752, 771 N.W.2d 185 (2009). Absent such proof, the constitutional dimensions of the relationship between parent and child require a court to deny the request for a guardianship. *Id.*

[8] Parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child's well-being. *Id.* The "fitness" standard applied in guardianship appointment under § 30-2608 is analogous to a juvenile court finding that it would be contrary to a juvenile's welfare to return home. *In re Guardianship of Elizabeth H., supra.*

In the county court's order, it did not explicitly state that it found Mattice to be an unfit parent. However, it did state that it found Mattice's "decision making ability [to be] personally deficient" and that Mattice "lacks the capacity to parent" Jordan. The court also found that as a result of Mattice's personal deficiencies and incapacity to parent, Jordan would be in danger if she were placed back in Mattice's custody.

These findings clearly demonstrate an implicit conclusion that Mattice is currently unfit to parent Jordan. The language in the court's order parallels the established definition of unfitness, which, as we stated above, is "a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child's well-being." *In re Guardianship of Elizabeth H.*, 17 Neb. App. at 762, 771 N.W.2d at 193-94.

In addition to the court's findings regarding Mattice's unfitness to parent Jordan, the court specifically found that Mattice's parental rights to Jordan "have been suspended by circumstances," which appears to indicate the court's conclusion

that Mattice has temporarily forfeited her parental rights to Jordan. And, as we discussed above, the parental preference principle requires a finding that a parent is either unfit or has forfeited his or her right to custody before a guardianship can be granted.

A careful reading of the county court's order reveals that it found that Mattice is currently unfit to parent Jordan and that she has forfeited her right to custody at this time. Accordingly, we find that the county court properly applied the parental preference principle in granting Kaaren's request for guardianship. The principle provides that a court must find that a parent is unfit or has forfeited his or her parental rights before the court can grant a request for guardianship over the parent's objections. We find Mattice's assertion that the court improperly applied the parental preference principle to be without merit.

We do, however, note that in her brief on appeal, Mattice points to certain comments made by the county court at the guardianship trial which could indicate the court's belief that Mattice is currently a fit parent for Jordan. These comments include the court's statement that it did not "want to say that [Mattice] is unfit because [the court did not] think that the evidence clearly shows that she is unfit, but she has made some decisions in her life that [have] come very close to that."

We agree that the court's comments indicate some equivocation about whether the evidence clearly and convincingly demonstrated that Mattice is currently an unfit parent for Jordan. When we read these comments in conjunction with the court's formal order, however, we find that the language in the formal order resolves any ambiguity in the court's findings, in that, in the court's order, it expresses a clear finding that Mattice is currently unfit. Moreover, we cannot disregard the court's additional finding that the evidence presented at the guardianship trial demonstrated that Mattice has temporarily forfeited her parental rights to Jordan. Such finding is another factor to consider in applying the parental preference principle.

Upon our review of the record in its entirety, we conclude that the county court properly applied the parental

preference principle, because the court made specific findings that Mattice is currently unfit and has temporarily forfeited her parental rights to Jordan prior to granting Kaaren's request for guardianship. As such, we next turn to a discussion of whether there was sufficient evidence to support the county court's findings.

2. Sufficiency of Evidence

On appeal, Mattice argues that the county court erred in finding sufficient evidence to warrant granting Kaaren's motion for guardianship of Jordan. Mattice asserts that the court did not properly consider her present circumstances, including the progress she has made since being released from jail in June 2011, and that the court erred in considering evidence that Jordan had been burned by a cigarette when she was very young. Upon our review, we cannot say that the county court erred in finding sufficient evidence to warrant granting Kaaren's request for guardianship. The totality of the evidence presented at the guardianship hearing supports the court's decision, and as such, we affirm.

As we discussed above, the county court granted Kaaren's request for guardianship of Jordan after finding that Mattice is currently unfit to parent Jordan and has temporarily forfeited her parental rights. In its order, the court explained that its findings were based on numerous factors.

First, the court found that the evidence presented at trial revealed that Mattice failed to protect Jordan from a "smoking environment" even though cigarette smoke exacerbated Jordan's upper respiratory problems and even though Jordan suffered a "burn-like injury," presumably from a cigarette, while in Mattice's custody. The court's factual findings are supported by evidence in the record. Kaaren testified that she observed a small burn on Jordan's wrist when she was only 3 weeks old. Kaaren indicated that the burn appeared to be from a cigarette and that she knew that Tricia smoked cigarettes. Other evidence revealed that at the time the burn appeared on Jordan, she was living with Mattice at Tricia's home. In addition, there was evidence to demonstrate that Jordan suffers from upper respiratory problems, including asthma, and

that her condition is worsened when she is around smoke. When Mattice was arrested, she left Jordan in Tricia's care and exposed to secondhand smoke.

The court also found that the evidence presented at trial revealed that in the recent past, Mattice had exhibited extremely poor judgment when she befriended and regularly communicated with an inmate in a Texas prison who was a registered sex offender. Mattice then sent money to this person and permitted him to come into her home after he traveled to Nebraska and appeared on her doorstep. As a result of Mattice's error in judgment, she was arrested and is now a convicted felon on probation. In addition, she permitted her children to be exposed to a dangerous situation. The court's factual findings are supported by evidence in the record. Mattice admitted that she had made a mistake by communicating with a man who was in prison and by allowing him to come into her home. She also admitted that she pled guilty to a felony charge of hindering the apprehension of a fugitive from justice and that at the time of the guardianship trial, she had recently been released from jail and was on probation for the next 5 years.

The court also found that the evidence presented at trial revealed that at the time of trial, Mattice did not have stable housing and was unemployed. These findings are supported by evidence in the record. Mattice testified that she was currently living in a domestic violence shelter, but that she was planning on moving into transitional housing very soon. Mattice appeared to have very little knowledge about her transitional housing and could not explain to the court the requirements for acquiring and retaining such transitional housing. Mattice also did not have a specific date for her move, nor did she know exactly where she would be living. Mattice indicated that she was unemployed and that her only source of income was government assistance.

Finally, the court found that Mattice did not have any family support to help her obtain more stability. These findings are also supported by evidence in the record. Evidence presented at the hearing revealed that Mattice's mother, Tricia, is responsible for at least seven young children, including Mattice's son. Other evidence revealed that Tricia simply does not have the

resources to adequately provide for Mattice and her daughters in addition to all of the other children she is caring for. Furthermore, there was evidence that Mattice and Tricia have a tumultuous relationship which often results in arguments and Tricia's asking Mattice to leave her home.

Viewed as a whole, the evidence presented at trial demonstrates that because of Mattice's decision to involve herself with a convicted felon, she is currently unable to provide Jordan with a stable home environment. In addition, the evidence demonstrates that Mattice has repeatedly placed Jordan in dangerous situations, without regard for her safety or physical well-being. Essentially, the evidence reveals that Mattice has shown she is deficient in making proper choices in her life and that her choices have had a negative effect on Jordan's well-being and will continue to have such an effect should she regain custody of Jordan at this point in time.

We acknowledge that there is conflicting evidence in the record concerning Mattice's parenting abilities and her decisionmaking skills; however, where credible evidence is in conflict on a material issue of fact, the appellate court considers, and may give weight to, the fact that the trial court heard and observed the witnesses and accepted one version of the facts rather than another. See *Marcovitz v. Rogers*, 267 Neb. 456, 675 N.W.2d 132 (2004). And, as we stated above, the county court's factual findings are clearly supported by evidence in the record.

In addition, the court's factual findings support its ultimate conclusion that Mattice is currently unfit to parent Jordan and that she has temporarily forfeited her parental rights to Jordan. Because the county court's decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable, we affirm the order of the county court granting Kaaren's request for guardianship of Jordan.

We must note, however, that as we explained above, a guardianship is temporary in nature, and that Mattice has the right, should she so choose, to file a motion to terminate the guardianship once she is able to demonstrate improvement in her parenting abilities and her decisionmaking skills.

VI. CONCLUSION

We find that the county court did not err when it granted Kaaren's petition for guardianship of Jordan, and accordingly, we affirm.

AFFIRMED.

STATE OF NEBRASKA, APPELLANT, V.
JOSHUA E. FLOREA, APPELLEE.
820 N.W.2d 649

Filed September 18, 2012. No. A-12-067.

1. **Judgments: Speedy Trial: Appeal and Error.** As a general rule, a trial court's determination as to whether charges should be dismissed on speedy trial grounds is a factual question which will be affirmed on appeal unless clearly erroneous.
2. **Statutes: Appeal and Error.** To the extent an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent conclusion irrespective of the determination made by the court below.
3. **Speedy Trial.** Neb. Rev. Stat. § 29-1207 (Cum. Supp. 2010) requires that a defendant be tried within 6 months after the filing of the information, unless the 6 months are extended by any period to be excluded in computing the time for trial.
4. ____. If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, he or she shall be entitled to an absolute discharge from the offense charged.
5. **Speedy Trial: Indictments and Informations.** During the period between dismissal of a first information and the filing of a second information which alleges the same charges, the speedy trial time is tolled and the time resumes upon the filing of the second information, including the day of its filing.
6. **Double Jeopardy.** The application of Neb. Rev. Stat. § 29-2316 (Reissue 2008) turns on whether the defendant has been placed in jeopardy by the trial court.
7. **Double Jeopardy: Juries: Pleas.** Jeopardy attaches (1) in a case tried to a jury, when the jury is impaneled and sworn; (2) when a judge, hearing a case without a jury, begins to hear evidence as to the guilt of the defendant; or (3) at the time the trial court accepts the defendant's guilty plea.

Appeal from the District Court for Saline County: VICKY L. JOHNSON, Judge. Exception sustained, and case remanded for further proceedings.

Tad D. Eickman, Saline County Attorney, for appellant.