

SUPREME COURT OF NEBRASKA

In re Interest of Taeson D.

305 Neb. 279 (2020) · No. No. S-19-382 · Decided March 13, 2020

SUMMARY

The Nebraska Supreme Court affirmed the termination of Samuel T.'s parental rights to Taeson D. The court held that an incarcerated parent was not denied procedural due process where he received notice, was represented by counsel, and did not request physical or telephonic participation. The court also upheld termination based on substantial neglect and the child's placement in foster care for 15 of the most recent 22 months.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	March 13, 2020
DOCKET	No. S-19-382
DISPOSITION	affirmed
PROCEDURAL POSTURE	Samuel T. appealed the Lancaster County Separate Juvenile Court's order terminating his parental rights after the termination hearing proceeded without his physical or telephonic appearance, although he was represented by counsel.
STANDARD OF REVIEW	Whether an incarcerated parent received procedural due process for a termination hearing is reviewed for abuse of discretion. Juvenile cases are reviewed de novo on the record, with the appellate court reaching an independent conclusion from the juvenile court's findings.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Samuel T. v. State of Nebraska

TOPICS

termination of parental rights

parental rights

procedural due process

appellate procedure

standard of review

PRACTICE AREAS

family law

juvenile law

parental rights

constitutional law

QUESTIONS PRESENTED

1. Whether Samuel T.'s procedural due process rights were violated when his parental rights were terminated at a hearing he did not attend physically or telephonically but at which he was represented by counsel.
2. Whether the juvenile court erred in terminating Samuel T.'s parental rights under Neb. Rev. Stat. § 43-292(6) because DHHS allegedly failed to make reasonable efforts to reunify him with Taeson.

HOLDINGS

1. An incarcerated parent's physical presence is not necessary at a termination hearing when the parent has been afforded procedural due process. The juvenile court has discretion to determine how the parent may meaningfully participate, and a rigid requirement of telephonic participation throughout the hearing is not imposed in every case.
2. The juvenile court did not abuse its discretion by proceeding without Samuel's physical or telephonic appearance where Samuel had notice, counsel, an opportunity to present evidence, and had not requested attendance or a continuance.
3. The termination order could be affirmed because the State established independent statutory grounds under § 43-292(2) and (7), together with the child's best interests; therefore, the court did not need to analyze the challenge to reasonable efforts under § 43-292(6).

KEY QUOTATIONS

"We decline to require juvenile courts to follow a rigid procedure of telephonic participation for the entire hearing in all cases." (286-287)

"We leave it to the juvenile courts' discretion to determine how an incarcerated parent may meaningfully participate in the hearing on the termination of his or her parental rights consistent with due process." (287)

FACTUAL BACKGROUND

Taeson D. was born in July 2017 and was placed in the custody of Nebraska DHHS shortly after birth because his biological mother had used methamphetamine during pregnancy. A paternity test identified Samuel T. as Taeson's biological father, but Samuel had almost no contact with the child and became incarcerated, ultimately serving a 30-year sentence in South Carolina. Samuel received notice of the termination proceeding and communicated with counsel, but he did not request to attend physically or by telephone; counsel represented him at the hearing and cross-examined the witness. The juvenile court found grounds for termination under § 43-292(2), (6), and (7), found Samuel unfit, and determined termination was in Taeson's best interests.

PROCEDURAL HISTORY

The State moved to terminate Samuel T.'s parental rights under Neb. Rev. Stat. § 43-292(2), (6), and (7). After notice, continuances, and a termination hearing at which Samuel was represented by counsel but did not appear or request telephonic participation, the juvenile court found the statutory grounds proven by clear and convincing evidence, found termination in the child's best interests, and terminated Samuel's parental rights. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004)
- In re Interest of Zoie H., 304 Neb. 868, 937 N.W.2d 801 (2020)
- In re Interest of L.V., 240 Neb. 404, 482 N.W.2d 250 (1992)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- In Interest of M.D., 921 N.W.2d 229 (Iowa 2018) (amended Mar. 5, 2019)
- E.J.S. v. Dept. of Health & Soc. Serv., 754 P.2d 749 (Alaska 1988)
- In re Randy Scott B., 511 A.2d 450 (Me. 1986)
- In re C.G., 954 N.E.2d 910 (Ind. 2011)
- In re D.C.S.H.C., 733 N.W.2d 902 (N.D. 2007)
- State ex rel. Jeanette H. v. Pancake, 207 W. Va. 154, 529 S.E.2d 865 (2000)
- In re Interest of Davonest D. et al., 19 Neb. Ct. App. 543, 809 N.W.2d 819 (2012)
- In re Interest of Sir Messiah T. et al., 279 Neb. 900, 782 N.W.2d 320 (2010)