

In re Interest of Taeson D.

Caselaw No.

No. S-19-382

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305 Neb. 279

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Summary: Samuel T. appeals the termination of his parental rights to Taeson D. out of the Lancaster County Separate Juvenile Court. Samuel's rights were terminated under Neb. Rev. Stat. § 43-292 (2), (3), (5), and that it was in Taeson's best interests. Samuel was represented during the TPR hearing, but he was not present as he had been incarcerated in South Carolina for a 30-year sentence. The decision of the Juvenile Court is affirmed.

Taeson was taken into custody shortly after his birth in July 2017 as he tested positive for methamphetamine. The mother relinquished her parental rights in late 2018. Taeson was placed with Lachrisha T., Samuel's adult daughter, and remains in her care. Samuel was present for his birth, but was incarcerated in November 2017 and has had almost no contact with Taeson except for at his birth. Originally, he was incarcerated in the Saline County jail, but before arrangements could be made for Taeson to visit, he was transferred to a federal prison in Saline County. Samuel did not keep his caseworker aware of his whereabouts.

A termination petition was filed in October 2018 and Samuel entered a denial in December. The caseworker was able to reach Samuel in prison in December 2018 where he explained he was no longer approving of Lachrisha adopting Taeson as she had stopped communicating with him and "putting money on his books."

The termination hearing started in March of 2019 and Samuel had not had any further communication with DHHS. Testimony showed that Samuel had not tried to be a part of his son's life. Samuel did not appear for the hearing in person or via phone. The Court found that Samuel's right should be terminated as to several subsections of § 43-292.

Samuel appeals in that he was denied procedural due process and that DHHS had not made reasonable efforts to reunite him with his son and so his rights were terminated in error.

To determine if a parent who is incarcerated has received due process during a TPR trial, discretion rests with the trial court. On appeal, the trial court's decision is examined for abuse of discretion. See *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232 (2004). Juvenile cases are reviewed de novo on the record.

Looking first at due process, Samuel says that he was denied due process because he did not appear "in some fashion." There are factors that a juvenile court must consider when determining whether to allow a parent to appear. See *In re Interest of L.V.*, 240 Neb. 404 (1992). The factors include the delay that might occur from the parent attending, the expense

to the State of transport of the parent, any security risk the parent would pose, and the best interests of the child. The Court here clarifies that the parent or his attorney must take initiative to notify the Court of the desire to attend the hearing. See *In re Interest of Mainor T.*, supra. The Court here applies that same principle to the request to appear telephonically. Here Samuel nor his attorney made the request. Samuel was not denied procedural due process ? he did not request to appear and his attorney participated for him.

Next, the Court looks at whether the Juvenile Court erred in terminating Samuel's parental rights. The Court notes that only one basis under Neb. Rev. Stat. § 43-292 be present as long as TPR is in the best interests of the child. *In re Interest of Sir Messiah T. et al.*, 279 Neb. 900 (2010). Samuel did not contest the findings under Neb. Rev. Stat. § 43-292 (2) and (7), and based on the record, the Court here finds that there is sufficient evidence to establish those grounds. There was also evidence that TPR would be in Taeson's best interests as Samuel had virtually no relationship with him and would be incarcerated for all of Taeson's childhood.

TPR was appropriate in this case.
