

SUPREME COURT OF NEBRASKA

In re Interest of Aaron D.; State of Nebraska v. Lorena D.

269 Neb. 249 (2005) · No. No. S-04-590 · Decided January 28, 2005

SUMMARY

The Nebraska Supreme Court considers the termination of Lorena D.'s parental rights to Aaron D. based solely on the statutory ground that Aaron had been in out-of-home placement for 15 of the most recent 22 months. The court examines whether clear and convincing evidence established that termination was in Aaron's best interests, focusing on the evidentiary weight of hearsay testimony, the mother's progress under the reunification plan, and the child's relationships with family members. The opinion also addresses related constitutional, evidentiary, jurisdictional, and Vienna Convention arguments.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	January 28, 2005
DOCKET	No. S-04-590
DISPOSITION	reversed
PROCEDURAL POSTURE	Lorena D. appealed a county court order, entered in its capacity as a juvenile court, terminating her parental rights under Neb. Rev. Stat. § 43-292(7).
STANDARD OF REVIEW	In an appeal from an order terminating parental rights, the Nebraska Supreme Court conducts a trial de novo on the record, disregarding impermissible or improper evidence, and determines whether clear and convincing evidence justifies termination under the Nebraska Juvenile Code.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Lorena D. v. State of Nebraska

TOPICS

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QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that termination of Lorena D.'s parental rights was in Aaron D.'s best interests when the State proceeded solely under Neb. Rev. Stat. § 43-292(7).
2. Whether the record contained sufficient evidence to assess Lorena's alleged noncompliance with rehabilitation and case-plan requirements.
3. Whether the State's failure to notify the Mexican consulate under the Vienna Convention deprived the juvenile court of jurisdiction.

HOLDINGS

1. The State failed to prove by clear and convincing evidence that termination of Lorena D.'s parental rights was in Aaron's best interests, so the termination order had to be reversed.
2. The State could not rely on Lorena's alleged noncompliance with rehabilitation requirements as clear and convincing evidence supporting termination because the record did not contain the dispositional orders or sufficient evidence establishing the court-ordered plan and the reasonableness of its requirements.
3. The court did not decide whether consular notification under the Vienna Convention was jurisdictional because the record contained no evidence showing whether the State had notified the Mexican consulate.

KEY QUOTATIONS

“Section § 43-292(7) operates mechanically and, unlike the other subsections of the statute, does not require the State to adduce evidence of any specific fault on the part of a parent.” (at 257)

“The standard for proving that termination of parental rights is in a juvenile's best interests is clear and convincing evidence, and the evidence in this record is, simply stated, neither clear nor convincing.” (at 257)

“The State cannot prove that termination of parental rights is in a child's best interests by implementing an unreasonable rehabilitative plan” (at 257)

“The judgment of the county court is reversed.” (at 257)

FACTUAL BACKGROUND

Aaron D. was removed from Lorena D.'s residence in May 2002 after a report that he had inappropriately touched his younger sister. He was adjudicated under the Nebraska Juvenile Code and placed in treatment and agency-based foster care. The State relied solely on the statutory ground that Aaron had been in out-of-home placement for 15 of the most recent 22 months, but the record showed that Lorena had made some progress with parenting skills and that expert testimony indicated termination could harm Aaron's relationship with Lorena and

his siblings. Much of the State's evidence concerning Aaron's circumstances and Lorena's parenting was presented through a caseworker who relied on reports from people who did not testify.

PROCEDURAL HISTORY

Aaron D. was adjudicated under Neb. Rev. Stat. § 43-247(3)(b) after being removed from Lorena's home. The State later petitioned to terminate Lorena's parental rights solely on the ground that Aaron had been in out-of-home placement for 15 or more of the most recent 22 months. The county court terminated her parental rights, and the Nebraska Supreme Court reversed after conducting a trial de novo on the record.

DISPOSITION

reversed

CASES CITED

- In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003)
- In re Interest of DeWayne G. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002)
- In re Interest of Kassara M., 258 Neb. 90, 601 N.W.2d 917 (1999)
- In re Interest of Rebecka P., 266 Neb. 869, 669 N.W.2d 658 (2003)
- In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999)
- In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004)
- In re Interest of Natasha H. & Sierra H., 258 Neb. 131, 602 N.W.2d 439 (1999)
- Johanson v. Board of Ed. of Lincoln Cty., 256 Neb. 239, 589 N.W.2d 815 (1999)
- In re Interest of Andrew M., Jr., & Marceleno M., 9 Neb. Ct. App. 947, 622 N.W.2d 697 (2001)
- In re Interest of L.J., J.J., and J.N.J., 220 Neb. 102, 368 N.W.2d 474 (1985)
- In re Interest of Kantril P. & Chenelle P., 257 Neb. 450, 598 N.W.2d 729 (1999)
- In re Interest of Crystal C., 12 Neb. Ct. App. 458, 676 N.W.2d 378 (2004)
- Burke v. McKay, 268 Neb. 14, 679 N.W.2d 418 (2004)
- In re Stephanie M., 7 Cal. 4th 295, 867 P.2d 706, 27 Cal. Rptr. 2d 595 (1994)
- Breard v. Greene, 523 U.S. 371, 118 S. Ct. 1352, 140 L. Ed. 2d 529 (1998)
- Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America), 2004 I.C.J. 1, No. 128 (Mar. 31, 2004)

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