

Nebraska Court of Appeals & Nebraska Supreme Court Case Law Summaries June 2012-June 2013

By: Jane M. McNeil, J.D.

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Relevant Cases June 2012-June 2013

- ***In re Interest of Chloe C.***, 20 Neb. App. 788 (2013).
 - The Nebraska Court of Appeals found that the termination of parental rights was *improper* where the mother made continuous improvements after she ended an abusive relationship with her boyfriend.
 - Although the child was placed out of the home for more than the 15 of 22 months, thus satisfying the statutory ground under § 43-292, the Court of Appeals disagreed that clear and convincing evidence established that termination was in the children's best interests.
 - The Court of Appeals considered the surrounding circumstances and found that the mother demonstrated "continued improvement in her parenting skills"

Reversal of Termination of Parental Rights

- ***In re the Interest of Rylee S.***
 - The juvenile court ordering of the mother to complete a pre-treatment assessment and authorizing the release of her mental health records to DHHS were not reasonable because there was no showing of any need for parental rehabilitation.
 - Where the adjudication of No Fault Petition was based only on the child refusing to attend school and there was no there evidence that such an order would contribute to eliminating the child's difficulties.
 - The Court distinguished this case from those involving abuse and neglect due to the fault of the parent, "the record should contain evidence sufficient to justify the need behind such order and how it will lead to correcting, eliminating, or ameliorating the issue presented."

No Fault Petition based on the child's needs = No Fishing Expedition on Mom

- *In re the Interest of Ashe G.,*
 - The Court noted that though the Mother clearly loved her son, she did not have the ability to parent for a child with special needs due to her own mental illness and mental deficiency.

**Parent MMR +
Child Special Needs =
TPR Upheld**

- *In re the Interest of Jacob H.*
 - The State's amending the petition to add the 15/22 ground for termination *immediately* prior to trial was *not improper* where the father alleged no prejudice he suffered as a result.
 - Termination of the father's parental rights was *improper* because there was not sufficient evidence to establish termination was in the children's best interests.

**Amendment Just Before Trial
=No Prejudice Alleged + anticipated + relevant**

Insufficient Evidence = No TPR

- *In re Interest of Angelina G. et al*

- The Nebraska Court of Appeals affirmed the termination of parental rights. It noted that 43-292(9) provides for termination when there are aggravated circumstances including, “abandonment, torture, chronic abuse or sexual abuse” and that it must be so severe or repetitive that an attempt to reunify would compromise the children’s safety and put them at unreasonable risk.
- In this case, the Court held that the evidence clearly and convincingly established that the children’s continual exposure to domestic violence was chronic abuse under the aggravated circumstances ground based on the psychological damage the repeated domestic violence has done to the children.

**Children’s Continued Exposure to D.V.
=Chronic Psychological Abuse under
Aggravated Circumstances**

- *In re Interest of Timothy W.*

- Removal of the children from the non-custodial parent in an ICWA case was improper because no qualified expert witness established that continued custody would cause serious emotional or physical damage to the children and there was no determination that active efforts had been made as to the father.

**ICWA findings must include qualified
expert, evidence of active efforts and
evidence of serious emotional or
physical damage to the children.**

- *In re Interest of Diana M. et. al.*
 - Changing the permanency goal from reunification to guardianship/adoption was proper where the children languished for two years while the mother denied her daughter's sexual abuse and maintained a relationship with the offender.
 - The order changing the permanency goal was a final, appealable order because it did not offer any rehabilitation plan for the parent to reunify.

An Order Changing of the Permanency Objective from Reunification to Adoption/ Guardianship is a Final Appealable Order.

- *In re Interest of Luka W.*
 - Where proper rights advisements are not made at adjudication, the termination petition is treated as those filed under N.R.S. 43-292(2) without prior juvenile court involvement, requiring rights advisements at the termination stage.
 - In this case, termination was improper because no rights advisement was given.

**No Rights Advisement =
No Due Process**

- *In re Interest of Zylena R. and Adrionna R.*
- Best interests should not be a factor in a threshold determination of jurisdiction in a transfer proceeding.
- In a motion to transfer to tribal court, the court must consider whether the “advanced stage” of the proceedings is good cause not to transfer based on the date of filing the TPR petition (not from the beginning of the abuse/neglect proceedings.)

Best interests cannot be a consideration in transfer to tribal court.

- *In re Interest of James B. et al.*
- The Nebraska Court of Appeals concluded the order was not final and appealable because it did not affect substantial rights.
- The Court noted that primary consideration in determining whether a parent’s substantial right was affected was the length of time over which the parent-child relationship would be disturbed.
- In this case, the Court of Appeals found the suspension was intended to be short-lived and only until therapy could be commenced and the therapist allowed to make recommendations, and not to cause a permanent termination of visits.

An Order Temporarily Suspending Visitation Rights is not Final Appealable Order.
