

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF DAKOTA W. ET AL.

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IN RE INTEREST OF DAKOTA W. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

MICHAEL K., APPELLANT.

Filed June 10, 2008. No. A-08-050.

INBODY, Chief Judge, and IRWIN and CARLSON, Judges.

CARLSON, Judge.

INTRODUCTION

Michael K. appeals from an order of the separate juvenile court of Douglas County overruling his motion for supervised visitation with his two minor children and one minor stepchild. For the reasons that follow, we affirm.

BACKGROUND

Michael is the natural father of Dakota W., born November 18, 2006, and Ellen W., born February 11, 2004, and the stepfather of Destinie B., born November 14, 1996. Michael has relinquished his parental rights to Ellen and has relinquished any rights he had in regard to Destinie. Michael is married to the mother of the three children.

On June 1, 2007, the State filed an amended petition to adjudicate Dakota and to terminate Michael's parental rights to Dakota. The amended petition alleged that Dakota comes within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004) because she lacks proper parental care by reason of the faults or habits of Michael in that:

A. Dawson [K.], born March 24, 2005[,] and a sibling to [Dakota], was subjected to physical abuse by Michael

B. On June 15, 2005, Dawson . . . was rushed to Children's Hospital by ambulance and found to be non-responsive and in cardiac arrest. A head CT later showed that Dawson sustained a non-accidental traumatic brain injury.

C. On or about June 17, 2005, Dawson . . . died as a result of his injuries.

D. Dawson . . . sustained his injuries while in the sole care and custody of his father, Michael

E. Michael . . . has given no plausible explanation for Dawson's injuries.

F. Due to the above allegations, [Dakota] is at risk for harm.

In regard to termination of Michael's parental rights, the amended petition alleged that Neb. Rev. Stat. § 43-292(2) (Reissue 2004) was met because Michael has substantially and continuously or repeatedly neglected and refused to give Dakota or a sibling of Dakota necessary parental care and protection, and that § 43-292(10)(a), (b), or (d) was met because Michael committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, or committed a felony assault that resulted in serious bodily injury to Dakota or another child of the parent. The amended petition further alleged that termination of Michael's parental rights is in Dakota's best interests.

On November 16, 2007, a second amended petition was filed. The allegations in regard to Michael remained the same.

On December 7, 2007, Michael filed a motion for supervised visitation asking the court to allow him supervised visits with Dakota, Ellen, and Destinie. On December 10, a hearing was held on Michael's motion for supervised visitation, as well as on a motion by Michael to continue the adjudication and termination of parental rights hearing. At the hearing, it was undisputed that Michael had relinquished his parental rights to Ellen, his biological child, 2 years earlier and had relinquished any interest he had in regard to Destinie, his stepchild, at the same time. The State objected to visitation in regard to Destinie and Ellen on this basis. The State objected to visitation in regard to Dakota because of the pending termination of Michael's rights in regard to Dakota. The State noted that Dakota was only 1 year old and that Michael had not had any contact with her for the past 7 months. Following the hearing, the juvenile court entered an order in which it sustained Michael's motion to continue and overruled his motion for supervised visitation.

ASSIGNMENT OF ERROR

Michael assigns that the juvenile court erred in overruling his motion for supervised visitation.

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 Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007).

ANALYSIS

Michael assigns that the juvenile court erred in overruling his motion for supervised visitation. Michael sought visitation with not only Dakota, but also with Ellen and Destinie, whom he had relinquished his parental rights to 2 years earlier. Michael argues that despite his prior relinquishment in regard to Ellen and Destinie, he and the children's mother are still married and intend to remain a family unit.

Neb. Rev. Stat. § 43-293 (Reissue 2004) states that “[a]n order terminating the parent-juvenile relationship shall divest the parent and juvenile of all legal rights, privileges, duties, and obligations with respect to each other” Accordingly, once a parent’s rights are terminated, the parent has no standing to assert entitlement to continued visitation with the child. See *In re Interest of Stacey D. & Shannon D.*, 12 Neb. App. 707, 684 N.W.2d 594 (2004). Michael relinquished his parental rights to Ellen and any rights he had in regard to Destinie 2 years before the hearing on Michael’s motion for supervised visitation. His voluntary relinquishment of his rights has the same effect as if his rights had been terminated involuntarily. Therefore, Michael has no standing to assert entitlement to visitation with Ellen and Destinie.

Michael has standing to assert entitlement to visitation with Dakota because his parental rights are still intact. The question we must answer in regard to Dakota is whether it would be in her best interests to have supervised visitation with Michael. The foremost purpose and objective of the Nebraska Juvenile Code is to promote and protect the juvenile’s best interests, and the juvenile code must be construed to ensure the rights of all juveniles to care and protection. *In re Interest of Veronica H.*, 272 Neb. 370, 721 N.W.2d 651 (2006). The best interests of the children are the primary and paramount considerations in determining and modifying visitation rights. *In re Estate of Jeffrey B.*, 268 Neb. 761, 688 N.W.2d 135 (2004). See, also, *Conn v. Conn*, 15 Neb. App. 77, 722 N.W.2d 507 (2006) (parent’s visitation rights are not absolute and must yield to best interests of child).

Based on the allegations against Michael in the amended petition to adjudicate Dakota and terminate Michael’s parental rights, there is a real possibility that Dakota could be harmed by Michael. The amended petition alleges that Dawson K., Dakota’s sibling, sustained a nonaccidental, traumatic brain injury while in Michael’s care and that Michael has given no plausible explanation for Dawson’s injuries. Dawson died as a result of his injuries. Given the serious nature of the allegations against Michael, there is an imminent risk of harm to Dakota to justify the denial of Michael’s visitation with Dakota. Accordingly, we find that it is not in Dakota’s best interests to have supervised visitation with Michael. The juvenile court did not err in overruling Michael’s motion for supervised visitation.

CONCLUSION

We conclude that Michael does not have standing to assert entitlement to visitation with Ellen and Destinie and that it is not in Dakota’s best interests to have supervised visitation with Michael. The order of the juvenile court overruling Michael’s motion for supervised visitation is affirmed.

AFFIRMED.