IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

IN RE INTEREST OF MIA H. & EZRA H.

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IN RE INTEREST OF MIA H. AND EZRA H., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

JAYME H., APPELLANT.

Filed November 17, 2026. Nos. A-25-908, A-25-909.

Appeals from the County Court for Buffalo County: GERALD R. JORGENSEN, JR., Judge. Affirmed.

Jeffrey P. Ensz, of Lieske, Lieske, & Ensz, P.C., L.L.O., for appellant.

Mandi J. Amy, Deputy Buffalo County Attorney, and Michele J. Romero, guardian ad litem, for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

FREEMAN, Judge.

INTRODUCTION

Jayme H. appeals from the order of the county court for Buffalo County that terminated his parental rights to his children. We address two appeals in this opinion. Case No. A-25-908 pertains to the termination of Jayme's parental rights to his daughter, Mia H. Case No. A-25-909 pertains to the termination of Jayme's parental rights to his son, Ezra H. For the reasons explained below, we affirm.

BACKGROUND

Mia, born in 2020, and Ezra, born in 2021, are the children of Sierra S. and Jayme. On September 30, 2023, Sierra attempted to take her life while the children were present; at the time, Jayme was determined to be suitable to care for the children.

Then, on October 10, 2023, the Nebraska Department of Health and Human Services (DHHS) was notified that the children were no longer with Jayme due to concerns that Jayme was smoking K2 in the presence of the children and bringing the children with him to purchase the substance. The county court ordered temporary custody with DHHS for Mia and Ezra during an ex parte custody hearing on October 11. The children were placed outside the home and have remained in an out of home placement since that time. Sierra relinquished her parental rights, and she will only be discussed as relevant to this appeal.

Jayme has an extensive criminal history. He has been convicted of third degree assault, criminal trespassing, assault by strangulation, child neglect, criminal mischief, attempt to possess methamphetamine, disturbing the peace, criminal nonsupport, possession of K2 or marijuana, possession or use of drug paraphernalia, obstructing a peace officer, theft, and failure to furnish information. Jayme was serving a sentence at the time of Mia's birth, so he did not meet Mia until she was about 4 months old. Jayme was again imprisoned on November 30, 2022, due to his convictions for assault by strangulation of Sierra and three counts of negligent child abuse. On August 29, 2023, Jayme was released from prison and placed on post-release supervision.

While on post-release supervision, Jayme had multiple positive drug tests for THC from October 2023 through January 2024. Jayme served an 8-day jail sanction for continually testing positive for THC, though the exact dates were not clear from the record. In November 2023, Jayme tested positive for methamphetamine.

Jayme began supervised visits with the children on October 17, 2023. The supervised visits occurred at various locations because Jayme did not have suitable housing. The place where he was residing did not approve of Jayme having visits in the home.

On February 2, 2024, the county court held a hearing and accepted the case plan created by DHHS. The case plan listed several goals for Jayme to accomplish, including improving his parenting skills, working on his sobriety, seeking employment and housing, and providing for his children's needs.

On July 9, 2024, the State moved to revoke Jayme's post-release supervision. Jayme had previously been sanctioned multiple times, including in November 2023, January 2024, June 2024, and July 2024. The State's allegations consisted of several violations throughout 2024, including behavior on July 5, 2024, that led to Jayme's arrest for assault and criminal trespass. Jayme admitted to relapsing on methamphetamine in June 2024 near the time of his arrest. Jayme also admitted to violating several conditions of his post-release supervision, including obeying all laws, making himself available to the probation officer, and failing to report for drug testing. As a result of his violations, Jayme's post-release supervision was revoked, and he was sentenced to 1 year's imprisonment and given 36 days credit for time already served.

Jayme was also convicted of assault in the third degree, a Class I misdemeanor, and criminal trespass in the second degree, a Class II misdemeanor. On December 12, 2024, Jayme was sentenced to 1 year's imprisonment for assault and 90 days' imprisonment for criminal

trespassing to be served concurrent to his assault charge. He was given credit for 161 days already served. Due to his post-release supervision revocation and conviction, Jayme's expected release date was in April 2026.

On June 25, 2025, the State moved to terminate Jayme's parental rights. The State alleged that the children had been in an out-of-home placement for 15 or more months of the most recent 22 months, reasonable efforts to reunify the family had failed, Jayme was unfit by reason of habitual drug use that was detrimental to the well-being of the children, and Jayme had continuously neglected to provide necessary parental care. The State further asserted that it was in the children's best interests that Jayme's parental rights be terminated.

A termination hearing was held on September 2, 2025. The children's caseworker, Bailey Hilbers, testified regarding the case's history and proceedings leading up to Jayme's incarceration. She gave her understanding of what occurred at Jayme's visitations with the children and any progress made on Jayme's goals. She believed that it was in the children's best interests to terminate Jayme's parental rights because of Jayme's lack of progress and the length of time that the children had been out of the home. It was also her opinion that Jayme did not provide for the children's basic needs.

The children's therapist, Jessica Schlegelmilch, testified that Mia told her that she had seen her father hurt her mother. Ezra told Schlegelmilch that he was scared and that his father was very angry. In order for the children to feel safe and secure with their father, Schlegelmilch explained that she would need to meet with Jayme for about two to three sessions to determine a plan for the family to move forward.

Schlegelmilch also observed the children with their foster parents. Schlegelmilch believed the foster parents had the skills needed to help the children develop healthy relationships and recommended that the children remain with their foster parents.

Jayme's sisters testified regarding how Jayme and the children love each other. One sister also mentioned how she let Jayme watch her own children and that she believed her children and Jayme's children were safe around him as long as he remained sober.

Jayme testified to the progress that he has made as a parent and the services and classes he has participated in. Further details regarding Jayme's visitations with his children and his progress toward his goals will be discussed below.

The county court found clear and convincing evidence that the State proved all the allegations contained in its motion including that it was in the children's best interests to terminate Jayme's parental rights.

Jayme appeals.

ASSIGNMENTS OF ERROR

Jayme assigns that the county court erred in finding (1) that there was proof of clear and convincing evidence that the children were within the statutory meaning of Neb. Rev. Stat. § 43-292 (Reissue 2016) and (2) that it was in the best interests of the children to terminate Jayme's 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.

Jayme argues that the county court erred in finding clear and convincing evidence of statutory grounds to terminate his parental rights.

While Jayme assigns error to the county court's findings regarding § 43-292(2), (4), and (6), the State also sought to terminate Jayme's parental rights under § 43-292(7). The county court found, by clear and convincing evidence, that statutory grounds existed pursuant to all grounds alleged in the State's motion.

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.*

Mia and Ezra were placed in the care and custody of DHHS on October 11, 2023, and have remained in foster care thereafter. By the time the operative motion to terminate the children's parental rights was filed on June 25, 2025, the children had been in an out-of-home placement for 20 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 Jayme's arguments pertaining to lack of evidence for termination under the other statutory grounds. See *In re Interest of Mateo L. et al., supra.* We next consider whether termination is in the children's best interests.

Best Interests.

Jayme argues that the county court erred in finding that terminating his parental rights was in Mia and Ezra's best interests.

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.*, 314 Neb. 631, 992 N.W.2d 471 (2023). 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 *id.* 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).

We first commend the efforts made by Jayme in this case. The county court stated that Jayme "genuinely loves his children, was appropriate in many ways, and posed no immediate physical safety threat," and we agree. We also recognize Jayme took the children to the doctor during his visitation on at least two occasions, even though the county court found that he never attended the children's medical appointments.

Regardless, Jayme's actions placed him in a position where he is unable to continually and consistently parent his children. And having a bond with a child does not make the parent a fit person to provide parental care for the child. See *In re Interest of Alec S.*, 294 Neb. 784, 884 N.W.2d 701 (2016).

Although incarceration alone cannot be the sole basis for terminating parental rights, it is a factor to be considered. *In re Interest of Jahon S.*, 291 Neb. 97, 864 N.W.2d 228 (2015). And it has been noted that although incarceration itself may be involuntary as far as a parent is concerned, the criminal conduct causing the incarceration is voluntary. See *id.* Thus, in a case involving termination of parental rights, it is proper to consider a parent's inability to perform his or her parental obligations because of incarceration. *Id.*

The Nebraska Supreme Court found that the parent in the case *In re Interest of DeWayne G. & Devon G.*, 263 Neb. 43, 638 N.W.2d 510 (2002) knowingly and deliberately violated his probation. The parent knew that the consequences of his actions would lead to the revocation of his probation. See *id.* The parent violated the terms of his probation when he knew he had parental obligations to his children. See *id.* The parent's probation violation placed the parent in a position where he was unable to provide for his children's needs. See *id.* Based on the Court's review, it found it was in the children's best interests to terminate the parent's parental rights. See *id.*

Similarly, Jayme knew he ran the risk of becoming incarcerated by violating his conditions for post-release supervision. Despite this, he violated the conditions multiple times over multiple months. This was not an isolated incident. And even though he testified that his return to prison

was the fastest way for him to leave the criminal justice system and avoid post-release supervision requirements, it was his repeated violations that placed him in a position where he is unable to provide for his children's needs.

Apart from Jayme's incarceration, there are several other concerning behaviors. Jayme's substance abuse is what led to the children being removed from his care at the beginning of the case, and it is also tied to his post-release supervision violations. As a result of a substance abuse evaluation, the evaluator recommended that Jayme participate in individual and group therapy. According to the substance abuse evaluation, Jayme stated he was not interested in participating in any therapy. We note, however, that Jayme stated at the termination hearing that he was participating in a relapse prevention program through post-release supervision.

While Jayme made progress on his parenting techniques and followed several of his visitation supervisor's recommendations, Jayme repeatedly became frustrated with his children, ended his visits early due to his frustrations, yelled and cursed at the children, and occasionally fell asleep during his visitation time. A few times the children were outside without Jayme's supervision; in one instance, he was in a conversation with his caseworker. He also forgot Ezra's birthday while at the doctor's office.

Jayme never progressed from supervised visitation and never obtained independent housing. Jayme stated that he was not accepted into low-income housing, nor did he have family that could accommodate room for his children on a permanent basis. Jayme had employment but lost one job because of a jail sanction. He also owed $12,272.75 in child support to Sierra for Mia and Ezra.

Even after his release from prison, it is unclear when, or whether, Jayme will be in a position to adequately provide and care for his children. Schlegelmilch testified that she would still need time to meet with Jayme to determine a plan for the family to move forward. 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.*, 321 Neb. 490, 35 N.W.3d 434 (2026).

Based on our de novo review, we find Jayme to be unfit and that termination of his parental rights is in the best interests of Mia and Ezra.

CONCLUSION

We conclude that the county court did not err in terminating Jayme's parental rights.

AFFIRMED.