

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Jakob N.,)
a child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Adam E.,)
)
Appellant.)

No. A-12-0359

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

OCT 22 2012

INBODY, Chief Judge, and SIEVERS and MOORE, Judges. **CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**
INBODY, Chief Judge.

INTRODUCTION

Adam E. appeals the order of the Lancaster County Separate Juvenile Court terminating his parental rights to his biological son Jakob N. For the following reasons, we affirm the order of the juvenile court in its entirety.

STATEMENT OF FACTS

Jakob was born in January 2004, to Adam and Dennise H. In October 2004, Dennise relinquished her parental rights. Jakob remained in foster care for the first several years of his life until he was eventually placed with Adam in February 2007. In October 2008, Adam married his current wife, Tia E. Jakob was removed from Adam and Tia's care on September 18, 2009. The State filed a petition against Adam only, since Tia is not a



biological parent and had not adopted Jakob. In December 2009, Jakob was adjudicated as a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) for the issues relating to unsanitary living conditions and domestic violence.

Over the course of the following years, the family was offered services by the Nebraska Department of Health and Human Services (DHHS), which included psychological evaluations, family support services, individual and family therapy, a domestic violence program, and therapeutic and supervised visitation. Again, Tia was not a party to the case, but was provided services and attended all court hearings.

On September 1, 2011, the State filed a motion for termination of Adam's parental rights pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2008), which motion also alleges that termination is in Jakob's best interests. The trial on the matter was held over several days in December 2011 and January 2012. Numerous DHHS employees, medical professionals, and other involved individuals testified over the length of the trial.

Abbi Shanle, a DHHS initial assessment worker, testified that she was the case manager assigned to the case from August 2008 through October 2009. During that time, Shanle testified that there were five intakes for the family regarding neglect, unsanitary living conditions, and Tia's treatment of Jakob and

his half-sister, Aurora, in the community. One of the intakes also involved domestic violence in the home. Shanle testified that a safety assessment interview with herself, Adam, and Tia was conducted on September 4, 2009, during which Adam and Tia spoke openly about the intake allegations. DHHS offered safety planning which included family support services and drop-in services, but Adam and Tia refused services at that time and made it clear to Shanle that only law enforcement would be allowed in their home. Shanle testified that she eventually recommended that Jakob be removed from the home because of repeated concerns of unsanitary living conditions, repeated contacts with DHHS and the Lincoln Police Department regarding the living conditions, domestic violence, and the refusal to cooperate with any services.

Kelsey Pruden supervised visitations between Adam, Tia, and Jakob from January 2010 through May 2011. At that time, visitations were Sunday from 9:00 a.m. to 5:00 p.m. and Tuesday from 5:00 p.m. to 7:00 p.m. Pruden explained that there were many instances in which Jakob refused to go on visitations. Pruden and Jakob's foster parents would try to talk Jakob into having visitation before canceling with Adam. Jakob indicated that he refused because of Tia. Pruden testified that Tia exhibited concerning behaviors such as snapping at Jakob, using intimidating body language, and using a harsh tone of voice.

Pruden discussed those concerns with Tia, who would sometimes show improvement and other times not. Adam often stepped in to assist Tia, but Tia often complained about Jakob's foster parents, at one time in Jakob's presence, and would become upset at Jakob's actions or Adam's attempts to have her participate in visitations. Pruden testified that she did not have any issues or concerns regarding Adam's behavior during visitations, only with Tia's inappropriate behaviors. In April 2011, Jakob began to refuse to go on all visitations and indicated again to Pruden that it was because he was afraid of Tia.

Pruden testified that most visitations occurred at Adam's home, which was consistently cluttered and smelled unpleasant, although she explained that there was never any trash lying around the home. Pruden testified that the kitchen was often messy with dirty dishes on the counter and the stove was dirty. Pruden testified that the condition of the apartment did not rise to the level of being too unsanitary for Jakob to have visitations there.

Pruden testified that Adam frequently participated in activities with Jakob during visitations, such as playing with various toys and watching movies. Pruden indicated that Adam was an active participant and he generally utilized appropriate interactions with Jakob. Pruden testified that on Sundays they would go to church and come home for lunch. Tia usually cooked

lunch and they would all eat at the table together. Pruden testified that the food provided was always appropriate for Jakob. Pruden testified that Adam and Tia were argumentative with her about redirection and Jakob's clothing. Also, Adam had issues with Jakob completing his homework on Tuesdays because Adam thought homework wasted visitation time. Pruden testified that Adam would voice his anger about homework, but would still make sure Jakob completed it on most occasions.

Stephanie Longwell, a visitation and family support worker involved in the case from May 2010 through January 2011, described Jakob not wanting to attend visitations. Longwell provided Adam and Tia with family support services once a week which focused on home maintenance and parenting skills. They discussed home odors and how to eliminate those odors, and discipline and redirection. Longwell testified that Adam was a loving father, but was not always receptive to suggestions. Longwell indicated that Jakob did not appear to be afraid of Adam, but was afraid of Tia. Longwell indicated that during this time, Adam and Tia did not miss any visitations and missed only a few family support meetings.

Cydney Volkner, a family permanency specialist, began working on the case in July 2010. Volkner testified that at no time during her time on the case would she have ever recommended a change in visitation or that Jakob be placed back in Adam's

home. Volkner testified that her last random drop-in of Adam's home had taken place in June 2011, and she described the home as cluttered, with a dirty kitchen and dirty dishes everywhere. Volkner testified that Adam indicated they were going camping and had a bunch of gear in the apartment. There was a new cat in the home, but the dogs were not present and the apartment still smelled of an unusual odor. Volkner testified that she made a random drop-in at the apartment just the day before she testified at trial, but no one was home. Volkner testified that a different car was parked in their designated spot and all of the bikes were gone. Testimony later indicated that Adam and Tia had moved, but had not notified DHHS.

Volkner testified that early on in the case a medication evaluation of Adam had been completed, with the recommendation that he be on medication, but Adam refused. In June 2011, Adam contacted Volkner and demanded a medication evaluation, indicating that he now wanted medication. Volkner made the arrangements and Adam attended two appointments, but failed to appear at the next appointment and did not fill his prescriptions. Volkner testified that in December 2011 Adam missed a therapy session.

Volkner testified that she was involved in taking Jakob to visitations and that he had refused on some occasions. On one occasion, she took Jakob to a visitation which was only to

include Adam and Jakob but when she arrived, Tia was in the area. Adam apologized to Volkner and explained that Tia was upset and felt isolated. Adam, Jakob, and his younger cousin Sammy were getting the bikes ready when Tia grabbed Sammy and indicated that Sammy could not talk to Jakob, because Jakob did not want them at the visit. Volkner testified that Tia stayed at the park through the entire visit. At the conclusion of the visit, Volkner explained that Tia came up to hug Jakob, who began whimpering and appeared to not want to be touched by Tia. Volkner testified that at many other times throughout the case Jakob reported to her and other therapists that he was afraid of Adam and Tia, although she then stated that she was unsure if he was afraid of Adam, but was certainly afraid of Tia. Volkner testified that termination of Adam's parental rights was in Jakob's best interests.

Volkner discussed the issues surrounding the decision to allow Jakob to attend or refuse visitations, as did many of the visitation workers. Volkner said that Jakob's refusal occurred throughout the case on various occasions. In January 2011, Jakob was not given a choice and was told that he had to attend visitations. In March 2011, Jakob's refusals increased in frequency and Volkner testified that therapists would facilitate the visitations and encourage Jakob to attend visitations. Jakob's refusals were frequently discussed at team meetings.

Beginning in March 2011, the team decided to call Adam with Jakob present when Jakob refused and visitations workers all continued to encourage Jakob to attend. Volkner testified that in May, the attempts shifted to removing Tia from visits since Jakob had indicated that he was afraid of her.

Regarding the conditions of the home, Volkner testified that the residence did not get any worse, but seemed to remain the same throughout the case. Volkner testified that the home had a very distinct and bad smell, there was always clutter and dishes everywhere. Volkner opined that the odor in the home was not fit for a child to live in. Volkner also described team meetings and testified that Adam and Tia were always raising their voices, interrupting, getting upset at any suggestions of feedback, and were not receptive. Volkner testified that Tia did not attend any team meetings after the June 2011 domestic violence altercation and that team meetings went better when Tia was not present, but that Adam was still defensive and would get upset.

Susan Hillman, a program support worker with KVC, testified that Jakob refused all visits she was involved with, except for two Saturday visits on June 25, and July 16, 2011, from 9:00 a.m. to 2:00 p.m. Hillman explained that Tia was not at either of those visits and no other concerns arose. Hillman testified that from the July 16 visit through the time of the trial, every

Saturday she made attempts to take Jakob to visitations but Jakob continually refused. Hillman testified that initially she would attempt to persuade Jakob to go on visitations, who was 7 years old at that time. Hillman indicated that during Jakob's most recent denials, she did not spend any time trying to persuade him any further.

Sandra Dirks, a CASA volunteer, has been involved in the case since January 2010. Dirks has visits with Jakob, is involved in team meetings, and was also involved with home visits to Adam's home. Dirks visited Adam's home on 9 occasions and made attempts on 7 other occasions, but there was no contact made with Adam. Dirks testified her most recent visit in the home was on October 22, 2011, and she was denied access to Jakob's room because she was informed by Adam that a friend was staying in the room. Adam and Tia's bedroom was full of boxes and Adam explained that his mother had also been living with them. Dirks described the apartment as being "very full of stuff," cluttered, there were ashtrays throughout the home, and food on the floor, which Adam promptly cleaned up. Dirks testified that on this particular visit, the kitchen was cleaner and the garbage cans were not overflowing, but there was a strong odor of tobacco smoke. In other visits there were dirty dishes piled up in the sink and on the counters and table, dishes in the living room, and numerous ashtrays. Dirks

indicated that smoking in the apartment was a concern because Jakob suffered from numerous respiratory issues, including asthma. On cross-examination, Dirks testified that beyond the smoke odor and residue in the apartment, there were no other significant health concerns.

Dirks testified that during her visits, Adam frequently discussed his frustrations with the case, and her supervisor frequently went on the home visits with her because Adam and Tia were very emotional and very assertive with their frustration, which they would often direct at Dirks. Dirks explained that Adam was very emotional at the monthly team meetings and would, in the beginning, frequently raise his voice and have outbursts. Dirks said that those instances had become less frequent at the most recent monthly meetings. Dirks explained that Tia would also use a loud tone of voice or would become entirely unresponsive, although Dirks testified that Tia had not been present at team meetings since June 2011.

In 2010, Dr. Gail Ihle, a licensed psychologist, completed a psychological evaluation of Adam and Tia. Dr. Ihle diagnosed Adam with dysthymic disorder and impulse control disorder, and Tia with adjustment disorder with anxiety. Dr. Ihle recommended that each continue with individual therapy.

Kera Frederick, a licensed psychotherapist, testified that she provided individual therapy services for Adam and Tia for 16

sessions each and none of the goals set regarding anger management, self-control, self-esteem, and accepting feedback were achieved. Frederick testified that in May 2010, Adam and Tia chose to work with a different therapist. Frederick explained that both attended and mostly participated in sessions, but did not demonstrate a willingness to change their behaviors.

In April 2011, Melissa Kenney, a licensed mental health therapist, began providing therapy services and has been providing Jakob weekly therapy since that time. Kenney testified Jakob was initially extremely anxious. Therapeutic visitation between Adam and Jakob was scheduled in July, but Adam did not attend. A second appointment was not scheduled again until November, because Kenney testified that Jakob's anxiety was so high that she felt he needed to learn coping skills to control the anxiety before resuming family sessions. Kenney testified that she was aware there was an order directing DHHS to provide family therapy, but did not realize that it was an order from the court until later on, at which time she immediately scheduled a family session. On November 10, both Adam and Tia attended, but Tia was not allowed to participate and became upset and frustrated, and eventually left. Jakob ran into the lobby and jumped into Adam's arms and Adam carried Jakob into the office. After that visit, Kenney testified that Jakob's

demeanor became more anxious, akin to what it had been at their very first session. Kenney explained that Jakob verbalized many feelings about Tia, explaining that he "did not like Mama."

Kenney explained that she gave Jakob the option to have a session with Adam or not, and on most occasions he declined, even though she encouraged him to visit with Adam. On November 17, 2011, Kenney had a session with Adam alone, and Adam did not show up for the December 1 appointment. On December 15, an appointment was made and Adam showed up at the office, but Jakob declined to attend. Kenney explained that she did not force Jakob to attend therapy with Adam because it allowed Jakob to have some control and to make his own choices.

Kenney testified that Jakob was making moderate progress in dealing with his anxiety issues, but recommended that his individual therapy continue. In her most recent session with Jakob, Jakob indicated that he was afraid to live with Adam because Jakob did not trust Adam. In discussing goals with Adam, Kenney testified that Adam's goal for the family was to "go back to the way things were" before Jakob was removed from his custody. Adam also wanted to discuss Jakob's imaginary friend and to get Jakob to attend therapy with him. Kenney opined that based solely upon her interactions with Jakob, it would be in Jakob's best interests to live with someone other than Adam.

Paul Ries, a licensed independent mental health practitioner, testified that there are several indicators present in children who are victims of neglect, such as social, educational, language, and developmental delays, difficulty regulating emotions, and heightened anxiety which results in panic attacks, shortness of breath, shaking, an outbreak of rash or other body functions. Ries became involved in Jakob's case in October 2010, with a pretreatment assessment and in November, individual therapy sessions began. Ries explained that the pretreatment assessment presented Jakob as a child that had been neglected and abused, and that Jakob had social, educational, and developmental delays, difficulty with incontinence, difficulty with emotional regulations, and anger outbursts. Ries also began family therapy with Adam and Jakob until the court ordered Tia to also be involved. Ries testified that Adam and Tia were consistent in their attendance of therapy and that 6 or 7 of the therapy sessions were held at Adam and Tia's home.

Ries testified that although Adam expressed love and Jakob reciprocated, it was difficult for Ries to establish a goal during the family sessions because he was concerned about Jakob's continuing fear of being hurt or harmed. Jakob talked to Ries about being locked in his room without food and being left in the room for so long that he wet his pants. Ries explained that he was reluctant to place a vulnerable child in a situation

to address issues with parents, when the parents had not acknowledged that those incidents had occurred.

Ries indicated that eventually Adam acknowledged two incidents related to some of Jakob's fears, which were being placed in time-out upside down and also time-outs where Jakob was required to hold his arms out in front of his body or in a "T" form. Adam acknowledged that those were inappropriate forms of discipline, at which time Ries felt that it was a safety issue to address with the family. The second incident which Adam acknowledged was that he had Jakob in his room for an entire day, although he indicated it was to separate Jakob from the family dogs. Ries explained that once both acknowledgements were made by Adam, Jakob displayed an increased willingness to participate in visitation and a decreased level of anxiety. Ries testified that issues of unsanitary living conditions and domestic violence needed to be addressed due to a concern regarding ongoing domestic abuse and Jakob's presence during those incidents. Jakob indicated to Ries that there was always yelling, Tia crying, and a report that Jakob had seen Adam hit Tia.

However, Ries testified that Jakob's willingness was only temporary because Adam reverted back to denying that the incidents had occurred. Ries testified that fairly early in the case, he recommended that family therapy temporarily cease

because of Jakob's fear and safety concerns. Sessions briefly ceased, during which time Ries worked with Jakob on reassurance about his safety during visitations, learning to cope with anxiety and worry, and encouraging Jakob to go to visitations. After about 2 months, Ries resumed family therapy and continued to provide services through April 2010. Ries reported that Adam demonstrated a capacity to be appropriate with Jakob, but Ries noted that no real progress had ever occurred with family therapy. Ries testified that any effort he made to work with the family was challenged or ignored and met with hostility. Ries explained that it was extremely difficult to build rapport with either Adam or Tia because he was constantly met with accusations regarding the foster family, inappropriate conversations, interruptions, and being told by Tia and Adam that they were not going to implement what he was saying because it was not what they wanted to do. Ries testified that during team meetings Adam was hostile, interruptive, and easily agitated. Adam would speak loudly and pace around the room which made it difficult to accomplish tasks. Ries also testified that Tia was interruptive and would become confrontational with Ries during family sessions while Jakob was present. Ries indicated that he experienced more difficulties with Tia than with Adam, as Tia was unable to fully understand Jakob's developmental issues and exhibited a lack of personal awareness. Ries

explained that most of Tia's interactions were misinterpreted by Jakob as he could not understand what she was trying to express. Because of those issues, Ries recommended that the family see different therapists.

Ries testified that over the 18 months of treatment, he observed Jakob make progress in overcoming some of his delays, but that Jakob needed to establish permanence and that it was necessary for Jakob to live in a safe and stable home so that he could develop meaningful relationships and learn how to self-manage. Ries indicated that he could not recommend moving the family to a lower level of supervised visitation. Ries testified that good attendance was not an indicator of therapy moving forward, but that therapy also required participation and a willingness to change. Ries testified that Adam was highly motivated to make changes at some times, but those times were short-lived and did not result in any consistent changes. Ries testified that he could recall no "enduring changes" on Adam's part.

James Holt, a licensed independent mental health practitioner, testified that he worked with Adam and Tia in May 2010, after Adam was referred to him for anger management in relation to the juvenile case. Holt prepared a treatment plan which focused on anger management, building appropriate pro-social skills, and expressing anger appropriately. Holt

recommended that Tia also be involved because of the marital situation. Holt initially diagnosed Adam with adjustment with depressive symptoms, which was changed during therapy to mood disorder with bipolar disorder.

Holt recommended activities for Adam and Tia to work on their communication skills, which he observed lacked maturity and were often very emotional. Holt testified that therapy with Adam and Tia was terminated in November 2011, because Holt believed that Adam needed to be on medication and Adam refused. However, Holt testified that Adam had made some progress in expressing his anger, but could not sustain any changes. Holt opined that in order for Adam to sustain any changes he needed to be on a mood-stabilizing medication to maintain a consistent level. Holt testified that he discussed his diagnosis and the bipolar disorder with Adam on several occasions. Holt testified that Adam was resistant to feedback, would become argumentative, and eventually became emotional and ceased engaging. Holt testified that there was very minimal progress made in working on Adam and Tia's relationship.

Holt testified that he also attempted to work with Adam and his brother Robert, Jakob's foster parent, but no progress was made because there was a significant amount of pain that Adam was not ready for in that type of relationship. Holt testified that the fact that Robert was Jakob's foster parent was a

barrier to making progress in the relationship, but was not the main issue between the two.

Gloria E., Adam's sister-in-law and Jakob's foster mother, testified that she has known Jakob since birth. Jakob was placed with Gloria and her husband, Adam's brother Robert, in September 2009. Gloria testified that, in addition to Jakob, Gloria has an 18-year-old son living in the house, and two other girls. Gloria testified that Jakob's half-sister, Aurora, also frequently stays at the home. Gloria explained that at that time of removal Jakob was 5 years old and was "very tiny," wearing toddler clothing. Gloria testified that Jakob began to grow considerably during the next 3 months. Gloria explained that initially Jakob was hyperactive, could not concentrate, and was scared. Jakob wet the bed and would urinate all over the bathroom. Jakob was also argumentative and occasionally violent towards other children and pets.

Gloria testified that Jakob has asthma and now has prescriptions for a Symbicort inhaler, Loritadine, Claritin, and also for Proair HC, which is a rescue inhaler. Jakob was also calmer and better able to focus. Gloria testified that behavior charts are no longer necessary for Jakob at school. For a period of time in late 2010, Jakob was also prescribed a medication for anxiety, but at the time of trial, he was no longer taking that

medication. Gloria testified that Jakob attends weekly individual therapy sessions.

Gloria testified that she encouraged Jakob to attend visits with Adam through manipulation and bribes, and also by threatening consequences such as spending time in his room if he refused. Gloria testified that Jakob showed resistance to visitations from the very first visit and that Tia was one of the reasons that Jakob did not want to go on the visitations and that issue was discussed at a team meeting where it was agreed that Jakob and Adam would have a visit alone, without Tia. That visitation was in May 2011, and Jakob willingly agreed to attend the visitation. However, Tia attended a portion of the visit and, since that time, Jakob had agreed to go to only two visitations with Adam. Gloria also testified that prior to the juvenile action being instituted, she had witnessed Tia smack Jakob across the face so hard that he spun around and fell back against a vehicle to catch his balance.

Jake Dilsaver, a police officer for the City of Lincoln, testified that on June 14, 2011, he was dispatched to a domestic assault in progress. When he arrived on scene, Dilsaver made contact with Tia and two teenagers who had witnessed the altercation. Tia had redness on her shoulder and face. After the initial call, Dilsaver and other officers made contact with Adam, who had left the scene before Dilsaver came to the

residence. Dilsaver interviewed Adam and observed scratches on Adam's neck. Adam explained that an argument had ensued with Tia and she became hysterical and slapped him across the face. Adam indicated that he sat on top of Tia and tried to calm her down by holding her hands down, but that she continued to slap his face and scratch his neck. Adam also revealed a history of domestic violence between Tia and himself, and that he had participated in a domestic violence class, but it "did absolutely nothing . . . it was a stupid class." The case was eventually dismissed.

Tia testified that she was 23 years old, had completed the 11th grade, and had no children of her own. Tia testified that other than temporarily babysitting a friend's children, she had not been employed since January 2009, and that she and Adam had moved to a new residence during the trial, but had not yet notified DHHS. As to her involvement in the case, Tia testified that she began therapy with Frederick, but chose to quit that therapy because she was not getting along with Frederick. Tia indicated that she then engaged the services of Holt. Tia testified that she gained some information from Holt which helped her and Adam's relationship, but was no longer seeing any therapist. Tia testified that there had not been any domestic violence between Adam and her and she explained that their problems stemmed from past violent relationships and Adam being

a victim of domestic violence by his first wife. Although prior to this testimony, Tia testified that on June 14, 2011, she had two teenagers, one of which was her friend's, at her home when Adam was preparing to leave for work. She indicated that Adam became upset, but did not push or strike her and she did not remember anything that she told the officers. Tia admitted that she attacked Adam during the incident, but later continued to maintain that there was no domestic violence in their relationship because she was merely having a "flashback" to a prior relationship.

Tia explained that prior to Jakob's removal, she was "extremely close" with Jakob and she had just taken him on a trip to Branson without Adam. Tia testified that if family counseling, visitation services, and a parenting class had been offered to her, it would have been more helpful in correcting the problems. Tia testified that the descriptions given of her throughout the trial were the result of her irritation with the case. Tia explained that the few visitations she was allowed with Jakob alone went "fantastically." Tia testified that Jakob was not afraid of her and that if he were to return to their home, she would be the primary caregiver because of Adam's work schedule. Tia testified that when she has "flashbacks" she tends to hit or strike whoever is in the room near her, but she was confident that she would not hit Jakob because he was shorter

than her and that she would be able to control the flashbacks by the time Jakob was back in the home. Tia further testified that she does not and has never used any type of physical discipline with Jakob.

Adam testified that it was in Jakob's best interests to be returned to his home. Adam testified that he was brought to court because he yelled at Tia and he should be given another opportunity to complete the services he started, in addition to having other necessary services provided. Adam testified that he asked DHHS to provide an anger management program but was not provided one. Adam testified that he had participated in a men's domestic violence group for 25-27 weeks, but did not learn anything. Adam testified that he also needed a parenting class, although he admitted that he had previously taken a parenting class and had addressed parenting skills with family support services and was in therapy throughout the case. Adam testified that he was not the perpetrator of domestic violence and that he had not engaged in domestic violence with Tia, although he had been the victim of domestic violence by his first wife.

Adam testified that he had been uncooperative with DHHS on only one occasion, when DHHS showed up at his door and asked for a UA test. Adam said he did not have to comply with DHHS because he lives in a free country and not because he had any concerns about failing the test. Adam testified that at the numerous

initial intakes made in 2009, he was cooperative and was not offered any services.

Adam explained that when Jakob was born, he had numerous problems and stayed in the NICU for 7 months. Adam testified that he visited Jakob every day and learned how to care for a preemie. Adam took the necessary classes to learn how to operate the apnea monitor and oxygen machine, in addition to a parenting class. Adam also began having visitations with Jakob, and eventually took full custody of Jakob.

Adam testified regarding the allegations of locking Jakob in his room and explained that Jakob was not locked in his room, but the door had a dysfunctional door knob which did not allow the door to be opened from the inside. Adam explained that he did not just leave the door open because the dogs in the house would roam around and disturb Jakob. Adam indicated that the dogs had kennels in the home but could not be left in the kennels when they were home. Adam also explained that he wanted the door shut so Jakob would have a sense of privacy. Adam further explained that he did not even know that the door was broken for at least a week and contacted the landlord numerous times to get it fixed.

Adam testified that he disciplined Jakob in an unorthodox manner by utilizing a new type of time-out that he saw in a movie. Adam testified that he thought that making Jakob stand

against the wall as though he was in an imaginary chair would be a way for him to focus. Adam said he had tried several kinds of time-outs and nothing worked, including making Jakob stand upside down on his head against the wall in a time-out, which Adam said he now realized was wrong. Adam testified that he had never used physical discipline with Jakob and described his relationship with Jakob as "untouchable." Adam also testified that he did not know, but had been told, that Jakob had asthma, but did not believe the diagnosis because, although Adam had received two opinions from medical professionals indicating that Jakob had asthma, Adam had not seen any "documented lung scan medical test."

Adam testified that the domestic violence program he participated in was an education class that he found irrelevant because it did not help him learn anything and that a different group dealing with anger and frustration would have been better for him. Adam explained that he ceased going to therapy sessions with Frederick because she did not get along with Tia and because Adam was controlling the sessions and not Frederick. Adam explained that he needs to see a therapist who would not look at him and say "[w]hat can we do to help you?" Adam also testified that he needed medication, but was not given it because KVC did not pay the \$5 for the medication. On cross-examination, Adam testified that he had money for cigarettes and