

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF MARCO J.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF MARCO J., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLEE,

V.

MARCO V., APPELLANT, AND RENAE H., APPELLEE AND CROSS-APPELLANT.

Filed September 25, 2012. No. A-11-1068.

Appeal from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge.
Affirmed.

Joseph Kuehl for appellant.

Donald W. Kleine, Douglas County Attorney, Jennifer C. Clark, and Emily H. Anderson,
Senior Certified Law Student, for appellee State of Nebraska.

Jacqueline G. Foland-Sieck for appellee Renae H.

Shannon Prosocki, guardian ad litem.

IRWIN, SIEVERS, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Marco V. appeals from an order of the separate juvenile court of Douglas County, Nebraska, filed on November 15, 2011, terminating his parental rights. Marco filed his notice of appeal on December 5. The mother, Renae H., cross-appeals the termination of her parental rights, also as a result of the November 15 order.

BACKGROUND

Marco J. (M.J.) was born in March 2008. This case was originally brought before the court on March 12, 2008, by the State of Nebraska on a petition alleging M.J. came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Cum. Supp. 2006) because he was lacking proper parental care by reason of faults or habits of Renae, his mother.

Renae has an extensive history with the Nebraska Department of Health and Human Services (DHHS). Since 1996, reports have been made against Renae for abusing and neglecting her five children. Her rights to her first child were terminated in 2002, after she failed to utilize services offered to her. Her rights to her second child were terminated in 2004, due to drug abuse and neglect of the child. In 2004, Renae voluntarily relinquished her parental rights to two more of her children, a set of twins.

Prior to M.J.'s birth, Renae contacted Jason Workman with DHHS regarding her concerns that once M.J. was born, he would be removed from her home, and she also admitted to using cocaine while pregnant with M.J. Renae told Workman that she was trying to quit using drugs and that at the time, she was participating in a substance abuse program. Renae tested positive for cocaine during her pregnancy, and M.J. tested positive for cocaine at the time of his birth.

Marco is the biological father of M.J. and is an immigrant from Mexico who remains in the United States illegally on an expired visa. He primarily speaks Spanish and has no support system in the United States. Marco filed a complaint to intervene on April 10, 2008, which was granted June 24.

The separate juvenile court of Douglas County obtained jurisdiction over M.J. for abuse and neglect under § 43-247(3)(a), and Workman immediately set up services for M.J., Marco, and Renae. Renae participated in group and individual sessions of "dialectical behavioral therapy," which is designed for people who have difficulties regulating emotions, tolerating distress, and managing interpersonal relationships. She participated for about a year, had trouble controlling her emotions, and made unsustained progress. Workers reported that Renae initially demonstrated minimal progress while participating in services, but that she also demonstrated threatening behavior toward visitation workers, acted inappropriately during team meetings, and failed to internalize skills learned in therapy. She was disrespectful of support staff and was uncooperative, canceled visits, and generally put her needs before those of M.J.

Workman stated that by August 2008, although he had reservations regarding Renae's progress and behavior, he trusted Marco to make appropriate parental and care decisions regarding M.J., and Workman recommended M.J. return to the parental home. The juvenile court found that M.J. could return to the home only if Marco did not live with Renae. As the case proceeded, Workman no longer recommended that M.J. return to the parental home because Marco failed to take on the role of primary parent, he failed to understand M.J.'s medical needs, he was deficient in his parenting skills, and he could not provide sustainable employment to support M.J.

In May 2009, Marco was informed that should Renae fail to improve, he may have to decide whether to leave Renae and gain custody of M.J. or stay with Renae and risk losing M.J. Marco wanted to stay with Renae. In June 2009, Renae tested positive for cocaine use. At that

point, she refused to submit to further testing, and as a result, her visits with M.J. were reduced. Renae also admitted that although she had cooperated, she had also tampered with one of her urinalysis tests.

Multiple services were provided to Marco. He was referred to “English as a second language” classes, but failed to sign up for the course. He was also given support to help with getting a valid work permit and citizenship. A family support worker, who was also a Spanish/English interpreter, worked closely with Marco and Renae. The family support worker has extensive knowledge regarding immigration issues and tried to help Marco address problems related to his expired visa, including contacting the Mexican consulate to obtain information on his behalf. The family support worker helped Marco, despite being told by Renae that Marco had “consulted with a private attorney.” Marco did not resolve his immigration issues and did not obtain a legal source of income during the pendency of this case.

Renae interfered with Marco’s visit with M.J. on April 12, 2010; she tried to grab M.J. out of Marco’s arms and “yell[ed] up through the window” of the apartment from the parking lot. From that point forward, M.J.’s visits with Marco and Renae were held at a neutral location. Once the visits were moved, Renae continued to call Marco and make herself visible to M.J. during his visits with Marco, although she was advised not to do so.

On June 14, 2010, a motion for termination of parental rights was filed, alleging Renae’s rights should be terminated under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2010). The motion alleged Renae failed to maintain a legal source of income, consistently attend individual therapy, attend a 12-step program, utilize services of DHHS, display sustainable progress, and consistently maintain visitation with M.J.

Also on June 14, 2010, a second supplemental petition was filed, alleging that M.J. came within the meaning of § 43-247(3)(a) (Reissue 2008) due to the faults and habits of Marco and alleging Marco’s rights to M.J. should be terminated under § 43-292(2) and (7). The petition cited Marco’s failure to utilize services offered and failure to make progress to achieve permanency with M.J. It also cited his failure to demonstrate the ability to live independently from Renae and his failure to obtain a legal source of employment.

At trial, the juvenile court considered whether Marco’s and Renae’s parental rights should be terminated on the basis that they had neglected M.J. and refused to give him necessary parental care and protection, whether reasonable efforts were necessary to reunify the family prior to filing for termination, whether M.J. had been in an out-of-home placement for 15 out of the 22 months preceding the filing of the motion to terminate, and whether such termination was in the best interests of M.J. The juvenile court found that all counts were true by clear and convincing evidence and that termination of both parents’ rights was in the best interests of M.J.

ASSIGNMENTS OF ERROR

Marco assigns the juvenile court erred in (1) finding the State provided clear and convincing evidence of substantial and repeated neglect within the meaning of § 43-292(2); (2) terminating Marco’s parental rights after deciding that although reasonable efforts at reunification were not required under § 43-292(2) and (7), reasonable efforts were made; and (3) finding there was clear and convincing evidence that termination of Marco’s parental rights was in the best interests of M.J.

Renaë assigns the juvenile court erred in finding that M.J. came within the meaning of § 43-292(2), (6), and (7) by clear and convincing evidence. Renaë also asserts that the court erred in terminating her parental rights after finding that although reasonable efforts at reunification were not required under § 43-292(2) and (7), reasonable efforts were made, and that the court erred in finding there was clear and convincing evidence that termination of Renaë's parental rights was in the best interests of M.J.

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 Justin V.*, 18 Neb. App. 960, 797 N.W.2d 755 (2011).

When the evidence is in conflict, the 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 Tyler F.*, 276 Neb. 527, 755 N.W.2d 360 (2008).

ANALYSIS

Statutory Grounds for Termination.

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the listed conditions exist. § 43-292.

On June 14, 2010, a motion for termination of parental rights was filed, alleging Renaë's rights should be terminated under § 43-292(2), (6), and (7). Also on June 14, a second supplemental petition was filed, alleging that M.J. came within the meaning of § 43-247(3)(a) due to the faults and habits of Marco and alleging Marco's rights to M.J. should be terminated under § 43-292(2) and (7).

Marco and Renaë both assert that the trial court erred in finding the State produced clear and convincing evidence of substantial and repeated neglect within the meaning of § 43-292(2). However, the court also found that under § 43-292(7), M.J. had been in an out-of-home placement for 15 or more of the most recent 22 months. M.J. was removed from the home in March 2008 and has not been reunited with Marco or Renaë since that time.

The court need only find that one of the listed conditions under § 43-292 is present, and the court did so in this case. We find the trial court did not err when it determined the statutory requirements for termination of Marco's and Renaë's parental rights were met under § 43-292(7), and therefore, we need not address the assignments of error regarding clear and convincing evidence of substantial and repeated neglect under § 43-292(2).

Best Interests.

As discussed above, in order to terminate parental rights, the State must prove that termination is in the child's best interests and that one or more of the statutory grounds listed in § 43-292 have been satisfied by clear and convincing evidence. *In re Interest of Shelby L.*, 270 Neb. 150, 699 N.W.2d 392 (2005).

Having found that the juvenile court correctly determined one or more of the statutory grounds listed in § 43-292 have been satisfied by clear and convincing evidence, we must now consider the best interests of the child, M.J.

M.J. was removed from the home in March 2008 and has not been reunited with Marco or Renae since that time. The trial court's order, dated November 11, 2011, found that based upon the evidence adduced, it was clear M.J. had been "languishing in foster care awaiting not only uncertain but unattainable parental maturity." The court determined it was in the best interests of M.J. to terminate the parental rights of both Marco and Renae.

The order cited Renae's extensive history with DHHS and her consistent "aggression, poor parenting, impulsivity, inability to work with service providers characterized by screaming, yelling, swearing, hanging up the phone on them, slamming doors in their face, and/or ordering them out of her home during visitation for herself and/or [Marco]." She has consistent involvement with drugs, and her anger interfered with her visitation with M.J., as well as Marco's visitation with M.J.

The evidence and exhibits show a pattern of substantial, continuous, and repeated neglect and refusal to give M.J. the necessary parental care and protection. Renae has not demonstrated a commitment to herself, or building a relationship with M.J., and she has failed to take advantage of the services put in place to assist her. After reviewing the evidence, we find the juvenile court did not err when it found it was in M.J.'s best interests to terminate Renae's parental rights.

With regard to Marco, the evidence shows Marco was aware of Renae's background, juvenile court involvements, and lack of progress. The juvenile court's order noted that Marco was advised to leave Renae and attempt to achieve reunification independently. Marco told a DHHS worker that if Renae never "got it together" and it looked like he would lose M.J., he would leave her. Marco never left Renae and did not make an attempt to reunite with M.J. on his own.

Another major obstacle is Marco's current illegal immigration status, as he has remained in the United States on an expired visa. Despite services offered, Marco has failed to satisfactorily resolve his immigration status, putting both his life and M.J.'s life in an unstable condition. Marco's status also affects his ability to obtain and maintain a legal source of income. The record shows Marco and Renae were afraid he would be arrested and deported, so they decided Marco would not return to work.

The court stated that the rehabilitative process does not force parents to change; it simply presents the opportunity to gain insight and, hopefully, the motivation and desire to change. Change never occurred in this case, and the evidence shows Marco did not make M.J.'s need for permanency a priority. After reviewing the evidence, we find the juvenile court did not err when it found it was in M.J.'s best interests to terminate Marco's parental rights.

Reasonable Efforts.

The trial court found that reasonable efforts to preserve and reunify the family were made, although they were not necessary under the requirements of § 43-292(2) and (7). Marco and Renae both assert that reasonable efforts were necessary and that the trial court erred in determining reasonable efforts to preserve and reunify the family were made.

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that “*one or more of the [listed] conditions exist.*” § 43-292 (emphasis supplied).

There is no requirement that the State prove that “reasonable efforts” to reunify the family were made, except when termination is sought under § 43-292(6). *In re Interest of Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009). As stated above, the trial court found that under § 43-292(7), M.J. had been in an out-of-home placement for 15 or more of the most recent 22 months. This is sufficient to terminate the parental rights of both parents, if it is in the best interests of the child. The trial court did not err when it determined that though reasonable efforts were made in this case, such efforts were not required under the statutes.

CONCLUSION

The juvenile court did not err when it found the State proved by clear and convincing evidence that one or more of the listed conditions in § 43-292 existed and that termination of the parental rights of Marco and Renae was in the best interests of M.J. The juvenile court also did not err when it determined reasonable efforts had been made, although they were unnecessary.

AFFIRMED.