

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF BABY GIRL F.

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IN RE INTEREST OF BABY GIRL F.,
A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

v.

MICHAEL A., APPELLANT.

Filed July 5, 2011. No. A-10-1114.

Appeal from the Separate Juvenile Court of Douglas County: DOUGLAS F. JOHNSON,
Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Christine D. Kellogg for
appellant.

Donald W. Kleine, Douglas County Attorney, Amy Schuchman, and Ryan Lindberg for
appellee.

Lynnette Z. Boyle, of Tietjen, Simon & Boyle, guardian ad litem.

IRWIN and CASSEL, Judges, and HANNON, Judge, Retired.

IRWIN, Judge.

I. INTRODUCTION

Michael A. appeals from the juvenile court's order continuing the out-of-home placement of his daughter, Baby Girl F., now known as Amari A. On appeal, Michael asserts that the juvenile court erred in finding that placing Amari with him would be contrary to her safety and welfare and in finding that reasonable efforts had been made to preserve and reunify the family. Upon our de novo review of the record, we conclude that a preponderance of the evidence supports the juvenile court's order and we affirm.

II. BACKGROUND

Amari was born in September 2010 to Michael and Danielle F. Michael and Danielle have been married since 2008. Although Danielle is not a party to this appeal, she was a party in the juvenile court proceedings below, and as a result, we will discuss her involvement in this case to the extent it is necessary.

In April 2009, more than a year prior to Amari's birth, Michael and Danielle were involved in juvenile court proceedings after Danielle's four children were removed from their home. All four of the children were found to be within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) as to Danielle. In addition, Michael admitted to the juvenile court that as the children's stepfather, he had failed to maintain safe and adequate housing. As a result of Danielle's adjudication and Michael's admission, both Michael and Danielle were ordered by the juvenile court to comply with certain requirements, including maintaining safe and appropriate housing, obtaining a legal source of income, complying with random urinalysis testing, completing a psychological evaluation, and participating in supervised visitation with the children. Ultimately, in August 2010, Danielle voluntarily relinquished her parental rights to her four children and the juvenile court proceedings were terminated.

On September 11, 2010, a few weeks after Danielle voluntarily relinquished her parental rights to her four older children, Amari was born. Approximately 1 week after her birth, Amari was removed from Michael's and Danielle's care.

On September 16, 2010, the State filed a petition alleging that Amari was within the meaning of § 43-247(3)(a) as to Danielle. The petition alleged that Amari was at risk for harm due to Danielle's use of alcohol and/or controlled substances and due to Danielle's failure to reunify with her four older children after they were removed from her care. On September 27, the State filed a supplemental petition alleging that Amari was within the meaning of § 43-247(3)(a) as to Michael. The supplemental petition alleged that Amari was at risk for harm due to Michael's failure to provide her with safe, stable, and appropriate housing and due to Michael's failure to reunify with his four stepchildren after they were removed from his care. Subsequently, the juvenile court entered an order placing Amari in the temporary custody of the Department of Health and Human Services (the Department) and scheduling a hearing to determine whether such placement should be continued.

A protective custody hearing was held on October 25, 2010. At that hearing, the only witness to testify was Dawn Coffey, the family's caseworker. Coffey has been the family's caseworker since May 2010, prior to the time that Danielle relinquished her parental rights to her four older children. Coffey testified that in the previous juvenile court proceedings, Michael was ordered by the juvenile court to participate in visitation with his stepchildren, complete a pretreatment assessment and a psychological evaluation, comply with random urinalysis testing, and participate with family support services. Coffey testified that Michael completed the pretreatment assessment and participated with family support services. There was evidence that Michael minimally participated in visitation with the children. In January 2010, there were 12 visits scheduled between Michael and the children and Michael attended three of those visits. In February 2010, Michael did not attend any scheduled visits with the children. Michael did not comply with urinalysis testing. He did not complete a psychological evaluation.

Other evidence presented at the hearing indicated that during the previous juvenile court proceedings, Michael was also ordered to obtain and maintain a legal source of income and housing. Coffey testified that Michael had moved six times since May 2009. At the time of the protective custody hearing, Michael lived with his mother, but Coffey testified that Michael continued to also reside with Danielle on occasion. Coffey testified that Michael and Danielle were still a married couple. In fact, Michael was with Danielle when Amari was removed from Danielle's home in September 2010.

Coffey testified that since Amari was removed from Michael's care, he had been offered additional services, including a pretreatment assessment, visitation services, and bus passes. When Michael was presented with the opportunity to participate in these services, he indicated that he wished to delay his participation until he could obtain a cellular telephone.

Coffey opined that Amari would be at risk of harm if returned to Michael's custody. She based this opinion on her prior experience with the family, her current experience with the family, and her expertise as a child and family services specialist.

After the hearing, the juvenile court entered an order finding:

Based on the exhibits and on the testimony of . . . Coffey, who was a credible witness, it is contrary to the best interests and safety of said child that she be returned to her parents, due to their lack of compliance and lack of therapeutic progress [during the prior juvenile court proceedings], lack of resolution of the issues . . . lack of follow-through with services by the father [including residing in multiple residences], and it is not safe for the child to be returned to either parent.

Michael appeals from this order here.

III. ASSIGNMENT OF ERROR

Michael assigns two errors in his brief on appeal. Each assigned error generally asserts that the juvenile court erred in continuing Amari's placement outside of his home.

IV. 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 Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009).

V. ANALYSIS

The circumstances required to be established for continuing to withhold a juvenile's custody from his or her parent or legal guardian pending adjudication are found in Neb. Rev. Stat. § 43-254 (Cum. Supp. 2010):

[T]he court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of section 43-283.01.

The State must prove the requirements of § 43-254 by a preponderance of the evidence. *In re Interest of Tayla R.*, *supra*.

On appeal, Michael asserts that the juvenile court erred in continuing Amari's placement outside of his home. Specifically, he argues that the juvenile court erred in finding that placing Amari with him would be contrary to her safety and welfare and in finding that reasonable efforts had been made to preserve and reunify the family. We first address Michael's assertions regarding whether reasonable efforts had been made to reunify the family.

Section 43-254 indicates that a juvenile court may order continued out-of-home placement of a child if the court finds that reasonable efforts were made to preserve and reunify the family when such efforts are required under Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2010). In this case, there is no dispute that reasonable efforts were required. Section 43-283.01(2) states, in pertinent part:

[R]easonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

Michael argues that the State failed to demonstrate that reasonable efforts were made prior to the removal of Amari from his care. Although he acknowledges that he was provided services during the previous juvenile court proceedings involving his four stepchildren, he asserts that such services were too remote in time from Amari's removal to be considered as reasonable efforts in the current juvenile court proceedings. Such assertion has no merit. The evidence reveals that Michael was provided with services through at least March 2010 and that such services were available to Michael through August 2010 when those juvenile court proceedings were terminated. Amari was born and removed from Michael's care just weeks after those proceedings were terminated.

The record reveals that the previous juvenile court proceedings involving Michael's stepchildren were initiated in April 2009. Sometime after April 2009, Michael admitted that he failed to provide his stepchildren with safe and stable housing and was ordered by the juvenile court to participate with various services. It is not clear from the record when such services were ordered or provided to Michael, but there is evidence which suggests that the services were provided to Michael at least through March 2010. In addition, it is clear that the previous juvenile court proceedings lasted through August 2010, when Danielle voluntarily relinquished her parental rights to her four older children. Presumably, we can assume that the services ordered by the juvenile court were available to Michael through August 2010, which was only weeks prior to Amari's birth and removal.

Coffey, the family's caseworker, indicated in her testimony at the protective custody hearing that during the previous juvenile court proceedings, Michael did not actively participate with the services available to him throughout the pendency of that case. Michael often could not be located by service providers. For example, the provider for Michael's urinalysis testing was not able to contact Michael for random testing that was ordered. In addition, there was evidence that the provider for Michael's psychological evaluation was not able to contact him by telephone or by mail. There was evidence that Michael stopped attending visitation with his stepchildren in January and February 2010. As such, it appears that Michael did not actively participate with the services available to him pursuant to the juvenile court's order and that any

termination of these services prior to August 2010 was due, at least in part, to Michael's lack of participation.

Michael also argues that the services provided to him during the previous juvenile court proceedings were not reasonably related to the circumstances the State alleged necessitated Amari's removal from his care. Such assertion is also without merit.

The supplemental petition in this case alleged, in part, that Amari was at risk for harm because Michael failed to provide safe and stable housing. This was the same allegation that Michael admitted to during the previous juvenile court proceedings. During those proceedings, Michael was ordered to obtain appropriate housing. He did not. Instead, Michael moved six times since May 2009. In addition, he continued to reside with Danielle occasionally, even as Danielle continued to use controlled substances. As a result, it is reasonable to assume that at the time of Amari's birth, Michael continued to struggle with his housing situation.

The supplemental petition also alleged that Amari was at risk for harm because Michael failed to obtain reunification with his stepchildren after failing to comply with the court-ordered reunification plan. As we discussed above, the juvenile court ordered Michael to, among other things, complete a psychological evaluation and comply with random urinalysis testing. There is nothing in our record to indicate that such orders were in response to any specific evidence demonstrating that Michael suffered from mental health problems or from substance abuse. Rather, it appears the orders were designed to identify any problems that may have affected Michael's parenting skills. When we consider that Danielle struggled with substance abuse and that Michael was married to and living with Danielle, such orders appear to have been reasonable. And, because Michael did not comply with the juvenile court orders during the pendency of the previous juvenile court proceedings, there is still uncertainty regarding Michael's circumstances and how those circumstances may affect his ability to parent.

Taken together, the evidence presented at the protective custody hearing is sufficient to demonstrate that reasonable efforts were made prior to Amari's removal. While the efforts were associated with the previous juvenile court proceedings, the efforts were close in time to Amari's removal and were reasonably related to the circumstances the State alleged necessitated Amari's removal from Michael's care.

Michael next argues that the juvenile court erred in finding that placement of Amari with him would be contrary to her safety and welfare. Upon our review of the record, we find this assertion to be without merit.

The evidence presented at the protective custody hearing reveals that Michael currently does not have stable housing. Although Michael reported that he lives with his mother and Coffey testified that Michael's mother's house is safe and appropriate, Coffey also testified that Michael does not always reside at that residence. Michael continues to live with Danielle on occasion, and Danielle continues to use and abuse controlled substances.

There was also evidence that Michael chose to delay his participation in services offered to him after Amari was removed from his home because he wanted to wait until he obtained a new cellular telephone. As a result of this decision, Michael did not have visitation with Amari for approximately 2 weeks.

The focus at this stage of the juvenile court proceedings is on Amari's safety and well-being. When we consider this focus, we find that a preponderance of the evidence supports the juvenile court's order to continue Amari's placement outside of Michael's home.

VI. CONCLUSION

Upon our de novo review of the record, we conclude that a preponderance of the evidence supports the juvenile court's order to continue the out-of-home placement of Michael's daughter, Amari. We affirm.

AFFIRMED.