IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

IN RE INTEREST OF JOSIAH E.

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IN RE INTEREST OF JOSIAH E., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

DE'TERENCE S., APPELLANT, AND ALEXIS E., APPELLEE.

Filed November 17, 2026. No. A-26-014.

Appeal from the Separate Juvenile Court of Douglas County: MARY M.Z. STEVENS, Judge. Affirmed.

Joseph Kuehl, of Lefler, Kuehl, and Burns Law Office, for appellant.

Thomas C. Riley, Douglas County Public Defender, and Nicole J. Tegtmeier for appellee Alexis E.

Jackson Stokes, Deputy Douglas County Attorney, for appellee State of Nebraska.

RIEDMANN, Chief Judge, and BISHOP and WELCH, Judges.

RIEDMANN, Chief Judge.

I. INTRODUCTION

De'Terence S. appeals, and Alexis E. cross-appeals, from the orders of the separate juvenile court of Douglas County terminating their parental rights to their son, Josiah E. Following our review, we affirm the orders of the juvenile court.

II. BACKGROUND

1. PROCEDURAL HISTORY

Josiah was removed from Alexis' care in June 2022 and, in September, was adjudicated as to Alexis based on her plea that the allegations that Josiah was in a situation injurious to his health were true. The State did not file to adjudicate Josiah as to De'Terence until January 2024. In May, Josiah was adjudicated as to De'Terence based on De'Terence's faults or habits, specifically his failure to take meaningful steps to obtain placement of Josiah and his failure to provide proper parental care and housing. The State filed motions to terminate De'Terence's and Alexis' parental rights in May 2025, alleging that Josiah was within the meaning of Neb. Rev. Stat. § 43-292(2), (6), and (7) (Reissue 2016). A hearing on the motions was held on August 20 and 22, and September 12. We recite only that evidence presented at the termination hearing as is necessary to resolve these appeals.

2. TERMINATION HEARING

(a) Josiah

Josiah was born in January 2021, at 28 weeks, and spent approximately 9 months in the hospital prior to discharge. In June 2022, the State filed an ex parte motion for immediate custody based on a physician affidavit averring that Josiah had demonstrated the ability to gain weight while hospitalized but had significantly slowed weight gain or lost weight when cared for at home. The physician averred that Josiah's malnutrition was "causing ongoing [] harm to his ongoing brain and body development." Josiah was placed with his foster mother and has remained in her care ever since.

Josiah has numerous diagnoses, including autism, global developmental delay, motor developmental delay, speech delay, obstructive sleep apnea, intermediate asthma, constipation, gastronomy tube dependency, non-compaction cardiomyopathy, a tethered cord, and cysts on his spine. Josiah participated in applied behavioral analysis (ABA) therapy Monday through Friday, speech therapy weekly, and feeding therapy every 2 to 3 weeks. He saw a "GI" doctor every 3 to 6 months, a "regular" doctor every year, and a cardiologist every 2 years. Josiah had seen a neurologist three times while in his foster mother's care. He was also scheduled to start occupational therapy. Josiah's foster mother estimated that not including ABA therapy, Josiah could have anywhere from 9 to 10 different appointments each month.

At the time of the termination hearing, Josiah was reliant on tube feeding for most of his nutritional needs. Although Josiah was not malnourished at the time of the termination hearing, "for a while that was a diagnosis associated to him." This was a changing scenario and evolved every visit. Josiah's "GI" issues were not expected to be resolved in the next year. If Josiah was not provided with his tube feedings, he would be at risk of significant morbidity, malnutrition, and even mortality.

Morgan Brdicko, Josiah's speech language pathologist, used handouts and occasionally videos to educate caregivers, but she preferred they be present in person. Josiah had made progress in his speech therapy, but at the time of the termination hearing still needed prompting to ask for help, request something if he was hungry or thirsty, or get his wants and needs met. As Josiah progressed, the strategies used would change and Brdicko preferred that a caregiver demonstrate

consistency in attending sessions. Brdicko thought Josiah was "probably not" likely to complete his work with her in the next year.

In April 2025, Josiah began ABA therapy with Victoria Rosales, spending approximately 35 to 40 hours per week in therapy. In therapy, Josiah worked on communication, specifically his expressive and receptive language, his social skills such as playing and engaging appropriately with peers, and his adaptive skills such as transitions, feeding, using the bathroom, waiting, and tolerating denied access. Rosales would meet with caregivers to collaborate on the skills being learned in therapy. She described that Josiah was routine, and when things were off his routine he did not respond well and it typically resulted in tantrums. Since beginning ABA therapy, Josiah had learned about 150 skills, but had the strategies not been implemented at home, that number might have been closer to 75 or 100. At the time of the termination hearing, Rosales did not expect that Josiah would be finished with ABA therapy in the next 6 months.

Selena Leon, a Nebraska Department of Health and Human Services caseworker, was assigned to Josiah's case in June 2023. She believed it was in Josiah's best interests that De'Terence's and Alexis' parental rights be terminated.

(b) De'Terence

De'Terence was ordered to obtain safe housing, obtain and provide proof of legal income, participate in supervised visitation, and attend all of Josiah's medical appointments.

(i) Housing

De'Terence maintained appropriate housing. From June 2023 to the termination hearing, De'Terence had three different residences, and Leon had conducted a walkthrough of all of them. His home at the time of the termination hearing had sufficient room for Josiah.

(ii) Employment

At the time of the termination hearing, De'Terence was working as security in a casino, a job he had held since June 2024. When he first started, he provided pay stubs to Leon but had not done so since that time.

(iii) Visitation

De'Terence participated in supervised visitation, which had to be paused in October 2024 due to his arrest, but it restarted shortly thereafter. Leon never recommended that the visitation level be liberalized. She stated there was a lack of interaction shown in visitation reports and confirmed that De'Terence and Josiah were still in the phase of establishing a bond. In the 6 months prior to the termination hearing, De'Terence had missed less than 25 percent of visits, and many of the missed visits were because of the visitation agency. Visits were appropriate, but Josiah's foster mother had concerns that De'Terence was not administering Josiah's full tube-feed during visits.

(iv) Medical Appointments

In the 6 months prior to the termination hearing, De'Terence attended about 90 percent of medical appointments, but if speech and feeding therapy appointments were included, it was only about 50 percent. Although De'Terence attended the medical appointments, he did not have much

interaction with the providers. De'Terence attended approximately 6 of 37 speech therapy appointments. He did not respond when Rosales attempted to contact him. De'Terence could not name all of Josiah's providers, nor was he able to name all of Josiah's specific diagnoses or medications.

(c) Alexis

Alexis was ordered to complete four goals that remained the same throughout the case and, for periods of time, additional requirements were added. The four main goals were to obtain safe housing, obtain and provide proof of a legal source of income, participate in supervised parenting time, and attend all medical appointments. Most of the evidence at the termination hearing, as it related to Alexis, focused on these four goals. Alexis has four other children, none of whom have been removed from her care. They are not involved in this appeal, and we reference them only as necessary.

(i) Housing

Alexis had inconsistent housing, having had approximately six different housing situations since Leon had been assigned the case.

(ii) Employment

Alexis reported being employed at various places but had not always provided Leon with proof of employment. She was employed at the time of the termination hearing but had not provided proof of this employment.

(iii) Visitation

Alexis participated in supervised visitation. Leon never recommended that the visitation level be liberalized because of the inconsistency in attendance. Alexis created the visitation schedule, but Josiah's foster mother estimated that in the year and a half prior to the termination hearing, Alexis had missed approximately 90 percent of visits. Alexis stated she missed visits due to her other children's schedules, or when her other children were sick. When visits were missed, Josiah would cry, not listen, and get mad. Alexis was engaged with Josiah when visits did occur. Leon noted there were concerns that Alexis had difficulty maintaining control of all the children.

(iv) Medical Appointments

At one time, Josiah's foster mother worked with Alexis' schedule for appointments, but Alexis still did not attend. Eventually, his foster mother began to schedule appointments when they worked with her own schedule. Josiah's foster mother estimated that Alexis attended about 30 percent of his appointments. Of the approximately eight feeding therapy appointments the foster mother attended with Josiah, Alexis was present at one. Alexis attended approximately 8 of 37 speech therapy appointments and would interact with Josiah when she did. She asked appropriate questions when she attended Josiah's neurology appointment. Alexis set a meeting with Rosales, but the meeting had to be canceled, and Alexis never responded to Rosales' attempt to reschedule. At the termination hearing, Alexis had difficulty identifying all of Josiah's providers and naming all his specific diagnoses. She stated that if Josiah were in her care, she would arrange for him to see the same providers as her other children.

3. JUVENILE COURT ORDER

The juvenile court noted that De'Terence engaged in parenting time, attended some medical appointments but failed to participate in ABA therapy or swallowing therapy, and attended approximately 22 percent of speech therapy appointments. It highlighted Alexis' lack of stable housing, failure to participate in Josiah's necessary care, and her lack of participation in scheduled parenting time. The court stated that both De'Terence and Alexis were unfit to parent. It found that the State had proven Josiah was within the meaning of § 43-292(2), (6), and (7) and that termination of De'Terence's and Alexis' parental rights was in Josiah's best interests. The court denied Alexis' motion for continued visitation, referring to her lack of participation in visits.

III. ASSIGNMENTS OF ERROR

De'Terence assigns, restated, that the juvenile court erred in finding that termination of his parental rights was in Josiah's bests interests. Alexis assigns, restated, that the court erred in finding a statutory basis to terminate under § 43-292(2), (6), and (7), finding that termination of her parental rights was in Josiah's best interests, and in denying her motion for continued visitation pending appeal.

IV. 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*.

V. ANALYSIS

1. STATUTORY BASIS

Alexis assigns that the juvenile court erred in finding that the State had proved a statutory basis for removal under § 43-292(2), (6), and (7). We disagree. To terminate parental rights, it is the State's burden 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. *In re Interest of Cameron L. & David L.*, 32 Neb. App. 578, 3 N.W.3d 376 (2024). Section 43-292(7) states that the court may terminate all parental rights between the parents and a juvenile when the court finds that "[t]he juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months." This section 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. See *In re Interest of Mateo L. et al.*, 309 Neb. 565, 961 N.W.2d 516 (2021).

Here, the evidence showed that Josiah had been in out-of-home placement since June 2022. At the time the motions to terminate parental rights were filed in May 2025, Josiah had been in out-of-home placement for over 34 months. This was sufficient to meet the requirements of § 43-292(7); therefore, a statutory basis for termination was proven by clear and convincing evidence. See *In re Interest of Jessalina M.*, 315 Neb. 535, 997 N.W.2d 778 (2023) (existence of statutory basis alleged in § 43-292(7) should be determined as of date petition or motion to terminate filed). Because grounds existed for termination under § 43-292(7), we need not address

Alexis' arguments related to the other statutory bases. See *In re Interest of Mateo L. et al., supra*. The juvenile court did not err in finding the existence of a statutory basis for termination.

2. Unfitness and Best Interests

Both De'Terence and Alexis assign that the juvenile court erred in finding that termination of his or her parental rights was in Josiah's best interests. We find that the juvenile court did not err in its determination. In addition to proving a statutory ground, the State must show that termination of parental rights is in the best interests of the child. *In re Interest of Cameron L. & David L., supra*. See, also, § 43-292. Whereas statutory grounds are based on a parent's past conduct, the best interests inquiry focuses on the future well-being of the child. *In re Interest of Mateo L. et al., supra*.

A parent's right to raise his or her child is constitutionally protected; so before a court may terminate parental rights, the State must show that the parent is unfit. *In re Interest of Cameron L. & David L., supra*. There is a rebuttable presumption that the best interests of a child are served by having a relationship with his or her parent. *Id*. This presumption is overcome only when the State has proved that the parent is unfit. *Id*. 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 caused, or probably will result in, detriment to the child's well-being. *Id*.

The best interests analysis and the parental fitness analysis are fact-intensive inquiries. *Id*. And while both are separate inquiries, each examines essentially the same underlying facts as the other. *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. *Id*.

(a) De'Terence

De'Terence had appropriate housing and was employed, although he failed to consistently verify his employment. His visits with Josiah had to be paused for a brief period due to his arrest. However, in the 6 months prior to the termination hearing, De'Terence had missed less than 25 percent of visits, and most of the missed visits were due to the visitation company. Visits were appropriate but never moved beyond supervised visitation, there was a lack of engagement during visits, and De'Terence was still establishing a bond with Josiah. There were some concerns regarding De'Terence's administration of Josiah's tube feeds during visits.

In the 6 months prior to the termination hearing, De'Terence had improved his attendance at medical appointments, not including speech and feeding therapy. But when in attendance, De'Terence did not have much interaction with the providers. He attended about 6 of 37 speech therapy appointments, and Brdicko preferred that a caregiver demonstrate consistency in attending appointments. De'Terence did not respond to Rosales when she reached out to him. At the termination hearing, he could not name all of Josiah's providers, specific diagnoses, or medications.

On appeal, De'Terence argues that appointments were made without regard for his schedule and were always set during his work hours. However, De'Terence could have reached out to Rosales outside of his work hours to discuss the strategies and skills Josiah was learning in

ABA therapy, but he failed to do so. Rosales noted that Josiah did not respond well when off his routine, and that had his ABA strategies not been implemented at home, he would have made considerably less progress. Considering the amount of time Josiah spent in ABA therapy each week, De'Terence's failure to engage with Rosales is troubling. We agree with the juvenile court's statement that the evidence showed that De'Terence "never made sufficient proactive efforts to position himself to provide the day-to-day care of a child with Josiah's complex medical needs."

The law does not require perfection of a parent. See *In re Interest of Cameron L. & David L.*, 32 Neb. App. 578, 3 N.W.3d 376 (2024). However, with Josiah's special needs, there is less room for error when seeing to his care. De'Terence made efforts in this case, but they were insufficient to place himself in a position to provide the care Josiah requires. Given Josiah's particularized needs, and the evidence discussed above, the State met its burden to show that De'Terence was unfit, and that termination of his parental rights was in Josiah's best interests. The juvenile court did not err in terminating De'Terence's parental rights.

(b) Alexis

Alexis had inconsistent housing. Although employed, she did not always provide proof of employment. Alexis created her visitation schedule, but in the year and a half prior to the termination hearing, had missed approximately 90 percent of visits. When a visit was missed, Josiah displayed negative behaviors. When visits occurred, Alexis was engaged, although it appeared she had difficulty maintaining control over all the children. Leon never recommended the visitation level be liberalized due to the inconsistency of Alexis' attendance. When she missed visits, Alexis stated it was due to her other children's schedules, or when her other children were sick.

Alexis attended about 30 percent of Josiah's appointments. She was present at only one of the eight feeding therapy appointments Josiah's foster mother attended. Alexis attended approximately 8 of 37 speech therapy appointments, and Brdicko preferred a caregiver to demonstrate consistency in attending appointments. When she did attend, Alexis interacted with Josiah. She asked appropriate questions when attending a neurology appointment. Alexis set a meeting with Rosales but never rescheduled when the original meeting was canceled. Despite difficulty in naming Josiah's providers and his specific diagnoses, Alexis stated if Josiah were in her care she would arrange for him to see the same providers as her other children. At the termination hearing, Alexis confirmed that she felt that she had to pick and choose between her children, and that if Josiah returned to her care, the issues with visitation and attendance at appointments would be alleviated. But Josiah's foster mother testified that at one point she had worked with Alexis' schedule for appointments, and Alexis still did not attend.

Alexis argues that her situation is similar to that presented by *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007), where the Nebraska Supreme Court reversed the termination of a mother's parental rights. It noted that the child's special medical needs that had served as the basis for his adjudication were no longer present See *id*. It later noted that the alleged deficiencies in the mother's parenting would not have justified removal had they been the basis for adjudication. See *id*. As such, "[t]hey should not have served to keep him out of the home once the reasons for his removal had been resolved; neither should a child be held hostage to compel a parent's

compliance with a case plan when reunification with the parent will no longer endanger the child." *Id*. at 351, 740 N.W.2d at 26.

Alexis argues this record is void of many of the parenting deficiencies presented in *Xavier*, and that "the reasons this case came into care have largely been resolved." Brief for cross-appellant at 29. But at the time of the termination hearing, Josiah was dependent on a gastronomy tube for most of his nutritional needs. Failing to provide the tube feeds would place him at risk of morbidity, malnutrition, and even mortality. Although Josiah had progressed in his speech therapy, he still needed to be prompted to ask for assistance, and he was not expected to complete ABA therapy within the next 6 months. Josiah's need for specialized care has not been resolved. Alexis argues that she testified that the logistical burden of coordinating Josiah's appointments and visits with her other children made it nearly impossible to attend each appointment and visit. But Alexis also failed to reschedule her meeting with Rosales to engage in ABA therapy. Communicating with Rosales was not hindered by the needs of her other children and would have been beneficial to Josiah, but Alexis failed to make this effort.

Alexis also argues that there was a "notion" that she had "a lot on her plate" in caring for her other children and would not be able to meet Josiah's needs, but that her ability to safely care for her other children is evidence to the contrary. In its order terminating her parental rights, the juvenile court referenced Alexis' lack of stable housing, failure to participate in Josiah's care, and failure to attend her parenting time. It does not appear to this court that the juvenile court terminated Alexis' parental rights because it thought she could not provide care for all of her children. Rather, it terminated her parental rights because the evidence showed that Alexis was unable or unwilling to provide the necessary care Josiah requires due to his medical and developmental needs.

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 Cameron L. & David L.*, 32 Neb. App. 578, 3 N.W.3d 376 (2024). When considering the evidence discussed above, along with Josiah's medical needs, the State met its burden to show Alexis was unfit, and that termination of her parental rights was in Josiah's best interests. The juvenile court did not err in terminating Alexis' parental rights.

3. CONTINUED VISITATION

Alexis assigns that the juvenile court erred in denying her motion for continued visitation pending appeal. We disagree. The court referenced Alexis' lack of participation in visits when denying this motion. In *In re Interest of Z.D.D. and N.J.D.*, 230 Neb. 236, 430 N.W.2d 552 (1988), the Supreme Court found that the decision to deny a father's request for visitation after his parental rights were terminated was supported by the record. See *id*. It stated that "[a]fter parental rights have been terminated, visitation while an appeal is pending would not be in the best interests of children who already have been in limbo for months or years." *Id*. at 243, 430 N.W.2d at 556. Considering Alexis' poor attendance at visits prior to the termination hearing, and the length of time Josiah has been in foster care, it would not have been in his best interest to have continued visitation pending this appeal. The juvenile court did not err in denying Alexis' motion.

VI. CONCLUSION

The juvenile court did not err in finding that a statutory basis existed for the termination of parental rights, nor in its determination that termination of De'Terence's and Alexis' parental rights was in Josiah's best interests. It did not err in denying Alexis' motion for continued visitation pending appeal. We affirm the orders of the juvenile court.

AFFIRMED.