

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF BRANDON H.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
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IN RE INTEREST OF BRANDON H., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

JEFF H., APPELLANT.

Filed September 23, 2008. No. A-08-341.

Appeal from the County Court for Adams County: ROBERT A. IDE, Judge. Affirmed.

Sam Zeleski, Deputy Adams County Public Defender, for appellant.

Donna Fegler Daiss, Adams County Attorney, for appellee.

IRWIN, SIEVERS, and CARLSON, Judges.

SIEVERS, Judge.

Jeff H. appeals from the decision of the county court for Adams County, sitting as a juvenile court, terminating his parental rights to his son Brandon H. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

Brandon was born on May 11, 1998, to Shelly H. and Jeff. Jeff was convicted of (1) sexual assault of a child and (2) first degree sexual assault on a child. The victims in the two convictions were, respectively, an 8-year-old friend of Jeff's 6-year-old stepdaughter and Jeff's 6-year-old stepdaughter. Jeff has been imprisoned since April 23, 1999, and his targeted release date is in July 2010.

The initial procedural history, as revealed by the record we have, is somewhat confusing. For reasons not apparent in the record, Brandon has been living with Joan K. since May 11, 2003. In 2005, Shelly and Jeff were involved in a divorce proceeding in Adams County District Court. During those divorce proceedings, Brandon, through his counsel, filed an application to terminate Jeff's parental rights, asking that he be placed in the permanent care and custody of

Joan and that his visitation with his mother, Shelley, be supervised by Joan. The application alleged as grounds for termination that Jeff is an “unfit parent, due to debauchery, repeated lewd and lascivious behavior and a mental illness which appears likely to continue for the foreseeable future.” The application also alleged that Jeff is “currently unable to parent [Brandon] at this point and has substantially, continuously and repeatedly neglected the minor child and refused to give him the necessary parental care and protection.” On September 9, the district court entered a journal entry transferring the application to the Adams County Court.

Once in juvenile court, the State filed an amended petition on January 25, 2006, to terminate Jeff’s parental rights alleging that (1) Jeff is unfit by reason of debauchery or repeated lewd and lascivious behavior, which conduct is seriously detrimental to the health, morals, or well-being of Brandon, see Neb. Rev. Stat. § 43-292(4) (Reissue 1998), and (2) termination is in Brandon’s best interests. In support of its amended petition, the State alleged that Jeff had been convicted of sexual assault of a child and first degree sexual assault on a child and that Jeff had not completed a sexual offender program in prison.

A termination hearing was held on October 29, 2007, to consider the termination of Jeff’s parental rights. On March 3, 2008, the juvenile court entered an order terminating Jeff’s parental rights to Brandon. In its order, the court found by clear and convincing evidence that grounds for termination under § 43-292(4) existed and that termination of Jeff’s parental rights was in the Brandon’s best interests. Jeff timely appeals from the juvenile court’s order terminating his parental rights to Brandon.

#### ASSIGNMENTS OF ERROR

Jeff alleges that the county court erred in (1) improperly transferring this termination proceeding to juvenile court on the basis of an agreement made in his absence and without making specific required jurisdictional findings, (2) finding that the evidence presented required termination of Jeff’s parental rights as being in his child’s best interests, and (3) terminating parental rights when such was not supported by sufficient evidence.

Jeff also argues, but does not specifically assign as error, that either reasonable efforts should have been made to preserve and reunify the family or specific findings should have been made if the State was to be excused from making such reasonable efforts. See Neb. Rev. Stat. § 43-283.01 (Reissue 2004). However, to be considered by an appellate court, an alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error. *In re Interest of Brian B.*, 268 Neb. 870, 689 N.W.2d 184 (2004).

#### 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 Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

## ANALYSIS

### *Jurisdiction.*

Jeff argues that the Adams County District Court improperly transferred this termination proceeding to juvenile court because the transfer was made as part of an “agreement” to which he was not a party. He argues that had he “been notified and allowed to participate he may have argued that the case should have remained in the District Court.” Brief for appellant at 5. In response, the State argues that “[a]lthough not physically present at the hearing in the District Court where the guardian ad litem’s Application was addressed, [Jeff] did receive notice of this Application as evidenced by the certificate of service.” Brief of appellee at 1.

The record before us contains an application filed in Adams County District Court case No. CI02-34 titled “Shelly H[.] v. Jeffrey T. H[.]” The application was filed by Brandon, through his counsel, seeking in part an order terminating Jeff’s parental rights under Neb. Rev. Stat. § 42-364(7) (Reissue 2004), the version of § 42-364(7) in effect at the time the application was filed and which stated in part:

Whenever termination of parental rights is placed in issue by the pleadings or evidence, the court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum.

(We note that at the time, § 42-364(7) was located in the “Husband and Wife” chapter of the statutes within the “Divorce, Alimony, and Child Support” article.) The certificate of service attached to the application shows that a copy of the application was mailed to Jeff. We note that while the application seeks a termination of Jeff’s parental rights, it makes no mention of transferring the application to juvenile court.

Next, the record contains an Adams County District Court journal entry showing that a hearing on the application to terminate parental rights was held on August 26, 2005--although our record does not contain such proceeding. The journal entry states that Brandon’s counsel, Shelly and her counsel, and counsel for the State were present, and that “[t]he parties agreed that the matter should be transferred to the Juvenile Court pursuant to Neb. Rev. Stat. § 42-364.” The district court then ordered that the matter be transferred to Adams County Juvenile Court. The journal entry made no mention of Jeff, either that he was present or that he was part of the agreement.

Our record lacks any indication that Jeff had notice of the August 26, 2005, hearing on the application or the agreement to transfer the matter to juvenile court. While he obviously was entitled to notice of such proceeding, this flaw does not deprive the juvenile court of jurisdiction under the circumstances in this case because the State subsequently filed an original petition in the juvenile court to terminate Jeff’s parental rights.

The filing of an original petition to terminate Jeff’s parental rights in the juvenile court conferred jurisdiction to the juvenile court. Such proposition was explained by the Nebraska Supreme Court in *In re Interest of Joshua M.*, 256 Neb. 596, 591 N.W.2d 557 (1999), which said:

The plain language of § 43-247(6) states that the juvenile court shall have jurisdiction of “[t]he proceedings for termination of parental rights as provided in the

Nebraska Juvenile Code.” The Nebraska Juvenile Code provides for the filing of “the original petition” seeking the termination of parental rights under § 43-291. Thus, the juvenile court acquires jurisdiction of a case for termination of parental rights brought on, inter alia, in an original petition filed under § 43-291 of the Nebraska Juvenile Code. By its terms, “the original petition” to terminate parental rights under § 43-291 is an initial filing and does not require prior action in or by the juvenile court. Taken together, §§ 43-247(6) and 43-291 indicate that the juvenile court properly acquires jurisdiction over an original action to terminate parental rights as provided in the Nebraska Juvenile Code without prior juvenile court action, including adjudication.

256 Neb. at 608-09, 591 N.W.2d at 565. Therefore, even if there was a jurisdictional defect in how this case was transferred from district court--an issue which we need not decide--when the State filed an original petition in the juvenile court, that act in and of itself conferred jurisdiction on the juvenile court. We find the juvenile court had jurisdiction over this matter based on the filing of an original petition in the juvenile court. Therefore, Jeff’s argument that the district court improperly transferred the matter to the juvenile court because he did not have notice or an opportunity to be heard on Brandon’s application is moot.

#### *Grounds for Termination.*

Jeff argues that the juvenile court erred in terminating his parental rights to Brandon. “We have held that the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in § 43-292 exists and that termination is in the child’s best interests. ‘Thus, only one ground for termination need be proved in order [to terminate] parental rights . . . .’” *In re Interest of Ty M. & Devon M.*, 265 Neb. at 173, 655 N.W.2d at 691 (quoting *In re Interest of Michael B. et al.*, 258 Neb. 545, 604 N.W.2d 405 (2000)).

Neb. Rev. Stat. § 43-292(4) (Reissue 2004) provides that parental rights may be terminated when the parent is “unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile.” On November 16, 1998, Jeff was convicted by a jury of sexual assault of a child--the victim being his stepdaughter’s friend, who was 8 years old at the time of the assault. While pending sentencing in the aforementioned case, Jeff pled guilty to the first degree sexual assault on a child--the victim being his stepdaughter who was 6 years old at the time of the assault. Jeff was sentenced to 20 years 5 months’ imprisonment for the jury conviction and 15 to 20 years’ imprisonment for assaulting his stepdaughter.

At the termination hearing, Jeff’s stepsister testified that when she was 5 or 6 years old and Jeff was approximately 13 years old (sometime in the mid- to late 1970’s), he started touching her breasts and penetrating her vaginal area with his fingers. Jeff’s stepsister said that Jeff continued to sexually abuse her until she was 11 or 12 years old. Jeff’s stepsister testified that she reported the abuse to police when she was 20 or 21 years old, but that no criminal charges were filed against Jeff because the case was too old.

Also at the termination hearing, exhibit 2, a report by Dr. Carl Greiner, a board-certified forensic psychiatrist, was received into evidence upon stipulation of the parties. Dr. Greiner’s report states that in September 2002, Jeff had related to a different mental health practitioner that

he had been a youth pastor and had abused that position to sexually assault young girls. Dr. Greiner diagnosed Jeff with pedophilia. Thus, there is clearly evidence that Jeff is unfit by reason of debauchery or repeated lewd and lascivious behavior, which conduct is seriously detrimental to the health, morals, or well-being of Brandon. To the extent that Jeff argues that he is not a threat to Brandon because he has only sexually assaulted girls, we are not persuaded. Jeff has a long history of sexually abusing girls and of using his position of authority to perpetrate such acts. Having a father who sexually abuses girls is seriously detrimental to Brandon's health, morals, or well-being. We find that grounds for termination exist under § 43-292(4).

*Best Interests of Brandon.*

Section 43-292 requires that parental rights can be terminated only when the court finds that termination is in the child's best interests. A termination of parental rights is a final and complete severance of the child from the parent and removes the entire bundle of parental rights. See *In re Interest of Crystal C.*, 12 Neb. App. 458, 676 N.W.2d 378 (2004). Therefore, with such severe and final consequences, parental rights should be terminated only "in the absence of any reasonable alternative and as the last resort." See *In re Interest of Kantril P.*, 257 Neb. 450, 467, 598 N.W.2d 729, 741 (1999). However,

Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time, the best interests of the child require termination of the parental rights. *In re Interest of Andrew M. et al.*, 11 Neb. App. 80, 643 N.W.2d 401 (2002). Children cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity. *In re Interest of Phyllisa B.*, 265 Neb. 53, 654 N.W.2d 738 (2002). *In re Interest of Stacey D.*, 12 Neb. App. 707, 717, 684 N.W.2d 594, 602 (2004).

Virginia White, a registered nurse and licensed mental health practitioner, testified that she has been seeing Brandon since January 2003. When Brandon first started coming to see her, he was 6 years old but had very little language capability, was extremely hyperactive, and was emotionally immature. Brandon had behavior issues, had difficulty with impulse control, and had boundary issues. White testified that Brandon has attention deficit disorder with hyperactivity. He is still emotionally immature, and White said she will continue to address his issues over the next few years. White testified that because of Brandon's special needs, structure and routine are "extremely important," and that when his normal routine is disrupted, Brandon gets extremely insecure. White also testified that because of his issues, Brandon is more easily manipulated and more suggestible--he is a follower, not a leader--and Brandon does not understand danger or safety issues. White testified that Brandon has never mentioned his father or a father figure, and she does not think that Brandon has any concept of what a father is. White thinks that contact with Jeff would be confusing for Brandon.

Teresa Canady, a special education teacher, testified that she is Brandon's case manager for resources in school. Canady said that Brandon is in the fourth grade and requires a lot of assistance. She said that Brandon has difficulty staying on task and following instructions. Canady testified that Brandon's IQ is 68, meaning that he is mildly mentally handicapped. Brandon is closer to a kindergartner or first grader with his social skills. Canady testified that Brandon needs consistency and that having the same person in his life is important.

The director of mental health services for the Department of Correctional Services testified that Jeff did not satisfactorily complete the inpatient sex offender program and was terminated from the program for lack of improvement and failing to address issues identified by staff. And Dr. Grenier's report, which was received into evidence by stipulation, notes that Jeff is evasive about the history of his pedophilia, has limited insight into the impact of his behavior on his victims, has limited appreciation of the relevance of his incest behavior on parenting his son, has misused his position of authority as a stepfather and youth minister to gain access to victims, has repeatedly been terminated from mental health programs, has had limited contact with his son since approximately 2002, and has a lack of appreciation of the severity of his son's language problems. Dr. Greiner stated in his report that "[Jeff's] psychiatric condition (pedophilia) combined with his limited insight and improvement would seriously impede his function as a father. His continued rights would not be in the best interest of his son."

The testimony is clear that Brandon has special needs and requires consistency in his life. Jeff has not been making satisfactory progress in his treatment programs. And Dr. Greiner stated that Jeff's continued rights would not be in the best interests of his son. Therefore, we find that termination of Jeff's parental rights is in Brandon's best interests.

#### CONCLUSION

For the reasons stated above, we affirm the juvenile court's decision to terminate Jeff's parental rights to Brandon.

AFFIRMED.