

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL**

IN RE INTEREST OF MIA V.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE INTEREST OF MIA V., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

FREDERICK C., APPELLANT.

Filed September 6, 2011. No. A-11-172.

Appeal from the Separate Juvenile Court of Lancaster County: ROGER J. HEIDEMAN,  
Judge. Affirmed.

Norman Langemach for appellant.

Joe Kelly, Lancaster County Attorney, and Alicia B. Henderson for appellee.

IRWIN, CASSEL, and PIRTLE, Judges.

PIRTLE, Judge.

**INTRODUCTION**

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Frederick C. appeals from an order of the separate juvenile court of Lancaster County, terminating his parental rights to his minor child, Mia V. Frederick challenges the admission of certain exhibits into evidence. Based on the reasons that follow, we determine that the challenged exhibits were properly admitted and we affirm the termination of Frederick's parental rights.

**BACKGROUND**

Mia was born in April 2007 and tested positive for methamphetamines at the time of her birth. Three days later, Mia was removed from the care of her mother and placed in foster care. Frederick and Mia's mother were married at the time of Mia's birth, but it is unclear if they were

living together as Frederick had just been released from prison. Subsequently, Mia was adjudicated as a child who lacked proper parental care by reason of the faults or habits of her mother, and Mia was placed in the custody of the Department of Health and Human Services (the Department). Mia was placed in the care of her mother between August 2008 and April 2009, and again between November 2009 and April 2010. Other than those two periods of time, Mia has been in foster care since she was 3 days old. Mia's mother relinquished her parental rights to Mia in December 2010.

On July 28, 2009, the State filed a petition alleging that Mia was a minor child as defined by Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) because she lacked proper parental care by reason of the faults or habits of Frederick in that

A) Since [Mia] was placed in the temporary custody of the . . . Department . . . and thereafter adjudicated as a child who lacked proper parental care by reason of the fault or habits of her mother, [Frederick] has failed to put himself in a position to assume full care and custody of [Mia]; has failed to provide [Mia] with necessary parental care and support; has failed to put himself in a position to visit with [Mia] or to otherwise establish and/or maintain a relationship with [Mia]; and/or has failed to maintain a safe and stable home for [Mia]; one or more of which is due, directly or indirectly, in part, to [Frederick's] criminal behavior, including, but not limited to his use, possession, and/or distribution of illegal controlled substances.

B) One or more of the above [allegations] places [Mia] at risk of harm.

The juvenile court adjudicated Mia as a child who lacked proper parental care by reason of the faults or habits of Frederick.

On October 21, 2010, the State filed an amended motion for termination of Frederick's parental rights alleging that statutory grounds to terminate existed under Neb. Rev. Stat. § 43-292(1), (2), (4), (6), (7), and (9) (Cum. Supp. 2010), and that termination of Frederick's parental rights is in the best interests of Mia.

On January 27, 2011, a hearing was held on the motion for termination. The evidence at the hearing showed that Frederick has a history of drug-related convictions. In 1998 and 2001, Frederick was convicted of possession of a controlled substance with intent to deliver. He was sentenced to 1 to 2 years' imprisonment for the 1998 conviction and 1 year's imprisonment for the 2001 conviction. In 2003, Frederick was again convicted of possession of a controlled substance with intent to deliver and sentenced to a term of 5 to 7 years' imprisonment and was released on parole in May 2006. In July 2006, he violated his parole and went back to prison until March 26, 2007. Most recently, he was arrested in March 2009 and pled guilty to conspiracy to distribute and possession with intent to distribute 50 grams or more of crack cocaine. He was sentenced to a term of 82 months' imprisonment.

The evidence at the hearing also showed that the Department arranged for Frederick to have supervised visits with Mia after she was initially placed in foster care. Sarah Gassen, Mia's case manager from the Department, testified that it was necessary that the visits be supervised in order to ensure Mia's safety because Frederick has a lengthy history of domestic violence and drug abuse, he did not have a place to live or a stable living environment, and he frequently canceled visits. Frederick's visits with Mia began on August 21, 2007. He was fairly consistent

with visits until December, at which time he moved to Colorado. Frederick's visits with Mia resumed in April 2008, but were very sporadic. His last visit occurred in November 2008. Gassen also testified that when Mia was removed from her mother's care in April 2009, the Department did not consider possible placement of Mia with Frederick because he was incarcerated.

Gassen testified that beginning in July 2008, the juvenile court ordered Frederick to complete certain requirements if he wanted Mia to be placed with him. Frederick was ordered to complete a psychological evaluation, a substance abuse evaluation, and was to establish a safe and stable home and a legal means of support for Mia. Gassen testified that Frederick completed a drug and alcohol evaluation. However, the outcome of the evaluation recommended outpatient treatment, which Frederick did not do. Frederick also began a psychological evaluation but then refused to complete it.

The evidence also showed that Frederick has not provided any financial support for Mia and that he has only provided a few necessities and has sent her only a few cards, letters, and gifts. Mia's mother testified that when Mia was in her care between August 2008 and April 2009, Frederick called Mia's mother a few times to check on Mia and sent a few letters to Mia. Similarly, Mia's mother testified that when Mia was in her care between November 2009 and April 2010, Frederick made a few telephone calls to Mia's mother, sent a few letters to Mia, and sent her a birthday card. Mia's mother testified that Frederick did not provide any financial support or any necessities for Mia during either period of time.

Further, Gassen testified that Frederick has never asked her for information about Mia's foster parents in order to send cards, letters, or gifts to Mia, nor has he ever given Gassen cards, letters, or gifts to give to Mia. Mia's foster mother testified that she has only received two items from Frederick for Mia during the times she has had Mia in her care--a box of diapers and a box of baby clothes.

Gassen testified that it is her opinion that it is in the best interests of Mia to terminate Frederick's parental rights based on Frederick's lack of participation in services offered by the Department and his lack of progress when he was in the community, and the fact that Frederick will be incarcerated for a lengthy period of time.

On January 28, 2011, the juvenile court entered an order finding that the State had proved by clear and convincing evidence that statutory grounds for termination existed pursuant to § 43-292(1), (2), (4), (6), (7), and (9), and that termination of Frederick's parental rights is in the best interests of Mia.

#### ASSIGNMENT OF ERROR

Frederick assigns, restated, that the juvenile court erred in admitting exhibits 25, 27, 28, 31, 32, and 33 into evidence and, as a result, erred in terminating his parental rights to Mia.

#### 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 Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009). However, when the evidence is in conflict, an appellate court

may give weight to the fact that the juvenile court observed the witnesses and accepted one version of the facts over the other. *Id.*

## ANALYSIS

Frederick argues that the trial court erred in admitting exhibits 25, 27, 28, 31, 32, and 33 into evidence over his objection. Frederick objected to all of these exhibits on the grounds that they lacked proper foundation, contained hearsay, and were irrelevant. Exhibits 25, 31, 32, and 33 are reports prepared for the court by Gassen, Mia's case manager. Specifically, exhibit 25 is a court report dated April 5, 2010, containing information about Frederick and Mia's mother relevant to Mia's case. Exhibits 31 and 32 are similar court reports dated July 21, 2010, and October 13, 2010, respectively. Exhibit 33 is a permanency planning report dated October 12, 2010, setting out the Department's permanency goal for Mia.

Exhibits 27 and 28 are letters written by Frederick in which he discusses the juvenile court case involving Mia. Exhibit 27 is written to the juvenile judge. It is not dated, but in the letter Frederick states that he is serving an 82-month sentence, so the letter was written sometime after March 2009. Frederick states that he wants it to "go on recorder [sic]" that he has a drug addiction and has abandoned his responsibilities as a parent as a result. He further states that he does not feel that the juvenile court treated him fairly in that it did not provide him with the same resources and services that it provided to Mia's mother. Exhibit 28 is written to Frederick's attorney and is dated March 11, 2010. In this letter, Frederick states that he wants the letter to go into the court's records. He states that he is willing to do what it takes to be a part of Mia's life and to become a better parent, but attending any parenting, anger management, and substance abuse classes offered at the prison may put his life at risk because he is in protective custody.

The Nebraska rules of evidence do not apply in cases involving the termination of parental rights. See *In re Interest of Rebecka P.*, 266 Neb. 869, 669 N.W.2d 658 (2003). Instead, due process controls and requires that fundamentally fair procedures be used by the State in an attempt to prove that a parent's rights to his or her child should be terminated. *Id.*

Rather than the formal rules of evidence, we evaluate the admission of evidence in termination of parental rights cases using a due process analysis. Procedural due process includes notice to the person whose right is affected by the proceeding; reasonable opportunity to refute or defend against the charge or accusation; reasonable opportunity to confront and cross-examine adverse witnesses and present evidence on the charge or accusation; representation by counsel, when such representation is required by the Constitution or statutes; and a hearing before an impartial decisionmaker. *In re Interest of Rebecka P.*, *supra*.

In the instant case, the record reflects that Frederick received proper notice of the termination hearing and that during the termination hearing, Frederick was represented by counsel. He was given a reasonable opportunity to refute or defend against the grounds alleged for termination of his parental rights, and he had a reasonable opportunity to confront and cross-examine adverse witnesses and present evidence in regard to the termination.

With regard to exhibits 25, 31, 32, and 33, the reports prepared by Gassen, the record reflects that Gassen testified in court, that Frederick's counsel raised objections to the admission of the reports, and that Frederick's counsel cross-examined Gassen. Further, each report was signed by Gassen and Gassen testified that she is the individual who prepared the reports. Gassen

had been Mia's case manager since March 2008 and had personal knowledge as to the content of the reports and laid proper foundation as the author of the reports.

In regard to exhibits 27 and 28, the letters written by Frederick, they both appear to be signed by Frederick and Mia's mother testified that the signatures on both letters are Frederick's. Mia's mother is familiar with Frederick's signature as they were married from February 2006 to May 2010. Frederick does not contest that he wrote the letters. Frederick's counsel objected to the admission of the letters and had the opportunity to cross-examine Mia's mother. Further, both letters are relevant in that they refer to the juvenile court case involving Mia and Frederick's inability to parent due to his incarceration.

Based on this record, we conclude that Frederick was afforded due process in general and also specifically, with respect to the receipt of the reports prepared by Gassen and the letters authored by Frederick. Accordingly, Frederick's assignment of error in regard to the admission of exhibits 25, 27, 28, 31, 32, and 33 is without merit.

Having found that exhibits 25, 27, 28, 31, 32, and 33 were properly admitted and having conducted a de novo review of the record, we conclude the State proved by clear and convincing evidence that one or more of the statutory grounds alleged in the amended motion for termination of parental rights exists and that termination of Frederick's parental rights is in Mia's best interests. § 43-292; *In re Interest of Jagger L.*, 270 Neb. 828, 708 N.W.2d 802 (2006). Accordingly, the juvenile court did not err in terminating Frederick's parental rights to Mia.

#### CONCLUSION

We conclude that the juvenile court did not err in admitting exhibits 25, 27, 28, 31, 32, and 33 into evidence. Accordingly, the judgment of the juvenile court terminating Frederick's parental rights to Mia is affirmed.

AFFIRMED.