

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Jayden W., )  
a child under 18 years of age. )  
 )  
State of Nebraska, )  
 )  
Appellee, )  
 )  
v. )  
 )  
Jonathan W., )  
 )  
Appellant. )

No. A-12-0539

**MEMORANDUM OPINION  
AND  
JUDGMENT ON APPEAL**

**FILED**

**FEB 05 2013**

**CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS**

INBODY, Chief Judge, and SIEVERS and RIEDMANN, Judges.  
SIEVERS, Judge.

INTRODUCTION

Jonathan W. appeals from the decision of the separate juvenile court for Douglas County terminating his parental rights to his minor child, Jayden W. After our de novo review of the trial court record, we affirm.

BACKGROUND

This appeal involves Jonathan's son, Jayden, born on September 10, 2009. In October 2009, when Jayden was approximately 6 weeks old, he was removed from his mother's custody to out-of-home placement, where he has remained throughout the case. Jayden has never resided with Jonathan. Jayden's mother relinquished her parental rights in early 2012, and is not involved in this appeal. Jonathan has mild mental



retardation, receives Social Security disability income, and resided in Kansas throughout this case. Jayden has special needs, which we summarize in detail below. At the time of the termination hearing in April 2012, Jayden was 31 months old.

KVC coordinated services for Jonathan throughout the case. The Department of Health and Human Services (the Department) managed the case until late 2010, when full case management was transferred to KVC.

In November 2009, Kindis Ward, a caseworker for the Department, telephoned Jonathan, and Jonathan confirmed that he had received a certified letter from the Department. (The Department sends certified letters to alleged fathers to inform them when a child alleged to be theirs is in state custody as well as providing the docket and page number for the case plus the phone number of the court administrator's office.) Jonathan denied that he was Jayden's father and denied even knowing Jayden's mother. Ward told Jonathan to refer to the certified letter, follow its instructions, and use the contact information it provided for the juvenile court. She further advised Jonathan to either hire an attorney or request that one be appointed for him. Ward also informed Jonathan that he could intervene in Jayden's case. Ward told Jonathan that she could help him arrange genetic testing if he requested it. Genetic testing was not arranged at that time because the Department did not

typically provide genetic testing when the alleged father denied relations with the child's mother.

On August 2, 2010, a home study of Jonathan's residence deemed the residence unsuitable for Jayden because Child Protective Services had been involved with Jonathan's roommate and because Adult Protective Services had made a charge against Jonathan concerning his grandmother. The same month, a genetic test arranged by Ward confirmed that Jonathan was Jayden's father. On September 13, the Department informed Jonathan that he was Jayden's father.

In September 2010, Jonathan called Ward, and she reviewed the intervention process with him and encouraged him to participate in an upcoming hearing and make himself known to the juvenile court so that he could start visitation. Because Jonathan told Ward he had an attorney, Ward did not forward a financial affidavit to him in order to help him obtain court-appointed counsel. Jonathan also told Ward that he was last employed in 2007. Jonathan did not inform Ward that he had no means of transportation. Jonathan was approved for supervised visitation with Jayden in Omaha in September 2010.

Throughout the case, Jonathan frequently called CASA workers seeking information about the case and stating that he wanted custody, and he was directed to call his caseworker at the Department. On October 13, Jonathan telephoned Nancy Wilson,

the CASA director. Jonathan said he wanted full custody of Jayden and that he wanted Jayden to come to Kansas for a 2-week visit for the upcoming holidays. Wilson instructed Jonathan to call Ward and provided him with her phone number. Wilson also instructed Jonathan to call LaRonda White, the KVC service coordinator for Jayden's case, and provided Jonathan with her phone number. Wilson asked Jonathan whether he had intervened. When he told her that he had not intervened but wanted an attorney, Wilson advised Jonathan to call the juvenile court, gave him the juvenile court's phone number, and told Jonathan that the juvenile court would help him through the process of intervening. Jonathan told Wilson that he was unemployed but looking for a job and that he was living with a female friend.

On October 25, 2010, Jonathan called Wilson 10 times and left 3 messages, stating that "everyone" had told him to call Wilson to arrange visitation. Wilson called Jonathan and left a message informing him that she could not arrange visitation and that he should call Matt Oliver, Ward's supervisor at the Department. Wilson provided Jonathan with Oliver's telephone number because she knew Ward was on medical leave.

In late October 2010, Oliver advised Jonathan over the telephone to intervene in Jayden's case and gave him the number of the juvenile court, instructing him to call the number and tell the court that he wanted to intervene. Oliver explained to

Jonathan that pending completion of paperwork permitting him to bring Jayden to Kansas for visits, he would have to come to Omaha to visit Jayden. Oliver admitted at trial that when he spoke to Jonathan on the telephone, he had concerns that Jonathan might have cognitive delays, based on how he was speaking.

On November 12, 2010, Jonathan again called Wilson and told her that he wanted Thanksgiving visitation with Jayden in Kansas. Wilson again explained to Jonathan that she did not arrange visitation, referred him to Oliver, and provided Oliver's phone number. She told Jonathan that any visitation in the near future would most likely be supervised and occur in Omaha. Jonathan expressed a willingness to visit Jayden in Omaha, but he said that transportation would be an issue for him, as he did not drive. Wilson directed Jonathan to inform White and Ward about his transportation issues and they would address them.

On May 24, 2011, Jonathan called Wilson and told her that he still wanted custody of Jayden. He informed Wilson that he had contacted White but had not received a response from her. Wilson advised Jonathan to call White's supervisor, Carrie Kenney, and provided him with her telephone number.

On June 1, 2011, Jonathan received correspondence concerning a mediation session scheduled for June 22 at the

Concord Center in Omaha. Mediation sessions were to be attended by the individuals working on Jayden's case, as well as the parties. White communicated with Jonathan to coordinate his intended attendance at the mediation. Jonathan was provided gas money to travel to Omaha. Jonathan did not attend the mediation. At the mediation session, it was decided that Jonathan's visitation with Jayden should be supervised and take place in a therapeutic setting.

On August 9, 2011, a family permanency specialist from KVC informed Jonathan that because he had not intervened, she would file an affidavit with the juvenile court pertaining to Jayden's case. Jonathan stated that he wanted to intervene, but did not do so.

On September 8, 2011, the State filed a petition alleging that Jayden was within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Cum. Supp. 2012) by reason of the faults or habits of Jonathan. The petition specifically alleged that Jonathan put Jayden at risk of harm by failing to put himself in a position to parent Jayden and to provide proper parental care and support for Jayden. The petition further alleged that Jayden came within the meaning of Neb. Rev. Stat. § 43-292 (Cum. Supp. 2010) (1) (abandonment), (2) (neglect), (7) (extended out-of-home placement), and (9) (aggravated circumstances); that termination of Jonathan's parental rights was in Jayden's best interests,

and that reasonable efforts to preserve and reunify the family, pursuant to Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2010), were not required because Jonathan had subjected Jayden to aggravated circumstances including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. The petition requested termination of Jonathan's parental rights.

In an order entered September 21, 2011, the juvenile court ordered that Jonathan was "invited to voluntarily" undergo a parenting assessment, participate in a "Safe Start Assessment," and undergo relinquishment counseling. Jonathan completed a psychological evaluation and parenting assessment in October 2011. At some point during the case, Jonathan also completed relinquishment counseling. He did not complete the "Safe Start Assessment" because Jayden's therapist recommended against it. The juvenile court referred the matter to the Concord Center for alternative dispute resolution of the permanency issue. The juvenile court appointed counsel for Jonathan.

On October 19, 2011, a year after Jonathan was approved for supervised visits with Jayden, he met Jayden for the first time. That day, Jonathan attended Jayden's play therapy session in Omaha which was conducted by Mary Ellen Christ-Anderson, a mental health counselor who had been Jayden's counselor since he was 2 years old. Jayden's foster mother, Tori S. was also present at each play therapy session. When Christ-Anderson met

Jonathan, she told him that food and drink were items that he could use to build attachment with Jayden, but he had not brought such things to any of the sessions. On November 9, the juvenile court appointed a guardian ad litem for Jonathan.

Jonathan was again invited to attend a mediation session at the Concord Center, scheduled for November 8, 2011. Transportation from Kansas to Omaha was to be provided for Jonathan, but he did not show up for the mediation. He later reported to caseworkers that he had overslept. The mediation session was rescheduled for November 30. Jonathan was again provided transportation, and he attended. At the meeting, Jonathan stated that he wanted to pursue custody of Jayden and that he would move to Omaha in January 2012 to have consistent visits with him. However, at the time of the termination hearing on April 6, 2012, Jonathan was still living in Wichita, Kansas.

Jonathan had been scheduled to attend a November 10, 2011, play therapy session, but the visit was cancelled because Jonathan had not attended the November mediation and Jonathan could not be reached.

Jonathan next attended a play therapy session with Jayden on December 27, 2011. At the December 27 play therapy session, Jonathan gave Jayden age-appropriate Christmas gifts.

Jonathan scheduled a visit with Jayden for January 23, 2012. Transportation was to be provided, but Jonathan did not

attend the visit because his grandmother was in the hospital. Jonathan sought to reschedule the visit.

Jonathan attended play therapy sessions on February 16 and March 6, 2012. At the March visit, Jayden had a difficult time interacting with Jonathan. Jonathan had to be prompted on how to interact with Jayden, and Jayden did not approach Jonathan frequently during the visit. According to Jayden's foster mother, he was difficult to console the evening after the session and Jayden did not behave normally for 2 days afterward. Jonathan attended a play therapy session on April 5, 2012. Jonathan had a total of five visits with Jayden, all taking place during Jayden's play therapy sessions.

Jayden had had five foster home placements since his removal at 6 weeks of age. He had been at his fifth placement since April 27, 2011, when he was 17 or 18 months old. Jayden was diagnosed with reactive detachment disorder, which diminishes a child's ability to attach to caregivers and which resulted from Jayden's many placements and possible neglect. The evidence was that Jayden's diagnosis was based on poor eye contact, a lack of play skills, a lack of stranger anxiety, tantrums, demanding and controlling behaviors, and eating issues. Jayden also recoiled from hugs and affection initiated by his foster mother and would only show limited affection on his own terms. Other symptoms that can be associated with

reactive detachment disorder include fire setting, high pain tolerance, fierce independence, destruction of property, lying, violating the rights of others, and harming animals.

Both of Jayden's parents have a history of seizures, and his caregivers were concerned that he may also have had seizures. Jayden had other incidents that involved him holding his breath until he went limp. Genetic testing of Jayden revealed a rare chromosome disorder implicated in ADHD, schizophrenia, and epilepsy.

Jayden has several developmental delays. An early intervention assessment completed by Omaha Public Schools in May 2011 showed that Jayden had some delays in the areas of cognitive, social, language, and motor skills. As of September 28, 2011, Jayden did not play with toys in an age-appropriate or purposeful way. As of February 2012, Jayden was 7 months behind in speech development, and his speech therapist suspected that Jayden had a minor speech disorder which prevented him from making the physical movements required for intelligible speech. At 31 months of age, Jayden spoke only 10 words spontaneously and approximated 40 to 50 words if told the words and asked to repeat them. Jayden had to be monitored by an adult while eating and was given a limited diet because his inability to chew food properly posed a choking hazard. He had temper tantrums, possibly due to his inability to communicate.

Because of Jayden's special needs, he requires constant supervision. Jayden's special needs also have required his foster mother to schedule and coordinate an array of appointments and services for Jayden and to communicate and cooperate with various specialists. Jayden's foster mother is a physical therapist and has used some of that knowledge in parenting Jayden.

An adjudication and termination hearing was held on April 6, 2012. We have already summarized much of the evidence in the chronology set forth above. Christ-Anderson and two CASA workers testified that they supported terminating Jonathan's parental rights to Jayden.

Christ-Anderson was present each time Jonathan saw his son. She testified that although Jonathan had seemed attentive to Jayden at times, she did not believe Jonathan understood the depth of Jayden's lack of development or the significance of his problems, despite having had Jayden's needs explained to him. Christ-Anderson had been informed that Jonathan had cognitive limitations, and she testified that she explained matters to him in a clear and concrete way.

Christ-Anderson testified that Jonathan had not been present for Jayden on a consistent basis, something that Jayden needed to build attachment. She denied that Jonathan had called her to inquire how Jayden was progressing outside of the

sessions Jonathan had attended and that she had called Jonathan. Christ-Anderson admitted that she liked Jonathan and had enjoyed working with him. She described him as a likable person who cared deeply for Jayden and had been trying to follow Christ-Anderson's directions. She stated that Jonathan could be playful, had a good sense of humor, and wanted to please.

Christ-Anderson testified that for Jayden to have a strong attachment, a permanent caregiver was crucial. According to Christ-Anderson, after living with his foster mother for a year and after eleven therapy sessions, Jayden was beginning to show signs of attachment to his foster mother. According to Christ-Anderson, if Jayden needed food or water during a visit, he turned to his foster mother rather than Jonathan. Considering this bonding and the length of time Jayden had been in out-of-home placement, Christ-Anderson supported the termination of Jonathan's parental rights.

Elizabeth Cajka, the CASA volunteer assigned to Jayden's case, testified that considering the period of time that Jayden had been in out-of-home placement, Jayden's need to form attachments, and Jonathan's lack of involvement, she believed terminating Jonathan's parental rights was in Jayden's best interests.

Wilson testified that based on Jonathan's lack of progress and involvement in the case, the duration of Jayden's out-of-

home placement, and Jayden's need for permanency, consistency, and attachments, terminating Jonathan's parental rights was in Jayden's best interests. Wilson testified that Jonathan had had the opportunity to become involved in Jayden's case before the petition for termination was filed. Wilson admitted that many workers had been involved in Jayden's case and that it was difficult to keep track of them all. However, Wilson stated that the telephone number for the juvenile court had not changed.

Michelle Thompson, formerly Michelle Koch, testified that she was a family permanency specialist at KVC and worked on Jayden's case beginning in November 2011. She testified that Jonathan had taken advantage of most of the services she had offered, including a parenting assessment and psychological evaluation, mediation, relinquishment counseling, and therapeutic visits with Jayden. However, Jonathan had not yet attended parenting education classes offered to him, for which KVC would pay. Thompson offered Jonathan several options and places to call, and Jonathan expressed a willingness to pursue parenting classes. Thompson testified that parenting classes were offered to Jonathan because his psychological evaluation concluded that Jonathan could possibly parent Jayden with the assistance of parenting classes.

Jonathan testified that he planned on starting a parenting class 9 days after trial. He understood that Jayden had some

issues, but he was committed to cooperating with services and obtaining the help that Jayden needed. Jonathan agreed that this would take time and trips to Omaha for a time.

Jonathan testified that when he learned from paternity testing that he was Jayden's father, it made him feel good because he loves Jayden. He testified, "I was happy. I wanted to love him and care for him and take care of him until he gets old." Jonathan stated, "I am very committed to my son all the way through my heart." Jonathan testified that he wanted to be in Jayden's life and that he believed he had been trying to be in his life. Jonathan had enjoyed interacting with Jayden during the five visits he had had. Jonathan stated that he wanted more frequent visits with Jayden and wanted to be Jayden's full-time parent.

Jonathan testified that he lived in Wichita, Kansas, with his sister, who was a certified nursing assistant and a source of support for him. The residence has five bedrooms, and his sister's two children also live there. Jonathan testified that the rest of his family lived in the area. Jonathan did not want to move to Omaha because his grandmother in Kansas had health problems.

Jonathan admitted that Ward told him that if he wanted custody, he had to intervene by calling the juvenile court. According to Jonathan, the juvenile court told him that he had

to appear in person to intervene. According to Jonathan, the juvenile court told him to call Legal Aid to retain an attorney, but Legal Aid told him that it could not represent him because Jayden's mother was already represented by Legal Aid. Jonathan testified that he called the juvenile court more than ten times, attempting to intervene. Jonathan testified that he asked the juvenile court to send him documents, but he did not receive them.

Jonathan testified that he asked White to help him arrange transportation to the juvenile court, that White said she would schedule it, but that when he spoke to White again, she said she had not heard anything from "them." Jonathan researched going to Omaha by bus and found that a one-way ticket was \$154 and a round-trip ticket was \$214, His Social Security disability income is approximately \$700 per month. Jonathan testified that his sister was sometimes available to take him to Omaha.

Jonathan testified that when it was determined that his residence was not suitable for Jayden, he moved to his sister's home and requested another evaluation of this residence from White, but it was not completed.

Jonathan testified that White did not provide him with paperwork to intervene, did not mail him an affidavit to get an attorney, and did not ask for his financial information. She informed Jonathan that he could have visits with Jayden, but she

did not schedule transportation for Jonathan. Jonathan denied being given the name of a visitation worker or agency to contact.

Jonathan testified that he had difficulty contacting White. He called her 21 times, and 7 times he received a message that her voicemail was full. If he could not reach White, he called Oliver, and if he could not reach Oliver, he called Cajka.

The juvenile court entered its order on May 14, 2012, and adjudicated Jayden as a child within the meaning of § 43-247(3)(a) as Jonathan was concerned. The juvenile court found all counts of the State's petition to be true. The juvenile court specifically found, inter alia, that Jonathan did not have independent housing for Jayden; that Jonathan did not assert himself as a father or attempt to be a significant part of Jayden's life and develop a relationship; and that Jonathan's mild mental retardation made him unable to appropriately parent Jayden. The juvenile court found that termination of Jonathan's parental rights was in Jayden's best interests. The juvenile court specifically found by clear and convincing evidence that Jayden came within the meaning of Neb. Rev. Stat. § 43-292(1), (2), (7) and (9) (Cum. Supp. 2010) and terminated Jonathan's parental rights on those grounds. Jonathan timely appeals.

#### ASSIGNMENTS OF ERROR

Jonathan alleges that the juvenile court erred in: (1) finding that Jayden came within the meaning of § 43-247(3)(a) insofar as Jonathan is concerned; (2) finding by clear and convincing evidence that Jayden came within the meaning of §43-292(1), (2), (7), and (9); (3) finding by clear and convincing evidence that termination of Jonathan's parental rights was in Jayden's best interests; (4) making certain factual findings concerning Jonathan's ability to parent Jayden; and (5) refusing to admit Jonathan's psychological evaluation and parenting assessment into evidence.

#### 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 Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010).

#### ANALYSIS

##### *Exclusion of Psychological Evaluation.*

Jonathan argues that the juvenile court erred in refusing to admit his psychological evaluation and parenting assessment at trial. Counsel for the State objected based on foundation because the author of the report was not present for examination. The juvenile court sustained the objection as to the contents of the exhibit but allowed Jonathan's counsel to

use it as an offer of proof that the examination occurred. Jonathan's counsel elicited testimony that the psychological evaluation and parenting assessment stated that Jonathan could possibly be a safe parent for a child if he took parent education classes. The parties stipulated that Jonathan had mild mental retardation.

In determining whether admission or exclusion of particular evidence in a parental rights termination case would violate fundamental due process, the Nebraska Evidence Rules serve as a guidepost. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007). An expert's opinion is ordinarily admissible under Neb. Rev. Stat. § 27-702 (Cum. Supp. 2012) if the witness (1) qualifies as an expert, (2) has an opinion that will assist the trier of fact, (3) states his or her opinion, and (4) is prepared to disclose the basis of that opinion on cross-examination. *Village of Hallam v. L.G. Barcus & Sons*, 281 Neb. 516, 798 N.W.2d 109 (2011).

Using the rules of evidence as a guidepost, we cannot say that the juvenile court erred in excluding the psychological evaluation and parenting assessment. Moreover, similar, if not as detailed, evidence was received in the form of testimony by other witnesses, and an improper exclusion of evidence is ordinarily not prejudicial where substantially similar evidence

is admitted without objection. *In re Interest of Tabatha R.*, 255 Neb. 818 (1998). This assigned error lacks merit.

*Factual Findings Concerning Jonathan's Ability to Parent.*

Jonathan challenges the juvenile court's findings that Jonathan did not have independent housing for Jayden; that Jonathan did not assert himself as a father or attempt to be a significant part of Jayden's life and develop a relationship; and that Jonathan's mild mental retardation made him unable to appropriately parent Jayden. 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 Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010). On our de novo review of the record, which we have detailed in this opinion, we find that we cannot fully agree with these conclusions by the trial court.

Once paternity was determined, Jonathan made considerable and rather consistent efforts to be part of Jayden's life keeping in mind the distance between Wichita and Omaha, Jonathan's lack of a driver's license, and his limited economic circumstances. Nonetheless, he made five trips to Omaha to see his son. As far as housing is concerned, Jonathan's present living arrangement with his sister, does not, at least from what the record reveals, seem inappropriate for a single parent. Later, in the section of Jayden's best interests, we will

discuss the issue of whether Jonathan's mild mental retardation makes him unable to parent Jayden.

*Adjudication as to Jonathan.*

Jonathan assigns that the juvenile court erred in finding that Jayden came within the meaning of § 43-247(3)(a) insofar as Jonathan is concerned. He argues that the State did not prove by a preponderance of the evidence that Jayden falls within the meaning of § 43-247(3)(a). The State's petition specifically alleged that Jonathan put Jayden at risk of harm by failing to put himself in a position to parent Jayden and to provide proper parental care and support for Jayden. Jonathan contends that he made ample efforts to obtain visitation and custody, and despite knowing about Jonathan's cognitive limitations, the Department essentially did nothing to help him.

Section 43-247(3)(a) grants the juvenile court jurisdiction over any child who, inter alia, lacks proper support through no fault of his or her parent or who lacks proper parental care by reason of the fault or habits of his or her parent. The purpose of the adjudication phase of a juvenile proceeding is to protect the interests of the child. *In re Interest of Heather R. et al.*, 269 Neb. 653, 694 N.W.2d 659 (2005). Parents are entitled to due process in adjudication proceedings. *Id.*

To obtain jurisdiction over a juvenile, the court's only concern is whether the conditions in which the juvenile

presently finds himself or herself fit within the asserted subsection of § 43-247. *In re Interest of Brian B. et al.*, 268 Neb. 870, 689 N.W.2d 184 (2004). At the adjudication stage, in order for a juvenile court to assume jurisdiction of minor children under § 43-247(3)(a), the State must prove the allegations of the petition by a preponderance of the evidence. *In re Interest of Rebekah T. et al.*, 11 Neb. App. 507, 654 N.W.2d 744 (2002). See *In re Interest of B.R. et al.*, 270 Neb. 685, 708 N.W.2d 586 (2005).

Evidence presented in support of the State's petition showed that Jonathan initially denied that he was Jayden's father and even denied knowing Jayden's mother. Meanwhile, Jayden languished in a series of foster homes that resulted in his reactive detachment disorder, and additional special needs began to surface. After Jayden's paternity was established, Jonathan made attempts to become involved in Jayden's life, but he did not actually intervene in this case, as caseworkers clearly and repeatedly instructed him to do. The evidence showed that at the time of the petition, Jonathan did not have the skills to care for a child with Jayden's special needs and did not have the means to support him. Throughout the case, the simple fact is that Jonathan has failed to parent Jayden. We conclude that the juvenile court was correct in finding by a

preponderance of the evidence that Jayden fell within the meaning of § 43-247(3)(a).

*Statutory Grounds for Termination.*

In Nebraska statutes, the grounds for termination of parental rights are codified in Neb. Rev. Stat. § 43-292 (Cum. Supp. 2010). Section 43-292 provides 11 separate conditions, any one of which can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900, 782 N.W.2d 320 (2010). In its order terminating Jonathan's parental rights, the juvenile court found that Jayden came within the meaning of § 43-929(1), (2), (7) and (9).

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." See, also, *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). Section 43-292(7) operates mechanically 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. *In re Interest of Aaron D.*, *supra*.

Jayden was removed from his mother's care on October 23, 2009. Soon afterward, in November 2009, Jonathon was first apprised of the possibility that Jayden was his child and given

the opportunity to submit to genetic testing. When the motion to terminate Jonathan's parental rights was filed on September 8, 2011, Jayden had been in out-of-home placement for nearly 23 months. Our de novo review of the record clearly and convincingly shows that grounds for termination of Jonathan's parental rights under § 43-292(7) were proven by sufficient evidence.

Once a statutory basis for termination has been proved, the next inquiry is whether termination is in the child's best interests.

*Best Interests.*

Neb. Rev. Stat. § 43-292 requires that parental rights can only be terminated when the court finds that termination is in the child's best interests. A termination of parental rights is a final and complete severance of the child from the parent and removes the entire bundle of parental rights. See *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004). Therefore, with such severe and final consequences, parental rights should be terminated only "in the absence of any reasonable alternative and as the last resort." See *In re Interest of Kantril P.*, 257 Neb. 450, 467, 598 N.W.2d 729, 741 (1999). However,

Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best

interests of the child require termination of the parental rights. *In re Interest of Andrew M. et al.*, 11 Neb. App. 80, 643 N.W.2d 401 (2002). Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Phyllisa B.*, 265 Neb. 53, 654 N.W.2d 738 (2002).

*In re Interest of Stacey D.*, 12 Neb. App. 707, 717, 684 N.W.2d 594, 602 (2004). The fact that a child has been placed outside the home for 15 or more months of the most recent 22 months does not demonstrate parental unfitness. *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012).

Jonathan initially denied that he was Jayden's father and that he had ever met Jayden's mother. Many months passed before Jonathan expressed an interest in Jayden. Caseworkers repeatedly encouraged and prompted Jonathan to intervene in Jayden's case, but he never did.

Jonathan's residence in Kansas made it very difficult for him to spend time with Jayden, and he chose to continue residing there even after finding out that Jayden was his child. Jonathan chose to live in Kansas because of his grandmother's failing health. While this choice shows an admirable regard for his grandmother, it did not put him in a position to parent his son during a crucial time in Jayden's early childhood development. At the time of trial, Jonathan was not maintaining his own

residence but rather lived with his sister and relied on her for some of his transportation.

Jayden has special emotional, educational, and physical needs and requires a variety of services, reinforced by specific parenting techniques. Consistency and permanency are of the utmost importance in dealing with Jayden's reactive attachment disorder. Jonathan has mild mental retardation. He does not drive. He was not employed at any time during these proceedings. Jayden's therapist testified that Jonathan did not seem to understand the depth of Jayden's problems. These factors make it clear that termination of Jonathan's parental rights is in Jayden's best interest. And while Jonathan has a caring and pleasant disposition, has attempted to become involved with Jayden and professes to love him, we are convinced that Jonathan could not effectively secure, provide for, and coordinate the various services and special care and attention that the child needs because of his various special needs. While Jonathan may have the best of intentions, children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Phyllisa B., supra.* Additionally, it is highly questionable whether Jonathan could ever develop the skill set needed to care for a special needs child. We recognize that the determination of whether termination of parental rights is in a child's best interest requires more than evidence that

one environment or set of circumstances is superior to another. *In re Interest of Angelica L.*, 277 Neb. 984, 767 N.W.2d 74 (2009). However, it is notable that Jayden had been placed in a stable foster home after a number of unsuccessful placements, and he is showing progress with the help of his foster mother. This is not to compare the foster mother's parenting abilities with Jonathan's, but we believe that it would not be in Jayden's best interests to disrupt a situation that presently provides Jayden with a measure of permanency and consistency, when what Jonathan could actually do in a parenting role is very questionable, despite his best intentions and desires. And it cannot be ignored that even after knowing that Jayden was his child, Jonathan was a rare physical presence in the child's life, and when he was present there was little evidence of successful bonding between Jonathan and Jayden.

Based on our de novo review, we conclude that it is in the best interests of Jayden that Jonathan's parental rights be terminated.

#### CONCLUSION

For the reasons stated above, we affirm the juvenile court's order terminating Jonathan's parental rights to Jayden.

AFFIRMED.