Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/04/2026 09:10 PM CST

IN RE INTEREST OF RYDER J., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. RANDAL R., APPELLANT.

809 N.W.2d 255

Filed February 17, 2012. No. S-11-482.

1. **Juvenile Courts: Appeal and Error.** An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. 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.
2. **Criminal Law: Minors.** Intentional child abuse that causes severe bodily injuries, regardless whether the injuries result in permanent damage or disability, qualifies as aggravated circumstances.
3. **Criminal Law: Minors: Appeal and Error.** In a case of intentional child abuse, an appellate court determines whether aggravated circumstances exist on a case-by-case basis.
4. **Criminal Law: Minors.** The list of aggravated circumstances in Neb. Rev. Stat. § 43-292(9) (Cum. Supp. 2010) is not exhaustive. Aggravated circumstances exist when a child suffers severe, intentional physical abuse.
5. **Parental Rights: Proof.** Under Neb. Rev. Stat. § 43-292 (Cum. Supp. 2010), once the State shows that statutory grounds for termination of parental rights exist, the State must then show that termination is in the best interests of the child.
6. **Constitutional Law: Parental Rights: Proof.** 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.
7. **Parental Rights: Presumptions: Proof.** 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.
8. **Parental Rights.** A court need not wait for a disaster to strike before taking protective steps in the interests of a minor child.
9. ____. 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.
10. ____. In a case involving termination of parental rights, it is proper to consider a parent's inability to perform his or her parental obligations because of incarceration.
11. ____. Although incarceration alone cannot be the sole basis for terminating parental rights, it is a factor to be considered.

Appeal from the County Court for Lincoln County: KENT D. TURNBULL, Judge. Affirmed.

Luke T. Deaver, of Person Law Office, for appellant.

Rebecca Harling, Lincoln County Attorney, and Jennifer Wellan for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

Randal R. is the father of Ryder J. The State twice charged Randal for abusing Crue J., Ryder's half brother, but not Randal's child. Randal pled no contest both times. The State moved to terminate Randal's parental rights to Ryder, arguing that the repeated abuse of Crue was grounds for termination. Following trial, the county court, sitting as a juvenile court, terminated Randal's parental rights. Because sufficient statutory grounds existed for the termination, and because the State proved that Randal was an unfit parent and that termination was in Ryder's best interests, we affirm.

BACKGROUND

BASIS FOR MOTION TO TERMINATE PARENTAL RIGHTS

Ryder was born in November 2008. Randal is his father, and Natasha J. is his mother. Natasha has another child, Crue, from a prior relationship. Crue was born in May 2005. Randal lived with Natasha, Crue, and Ryder at various times in 2008 and 2009.

In April 2008, Natasha took Crue to a local hospital with significant physical injuries, which medical personnel determined were the result of nonaccidental trauma. In sum, Crue had been physically abused. Crue sustained the injuries while in the care and custody of Randal. Randal pled no contest to attempted child abuse, a Class II misdemeanor, and received probation. Following this incident, Randal ceased living with Natasha and Crue.

But in early 2009, Randal moved back in with Natasha, Crue, and Ryder. Randal and Natasha had gone to counseling, Crue had received therapy, and at the time, Natasha did not believe that Randal had hurt Crue. In October 2009, Crue was again

taken to the hospital with significant physical injuries, which medical personnel determined were the result of nonaccidental trauma. Crue sustained the injuries while in the care and custody of Randal. Randal pled no contest to attempted child abuse, a Class IV felony. A district court sentenced Randal to a term of 1⅔ to 4 years' incarceration.

Because of these two incidents, the county attorney petitioned the juvenile court to adjudicate Ryder as a child under the Nebraska Juvenile Code. The county attorney then filed a motion, later amended, to terminate Randal's parental rights. The motion alleged Randal had subjected "the juvenile or another minor child to aggravated circumstances, including, but not limited to[,] abandonment, torture, chronic abuse or sexual abuse" under Neb. Rev. Stat. § 43-292(9) (Cum. Supp. 2010). The motion also alleged Randal had "committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent" under § 43-292(10).

The Trial

Much of the evidence at trial detailed the extent of Crue's injuries in 2008 and 2009. Michael Gallentine, M.D., a urologist, examined Crue following the April 2008 incident. Gallentine testified that Crue "had a significant amount of swelling and bruising, [and] some degree of some redness" in his genital area. Gallentine testified that these types of injuries could only have been caused by significant trauma, through the "striking or grabbing, [or] twisting" of the genitals. He testified that such injuries can potentially cause chronic discomfort, loss of a testicle, and fertility issues, although it appeared that Crue would not suffer from such long-term effects. Gallentine opined that Crue's injuries were caused by physical abuse. Gallentine also saw Crue following the October 2009 incident. He observed that Crue had injuries similar to those incurred in 2008 and again concluded that Crue's injuries were caused by physical abuse.

Kathy Lopez, M.D., a pediatrician, also testified regarding the extent of Crue's injuries. She explained that Crue was admitted to the hospital for 4 days following the April 2008 incident. In addition to the injuries to his genital area, Crue

had significant bruising to his jaw and hemorrhages in both eyes. Lopez opined that these injuries indicated that Crue had been strangled. Lopez explained that the strangulation could have caused permanent disability or death. Lopez opined that Crue's injuries were caused by nonaccidental trauma. Lopez also saw Crue following the October 2009 incident. She explained that the injuries were "[v]ery similar" to those suffered in 2008 and opined that Crue's injuries were again the result of physical abuse.

Lee Kimzey, Ph.D., a clinical psychologist, diagnosed Randal with dependent personality disorder. He testified that the only treatment for the disorder was long-term therapy. From his evaluation of Randal, he concluded that despite Randal's desire to parent Ryder, he was "'currently ill-equipped to manage the child and frustrations inherent in parenting and the risk [for] harm to Ryder, if left unsupervised, exceed[ed] a reasonable threshold of safety.'" He was also concerned with Randal's apparent lack of remorse for Crue's injuries and his failure to accept responsibility for causing those injuries. And Kimzey explained that the inherent frustrations of child rearing, combined with Randal's impulsiveness and lack of concern for others, created an unreasonable risk of danger for Crue, or any child of similar age. He testified, however, that with therapy and supervised visits, he believed the risk to Ryder would be minimal.

The Juvenile Court's Order

The court terminated Randal's parental rights to Ryder. Under § 43-292(9), the court found, by clear and convincing evidence, that Randal had subjected another minor child, Crue, to aggravated circumstances "including torture and chronic abuse." The court found that grounds for termination existed under § 43-292(10) because Randal caused serious bodily injury to Crue. The court rejected Randal's argument that § 43-292(10) did not apply because Randal's was not Crue's parent. The court then found that termination of Randal's parental rights was in Ryder's best interests. The court emphasized Randal's impulsive behavior, his inability to cope with the stress of raising a child, his need for extensive

psychotherapy, and Kimzey's belief that Ryder would be unsafe if left alone with Randal. Furthermore, the court determined that Randal was an unfit parent. The court emphasized Randal's extremely violent reaction to the normal stress of raising a child, his refusal to acknowledge his behavior, and the likelihood that Randal would repeat this type of behavior. The court terminated Randal's parental rights to Ryder.

ASSIGNMENTS OF ERROR

Randal assigns, restated, that the court erred in:

(1) finding that Randal had subjected Crue to "aggravated circumstances" under § 43-292(9);

(2) violating the Ex Post Facto Clauses of the Nebraska and U.S. Constitutions when it terminated Randal's parental rights based in part upon the 2008 abuse, which occurred before the Legislature amended § 43-292(9);

(3) determining that Randal was Crue's "parent" for purposes of § 43-292(10);

(4) finding that the termination of Randal's parental rights was in Ryder's best interests; and

(5) finding that Randal was an unfit parent.

STANDARD OF REVIEW

[1] An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.[1] 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.[2]

ANALYSIS

"Aggravated Circumstances" Under § 43-292(9)

[2] Randal argues that Crue's injuries do not rise to the level of "aggravated circumstances" under § 43-292(9) because Crue's injuries will likely have no long-term effects. But

---

[1] *In re Interest of Jamyia M.*, 281 Neb. 964, 800 N.W.2d 259 (2011).

[2] *In re Interest of Jac'Quez N.*, 266 Neb. 782, 669 N.W.2d 429 (2003).

intentional child abuse that causes severe bodily injuries, regardless whether the injuries result in permanent damage or disability, qualifies as aggravated circumstances.

Section 43-292 states, in relevant part:

> The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:
>
> . . . .
>
> (9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

The court terminated Randal's parental rights to Ryder, in part because Randal had subjected Crue, "another minor child," to aggravated circumstances under § 43-292(9). The court based its decision on both the 2008 and 2009 incidents of abuse. But the relevant language of § 43-292(9), "or another minor child," was added in 2009.[3] Because the 2008 abuse occurred before that language was added, Randal argues that when the court considered the 2008 abuse, it violated the Ex Post Facto Clauses of the Nebraska and U.S. Constitutions. But under our de novo review of the record, we conclude that the 2009 abuse, which occurred after the Legislature amended the statute, is sufficient to conclude that Randal subjected Crue to aggravated circumstances. So we do not consider the Ex Post Facto Clause issue.

[3] We determine whether aggravated circumstances exist on a case-by-case basis.[4] Although the Legislature has not defined in the juvenile code the phrase "aggravated circumstances," this is not the first time we have addressed its meaning. For example, in *In re Interest of Jac'Quez N.*,[5] we cited with approval

---

[3] See 2009 Neb. Laws, L.B. 517, § 2. Compare § 43-292(9) (Reissue 2008) with § 43-292(9) (Cum. Supp. 2010).

[4] See *In re Interest of Jac'Quez N., supra* note 2.

[5] *Id.*

the New Jersey Superior Court, stating 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" . . . .'"[6] We then concluded that aggravated circumstances existed where the parent delayed seeking medical attention for 2 days when the child had suffered obvious, serious physical injuries.[7] In *In re Interest of Hope L. et al.*,[8] we found that aggravated circumstances existed where the parents starved two of their children and, by false medical reports, obtained unnecessary medical operations for three of their children. And most recently, in *In re Interest of Jamyia M.*,[9] we again concluded that aggravated circumstances existed where the child suffered severe physical injuries through intentional abuse.[10]

[4] Here, the juvenile court determined that Randal subjected Crue to torture and chronic abuse, which were "aggravated circumstances" under § 43-292(9). We reiterate that, in contrast to the juvenile court, we are looking only at the 2009 abuse. And the 2009 abuse, by itself, is not chronic abuse, because it was a single event. Furthermore, we are hesitant to term the abuse, although severe, as torture on this record. The examples provided under § 43-292(9), however, are not an exhaustive list,[11] and we have determined that aggravated circumstances exist when a child suffers severe, intentional physical abuse.[12] Here, the State has met that standard. Crue's injuries in 2009 were severe—Gallentine opined that Crue had bruising, swelling, and abrasion to his genitals and the surrounding area. Both Gallentine and Lopez explained that Crue had petechial hemorrhaging across his face, significant

---

[6] *Id.* at 791, 669 N.W.2d at 436, quoting *New Jersey Div. v. A.R.G.*, 361 N.J. Super. 46, 824 A.2d 213 (2003).

[7] See *id.*

[8] *In re Interest of Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009).

[9] *In re Interest of Jamyia M., supra* note 1.

[10] See *id.*

[11] See *In re Interest of Jac'Quez N., supra* note 2.

[12] See *In re Interest of Jamyia M., supra* note 1.

bruises on several areas of his body, and a hemorrhage in his right eye. Lopez concluded that Crue had been strangled. Both Gallentine and Lopez opined that Crue had been intentionally, physically abused. Thus, we conclude that Randal subjected Crue to aggravated circumstances within the meaning of § 43-292(9).

But Randal asserts that our previous cases interpreting the meaning of aggravated circumstances have all involved children who were permanently injured. Randal argues that the abuse of Crue does not constitute aggravated circumstances because Crue suffered no permanent injury or disability. We disagree. We first note that while the extent of a child's injury is relevant to determining whether aggravated circumstances exist, we have never stated that aggravated circumstances exist *only* when permanent injury is inflicted. On the contrary, in *In re Interest of Jamyia M.*, we stated that aggravated circumstances existed where the record "support[ed] the finding that [the child was subjected] to severe, intentional physical abuse."[13]

Furthermore, Randal's approach would benefit parents whose abusive conduct, by dumb luck, did not permanently harm their children. We are unwilling to place a child in a position to be harmed again (or for the first time) simply because the child had the good fortune to escape permanent disability in the first instance. This case is a good example. Crue suffered severe physical injuries in 2009, and Lopez explained that his injuries could have resulted in death, loss of vision, or permanent disability and disfigurement. Crue's fortunate avoidance of long-term, debilitating effects from his injuries does not lessen the terrible nature of the abuse. The lack of permanent injury or disability to Crue is a distinction without a difference.

Because statutory grounds for the termination of Randal's parental rights to Ryder exist under § 43-292(9), we need not address Randal's claim that the court erred in concluding that grounds existed under § 43-292(10).[14] Instead, we move to the

---

[13] *Id.* at 975, 800 N.W.2d at 268.

[14] See, e.g., *In re Interest of Jac'Quez N., supra* note 2.

next phase of the analysis and determine whether Randal was an unfit parent and whether termination of Randal's parental rights was in the best interests of Ryder.

Parental Fitness and Best Interests of the Child

Randal argues that his abuse of Crue, while terrible, is of limited significance in determining whether the court should terminate his parental rights to Ryder. Randal asserts that the evidence shows that he and Ryder have a strong father-son relationship and that less drastic remedies exist that would allow that relationship to continue without endangering Ryder's well-being. In short, Randal argues that the State failed to prove both that he was an unfit parent and that termination was in Ryder's best interests. Again, we disagree.

[5-7] Under § 43-292, once the State shows that statutory grounds for termination of parental rights exist, the State must then show that termination is in the best interests of the child. But that is not all. 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.[15] And 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.[16] Obviously, both the best interests analysis and the parental fitness analysis are fact-intensive inquiries. And while both are separate inquiries, each examines essentially the same underlying facts as the other.

It is true that Randal's friends and family members testified on his behalf and that their testimony indicated Randal and Ryder had a normal father-son relationship. Further, their testimony showed that they believed Randal to be a capable parent. But on cross-examination, several of those same

---

[15] See *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007).

[16] *Id.* at 349, 740 N.W.2d at 25, quoting *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

witnesses testified that they did not believe that Randal had twice abused Crue—acts to which Randal had pled no contest and been found guilty. We give no weight to their testimony. As to Randal's remaining witnesses, we do not doubt their sincerity, but their opinions are significantly outweighed by the testimony regarding Crue's abuse, the circumstances surrounding it, and Kimzey's clinical opinions.

[8] We recognize that Randal has never abused Ryder. But there is no dispute that Randal seriously abused Crue. And in our view, the abuse of *any* child by an adult—regardless of whether it is the adult's own child or the child of another—calls that adult's ability to parent into serious question. This is particularly true here. The record shows that the 2009 abuse was preceded by a relatively ordinary child-rearing event: Crue, a 4-year-old at the time, wet the bed and tried to hide his soiled pajamas. The abuse, from this record, was apparently Randal's way of dealing with the bed-wetting. Obviously, physical abuse is not an appropriate response to the stress of parenting. We note that the types of events that led to Crue's abuse, such as bed-wetting, had not yet become an issue with Ryder—so Randal had not experienced the same situations with Ryder that apparently prompted the abuse of Crue. So, the fact that Randal has not yet abused Ryder is inconsequential. We need not wait for a disaster to strike before taking protective steps in the interests of a minor child.[17]

We also recognize that Crue is not related to Randal and that Ryder is Randal's biological child. While Kimzey acknowledged that parents often treat their biological children differently from their unrelated children, he concluded that if *any* child about Crue's age (3 to 5 years old) were left unsupervised with Randal, that child would be exposed to an unreasonable risk of harm. Kimzey explained that the stress of raising any child, and not just Crue, could potentially result in Randal's "lashing out at the child." Essentially, Kimzey opined that Randal could not appropriately deal with the stress of raising a child independently; when confronted with that stress, Randal could and did respond with violence.

---

[17] See *In re Interest of S.L.P.*, 230 Neb. 635, 432 N.W.2d 826 (1988).

[9] Moreover, we have stated that "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."[18] Kimzey diagnosed Randal with dependent personality disorder. In short, the diagnosis indicated that Randal could not take care of Ryder without supervision. Kimzey testified that no medication is available to treat this type of disorder and that the only remedy is long-term therapy for an indeterminate time. As such, this weighs in favor of termination of Randal's parental rights.

[10,11] Lastly, we note that Randal is currently incarcerated. We have stated that "in a case involving termination of parental rights, it is proper to consider a parent's inability to perform his or her parental obligations because of incarceration."[19] If a parent is in jail, he or she necessarily has a more limited role in raising a child. So, although incarceration alone cannot be the sole basis for terminating parental rights, it is a factor to be considered.[20] Here, a district court sentenced Randal to a term of 1⅔ to 4 years' incarceration, after he violated his probation and pled no contest to attempted child abuse, a Class IV felony. This also weighs in favor of termination of Randal's parental rights.

Taken together, these facts show that Randal is not a fit parent for Ryder and that termination of his parental rights is in Ryder's best interests. We emphasize the severe nature of the abuse inflicted upon Crue and that the abuse was apparently in response to the normal stress of raising a child. Furthermore, Kimzey testified that the risk to Ryder, if left unsupervised with Randal, was unreasonable. The court did not err in terminating Randal's parental rights to Ryder.

CONCLUSION

In our de novo review of the record, we conclude that sufficient statutory grounds existed for the court to terminate

---

[18] *In re Interest of DeWayne G. & Devon G.*, 263 Neb. 43, 56, 638 N.W.2d 510, 520 (2002).

[19] *Id.* at 57, 638 N.W.2d at 521.

[20] See *id.*

Randal's parental rights to Ryder. We also conclude that Randal is an unfit parent and that terminating Randal's parental rights to Ryder was in Ryder's best interests. We affirm the judgment of the juvenile court.

AFFIRMED.