

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Lorenzo P.,)
a child under 18 years of age.)
)
In re Interest of Angel P.,)
a child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Leonires P.,)
)
)
Appellant.)

No. A-13-343.

No. A-13-344.

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

AUG 26 2014

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

IRWIN, MOORE, and BISHOP, Judges.

IRWIN, Judge.

I. INTRODUCTION

Leonires P. appeals from two orders of the county court, acting as a juvenile court. In case No. A-13-343, he appeals from the court's order terminating his parental rights to his son, Lorenzo P. In case No. A-13-344, he appeals from the court's order terminating his parental rights to his son, Angel P. The two cases have been consolidated on appeal and, as such, we decide both cases in this opinion.

In both cases, Leonires argues that the county court erred in finding that termination of his parental rights was in his children's best interests. Finding no merit to Leonires' assertions, we affirm the orders of the county court.



II. BACKGROUND

These juvenile court proceedings involve two children: Angel, born in January 2003, and Lorenzo, born in December 1997. Leonires is the children's biological father. The children's biological mother is not a party to this appeal. She relinquished her parental rights to both children during the lower court proceedings. As such, her involvement in the children's lives and in this case will not be discussed further.

In October 2010, police were dispatched to Leonires' home as a result of domestic violence between Leonires and his ex-wife, Sonya. Angel was present at the home when police arrived. He informed the officers that he had observed the fight between his father and Sonya and that the fight had involved a knife. In addition, Angel told officers he was scared. He then began crying. This is not the first time that police were dispatched to Leonires' home. He and Sonya have a history of engaging in domestic violence with each other.

As a result of the violence occurring in Leonires' home, on October 27, 2010, the State filed a petition with the county court alleging that Angel was a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) as to Leonires. Specifically, the petition alleged that Angel lacked proper parental care or was in a dangerous situation because Leonires and Sonya "were involved in a domestic altercation in [Angel]'s presence" and because

Leonires and Sonya remained in a relationship despite the history of domestic violence between them.

Also on October 27, 2010, the county court entered an order placing Angel in the temporary custody of the Department of Health and Human Services (the Department). However, Angel remained living with Leonires as a result of a safety plan put into place by the Department. That plan required that an "in-home safety provider" be present at Leonires' home whenever Angel was there. "That person would ensure that there was not any drugs or alcohol being used in the home and that Sonya [] was not there. She also would provide transportation to and from school for [both Angel and Lorenzo]." The safety plan was terminated on January 29, 2011, after the Department received a report that Angel had been in Leonires' home without any supervision and without the Department's knowledge. At that time, Angel was placed in the home of his paternal uncle and aunt, Juan and Maria.

On February 22, 2011, a hearing was held concerning the allegations in the State's petition. After the hearing, the county court adjudicated Angel as being within the meaning of § 43-247(3)(a) as to his father, Leonires. A rehabilitation plan was established for Leonires by the Department and was adopted by the court. This plan required Leonires to participate in an intensive outpatient treatment program due to his alcohol use; to attend Alcoholics Anonymous (AA) meetings on a weekly basis; to attend an

anger management program; to obtain and maintain employment; and to provide a stable home for his children which is free from drugs, alcohol, and violence.

On April 12, 2011, a disposition hearing was held. By the time of this hearing, Leonires had left his home in Nebraska and was residing in Texas. Angel remained living with his foster parents, Juan and Maria; and Leonires left Lorenzo in Nebraska to reside with Leonires' mother.

The family's Department caseworker testified at the hearing that she had not received any proof from Leonires that he was attending weekly AA meetings, that he had suitable housing, or that he was employed. In addition, she testified that Leonires was not participating in an intensive outpatient treatment program because he did not believe that he needed such help, nor was he participating in anger management classes. Leonires was having some visitation with Angel, but only over the telephone. Leonires also testified at this hearing. He indicated that he did have housing and employment in Texas. At the close of this hearing, the court specifically ordered Leonires to begin an intensive outpatient treatment program and an anger management program. In addition, the court specifically ordered him to begin attending AA meetings on a regular basis and to provide proof of his attendance.

On July 12, 2011, another hearing was held. At the time of this hearing, Leonires was still residing in Texas. The family's

Department caseworker testified that she had not had much contact with Leonires since the previous hearing in April. She also testified that she had not received any information that Leonires had participated in a substance abuse treatment program or in an anger management program. As a result of Leonires' lack of progress on his rehabilitation plan, the court ordered that the case's permanency objective be changed from reunification with Leonires to either guardianship or adoption.

On August 2, 2011, Leonires filed a motion with the county court requesting an expedited review hearing. The court granted Leonires' request and held a hearing on August 9, 2011. At this hearing, Leonires testified that, as a result of the court's decision at the last hearing to change the permanency objective, he had decided to remain in Nebraska and work on his rehabilitation plan. Leonires reported that since the July hearing he had started an anger management program and an intensive outpatient treatment program. The county court entered an order changing the permanency objective back to reunification with a secondary plan of adoption.

Another hearing was held in October 2011. At this hearing, it was reported that Leonires was making a great deal of progress with his rehabilitation plan. He had completed an intensive outpatient treatment program; was regularly attending AA meetings; and was attending anger management counseling. In addition, Leonires had obtained housing and Lorenzo was currently residing

with him there. As a result of Leonires' progress, the court permitted him to have unsupervised visitation with Angel for up to three nights per week. Shortly after this hearing, the Department began transitioning Angel back into Leonires' home. Angel began residing with Leonires on November 1, 2011.

On December 8, 2011, a review hearing was held. By the time of this hearing, Leonires' progress and participation with the rehabilitation plan had substantially declined. At the hearing, Leonires' ex-wife, Sonya, testified. She indicated that Leonires had on-going contact with her throughout the proceedings, despite his promises to the court that he would end his tumultuous and violent relationship with her. She also testified that Leonires' continued to drink alcohol and that he had stopped going to AA meetings. In fact, she testified that she had assisted Leonires in forging signatures on his meeting cards in an effort to deceive the court and the Department workers.

Other evidence presented by the State also suggested that Leonires was continuing to have contact with Sonya, was continuing to consume alcohol, and had discontinued his substance abuse treatment. In addition, the State offered evidence that Angel had reported to Department workers that Leonires had been drinking alcohol again and that he was leaving Angel home alone at night with only Lorenzo to supervise him. As a result of the testimony at this hearing, the county court ordered that Angel again be

removed from Leonires' home. Leonires was ordered to have only supervised visitation with Angel.

The county court held another hearing on December 27, 2011, only a few weeks after the previous hearing. At the time of this hearing, Angel continued to reside in a foster home and Leonires was having only supervised contact with him. In addition, the State reported that Leonires had recently been charged with second offense driving under suspension, which was a felony. The court, once again, changed the permanency objective for the case to adoption or guardianship.

Shortly after this hearing, the State filed a motion to terminate Leonires' parental rights to Angel. In the motion, the State alleged that termination of his parental rights was warranted pursuant to Neb. Rev. Stat. § 43-292(2) (Cum. Supp. 2012), because he had substantially and continuously or repeatedly neglected and refused to give Angel necessary parental care and protection; § 43-292(4), because he is unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which is found by the court to be seriously detrimental to the health, morals, or well-being of Angel; and § 43-292(6), because reasonable efforts to preserve and reunify the family failed to correct the conditions that led to the determination that Angel was within the meaning of § 43-247(3)(a).

The State also alleged that termination of Leonires' parental rights was in Angel's best interests.

In March 2012, while Angel's case was still pending, Lorenzo reported to his uncle, Juan, that Leonires had assaulted him after he brought marijuana into the home, even though Leonires had previously given him permission to use marijuana. At around this same time, Leonires was arrested and jailed on charges of driving under the influence and third offense driving under suspension.

On March 14, 2012, the State filed a petition with the county court alleging that Lorenzo was a child within the meaning of § 43-247(3)(a). Specifically, the petition alleged that Lorenzo was in a situation or engaged in an occupation dangerous to life or limb or injurious to his health or morals because Leonires was physically abusive to him; because Leonires permitted Lorenzo to ingest marijuana; because Leonires allowed Lorenzo to drive before he was old enough to obtain a driver's license; because Leonires was currently incarcerated and unable to care for Lorenzo; and because Leonires has had a history of alcohol abuse which has affected his ability to parent Lorenzo.

Also on March 14, 2012, the county court entered an order placing Lorenzo in the temporary custody of the Department. Lorenzo was placed in the home of his uncle and aunt, which is also where Angel was currently placed.

Ultimately, Leonires pled no contest to those allegations in the petition which asserted that he was currently incarcerated and unable to care for Lorenzo and that he has had a history of alcohol abuse which has affected his ability to provide care for Lorenzo. As a result of his plea, the county court adjudicated Lorenzo as a child within the meaning of § 43-247(3)(a).

Leonires remained in jail throughout the majority of 2012. As a result, he was not able to make any further progress on his rehabilitation plan, nor was he able to have any physical contact with Angel or Lorenzo. At some point during the summer of 2012, Leonires tentatively agreed to permit Juan and Maria to be the children's permanent guardians. The State agreed to dismiss its motion to terminate Leonires' parental rights to Angel.

Before the guardianship could be formally established, however, Juan and Maria reported that Lorenzo had sexually assaulted one of their young daughters. After this incident, they declined to go forward with the guardianship proceedings or to act as the children's permanent guardians. Angel remained in Juan's and Maria's home, but Lorenzo was ultimately placed in a non-family foster home.

On December 13, 2012, the State filed a second motion to terminate Leonires' parental rights to Angel and a first motion to terminate Leonires' parental rights to Lorenzo. In the motions, the State alleged that termination of Leonires' parental rights as

to both Angel and Lorenzo was warranted pursuant to § 43-292(2), (4), (6), just as in the first motion to terminate Leonires' parental rights to Angel. In addition, the State alleged that termination was warranted as to Angel pursuant to § 43-292(7), because he had been in an out-of-home placement for at least 15 of the last 22 months. The State also alleged that termination of Leonires' parental rights was in Angel's and Lorenzo's best interests.

On February 4, 2013, a hearing was held on the State's motions to terminate Leonires' parental rights. While we have carefully reviewed the evidence presented at the hearing in its entirety, we do not set forth the specifics of the voluminous testimony and exhibits here. Instead, we will set forth more specific facts as presented at the hearing as necessary in our analysis below.

After the hearing, the court entered detailed orders finding that the State proved by clear and convincing evidence that grounds for termination of Leonires' parental rights to Angel existed pursuant to § 43-292(2), (6), and (7) and that grounds for termination of Leonires' parental rights to Lorenzo existed pursuant to § 43-292(2) and (6). The court also found that termination of Leonires' parental rights was in both boys' best interests. The court then ordered that Leonires' parental rights to the boys be terminated.

Leonires appeals from the county court's orders here.

III. ASSIGNMENTS OF ERROR

On appeal, Leonires alleges that the county court erred in finding that termination of his parental rights was in Angel's and Lorenzo's best interests.

IV. ANALYSIS

1. STANDARD OF REVIEW

Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). 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.*

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 Jagger L.*, *supra*. 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.*

2. ANGEL'S BEST INTERESTS

In case No. A-13-344, Leonires appeals from the county court's decision to terminate his parental rights to his son, Angel. On

appeal, Leonires assigns as error only the county court's finding that termination of his parental rights is in Angel's best interests. Leonires does not challenge the statutory basis for termination of his parental rights. As such, he does not challenge the county court's findings that he had substantially and continuously or repeatedly neglected Angel and refused to give him necessary parental care and protection, pursuant to § 43-292(2); that following a determination of Angel as a child within the meaning of § 43-247(3)(a), reasonable efforts to preserve and reunify the family under the direction of the court failed to correct the conditions leading to that determination, pursuant to § 43-292(6); and that Angel had been in an out-of-home placement for at least 15 months of the most recent 22 months, pursuant to § 43-292(7).

The sole issue raised in Leonires' appeal is whether the State adduced sufficient evidence to demonstrate that termination of his parental rights is in Angel's best interests. In his brief to this court, Leonires' argues that termination of his parental rights is not in Angel's best interests because he has a bond with Angel and because he has made some progress towards reunification. Upon our de novo review of the record, we disagree with Leonires' assertions. The State presented sufficient evidence to prove that terminating Leonires' parental rights is in Angel's best interests.

At the time of the termination hearing in February 2013, this case had been pending for almost two and a half years. And, for a majority of that time period, Angel was residing outside of Leonires' home, in a foster home placement, because Leonires repeatedly failed to cooperate and comply with the court and with the Department.

When the case was initiated in October 2010, Angel was permitted to remain living with Leonires because the Department created a safety plan and provided the family with an "in-home safety provider." This in-home safety provider essentially lived in Leonires' home in order to assist him in effectively and safely parenting both Angel and Lorenzo. However, after only a month or two, Leonires failed to comply with the tenets of the safety plan and permitted Angel to be in his home without the presence of the in-home worker and without informing the Department. As a result of Leonires' failure to comply, Angel was removed from his home.

After this initial removal, Leonires continued to fail to comply with the court and with the Department. He moved to Texas, away from Angel; did not stay in regular contact with the Department worker assigned to his case; and did not comply with the tenets of his rehabilitation plan. In particular, Leonires did not participate in an intensive outpatient treatment program or in an anger management program. In fact, Leonires seemed completely unwilling to comply with the rehabilitation plan until the county

court demonstrated the seriousness of these proceedings by changing the case's permanency objective. At that time, Leonires moved back to Nebraska and appeared to fully cooperate with the plan. Leonires' cooperation resulted in Angel being returned to his home.

However, Angel's time in Leonires' home lasted for only a month. It was then reported that the progress Leonires' had made was only superficial in nature. The State presented evidence that Leonires' was continuing to use and abuse alcohol; that he was continuing his tumultuous and violent relationship with his ex-wife; and that he was not providing appropriate care for Angel. Leonires was also arrested twice in a span of three months for multiple felony charges. As a result of these arrests, Leonires spent almost an entire year incarcerated and away from Angel.

When we view the entire history of these juvenile court proceedings, we conclude that, contrary to Leonires' assertions, he has not made much, if any, progress towards reunification with Angel. While Leonires did make some efforts to become a better, more appropriate parent for Angel, such efforts were clearly short-lived and somewhat insincere. More importantly, such efforts did not seem to affect Leonires' ability to be an appropriate and effective parent. Through his actions, Leonires has demonstrated that he is simply unable of providing Angel with any sort of safety or stability.

The State presented evidence at the termination hearing that Angel truly needs safety and stability. Angel's counselor, Jeanna Townsend, testified that Angel suffered from an adjustment disorder. Such disorder is typically caused by emotional neglect, a child's lack of connection with his parents, and the child's needs not being met on a consistent basis. As a result of his disorder, Angel has many behavioral problems. However, Angel's behavior dramatically improved when he was placed outside of Leonires' home and with his uncle and aunt, Juan and Maria. Townsend testified that Angel does best when he has consistency, safety, reliability, supportive caregivers, and clear expectations of what behavior is required. Townsend also testified that Leonires has not been able to provide these things for Angel. She opined that termination of Leonires' parental rights is in Angel's best interests.

While there was evidence that Angel loves his dad and wants some sort of relationship with him, there was also evidence that Angel really struggled with that relationship. Angel reported feeling confused by Leonires, especially when Leonires would promise Angel things, like becoming a family again, but would then fail to follow through with that promise. Townsend testified that Angel really wanted a close relationship with his dad, but that, in her opinion, he never got that from Leonires. Ultimately, Angel

has repeatedly indicated that he wants to live with Juan and Maria, or with someone other than Leonires.

Upon our de novo review of the record, we conclude that the State presented sufficient evidence to warrant termination of Leonires' parental rights to Angel. Despite the length of time that has passed while these proceedings were pending, Leonires has failed to make progress towards reunification with Angel and is still unable to provide for Angel's basic needs. We find that Angel should not continue to be suspended in foster care, without any hope of permanency, while Leonires has repeatedly demonstrated that he is either unwilling or unable to be an appropriate or effective parent to Angel. See *In re Interest of B.A.G., Jr.*, 235 Neb. 730, 457 N.W.2d 292 (1990). We affirm the order of the county court terminating Leonires' parental rights to Angel.

3. LORENZO'S BEST INTERESTS

In case No. A-13-343, Leonires appeals from the county court's decision to terminate his parental rights to his son, Lorenzo. On appeal, Leonires assigns as error only the county court's finding that termination of his parental rights is in Lorenzo's best interests. Leonires does not challenge the statutory basis for termination of his parental rights. As such, he does not challenge the county court's findings that he had substantially and continuously or repeatedly neglected Lorenzo and refused to give him necessary parental care and protection, pursuant to

§ 43-292(2) and that following a determination of Lorenzo as a child within the meaning of § 43-247(3)(a), reasonable efforts to preserve and reunify the family under the direction of the court failed to correct the conditions leading to that determination, pursuant to § 43-292(6).

The sole issue raised in Leonires' appeal is whether the State adduced sufficient evidence to demonstrate that termination of his parental rights is in Lorenzo's best interests. In his brief to this court, Leonires' focuses his argument almost entirely on the testimony provided by Lorenzo's psychologist, Matthew Hutt. During this testimony, Hutt testified that termination of Leonires' parental rights was in Lorenzo's best interests. Leonires' contends that this opinion lacks credibility because it is based only on what Lorenzo reported to Hutt. Upon our de novo review of the record, we conclude that Leonires' assertions on appeal have no merit.

The evidence presented by the State at the termination hearing revealed that Lorenzo does not have a beneficial relationship or a bond with Leonires. In addition, the evidence revealed that Leonires has proven himself to be unable or unwilling to provide a safe and stable home for Lorenzo.

The State filed its petition in Lorenzo's case as a result of allegations that Leonires had physically abused Lorenzo. Evidence presented at the termination hearing revealed that this abuse was

not an isolated incident. Rather, Lorenzo had reported abuse at his father's hand on more than one occasion. At the time of his removal, Lorenzo expressed a great deal of anger towards Leonires, even threatening that he may harm himself or Leonires if he was made to return home. According to Hutt, these feelings of anger continued long after Lorenzo's removal. Lorenzo had repeatedly reported to Hutt that he felt angry, hurt, and disappointed by Leonires. In addition, Lorenzo had indicated that he did not want a relationship with Leonires. In fact, Lorenzo had refused to see or speak to his father since the time of his removal from Leonires' home in March 2012. During Leonires' testimony at the termination hearing, he appeared to acknowledge the strain in his relationship with Lorenzo. When asked about his bond with Lorenzo, he could only state that he would like there to be a bond at some point.

Immediately after Lorenzo's removal, he displayed serious behavioral problems, including, continued and persistent marijuana use and acting out aggressively and sexually. The State presented evidence that the longer Lorenzo was out of Leonires' home, the better his behavior became. By the time of the termination hearing, he had stopped using marijuana, was involved in many extracurricular activities at school, was learning to be respectful to women, and was doing extremely well in his foster home. Hutt testified that the consistency and predictability provided to Lorenzo by his foster home had greatly benefitted him.

In contrast to the progress made by Lorenzo during the pendency of the lower court proceedings, during that same time period, Leonires did not make any progress towards reunification with Lorenzo. As we discussed in our analysis above, Leonires repeatedly demonstrated his inability to be an appropriate and effective parent to his children no matter how much assistance or involvement was provided to him by the court or the Department.

Hutt opined that termination of Leonires' parental rights was in Lorenzo's best interests. And, although, Leonires challenges the credibility of this opinion on appeal, we conclude that his assertion lacks any merit. As Lorenzo's psychologist, Hutt was qualified to render an opinion about Lorenzo's immediate and future needs. Moreover, other evidence presented by the State, and discussed above, support Hutt's opinion. Just like Angel, Lorenzo should not be made to languish in foster care while Leonires continues to prove himself unable to provide for Lorenzo's basic needs. See *In re Interest of B.A.G., Jr., supra*.

We conclude that the State presented sufficient evidence to prove that termination of Leonires' parental rights was in Lorenzo's best interests. As such, we affirm the order of the county court.

V. CONCLUSION

Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant termination of Leonires'

parental rights to his sons, Angel and Lorenzo. As such, we affirm the orders of the county court terminating his parental rights.

AFFIRMED.