

IN THE NEBRASKA COURT OF APPEALS

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

IN RE INTEREST OF ACE V.

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

STATE OF NEBRASKA, APPELLEE,

V.

MARCOS V., APPELLANT.

Filed October 6, 2026. No. A-25-951.

Appeal from the Separate Juvenile Court of Lancaster County: REGGIE L. RYDER, Judge.
Affirmed.

Kyle J. Flentje, of Flentje Law, L.L.C., for appellant.

Christopher M. Reid, Deputy Lancaster County Attorney, for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

BISHOP, Judge.

INTRODUCTION

Marcos V. appeals the order of the separate juvenile court of Lancaster County terminating his parental rights to his son, Ace V. We affirm.

BACKGROUND

PROCEDURAL BACKGROUND

Marcos is the biological father of Ace, born in March 2021. Abby W. is the child's mother. The State sought to terminate Abby's parental rights to Ace during these same juvenile proceedings below, but she ultimately relinquished her parental rights. Because Abby is not part of this appeal, she will only be discussed as necessary.

Ace was removed from Abby's care in March 2021 after his urine tested positive for amphetamines at the time of his birth. In both its March petition and subsequent amended petition, the State alleged that Ace was a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2016) because he lacked proper parental care by reason of the faults or habits of Abby, or he was in a situation dangerous to life or limb, or injurious to his health or morals. The State listed Marcos as Ace's "alleged" father. Upon motion by the State, the juvenile court entered an ex parte order granting the Nebraska Department of Health and Human Service (DHHS) temporary custody of Ace and he was subsequently placed in a foster home. Other than being placed with Abby from June 24 to August 17, 2022, and from November 18, 2022, to February 7, 2024, Ace has remained in foster care.

On April 7, 2021, the juvenile court ordered DHHS to arrange genetic testing to establish paternity of Ace. (According to a DHHS court report, Marcos signed an acknowledgment of paternity in March, and his paternity was confirmed by genetic testing in September.) DHHS was to offer drug and alcohol testing to "both parents," and there was to be supervised visitation for "both parents."

In May 2021, Ace was adjudicated to be a child within the meaning of § 43-247(3)(a), based on Abby's "no contest" plea to the allegations in the amended petition.

Following a disposition hearing in August 2021, the juvenile court ordered DHHS to continue to make drug testing and a substance use evaluation available to Marcos. Following subsequent review hearings, the court ordered that Marcos should have reasonable rights of supervised visitation, but he should not have parenting time when incarcerated. Marcos was ordered to maintain regular (minimum of monthly) contact with his case manager; notify his case manager of any changes in his living situation within 24 hours of the change; notify his case manager of any contact with law enforcement within 24 hours of the contact; participate in monthly team meetings; not possess or consume alcohol, controlled substances or any mind/mood altering substances, unless prescribed by a physician; maintain a safe, stable and sober living environment; maintain employment or another legal means of support for himself and the juvenile; and participate in the Circle of Security parenting education class.

On July 3, 2025, the State filed a supplemental petition alleging that Ace was a child within the meaning of § 43-247(3)(a) because he lacked proper parental care by reason of the fault or habits of Marcos and/or was in a situation dangerous to life or limb or injurious to his health or morals based upon the following:

a. Ace . . . has been adjudicated as a child defined by [§] 43-247(3)(a) and under the jurisdiction of the Separate Juvenile Court since May 27, 2021[,] and remains under the court's jurisdiction as of the filing of this Supplemental Petition;

b. Ace . . . was removed from his mother's care on or about March 30, 2021. Ace . . . was reunified with his mother on or about June 24, 2022. Ace . . . was removed a second time from his mother's care, on or about August 17, 2022, and successfully reunified with his mother on or about November 11, 2022. Ace . . . was removed from his mother's care for a third time on or about February 7, 2024, and remains in an out-of-home placement as of the filing of this Supplemental Petition;

c. Despite being aware of Ace . . . being under the court’s jurisdiction since May of 2021 and being placed out-of-the home, Marcos . . . has failed to place himself in a position to assume the care and custody of his son, Ace

d. Marcos . . . has failed to provide a safe and stable home and/or proper or necessary care for said juvenile;

e. The actions of Marcos . . . and/or the above situation, places said juvenile at risk of harm;

f. Some events occurred in Lancaster County, Nebraska.

(Emphasis omitted.)

Also on July 3, 2025, the State filed a motion to terminate Marcos’ parental rights to Ace pursuant to Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2016). The State alleged that Marcos had substantially and continuously or repeatedly neglected and refused to give the child, or a sibling of the child, necessary parental care and protection; reasonable efforts failed to correct the conditions leading to the adjudication of the child under § 43-247(3)(a); the child had been in an out-of-home placement for 15 or more months of the most recent 22 months; and termination of Marcos’ parental rights was in the child’s best interests.

In September 2025, the juvenile court ordered Marcos to submit to random drug and alcohol testing as directed and arranged by DHHS (he previously had been submitting to drug testing only via probation in a criminal case).

TERMINATION HEARING

A hearing on the supplemental petition and the motion to terminate Marcos’ parental rights was held on November 13 and 14, 2025. The State called several witnesses to testify, and numerous exhibits were received into evidence. Marcos testified in his own behalf and called witnesses to testify on his behalf.

Aspen Sitorius, a DHHS child and family services specialist, was assigned to this case on November 6, 2024, and was the ongoing caseworker at the time of the termination hearing. When she was first assigned to this case, Sitorius met with the previous caseworker and supervisor, and she reviewed all documentation including court reports and court orders. Sitorius said that Ace was removed from his biological mother shortly after his birth in 2021 because he “had been exposed to substances.” Two different times during this case Ace was reunified with his biological mother only to be removed again each time; Ace was with his mother from June to August 2022, and from November 2022 to February 7, 2024. Ace has remained in foster care since his last removal on February 7, 2024.

According to Sitorius’ testimony, Ace has never been placed with Marcos. At the time of the second removal in August 2022, attempts to contact Marcos were not successful. And at the time of the third removal in February 2024, Marcos had just been sentenced to probation for the possession of a controlled substance, specifically methamphetamine, so DHHS found that he was not a suitable placement for Ace at that time; DHHS needed proof of Marcos’ sobriety, “a couple months of negative drug tests through probation,” to consider him as a placement for Ace. During her time on the case, Sitorius received updates from probation on Marcos’ missed and positive drug tests.

An exhibit received in evidence shows that in November 2023, Marcos pled guilty in district court to: count 1, possession of a controlled substance (methamphetamine); and count 2, obstructing a peace officer. On January 19, 2024, he was sentenced to consecutive terms of 3 years' probation on count 1 and 2 years' probation on count 2. Among the terms of his probation, Marcos was to: abstain from the use or possession of alcohol or controlled substances and submit to random alcohol and drug testing a minimum of three times each week; satisfactorily attend and complete any alcohol, drug, and/or mental health evaluation, counseling, or treatment as directed by probation; comply with the recommendations in an April 2023 substance abuse evaluation; and refrain from unlawful or disorderly conduct or acts injurious to others.

Ember Kalama, Marcos' probation officer, testified that as part of his probation, Marcos was to randomly drug test three times each week. According to exhibits received into evidence, Marcos missed numerous drug tests. Kalama said, "That has been something that's kind of an ongoing issue throughout his probation," but "over time he has done a better job with reporting in for testing, communicating if something is going on or if he would be late, and being more honest about things going on."

According to exhibits received in evidence, in addition to the numerous missed drug tests, Marcos provided positive drug testing samples. In 2024, he provided positive samples on April 29 (admitted to the use of methamphetamine on April 27), October 10 (methamphetamine and THC), and November 1 (THC). In 2025, Marcos provided a positive drug testing sample on February 11 (THC). On October 15, Marcos "tampered with a drug screening," "immediately admitted to the situation, admitted to the use of THC and provided a positive THC test." Regarding the positive drug test for THC on October 15, Kalama testified that when she confronted Marcos, he claimed he used a vape at his oldest sibling's home and then realized it contained a THC product.

According to exhibits received in evidence and Kalama's testimony, Marcos received three custodial sanctions in 2025. The district court ordered him to serve a 2-day custodial sanction in February (missed drug tests, failing to attend an office visit, and not complying with a prior sanction); a 2-day custodial sanction March (missed drug tests, failing to attend "group" and an office visit, and a positive THC test), and a 3-day custodial sanction in October (in part for initially trying to tamper with a drug test).

According to Kalama, Marcos was unsuccessfully discharged from intensive outpatient treatment two times for nonattendance. (Documents in our record show he was unsuccessfully discharged in July 2024, and again in August.) Marcos later attended outpatient treatment with a different provider but missed many sessions; his therapist ultimately discharged him for "maximum benefit" in May 2025. Based on her understanding, Kalama "wouldn't necessarily call it a successful release" but also "wouldn't classify it as an unsuccessful release."

Kalama testified that Marcos "just received" two citations for misdemeanor thefts. The alleged offenses occurred in April and May 2025, but Marcos did not receive the citations from law enforcement until October. Kalama subsequently sent a probation violation report to the County Attorney's office, and that office will determine whether to file a "formal violation."

Caseworker Sitorius was asked about the various court-ordered requirements for Marcos in the juvenile case, including that he notify her of any law enforcement contacts within 24 hours; attend monthly team meetings; maintain regular contact with her; not possess or consume alcohol or controlled substances; maintain a safe, stable and sober living environment; maintain

employment or another legal means of support for himself and Ace; and participate in the Circle of Security parenting education class. During Sitorius' time as the caseworker, Marcos did not notify her of law enforcement contacts within 24 hours, including the two recent law enforcement citations for theft that were noted during probation officer Kalama's testimony. Marcos missed approximately five monthly family team meetings--January, February, May, June, and July 2025. Until September, Sitorius had monthly contact with Marcos. But "[r]ecently, it's been more difficult to get a hold of [him]" as he would often not respond to her text messages, "especially regarding trying to set up home visits." Sitorius testified that DHHS was not confident in Marcos' sobriety, given his lack of consistency with drug testing. She also noted his positive drug test from October 2025.

According to Sitorius, Marcos currently lived with his girlfriend, and his girlfriend's daughter (5 or 6 years old). Sitorius believed that Marcos had stable housing, but "[g]iven that the housing is not necessarily sober," she was not sure it was a safe environment. Additionally, the periods of incarceration for custodial sanctions and the possibility of probation revocation gave her concerns about the stability of the homelife Ace would have if placed with Marcos. Marcos has had various employments, and he started the Circle of Security parenting classes in September 2025 but had not yet completed them at the time of the termination hearing.

Some information regarding Marcos' supervised visitation with Ace appears in the DHHS court reports and case plans. Ace was born in March 2021. Marcos was incarcerated from August 12, 2021, to April 17, 2022. (In November 2021, the juvenile court ordered that Marcos shall not have parenting time with Ace when incarcerated). The June 2022 court report noted that Marcos had been providing appropriate care for Ace during visits. On August 16, Marcos' supervised visitation was decreased to 3 hours per week because he was not consistent with confirming his visits and he was not holding visits for the duration of the time scheduled. Marcos did not have visits with Ace from sometime in August or September 2022 to September 2023 due to Marcos' lack of involvement in the case and not communicating with workers about scheduling visitation. The November 2023 court report stated that Marcos was scheduled to have one 2-hour visit with Ace each week, but Marcos was not consistent in attending visits. The January 2024 court report stated that Marcos was not currently having visits because he did not respond to attempts to schedule visits. The April court report stated that Marcos was scheduled for one supervised visit with Ace each week. According to the June court report, the visitation provider stopped providing visits for Marcos on May 26 due to frequent cancellations. A new provider started June 1, and Marcos was scheduled to have two visits each week, for 3 hours each visit; "[h]e has missed his only visits so far." The August court report stated that Marcos currently had one 2-hour visit with Ace each week. According to the February 2025 court report, there were 8 hours of visitation scheduled each week. Marcos cancelled one visit in October 2024 and two visits in December; otherwise, the visitation notes received during the reporting period were positive. The May 2025 court report stated that Marcos had 8 hours of visits scheduled each week--in March he cancelled one visit due to illness and did not respond to offers to make up hours for two other missed visits that were cancelled due to the weather; in April Marcos missed two visits, and during one visit he left Ace with the visitation worker for 15 minutes to run an errand. According to the September court report, Marcos missed one visit in May but attended all visits in June, July, and August.

During Sitorius' time on the case, Marcos was not consistent with his visitation. She said that "there's been several months where he's made all visits, but then there's also been several where he's missed at least two visits." Marcos currently had visitation with Ace 12 hours each week, 8 hours on Sundays and 4 hours on Fridays; this is the most visitation time that he had since Sitorius was assigned to the case. Marcos had asked for more visitation, but Ace's schedule, including preschool, had been a barrier to increased visitation.

According to Sitorius' testimony, there was a safety concern documented at a July 2025 visit. "[T]here was a physical altercation" between two or three individuals. The individuals had been at Marcos' house, but the altercation took place down the street. Marcos was not involved in the altercation but stepped in to separate the individuals. The visitation worker witnessed the altercation but did not indicate if Ace witnessed the event. (Marcos testified that he overheard his younger sister and her boyfriend arguing and Marcos "went to the front up to the corner where they were" and told her that they needed to leave; he did not believe Ace observed anything because he was in the backyard.)

Sitorius stated that there had also been documentation that Marcos fell asleep during some visits, most recently in October 2025. Additionally, there was also "recent[]" documentation that Marcos was asleep when Ace arrived for visitation; the young daughter of Marcos' girlfriend would answer the door and then Ace would go wake up Marcos. (Marcos' girlfriend testified that her 5-year-old daughter answers the door for Ace's visits because "she's excited," but Marcos has "usually been awake for over thirty minutes before the visit" even though he is in the bedroom.)

To Sitorius' knowledge, Marcos' visits with Ace have always been supervised. She stated that in order for DHHS to recommend monitored visits, Marcos would need to consistently drug test and maintain sobriety for at least 45 to 60 days. And to recommend moving from monitored visits to overnight visits, DHHS would need to see consistency with drug testing and sobriety, "most likely for another [60] days," and DHHS "would also like to see [Marcos] not receive any additional probation violations such as the custodial sanctions." To recommend reunification, DHHS would want to see consistency with drug testing and sobriety for at least 6 months, and during those 6 months DHHS would like to see no new law violations, no new probation sanctions, and no safety concerns during visits. On cross-examination, Sitorius stated those timelines were not communicated to Marcos. However, staying sober and consistently drug testing had always been an expectation.

According to Sitorius, Ace's foster parents have reported a regression in his behavior following visitation. "Even now, it takes Ace approximately twenty-four to forty-eight hours to de-escalate after visits and to get back into his normal routine and normal temperament." And "[f]or a period of time there, Ace was having accidents throughout the day as well as, I believe during the night he was also experiencing nightmares." (Ace's foster mother testified that regression in potty-training and accidents happened when visitation with "both parents" increased.)

Ace's foster mother testified that Ace has been placed with her since May 7, 2024, although he has been in her care on and off since his birth in 2021. When Ace was told in advance that he was going on to have a visit with Marcos, Ace had "extreme behaviors," "to the point recently of hitting, kicking, screaming 'no,' throwing tantrums, things of that nature, not taking 'no' for [an] answer," and he "also at times has eloped or tried to run away from the home when he's being told

‘no.’” There were not as many issues if Ace was not told about a visit until the visitation worker arrived to pick him up, and Ace “would just go willingly.” The foster mother also noticed an increase in Ace’s behaviors following his visits with Marcos; Ace would not take “no” for an answer, argued, fought more with his siblings (biological mother’s other children), hit, kicked, and threw things. Ace was doing equine therapy with a licensed mental health therapist to address his behavior.

A DHHS court report states that on July 31, 2025, the caseworker received an email from Ace’s therapist stating that “‘we are beginning to see a pattern of behavioral and emotional dysregulation following his visits with his father’”; “[t]hese episodes often include emotional disconnects, defiance, and occasional outbursts-behaviors that contrast sharply with his otherwise positive demeanor and progress in therapy.” Sitorius stated that Ace’s therapist believed the issues were due to Ace needing permanency.

Sitorius testified that since the most recent removal in February 2024, Ace had been in an out-of-home placement for 21 months, and he had been in an out-of-home placement for 39 months since the case opened in 2021. When asked if DHHS believed that Ace was in need of a permanent home, Sitorius responded, “Yes.”

Nicole Lemke, a DHHS child and family services specialist supervisor, is Sitorius’ supervisor and had been the covering supervisor for 3 months for a previous caseworker. Lemke testified that Marcos was determined to be Ace’s father in September 2021. Marcos proceeded to get a possession of methamphetamine charge in 2023, continued to receive law violations, and continued to receive custodial sanctions for probation, making him unavailable to Ace while serving that jail time. And there were ongoing concerns about Marcos’ substance use. Ace has been out-of-home “for almost his entire life” and “deserves permanency.” Lemke opined that it was in Ace’s best interests to terminate Marcos’ parental rights.

Marcos’ live-in girlfriend testified that she has witnessed visits between Marcos and Ace and said that Marcos “goes out of his way to plan activities for visits every week” and “completely parents Ace.”

Marcos’ mother testified that she has been present for visits between Marcos and Ace and never observed anything concerning. She believed Marcos was a good father and paid attention to Ace. According to her, Ace was bonded to Marcos and is excited to see him. She did not believe it was in Ace’s best interests to terminate Marcos’ parental rights; “[o]ver the last two years, [Marcos] has shown a lot of improvement, he’s stepping up doing what he needs to do.”

Marcos’ sister testified that she had also been present for visits between Marcos and Ace and never noticed anything concerning. She believed Marcos had made “quite a bit of progress” in this case. She did not believe it was in Ace’s best interests to terminate Marcos’ parental rights.

During his testimony, Marcos confirmed that he was a convicted felon and on probation. He testified that he must drug test three times a week for probation and “for the past four or five months [has] been pretty consistent,” missing “a couple maybe, if not none.” In the past he missed drug tests for various reasons like moving, job or schedule changes, or switching “group[]” sessions. Marcos said he last used methamphetamine “[o]ver a year ago.” He used THC “sometime last month” when he “had a vape” that he “didn’t realize had THC in it”; “I felt the effects after I hit it and, you know, I, I didn’t hit it again.” When asked if he communicated that to his probation officer, Marcos replied, “Not at first,” “I did try to tamper with the test and obviously I got caught.”

He said, “I was just scared about the situation and, I mean, obviously after I got caught, I talked to [my probation officer] right away and explained to her what happened.”

Marcos stated that he had been with his current employer for “[a]bout a month, month and a half.” When asked if this was the most stable employment in his recent past, Marcos responded, “It will be.”

Marcos believed that visits with Ace have gone well. Marcos plans things to do so that Ace is not bored. During visits, Ace behaves “exceptionally well” and when the visit is over he “never wants to leave.” Ace usually calls Marcos “Dad.” When Ace has called Marcos by name, Marcos asked Ace why he was doing that and he said that his foster mother “told him to.” (The foster mother testified that she encouraged Ace to call Marcos “Dad,” but Ace decided to start calling him Marcos.)

Marcos did not believe that terminating his parental rights was in Ace’s best interests. Marcos stated, “I’m pretty active in his life, I mean, I haven’t always been but I’m getting consistent” and “I feel like I’ve made a lot of progress in this case that’s been unacknowledged and I’ve come far away from who I was two years ago.”

JUVENILE COURT’S DECISION

In its order entered on November 20, 2025, the juvenile court adjudicated Ace to be a child within the meaning of § 43-247(3)(a) because he lacked proper parental care by reason of the fault or habits of Marcos and was in a situation dangerous to life or limb or injurious to his health or morals. The court also terminated Marcos’ parental rights to Ace after finding by clear and convincing evidence that statutory grounds existed pursuant to § 43-292(2), (6), and (7), that Marcos was unfit to parent Ace, and that termination of Marcos’ parental rights was in the child’s best interests.

Marcos appeals.

ASSIGNMENTS OF ERROR

Marcos assigns, restated, that the juvenile court erred in (1) finding that statutory grounds exist to terminate his parental rights under § 43-292(2), (6), and (7); and (2) finding that termination of his parental rights was in Ace’s best interests.

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 Mateo L. et al.*, 309 Neb. 565, 961 N.W.2d 516 (2021). 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

STATUTORY GROUNDS FOR TERMINATION

The State sought to terminate Marcos’ parental rights to Ace 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. *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 State to adduce evidence of any specific fault on the part of a parent. *In re Interest of Mateo L. et al.*, *supra*. In other words, if the 15-out-of-22 months’ period is met, § 43-292(7) is met. See *In re Interest of Mateo L. et al.*, *supra*.

Ace was removed from his mother for the final time on February 7, 2024, and remained in foster care thereafter. By the time the motion to terminate Marcos’ parental rights was filed on July 3, 2025, Ace had been in an out-of-home placement for nearly 17 months. The 15-out-of-22 months’ period was satisfied.

The State has shown clearly and convincingly that § 43-292(7) exists as a statutory basis for terminating Marcos’ parental rights to Ace. And since any one of the bases for termination codified in § 43-292 can serve as the basis for termination, we need not consider the sufficiency of the evidence concerning any other statutory basis for termination. *In re Interest of Mateo L. et al.*, *supra*.

Furthermore, we note that because we do not consider whether termination of parental rights was proper pursuant to § 43-292(6), Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2024), which requires reasonable efforts to reunify families, is not applicable to the instant case. Section 43-283.01 is only incorporated into § 43-292(6), not into the remaining subsections of § 43-292. See *In re Interest of Andrew M. et al.*, 11 Neb. App. 80, 643 N.W.2d 401 (2002). See, also, *In re Interest of Mateo L. et al.*, *supra* (reasonable efforts to reunify family required under juvenile code only when termination is sought under § 43-292(6)). We next consider whether termination is in Ace’s best interests.

BEST INTERESTS AND UNFITNESS

Under § 43-292, in addition to proving a statutory ground, the State must show that termination is in the best interests of the child. *In re Interest of Noah C.*, 306 Neb. 359, 945 N.W.2d 143 (2020). A child’s best interests are presumed to be served by having a relationship with his or her parent. *In re Interest of Leyton C. & Landyn C.*, 307 Neb. 529, 949 N.W.2d 773 (2020). This presumption is overcome only when the State has proved that the parent is unfit. *Id.* Although the term “unfitness” is not expressly stated in § 43-292, the Nebraska Supreme Court has said that it derives from the fault and neglect subsections of that statute and from an assessment of the child’s best interests. *In re Interest of Mateo L. et al.*, *supra*. In the context of the constitutionally protected relationship between a parent and a child, parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to a child’s well-being. *In re Interest of Leyton C. & Landyn C.*, *supra*. The best interests analysis and the parental fitness analysis are separate inquiries, but each examines essentially the same underlying

facts as the other. *Id.* We have previously set forth the evidence presented at the termination hearing, and we will not recount it again here.

Marcos argues that his “substantial rehabilitative efforts demonstrate his present capability to parent” and that he is making progress on probation “no matter how much the State wants to paint a picture like [he] is constantly using drugs while on probation.” Brief for appellant at 15. Marcos also points to his “fantastic supporting cast of family who are also active in Ace’s life.” *Id.*

While there are some signs of recent progress, this juvenile case has been ongoing since March 2021, and Marcos has never progressed beyond supervised visitation. He has been incarcerated and served custodial sanctions while on probation. Additionally, he has missed numerous drug tests and tested positive as recently as October 2025, leading to questions about his sobriety. Marcos’ own actions served as a barrier to progressing beyond supervised visits. Marcos had only recently been more consistent in having his limited visits with Ace. But following visits, Ace reportedly exhibited a pattern of behavioral and emotional dysregulation.

At the time of the termination hearing Ace was 4½ years old. He had been in an out-of-home placement for the past 21 months, and for a total of 39 months during his lifetime. As noted by the State, Marcos “has been provided with ample opportunity to rehabilitate himself and has been unsuccessful” and “Ace’s well-being is detrimentally affected by [Marcos’] instability.” Brief for appellee at 18. Caseworker Sitorius believed that Ace needed a permanent home. Supervisor Lemke testified that Ace deserves permanency, and she opined that it was in Ace’s best interests to terminate Marcos’ parental rights. We agree. “Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity.” *In re Interest of Walter W.*, 274 Neb. 859, 872, 744 N.W.2d 55, 65 (2008). And 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 Leyton C. & Landyn C.*, *supra*. The State proved that Marcos was unfit, meaning that he has a personal deficiency or incapacity which has prevented, or will prevent, performance of a reasonable parental obligation in child rearing and which has caused, or probably will result in, detriment to the child’s well-being. See *id.* We further find that there is clear and convincing evidence that it is in Ace’s best interests to terminate Marcos’ parental rights.

CONCLUSION

For the foregoing reasons, we affirm the order of the juvenile court terminating Marcos’ parental rights to Ace.

AFFIRMED.