

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

IN RE INTEREST OF ZOEYANN S.

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IN RE INTEREST OF ZOEYANN S., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

ROXANN H., APPELLANT.

Filed September 29, 2026. No. A-25-842.

Appeal from the Separate Juvenile Court of Douglas County: AMY N. SCHUCHMAN, Judge.
Affirmed.

Mark F. Jacobs, of Bressman, Hoffman, Jacobs & Quandt, P.C., L.L.O., for appellant.

Rachael A. Smith, of Smith Law, P.C., L.L.O., guardian ad litem.

BISHOP, WELCH, and FREEMAN, Judges.

FREEMAN, Judge.

INTRODUCTION

Roxann H. appeals from the order of the separate juvenile court of Douglas County that terminated her parental rights to her daughter, Zoeyann S. For the reasons explained below, we affirm.

BACKGROUND

Zoeyann, born in 2014, was removed from Roxann's care in December 2022, following reports of problematic sexualized behavior involving Roxann's other children. Zoeyann's father relinquished his parental rights, and he will not be further discussed.

In December 2022, the State filed a petition alleging that Zoeyann was within the meaning of Neb. Rev. Stat. § 43-247 (Cum. Supp. 2024). For the purposes of this case, Zoeyann was

adjudicated on January 4, 2023, after Roxann admitted to the allegations filed by the State that Zoeyann was at risk of harm. Zoeyann was placed with her former nanny, Angie L. Robbins, as her foster parent. Rachael A. Smith was appointed as Zoeyann's guardian ad litem, and Andrea Thompsen became Roxann's caseworker.

Throughout the pendency of the case, the juvenile court ordered Roxann to complete several goals and provide proof of her accomplishments with reunification as the permanency objective. On January 6, 2023, the juvenile court ordered Roxann to complete the following goals: complete a sexual abuse class, maintain a stable and legal source of income, obtain safe and appropriate housing, and complete family therapy. On March 3, the juvenile court also ordered Roxann to complete a psychiatric and psychological evaluation.

In November 2024, the juvenile court held a hearing, and at that time, it denied a motion to terminate Roxann's parental rights to Zoeyann. Specifically, the juvenile court found that after the motion terminating parental rights was filed, Roxann had made "substantial steps toward reunification," and Zoeyann had "successfully process[ed] her trauma" and was "'feeling good'" about visits with Roxann and wanted to live with her.

On February 11, 2025, after a review hearing, the juvenile court again ordered Roxann to complete the goals to maintain a stable and legal source of income, obtain safe and appropriate housing, and complete family therapy. Additionally, Roxann was ordered to complete individual therapy, cooperate with family support worker services, take all medication prescribed and participate in medication checks as needed, and participate in supervised visitation on a regular basis.

However, on May 14, 2025, Smith filed a third motion to terminate Roxann's parental rights under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2016), alleging that Roxann failed to accomplish her ordered goals to (1) maintain a stable and legal source of income, (2) obtain safe and appropriate housing, (3) complete individual therapy, (4) cooperate with family support worker services, (5) complete family therapy, and (6) participate in supervised visitation on a regular basis.

A hearing was held on October 16, 2025, and the juvenile court found that the allegations that Roxann failed to meet goals (1), (2), (3), and (5) were true by clear and convincing evidence. The following evidence and testimony were received regarding the juvenile court's findings.

Income.

Thompsen has worked as Roxann's caseworker since April 2024. Since that time, Roxann has only provided one paycheck to Thompsen from St. Regis Hotel for a job she received through a temporary agency. Thompsen is concerned that Roxann has been unable to find a stable source of income to take care of Zoeyann.

Roxann clarified that she is working with a temporary agency, Mid-America Staffing, for employment. She has worked at Hotel Deco and the College World Series and will be working at Iowa Western Community College. She earns money through blood and plasma donations. She also was hired part-time at Casey's in Council Bluffs with the potential for the position to transition into full-time.

Housing.

Thompson testified that since she has worked with Roxann, Roxann has not had safe and stable housing. Roxann indicated that she is currently on several housing lists, including income based and income restricted housing, and provided proof to her caseworker. Roxann has been waiting for housing for more than 2 years. Thompson stated she has not received proof that Roxann has taken any other steps to obtain permanent housing.

A timeline of Roxann's living arrangements was adduced at the October 2025 hearing. Roxann lived at her brother's apartment from April 2023 until April 2024. After the apartment, she went to live with her mother in Missouri Valley, Iowa. She then moved to the Lydia House from November 2024 until January 2025. Roxann clarified that while she was at the Lydia House, she participated in the New Life Recovery Program to help with drug and alcohol abuse and mental health. She was unable to graduate from the program because there were issues with getting her other children to school. From January through September 2025, she went back to living with her mother in Missouri Valley.

Roxann moved back to the Lydia House in August 2025. She returned to the Lydia House to become more stable and accomplish her court orders.

The Lydia House is a temporary shelter, and Thompson did not believe that the Lydia House could provide safe and stable housing for Roxann and Zoeyann. By the time of the October 2025 hearing, Roxann had resided at the Lydia House on three separate occasions and had been previously discharged twice.

Individual Therapy.

Roxann began attending individual therapy in October 2024. However, she was discharged in the spring of 2025 because she failed to attend the sessions. Roxann explained that it was difficult to attend therapy while living in Iowa and travelling during rush hour. Roxann began individual therapy again in August 2025. Thompson is concerned that Roxann has not been consistent with her individual therapy because it is essential for her reunification to Zoeyann.

Family Therapy.

Marie Gotthardt became Zoeyann's therapist in January 2025. She was specifically hired to work toward accomplishing family therapy with Zoeyann and Roxann. Gotthardt and Thompson did not believe that family therapy was appropriate, at least initially. Gotthardt explained that Zoeyann was exhibiting unsafe and risky behaviors and was unstable in her emotions and mental state.

Eventually, Gotthardt began to coordinate family therapy through Roxann's therapist but was unable to finalize that coordination with Roxann, who did not call or respond to Gotthardt's email. However, since May 2025, Gotthardt no longer recommended family therapy because Roxann had not completed individual therapy and was inconsistent in visiting Zoeyann.

Supervised Visitation.

Roxann currently has weekly supervised visits with Zoeyann. Robbins testified that Zoeyann looked forward to these visits. If visitation occurred over a mealtime, Roxann was

responsible for bringing food. Visitations were cancelled if food was not provided. Some of Roxann's visitations were cancelled because Roxann did not come prepared to feed Zoeyann.

Roxann explained that sometimes she did not come prepared to feed Zoeyann because there was a delay with her food delivery service. She was also inconsistent in her visitation due to lack of transportation, even though she receives monthly bus passes from Thompsen.

Since the November 2024 hearing, Roxann's visitation has not improved. Thompsen was unable to recommend more visitation time with Zoeyann because Roxann did not have a stable income or home, and Roxann did not consistently confirm her visits.

Best Interests.

Gotthardt testified that any additional time for Roxann to work toward reunification would be harmful to Zoeyann because a lack of permanence, security, and consistency would be emotionally and mentally distressing. Zoeyann is unsure of Roxann's ability to take care of her and has told Gotthardt that she wants the court proceedings to end.

Thompsen agreed that termination of Roxann's parental rights to Zoeyann would be in Zoeyann's best interests because Roxann had failed to show any sustained progress while Thompsen was involved with the case. Although Thompsen believed, at the November 2024 hearing, that Roxann should be granted more time to work toward reunification, she now asserts that any additional time would be unreasonable.

At the November 2024 hearing, Roxann was staying at the Lydia House and completing its program. However, since then, she was discharged from the Lydia House because she was inconsistent with its program and had issues taking her other children to school. While there were periods of improvement from Roxann, it did not last. Zoeyann also expressed to Thompsen that she is no longer interested in reunifying with Roxann.

Roxann testified that it would not be in Zoeyann's best interests to terminate her parental rights because Zoeyann needs her family. She requested that the juvenile court give her more time for reconciliation because of the inconsistency from the court workers and because she is trying to accomplish her goals.

Juvenile Court Order.

The juvenile court found clear and convincing evidence that Zoeyann was a child within the meaning of § 43-292(2), (6), and (7). It also found clear and convincing evidence that it was in Zoeyann's best interests that Roxann's parental rights be terminated.

Roxann appeals.

ASSIGNMENTS OF ERROR

Roxann assigns that the juvenile court erred in finding (1) that there was proof of clear and convincing evidence that Zoeyann was within the statutory meaning of § 43-292 and (2) that it was in the best interests of Zoeyann to terminate her parental rights.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the findings made by the juvenile court below. *In re Interest of Denzel D.*, 314 Neb. 631, 992 N.W.2d 471 (2023). However, when the evidence is in conflict, an appellate court

may consider and give weight to the fact that the juvenile court observed the witnesses and accepted one version of the facts over another. *Id.*

ANALYSIS

To terminate parental rights, it is the burden of the moving party to show by clear and convincing evidence both that one of the statutory bases enumerated in § 43-292 exists and that termination is in the child's best interests. See *In re Interest of Mateo L. et al.*, 309 Neb. 565, 961 N.W.2d 516 (2021). Whereas statutory grounds are based on a parent's past conduct, the best interests inquiry focuses on the future well-being of the child. *Id.*

Statutory Basis.

Roxann argues that the juvenile court erred in finding clear and convincing evidence that her parental rights should be terminated pursuant to § 43-292(2) and (6).

While Roxann only assigns error to the juvenile court's findings regarding § 43-292(2) and (6), Smith sought to terminate Roxann's parental rights to Zoeyann under § 43-292(2), (6), and (7). The juvenile court found, by clear and convincing evidence, that statutory grounds existed pursuant to all three grounds.

Section 43-292(7) allows for termination when "[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months." The existence of the statutory basis alleged under § 43-292(7) should be determined as of the date the petition or motion to terminate is filed. See *In re Interest of Jessalina M.*, 315 Neb. 535, 997 N.W.2d 778 (2023). By the plain and ordinary meaning of the language in § 43-292(7), there are no exceptions to the condition of 15 out of 22 months' out-of-home placement. *In re Interest of Mateo L. et al.*, *supra*. Section 43-292(7) operates mechanically and, unlike the other subsections of the statute, does not require the moving party to adduce evidence of any specific fault on the part of a parent. See *In re Interest of Mateo L. et al.*, *supra*. In other words, if the 15-out-of-22 months' formula is met, § 43-292(7) is met. *In re Interest of Mateo L. et al.*, *supra*.

Zoeyann was placed in the care and custody of the Nebraska Department of Health and Human Services on January 4, 2023, and she remained in foster care thereafter. By the time the operative motion to terminate Zoeyann's parental rights was filed on May 14, 2025, Zoeyann had been in an out-of-home placement for 28 months; thus, the 15-out-of-22 months' period was clearly satisfied.

Because grounds existed for termination under § 43-292(7), we need not address Roxann's argument pertaining to lack of evidence for termination under § 43-292(2) and (6). See *In re Interest of Mateo L. et al.*, *supra*. We next consider whether termination is in Zoeyann's best interests.

Best Interests.

Roxann argues that the juvenile court erred in finding that terminating her parental rights was in Zoeyann's best interests. We disagree.

In addition to providing a statutory ground, the moving party must show that termination of parental rights is in the best interests of the child. See *In re Interest of Mateo L. et al.*, *supra*. In light of the constitutionally protected nature of the parent-child relationship, there is a rebuttable

presumption that it is in the child's best interests to share a relationship with his or her parents. See *In re Interest of Denzel D.*, *supra*. The presumption that it is in the child's best interests to share a relationship with his or her parent can only be overcome by a showing that the parent either is unfit to perform the duties imposed by the relationship or has forfeited that right. See *In re Interest of Denzel D.*, 314 Neb. 631, 992 N.W.2d 471 (2023). Parental unfitness means a personal deficiency or incapacity that has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and that has caused, or probably will result in, detriment to a child's well-being. *Id.*

The best interests and parental unfitness analyses require separate, fact-intensive inquiries, but each examines essentially the same underlying facts. *Id.* In proceedings to terminate parental rights, the law does not require perfection of a parent; instead, courts should look for the parent's continued improvement in parenting skills and a beneficial relationship between parent and child. *In re Interest of Leyton C. & Landyn C.*, 307 Neb. 529, 949 N.W.2d 773 (2020). In cases where termination of parental rights is based on § 43-292(7), appellate courts must be particularly diligent in their de novo review of whether termination of parental rights is in fact in the child's best interests. *In re Interest of Cameron L. & David L.*, 32 Neb. App. 578, 3 N.W.3d 376 (2024).

Roxann made some progress on many of her goals and court orders throughout this case. However, she never fully progressed to a point where she could have unsupervised visits with Zoeyann, let alone have her safely returned to her care. Roxann came close to fulfilling certain requirements but did not take the final steps to achieve her goals.

Roxann testified to several temporary employments but only provided proof of one paycheck to Thompsen. Although Roxann stated she received a part-time position at Casey's, she was unable to find or provide proof of a stable source of income in a timely manner.

Similarly, Roxann was unable to find stable housing in a timely manner. Roxann switched between living with family and the Lydia House, which is only a temporary shelter. She was discharged from the Lydia House due to her inability to follow the program. While she stated she is on several housing lists, Roxann has made little progress to obtain stable housing during the more than 2 years this case has been pending.

Furthermore, Roxann was not consistent with her individual therapy sessions and supervised visits. Roxann claimed that much of her inconsistency was due to transportation issues. However, Thompsen provided her with transportation assistance. Because Roxann failed to attend her individual therapy sessions, she was discharged by her therapist in the spring of 2025 and only began attending sessions again in August 2025, three months after the current motion to terminate had been filed.

Consequently, Gotthardt would not recommend commencement of family therapy because Roxann was inconsistent in attending her individual therapy sessions. And according to Thompsen, successful completion of family therapy was essential for the reunification process.

Because of Roxann's income and housing instability and her inconsistency in confirming and attending supervised visits, visitations were not increased. Roxann also had difficulty coming prepared to feed Zoeyann as required at some of her visits.

We acknowledge that Roxann has made progress and taken positive steps. However, after 2 years, Roxann was still not in a position where she could safely care for Zoeyann. Although

Roxann loves Zoeyann, she has not shown she is able to place herself in a position to have her safely returned to her custody and care.

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 Bosileo D. et al.*, 321 Neb. 490, 35 N.W.3d 434 (2026). The evidence shows that the concerns which existed at the time Zoeyann was removed from Roxann's care have not been resolved during the 28 months she has remained in out-of-home care, and her consistent failure to fully achieve her goals shows this is unlikely to change in the near future.

Additionally, Nebraska courts have recognized that children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. See *In re Interest of Bosileo D. et al.*, *supra*. Zoeyann has already spent a significant amount of time in out-of-home care, and she should not be made to wait even longer when Roxann is unable to rehabilitate herself. We find Roxann to be unfit and that termination of her parental rights to be in the best interests of Zoeyann.

CONCLUSION

We conclude that the juvenile court did not err in terminating Roxann's parental rights.

AFFIRMED.