

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Jeffrey S.)
and Ronnie S.,)
Children under 18 years of age.)
State of Nebraska,)
Appellee,)
v.)
Jeffrey S.,)
Appellant.)

No. A-11-946

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

MAY 09 2012

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEAL**

INBODY, Chief Judge, and MOORE and PIRTLE, Judges.

MOORE, Judge.

INTRODUCTION

Jeffrey S. (Jeffrey) appeals the decision of the separate juvenile court of Sarpy County terminating his parental rights to his children, Jeffrey S. and Ronnie S. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Jeffrey's parental rights. As such, we affirm the order of the juvenile court terminating Jeffrey's parental rights to his children. 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.



STATEMENT OF FACTS

On April 1, 2008, the State filed a petition alleging that the children, Jeffrey S., born January 19, 2006, and Ronnie S., born June 9, 2007, should be adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults and habits of their parents. Specifically, the State alleged that the boys were removed from their mother's care on March 27, 2008, when she was arrested for possession of methamphetamines. The petition stated that the mother had a history of illegal drug use, was unemployed, and that her two older children had been removed from her care in the state of Iowa because of her illegal drug use and neglect. In count II, the petition alleged that Jeffrey was separated from the children's mother, that he did not have independent housing, worked part-time, and was not in a position to parent his children.

Following a hearing in August 2008, Jeffrey admitted the allegations of count II, while the children's mother pled no contest to the allegations as to her. The children were adjudicated under § 43-247(3)(a). Subsequent dispositional orders provided for supervised visitation for Jeffrey, and included requirements for him to obtain a legal source of income and suitable housing for the children.

In September 2010, the State filed a motion to terminate parental rights. The petition alleged that termination of

Jeffrey's parental rights was in the best interest of the children because (1) reasonable efforts under the direction of the court had failed to correct the conditions leading to the children's adjudication; (2) despite 30 months of court intervention, Jeffrey had failed to make sufficient progress to have the children placed with him; and (3) the children had been in out-of-home placement for 15 months of the most recent 22 months. The petition also contained allegations as to the children's mother. However, it is unnecessary to recite those allegations here, as she later relinquished her parental rights and is not a party to this appeal.

At the hearing on the motion to terminate parental rights, the State presented testimony from Kelly Fairbanks, a clinical psychologist, who conducted a psychological evaluation of Jeffrey in August 2010, diagnosing him with major depressive disorder and amphetamine abuse, full remission. Fairbanks recommended psychiatric treatment for Jeffrey as well as a parenting evaluation.

Lou Ann Patterson, a mental health therapist, provided therapy services for Jeffrey for several months in 2009 and again in 2010. Patterson testified that Jeffrey was inconsistent in his attendance at the scheduled weekly sessions and that he stopped attending sessions in December 2010. She did not think

that Jeffery had achieved his therapeutic goals at that time and stated that she saw no progress in his therapy.

Kelly Schiermeyer, a family support worker with the Nebraska Children's Home Society, testified that she worked with Jeffrey and his children for 28 months, ending in January 2011. She testified that because Jeffrey was inconsistent in attending visits and family support work sessions, she instituted a policy that the visits would be cancelled if Jeffrey was 20 minutes or more late. Schiermeyer testified that since the motion to terminate parental rights was filed in September 2010, 442 visits and meetings were offered to Jeffrey, of which he attended 360 and missed 82. She said that Jeffrey had difficulty keeping steady employment and has only been able to keep a part-time job as a bouncer at a local bar. Schiermeyer acknowledged that Jeffrey enjoyed his time with his children and would play with them and make meals for them. However, she said he had trouble with "multi-tasking," such as remembering to check on the boys if he was focused on preparing a meal. Schiermeyer testified that she was never able to recommend unsupervised visits between Jeffrey and his children in her 28 months working with them.

Kelly Sims was a caseworker for Children Family Services assigned to Jeffrey's children from April 2008 until December 2010. She stated that when the children were first removed from

the home, Jeffrey S. was 2 years old but functioned like a 6- to 9-month-old baby. There was concern that Ronnie S., less than 1 year of age, had an eating disorder because he constantly required a bottle in his mouth. Sims stated she worked with the family for 2 years, 9 months, during which time the children were never returned to the home. She stated that Jeffrey made only minimal progress, although she at times personally accompanied him to search for jobs and housing. Sims also arranged for his therapy, paid by DHHS, but his attendance was very inconsistent and he eventually stopped attending. Sims stated that Jeffrey was making essentially no progress but was blaming others for his failures. Sims included drug testing in her work with Jeffrey, citing his admission to use of methamphetamines when the children were first removed from the home, his admission to use of methamphetamines in September 2010, and his positive test for cocaine in November 2010.

Sims testified that Jeffrey was not a fit parent because he puts his own needs before those of his children, and continues to lack consistency in his source of income, transportation, housing, and the children's medical appointments. She stated that Jeffrey made no progress in the nearly 3 years she was his case manager and that she believed it was in the best interests of the children that his parental rights be terminated.

Ashleigh Weaver, a family permanency specialist with KVC, testified that she has worked with Jeffrey's children since January 2010. She testified that both children have significant health problems. Jeffrey has been diagnosed with Trisomy 13 and is developmentally delayed, and Ronnie has "chromosome seven conversion." She said that both boys require constant in-sight supervision, that they must maintain strict schedules and medication management, and have specialized food. Weaver stated that Jeffrey does not always attend the monthly meetings designed to review the services provided and the case plan, and that when he does, he is very argumentative to the point that the meetings are "out of control." Weaver testified that she had never been able to recommend unsupervised visitation with the children and believed that they would be at risk of harm in such a situation. She noted that the children already had been in out-of-home placement for 42 months and stated that she did not believe Jeffrey to be a fit parent.

The juvenile court ordered that Jeffrey's parental rights be terminated, finding by clear and convincing evidence that following a determination that the children were as described in § 43-247(3)(a) and despite reasonable efforts under the direction of the court, Jeffrey had failed to correct the conditions leading to the determination. The court further found that the children had been in out-of-home placement for 15 or

more months of the previous 22 months, that Jeffrey was an unfit parent, and that it was in the children's best interests that Jeffrey's parental rights be terminated. Jeffrey timely appealed to this court.

ASSIGNMENTS OF ERROR

As restated, Jeffrey asserts that the juvenile court erred in finding that he had failed to correct the conditions which led to the removal of his children and in finding that he was unfit to parent his children and that termination of his parental rights was in the best interests of his children.

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 Thomas M.*, 282 Neb. 316, 803 N.W.2d 46 (2011).

When the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010).

ANALYSIS

The juvenile court found that the State proved grounds for termination under § 43-292(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 Jeffrey S. and Ronnie S. had remained in out-of-home placements since they were removed from their mother's home in March 2008. 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 Jeffrey'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 the children's best interests.

The record shows that Jeffrey failed to acquire adequate skills to care for the needs of his two young special-needs children. He also failed to obtain adequate employment to provide for the children. Jeffrey was never able or willing to fully avail himself of all of the services offered by the State. He was inconsistent in attending his therapy appointments and ultimately simply stopped attending therapy sessions, even after a petition to terminate his parental rights had been filed.

Despite extensive involvement and support from caseworkers, Jeffrey was never able to exercise unsupervised visitation with his children even after more than 3 years of State involvement with him and his children.

Sims, the family's caseworker for nearly 3 years, testified that it was in the children's best interests if Jeffrey's parental rights were terminated because Jeffrey puts his own needs before those of his children and continued to lack consistency in his source of income, transportation, housing and the children's medical appointments. Weaver's testimony was similar to that of Sims, and she also stated that it was her opinion that it was in the best interests of the children to terminate Jeffrey's parental rights.

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). We conclude that clear and convincing evidence demonstrates that termination of Jeffrey's parental rights is in Jeffrey S. and Ronnie S.'s best interests.

CONCLUSION

Because the State proved a statutory ground for termination under § 43-292 and that termination of Jeffrey's parental rights is in the best interests of Jeffrey S. and Ronnie S., we affirm

the juvenile court's order terminating Jeffrey's parental rights.

AFFIRMED.