

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF JASMINIAH S.

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

STATE OF NEBRASKA, APPELLEE,

V.

JEREMIAH S., APPELLANT.

Filed January 17, 2012. No. A-11-593.

Appeal from the Separate Juvenile Court of Douglas County: CHRISTOPHER KELLY,
Judge. Affirmed.

D.A. Drouillard and John Madden, Eric Newhouse, and Amanda Leigh Sellers, Senior
Certified Law Students, of Drouillard Law, L.L.C., for appellant.

Donald W. Kleine, Douglas County Attorney, and Jennifer C. Clark for appellee.

INBODY, Chief Judge, and CASSEL and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Jeremiah S. appeals from an order of the separate juvenile court of Douglas County adjudicating his daughter, Jasminiah S., as a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) and terminating his parental rights to Jasminiah pursuant to Neb. Rev. Stat. § 43-292(1), (2), (7), and (9) (Cum. Supp. 2010). Jeremiah challenges the adjudication of Jasminiah and the termination of his parental rights, as well as the court's finding that termination was in Jasminiah's best interests and its finding that reasonable efforts to preserve and reunify the family pursuant to Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2010) were not required. Based on the reasons that follow, we affirm.

BACKGROUND

Linda D. and Jeremiah are the natural parents of Jasminiah, born in April 2005. On September 24, 2009, Linda was arrested and her three children, including Jasminiah, were removed from her care. That same night, Jeremiah received a voicemail message that Jasminiah had been removed from Linda's care. Jeremiah located Jasminiah and brought her back to his parents' house, where he was living.

On September 29, 2009, the State filed a petition alleging that Jasminiah came within the meaning of § 43-247(3)(a) because she lacked proper parental care by reason of the faults or habits of Linda. Also on September 29, the juvenile court issued an order for immediate custody giving the Nebraska Department of Health and Human Services (the Department) custody of Jasminiah for placement in foster care or other appropriate placement. Pursuant to that order, the Department removed Jasminiah from Jeremiah's care and placed her in foster care. She has remained in foster care during the entirety of these proceedings.

In February 2010, the juvenile court adjudicated Jasminiah with regard to Linda and recommended that Jasminiah remain in the custody of the Department. Linda voluntarily relinquished her parental rights in May 2011.

On December 29, 2010, the State filed a supplemental petition alleging that Jasminiah came within the meaning of § 43-247(3)(a) because she lacked proper parental care by reason of the faults or habits of Jeremiah. The supplemental petition further alleged that Jeremiah's parental rights to Jasminiah should be terminated pursuant to § 43-292(1), (2), (7), and (9); that terminating Jeremiah's parental rights was in Jasminiah's best interests; and that reasonable efforts to preserve and reunify the family under § 43-283.01 were not required because Jeremiah had subjected Jasminiah to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

On May 20 and May 24, 2011, a hearing was held on the supplemental petition. Seven witnesses testified, including Jeremiah and Linda. Based on the State's evidence, the Department has continually tried to contact Jeremiah in regard to Jasminiah throughout this case. Despite the many attempts to contact Jeremiah, the Department has had very little contact with Jeremiah and Jeremiah has taken little to no initiative to become involved in Jasminiah's case. Jeremiah appeared at one hearing in October 2009. He asked for visits with Jasminiah and was told he needed to intervene in the case, which he never did. He also had contact with the caseworker from the Department early on in the case. Martha Flores, the caseworker from August 2009 to August 2010, testified that Jeremiah called her three times between September 2009 and December 2009 or January 2010. Flores returned his calls and spoke with him three times. Flores testified that she had no further contact with him despite her continued attempts to contact him.

Between August and November 2010, Heather Schooler, the case manager at the time, made at least three attempts to contact Jeremiah. Jeremiah returned one of those telephone calls, leaving a message with Schooler. Schooler called Jeremiah back after he left a message, but she was unable to reach him. That was the extent of her contact with him during the time she was case manager from August 2010 until April 2011.

The only other contact the Department has had with Jeremiah occurred in April 2011, well after the supplemental petition had been filed. Jeremiah called Bethany Dilts, a family

permanency specialist assigned to the case at that time. Dilts testified that Jeremiah indicated he was interested in having visitation with Jasminiah, and Dilts told him that visitation would have to be ordered by the court before services could be set up for him. Dilts testified that prior to the telephone call from Jeremiah, she had a couple telephone numbers for Jeremiah but neither of those numbers were active when she tried to contact him. Dilts also had an address for Jeremiah, and she mailed him a letter in early March 2011, but received no response. Dilts further testified that when Jeremiah called her in April 2011, she wrote down his telephone number and verified his address. When she tried to call him back using the number he had called her from, it did not work. She also sent him a letter at the end of April inviting him to a meeting on May 13 regarding Jasminiah's placement, but Jeremiah did not attend.

Tiffany Lassek, the service coordinator assigned to this case from September 2009 to July 2010, testified that she had no contact with Jeremiah, despite her attempts to contact him. She testified that as a result of no contact with Jeremiah, no visitation and no services were set up.

Jourdan Lidonde, the service coordinator who took over the case from Lassek and had the case until February 2011, testified that she had a telephone number for Jeremiah and tried to contact him by telephone on a monthly basis, but never had any contact with him.

Jeremiah testified that he was fully aware that Jasminiah was placed in foster care in September 2009 and that she has been in foster care since that time. Jeremiah testified that he asked for visits with Jasminiah at a hearing he attended on October 7, 2009, and was told that it was necessary for him to intervene in the case if he desired to secure visitation and/or custody of Jasminiah. Jeremiah testified that he was appointed counsel and that he contacted counsel initially, but failed to maintain contact with the attorney in order to intervene. Jeremiah testified that he was incarcerated in March 2010 and that is why he never followed through with intervening. He also acknowledged receiving a letter in March 2010, informing him of an upcoming hearing regarding Jasminiah's placement, but that he could not attend due to his incarceration. Jeremiah admitted that he did not contact his attorney or the Department after he got out of jail in June 2010.

Jeremiah also testified that around November or December 2009, the Department investigated his home to see if it was suitable for Jasminiah. The Department concluded it was not possible to place Jasminiah with Jeremiah at that time due to Jeremiah's lack of employment and the people he was living with, which included his father, who was a felon, and his brother, who was on probation.

Jeremiah also testified that after he got out of jail in June 2010, Linda contacted him to inform him that after she got out of jail in March, she had obtained visitations with Jasminiah. Jeremiah testified that beginning in early July and continuing for several months thereafter, he attended a few of Linda's supervised visits with Jasminiah. More specifically, he testified that he went to two or three visits per month. These visits ceased in September 2010 when Linda was again incarcerated. Linda's testimony was similar to Jeremiah's testimony in regard to his attending visits. Jeremiah testified that during the time he was going to these visits, he knew it was important to contact the Department, but he did not do so. He also told a relative of Linda's in the fall of 2010 that he did not want to get involved in the court case regarding Jasminiah while there was an outstanding warrant on him for child support. The warrant was out on him from October 2010 to April 2011.

Jeremiah testified that the last time he had contact with Jasminiah was in April 2011 when he saw her at a park with a relative of Linda's. He also testified that he had telephone contact in January or February 2011 through the same relative.

Following the hearing, the juvenile court entered an order on May 25, 2011. The juvenile court found by a preponderance of the evidence that pursuant to § 43-247(3)(a), Jasminiah lacked proper parental care by reason of the fault or habits of Jeremiah, in that he had failed to have any contact with Jasminiah in the previous 6 months, had failed to provide any emotional support in the previous 6 months, and had failed to place himself in a position to parent Jasminiah, and that due to these allegations, Jasminiah was at risk for harm. The juvenile court also found that there was clear and convincing evidence to support terminating Jeremiah's parental rights under § 43-292(1), (2), (7), and (9); that terminating Jeremiah's parental rights was in Jasminiah's best interests; and that reasonable efforts under § 43-283.01 were not required.

ASSIGNMENTS OF ERROR

Jeremiah assigns that the juvenile court erred in (1) finding that Jasminiah came within the meaning of § 43-247(3)(a), (2) finding that Jasminiah came within the meaning of § 43-292(1), (2), (7), and (9), (3) finding that termination of Jeremiah's parental rights was in Jasminiah's best interests, and (4) finding that reasonable efforts pursuant to § 43-283.01 were not required because Jeremiah had subjected Jasminiah to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

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 Leland B.*, 19 Neb. App. 17, 797 N.W.2d 282 (2011). When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. *In re Interest of Leland B.*, *supra*. The State must prove these facts by clear and convincing evidence. *Id.* 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. *Id.*

ANALYSIS

Adjudication.

Jeremiah first assigns that the juvenile court erred in finding that Jasminiah was a juvenile within the meaning of § 43-247(3)(a). Following our de novo review of the record, we conclude that the juvenile court did not err in finding that the State had proved by a preponderance of the evidence that Jasminiah lacked proper parental care by reason of the fault or habits of Jeremiah for purposes of § 43-247(3)(a).

The juvenile court found that Jasminiah came within the meaning of § 43-247(3)(a) because Jeremiah failed to have any contact with Jasminiah in the previous 6 months, failed to provide any emotional support in the previous 6 months, and failed to place himself in a position to parent Jasminiah, and that due to these allegations, Jasminiah was at risk for harm. The evidence indicates that while Jeremiah did have limited contact with Jasminiah in the previous 6 months before the supplemental petition was filed, such contact occurred during Linda's court-approved visits and was not authorized by the Department. Jeremiah testified that he knew his attendance at these visits was not authorized and that he knew it was important to contact the Department, but did not do so. Further, there is no evidence as to how these visits went between Jeremiah and Jasminiah. We do not know what interaction took place and if such interaction, if any, could be construed as providing emotional support.

Further, the evidence shows that Jeremiah has not placed himself in a position to parent Jasminiah. Jeremiah admits that he knew that Jasminiah was placed in foster care in September 2009, that he was told in October 2009 that he needed to intervene in the case if he wanted visits and/or custody of Jasminiah, that he was appointed counsel to assist him, and that he failed to follow through. He was incarcerated for a period of time in 2010. From October 2010 to April 2011, Jeremiah did not want anything to do with the case due to his outstanding warrants for child support. From March 2010 until the hearing on the supplemental petition in May 2011, Jeremiah has been unemployed. All of these factors prove that Jeremiah is not in a position to parent Jasminiah.

We conclude, based on our de novo review, that the preponderance of the evidence indicates that Jasminiah is a juvenile within the meaning of § 43-247(3)(a). Accordingly, we affirm the adjudication portion of the juvenile court's order.

Statutory Grounds for Termination of Parental Rights.

Jeremiah next claims that the evidence was insufficient to terminate his parental rights to Jasminiah. In this case, the juvenile court found that four statutory grounds for termination had been proved, § 43-292(1), (2), (7), and (9). Because we determine that the evidence clearly and convincingly demonstrates that Jasminiah was in an out-of-home placement for at least 15 of the most recent 22 months, we affirm the juvenile court's order under § 43-292(7) and need not, and do not, further specifically address the sufficiency of the evidence under § 43-292(1), (2), and (9).

For a juvenile court to terminate parental rights under § 43-292, it must find that termination is in the child's best interests and that one or more of the statutory grounds listed in this section have been satisfied. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). The State must prove these facts by clear and convincing evidence. *Id.* Clear and convincing evidence is that amount of evidence that produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved. *Id.* If an appellate court determines that the lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds set forth in § 43-292, the appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. *Id.*

Section 43-292(7) provides for termination of parental rights when "[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two

months.” Thus, in order to terminate parental rights under § 43-292(7), the State must prove by clear and convincing evidence that the child has been in out-of-home placement for 15 or more of the most recent 22 months and that termination of parental rights is in the best interests of the child. *In re Interest of Jagger L., supra.* Along with proof of best interests, § 43-292(7) is satisfied if the evidence shows the requisite number of months of out-of-home placement and, unlike the other subsections of the statute, does not require the State to adduce evidence of any specific fault on the part of a parent. *Id.*

In the present case, there is no dispute that Jasminiah has been in out-of-home placement continuously since September 29, 2009, which was 15 months at the time the supplemental petition to terminate Jeremiah’s parental rights was filed, and which was nearly 20 months at the time of trial. Thus, there is clear and convincing evidence that Jasminiah had been in out-of-home placement for 15 of the most recent 22 months pursuant to § 43-292(7). Accordingly, the assignment of error challenging the basis for termination under § 43-292(7) is without merit.

Best Interests.

Jeremiah also contends that the State did not prove by clear and convincing evidence that termination of his parental rights was in Jasminiah’s best interests. We conclude that the State did meet its burden in regard to best interests.

Tara Winters, a child and protective services supervisor with the Department who supervised Schooler during the time she was the case manager, testified that she believes terminating Jeremiah’s parental rights is in Jasminiah’s best interests because she has spent nearly 2 years in foster care and needs stability and permanency and because Jeremiah is not able or willing to provide that for her. Winters also testified that she does not believe the Department needs to provide any services at this point to help Jeremiah reunify with Jasminiah because the Department has been attempting to contact him and involve him the entire time Jasminiah has been in foster care.

Dilts also testified that it is in Jasminiah’s best interests to terminate Jeremiah’s parental rights because of Jeremiah’s lack of involvement with Jasminiah, his inability to provide for her financially, the length of time Jasminiah has been in foster care, and her need for permanency.

Jasminiah has been in foster care since September 2009, and Jeremiah has been aware of her placement the entire time. He was told early on in the case that he needed to intervene in the matter if he wanted visits and/or custody of Jasminiah, and despite having an attorney appointed for him, he failed to intervene. The Department has continually tried to contact him throughout the case, but despite its efforts, it has had very minimal contact with Jeremiah. Jeremiah has taken little to no initiative to become involved in Jasminiah’s case. As a result, no services or visitation have ever been set up.

Jeremiah has only seen Jasminiah a few times since September 2009, and those occasions, with one exception, occurred during Linda’s court-approved visits when his presence was not authorized. Jeremiah testified that during the time he was going to these visits, he knew it was important to contact the Department, but he did not follow through in doing it. Further, Jeremiah has not sent Jasminiah any letters, cards, or gifts throughout the case.

As previously stated, Jasminiah has been in foster care since September 2009, and despite Jeremiah's knowledge of Jasminiah's placement, he failed to intervene in the matter and has made little effort to contact and to work with the Department to make visits and/or custody of Jasminiah possible. Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Phoenix L.*, 270 Neb. 870, 708 N.W.2d 786 (2006). Jasminiah deserves permanency, and there is no indication in the record that Jeremiah can provide that. We conclude, based on Jeremiah's lack of effort as well as the opinions of Winters and Dilts, that the State proved by clear and convincing evidence that terminating Jeremiah's parental rights is in Jasminiah's best interests. This assignment of error is without merit.

Reasonable Efforts.

Finally, Jeremiah assigns that the juvenile court erred in finding that reasonable efforts to preserve and reunify the family pursuant to § 43-283.01 were not required because he had subjected Jasminiah to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. Section 43-283.01(2) generally provides that reasonable efforts to preserve and reunify families are required in juvenile cases. However, § 43-283.01(4)(a) specifically provides that such reasonable efforts are not required if a court of competent jurisdiction determines that the parent has subjected the juvenile to aggravated circumstances, including abandonment.

The Nebraska Supreme Court and this court have recognized that the requirement to provide reasonable efforts to reunify families pursuant to § 43-283.01 is incorporated into a termination of parental rights case under only § 43-292(6), related to assertions that parental rights should be terminated because of the failure of a parent to successfully rehabilitate himself or herself. See *In re Interest of Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009); *In re Interest of Brittany S.*, 12 Neb. App. 208, 670 N.W.2d 465 (2003). Here, termination was not sought under § 43-292(6); it was sought under § 43-292(1), (2), (7), and (9), and we have affirmed the court's finding under § 43-292(7). The State has no obligation to demonstrate reasonable efforts at reunification when parental rights are terminated on the basis of § 43-292(7). *In re Interest of Brittany S.*, *supra*. Therefore, after a proper finding under § 43-292(7), reasonable efforts to reunify Jeremiah and Jasminiah under § 43-283.01 were not required, and the juvenile court's finding to that effect was correct.

CONCLUSION

After our de novo review of the record, we conclude that the juvenile court did not err in finding that Jasminiah came within the meaning of § 43-247(3)(a), that Jeremiah's parental rights should be terminated under § 43-292(7), that termination of Jeremiah's parental rights is in the best interests of Jasminiah, and that reasonable efforts pursuant to § 43-283.01 were not required. Accordingly, the juvenile court's order adjudicating Jasminiah and terminating Jeremiah's parental rights to Jasminiah is affirmed.

AFFIRMED.