



Practical Implications of *In re Interest of Meridian H.*

Case Summary

Tiffani H. is the biological mother of Damon H., born in 2002, Aleeah H., born in 2003, and Meridian H., born in 2007. Prior to Meridian's birth, Tiffani and the biological father relinquished their parental rights to Damon and Aleeah and both children were adopted by Jeffrey H. and Karen H. who live in Minnesota near the children's biological grandparents. In 2007, while temporarily residing in Nebraska, Tiffani was arrested for driving under the influence, after a car accident in which Meridian was in the car. In December 2007, Meridian was adjudicated pursuant to § 43-247(3)(a) and, following brief placements in other foster homes, in March 2008 Meridian was placed in the foster home of Shane K. and Brandi K. in Nebraska. In December 2008, the juvenile court ordered that the Nebraska Department of Health and Human Services (DHHS) obtain an "expedited home study" of Jeffrey and Karen's home, with her siblings, in Minnesota for purposes of prospective placement of Meridian with her brother and sister. The home study concluded that it was, "highly recommended" that Meridian be placed with Jeffrey and Karen." A court-ordered psychological evaluation of the parties performed in May 2009, also recommended that Meridian have the opportunity to develop a close relationship with and grow up in the same home with her brother and sister, and to know her grandparents in Minnesota. In June 2009, DHHS recommended in its case plan that Meridian be placed in the same home with her brother and sister for purposes of adoption by Jeffrey and Karen. After a review hearing in 2009, the court ordered DHHS to obtain a second opinion for the purpose of assessing the aspects of bonding and attachment, and to provide the court with a transition plan. That assessment ultimately concluded that Meridian was deeply bonded to her foster parents, and it was in Meridian's best interests to remain in their care even though Meridian had responded well to several visits with her siblings and their adoptive parents. In September 2009, the State filed a motion to terminate Tiffani's parental rights to Meridian pursuant to § 43-292(4) and (7). Damon and Aleeah H., through their adoptive parents, Jeffrey and Karen, intervened in the juvenile court case and filed a motion seeking to change Meridian's placement from her foster home to their home in Minnesota. On September 1, 2010, the juvenile court entered an order overruling Jeffrey and Karen's motion for a change of placement and concluded that it was in Meridian's best interests to remain with her foster parents.

Jeffrey and Karen appealed this order, on behalf of Damon and Aleeah, and alleged that the juvenile court's order contravened public policy, state statute, and the federal Fostering Connections Act. They also alleged that the juvenile court erred in not ordering visitation between the siblings, that the juvenile court erred in finding that Meridian would be emotionally harmed if her placement were changed, that the juvenile court erred in not finding a fundamental liberty interest in the sibling relationship, and that the juvenile court abused its discretion in finding that the foster parents stand in loco parentis to Meridian.

Analysis

On appeal, the Supreme Court considered two jurisdictional issues that were presented in this case. First, the court considered whether the juvenile court's denial of the motion to change placement was a final appealable order. Second, the court considered whether the siblings, Damon and Aleeah, by and through

their adoptive parents, had standing to appeal in this case. In the context of deciding both the standing issue and the final order issue, the Supreme Court analyzed whether Damon and Aleeah possessed any rights to have their sibling placed with them. The Nebraska Supreme Court concluded that “Damon and Aleeah have no cognizable interest in the sibling relationship separate and distinct from that of Meridian.” *Id.* at 478.

The Supreme Court analyzed the alleged rights and interests of Damon and Aleeah in three different contexts: (1) with respect to Nebraska statutes and regulations, (2) under the Constitutions of the United States and Nebraska, and (3) under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008.

Standing and Interests Under Nebraska Statutes and Regulations

The Supreme Court began its analysis by noting that Neb. Rev. Stat. § 43-2,106.01 explicitly grants “(a) The juvenile; (b) The guardian ad litem; (c) The juvenile’s parent, custodian, or guardian . . . or (d) The county attorney or petitioner . . .” the ability to challenge a juvenile court’s order, but the juvenile’s siblings do not have the explicit statutory authority to appeal. *Id.* at 475. Even though Damon and Aleeah were not statutorily authorized to appeal, the court opined that they might have standing if they could show a “personal stake” in the matter. *Id.* at 476. The Supreme Court recognized that there is a statutory, regulatory, and case law preference for placement with relatives in Nebraska, but noted that these situations have been limited to juveniles who are adjudicated within the jurisdiction of the juvenile court, not unadjudicated siblings. For example, the Supreme Court noted that, “[t]he Nebraska statutes and regulations which reflect a policy favoring preservation of a sibling relationship do so only within the context of determining the best interests of a juvenile who is subject to the jurisdiction of a juvenile court or otherwise entrusted to the custody of DHHS.” *Id.* at 477. The Supreme Court also recognized that Nebraska courts have previously recognized sibling rights, but only as to the best interests of adjudicated children. The Supreme Court noted that, “[t]his court stated in *In re Interest of Aaron D.* and *In re Interest of L.J., J.J.*, and *J.N.J.* that juvenile courts must recognize, if possible, the interests of siblings. But we did so in the context of determining the sufficiency of the evidence to support a finding that termination of parental rights was in the best interests of the adjudicated juvenile.” *Id.* The Supreme Court went on to point out that Nebraska has never “recognized a right on the part of unadjudicated siblings to seek establishment or preservation of a claimed sibling relationship in the juvenile abuse and neglect proceedings.” *Id.* In regards to Damon and Aleeah’s interests under state law, the Supreme Court concluded that, “under Nebraska law, Damon and Aleeah have no cognizable interest in the sibling relationship separate and distinct from that of Meridian. Here, the guardian ad litem did not appeal on Meridian’s behalf and has joined in the briefs of the appellees.” *Id.* at 478.

Fundamental Liberty Interest

The Supreme Court next considered, in the context of the standing question, whether Damon and Aleeah had a fundamental liberty interest protected by the Due Process Clause of the 14th Amendment to the U.S. Constitution and article I, §§ 1 and 3 of the Nebraska Constitution. The Supreme Court recognized that there was indeed a fundamental liberty interest in the parent child relationship, but determined that this does not extend to siblings whose relationship with their mother had been “extinguished.” The Supreme Court framed the question as, “whether the constitutionally protected parent child relationship which once existed between Damon and Aleeah and their biological parents and the entirely separate parent-child relationship which once existed between Meridian and her biological mother can be considered together as the basis for a present constitutionally protected right of Damon and Aleeah to a relationship with Meridian, with whom they have never resided.” *Id.* at 479. The Supreme Court concluded that a child’s relationship with their siblings is “but one factor, albeit an important one” in determining whether a particular placement is in the child’s best interests. *Id.*

Fostering Connections Act

Finally, the Supreme Court considered whether the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (“Fostering Connections Act”) created any substantive rights applicable to this proceeding.¹ The Supreme Court recognized that the Fostering Connections Act requires that the State provide adequate notice to all adult relatives of the child, that the State make reasonable efforts to “place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement” and to provide for “frequent visitation” for siblings who are not jointly placed. *Id.* at 479–480. The Supreme Court did not read the statute so as to provide any substantive rights to Damon and Aleeah, and stated “[t]he Fostering Connections Act places certain responsibilities on a state with respect to a child who it has removed from the custody of its parents, but says nothing about minor siblings of the child who are not in foster care.” *Id.* at 481. “The statute requires notice to adult relatives of children removed from parental custody, but does not require notice to relatives who are minors or to the parents or custodians of such minors.” *Id.* at 481. The Supreme Court concluded that the Fostering Connections Act did not “establish any legal interest on the part of Damon and Aleeah which could have been affected by the juvenile court’s placement order or serve as the basis for standing.” *Id.*

The Supreme Court, after concluding Damon and Aleeah had no substantial interest or personal stake in the matter, dismissed the appeal because Damon and Aleeah lacked standing.

Practical Implications

The Supreme Court specifically noted that Neb. Rev. Stat. § 43-2,106.01 provides explicitly that a guardian ad litem may appeal from “a final order or judgment entered by a juvenile court” and that in this case “the guardian ad litem did not appeal on Meridian’s behalf.” In the future, it seems that the guardian ad litem (GAL) or, if applicable, an attorney representing adjudicated children, may be in the best position to raise the arguments regarding sibling placement and visitation. Thus, it is vital that GALs and attorneys representing adjudicated children’s interests are aware of the state and federal preferences for placement of foster children with their siblings. In addition, Nebraska Appleseed does not read this case to suggest that children do not have rights to a relationship with their siblings but rather that this issue is best considered from the perspective of adjudicated child/ren.

Although Damon and Aleeah were deemed by the juvenile court to have an interest in continuing their relationship with Meridian sufficient for the court to grant them leave to intervene as legal parties for the purpose of being heard by the court on the issues of their sister’s health, safety and welfare, including seeking her placement and visitation, they were determined *not* to have standing to appeal the juvenile court’s order overruling their placement motion. Thus, an interesting implication that emerges from the court’s decision is that a person who can demonstrate standing sufficient to intervene as a legal party in a juvenile court proceeding might not have standing to appeal a final order of the court.

LB 177

¹ The Nebraska Supreme Court noted at the beginning of its analysis in this section that the Federal Fostering Connections Act was amended by the 2010 Patient Protection and Affordable Care Act (ACA). *Id.* at 479. The Nebraska Supreme Court went on to state that, “[r]ecently another provision of that statute was held unconstitutional by a U.S. district court, which also held that § 671 [the Fostering Connections Act’s sibling placement provision] was not severable and was therefore unconstitutional as well.” *Id.* However, the Nebraska Supreme Court stated that it assumed, despite this decision, that § 671 remained valid for purposes of this appeal. Nebraska Appleseed does not believe that the Fostering Connections Act is unconstitutional on this basis. Without going into detail here, we note that, among other reasons, there have been several other federal cases challenging the ACA that have upheld the constitutionality of the ACA and have ruled differently on the severability issue.

The Nebraska Legislature recently passed LB 177, a bill that places the sibling placement provision of the federal Fostering Connections Act into Nebraska statute and clarifies that this provision applies to a broad range of siblings. The statute defines siblings as, “biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings.” Neb. Rev. Stat. § 43-1301(10). Furthermore, LB 177 clarifies that the sibling placement provisions apply even if the child has not resided with the siblings prior to placement in foster care.² In addition, LB 177 includes a provision stating that “[p]arties to the case may file a motion for joint-sibling placement, sibling visitation, or other ongoing interaction between siblings.” It is hoped that this bill will help clarify Nebraska’s preference for sibling placement in cases going forward.

Please contact Nebraska Appleseed’s Foster Care Reform Legal Resource Center at (402) 438-8853 if you have a case addressing this issue or related issues.

² “Family unit shall mean the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care, except that for purposes of potential sibling placement, the child’s family unit shall also include the child’s siblings even if the child has not resided with such siblings prior to placement in foster care.”