

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Alyssa B.,)
A child under 18 years of age.)
)
State of Nebraska,)
)
Appellee,)
)
v.)
)
Harold B.,)
)
Appellant.)

No. A-13-686

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

FILED

FEB 25 2014

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

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

INBODY, Chief Judge.

INTRODCUTION

Harold B. appeals from an order of the separate juvenile court of Lancaster County, terminating his parental rights to his minor child, Alyssa B., pursuant to Neb. Rev. Stat. § 43-292(2) and (6) (Reissue 2008) and finding that termination was in Alyssa's best interests. Alyssa's mother, Amanda G.'s parental rights were also terminated, but that issue is not before us in this appeal. Therefore, we limit our discussion of the termination proceedings only as it applies to Harold's appeal.

STATEMENT OF FACTS

Shortly after her birth in July 2010, Alyssa was removed from Amanda's care. At that time, Harold was incarcerated. In



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October, Harold was released from prison and in November, he intervened in the pending juvenile case when paternity established that he was Alyssa's father. Also in November, Harold was offered voluntary services through the Nebraska Department of Health and Human Services (DHHS). A pretreatment assessment was conducted and it was recommended that Harold complete a men's domestic violence program; participate in individual therapy to address triggers for anger and aggression, anger management skills, and healthy relationships and boundaries; and complete parenting education classes. Thereafter, Harold resided in an apartment in the same building as Alyssa and Amanda. Amanda and Harold made that decision intentionally so that they could parent Alyssa together and eventually live together, as the juvenile court permitted; however, Harold continued to refuse any of the services offered by DHHS, except visitation with Alyssa, and denied any need for those other services. Alyssa was placed back in Amanda's care in April 2011.

In May 2011, Alyssa was adjudicated as a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008), due to Harold's failure to put himself in a position to care for Alyssa, his failure to provide parental care and support, failure to maintain a safe and stable home, and his failure to acknowledge his issues with domestic violence toward the mother

of another one of his children. Harold appealed the adjudication, which order we affirmed in its entirety. See *In re Interest of Alyssa B.*, case No. A-11-520.

Thereafter, in May 2012, Harold was ordered to participate in supervised visitation with Alyssa; complete a men's domestic violence program with a group component; and participate in individual therapy to address anger management skills, cognitive restructuring to manage his moods, goals for a positive future, and healthy boundaries. The juvenile court and DHHS made it clear on numerous occasions that if Harold wanted to be considered for custody of Alyssa, he would need to participate in and complete the ordered services. Harold was also ordered to participate in parenting education, couple's counseling, to report any law enforcement contact to DHHS within 24 hours, and to not engage in any threatening or assaultive behaviors.

However, Harold's contacts with law enforcement continued throughout the proceedings. Law enforcement was called to Amanda's apartment several times based upon reports of domestic violence between Amanda and Harold. In January 2012, Harold was charged with disturbing the peace of a family support worker conducting a drop-in visit at Amanda's apartment after Harold began cussing and yelling at the worker. In June 2012, Harold was driving an unlicensed motorcycle when law enforcement attempted to stop him and Harold fled at speeds estimated at 90

to 100 m.p.h. He was eventually charged and convicted of felony flight to avoid arrest. In August 2012, Harold was charged with assault for fighting an individual from whom Amanda had sought help after a domestic altercation with Harold ensued, and he was also cited for assaulting his sister, in addition to later being convicted of leaving the scene of an accident, driving under a suspended license, and driving too fast for conditions.

In August 2012, Alyssa was again removed from Amanda's care at Amanda's request and self-reports of mental instability, misuse of prescription medication, and involvement in domestic violence with Harold. At that time, Harold initially agreed to participate in court-ordered services other than visitation, but then participated in the domestic violence program only after DHHS agreed to pay for the program. In August 2012, Harold started attending the program, but shortly thereafter stopped due to incarceration. In November 2012, Harold was allowed to return to the domestic violence program, which he eventually completed. In January 2013, Harold began individual therapy with an unlicensed therapist and recently had begun counseling with a licensed therapist, Robert Troyer.

The State filed a motion to terminate Harold's parental rights in December 2012, based on allegations that Harold had substantially and continuously or repeatedly neglected Alyssa and failed to provide her with necessary parental care and

protection, that Alyssa had been previously determined to be a child within the meaning of § 43-274(3)(a), and that reasonable efforts failed to correct the conditions leading to adjudication. The motion further alleges that termination of Harold's parental rights is in Alyssa's best interests.

At trial, Harold testified that he was incarcerated when Alyssa was born. Harold was released from that incarceration in November 2010, at which time he was not allowed to live with Amanda. Shortly thereafter, he found an apartment in the same complex as Amanda. During the proceedings, Harold testified that he had been incarcerated on several occasions and that he had a pending felony charge for which he would be sentenced in the future. Harold maintained that he did not assault Amanda on June 17, 2011, and that she frequently falsely accused him, and also that he did not assault his sister, but admitted that he had pled guilty to disturbing the peace during the incident with the family support worker, testifying that he was mad, but did not remember what he said to the worker.

Harold testified that he ended his relationship with Amanda in August 2012, and that he did not intend to reunite with her. Harold testified that he continued to attempt to have no contact with Amanda after he was released from jail in October 2012, because "she kept putting [him] in jail." Harold testified that they have sent each other text messages since that time, but

that it was always because she contacted him first. Harold testified that he had seen Amanda in person at other times in January and February 2013, but that it was only because she kept showing up at his house, texting him, and calling him from different numbers. In February 2013, Harold went to visit Amanda when she told him that something bad had occurred at a local mechanic's shop. Harold testified that he and Amanda went to the mechanic's shop to confront the man about the alleged attack on Amanda. While at the shop, Harold was attacked by those same men, and at some point Amanda was injured. Harold then tried to leave the place with Amanda, but since she was hurt he took her to the hospital. Harold testified that he does not want to have contact with Amanda and that she is not allowed at his home. Harold indicated that if Amanda came to his home, he would call the police. He explained that she came to his home on April 1 and an argument ensued, and instead of going into his apartment he left, but still went to jail. Harold testified that after the last court session, Amanda sent him texts and called him and that he spoke with her, but he could not keep up with all the texts. Harold testified that he responded to Amanda's texts by asking her to "Stop texting me." Harold believed that he needed some type of protection order to be able to avoid Amanda.

Harold testified that at the inception of the case, he did not participate in a domestic violence program because he was

incarcerated. Harold also testified that at the time of the adjudication trial, he was not interested in and refused to participate in domestic violence programs and individual therapy. Harold explained that he did not refuse the parenting classes because he thought he was receiving that from "the workers." Harold did not take a parenting course in 2010 or 2011, but he took one class in December 2012, and another in March 2013. Harold testified that he learned about not placing the children in the middle of a separation because it was bad for them, and that the second class was about fighting and arguing in front of the children.

Harold testified that he was aware that the juvenile court ordered him to participate in a domestic violence class, individual therapy, and parenting education if he wanted to be a placement option or have less restrictive parenting time with Alyssa. Harold testified that he had referred himself to Lutheran Social Services for an evaluation, and was receiving individual therapy from Troyer. Harold testified that he was working on staying away from Amanda, changing his thought patterns, and anger. Harold agreed that he needed the therapy and that it was helpful. Harold testified that in 2006, he took a domestic violence class, and he had recently finished another 24-week course. Harold testified that he decided to take the class at this time so he could learn from it. Harold testified

that he did not know why he did not initially want to take the class and he did not remember if he was told that he must take the class if he wanted Alyssa to live with him. Harold testified that he wanted Alyssa to live with him, but that at the time the case began, Alyssa was living with Amanda and he was not going to take Alyssa from Amanda.

Harold testified that he has supervised visitation with Alyssa twice a week for 3 hours at a time at his apartment. Harold testified that he had not been inappropriate with visitation workers, and that he was just joking with the worker who indicated that Harold had told her that she was sexy and that he liked her tight pants, and that he had not touched her leg or tried to grab her. Harold testified that she was lying about the context of the conversation. Except for the times that he was incarcerated, Harold testified that he had only missed two visitations with Alyssa. Harold testified that during his visitations with Alyssa, the two would play and go to the park. Harold testified that he believed he had made changes since the start of the case and that Alyssa needed to be with him. Harold testified that he and Alyssa have a good relationship and that it is a healthy, positive relationship. Harold testified that he has a full-time job that pays him \$8 per hour, with bonuses, health insurance, and vacation benefits. Harold testified that he pays \$50 per month in child support and that he is current on

those payments. Harold explained that he was ready for placement of Alyssa with him because he can provide for her and take care of her. Harold testified that his apartment is ready for Alyssa and he has everything necessary to take care of her. Harold testified that he provides Alyssa with clothing, toys, birthday and Christmas presents, and other gifts. Harold testified that, looking back, he wished he had begun services in 2010, so that he could have been in a better position to have placement. Harold testified that it was his fault that he did not take the domestic violence class sooner and admitted that he has had anger problems in the past.

Harold testified that although he had been to jail on one occasion in 2013, he had not been charged or cited and that he would be soon serving a 180-day sentence and would be applying for house arrest. Harold also testified that he would be willing to undergo additional evaluations if necessary. Harold explained that he had never had a visit with the visitation worker who said he had been threatened by Harold, but that on that day, the worker was bothering him about getting milk for Amanda and the kids, but that Amanda had told Harold the kids had already eaten.

Harold testified that the individual who he assaulted for helping Amanda actually jumped him first because he wanted to fight Harold. Harold testified that there was an incident where

Amanda had reported to officers that he hit her, when actually he was teaching Amanda to ride a motorcycle and she fell over while sitting on the motorcycle. Harold testified that he did not push her over. Harold was also set to begin a sentence of imprisonment for a felony conviction shortly after the termination trial concluded.

Brian Hoffart, a facilitator at Orr Psychotherapy Resources was co-facilitating domestic violence intervention classes. Hoffart testified that Harold started coming to classes in September 2012, but that his participation was temporarily placed on hold while Harold was incarcerated. Hoffart testified that Harold's program was 24 weeks and since beginning the program he had missed five classes, and had only one class remaining before Harold would successfully complete the program.

Several family permanency specialists testified at trial, each giving similar testimony regarding Harold's general unwillingness to participate in services except for visitation and about his extensive contacts with law enforcement. Many supervision workers also testified about the strained relationship between Harold and Amanda which included both verbal and physical domestic abuse. Felicia Mendoza, who worked with the family from January 2011 through October 2011, testified that initially Harold had supervised visitation with Alyssa only on Sundays, but later added additional days at

Harold's request. During that time, Harold was not moved to any less restrictive level of visitation. Mendoza testified that she spoke with Harold about the pretreatment assessment which had been completed and that in line with that assessment, he should enroll in domestic violence classes and individual therapy to address domestic violence in relation to his situation and also how it posed a threat to Alyssa. Mendoza explained that she was unsuccessful in getting Harold to engage in either service because he did not want to admit guilt in relation to the other juvenile case involving another woman and another child of his. Mendoza testified that in April 2011, both of Amanda's children, which included Alyssa, were placed back with Amanda, but in June 2011, she requested that the children be removed to respite care so that Amanda could work with Harold on their relationship. Mendoza testified shortly thereafter there were reports of domestic violence between Harold and Amanda. Mendoza recommended to Harold that he and Amanda undergo couples counseling and that Harold was receptive to the idea. Mendoza testified that Harold supplied food, diapers, and toys during visitations with Alyssa and did not have any trouble with visitation workers during her time on the case.

Angela Miles, a child and family services specialist, was assigned as the case manager for Alyssa's case in April 2012. At that time, Alyssa was placed with Amanda and there was a safety

plan in place relating to the family. Miles recommended to Harold that he participate in getting an updated pretreatment assessment completed, domestic violence programing, individual therapy, and parenting classes to correct the adjudicated issues, in addition to reporting law enforcement contact to DHHS within 24 hours of the contact. Miles testified that immediately after the adjudication in May 2012, Harold was unwilling to participate in the domestic violence program, individual therapy, or parenting classes because he did not agree with the adjudication, but that he had been participating in couples counseling with Amanda. Miles testified that Harold reported to her that he had contact with law enforcement between March 10 and 13, 2013, but that he had not reported any of the other contacts that had occurred since May 2012.

Miles testified that on June 19, 2012, she specifically spoke with Harold about participating with services and that he was willing to participate in the domestic violence programing at that time, if DHHS paid for the programing. But Harold still refused individual therapy and parenting classes because he was participating in couples therapy with Amanda. In July 2012, Harold's visitations with Alyssa ceased completely because the service provider could not reach Harold. Visitations resumed in November 2012, and Miles testified that during that period,

Harold had been incarcerated on three different occasions between August and October.

After a court hearing on November 1, 2012, Miles again spoke with Harold about the issues he still needed to address in order to correct the adjudicated issues. Miles reiterated to Harold that he needed to resume his participating in the domestic violence program, seek out individual therapy, complete a pretreatment assessment, and to complete parenting classes. Miles testified that at this time in November 2012, was the first time Harold was cooperative and willing to participate in those services in order to obtain custody of Alyssa. Once Miles became aware that Harold was participating in individual therapy with Lutheran Social Services, it was discussed that Harold be receiving therapy from a more specialized provider than Kemnitz, who at that time was an intern, and Miles facilitated Harold's switch to have individual therapy with Bob Troyer.

In February 2013, Miles conducted a walk-through inspection of Harold's residence and found that it was appropriate for Alyssa to have visitations there. Miles found that there were no safety concerns and that he had food in the home for Alyssa. Miles testified that Harold's visitations with Alyssa were positive and consistent and that Harold had been proactive in learning about appropriate nutrition and meals he could provide Alyssa during visitations. However, Miles testified that she

would not recommend any visitation less than supervised because of Harold's continuous contact with the police and continued relationship with Amanda. Miles remained concerned about the ongoing contact and issues between Harold and Amanda because Harold had reported to DHHS that the relationship was over, but their contact and police contacts were ongoing. Miles testified that she addressed the issue in terms of what Harold would do if a situation arose wherein Alyssa was in his care and how that would affect her. Miles testified that Harold had arranged and completed two parenting classes through the mediation center, but that the classes did not meet with DHHS' expectations of what Harold needed for parenting education because DHHS suggested providing family support services during visitation with Alyssa to provide one-on-one parenting education with his daughter. Although Miles explained that at the time of the termination trial, DHHS did not require Harold to take another parenting class because he was working directly with the family support worker.

Specifically, Miles testified that there were several ongoing issues which prevented any recommendations to lower the amount of supervision, such as the ongoing relationship with Amanda, continued contact with law enforcement, that Harold had a significant amount of time to participate in services and had not fully completed everything. Miles testified that DHHS

supported the termination of Harold's parental rights, and that in her opinion as a caseworker, she believed it was in Alyssa's best interests. Miles reiterated that those recommendations were based upon Harold's current and possible future criminal activities, lateness in participating in services, his lack of ability to control his actions and violent tendencies, and that he was not using the knowledge he gained in the classes he had taken. Miles further testified that DHHS was concerned that with the pending 180-day jail sentence, Harold would not be in a position to parent Alyssa for at least 6 more months.

Lynn Beideck, an independently licensed mental health therapist, testified that she provided individual therapy to Amanda, as well as couples therapy to both Harold and Amanda from March through October 2011, which focused not on the violence in the relationship, but in communicating and being honest. Beideck testified that the couples counseling concluded because Harold no longer wanted to participate.

Tim Kemnitz, a therapist with Lutheran Family Services, testified that he did not have any licensures in Nebraska to engage in mental health therapy or mental health counseling, but was an intern with Lutheran Family Services. Kemnitz testified that he provided individual therapy to Harold in January 2013. Kemnitz testified that his only source of information in the pretreatment assessment and the three sessions of therapy

completed with Harold, was Harold. Kemnitz testified that he was working with Harold on anger management, cognitive restructuring for moods, establishing boundaries and goals, and cognitive behavioral therapy.

Robert T. Troyer, a licensed independent mental health therapist, testified that Harold has been cooperative, genuine and honest with him during their individual therapy sessions. Harold completed a pretreatment assessment with Troyer on February 28, 2013, and a mental status evaluation on March 7. At the time of Troyer's testimony on May 2, Harold had completed eight therapy sessions with Troyer. Troyer diagnosed Harold with intermittent explosive disorder which involves repeated episodes of "impulsive, aggressive, violent behavior or angry, verbal outbursts" in which an individual reacts "grossly out of proportion to the situation, road rage, domestic abuse, throwing or breaking objects or other temper tantrums may be signs" Troyer testified that the first step in treating the disorder is for the individual to take responsibility and that Harold had admitted to Troyer what he had done in the past. Troyer testified that the two were then working on cognitive restructuring. Troyer testified that Harold would need to continue with individual therapy for 6 months to a year before the disorder could be resolved.

Troyer testified that he had not seen any visitation notes with regards to Harold's relationship with Alyssa, but that Troyer had not "witnessed or seen or heard" why visitation needed to remain supervised. However, Troyer testified that Harold's disorder concerns Troyer, specifically with Harold's ability to discharge appropriate parental responsibility because a child could easily cause a parent to become frustrated and explosive. Troyer testified that when Harold was scheduled to be incarcerated, Troyer would continue to provide Harold with therapy one hour a week by going to Harold's location, and that one hour a week of therapy was all Harold needed. However, Troyer later testified that based on some of the new information he received at trial, he felt that Harold also needed to undergo a neurological psychological evaluation.

Troyer explained that Harold reported that he is no longer going to maintain a relationship with Amanda, but that he has a difficult time staying away from her. Troyer testified that Harold's type of obsession with Amanda would make it difficult to maintain his distance from Amanda and that Harold could not control that obsession. Troyer also testified that Harold struggles with time lines and that impacts his ability to determine a client's honesty.

Regarding Alyssa's well-being, Catherine H., Alyssa's foster mother, testified that Alyssa was placed with her after

being released from the hospital following her birth. Catherine is married and has two daughters who are 6 and 8 years old, and is a stay-at-home mother. Catherine's husband is a mechanic with Lincoln Public Schools. Alyssa's half-sister, Davina K., was also placed with the family. Alyssa and Davina remained with the family until around May 2011, when they were placed with Amanda. While the girls were placed with Amanda, Catherine continued to provide babysitting services for the girls during those 15 months, sometimes for just a few hours and other times for days and weeks at a time. Catherine testified that Alyssa and Davina were very attached to each other because of their closeness in age and that they are always together. Catherine testified that both girls are also bonded with her daughters and the girls have a typical sister relationship. Eventually, both girls were removed from Amanda's home and placed back with Catherine and her family. Catherine testified that she loves both Alyssa and Davina. Catherine testified that Alyssa refers to Harold as daddy or "Daddy Harold." Catherine testified that Alyssa looks forward to her visits with Harold and is happy, but a little hyper after the visits.

The juvenile court found that Harold's main contention in resisting the motion to terminate was that he needed more time to complete court-ordered services and demonstrate that he could alleviate the conditions that led to the adjudication. The court

found that although Alyssa was most recently removed from Amanda's care in August 2012, the argument was not given more serious consideration because Harold has not been able to demonstrate any safe, stable, and nonviolent lifestyle since being released from prison in October 2010. The juvenile court noted the numerous law enforcement contacts, most of which were the result of his "conflictual, (sic) violent, and unhealthy relationship" with Amanda. The juvenile court found that neither Amanda nor Harold appeared willing to avoid their relationship which poses a risk of emotional and physical harm to any child placed in their custody. The court recognized that Harold had recently completed a men's domestic violence program, but found that he had been unable to demonstrate the ability to separate himself from Amanda, had lived with her in violation of a no contact provision of his bond, called her from jail while incarcerated for assault charges reported by her, which occurred after he had completed the program and had begun individual counseling. The court found that Harold had described to a therapist that his problems were "being in the wrong place at the wrong time" and that Harold was once again incarcerated and unable to provide stability for Alyssa. The juvenile court concluded that Harold had substantially and continuously or repeatedly neglected Alyssa and refused to give her necessary parental care and protection, that Alyssa had previously been

determined to be a child described in § 43-247(3)(a), that reasonable efforts to correct the conditions leading to the adjudication had failed, and that termination is in Alyssa's best interests.

ASSIGNMENTS OF ERROR

On appeal, Harold asserts, rephrased and consolidated, that the court erred in finding that he had substantially and continuously or repeatedly neglected Alyssa and refused to give her necessary parental care and protection, and that termination of his parental rights is in Alyssa's best interests.

STANDARD OF REVIEW

Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. *In re Interest of Angelica L. & Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009). However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *Id.*

ANALYSIS

Statutory Grounds.

Harold argues that the juvenile court erred in finding statutory grounds appropriate for termination of his parental rights.

For a juvenile court to terminate parental rights under § 43-292, it must find that one or more of the statutory grounds listed in that section have been satisfied and that termination is in the child's best interests. See *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). The State must prove these facts by clear and convincing evidence. *Id.* 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. *Id.*

Under § 43-292(6), grounds for termination exist when reasonable efforts have failed to correct the conditions which led to the adjudication. It is the burden of the State, and not the parent, to prove by clear and convincing evidence that the parent has failed to comply, in whole or in part, with a reasonable provision material to the rehabilitative objective of the case plan. *In re Interest of Angelica L. & Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009).

The State filed the motion to terminate Harold's parental rights on December 4, 2012. Since the inception of the case in 2010, Harold's visitation with Alyssa did not progress to any visitation lower than fully supervised visitation. The record indicates that Harold had consistently participated in visitations through the years, except for during those times that he was incarcerated.

Testimony from family support workers indicates that Harold was encouraged throughout the proceedings to engage in the services recommended in the pretreatment assessment in order to move forward with Alyssa. Those services included parenting education classes, a domestic violence program, and individual therapy. Harold did not begin any type domestic violence program until August or September 2012, and was unable to initially complete the program due to being incarcerated. From 2010 through the filing of the motion for termination, Harold did not take any parenting classes and did not engage in any type of individual therapy.

Another concern in the case is the continued relationship between Harold and Alyssa's mother, Amanda. The case is riddled with ongoing law enforcement contacts by Harold, most of which involve allegations of domestic violence between himself and Amanda. In August 2012, Harold was arrested for assaulting Amanda and was released on bond with a special condition that the two have no contact. Testimony presented indicates that Harold and Amanda continued to have contact, including Harold moving into her apartment for some portion of that time. However, Harold testified that he and Amanda ended their relationship after the August 2012 arrest, and that he did not want to have contact with her but that she continued to call, text, and show up at his apartment throughout the proceedings.

Throughout the case, Harold also had other contacts with law enforcement for assaulting a family support worker, violently assaulting an individual who was helping Amanda flee Harold, felony flight to avoid arrest, and various other contacts. In April 2013, Harold had contact with law enforcement after reports of a verbal domestic disturbance between Harold and Amanda, but no citation or charges arose from that contact. Furthermore, Harold testified that he was sentenced on a felony conviction to 180 days' imprisonment which was set to begin after the termination trial proceedings had concluded.

This record shows that throughout the majority of the proceedings until the motion to terminate was filed, Harold made minimal progress toward correcting the issues leading to Alyssa's adjudication. There is sufficient evidence in the record to support a finding that termination of Harold's parental rights to Alyssa was proper under § 43-292(6), and the juvenile court did not err in making this finding. Because we have found that termination as to Alyssa was proper under § 43-292(6), we need not consider Harold's assignment of error as to § 43-292(2).

Best Interests.

Harold asserts that Alyssa's best interests are not served by the termination of his parental rights because he is making

"sincere and significant steps to rehabilitate himself." Brief for appellant at 22.

In addition to proving a statutory ground for termination of parental rights the State must show that termination is in the best interests of the child. See, *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012); *In re Interest of Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012). A parent's right to raise his or her child is constitutionally protected; so before a court may terminate parental rights, the State must also show that the parent is unfit. *In re Interest of Kendra M. et al.*, *supra*. There is a rebuttable presumption that the best interests of a child are served by having a relationship with his or her parent. Based on the idea that fit parents act in the best interests of their children, this presumption is overcome only when the State has proved that the parent is unfit. *Id.* Although the term "unfitness" is not expressly used in § 43-292, the concept is generally encompassed by the fault and neglect subsections of that statute and through a determination of the child's best interests. See *In re Interest of Kendra M. et al.*, *supra*. In the context of the constitutionally protected relationship between a parent and a child, the Nebraska Supreme Court has stated, "'Parental unfitness means a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in

child rearing and which has caused, or probably will result in, detriment to a child's well-being.'" *Id.* at 1033-34, 814 N.W.2d at 761, quoting *Uhing v. Uhing*, 241 Neb. 368, 488 N.W.2d 366 (1992). The best interest analysis and the parental fitness analysis are fact-intensive inquiries, and although they are separate inquiries, each examines essentially the same underlying facts as the other. See *In re Interest of Kendra M. et al.*, *supra*.

In determining whether clear and convincing evidence shows termination is within the child's best interests, the lower court can consider facts occurring within the time period before the filing of the termination action, as well as those that have transpired since. See *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005). Relevant evidence of facts includes those relating to parental efforts and behavior, and the needs or circumstances of the child. *Id.*

The evidence in this case indicates that although he did not take any of the recommendations set forth at the inception of the case in 2010 until 2012, Harold eventually had completed all of the recommended services and was still receiving individual therapy on a weekly basis. As noted, Harold began a domestic violence program in early 2012, but did not initially complete the program due to incarceration. After his incarceration, Harold resumed participation in the program in

November 2012, and had completed the 24-week program by the end of the termination trial proceedings. Harold testified that he had learned many things in those programs and that he understood that his actions in the past were not appropriate. Harold completed his first parenting class in December 2012, and the second in March 2013.

In December 2012, Harold arranged and underwent a pretreatment assessment with an intern at Lutheran Social Services, and had also begun individual therapy. Thereafter, it was determined that Harold needed therapy given by a licensed therapist and Harold arranged for therapy with Troyer, who was licensed in accordance with DHHS' recommendations. Harold testified that he was working on many issues with Troyer. Troyer testified that Harold was consistently attending weekly therapy sessions and that Troyer believed Harold was being honest. Although Troyer testified that Harold needed an additional evaluation, and that he would require additional ongoing therapy before he would be ready for placement of Alyssa with him, Troyer also testified that he would continue to provide Harold with the necessary therapy while he served his 180-day incarceration set to begin after the termination proceedings. However, Troyer testified that Harold's disorder concerns Troyer, specifically with Harold's ability to discharge appropriate parental responsibility because a child could easily

cause a parent to become frustrated and explosive. Troyer testified that when Harold was scheduled to be incarcerated, Troyer would continue to provide Harold with therapy one hour a week by going to Harold's location, and that one hour a week of therapy was all Harold needed. However, Troyer later testified that based on some of the new information he received at trial, he felt that Harold also needed to undergo a neurological psychological evaluation.

Harold maintained full-time, stable employment with benefits, and had obtained safe and appropriate housing, in which Alyssa had her own room, and is current with his child support obligation. Harold was consistent with his visitations with Alyssa and had provided Alyssa with the proper care during those visits. The record indicates that Harold and Alyssa love each other, have a good relationship, and are bonded. Alyssa's foster mother testified that Alyssa is developing normally in her care, is well-behaved with no medical needs or behavioral issues and looks forward to her visits with Harold.

Nonetheless, Harold has a record of numerous law enforcement contacts and incarcerations which have failed to cease during the proceedings. In fact, during the termination proceedings, Harold was sentenced to a 180-day period of incarceration for a 2012 conviction, which was set to begin immediately after the termination proceedings. While Harold had

no further convictions in 2013, he did have continued contact with law enforcement, many of which involve his relationship with Amanda.

Harold testified that he has realized that his relationship with Amanda is a problem and that he has attempted to not initiate any contact with her. However, there is evidence in the record that Harold and Amanda have continued to have contact with each other and cannot stay away from one another. Harold's therapist testified that Harold reported that he is no longer going to maintain a relationship with Amanda, but that he has a difficult time staying away from her. Troyer testified that Harold's type of obsession with Amanda would make it difficult to maintain his distance from Amanda and that Harold could not control that obsession. Troyer also testified that Harold struggles with time lines and that impacts his ability to determine a client's honesty.

The best interests of a child require termination of parental rights when a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time. See *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012). Children cannot, and should not, be made to await uncertain parental maturity. See *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). Harold has been given numerous opportunities over the past several years to take

advantage of services provided to be in a position to parent Alyssa, and has only recently taken any steps to be in that position. Harold continues to be unable to remain out of Amanda's life which continually has detrimental effects on his life, including continuous law enforcement contacts and long periods of incarceration. Therefore, we find that termination of Harold's parental rights is in Alyssa's best interests and the juvenile court did not err in finding the same.

CONCLUSION

For the reasons set forth herein, we find that the State had proved, by clear and convincing evidence, that terminating Harold's rights is appropriate pursuant to § 43-292(2) and also that termination is in Alyssa's best interests. Accordingly, we affirm the judgment of the juvenile court.

AFFIRMED.