

IN THE NEBRASKA COURT OF APPEALS

In re Interest of A'laijah M.)
and Alaina T.,)
children under 18 years of age.)
State of Nebraska,)
Appellee,)
v.)
Charles T.,)
Appellant.)

No. A-11-992

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

JUN 26 2012

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

INBODY, Chief Judge, and IRWIN and SIEVERS, Judges.

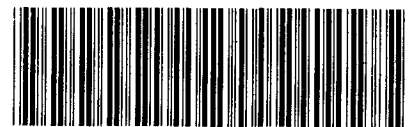
SIEVERS, Judge.

INTRODUCTION

Charles T. appeals from the order of the separate juvenile court of Douglas County terminating his parental rights to his daughter, Alaina T., born October 18, 2007. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Charles' parental rights. As such, we affirm the order of the juvenile court terminating Charles' parental rights to Alaina.

STATEMENT OF FACTS

At the outset, we note that that this appeal only involves the termination of parental rights regarding the minor child Alaina. This appeal does not involve the termination of parental rights regarding the minor child A'laijah. Therefore, A'laijah



will only be discussed as necessary to provide the context for Alaina's removal from the parental home and the subsequent juvenile court proceedings.

In July 2009, the State filed a petition alleging that A'laijah M. and Alaina T. should be adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults and habits of their mother, Monique G. Specifically, the State alleged that A'laijah had been admitted the previous day to the University of Nebraska Medical Center with a life-threatening diabetes condition because Monique had failed to provide her with proper medical attention, and that Monique had failed to provide proper parental care, support and supervision of both children. The record shows that when A'laijah, 5 years old, arrived at the UNMC emergency room, she was comatose from a previously diagnosed diabetic condition which Monique failed to adequately monitor and treat. A'laijah and her younger sister, Alaina, were immediately removed from their home and have not since returned from out-of-home placement. Following a hearing in August 2009, the children were adjudicated under § 43-247(3)(a) as to Monique. Monique eventually relinquished her parental rights to both children and is not a party to this appeal.

In June 2010, the State filed an amended supplemental petition in which it alleged that Charles was the father of Alaina T., then 2 years of age; that he had engaged in domestic

violence with Monique; had failed to protect Alaina from domestic violence; had engaged in violent and erratic conduct in front of Alaina; had failed to provide her with proper parental care, support or supervision; and that Alaina was at risk of harm. In August 2010, Charles admitted to the allegations of the amended supplemental petition that he had failed to protect Alaina from domestic violence and that Alaina was at risk of harm. Alaina was adjudicated under § 43-247(3)(a) as to Charles. Charles was ordered to complete a pretreatment assessment within 30 days of the order, successfully complete an accredited domestic violence program, and have reasonable rights of supervised visitation and family time.

On March 2, 2011, the State filed a Second Motion for Termination of Parental Rights in which it alleged that Charles' parental rights should be terminated to Alaina on the basis that (1) he had substantially and continuously or repeatedly neglected and refused to give Alaina necessary parental care and affection; (2) reasonable efforts to preserve and reunify the family, under the direction of the court, had failed to correct the conditions leading to Alaina's adjudication; and (3) Alaina had been in out-of-home placement for 15 months of the most recent 22 months. The State further alleged that termination of Charles' parental rights was in Alaina's best interests.

At the hearing on the State's motion for termination of Charles' parental rights, it was undisputed that Alaina had been removed from Monique's home because of Monique's severe medical neglect of A'laijah in July 2009, and that she has since remained in out-of-home placement. Penny Cavender, Alaina's mental health therapist, testified that Alaina has an adjustment disorder and that she exhibits physical and verbal aggression, defiance and talking back. Cavender conceded that Alaina is attached to Charles. However, Alyson Goedken, Alaina's caseworker for a time in 2010, testified that Charles would agree to exercise his supervised visitation sessions with Alaina only on Fridays, stating that he was otherwise busy. Goedken noted that Charles was unemployed and that he declined to explain his refusal to exercise visitation at any other time. Goedken stated that although Charles would voice his desire to parent Alaina, he failed to follow through, missing many of his scheduled visits. She stated that he made little progress toward reunification with Alaina, failing to enroll in a court-ordered domestic violence program and failing to complete the pretreatment assessment or to obtain employment.

Renae Henrichs was the service coordinator and family permanency specialist with KVC who worked with Alaina from June 2010 until July 2011. Henrichs testified that Charles was encouraged to have more than one visit per week with Alaina but

that he refused to do so. Henrichs stated that she was concerned that Charles especially indicated that he would do no weekend visitations and refused to explain his refusal to see Alaina more than once a week. She testified that Charles showed disinterest when he interacted with Alaina, and did not hug her or tell her he loved her. Henrichs stated that by March 2011, Charles had begun visiting Alaina twice a week at KVC's request but had not completed the domestic violence program or pretreatment assessment. By May 2011, Charles had dropped out of the domestic violence program. Henrichs noted that, with termination of Monique's parental rights, Charles would be the sole parent for Alaina if she were returned to him. She stated she did not believe that Charles was motivated to parent Alaina 24 hours a day, 7 days a week, noting that his visitations had never progressed beyond a supervised level. In Henrichs' opinion, it was not in Alaina's best interests to reunify with Charles. Henrichs cited the length of time that Alaina had been in out-of-home placement, Charles' inconsistent participation in services, and lack of motivation or desire to visit Alaina.

Following the hearing, the juvenile court entered an order finding that all counts of the amended supplemental motion for termination of Charles' parental rights were true. The court found that Charles failed to show any real interest in Alaina and failed to complete court-ordered rehabilitative services.

The court stated that Alaina needs permanency and should not await uncertain parental maturity and languish in foster care. The court also found that it was in Alaina's best interest to terminate Charles' parental rights. Charles has appealed from this order.

Pursuant to this court's authority under Neb. Ct. R. of App. P. § 2-111(B)(1), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

As summarized, Charles contends that the juvenile court erred in terminating his parental rights and finding that such termination was in Alaina's best interests.

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).

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.*

ANALYSIS

The juvenile court found that the State proved grounds for termination under § 43-292(2), (6), and (7) (Cum. Supp. 2010). 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 Alaina has remained in out-of-home placements since July 2009. 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 Charles' 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 Alaina's best interests.

The record shows that Charles failed to show a consistent interest in Alaina, that he unilaterally limited his visits with her, and was often disinterested in her when he did visit. Charles has also failed to complete the court-ordered accredited

domestic violence program and pretreatment assessment, or to consistently participate in family support services. Although Charles verbally indicated to caseworkers that he was interested in reuniting with Alaina, his interest soon dissipated when it came time to invest the required time and effort to achieve that goal. At the time of the hearing to terminate Charles' parental rights, Alaina, then 4 years old, had spent over two years in out-of-home placement with no end in sight. 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). In its order, the juvenile court stated that "the father's inconsistent visitation with his child and lack of follow through with services shows that he has not put himself in a position to parent his child and have a relationship with her . . ." 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).

More than two years have passed since Alaina was removed from her home, and she deserves a permanent placement. Upon our de novo review of the record, we conclude that the juvenile

court did not err in finding that termination of Charles' parental rights is the Alaina's best interests.

CONCLUSION

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

AFFIRMED.