

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF LAKEIARA J.

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

STATE OF NEBRASKA, APPELLEE,  
v.  
TIUANA J., APPELLANT.

Filed November 15, 2011. No. A-11-159.

Appeal from the Separate Juvenile Court of Douglas County: WADIE THOMAS, Judge.  
Affirmed.

Paul Muia, of Law Offices of Paul Muia, for appellant.

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

INBODY, Chief Judge, and SIEVERS 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. Tiuana J. appeals from an order of the separate juvenile court of Douglas County terminating his parental rights.

**BACKGROUND**

Tiuana is the biological father of 17-year-old LaKeiara J., who is currently in an out-of-home placement and has been continuously since she was removed from her mother's home in January 2007. LaKeiara has been diagnosed with bipolar disorder, attention deficit disorder, and diabetes, and she has a history of aggression and attachment issues. The State initially filed a petition against Tiuana on January 13, 2009, alleging that LaKeiara was a child

within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) in that (1) Tiwana failed to provide LaKeiara with safe, stable, and appropriate housing; (2) Tiwana failed to provide LaKeiara with proper care and support; and (3) Tiwana's continued incarceration put LaKeiara at risk for harm. The State also filed a motion for temporary custody on January 13, which was granted the same day by the juvenile court.

On October 29, 2009, the State filed a second motion for termination of parental rights, alleging that (1) LaKeiara was a child within the meaning of § 43-247(3)(a), on March 12, 2009, insofar as Tiwana is concerned; (2) Tiwana was ordered to comply with various plans of rehabilitation by the separate juvenile court of Douglas County; (3) LaKeiara comes within the meaning of Neb. Rev. Stat. § 43-292(1) (Cum. Supp. 2010), being under the age of 18 and having been abandoned by Tiwana for 6 months or more immediately prior to the filing of the petition; (4) LaKeiara comes within the meaning of § 43-292(2) because Tiwana, the biological father, has substantially and continuously or repeatedly neglected and refused to give said child necessary parental care and protection; (5) LaKeiara is within the meaning of § 43-292(7) in that she has been in out-of-home placement for 15 or more of the most recent 22 months; (6) LaKeiara is within the meaning of § 43-292(9), as Tiwana has subjected LaKeiara to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse; (7) termination of Tiwana's parental rights is in the best interests of LaKeiara; and finally, (8) reasonable efforts under Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2010) are not required because Tiwana has subjected LaKeiara to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

The hearing on the second motion for termination of parental rights came before the separate juvenile court on January 20, 2011. Dr. Joseph Conrad Stankus is a clinical psychologist, and he testified that he first became involved with this case in March 2010, when he conducted a court-ordered psychological evaluation of Tiwana. Stankus found Tiwana to have a history of problems with cannabis dependence, including smoking marijuana in violation of his parole. Stankus also found Tiwana to have cocaine dependence in sustained remission and nicotine dependence, and Stankus diagnosed Tiwana with "neglect of child, perpetrator," because of his pattern of neglecting LaKeiara. Tiwana had criminal offenses dating back to childhood, and as an adult, he has been incarcerated for armed robbery, robbery, and possession of stolen property. He also admitted to being a member of the "Bloods" gang. Stankus testified that Tiwana's long criminal record and his history support a diagnosis of antisocial personality disorder.

Stankus said that with Tiwana's actions, diagnoses, and criminal history, he would not and could not provide the stability LaKeiara needs. Tiwana violated parole on multiple occasions with the knowledge that these illegal actions would jeopardize his freedom. Stankus said the pattern of Tiwana's actions do not suggest a sustained, dedicated commitment to LaKeiara or his role as a parent. Stankus testified LaKeiara needed to be able to bond with someone who "would be more available to her" and who would spend time with her, nurture her, provide guidance, and act as a positive role model. Stankus stated it would be in LaKeiara's best interests to terminate Tiwana's parental rights.

Rachelle Barcel, a family permanency specialist, testified she took over this case from a previous worker in June 2010. Barcel and Tiwana's first meeting took place in June, and she

provided him with her contact information and an explanation of how she could help him. Tiwana contacted Barcel only once, by letter, in either August or September. Barcel testified that visits were limited because LaKeiara was not in a place to have visits and that only two visits took place between Tiwana and LaKeiara. Barcel said LaKeiara has been in out-of-home placement since 2008 and has never returned to her mother's or Tiwana's home. During this period, she has been in 10 different homes, been hospitalized for self-harm, and run away three times. Barcel stated LaKeiara needs stability, as well as the knowledge that she has people who care for her and will help her cope with her diabetes. Barcel recommended that it is in LaKeiara's best interests to terminate Tiwana's parental rights.

Harpreet Moore, a child and family service specialist, testified that as soon as LaKeiara's mother disclosed Tiwana's potential paternity, Moore contacted him by letters sent October 30, 2007, and October 2, 2008. Moore received no response, and her first reciprocated contact was after the petition was filed in January 2009. Moore supervised a visit between LaKeiara and Tiwana, the day they first met in March 2009. Tiwana was "released" later that month, and Moore had no contact with Tiwana or information regarding his whereabouts for several months. She contacted him upon his return to the penitentiary in September or October 2009. Moore testified that Tiwana's parental rights should be terminated because LaKeiara and Tiwana have no relationship and because Tiwana is not able to provide emotional or financial care for her due to his incarceration. In addition, Tiwana would be unable to help LaKeiara manage her behavioral issues, mental health issues, and physical health issues.

Rachel Eftink-Cari was LaKeiara's therapist during LaKeiara's 10-month stay at a residential treatment center between July 2008 and April 2009. Eftink-Cari said she worked with LaKeiara on emotional and behavioral issues, as well as aggression and some attachment issues. Eftink-Cari testified that LaKeiara needs a very stable home, a lot of support, and people she can count on.

Following trial, the court found that the witnesses' testimony offered by the State was credible and that LaKeiara came within the meaning of § 43-292(1), (2), (7), and (9) by clear and convincing evidence. The court found that Tiwana had abandoned the minor child for 6 months or more immediately prior to the filing of the petition; Tiwana had substantially and continuously or repeatedly neglected and refused to give the child necessary parental care and protection; and Tiwana had subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, and sexual assault. The court also determined LaKeiara had been in an out-of-home placement for 15 or more months of the most recent 22 months and that it was in her best interests that the parental rights of Tiwana be terminated. Tiwana timely filed his notice of appeal.

#### ASSIGNMENTS OF ERROR

Tiwana alleges the separate juvenile court erred in finding that the State proved by clear and convincing evidence that Tiwana's parental rights should be terminated under § 43-292(1), (2), (7), and (9). Tiwana also alleges the State failed to prove by clear and convincing evidence that the termination of Tiwana's parental rights was in the best interests of LaKeiara.

## STANDARD OF REVIEW

Juvenile cases are reviewed do 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 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 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.*

## ANALYSIS

Under § 43-292, in order to terminate parental rights, the State must prove, by clear and convincing evidence, 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 Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009). The juvenile court in this case found the State proved by clear and convincing evidence that LaKeiara came within § 43-292(1), (2), (7), and (9) and that it was in her best interests to terminate Tiuana's parental rights.

If an appellate court determines that the lower court correctly found the termination of parental rights is appropriate under one or more of the statutory grounds set forth in § 43-292, the appellate court need not further consider the sufficiency of evidence to support termination under other statutory grounds. *In re Interest of DeWayne G. & Devon G.*, 263 Neb. 43, 638 N.W.2d 510 (2002). Here, we consider the termination under § 43-292(7).

LaKeiara is a minor child who was born in 1994. LaKeiara was removed from her mother's care in 2007, has consistently been in out-of-home care, and is currently in an agency-based foster home. LaKeiara has been in out-of-home placement for at least 15 of the most recent 22 months, the statutory requirement to terminate parental rights under § 43-292(7). The 15-month condition serves the purpose of providing a reasonable timetable for parents to rehabilitate themselves. *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232, 674 N.W.2d 442 (2004).

Tiuana, LaKeiara's biological father, states the 15-month period commences after the minor child is removed and goes up to the date of the hearing on the motion to terminate parental rights. Tiuana alleges that he became aware of his paternity only when the State filed a petition against him and that therefore, LaKeiara should be considered removed, as to him, pursuant to the supplemental petition filed on January 13, 2009. Regardless of whether the appropriate date is January 2007 or January 2009, LaKeiara has been in out-of-home placement for the requisite amount of time in accordance with the statute. Tiuana argues he was not provided enough time to rehabilitate himself to be reunited with LaKeiara. Tiuana's brief alleges only 12 months elapsed between the filing of the supplemental petition on January 13, 2009, and the hearing on the termination of Tiuana's parental rights on January 20, 2011. However, the elapsed period is actually 24 months, fulfilling the statutory requirements and granting Tiuana ample time and opportunity to rehabilitate himself.

The State fulfilled the requirements of § 43-292(7), and we need not address any further assignments of error regarding statutory requirements under § 43-292. Having concluded that LaKeiara has been in out-of-home placement for the requisite period of time, we move on to a discussion of her best interests. When a parent is unable or unwilling to rehabilitate himself or herself within a reasonable period of time, the child's best interests require termination of parental rights. *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *Id.*

Tiwana has had a series of health and behavioral issues. He met with Stankus, a clinical psychologist, for a court-ordered psychological evaluation in March 2010. Stankus determined Tiwana has a cannabis dependence, a cocaine dependence in sustained remission, a nicotine dependence, and antisocial personality disorder. Tiwana also admitted to being a member of the "Bloods" gang. Tiwana has a history of criminal offenses dating back to childhood, and as an adult, he has been incarcerated for armed robbery, robbery, and possession of stolen property.

When LaKeiara entered the foster care system, Tiwana was incarcerated and may or may not have been aware of his paternity. He definitively became aware of his paternity in January 2009, and upon his later release on parole, he made no effort to contact the caseworker to set up visits or contact LaKeiara. He violated his parole by smoking marijuana and returned to the penitentiary later that same year. He is currently incarcerated, and due to the violation of his parole, he lost his good time. He now is eligible for discharge in 2014, at which time LaKeiara will have achieved the age of majority in Nebraska. Tiwana had the opportunity to rehabilitate himself and establish a relationship with LaKeiara when he was released on parole. However, he failed to make contact with her and engaged in behavior in violation of his parole agreement.

LaKeiara has been diagnosed with diabetes, bipolar disorder, and attention deficit disorder, and her therapist diagnosed attachment and aggression issues. Although Tiwana is aware of LaKeiara's various health issues, he is currently incarcerated and is in no position to support her health and well-being. Further, the evidence indicates that Tiwana and LaKeiara have little or no established relationship. In the past 2 years, LaKeiara has had 10 different placements, run away three times, and been hospitalized for self-harm. During this period, she has had only two visits with Tiwana--the first was in March 2009 when she met Tiwana for the first time. Tiwana testified that he and LaKeiara correspond via letters and telephone calls. However, Moore, Barcel, and Eftink-Cari, adults who have worked closely with LaKeiara, Tiwana, and this case, did not confirm this assertion. In fact, they testified there was little contact between LaKeiara and Tiwana. Moore reported that she knew of no bond or established relationship formed between LaKeiara and Tiwana.

For all of the above reasons, it is in LaKeiara's best interests to terminate Tiwana's parental rights, allowing the State to seek more permanent and stable surroundings for LaKeiara in her remaining years of childhood.

## CONCLUSION

For the foregoing reasons, we conclude that the juvenile court did not err in finding the State provided clear and convincing evidence the requirements of § 43-292 were satisfied and that it was in LaKeiara's best interests to terminate the parental rights of Tiwana.

AFFIRMED.