

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF TYLER W.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF TYLER W., A CHILD UNDER 18 YEARS OF AGE.
STATE OF NEBRASKA, APPELLEE,
V.
CASEY G., APPELLANT.

IN RE INTEREST OF LANDON W., A CHILD UNDER 18 YEARS OF AGE.
STATE OF NEBRASKA, APPELLEE,
V.
CASEY G., APPELLANT.

Filed August 9, 2011. Nos. A-11-115, A-11-116.

Appeals from the County Court for Dodge County: KENNETH VAMPOLA, Judge.
Affirmed.

Timothy M. Schulz, of Yost, Schafersman, Lamme, Hillis, Mitchell, Schulz & Hartmann,
P.C., L.L.O., for appellant.

Timothy E. Sopinski, Deputy Dodge County Attorney, for appellee.

SIEVERS, MOORE, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Casey G. appeals from orders terminating his parental rights to each of his children. We conclude that any error in receiving certain exhibits was harmless, because a witness provided similar evidence in testimony to which there was no objection. Because the State proved by clear and convincing evidence that a statutory ground for termination under Neb. Rev. Stat. § 43-292 (Cum. Supp. 2010) exists and that termination of Casey's parental rights was in the children's best interests, we affirm.

BACKGROUND

Casey is the biological father of Tyler W., born in May 2007, and Landon W., born in October 2008. Casey and the children's mother never married. Tyler was removed from the home on November 26, 2007, when he was 6 months old, and has remained in continuous out-of-home placement. He was 3½ years old at the time of trial. Landon was removed from the home on February 3, 2009, when he was 3 months old, and he was a little over 2 years old at the time of trial. After the children were removed from the home, the court later adjudicated them as being within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults and habits of their parents.

On June 25, 2010, the State filed a supplemental petition to terminate parental rights in each child's case. The petitions alleged grounds for terminating Casey's parental rights under § 43-292(6) and (7).

On December 1, 2010, the court conducted a trial on the petitions to terminate parental rights. Casey did not appear, and when the court inquired as to his whereabouts, Casey's counsel stated that he spoke with Casey "by telephone and wrote to him twice within the last month, informing him of today's court date. [Counsel] had a meeting scheduled with him to discuss this matter, which he did not show up for. So [counsel] d[id]n't know why he's not here today."

Dawn McDuffee, a children and family services specialist with the Nebraska Department of Health and Human Services (DHHS), was assigned to the children's case for 1 month in 2008 and then since September 2009. McDuffee testified that it had been difficult to work with Casey because he had been incarcerated "a large part of the time."

According to a March 21, 2008, case plan and court report, Casey had requested visitation with Tyler at a time when Casey was in jail and DHHS recommended that Casey first be ordered to complete a full psychological evaluation and follow the recommendations by a licensed psychologist. One of the case plan's goals was for Casey to be a healthy and safe father for Tyler. It listed the following strategies for Casey: (1) complete a psychological evaluation by a licensed psychologist, (2) follow all guidelines of the court that may include a probation agreement, (3) participate in any treatment recommended by a licensed psychologist, (4) contribute financially to Tyler's well-being and care with consistent child support, (5) complete a parenting class as arranged by DHHS and demonstrate consistency in his practice, and (6) ensure that his sex offender status is registered and that he will work with authorities as designated by the court. McDuffee testified that she mailed Casey every case plan and court report, that Casey had been invited to every family team meeting (Casey did not attend the meeting in February 2010), and that McDuffee then mailed a letter to Casey to remind him of the court's requirements that had been discussed during the meeting. McDuffee testified that Casey completed a victim's impact class while he was incarcerated, and evidence was adduced that Casey completed a parenting program.

By the time of trial, McDuffee testified that Casey had not completed a psychological evaluation, had not registered as a sex offender, and had not completed a parenting class and demonstrated the skills that he had learned. She testified that DHHS had recommended the completion of a psychological evaluation so that DHHS "could get a basis for his needs." She noted that Casey had a criminal history and that he was struggling in his relationships and

communication with the children's mother. McDuffee testified that DHHS tried to help Casey obtain the evaluation by discussing finding a therapist in the area, setting up an evaluation, and turning in all the paperwork--all Casey needed to do was schedule the appointment, which he failed to do. McDuffee testified that Casey also "no-showed" for a scheduled evaluation with a Dr. Westby. Casey did participate in an intake and assessment summary.

McDuffee testified that Casey was on probation again for not registering as a sex offender. When asked how Casey's maintaining registration as a sex offender was relevant to his ability to parent, McDuffee answered, "It offers permanency to the children. If he is failing to register and he is in and out of incarceration, he can't offer permanency to the children." McDuffee testified that Casey had been charged four times with failing to register as a sex offender, but that one charge was dropped. One of the convictions was before either child was born. McDuffee testified that since Tyler's birth, Casey had spent approximately 14 to 15 months incarcerated, and that he was currently on probation. McDuffee testified that Casey "had had several protection orders against him, I believe four total, with [the children's mother], three or four, and he had violated those protection orders. That is one of the reasons he's become incarcerated." She further testified that Casey also violated a protection order taken out within the last year by his wife.

McDuffee believed it was in the children's best interests for Casey's parental rights to be terminated. She testified that the children are not attached to Casey and that "[t]hey do not know him." She testified that it was difficult for Casey to offer permanency when he is "in and out of incarceration" and that safety is an issue due to Casey's violating protection orders and not addressing either his domestic violence or his anger management.

McDuffee testified that as of May 20, 2010, Casey had attended one visit with the children in November and in December 2009, two visits in March 2010, and two other visits. She testified that at the end of March, Casey's visitation was increased to two times a week, that he never achieved visitations twice in one week, and that he requested at the end of May that visitation be reduced to once a week. A service coordinator for Casey and the children from mid-March to May 2010 testified that Casey attended two visits over a period of 3 months. She testified that Casey completed a budget, but to her knowledge, Casey had not obtained domestic violence counseling as required by the court's order.

On January 13, 2011, the court entered an order terminating Casey's parental rights to the children. The court determined that the State proved by clear and convincing evidence grounds for termination under § 43-292(6) and (7) and that termination of Casey's parental rights was in the children's best interests. More specifically, the court found that Casey had failed to comply with the reasonable recommendations and goals of six different case plans for reunification with Tyler and four different case plans for reunification with Landon because Casey had not (1) completed a psychological evaluation, (2) completed parenting classes, (3) demonstrated parenting skills, (4) consistently registered as a sex offender, or (5) sought counseling for anger issues.

Casey timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

Casey's brief contains 10 assignments of error and three sections of argument--one of which concerns an unassigned error. In order to be considered by an appellate court, an alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error. *In re Interest of Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009). The only errors both specifically assigned and specifically argued--and, thus, the only errors properly before us--are that the juvenile court erred by (1) finding that Casey failed to comply with reasonable recommendations and goals provided by six different case plans adopted throughout the course of the case, (2) finding that he had not completed parenting classes and had not demonstrated parenting skills, (3) finding that he continued to fail to register as a sex offender and had been incarcerated rendering him unable to parent, (4) finding that he had not completed any of the requirements of the case plans, and (5) receiving evidentiary documents concerning his criminal convictions and concerning domestic protection order matters involving him.

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 Meridian H.*, 281 Neb. 465, 798 N.W.2d 96 (2011).

ANALYSIS

Evidentiary Issues.

Casey argues that the court erred in receiving into evidence documents concerning criminal convictions and domestic protection order matters. His attorney objected to receipt of the documents showing Casey's prior convictions for failing to register as a sex offender based upon relevancy. The court overruled the objection and stated it would "receive the exhibits for the limited purposes of showing a pattern of behavior, and that . . . the actual conviction does not bear on the qualifications of parenting at this time, other than the pattern." The court also received over the relevancy objections of Casey's counsel a protection order for the children's mother against Casey and a document showing Casey was found guilty of violating a protection order. The court's order mentions Casey's failing to register as a sex offender, his incarceration, and his violation of domestic abuse protection orders.

The Nebraska Evidence Rules do not apply in cases involving the termination of parental rights. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007). Instead, due process controls and requires that the State use fundamentally fair procedures before a court terminates parental rights. *Id.* In determining whether admission or exclusion of particular evidence would violate fundamental due process, the Nebraska Evidence Rules serve as a guidepost. *Id.*

Even assuming, without deciding, that the admission of this evidence was error, it was harmless. Erroneous admission of evidence is harmless error and does not require reversal if the evidence is cumulative and other relevant evidence, properly admitted, supports the finding by the trier of fact. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007). McDuffee testified, without objection, about Casey's convictions for failing to register as a sex offender and

violating protection orders. Thus, the facts of Casey's convictions were properly before the juvenile court and the documents in question were merely cumulative.

Statutory Grounds for Termination.

In order to terminate an individual's parental rights, the State must first prove by clear and convincing evidence that one of the statutorily enumerated grounds for termination exists. See *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010). The juvenile court found that the State proved grounds for termination under § 43-292(6) and (7). Casey does not contest the existence of grounds under § 43-292(7).

Under § 43-292(7), the State must show that the children have been in an out-of-home placement for 15 or more months of the most recent 22 months. According to the evidence, Tyler was removed from the home on November 26, 2007, and Landon was removed from the home on February 3, 2009. The children have remained in out-of-home placements since removal, and the supplemental petitions to terminate parental rights were filed in June 2010. 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 Casey's assigned errors relevant to the court's determination that the State proved the ground enumerated in § 43-292(6). 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 ground in our analysis of the children's best interests.

Best Interests.

In order to terminate an individual's parental rights, the State must also prove by clear and convincing evidence that termination is in the children's best interests. *In re Interest of Sir Messiah T. et al.*, *supra*.

Casey challenges the court's finding that he had not complied with the case plans. Although there is no dispute that Casey did not undergo a psychological evaluation, it appears that the juvenile court erred in finding that Casey did not meet any of the goals contained in the case plans. But our review in this case is de novo, and our primary consideration is the best interests of the children. See *In re Interest of A.L.N.*, 223 Neb. 675, 392 N.W.2d 780 (1986).

The evidence clearly and convincingly establishes that termination of Casey's parental rights is in the children's best interests, and his brief fails to challenge this in any meaningful way. At the time of trial, the children were ages 3½ and 2 and, according to McDuffee, they "do not know" Casey. He has been "in and out of incarceration" and has only sporadically engaged in visitation with his children. Meanwhile, the children have remained in out-of-home placements: Tyler since November 2007 and Landon since February 2009. 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). McDuffee believed it was in the children's best interests for Casey's parental rights to be terminated. Based upon our de novo review of the record, we agree.

CONCLUSION

We conclude upon our de novo review that the State proved by clear and convincing evidence the existence of a statutory ground for termination and that termination of Casey's parental rights was in the children's best interests.

AFFIRMED.