

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Aaliyah C.,)
A child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Dadreon M.,)
)
Appellant.)

No. A-13-1028

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

APR 17 2014

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

INBODY, Chief Judge, and MOORE and PIRTLE, Judges.

MOORE, Judge.

INTRODUCTION

Dadreon M. appeals from the order of the separate juvenile court for Douglas County which terminated his parental rights to his minor child, Aaliyah C. Because we find sufficient grounds to support termination and that such is in the best interests of Aaliyah, we affirm.

BACKGROUND

Dadreon is the biological father of Aaliyah born in July 2009. Aaliyah's mother, Channell C., was herself a minor and a state ward at the time of Aaliyah's birth. It does not appear that Dadreon and Channell have ever resided together with Aaliyah as a family. Channell is not involved in this appeal, and we have set forth only those facts about Channell necessary



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to provide context for Dadreon's appeal. Dadreon, born in November 1991, was 17 years old at the time of Aaliyah's birth. Aaliyah became a state ward and entered foster care in November 2010 and has not been returned to Channell's care or placed in Dadreon's care since that time.

On November 9, 2010, the State filed a petition in the juvenile court, alleging that Aaliyah came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) due to the faults and habits of Channell. The State's removal affidavit stated that Channell, then 17 years old, ran away from her parents' home with Aaliyah in September with no baby supplies, and had only phone contact with her parents until October when she took Aaliyah to a medical clinic with a diaper rash. According to the affidavit, Channell had been staying with a friend, refused to return to her parents' home, ran away from the friend's home late in October, and was still on the run with Aaliyah at the time of the affidavit in November. The affidavit noted that Channell had made reports to the CPS hotline regarding her parents numerous times and that she refused to come in and meet with a case worker. The affidavit also noted past reports that Dadreon, who was Channell's boyfriend and Aaliyah's father, had held a gun to Channell's head. The court issued an order on November 9 for immediate custody, placing Aaliyah in the custody

of the Nebraska Department of Health and Human Services (the Department) with placement to exclude Channell's home.

On March 21, 2011, the juvenile court adjudicated Aaliyah as being within the meaning of § 43-247(3)(a) with respect to Channell. The court found it would be in Aaliyah's best interests to remain in the temporary care and custody of the Department with placement to exclude Channell's residence. The permanency objective at that time was reunification. We note that in December the permanency objective changed to reunification concurrent with adoption.

On February 28, 2012, the State filed a motion for termination of Channell's parental rights under Neb. Rev. Stat. § 43-292(2), (6), and (7) (Cum. Supp. 2012). The State's motion was set for hearing on July 6, but the record on appeal does not include any order associated with that hearing.

On October 30, 2012, the State filed a supplemental petition in the juvenile court, alleging that Aaliyah came within the meaning of § 43-247(3)(a) due to the faults or habits of Dadreon, in that he had failed to provide proper parental care and support for Aaliyah and that due these allegations, she was at risk for harm. The State also alleged that Aaliyah came within the meaning of § 43-292(1), (2), (7), and (9) and that termination of Dadreon's parental rights was in Aaliyah's best interests. Finally, the State alleged that reasonable efforts

under Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2010) were not required because Dadreon had subjected Aaliyah to aggravated circumstances including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

A hearing was held on the supplemental petition on June 24, 2013. The juvenile court heard testimony from two case workers, Aaliyah's foster parent, and Dadreon. The court also received various exhibits into evidence, including a DNA genetic testing report, an order of paternity and support, and certified copies of Dadreon's convictions for assault and battery, domestic assault, and possession and transportation of firearms.

Erica Bush was the case worker assigned to this case from June 2011 to March 2012. During Bush's first week on the case, she met with Channell, who identified Dadreon as an alleged father of Aaliyah. In June, Bush contacted Dadreon by phone, and she spoke once with him and once with his mother. When Bush spoke with Dadreon, she told him that he needed to intervene in the juvenile case because he had been named as an alleged father. Bush explained what intervention was and how to do it. Bush also explained the need to obtain paternity testing and provided Dadreon with a telephone number for Child Support Enforcement to start the genetic testing process. According to Bush, Dadreon expressed concerns about having to pay child support, but she explained that it was important to establish

paternity and that child support would not be assessed until paternity was established.

Dadreon did not contact Bush about Aaliyah between June and September 2011. In September, after learning that Dadreon was in jail, Bush sent him a letter, stating that she thought Dadreon was Aaliyah's alleged father and that she would like him to intervene in the case and obtain paternity testing. Bush provided the same information she had given Dadreon in June with respect to intervention and paternity testing, and she included her contact information in case he needed her assistance with those tasks. According to Bush, she never received a response to her letter.

Bush did not have further contact with Dadreon until January 2012 when he and his mother attended a family team meeting where they discussed the lack of progress with the case and the need for Dadreon to intervene and establish paternity. Bush relayed the same information about intervention and paternity testing that she had given him in 2011. Bush also provided Dadreon with a telephone number for Fathers for a Lifetime, which Bush described as a community program to help fathers become engaged throughout the court process and in other ways, so he could "get invested" in the case if he was still interested in doing so. According to Bush, Dadreon again told her he was interested in paternity testing but was concerned

about having to pay child support for Aaliyah. At the time, Dadreon had just been released from jail and was having difficulty finding employment due to his criminal record. Dadreon told Bush he was interested in participating in Fathers for a Lifetime, but she did not follow up to see whether he had done so. During the team meeting, Bush also provided Dadreon with the number for vocational rehabilitation because she knew he was interested in finding employment and gave him contact information for some companies that hire people who have difficulty obtaining work due to their criminal records.

During Bush's time as Aaliyah's case worker, Dadreon did not intervene in the case or attend any juvenile court hearings; he never had supervised visitation with Aaliyah; and he did not send Bush any cards, gifts, letters, or money for Aaliyah. Bush opined that Aaliyah would be at risk for harm if placed in Dadreon's care because he did not have the skills to provide for her. Bush also noted the violent relationship between Dadreon and Channell.

Angelitta Hass was Aaliyah's case worker at the time of the termination hearing and had been so since December 2012. Hass has had limited contact with Dadreon, but she spoke with him briefly by phone in February 2013 about what he needed to do and when he would be released from jail. A week prior to the June 24 termination hearing, Dadreon contacted Hass and told her he

thought he would be released at the end of July 2013. Dadreon was continuously incarcerated during the time between the two phone conversations. During the conversation the week before the hearing, Hass and Dadreon also discussed the fact that Dadreon would like Aaliyah to be placed in a family home and the things Dadreon needed to do in relation to the case.

Hass is the case worker on another juvenile court case involving an 8-month-old child of Dadreon and Channell, who was made a State ward at birth. Dadreon received a psychological evaluation in that case in March 2013. Recommendations for Dadreon resulting from the evaluation included therapeutic visitation, parenting classes, domestic violence awareness, anger management, and a family support worker to work with him on parenting issues, but the State has been unable to provide those recommendations due to Dadreon's incarceration. Dadreon has not been reunified with the child in that case. Hass agreed that Dadreon has shown interest in complying with court orders in that case when he is able to do so.

According to Hass, Aaliyah needs a skilled parent and requires extra supervision because of her behaviors, which in the past have included explosive tantrums, although her behaviors have improved. At the time of the termination hearing, Aaliyah was receiving physical and occupational therapy because she loses her balance when walking, and she was receiving speech

therapy because her speech is quite delayed. Hass has witnessed multiple interactions between Aaliyah and her foster parents in the foster home, showing Aaliyah as happy, following directions, hugging her foster mother, and being very talkative with the other children in the home.

During Hass' time as the case worker, Dadreon had no visits with Aaliyah; he did not send her any cards, gifts, letters or money; and he did not intervene in the case. Hass was aware of documentation, however, showing that Dadreon had tried to make phone contact with Aaliyah through Channell, by getting on the phone when Channell called the foster home to speak with Aaliyah. Hass testified that Aaliyah would be at risk for harm if placed in Dadreon's care and custody because he has had no contact with her, there is no attachment or bond, she requires extra supervision because of her behaviors, and he is unable to provide a stable home or financial support because of his current incarceration. Hass testified further that it would be in Aaliyah's best interests if Dadreon's parental rights were terminated because he has had no contact with her, she does not know him as her father, and Aaliyah is in a safe and stable home where she receives the love and care that she needs.

Eris Mackey had been Aaliyah's foster parent for over a year and a half at the time of the termination hearing. During that time, no one alleging to be Aaliyah's father has ever

called Mackey's home to speak with Aaliyah, to inquire about her well-being, or to request visitation with her. Nor has Mackey received any cards, gifts, letters, or money from anyone alleging to be Aaliyah's father.

A genetic testing report from August 2012 shows that Dadreon is Aaliyah's father. In September 2012, the district court entered an order of paternity and support, finding Dadreon to be Aaliyah's father and ordering child support of \$0 due to Dadreon's incarceration.

The court received copies of certain criminal convictions of Dadreon. He pled guilty and was convicted of possession and transportation of firearms in 2009. Dadreon pled guilty and was convicted of three counts of assault and battery in March 2012 and was incarcerated for 6 months between April and October. He pled no contest and was convicted of one count of third degree domestic assault against Channell, was incarcerated in December, and remained incarcerated at the time of the termination hearing.

Dadreon testified about his contact with Aaliyah and his attempts to intervene in the case and obtain genetic testing. With respect to contact, Dadreon testified that he attempted to see Aaliyah right after she was born. He testified that Channell's parents kept canceling his appointments to see Aaliyah and that he was only able to see her after arriving at

their house unannounced. Dadreon was also able to see Aaliyah when Channell was on the run. According to Dadreon, Channell left Aaliyah with him a couple of times during that period and he cared for her. Dadreon testified that he regularly attempted to visit Aaliyah when visitations were held with Channell at the Urban League and that he was able to do so when visits were not supervised. He testified that he was approved by a lady who worked there, and that he was signed up for parenting classes at that location, but that he was there mostly to see Aaliyah. Later, when visits became supervised, he still tried to see Aaliyah but was told he had to be approved and get involved legally. According to Dadreon, Aaliyah does know who he is. Dadreon testified that he stopped going to visits at the Urban League when he became incarcerated, although it was not clear to which incarceration he was referring.

Dadreon testified that he was given the telephone numbers for multiple providers to call about genetic testing. According to Dadreon, one of the contacts required money for such testing, and he was not able to afford it. He testified that he communicated this to his support worker, who then provided the number for Fathers for a Lifetime, and that he was never called back after initially contacting that organization. Dadreon had genetic testing done while he was incarcerated in 2012.

With respect to intervention, Dadreon testified that he received three letters while he was incarcerated in the first part of 2012 from a case worker, other than the case workers who testified, about Aaliyah being adopted and intervening in the case. Dadreon called the case worker, explained that he did not want his daughter to be adopted and that it was difficult to do things while he was incarcerated. The case worker told him he needed to contact an attorney or the courts. Dadreon testified that because he did not have an attorney and did not know how to proceed, he tried to write to the juvenile court judge while he was incarcerated. Dadreon testified that when he was released from jail in October, he filled out an affidavit to intervene in this case. However, no affidavit was offered into evidence and no petition to intervene had been filed by Dadreon at the time of the termination hearing.

Dadreon testified that he never intended to abandon Aaliyah; that no one ever provided him with an address where he could send her gifts or cards; that if someone had had done so, he would have attempted to send such things; that he loved Aaliyah; and that he felt he would be able to adequately support her. Dadreon agreed that he could not presently take care of Aaliyah; provide her with housing, clothing, and food; or take her to medical, physical therapy, occupational therapy, or speech therapy appointments because of his incarceration. He

testified, however, to his belief that he would be able to do so once released from jail and that he would also be able to obtain adequate housing at that time. He testified that he intended to live with his family until he obtained employment. Dadreon was last employed in June 2011.

On October 17, 2013, the juvenile court entered an order terminating Dadreon's parental rights to Aaliyah. The court found Dadreon's testimony not credible in general, although the court did reference Dadreon's testimony about his current incarceration. The court found by a preponderance of the evidence that Aaliyah was within the meaning of § 43-247(3)(a) with respect to Dadreon. The court found clear and convincing evidence to support termination under § 43-292(1), (2), (7), and (9) and that termination was in Aaliyah's best interests. The court also found that reasonable efforts were not required due to that fact that Dadreon had abandoned Aaliyah and chronically neglected her. Dadreon subsequently perfected his appeal to this court.

ASSIGNMENTS OF ERROR

Dadreon asserts that the juvenile court erred in (1) finding clear and convincing evidence of grounds for termination of his parental rights under § 43-292(1), (2), (7), and (9); and (2) finding clear and convincing evidence that termination of his parental rights was in Aaliyah's best interests.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Marcella G.*, 287 Neb. 566, ___ N.W.2d ___ (2014).

ANALYSIS

Statutory Grounds.

Dadreon asserts that the juvenile court erred in finding clear and convincing evidence of grounds for termination of his parental rights under § 43-292(1), (2), (7), and (9).

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in § 43-292 exists and that termination is in the child's best interests. *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012). Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of the fact to be proved. *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006).

Under § 43-292(7), the State must show that the child has been in an out-of-home placement for 15 or more months of the most recent 22 months. The evidence was unchallenged that Aaliyah has remained in out-of-home placement continuously since November 2010, or approximately 2 years at the time of the

filing of the supplemental petition. Accordingly, the State proved § 43-292(7) by clear and convincing evidence.

Because the State need prove only one ground for termination, we decline to consider Dadreon's assertion that the juvenile court erred in finding termination proper under § 43-292(1), (2), and (9). Generally, when termination is sought under subsections of § 43-292 other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. *In re Interest of Emerald C.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012). Thus, we will consider evidence relevant to §§ 43-292(1), (2), and (9) in our analysis of Aaliyah's best interests.

Best Interests.

Dadreon asserts that the juvenile court erred in finding clear and convincing evidence that termination of his parental rights was in Aaliyah's best interests.

There is evidence in the record of Dadreon's abandonment of Aaliyah. Whether a parent has abandoned a child within the meaning of § 43-292(1) is a question of fact and depends upon parental intent, which may be determined by circumstantial evidence. *Kenneth C. v. Lacie H.*, 286 Neb. 799, 839 N.W.2d 305 (2013). Abandonment is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence,

care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. *Id.* To prove abandonment in determining whether parental rights should be terminated, the evidence must clearly and convincingly show that the parent has acted toward the child in a manner evidencing a settled purpose to be rid of all parental obligations and to forgo all parental rights, together with a complete repudiation of parenthood and an abandonment of parental rights and responsibilities. *Id.* The time period for calculating the 6-month period of abandonment specified in § 43-292(1) is determined by counting back 6 months from the date the juvenile petition was filed. *Id.* Abandonment is not an ambulatory thing the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child. *Id.*

Dadreon has not had any physical contact with Aaliyah since she was a very young child and that contact was quite limited. He has never provided care, protection or maintenance for her, with the exception of a couple of times when Aaliyah, who was a little over 1 year old, was left with him by Channell when she was on the run.

In June 2011, after Aaliyah was adjudicated as to Channell, Bush spoke with Dadreon about Aaliyah being in foster care and first provided him with information about intervening and establishing paternity. She also provided him with this

information in September and again in January 2012. Hass provided Dadreon with information in February 2013 and he apparently also received information about intervening and establishing paternity from another case worker. Between November 2010 and June 2013, Dadreon provided no financial support, cards, gifts, or letters to Aaliyah. He did not take steps to establish paternity until August 2012 and he never intervened in the case.

Dadreon testified that he did not intend to abandon Aaliyah, and the record does show that he made some attempt to call Aaliyah in her foster home via Channell. He also testified that he visited Aaliyah during a period when her visits with Channell were unsupervised and that he cared for her on a few occasions when Channell was on the run. He testified that he filled out an affidavit to intervene in the case in October 2012, however, no affidavit was offered in evidence and no intervention had occurred at the time of the termination hearing.

We recognize that the juvenile court was able to observe the testimony at the termination hearing. In its order, the court specifically noted that it generally did not find Dadreon's testimony credible. Although we review this case de novo on the record, we are permitted to consider and give weight to the fact that the lower court observed the witnesses and

accepted one version of the facts over another. See *In re Interest of Justine J. et al.*, 286 Neb. 250, 835 N.W.2d 674 (2013). We determine that it is appropriate to give deference to the juvenile court in this case and we agree that there is evidence of abandonment of Aaliyah by Dadreon. Parental obligation requires a continuing interest in the child and a genuine effort to maintain communication and association with that child. *Kenneth C. v. Lacie H.*, *supra*. The minimal efforts made by Dadreon in this case do not amount to a genuine effort to maintain communication and association with Aaliyah.

The record also shows that Dadreon has substantially and continuously or repeatedly neglected and refused to give Aaliyah necessary parental care and protection. See § 43-292(2). Again, Aaliyah has never lived with or been placed with Dadreon and he has never provided her with any significant care or with financial support. For much of the time that the proceedings concerning Dadreon were pending, he was incarcerated. 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. *In re Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). Although incarceration alone cannot be the sole basis for terminating parental rights, it is a factor to be considered. *Id.* A parent may as surely neglect a child of whom he or she does not have possession by failing to

put himself or herself in a position to acquire possession as by not properly caring for a child of whom he or she does have possession. See *In re Interest of Elizabeth S.*, 282 Neb. 1015, 809 N.W.2d 495 (2012). Although incarceration itself may be involuntary as far as a parent is concerned, the criminal conduct causing the incarceration is voluntary. *In re Interest of Kalie W.*, 258 Neb. 46, 601 N.W.2d 753 (1999). In termination of parental rights cases, it is proper to consider a parent's inability to perform his or her parental obligations because of imprisonment, the nature of the crime committed, as well as the person against whom the criminal act was perpetrated. *Id.* And, one need not have physical possession of a child to demonstrate the existence of neglect contemplated by subsection (2) of this section. *Id.*

A juvenile's best interests are a primary consideration in determining whether parental rights should be terminated as authorized by the Nebraska Juvenile Code. Both Bush and Hass testified Aaliyah would be placed at risk for harm if placed in Dadreon's care because of his lack of contact with her, his lack of skill as a parent, and the special needs of Aaliyah. While Dadreon expressed a desire to be a parent to Aaliyah upon his release from incarceration, there is no evidence to suggest that reunification with Aaliyah could occur any time in the near future. 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, 744 N.W.2d 55 (2008).

The juvenile court did not err in finding that termination of Dadreon's parental rights was in Aaliyah's best interests.

CONCLUSION

The juvenile court did not err in terminating Dadreon's parental rights.

AFFIRMED.