

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Adreyona J.,)
A child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Gerald J.,)
)
Appellant.)

No. A-13-1031

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

APR 28 2014

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

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

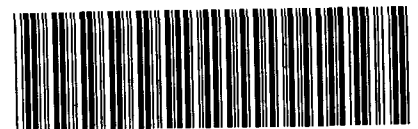
INBODY, Chief Judge.

INTRODUCTION

Gerald J. appeals the order of the Separate Juvenile Court of Lancaster County adjudicating his minor child, Adreyona J., born in 2005, as a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) and terminating his parental rights pursuant to Neb. Rev. Stat. § 43-292 (Reissue 2008). For the following reasons, we affirm the order of the juvenile court.

STATEMENT OF FACTS

In July 2009, the State filed a petition to adjudicate Adreyona as a child within the meaning of § 43-247(3)(a), as a result of the actions of her mother, Darcel H. The petition alleged verbal and physical domestic confrontations which placed Adreyona at risk of physical and emotional harm. Gerald was not



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listed on the petition at that time, but was identified as Adreyona's father in subsequent reports. In September, the juvenile court ordered the State to identify and serve Adreyona's biological father. Service of Gerald was attempted at an address in Omaha, Nebraska, but it was reported that Gerald had not resided at that address for 6 years. In November 2009, service upon Gerald was attempted in Harris County, Texas, but it was reported that Gerald only visited the residence occasionally. In May 2011, Adreyona was removed from Darcel's home and has remained in out-of-home placement since that time. In September 2012, Gerald filed a request for court-appointed counsel.

In the earliest case report in the record, dated November 30, 2009, Gerald's name was listed as Adreyona's parent and Darcel reported that he was Adreyona's biological father. The February 23, 2010 court plan indicates that on October 23, 2009, Gerald contacted a caseworker and provided his contact information in Texas. The report indicates that Gerald wanted to be involved in the case and a need for counsel form was sent to Gerald, but had not been returned. In the July 2011 court report, the report indicates that Gerald had not recently made contact and that no one was sure of his location; furthermore, the report indicates that the phone number given for Gerald had been disconnected. In the May 14, 2012 guardian ad litem (GAL)

report, the GAL reports making contact with Gerald's mother in Houston, Texas, who indicated that she was concerned about Darcel's care of Adreyona, and that Gerald was not yet in a position to take Adreyona.

The April 19, 2013 court report indicates that Gerald had been provided case reports and that Gerald's mother had considered placement, but not without Darcel also coming to Texas with Adreyona. The report indicates that Gerald had sporadic contact with Adreyona that had recently increased to telephone calls two to three times per week. Gerald reported to caseworkers that at that time, he lived with his mother, but in 3 months would be moving into his own home. The plan recommends that Gerald participate in a pretreatment assessment, cooperate with an interstate compact on the placement of children agreement or ICPC, and provide military discharge records to DHHS.

A phone log of parent contacts was received into evidence and details phone calls made by caseworkers during the proceedings. In October 2012, contact was made with Gerald, who indicated that he wanted custody of Adreyona. Notes indicate that Gerald explained he had known that Adreyona had been in out-of-home care for over 15 months. Gerald indicated that he had been sending items to Adreyona and had spoken with her on the phone. Gerald told the caseworker that he had obtained a

lawyer in Nebraska. A second phone call was made in October, during which Gerald was informed that paternity needed to be established.

In January 2013, Darcel voluntarily relinquished her parental rights to Adreyona. On February 22, caseworkers received a phone call from Gerald, who indicated that he wanted genetic testing so he could have placement of Adreyona with him. Gerald indicated that he had been working with the Texas Department of Health and Human Services since October 2012 and had known that Adreyona had been removed from Darcel's home, because of his frequent contact with Darcel. Gerald confirmed to the caseworker that he had been receiving court reports for Adreyona's case and had received reports dated: April 4, 2011; May 4, 2012; August 6, 2012; and October 26, 2012. In March 2013, it was noted by Adreyona's foster mother that Gerald had sent Christmas gifts to Adreyona in 2011 and 2012 and "does call every once and a while."

On February 28, a supplemental petition and motion for termination of parental rights was filed by the State as to Gerald, alleging that: Gerald had acknowledged paternity of Adreyona in 2005; that since February 2010, Gerald knew or should have known that there was a juvenile case involving Adreyona; that since her removal from the home in May 2011, he had only sporadic contact; and had failed to place himself in a

situation where he could parent Adreyona, which all placed the minor child at risk of harm. The petition further alleged that termination of Gerald's parental rights to Adreyona was in her best interests and appropriate pursuant to Neb. Rev. Stat. § 43-292(1), (2), (6), (7), and (9).

In April 2013, Gerald and Adreyona had an in-person visitation at a local mall in Lincoln. Adreyona's foster parents accompanied the visitation and all reports indicate that the visit went well, although Adreyona was very anxious and emotional prior to the visitation. On May 15, Gerald reported that he was not employed but was in the process of interviewing. Gerald reported that he had phone contact with Adreyona every 3 to 4 days and that he planned on coming to visit her in June. Gerald refused the recommendation to undergo a pretreatment assessment, unless he was ordered to do so by the court, because the situation was not his fault.

In May 2013, the Texas Department of Health and Human Services completed a home evaluation with Gerald, who lived with his mother, to determine the appropriateness of the placement of Adreyona with him. The report indicates that Gerald was fully aware of why Adreyona had been removed, that Gerald wanted placement of Adreyona, and believed that he could provide for Adreyona. The report indicates that Gerald had no criminal history in Texas, although Gerald reported he had been

previously charged with attempted murder and driving under the influence in other states. Gerald reported that the attempted murder charge was dropped. The report indicates that Gerald had been in the military, but was reported AWOL, which Gerald explained was because he had surgery and did not return to his unit. Gerald was previously married and had two children from that marriage, but Gerald did not want those two children to be contacted. Gerald reported that he is now in a relationship with his girlfriend and helps her raise her two young children.

The report detailed that Gerald and his mother live in a 2-bedroom apartment. Gerald reported that he is in the process of renting a 3-bedroom and 3-bathroom townhouse and that he and Adreyona would continue to live with his mother until the townhouse was ready, with him and Adreyona sharing a room. The report indicates that Gerald just recently began working and did not have insurance coverage for Adreyona. Gerald's mother received social security benefits, which the report indicated, alone, would be difficult to raise Adreyona with, but that both Gerald and his mother reported they would receive support from friends and family. The report indicates that Gerald is ready to take the necessary steps to parent Adreyona and address issues that may arise.

Angela Pillow, Adreyona's foster mother, testified that Adreyona had been in her care since May 2011. At that time,

Pillow made immediate contact with Gerald, who knew that Adreyona was placed with her and not with Darcel. Gerald and/or his mother, Kathryn Everett, contacted Adreyona once a month at Pillow's home through telephone contact over the next year, but there was no physical contact between them. Pillow explained that in December 2011, the calls from Gerald ceased for several months. In December 2012, Gerald told Pillow that he wanted custody of Adreyona and he continued to have monthly phone contact with Adreyona. Pillow testified that during their phone conversations, Gerald and Adreyona talked about school and Gerald always told her that he loved her. On one occasion, Pillow explained that Gerald helped Adreyona with a kindergarten project by providing pictures of family members.

In April 2013, Adreyona and Gerald had an in-person visitation at a mall. Pillow and her husband attended the visitation with Adreyona and Gerald. Pillow testified that the visit was positive and Adreyona seemed to get along with Gerald. Gerald brought Adreyona a gift and she hugged Gerald. Pillow offered Gerald a second time to visit Adreyona on the following day, and Pillow explained that the visit also went well and Adreyona was relaxed. Since that time, Adreyona has had no further in-person visitations with Gerald. After the April visits, Gerald continued to have phone contact, at least once a month, with Adreyona.

Pillow also testified that Gerald and Kathryn provided gifts to Adreyona on several occasions. In 2011, Gerald and Kathryn sent Adreyona several packages and \$40, including books, clothing, and toys. In 2012, Adreyona also received a package and Christmas gifts from Gerald and his mother. The Christmas gifts consisted of a Kindle Fire, a \$25 gift card, clothing, a bag, a journal, and some jewelry.

Barb Onnen, a licensed independent mental health practitioner, testified that she provides individual and family therapy for Adreyona and therapeutic visitations for Gerald. Onnen began therapy with Adreyona in December 2011, which continued on a weekly to bi-weekly basis, until Darcel relinquished her parental rights, at which time therapy was increased. In July 2013, Onnen began supervising therapeutic phone visitations between Gerald and Adreyona. The first visitation contact lasted 12 minutes and was very "superficial." Onnen explained that the second phone call went very similarly and lasted only 8 minutes before Adreyona decided that she did not want to speak with Gerald any longer. At the next phone call, on July 25, Adreyona did not want to speak with Gerald. Onnen testified that those were the only three conversations that she facilitated and, in her opinion, she believed that the relationship between Gerald and Adreyona was very superficial. Onnen testified that Adreyona knows Gerald as "Dad" but does not

really know him. Onnen opined that based upon her experience with Adreyona, termination of Gerald's parental rights was in Adreyona's best interests. Onnen explained that in her role assisting parents fill a parental role, expectations of a parent in an active parent role are daily care, meeting emotional and physical needs, and being financially supportive. Onnen had not observed any of these expectations from Gerald.

Darcel testified that she and Gerald had been in a romantic relationship for approximately 5 years before Adreyona was born and that the relationship ended a month after Adreyona was born. Darcel testified that Gerald left her and Adreyona and moved to Omaha to become a rapper. From the time he left through his move to Texas in 2008, Darcel testified that Gerald had no contact with Adreyona, but that Darcel kept in contact with Gerald's mother, Kathryn. Darcel explained that Kathryn provided Darcel child support through Kathryn's disability checks, but Gerald provided no financial support from 2005 through 2008, provided no gifts, and had no telephone contact with Adreyona. After 2008, Adreyona had telephone contact with Gerald whenever he was at Kathryn's home, which Darcel estimated was once every 2 months. In 2009, when the juvenile court case was opened, Darcel notified Kathryn about the circumstances and Kathryn relayed the information to Gerald.

On cross-examination, Darcel testified that in 2006, Gerald spent time with Adreyona, but she felt that it was only because he wanted to resume his relationship with her, not spend time with Adreyona. Darcel testified that from 2005 through 2011, Gerald had not sent Adreyona any letters, gifts, cards, and had not provided clothing, food, or financial support for her.

Molly McKewon testified that from 2009 through 2010, she was assigned as Adreyona's caseworker. During that time, McKewon attempted to contact Gerald by the phone and mail. When she successfully contacted Gerald in 2010, McKewon testified that Gerald believed he was Adreyona's biological father and that she informed him that if he wanted to be involved, he would need an attorney. McKewon testified that she sent Gerald a need for counsel form to an address in Houston, Texas. During her time on the case, McKewon testified that Gerald made no contact with DHHS, but that Kathryn had been in contact.

Nicole Lemke testified that she was assigned as the child and family service specialist for Adreyona from November 2009 to September 2011. Lemke testified that she had contact with Kathryn when Adreyona was removed from Darcel's home and discussed that Kathryn wanted to be considered for placement of Adreyona. Kathryn notified Lemke that Gerald was living with her on-and-off, and had received court reports at her home. Lemke

testified that she attempted to send Gerald contact information but did not include him in team meetings.

Jamie Kramer testified that she was the caseworker assigned to Adreyona from September 2011 through January 2013. Kramer testified that in August 2012, she sent Gerald a signed-certified letter asking him to contact DHHS. Two months later, Gerald contacted DHHS, identifying himself as Adreyona's father. At that time, Gerald indicated he was not paying child support and there had been no genetic testing. In October 2012, Kramer had contact with Gerald again, discussing establishing paternity and Gerald's involvement such that he wanted to have custody of Adreyona. Kramer testified that Gerald was not included in team meetings, but was sent a certified letter to ascertain what level of involvement he wished to have, to which Gerald did not respond. Kramer testified that in her time as a caseworker, Gerald had failed to put himself in a position to parent because he was fully aware of DHHS' involvement and Adreyona's placement and failed to take an active role in Adreyona's life.

Dilynne Byers testified that she was also previously assigned as a children and family services specialist to Adreyona's case from January to August 2013. Byers had monthly contact with Gerald beginning in April 2013. At that time Gerald was living in Texas with his mother, was not employed, and was receiving \$800 every two weeks in unemployment benefits. Byers

explained to Gerald that he needed a pretreatment assessment and an ICPC, for placement of a child in a different state in order to be considered for placement of Adreyona. Byers reported that Gerald agreed to complete the pretreatment assessment in April and May, but in June indicated that he would not participate. Further, in June, DHHS facilitated therapeutic phone sessions and Gerald was very upset because he would not be able to speak freely to Adreyona. In July, Gerald indicated that he again would participate, but only if he chose the place. Byers was concerned about Gerald's ability to parent because he did not have steady employment, he was unwilling to complete a pretreatment assessment, and he had only one visitation with Adreyona in 5 years. As of August, the pretreatment and the ICPC had not been completed by Gerald.

At the conclusion of the State's evidence, Gerald's counsel submitted numerous exhibits, which were received by the court, and renewed his motion to continue the proceedings. The juvenile court again denied the motion, finding that the matter had been set for some time and there was no showing that Gerald would be able to attend the proceedings if continued. Gerald's counsel then renewed his motion to allow Gerald testify by phone, which motion was also overruled. In light of those rulings, Gerald's counsel submitted a written offer of proof, which was received solely as the offer of proof.

On July 3, 2013, the juvenile court scheduled a formal hearing on the supplemental petition and motion for termination of parental rights for August 16. On August 14, Gerald filed a motion to continue the hearing. In support of the motion, Gerald indicated that he lived in Houston, Texas, and that the trip to Lincoln would cost him about \$500, which he did not have because he had lost his job in July. Gerald indicated that his financial strain would soon be alleviated because he had good employment prospects. At the August 16 hearing, the juvenile court overruled the motion to continue and the oral motion to allow Gerald to participate telephonically. The juvenile court concluded that Gerald's counsel could request a recess during the course of any of the witnesses' testimony if he wished to consult with Gerald.

In its order, the juvenile court found that Gerald knew or should have known that a juvenile case involving Adreyona was going on in May 2011, when Adreyona was removed. Gerald only had sporadic contact with Adreyona and failed to place himself in a situation where he could parent her. The court found that these circumstances placed Adreyona at risk for harm and that made Adreyona a child within the meaning of § 43-247(3)(a).

The juvenile court made its factual findings and concluded that the allegations contained within the motion for termination of Gerald's parental rights were true by clear and convincing

evidence. The court found that Gerald had abandoned Adreyona for 6 months or more prior to the filing of the motion; had substantially and continuously or repeatedly neglected and refused to give her necessary parental care and protection; that reasonable efforts have failed to correct the conditions leading to adjudication; that Adreyona had been in out-of-home placement for 15 or more of the most recent 22 months; and that Gerald had subjected Adreyona to aggravated circumstances including, but not limited to, abandonment.

ASSIGNMENTS OF ERROR

Gerald assigns, rephrased and consolidated, that the juvenile court erred by overruling his motion to continue and motion to participate by telephone, adjudicating Adreyona as a child within the meaning of § 43-247(3)(a), and terminating his parental rights.

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 Angelica L. & Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009). However, 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 another. *Id.*

ANALYSIS

Motion to Continue.

Gerald argues that he was denied fundamental due process when the juvenile court overruled his motion to continue the hearing. Gerald concedes that he had notice of the hearing, but could not anticipate the loss of his job and short-term financial consequences. Brief for appellant at 35.

A motion for continuance is addressed to the discretion of the trial court, whose ruling will not be disturbed on appeal in the absence of an abuse of discretion. *In re Interest of Azia B.*, 10 Neb. App. 124, 626 N.W.2d 602 (2001).

The parent-child relationship is afforded due process protection, and consequently, procedural due process is applicable to a proceeding for termination of parental rights. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992); *In re Interest of Joseph L.*, 8 Neb. App. 539, 598 N.W.2d 464 (1999). The concept of due process embodies the notion of fundamental fairness and defies precise definition. *Id.* When a person has a right to be heard, procedural due process includes notice to the person whose right is affected by a proceeding, that is, timely notice reasonably calculated to inform the person concerning the subject and issues involved in the proceeding; a reasonable opportunity to refute or defend against a charge or accusation; a reasonable opportunity to confront and

cross-examine adverse witnesses and present evidence on the charge or accusation; representation by counsel, when such representation is required by constitution or statute; and a hearing before an impartial decision maker. *Id.*

In Nebraska, parents have a statutory right to be represented by counsel during proceedings to terminate parental rights. See Neb. Rev. Stat. § 43-279.01(b) (Reissue 2008). The determination of whether the procedures afforded an individual comport with the constitutional requirements for procedural due process presents a question of law. *In re Interest of Joseph L.*, *supra*. However, the Nebraska Supreme Court has held that parental physical presence is unnecessary for a hearing to terminate parental rights, provided that the parent has been afforded procedural due process for the hearing to terminate parental rights. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992).

In deciding whether to allow a parent's attendance at a hearing to terminate parental rights, notwithstanding the parent's incarceration or other confinement, a court may consider the delay resulting from the prospective parental attendance, the need for disposition of the proceeding within the immediate future, the elapsed time during which the proceeding has been pending before the juvenile court, the expense to the State if the State will be required to provide

transportation for the parent, the inconvenience or detriment to parties or witnesses, the potential danger or security risk which may occur as a result of the parent's release from custody or confinement to attend the hearing, the reasonable availability of the parent's testimony through a means other than parental attendance at the hearing, and the best interests of the parent's child or children in reference to the parent's prospective physical attendance at the termination hearing. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992).

In this case, a hearing was held on April 29, 2013, during which the termination hearing was set for June 25 and July 3. On June 10, Gerald filed a motion to continue the trial because he had new counsel who needed more time to prepare for trial and requested that trial be set for a full day so that he could "minimize the effects to his current employment." The trial court found that good cause had been shown and granted the motion to continue until August 16. On August 14, Gerald filed a second motion to continue the termination proceedings, indicating that he had lost his job in July and could not afford the \$500 that was necessary to make the trip to Nebraska. The motion indicated that Gerald's circumstances were temporary.

Gerald filed two motions to continue the termination hearings because of his financial situation. The juvenile court found that the termination hearing had been scheduled for some

time and the proceedings involving Gerald had been pending since February. The record indicates that Gerald had been informed of the proceedings since 2009, and that Adreyona had been removed from the home since May 2011, and had remained in foster care since that time.

The record in this case establishes that Gerald was afforded procedural due process. Gerald was given notice of the proceedings and was represented by his attorney who participated fully in the hearing on Gerald's behalf. Gerald's counsel was allowed to present evidence, cross-examine witnesses, and to have recess as necessary in order to contact Gerald in order to confer with him. Gerald's counsel thoroughly examined every witness presented by the State, was active in his participation, and represented Gerald's interest throughout the proceedings. As a matter of law, Gerald's due process rights were not violated and the district court did not abuse its discretion by overruling Gerald's motion to continue.

Motion to Testify by Telephone.

Gerald contends that the juvenile court also erred by overruling his alternative oral motion to participate in the termination hearing telephonically.

As with the question of the need for a parent to be physically present at the termination of parental rights hearing, a parent's right to participate telephonically rests on

the standard of whether the "parent has been afforded procedural due process," bearing in mind that the "concept of due process embodies the motion of fundamental fairness and defies precise definition." *In re Interest of Azia B.*, 10 Neb. App. 124, 132, 626 N.W.2d 602, 610 (2001), citing, *In re Interest of L.V.*, *supra*.

The record indicates that the first time Gerald asserted his request for telephonic participation was through an oral motion at the hearing itself. Gerald made no showing or assertion that the motion could not have been made prior to that time. Clearly, the mechanics of Gerald participating from Texas would require significant, and on this record, unwarranted delay of the proceedings. As indicated above, the record shows that Gerald's counsel examined witnesses and presented evidence at the hearing. Therefore, we conclude, as we did with regard to Gerald's motion for continuance, that due process considerations do not require, on this record, telephonic participation by Gerald. The juvenile court did not abuse its discretion by denying his motion to participate by telephone.

Adjudication.

Gerald argues that the juvenile court erred in assuming jurisdiction of Adreyona because there was no evidence to support the determination. Gerald states in his brief that he "would acknowledge the accuracy of most of the numbered

allegations that are contained in the Supplemental Petition," and "has known about the pendency of the case for nearly its entire duration . . . and [was] aware that Adreyona had been removed from her mother's care on May 14, 2011." Brief for appellant at 16 and 17. However, Gerald contends that his failure to parent Adreyona was not his fault, but that of DHHS for blocking his attempts to get custody.

To obtain jurisdiction over a juvenile at the adjudication stage, the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of § 43-247. *In re Interest of Justine J.*, 286 Neb. 250, 835 N.W.2d 674 (2013). Section 43-247(3)(a) outlines the basis for the juvenile court's jurisdiction and grants exclusive jurisdiction over any juvenile "who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian."

The purpose of the adjudication phase is to protect the interests of the child. *In re Interest of Sabrina K.*, 262 Neb. 871, 635 N.W.2d 727 (2001). The Nebraska Juvenile Code does not require the separate juvenile court to wait until disaster has befallen a minor child before the court may acquire jurisdiction. *In re Interest of M.B. and A.B.*, 239 Neb. 1028, 480 N.W.2d 160 (1992). While the State need not prove that the child has actually suffered physical harm, Nebraska case law is

clear that at a minimum, the State must establish that without intervention, there is a definite risk of future harm. *In re Interest of Anaya*, 276 Neb. 825, 758 N.W.2d 10 (2008). The State must prove such allegations by a preponderance of the evidence. *Id.*

The record presented at the hearing indicates that in 2005, Gerald signed an acknowledgment of paternity and that he has known of the juvenile proceedings since 2009, and also knew that Adreyona had been removed from Darcel's home in May 2011. At the time the adjudication petition was filed, Gerald had no physical contact with Adreyona and only sporadic telephone contact and had failed to place himself in a situation to parent Adreyona. In accordance with § 43-247(3)(a), Adreyona lacked proper parental care by reason of the fault or habits of Gerald. The juvenile court did not err by adjudicating Adreyona as a child within the meaning of § 43-247(3)(a) and this assignment of error is without merit.

Statutory Grounds for Termination.

Gerald argues that the juvenile court erred by terminating his parental rights pursuant to § 43-292(1), (2), (6), and (9); and that it is "totally unfair" to hold Adreyona's out-of-home placement under subsection (7) against him. Brief for appellant at 29.

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in § 43-292 exists and that termination is in the child's best interests. *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012). 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 proved. *In re Interest of Leland B.*, 19 Neb. App. 17, 797 N.W.2d 282 (2011).

The undisputed evidence was that Adreyona has remained in out-of-home placement since May 2011, or nearly 27 months at the time of the termination hearing. Accordingly, the State proved § 43-292(7) by clear and convincing evidence. Because the State need only prove one ground for termination, we decline to consider Gerald's assigned error regarding the juvenile court's determination that the State failed to prove the 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. *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012). Thus, we will consider evidence relevant to the other grounds in our analysis of Adreyona's best interests.

Best Interests.

Gerald argues that termination is not in Adreyona's best interests and that there is no evidence to support such a finding.

In addition to proving a statutory ground for termination of parental rights, the State must show that termination is in the best interests of the child. See, *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012); *In re Interest of Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). A parent's right to raise his or her child is constitutionally protected; so before a court may terminate parental rights, the State must also show that the parent is unfit. *In re Interest of Kendra M. et al.*, *supra*. There is a rebuttable presumption that the best interests of a child are served by having a relationship with his or her parent. Based on the idea that fit parents act in the best interests of their children, this presumption is overcome only when the State has proved that the parent is unfit. *Id.* Although the term "unfitness" is not expressly used in § 43-292, the concept is generally encompassed by the fault and neglect subsections of that statute and through a determination of the child's best interests. See *In re Interest of Kendra M. et al.*, *supra*. In the context of the constitutionally protected relationship between a parent and a child, the Nebraska Supreme Court has stated, ""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.* at 1033-34, 814 N.W.2d at 761, quoting *Uhing v. Uhing*, 241 Neb. 368, 488 N.W.2d 366 (1992). The best interests analysis and the parental fitness analysis are fact-intensive inquiries, and although they are separate inquiries, each examines essentially the same underlying facts as the other. See *In re Interest of Kendra M. et al.*, *supra*.

The record in this case indicates that the proceedings involving Adreyona began in 2009. There is no dispute that Gerald has known of the proceedings, the conditions that led to the proceedings, the court reports, and that Adreyona was removed from the home in May 2011. Since that time, Gerald has maintained only sporadic contact with Adreyona through phone calls and gifts sent to Adreyona. Testimony indicates that most of the contact and gifts were facilitated through Gerald's mother. The record indicates that Gerald was asked to complete an in-home study and a pretreatment assessment in April 2013, and at the time of the termination proceedings had only completed the in-home study in Texas, but would need to have another study completed as he intended to move from his mother's home. The record indicates Gerald, who continued to reside in

Texas, had no stability in employment or housing, and has not paid any child support for Adreyona. Most importantly, we have mentioned that Gerald does not dispute that he has known of the proceedings for some time, but still has made only one effort to travel to Nebraska for visitation with Adreyona.

During all of those years, it does not appear that Gerald has made any steps that would place him in a position to parent Adreyona, aside from his visit in April 2013, and sending gifts to Adreyona on occasion. Gerald has continually neglected Adreyona and has not demonstrated that he is a fit parent to perform any reasonable parental obligation in Adreyona's rearing. Adreyona should not be made to wait until Gerald is ready to be a parent and, as such, termination of his parental rights is in her best interests.

CONCLUSION

In conclusion, the juvenile court did not abuse its discretion by overruling Gerald's motion to continue the termination proceedings. Upon our de novo review of the record, we find that the evidence establishes that Adreyona is a child within the meaning of § 43-247(3)(a). Furthermore, the State presented evidence by clear and convincing evidence that termination of Gerald's parental rights was appropriate in accordance with § 43-292(7) and in Adreyona's best interests.

Therefore, we affirm the order of the juvenile court in its entirety.

AFFIRMED.

X