

In Re Interest of Isabel P. et al.

Caselaw No.

No. S-15-487

Filed on

Friday, March 18, 2016

SUMMARY: The State appeals an order of the County Court for Madison County to not terminate Charles J.'s parental rights to his son, K.J. because it had not provided counsel for Charles in the proceedings leading up to the adjudication of K.J. The Supreme Court reverses and remands with directions.

On November 1, 2012, during the first adjudication petition hearing, the Juvenile Court declined to appoint Charles an attorney. Kristie, K.J.'s mother, was appointed an attorney. The Court ordered that K.J. remain with DHHS. Kristie eventually relinquished parental rights her children.

On August 27, 2014, the State petitioned to terminate Charles' parental rights. On October 15, 2014, Charles was appointed counsel.

At the TPR hearing, evidence was presented that Charles abandoned K.J. and that he did not fulfill his child support obligations for K.J. or any of his other children. During the 22-month period that K.J. was in foster care 2014 Charles visited K.J. for about 14 total hours. Charles' visits to K.J. in foster care also seemed to have a negative effect on K.J.

Following the termination hearing, the Juvenile Court found that it should have appointed an attorney for Charles at the adjudication hearing, and for that reason, it denied the State's petition to terminate the parental rights of Charles.

The State assigned error to the Juvenile Court declining to terminate Charles' parental rights without considering grounds (1) through (3) as listed under Neb. Rev. Stat. § 43-292. The GAL assigned the same error and also assigned that the Juvenile Court erred in not terminating Charles' parental rights to K.J.

Statutory interpretation is a question of law that an appellate court resolves independently of the trial court. *State v. Mendoza-Bautista*, 291 Neb. 876 (2015); *State v. Ramirez*, 285 Neb. 203 (2013); *State v. Dixon*, 282 Neb. 274 (2011). An appellate court reviews juvenile cases de novo on the record and reaches a conclusion independently of the juvenile court's findings. *In re Interest of Enyce J. & Eternity M.*, 291 Neb. 965 (2015).

For an appellate court to have jurisdiction, a final order must have been entered by the Court

that the appeal is taken from. See, Neb. Rev. Stat. § 43-2, 106.01 (Cum. Supp. 2014); In re Interest of Jassenia H., 291 Neb. 107 (2015). Under Neb. Rev. Stat. § 25-1902 (Reissue 2008), three types of final orders exist which may be reviewed on appeal. This case involves the second type, an order affecting a substantial right made during a special proceeding. Case law establishes that a proceeding before a juvenile court is a special proceeding for appellate purposes. In re Interest of Jassenia H., supra note 5; In re Interest of Meridian H., 281 Neb. 465 (2011); In re Interest of Thomas M., 282 Neb 316 (2011); In re Interest of Ty M. & Devon M., 265 Neb. 150 (2003); In re Interest of Anthony R. et al., 264 Neb. 699 (2002); In re Interest of Clifford M. et al., 258 Neb. 800 (2000). The Juvenile Court's order affected the State's right to protect the welfare interests of its resident child, K.J., which was a substantial right. In re Interest of Karlie D., 283 Neb. 581 (2012). Thus, the Appellate Court has jurisdiction over this case.

Defects during adjudication do not prevent contemplation of termination of parental rights pursuant to Neb. Rev. Stat. § 43-292(1) through (5) as long as a parent received due process. See, In re Interest of Joshua M. et al., 256 Neb. 596 (1999). The Nebraska Supreme Court found that Charles received due process. It concluded that the Juvenile Court erred in denying the State's motion to terminate parental rights without considering whether termination of parental rights was in the child's best interests or justified under grounds (1) through (3) of § 43-292.

To terminate parental rights, a court must find by clear and convincing evidence that one of the statutory grounds enumerated in Neb. Rev. Stat. § 43-292 exists and that the termination is in the child's best interests. See In re Interest of Kendra M. et al., 283 Neb. 1014 (2012). The Nebraska Supreme Court considered grounds (1) through (3) at the request of the State and GAL.

A parent's abandonment of his or her child for six months or more immediately prior to the filing of a petition to terminate parental rights is a ground for termination of such rights under § 43-292(1). In re Interest of Gabriella H., 289 Neb. 323 (2014). The Court concluded that Charles' sporadic, insubstantial efforts to maintain a relationship with K.J., combined with Charles' failure to visit K.J. in the six months prior to the filing of the termination petition, constituted clear and convincing evidence that Charles abandoned K.J. within the meaning of Neb. Rev. Stat. § 43-292(1).

The Supreme Court did not have to review the other alleged bases for termination of Charles' rights because Neb. Rev. Stat. § 43-292 only requires the State to prove one of the statutory grounds for termination of parental rights. See In re Interest of Joshua M. et al., supra note 1.

A child's best interests are presumed to be served by having a relationship with his or her parent. See, In re Interest of Jahon S., 291 Neb. 97 (2015); Kenneth C. v. Lacie H., supra note 14; In re Interest of Kendra M. et al., supra note 12; In re Interest of Ryder J., 283 Neb. 318 (2012). This presumption is overcome only when the State has proved that the parent is unfit. In re Interest of Jahon S., supra note 22.

Charles has been convicted of a number of drug charges and other felony charges during K.J.'s lifetime. Charles' criminal conduct has led to incarceration several times in K.J.'s life. This made it impossible for him to be consistently in K.J.'s life. Charles has left K.J. unsupervised, or supervised by questionable individuals. Testimony was given that Charles' interactions with K.J. are negative and K.J. does not want a relationship with Charles. Charles does not appear able to act in K.J.'s best interests.

The Court found that the State proved by clear and convincing evidence that Charles abandoned K.J. and that the termination of his parental rights was in K.J.'s best interests. The Nebraska Supreme Court reversed the decision of the Juvenile Court, remanded the case with directions to vacate its order from May 21, 2015, and entered an order terminating Charles' parental rights to K.J.
