

In re Interest of Jade H.

Caselaw No.

No. A-17-513

Filed on

Tuesday, March 27, 2018

Summary: Benjamin appeals the order of the Separate Juvenile Court of Douglas County terminating his rights to his three children. The Court here affirms.

Benjamin is the father of Jade, Aly, and Kazlynn. In October 2016, all three were in his vehicle when he was involved in a collision. Kazlynn was severely injured and placed on life support, Aly had serious injuries, but was doing well at the time of the hearing, and Jade had only minor injuries. All of the children were placed in protective custody the next day.

After the collision, Benjamin drove off to a park and disposed of alcohol into a trash can, as seen by an Omaha Police officer. In November 2016, the state filed an amended petition and TPR alleging aggravated circumstances, therefore TPR was warranted under Neb. Rev. Stat. § 43-292(2), (8), (9), and (10).

Evidence at trial showed that Benjamin had been the primary caretaker for all three of the children, getting custody of Jade after she spent some time in foster care as an infant due to her mother's alcohol addiction. The woman who had been Jade's foster mother as an infant became Jade and Aly's foster mother after the accident. Benjamin maintained contact with Aly and Jade via phone calls from jail. The foster mother testified that continued contact with their father would be in the children's best interests. The foster mother also testified about her observations of Benjamin's alcohol use.

The police officer testified that Benjamin was intoxicated at the scene of the accident and there was a bottle of whiskey and beer in the car. At the hospital, his blood alcohol content was .115. He has also been convicted of DUI in 2003, 2005, 2007, and 2009.

Aly had a hemorrhage in her brain because of the accident and was in the ICU for three days. She improved after that. Kazlynn also had a brain hemorrhage, a skull fracture, swelling of her brain, and other injuries. She has a severe brain injury and her prognosis is "really, really bad" and she is "neurologically devastated." She will never recover.

The case manager testified that there had been three previous intakes regarding Benjamin, including one in 2015. Based on his history of DUI and alcohol issues, she believed termination would be in the children's best interests.

Benjamin assigns error to the finding that the children came within the meaning of Neb. Rev. Stat. § 43-292(2), (8), (9), and (10), that the Court found that reasonable efforts were not required, and that TPR was in the best interests of the children.

An appellate court reviews juvenile cases de novo on the record and may give weight to the lower court's observation of the witnesses. *In re Interest of LeVanta S.*, 295 Neb. 151 (2016).

To terminate a parent's rights, the Court must find by clear and convincing evidence that one

of the statutory grounds exists in Neb. Rev. Stat. § 43-292 and that termination is in the best interests of the child.

Here, the Court finds that the State has proven by clear and convincing evidence Neb. Rev. Stat. § 43-292(9), which allows for termination where a parent has subjected a child to aggravated circumstances. The Supreme Court has found that, "where the circumstances created by the parent's conduct create an unacceptably high risk to the health, safety, and welfare of the child, they are "aggravated.?" In re Interest of Jac?Quez N., 266 Neb. 782 (2003). Failure to seek medical treatment for a child who has suffered serious physical injury meets the standard of Neb. Rev. Stat. § 43-292(9). Id. Here, Aly and Kazlynn had obvious and serious injuries after the accident. Benjamin saw their injuries, commented on them, but still delayed their care because he drove to a park to dispose of his alcohol. The Court finds that his delay in seeking care was "a conscious, intentional decision" to protect himself. Further, Benjamin chose to drive his children while he was intoxicated. Therefore, TPR was warranted under Neb. Rev. Stat. § 43-292(9).

Because only one statutory ground need be proven for TPR, the Court moves on to the claim about reasonable efforts toward reunification. The Nebraska Supreme Court has previously found that reasonable efforts to reunify a family are only required when TPR under Neb. Rev. Stat. § 43-292(6) is sought. In re Interest of DeWayne G. & Devon G., 263 Neb. 43 (2002), so the claim is not relevant.

TPR also requires a showing that termination is in the best interests of the children. The state must show that the parent is unfit. Because of his history with alcohol, his prior DUI convictions, driving under the influence with his children in the car, and not immediately seeking medical attention for his children, there is clear and convincing evidence that Benjamin is an unfit parent. He did not exercise reasonable parental obligations towards his children and so TPR is in their best interests.

Therefore the order of the Court is affirmed.
