



Interaction Between
Reasonable Efforts,
Aggravated Circumstances
and Termination of
Parental Rights

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Reasonable Efforts (NRS
43-283.01)

“Reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.”

Neb. Rev. Stat. 43-283.01

MUST use Reasonable Efforts to Reunify Family UNLESS a Court of Competent Jurisdiction has determined that:

- The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily, OR
- The parent has committed a specific type of felony against the juvenile or or another child of the parent, OR THE JUVENILE'S MOTHER; OR
- The parent has subjected the juvenile OR ANOTHER MINOR CHILD to aggravated circumstances.

In re DeWayne G.

- *In re DeWayne G.* (263 Neb. 43 (2002))
- Tells courts when to review reasonable efforts WHEN THEY ARE REQUIRED.
- Started out as a neglect case involving the mother.
- Then 3a and TPR filed on father

In re DeWayne G.

- Tells courts that no party can bring a motion requesting a “separate hearing” on the issue of whether reasonable efforts have been made.
- Tells courts that the issue of “reasonable efforts IF REQUIRED under 43-283.01” MUST be reviewed by a court at four distinct times.

When to Review R/E if Required?

1. Under 43-284: When removing a child from the home after adjudication under 43-247 (3) or (4). (Not sure why didn't add (9).
2. Under 43-254: When court continues an out-of-home placement pending an adjudication of any juvenile case.

When to Review R/E if Required?

3. Under 43-1315: When court reviews juvenile's status (disposition and reviews) and permanency plan.
4. Under 43-292(6): When TPR is sought under that section.

What *DeWayne G.* Does Not Address

Does NOT address how or when a court is to determine that reasonable efforts DO NOT have to be provided under the exceptions provided by 43-283.01.

When to Determine that R/E are NOT Required?

In re Janet J., 2001 WL 1221682:

Child born to unmarried parents.

Mother had previously been convicted of child abuse on two other children. Dad intended to stay with Mom and raise this child.

(3)(a)--Situation Dangerous--Filed "against" Mom and Dad

An Important Aside

In re Janet J., 2001 WL 1221682:

Why didn't County Attorney file a TPR against the mother under 43-292(2) or (10)?

In re Janet J.

In re Janet J., 2001 WL 1221682:

Child adjudicated under 43-247(3)(a)

Appeal Taken—Affirmed—Remanded for Disposition

In re Janet J.

Janet J., 12 Neb. App. 42 (2003):

On remand, Juvenile Court approved a case plan which did not provide for reasonable efforts to reunify with Mom

Appeal taken

Issue—Was the duty to provide reasonable efforts toward reunification with Mom excused under 43-283.01(4)?

In re Janet J.

Yes! No duty to provide reasonable efforts!

Evidence at dispositional hearing showed the mother had committed a felony assault resulting in serious bodily injury to another minor child of hers!

Proven by a preponderance of the evidence (Burden of proof will be disapproved by NSC in *In re Jac'Quez*)

When to Determine that R/E are not Required?

AT A DISPOSITIONAL HEARING!

How Prove that R/E are not Required?

The Juvenile Court in which the adjudication occurred is a court of competent jurisdiction to determine that an exception exists. *In re Janet J.*, 12 Neb. App. 42 (2003).

How to Prove that R/E are not Required?

Evidence of a criminal conviction from another court for the exact same crime should undoubtedly be sufficient evidence of the requisite triggering fact as long as it is a final order. (See *In re Jamie M.*, 14 Neb. App. 763 (2006)—TPR upheld under 43-292(10) after criminal conviction for murder of sibling was finalized)

A certified copy of court records of an involuntary termination in the same or a different court should be sufficient evidence

Query

If one of the exceptions to the duty to provide reasonable efforts is proven, are no reasonable efforts required?

Janet J. 's Answer

- "We think the words of 43-283.01 and the legislative history clearly demonstrate that the juvenile court must consider and determine whether the best interests of the child require reasonable efforts at reunification notwithstanding a finding of one of the situations in subdivision 4 and that in such consideration, the health and safety of the child must be paramount."
- But no other case says this!!!!

When Else Can a Court Determine that R/E are NOT Required?

Jac'quez N., 266 Neb. 782 (2003):

Severe Head Injury Case involving one child

3a Petition, Motion for TPR, and Motion to excuse reasonable efforts requirement brought against Mother and Father

State prevailed against Father. He did not appeal.

In re Jac'Quez

State wins 3a against Mother

State loses TPR and motion to excuse R/E requirement

Did not prove "aggravated circumstances" for TPR under 43-292 (9) or R/E motion under 43-283.01(4)(a)

Did not prove substantial and continuous or repeated neglect for TPR under 43-292 (2)

State appealed

In re Jac'Quez

Neb. Sup. Ct. reverses

Addresses Motion to Excuse R/E under 43-283.01(4)(a)

Upheld TPR under 43-292(9)

Burden of Proof to Excuse Reasonable Efforts—*Jac'quez*

Clear and Convincing Evidence:

“Dispensing with reasonable efforts at reunification frequently amounts to a substantial step toward termination of parental rights.”

(Disapproves language in *In re Janet J.*, 12 Neb. App. 42 indicating preponderance of the evidence was sufficient)

Definition of Aggravated Circumstances—*Jac'Quez*

- Nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child, and would place the child in a position of an unreasonable risk to be reabused.
- The child welfare agency may bypass reasonable efforts toward reunification where the circumstances created by the parent's conduct create an unacceptably high risk to the health, safety and welfare of the child.

Query

Should the Supreme Court in *Jac'Quez* have addressed the State's motion to excuse reasonable efforts?

Wasn't that motion moot once the Court upheld the TPR?

Query Restated

Must HHS provide reasonable efforts at reunification if a TPR has been proven at the beginning of its case?

Or, must the State plead and prove that an exception to providing reasonable efforts at reunification also exists?

Example

A mother suffers persistent, untreatable mental illness, such that she cannot and will not be able to parent.

She has a baby.

Father is unknown.

Can a TPR be successfully pursued immediately under 43-292(5)?

Or, does the court have to provide reasonable efforts to reunify because none of the exceptions in 43-283.01(4) can be proven?

Watch For It

In re Interest of Hope L., Neb. Sup. Ct.

Medical abuse of 3 siblings

4th born while awaiting TPR trial—
put in HHS custody so not abused

3a, TPR and Mtn to Excuse R/E
pled and proven

Argued it to Neb. Sup. Ct. last
week

Watch For It

In re Interest of Hope L., Neb. Sup. Ct.

Will the court uphold the TPR on all four
children?

Will the court say the R/E motion was
proven under 43-283.01 (c) since at
least one child's TPR was correct?

Will the court say it does not have to
address the R/E motion because it is
moot now that it has affirmed the TPR
on all four children?

Nuts and Bolts on 43- 283.01

Prior Termination

- Must have been of a Sibling of the Juvenile
- Must have been an Involuntary Termination

What's an Involuntary Termination?

- Admission to a Termination Petition or Motion?
- Unanswered Question

Type of Felony Conduct

- Toward another child of the parent
 - First or second degree murder or voluntary manslaughter
 - Aided or Abetted first or second degree murder or voluntary manslaughter
 - Attempted, conspired, or solicited to commit murder
- "Another Child"
 - Notice -- No Age Restriction

Type of Felony Conduct (cont.)

- Toward the Juvenile
 - Attempted, conspired, or solicited to commit murder
 - Felony Assault which results in Serious Bodily Injury

Type of Felony Conduct (cont.)

- Toward another Minor Child of the Parent
 - Felony Assault which results in Serious Bodily Injury
- “Minor Child”
 - Notice – Age Restriction

What is Felony Assault Resulting in Serious Bodily Injury?

- In re Janet J., 12 Neb. App. 42 (2003):
- The evidence would have to show that the parent committed an assault on the child, such assault being a felony under the law of the State of Nebraska and resulting in serious bodily injury to that child.
- What if the event happened in a different state? Unclear!

What is Felony Assault Resulting in Serious Bodily Injury? (cont.)

- Use 28-308 in Nebraska for what is a felony assault
- Use 28-109(20) for definition of serious bodily injury
 - Bodily injury which involves a substantial risk of:
 - Death
 - Serious Permanent disfigurement
 - Protracted loss or impairment of function of any part or organ of the body

How Determine What is Serious Bodily Injury?

- *In re Janet J.*, 12 Neb. App. 42 (2003):
- Trier of fact can use common knowledge to determine if victim has suffered serious bodily injury.
- Spiral fracture of a baby's leg which occurred as a result of excessive force being applied on the leg with a twisting action was serious bodily injury.

What is Aiding and Abetting?

- *In re Hailey M.* (NCA 2007)
- Participating in a criminal act which must be evidenced by word, act, or deed and mere encouragement or assistance is sufficient.
- Not necessary that the person take a physical part in the commission of the crime or that there was an express agreement to commit the crime
- Mere presence, acquiescence or silence is not enough

Example of Aiding and Abetting

- In re Hailey M. (NCA 2007)
- Mother aided or abetted murder or voluntary manslaughter by placing her child in a situation that endangered his life
- Did so by leaving her child alone with her boyfriend when she knew or should have known that the boyfriend was abusing the child

Query

- What if the parent “Aided and Abetted” a Felony Assault resulting in Serious Bodily Injury to another of her minor children?
- Would that be sufficient for a “no reasonable efforts finding” for a subsequent born child?

Aggravated Circumstances

- NO LONGER Child specific!!!
- Now include “or another minor child:”
 - “Per Se” Aggravated Circumstances:
 - Abandonment
 - Torture
 - Chronic Abuse
 - Sexual Abuse
 - Other Things can also be considered Aggravated Circumstances!
