



Michael T., Aiden's father. Specifically, the petition alleged that on March 2, 2010, the children were removed from Michael and Tara's home after it was found in an unsafe and unsanitary condition despite earlier warnings from the Department of Health and Human Services (DHHS). Although church members had provided assistance in cleaning, conditions in the home had again deteriorated. The petition further alleged that Michael and Tara failed to dress the children appropriately for very cold winter conditions and that Michael was late in picking the children up from daycare and sometimes forgot to pick them up. The petition was later amended to delete the allegations of inappropriate dressing and to add allegations that Michael and Tara have a history of mutual verbal and physical altercations occurring in front of the children and that Michael had twice been arrested for domestic assaults against Tara. The children were removed from the parental home and placed in the temporary custody of DHHS, with Michael and Tara permitted supervised parenting time. At a May 19 hearing, Michael and Tara admitted to the allegations in the amended petition and the children were adjudicated under § 43-247(3)(a). Tara later relinquished her parental rights to the children and is not a party to this appeal.

At subsequent hearings Michael was ordered to participate in individual therapy and marriage counseling and to cooperate

with DHHS in its provision of services. Following a review hearing in November 2010, the children were permitted to move back to the family home. However, in March 2011, Michael moved out of state, leaving the children with Tara. The children were again removed from the home on March 25, 2011. On January 27, 2012, the State moved to terminate Michael's parental rights to Aiden pursuant to Neb. Rev. Stat. § 43-292(6) (Cum. Supp. 2012), alleging that reasonable efforts, under the direction of the court, had failed to correct the conditions leading to Aiden's adjudication; and that Aiden had been in out-of-home placement for 15 months of the most recent 22 months, pursuant to § 43-292(7). The State further alleged that termination of Michael's parental rights was in Aiden's best interests.

At the May 2012 hearing on the State's motion for termination of Michael's parental rights, Rachel Barcel, a foster care specialist with the Nebraska Families Cooperative (NFC), testified that she worked with Aiden for a 16-month period ending in October 2011. Barcel stated that the family had been reunified in November 2010 under Intensive Family Preservation (IFP) in which a therapist and family support worker conduct very intensive work in the family home teaching parenting skills and providing an array of services. She testified that the family was not stable once IFP was removed in February 2011. Barcel stated that Tara had "mental health

concerns" and that she was in bed every time Barcel visited the home, leaving the child care to Michael. Barcel stated that Tara had no income or transportation.

Barcel testified that she called Michael on March 9, 2011, after receiving a call from the daycare where both children were receiving speech therapy and occupational therapy. Michael informed her that he had left Tara, was seeking a divorce, and was on his way to Minnesota. He told Barcel that he had no concerns about leaving the children with Tara. Upon leaving, Michael took the family's income tax refund in the amount of \$4,000, paid the March rent, and left Tara \$20. Barcel stated that Michael made no arrangements to provide for Aiden's welfare although he later made a minimum payment to keep Tara's electricity from being shut off. Both children were removed from Tara's home a second time on March 25.

Barcel later contacted Michael at his grandparents' home in Georgia, asking him to participate in therapy. However, since leaving the family home, Michael had not seen Aiden and had very little telephone contact even though he was entitled to supervised telephone conversations. Barcel stated that Michael did not ask about reunification with Aiden, did not send Aiden cards or gifts or offer financial support, and that he did not participate in any therapy.

Cristen White, a family permanency director with NFC, testified that she was the supervisor on Aiden's case from the time of his first removal from the family home until March 2012. White stated that Michael contacted her on March 14, 2011, to say that he was removing his things from the family home under police supervision. Later in the day, Michael came to her office to say that he had found the home "a big mess" and that Tara's Percocet was gone and the police officer was calling in a report of child abuse and neglect. White then visited the family home because of her concerns about Tara's significant mental health issues and abuse of prescription medications and because she was concerned as to how Tara would provide for the children in Michael's absence.

White stated that Michael was not a fit parent because "he up and left his wife and his child and was gone for over a year without even seeing his child," knowing that Tara had mental health issues and was abusing prescription medications. White noted that Michael never completed his individual therapy. A home study was completed on Michael's grandparents' home in Georgia but it did not approve placement with Michael. White testified that it was in Aiden's best interests that Michael's parental rights be terminated, observing that Michael had no face-to-face contact with Aiden, age 3 at the time of the termination hearing, from the time that Michael left the family

home on March 14, 2011, until at least the time that the petition to terminate his parental rights was filed on January 27, 2012.

Rachel Brennan, a caseworker with NFC, has worked with Aiden since November 2011. Brennan testified that Aiden had been in out-of-home placement for 18 of the past 22 months and that Michael had not visited his son from the time he left the family home in March 2011 until March 2012, shortly after the petition to terminate Michael's parental rights was filed. She said that Michael had some telephone contact with Aiden and has had four visits with him since the termination petition was filed. However, Brennan testified she did not believe that Michael had progressed to the point of having unsupervised visits because he had made no progress in the case, had not followed through with any recommendations offered through case management, and had not completed any individual therapy or addressed his anger management problems. Brennan stated that she did not think Michael was a fit parent because he had not seen Aiden for a year, had inconsistent phone visits, failed to accept responsibility for Aiden's removal from the home and had no bond with Aiden--although she acknowledged that she did not see Michael interact with Aiden. Brennan noted that Michael did not request services until 2 weeks before the termination hearing.

For these reasons, Brennan believed that it was in Aiden's best interests that Michael's parental rights be terminated.

Michael testified that he left Tara because he was unable to deal with her behavior any longer and that he contacted NFC when he learned that Aiden had again been removed from the home. Michael stated that he asked for a home study in Georgia, hoping to have Aiden come live with him there. He testified that he sent money to Tara after he left. The payment records he placed in evidence show that he paid Tara a total of \$95 in March 2011, although he testified that he also paid two months' rent and made a minimum payment to keep Tara's electricity on. He stated that he never told anyone that he did not want to be involved in Aiden's life and that he was willing to work on parenting issues in Georgia. Michael testified that he worked two part-time jobs in Georgia but that he did not earn enough to afford plane tickets to see Aiden in Nebraska.

Following the hearing, the juvenile court terminated Michael's parental rights under § 43-292(6) and (7). The court also found that Michael was an unfit parent and that it was in Aiden's best interests that Michael's parental rights be terminated. Michael appeals from this order.

#### ASSIGNMENTS OF ERROR

Michael contends that the juvenile court erred in finding that he had failed to correct the conditions which led to

Aiden's removal from the home because the evidence shows that he had substantially complied with court orders. He also asserts that the court erred in terminating his parental rights to Aiden.

#### STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

#### ANALYSIS

The juvenile court found that the State proved grounds for termination under § 43-292(6), and (7). For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. See *In re Interest of Leland B.*, 19 Neb. App. 17, 797 N.W.2d 282 (2011). The State must prove these facts by clear and convincing evidence. *Id.* Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of the fact to be proven. *Id.*

Under § 43-292(7), the State must show that the child has been in an out-of-home placement for 15 or more months of the most recent 22 months. The evidence was unchallenged that Aiden has remained in out-of-home placements for a total of 18 of the past 22 months at the time of trial. Accordingly, the State proved § 43-292(7) by clear and convincing evidence.

Because the State need prove only one ground for termination, we decline to consider Michael's assigned errors regarding the court's determination that the State proved other grounds enumerated in § 43-292. Generally, when termination is sought under subsections of § 43-292 other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). Thus, we will consider evidence relevant to the other grounds in our analysis of Aiden's best interests.

The record shows that Michael was struggling to deal with a very young child and a mentally ill wife who showed little or no capability of caring for that child. There was some evidence that while he was living in Nebraska, Michael was participating in some of the services offered to him to help him develop the skills to keep Aiden in his home. Nonetheless, Michael left Aiden in Tara's care and moved out of state, taking the family's sizable tax refund for his own use save for some meager amounts

paid to Tara for rent and to keep the electricity on. Michael offered no real explanation for his decision to abandon Aiden to the care of a woman Michael knew was incapable of providing care for him. Subsequently, Michael did not see Aiden for a year and only spoke with him sporadically by telephone despite having the right to do so. Living with his grandparents in Georgia, Michael exhibited little interest in obtaining services until immediately prior to the hearing to terminate his parental rights. In spite of more than 2 years of State involvement with his family, Michael never made sufficient progress to reach a level of unsupervised visits with Aiden, even had he chosen to visit the child. Further, there was little evidence that a bond existed between Michael and Aiden.

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 not properly caring for a child of whom she does have possession. *In re Interest of J.N.V.*, 224 Neb. 108, 395 N.W.2d 758 (1986). The system cannot and should not allow children to languish in foster care waiting to see if the parent will mature. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007). Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. *In re Ryder J.*, *supra*.

Aiden has spent most of his young life in the care of the State, and he deserves a permanent placement. Upon our de novo review of the record, we conclude that the juvenile court did not err in finding Michael to be an unfit parent and that termination of Michael's parental rights is in Aiden's best interests.

#### CONCLUSION

Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Michael's parental rights. As such, we affirm the order of the juvenile court terminating his parental rights to Aiden.

AFFIRMED.