

Nebraska Caselaw Summaries

In re Interest of Emma J.

Filed on August 10, 2010
 Supplemental Opinion
 18 Neb. App. 529, 789 N.W.2d 528

SUMMARY: A modification of text was made in the opinion of In re Interest of Emma, 18 Neb. App. 389, 782 N.W.2d 330 (2010), namely that a September 30, 2009, where active efforts findings were improperly made was a continuation of a previous order and therefore not final and appealable.

On a motion for rehearing, the Nebraska Court of Appeals overruled the motion but modified the section entitled "Active Efforts and Expert Testimony." In summary, the Court of Appeals found that it was error for the juvenile court to make active efforts findings in its September 30, 2009, adjudication order because no evidence was adduced at that hearing regarding active efforts or expert testimony. However, the Court of Appeals concluded the error was harmless because the issues were full addressed in the previous order issued after the June 11, 2009, hearing, and that the September 30, 2009, adjudication order was a continuation of the June 11, 2009, order and not final and appealable as to the issue of continued out-of-home placement.

In re Interest of Arica S. et al.
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Filed on September 21, 2010
 Not designated for permanent publication, A-10-117

SUMMARY: Evidence establishing the mother's repeated substance use, subsequent drug treatment programs and ongoing failure to provide stability for the children showed that termination was in the children's best interests regardless of the loving relationship she had with them. The judge's statements at the disposition hearing encouraging the mother to consider all options, including open adoption, did not prove that the outcome of the termination trial was unfair or partial. □

Arica S., Angel S., Michael S. and Michaela S. are the children of Renee S., who has had a methamphetamine addiction for 20 years which has resulted from the children being removed from her care. The children were returned in January 2008 and the case closed in August 2008 but the children were removed again that month due to Renee's relapse. Renee has been through many drug treatment facilities, which includes having completed inpatient treatment in April 2009 but relapsing in June and July 2009 and returning in September 2009. At trial, evidence was submitted regarding the negative impact of Renee's conduct on the children's stability and the positive impact a stable adoptive placement was making socially, behaviorally and academically. At trial, Renee stated she had only 2 witnesses but then requested a continuance at the end of trial for an additional witness, which the court denied. Following trial, the court terminated Renee's parental rights and Renee appealed.

The Nebraska Court of Appeals affirmed the termination. It rejected Renee's arguments that her due process was violated because the judge indicated at the disposition hearing that she should consider all options including open adoption or because the judge denied a continuance at trial. It noted that at that time the State already indicated it was filing additional pleadings and DHHS and the guardian ad litem had recommended the permanency goal be changed to adoption; therefore, the judge's statements were reasonable. The Court of Appeals also concluded that termination was in the children's best interests because of Renee's long history with substance abuse and failure to provide stability even after multiple treatments.

In re Interest of Kennedy B. & MacKenzie B.
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Filed on September 28, 2010
 Not designated for permanent publication, A-10-274

SUMMARY: Termination was improper where the mother had substantially complied with virtually every requirement specified by the court, had improved significantly as a parent and, while there were still some concerns about the cleanliness of the home, there were no concerns about the children's safety

with the mother.

MacKenzie, DOB 12/03, and Kennedy, DOB 7/06, were removed from the home on April 24, 2007, after police responding to allegations that MacKenzie was dirty, unkempt and having a strong odor discovered them living in a filthy home with drug paraphernalia and pornography within reach of the children. On August 6, 2007, the parents admitted that use of alcohol and/or controlled substances placed the children at risk for harm. Disposition was continued several times until January 23, 2008, when the court ordered Laura undergo random UAs, maintain adequate housing, have supervised visits, participate in family support services, participate in outpatient treatment as arranged by DHHS, attend AA/NA meetings and participate in individual therapy. Review hearings were held through March 2009. On May 22, 2009, the State filed a motion to terminate Laura's parental rights to Kennedy and MacKenzie pursuant to 43-292(2), (6) and (7). After hearings on September 16, 2009, November 30, 2009, and January 13, 2010, the court terminated Laura's parental rights. Evidence adduced at trial showed that Laura continued to have problems with cleanliness of the house but that the house had remained clean for 10 months at the time of the last hearing and that she had given away the majority of her pets that were causing the issues. Although DHHS alleged that Laura had not completed drug treatment, Laura established that she had paid for and completed treatment with a licensed substance abuse counselor. This counselor testified that Laura does not seem to be using anymore and has a good prognosis for the future. Visitation and family support workers also spoke positively of Laura's improved ability to parent, especially as to MacKenzie who has behavioral issues. A family therapist testified as to her surprise over the filing of the termination petition given Laura's improvement at visitation and in her ability to parent MacKenzie. There was also testimony establishing that Laura had separated from the father, who was a negative influence on her, and only had sporadic contact related to the children.

The Nebraska Court of Appeals reversed the termination of parental rights, holding that Laura "has substantially complied with everything that she was asked and ordered to do." The Court of Appeals noted that perfection of a parent is not required but rather a "parent's continued improvement in parenting skills and a beneficial relationship between parent and child." Kennedy B. at 7 (quoting *In re Crystal C.*, 12 Neb. App. 458, 465, 676 N.W.2d 378, 384 (2004)). It reviewed the improvements Laura had made and her compliance with the case plan and noted that the State focused too much on her relationship with the father, which was eventually established to be reasonable under the circumstances. The Court of Appeals found that Laura "cleaned up her home and no longer uses drugs,...was attentive during visits, applied the skills she learned...and was successful in helping MacKenzie's behavior problems, and continued to gain and enhance her parenting skills.

In re Interest of Ramon N.

Filed on October 5, 2010
18 Neb. App. 574, 789 N.W.2d 272

SUMMARY: Refusal to invalidate an adjudication order that was not ICWA compliant was proper because ICWA provisions apply prospectively from the formal identification of the child as Indian, because there was no basis for collateral attack and because Neb. Rev. Stat. 43-1507 does not apply where there is no denial of substantive protections of ICWA. Being a member of a tribe and the mother of the child are not sufficient facts to establish that the person is a qualified expert under ICWA.

A petition under Neb. Rev. Stat. 43-247(3)(b) was filed on July 27, 2009, pertaining to 16-year-old Ramon based on violation of curfew and running away. On August 14, 2009, the court after testimony ordered Ramon to be placed into custody. Ramon was adjudicated on September 4, 2009, and the court indicated a continuance on October 8 in order for the State to provide notice to the Oglala Sioux Tribe. The State filed an ICWA notice on October 9 and sent notice to the tribe via registered mail on October 14. On February 16, 2010, a DHHS court report was received that stated the mother indicated Ramon was an enrolled member of the tribe. The court then found reasonable efforts were made to reunify. On February 18, 2010, Ramon filed a petition to invalidate the proceedings because the petition to adjudicate did not plead facts under ICWA and no expert testimony was provided regarding Ramon's out-of-home placement. On March 5, 2010, the court overruled the petition but found ICWA to apply effective March 5 and found that expert testimony regarding placement was provided in the form of Ramon's mother. Ramon appealed.

The Nebraska Court of Appeals was affirmed in part and reversed in part. The Court of Appeals first addressed the allegation that the adjudication was invalid because proper ICWA allegations weren't made in the petition. Ramon did not appeal the adjudication order, which is a final, appealable order, and such order is no subject to collateral attack because the attack was not grounded in the court's lack of jurisdiction. The Court noted that the sufficiency of the petition is not the test of jurisdiction; rather, it must be shown that the court does not have the authority to grant the relief or that the facts are not sufficient. The Court also found that 43-1507 under ICWA did not provide a basis to invalidate in this case because there was no allegation of violations of the substantive protections of ICWA. Furthermore, ICWA provisions apply prospectively from the date Indian child status was established on the record. The Court of Appeals thus concluded that the absence of ICWA allegations in the petition did not support invalidating the adjudication.

The Court of Appeals did reverse and remand the case on the basis that proper qualified expert testimony under ICWA was not provided regarding the continued custody of Ramon out of the home and active efforts were not shown to be provided. It held that the evidence did not rise to the level of active efforts, which requires more than reasonable efforts and should be culturally relevant. The Court also held that the mother's testimony cannot be considered qualified expert testimony under ICWA since the only qualifications she held were being a member of the tribe and being the child's mother. There was no indication that she was knowledgeable in tribal customs or childrearing practices or has substantial experience in delivery of services to Indian families.

In re Interest of Maddison T.

Filed on October 26, 2010
Not designated for permanent publication, A-10-423

SUMMARY: Immediate termination after removal was proper based on prior terminations and evidence establishing that the mother continued to struggle with drug addiction and mental health issues.

Maddison, DOB 1/08, was removed from the mother on October 30, 2009. The mother, Tasha, had her parental rights terminated involuntarily to two children prior to the removal. Maddison's removal was based on an incident where Tasha was found wandering the streets with Maddison in a confused state, tested positive for methamphetamines and then lied about the number of uses. Around October 30, 2009, the State filed a petition under Neb. Rev. Stat. 43-247(3)(a) and under 43-292(2) to terminate Tasha's parental rights based on the prior neglect of Tasha's other children. In March 2010, the court terminated Tasha's parental rights. Tasha appealed.

The Court of Appeals affirmed the termination of parental rights. It noted that the juvenile court was appropriate in considering prior history with Tasha's other children. The Court of Appeals also connected the prior history to the current in noting that the evidence established the mother continued to suffer from the same reasons as the previous termination, namely drug and mental health issues. Furthermore, in the time between filing the petition and termination, Tasha made no effort to access any services that were offered to her by DHHS.

In re Interest of Jamyia M.

Filed on November 30, 2010
18 Neb. App. 679, 791 N.W.2d 343

SUMMARY: There is no exception to making "active efforts" as there is for reasonable efforts under the aggravated circumstances exception of N.R.S. 43-283.01

On September 30, 2008, Jamyia M., was removed from the home at 2 months of age after being hospitalized for a serious, non-accidental hemorrhage consistent with shaken baby syndrome when in the care of her parents. On October 3, 2008, a petition was filed alleging Jamyia was within the meaning of N.R.S. 43-247(3)(a) and in late October an amended petition was filed alleging that reasonable efforts were not required and active efforts provided unsuccessful and requesting that the parents rights be terminated. Jamyia was found to be enrolled or eligible for enrollment with the Navajo Nation and on January 29, 2009, the court found NICWA requirements to apply to the case.

During the pendency of the case, services that were offered included a comprehensive family assessment, parenting classes, a clothing voucher for Jamyia, Early Development services for Jamyia and videotaped recordings for the parents to view, CPR training for the parents. They were not allowed supervised visitation. The parents complied with everything asked of them, attended every hearing, followed Jamyia's progress and sent her gifts. At trial, an individual testifying as an ICWA expert found that these services constituted active efforts. In February 2010, the juvenile court terminated the parents' parental rights and found that reasonable efforts were not required under 43-283.01 due to aggravated circumstances. The Nebraska Court of Appeals reversed and remanded the termination of parental rights. After reviewing earlier appellate findings in *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008) and *In re Interest of Louis S. et al.*, 17 Neb. App. 867, 774 N.W.2d 416 (2009) of what constituted active efforts, the Court of Appeals concluded that there was not clear and convincing evidence that active efforts were provided and that those efforts were unsuccessful. Next, the Court of Appeals held that N.R.S., 43-283.01, which relieves the state from providing reasonable efforts in cases involving aggravated circumstances did not extend to NICWA cases nor did it trump the specific provisions of NICWA requiring active efforts in all cases involving Indian children.

<p>In re Interest of Justin H. et. al.</p>

Filed on December 7, 2010
18 Neb. App. 718, 791 N.W.2d 765

SUMMARY: Termination of parental rights was improper as to the children not connected to the inappropriate sexual contact because the parents established significant progress in their ability to care and protect the children. However, with the children involved in the sexual assault, the parents did not show that they had the ability to provide a proper environment that would protect the children.

Tonya, Jeffrey, and Michael are the parents of multiple sets of children, Stephanie, DOB 3/95, Justin, DOB 3/97, Nicholas, DOB 2/99, Zachary, DOB 2/02, Ashley, DOB 6/01, Austin, DOB 10/02, Kiarra, DOB 6/06, and Cian, 8/07. On various occasions since 1999, the children were removed from parental homes on neglect allegations. Stephanie, Justin, Nicholas, Zachary and Kiarra were removed again in June 2007 based on Justin's subjecting Nicholas to inappropriate sexual contact, Michael's inappropriate physical contact and Tonya's and Jeffrey's failure to protect. Cian was removed at birth in August 2007. Tonya and Jeffrey admitted to allegations related to the failure to protect Nicholas from Justin and were ordered complete services. On October 7, 2008, the State filed a motion to terminate Tonya's parental rights to Stephanie, Justin, Nicholas, Zachary, Kiarra and Cian. A motion was also filed to terminate Jeffrey's parental rights to Stephanie, Justin, Ashley, and Austin. Another petition was filed alleging Michael's children were within the meaning of 43-247(3)(a) due to his failure to attend visitation, provide housing and utilize services, and to terminate his parental rights. On November 2, 2009, the court terminated Tonya's parental rights to all other children and Jeffrey's parental rights to all of his children. The court also found Michael's children to be within the meaning of 43-247(3)(a) but denied termination. Tonya, Jeffrey and Michael appealed.

The Court of Appeals affirmed the termination of Tonya's parental rights to Justin and Nicholas but reversed the termination as to Stephanie, Zachary, Kiarra and Cian. It justified its findings on the basis that Tonya did not have the ability to properly care for and protect Justin and Nicholas given Justin's sexual assault against Nicholas. However, the Court of Appeals found that Tonya had been making more significant progress in improving her ability to care for the children than during prior court involvement, namely that she improved in therapy, had appropriate visitation, demonstrated appropriate parenting skills and maintained stable housing. The Court of Appeals also found a strong bond between Tonya and the children with the exception of Justin and Nicholas.

As to Jeffrey, the Court of Appeals affirmed the termination of parental rights as to Jeffrey but reversed the terminations as to Stephanie, Ashley and Austin based on similar reasoning. It found that Jeffrey complied with every court order, consistently attended visitation and demonstrated appropriate parenting techniques. However, like with Tonya, the Court of Appeals found that Jeffrey was unable to provide Justin with a strict, structured environment he requires.

As to both parents, the Court of Appeals discounted the testimony of a therapist supporting termination of parental rights because it found that the evidence and remaining testimony overwhelming contradicted her testimony.

Finally, as to Michael, the Court of Appeals reversed the court's finding that Kiarra and Cian came within the meaning of 43-247(3)(a). It found that although Michael was initially inconsistent with attending visitation beginning in 2008 he consistently attended visits. The evidence also established that he acquired appropriate housing and voluntarily participated in services.

In re Interest of Frank S. et. al.

Filed on January 18, 2011

Not designated for permanent publication, A-10-772 through A-10-774

SUMMARY: Termination of the father's parental rights was proper because he failed to follow through on sex offender and parenting programs while incarcerated and had poor interaction with the children during therapeutic visitation even when prompted, and because the children's behaviors had improved since being placed in foster care.

Malachi, DOB 11/05, Frank DOB 3/07 and Michael, DOB 6/09, were removed from the mother's care on February 7, 2009 (for Malachi and Frank) and after birth on July 8, 2009, for Michael. On January 29, 2010, the court changed the permanency goal to adoption. Petitions to terminate the parental rights of the parents were filed. The mother voluntarily relinquished her parental rights at trial. The father, Gary, had his parental rights terminated on July 6, 2010, after trial. Gary appeals.

The Nebraska Court of Appeals affirmed the termination of parental rights. At the time of removal, Gary was incarcerated in military confinement based on sexual abuse of his 9-year-old niece but had attended the termination hearing. The Court of Appeals noted that although incarceration cannot be the sole basis for termination, in this case Gary did not follow through on a case plan that included completing parenting classes and a sex offender program that were available in the prison. Furthermore, because of his incarceration Gary was unable to provide the children with a permanent living arrangement. He had also been absent from the older boys' lives and had never met his youngest son. Finally, the Court of Appeals noted that Gary showed little attempt to interact with the children even when prompted by a therapist, and that the older children's behavioral problems had stabilized in the foster home.

In re Interest of Tegan V.

Filed on January 18, 2011

794 N.W.2d 190, 18 Neb. App. 857

SUMMARY: The physical locus of a child at the time an amended petition is filed does not affect the subject matter jurisdiction of the presiding juvenile court.

Tegan, a child under one, was taken to the emergency room by her mother for second-degree burns on her face, ears and neck. The doctors determined that the mother's explanation for the injuries did not match the burn patterns, and on December 7, 2009, the State filed a 3a petition. The court granted DHHS immediate custody. Tegan was then placed in foster care with her grandmother in Sarpy County. On February 23, 2010, an amended petition was filed additionally alleging that the mother did not visit Tegan and failed to provide proper parental care. At an adjudication hearing on March 8th, the county attorney indicated that the State would be moving forward only on the allegations in the amended petition. The mother's attorney motioned to dismiss the case for lack of subject matter jurisdiction due to the child being placed in Sarpy County when the amended petition was filed. After briefs were submitted, the court dismissed the case for lack of subject matter jurisdiction. The State appealed.

The Court of Appeals reversed the juvenile court's dismissal. It first noted that Neb. Rev. Stat. 43-247 provides for juvenile courts having jurisdiction over "any juvenile" who lacks proper parental care, and that Neb. Rev. Stat. 43-282 provides juvenile courts with the discretion to transfer the case after adjudication if the child moves. The Court of Appeals also quoted a Nebraska Supreme Court case where the Supreme Court held that "in a proceeding under the Nebraska Juvenile Code, the State is not required to prove proper venue." *In re Interest of Leo*, 258 Neb. 877, 881, 606 N.W.2d 783, 786 (2000).

The Court of Appeals noted that Neb. Rev. Stat. 43-274, where a county attorney may file a petition regarding a child in his or her county, may be the only limitation on venue. But, in this case, the county attorney did file the original petition when the child was still living in the county. The Court of Appeals found that it would be illogical and inefficient to extend this requirement to filings of amended petitions. It concluded that the juvenile court therefore retained subject matter jurisdiction but after adjudication would have had the discretion to transfer the case to the Sarpy County juvenile court.

In re Interest of Kailynn I.

Filed on February 8, 2011

Not designated for permanent publication, A-10-500

SUMMARY: The parent's occasional compliance with the court ordered plan over three years, is outweighed by the child's need for a permanent home and termination of parental rights was therefore proper.

Kailynn I, DOB 1/00, was removed from Dawn, her mother, in November 2006 pursuant to an arrest for a fourth-offense driving under the influence. Kailynn was adjudicated on April 16, 2007, under Neb. Rev. Stat. 43-247(3)(a), after Dawn admitted her use of substances placed Kailynn at harm. Dawn was incarcerated out-of-town from May 2, 2007 through late December 2007. She was then incarcerated in town on work release through February 16, 2008. During the periods of incarceration, the court ordered Dawn to complete a chemical dependency and psychological evaluations, attend treatment, attend supervised visitation, and maintain safe and adequate housing and a legal source of income.

Over the next 2 years, Dawn was ordered to comply with similar requirements in the case plan. Dawn used family support services and resided at a halfway house from March to August 2008. Over several months, Dawn was asked to submit to random UAs but failed to take the tests many times. In September 2008, Dawn found a two-bedroom apartment and had regular and appropriate supervised visitation there. However, she missed several therapy appointments. Dawn began substance abuse counseling in October 2008 and was successfully discharged in July 2009. However, in January 2009, Dawn had missed the past 4 to 5 UAs, and the caseworker viewed Dawn to be under the influence when she visited her house. Dawn had voluntarily accepted services through the Family Support Network but discharged one worker and had services discontinued on March 3, 2009, for lack of interest. On January 29, 2009, the State filed a motion to terminate Dawn's parental rights. The trial was held over 8 days beginning on April 16, 2009, and ending on April 5, 2010. On May 7, 2010, the court terminated Dawn's parental rights. Dawn appealed.

The Nebraska Court of Appeals affirmed the termination. There was no contest that Kailynn had been out-of-home more than 15 of the past 22 months. As to best interests, the Court of Appeals noted Dawn's compliance in several parts and time periods of the case. However, it also noted that "due to a lack of consistency over an extended period of time, reunification has never occurred," at page 10, and that Dawn never made enough progress to even move beyond supervised visitation. Because Kailynn needs stability, consistency and permanency, the Court of Appeals held that termination was in her best interests.

In re Interest of Corey W. et.al.

Filed on February 15, 2011

Not designated for permanent publication, A-10-893

SUMMARY: If reasonable efforts have been made to reunify the child with a parent, placing the child out-of-state with another parent does not automatically create a situation not conducive to reunification; however; a concurrent goal of adoption should be changed to "change of custody" if placement with another parent occurs.

Corey W., DOB 9/97, Carissa W., DOB 6/99, and Cassidy S., DOB 1/02, came under the jurisdiction of the juvenile court around December 2008 due to their exposure to domestic violence between the mom, Christy, and her live-in boyfriend, Ty. Christy was ordered on February 25, 2009, to have no contact with Ty or allow the children to have contact, among other requirements. On April 23, 2009, DHHS filed a

motion for immediate custody of the children after Christy left the state without making appropriate arrangements for child care, drove with the children without a driver's license and left the children at playgrounds while visiting Ty in jail. The children were placed in a non-relative foster home. At a review on November 30, 2009, the court found that reasonable efforts had been made to achieve reunification, specifically listing the services, and noted the permanency plan to be reunification with a concurrent plan of adoption. It also ordered reasonable visitation with the 2 fathers, Rocky (Corey and Carissa) and Timothy (Cassidy). On April 1, 2010, Rocky filed for placement of all three children. Over summer of 2010, the children spent time with Rocky and Cassidy spent time with Timothy. At a hearing on August 10, 2010, the caseworker testified that both fathers' homes were appropriate and the children did not object to living there. After the hearing, the court again found reasonable efforts had been made, kept the same permanency plan and ordered the placement change to the fathers' homes. Christy appealed on the basis that placing the children out of Nebraska made reunification a practical impossibility.

The Nebraska Court of Appeals affirmed the placement changes. It distinguished *In re Interest of Ethan M.*, 15 Neb. App. 148, 158, 723 N.W.2d 363, 371 (2006) (where a child placed with the mother in California was overturned and the court directed to approve placement in a home "conducive to reunification") because reasonable efforts to reunify had not yet been made with the father. In this case, the children had been out of home 14 months and the mother was provided with many services during that time but still had not progressed enough to allow reunification. The Court of Appeals rejected the argument that Ethan M. created a hard rule against out-of-state placement with a natural parent when there is a goal of reunification with the other parent. Furthermore, the Court of Appeals noted the presumption of placement with a biological parent in *In re Interest of Amber G. et al.*, 250 Neb. 973, 554 N.W.2d 142 (1996). Finally, however, the Court of Appeals noted that placement with the biological fathers would preclude adoption remaining as a concurrent goal and ordered that it be changed to "change of custody."

In re Interest of Javontae T.

Filed on March 22, 2011

Not designated for permanent publication, A-10-906

SUMMARY: A parent cannot delay a proceeding by challenging paternity when a default order of paternity had been entered years earlier and has remained uncontested by that parent. □

Javontae, DOB 6/93, is the child of James, who has been incarcerated a majority of Javontae's life. On June 3, 2010, the State filed a 3a petition alleging Javontae lacked proper parental care because of James' incarceration, minimal contact with Javontae and failure to provide support. At an adjudication hearing in July 2010, James objected to a November 1995 district court decree of paternity from being admitted into evidence. The juvenile court denied the motion. At the adjudication hearing on August 6, 2010, James made a motion to continue proceedings so that he could challenge the paternity decree. The court denied the motion. Multiple witnesses testified at the hearings about James' minimal contact with his son, his absence during incarceration and his failure to provide support. The court found Javontae to be within the meaning of 43-247(3)(a) in that James was incarcerated and failed to provide meaningful support. James appealed.

The Nebraska Court of Appeals affirmed the adjudication. The Court of Appeals noted that if James had wanted to collaterally attack a paternity judgment that was entered in 1995, he should have instituted proceedings in the district court to have the judgment vacated or reversed. Instead, James allowed the decree to remain valid for 15 years before questioning its validity. The Court of Appeals also found that it was proper for the court to deny a continuance to allow James to question the paternity decree because James did not offer any evidence to show that he was not aware of the decree or was otherwise unable to challenge it at an earlier date.

Finally, the Court of Appeals affirmed the finding of adjudication and noted that James had been incarcerated most of Javontae's life and had not been able to provide Javontae with housing, financial support or daily parental care.

In re Interest of Breana M.

Filed on April 5, 2011
18 Neb. App. 910, 795 N.W.2d 660

SUMMARY: A Nebraska juvenile court has subject matter jurisdiction under the juvenile code over “any juvenile” lacking proper parental care by reason or fault of the parent regardless of where the child is residing at the time the petition is filed.

Breana, DOB 12/08, was removed from the custody of her mother on May 17, 2010, and placed with her maternal grandmother. Breana had been residing with her grandmother intermittently in Cass County since March 2009, but Kaylin, the mother, would remove the child whenever the grandmother reported Kaylin’s drug use to authorities. The May 17, 2010, removal was the result of a threat by Kaylin to remove Breana again. The petition was filed in Douglas County. At the Protective Custody Hearing, Kaylin and the father argued that the court lacked personal jurisdiction over Breana and that Douglas County was not the proper venue. On July 19, 2010, the juvenile court granted the motions to dismiss the case. The State appealed.

The Nebraska Court of Appeals reversed the juvenile court’s dismissal. The Court of Appeals first clarified the term “personal jurisdiction” to be “subject matter jurisdiction” in this case, which would grant the court the authority to hear certain actions, and not the authority to bind a particular person to a decision. Under the juvenile code, the juvenile court has far-reaching subject matter jurisdiction, namely under 43-247(3)(a) of any juvenile who lacks proper parental care by reason of fault or habits of the child’s parent, guardian or custodian. The Court of Appeals held that this broad subject matter jurisdiction is not limited by the child’s temporary residence in another county. As for venue, it was noted that proper venue is immaterial to whether a child falls within the meaning of 43-247(3)(a), and that 43-282 gives the court discretion after adjudication to transfer a case to a county where the child is living. The Court of Appeals therefore held that a juvenile court should not grant a motion to dismiss based on improper venue but should first hold an adjudication hearing, after which the matter of transferring the proceedings to another county would then be considered. The Court of Appeals finally noted that the Indian Child Welfare Act (ICWA) does not apply in the consideration of which court has jurisdiction because neither parent has filed a petition to transfer the case to tribal court.

In re Interest of Lokani M.

Filed on April 19, 2011
Not designated for permanent publication, A-10-1112

SUMMARY: Termination of parental rights was proper where the mother did not make sufficient effort to work on her case plan and where the needs of the child required stability and permanency.□

Lokani, DOB 7/03, was removed from the mother, Veronica, on August 26, 2008, due to Veronica’s drug use. Adjudication was held on September 18, 2008, and a disposition order was entered on November 18, 2008, ordering Veronica to complete dual diagnosis inpatient treatment, undergo a psychiatric evaluation, take all medications, submit to random UAs and engage in parenting time 3 times per week for 3 to 4 hours per visit. Visitation was severely restricted in April 2009, after Veronica yelled at a worker and took Lokani to her home, requiring a police call. During review hearings in May and November, Veronica was again ordered to comply with the case plan. On November 9, 2009, Veronica was arrested and had remained incarcerated up to the time of the termination trial. She had not completed treatment, undergone a psychiatric evaluation or submitted to random UAs. On May 27, 2010, a motion for termination of parental rights was filed, and trial was held on September 24, 2010. At trial, Lokani’s therapist testified to Lokani’s reactive attachment disorder and need for stable and permanent relationships. On October 20, 2010, the juvenile court terminated Veronica’s parental rights. Veronica appealed.

The Nebraska Court of Appeals affirmed the termination of parental rights. It noted Veronica’s failure to comply with the court-ordered case plan, lack of progress toward reunification and Lokani’s need for

stability. It also noted that Veronica's actions of taking classes and being drug free while incarcerated are "too little, too late."

In re Interest of Meridian H.

Filed on May 6, 2011
281 Neb. 465, ____ N.W.2d ____

SUMMARY: Siblings of a child under the custody of the state child welfare system have no standing to appeal denial of the child's placement in their home.

Meridian, a 3-year-old, was adjudicated as a child within the meaning of N.R.S. 43-247(3)(a) in December 2007, and has been in foster care nearly all of her life. Her assumed father died weeks before she was born. Her mother had earlier relinquished her parental rights to two of Meridian's siblings, Damon and Aleeah, and they were adopted by a Minnesota couple. Because the initial plan was to reunify Meridian with her mother, Meridian was placed in foster care in Nebraska and remained in one foster home for a majority of her life. In July 2008, the court ordered DHHS obtain a home study of the siblings' home and in June 2009 the home study highly recommended placement in the siblings' home. In April 2009, Dr. Glenda Cottam conducted a placement suitability assessment for Meridian and recommended that Meridian be placed in the sibling's home. In June 2009, the court ordered DHHS to engage Nancy Thompson to formulate a plan for Meridian to have contact with the siblings' family to determine an effect of change of placement. Thompson observed a visit and recommended that Meridian remain with the current foster family because "while Meridian shares a common genetic makeup with the [siblings], there is no emotional bond built from early-shared experience and common caretaking." *Supra* at page 6. Based on that recommendation, DHHS changed its position and recommended adoption by the foster parents.

The mother struggled with chemical dependency and after initially indicating she wanted to relinquish parental rights in February 2009, the State eventually filed a motion for termination of parental rights on September 15, 2009. The siblings' adoptive parents [hereinafter "siblings"] were allowed to intervene on behalf of the siblings, as were the maternal grandparents and foster parents. The siblings then made a motion for change of placement to allow Meridian to live with them and filed an objection to the DHHS case plan. After a trial, the juvenile court overruled the siblings' motion for change of placement and terminated the mother's parental rights. The juvenile court specifically noted that application of Fostering Connections Act to this case was unclear, that Meridian never lived with or knew her siblings, and that a change in placement would certainly cause emotional harm to Meridian. The siblings appealed and the maternal grandparents cross-appealed.

The Nebraska Supreme Court dismissed the appeal for lack of standing. The Nebraska Supreme Court addressed whether the order was a final, appealable order by affecting the siblings' substantial rights, and whether the siblings had standing to appeal from the order, and therefore analyzed "the existence and nature of any rights which [the siblings] may possess, and how such rights, if any, were affected by the placement determination." 281 Neb. at 475. Overall, the Supreme Court concluded that the siblings had no cognizable rights to Meridian's placement under (1) Nebraska statutes, regulations or common law, (2) the constitution or (3) the federal Fostering Connections Act.

Specifically, the Supreme Court noted that Nebraska statutes providing standing do not specifically provide standing for siblings and in other cases where non-listed parties were nevertheless permitted to appeal were allowed to do so in cases where they were not conferred any special entitlements with respect to custody and placement. In this case, the party has to show a personal stake in the controversy in order to have standing to appeal. The Supreme Court concluded that although prior case law and Nebraska public policy acknowledges the importance of sibling relationships and favors its preservation, it doesn't confer a right to siblings to seek to establish or preserve the sibling relationship; rather, it is done in the context of the best interests determination. As for constitutional interests, the Supreme Court held that there is no constitutionally protected interest to a sibling relationship as there is to a parent-child relationship. Finally, the Supreme Court concluded that the federal Fostering Connections Act does not create substantive legal rights in the siblings but instead places certain responsibilities on a

state regarding the child it removes from the parent's custody.

The Nebraska Supreme Court also concluded that the maternal grandparents lack standing to cross-appeal because any interest with Meridian was eliminated when the mother's parental rights were terminated.

In re Interest of Leland B.

Filed on May 10, 2011
19 Neb. App. 17, ____ N.W.2d ____

SUMMARY: Incarceration, standing alone, cannot be grounds for termination of parental rights □

Leland, DOB 12/05, entered the child welfare court system in October 2008 after his mother was unable to care for her children due to a mental health issue. Leland's father, Ronald, was incarcerated in May 2008 for possession and intent to distribute cocaine. In April 2009, Leland's mother died. After her death, DHHS sent Ronald a letter notifying him of Leland's custody, and Ronald responded requesting placement of Leland with Ronald's sister. On June 24, 2009, the State filed a supplemental petition alleging Leland to be within the meaning of N.R.S. 43-247(3)(a) due to Ronald's incarceration. In August 2009, Ronald admitted to the allegations. On June 15, 2010, the State filed a motion to terminate Ronald's parental rights. On August 16, 2010, a hearing on the motion to terminate was held. Leland's caseworker and his therapist testified that Leland had behavioral issues and that termination was in Leland's best interest to provide him with a stable, consistent living environment. Ronald testified that he could be released to a halfway house as early as March 2011 and could live with Leland's grandmother. The only evidence submitted at trial in support of the statutory ground for termination was related to Ronald's incarceration and the reasons for his incarceration. After trial, the juvenile court terminated Ronald's parental rights. Ronald appealed.

The Nebraska Court of Appeals reversed the termination of parental rights. It noted that incarceration cannot be the sole statutory grounds for termination and, in this case, it was. The Court of Appeals noted that the therapist and caseworker's opinions that termination was in Leland's best interests were based solely on the incarceration and not on Ronald's ability to parent, and that many concerns were speculative. The Court of Appeals also noted that Ronald had consistently followed through on his only opportunity to contact Leland through letters. Because the Court of Appeals found that incarceration could not solely satisfy grounds for termination, it did not address the issue of best interests.

In re Interest of Nature B.

Filed on June 28, 2011
Not designated for permanent publication, A-10-1133

SUMMARY: There was sufficient evidence that the child comes within the meaning of 43-247(3)(a) based on the child's testimony of inappropriate discipline, failure to care for injuries and her fear of her mother and step-father, but the DHHS recommendation for continued placement in the father's home was shown not to be in the child's best interest based on the father's past criminal history and history of domestic violence and the child's unhappiness with the placement.

Nature, a 12-year-old girl, was removed from her mother and stepfather's home on April 13, 2010, after she made allegations of physical abuse and failure by her mother to care for her injuries and protect her from harm. Nature's father, Christopher, made motions to intervene and for placement, and placement was granted on July 15, 2010. At the adjudication/dispositional hearing on October 25, 2010, Nature testified that her stepfather struck her with a belt causing her nose and mouth to bleed and that her mother did not care for her injuries. She also spoke of past abuse - testifying her stepfather hit her on more than 12 occasions since she was 5 - and that her mother has hit her with a belt in several instances. The initial assessment worker also testified that Nature's physician stated Nature was having suicidal ideations and was self-harming. The court found Nature to be within the meaning of N.R.S. 43-247(3)(a) and ordered Nature to remain in care with placement to include the father's home. The mother appealed.

The Nebraska Court of Appeals affirmed the adjudication but reversed as to continued placement with the father. As to adjudication, the Court of Appeals found that the evidence adduced at trial – specifically, Nature’s testimony and her fear of her mother and stepfather – was sufficient to warrant adjudication. It also found that the court did not err in ordering the mother to comply with a rehabilitation plan. Regarding Nature’s placement with Christopher, however, the Court of Appeals found that there was sufficient evidence presented to overcome the recommendation in the DHHS case plan for continued placement there. Specifically, the evidence included a denial from an Ohio home study based on Christopher’s violent history, past domestic abuse between Christopher and his wife, physical discipline of Nature and past substantiation and involvement with child welfare services in Ohio. The Court of Appeals noted that a recent law change to 43-285(2) removes the presumption of preference in favor of the DHHS plan.

In re Interest of Baby Girl F.

Filed on July 5, 2011□

Not designated for permanent publication, A-10-1114

SUMMARY: Reasonable efforts offered to a parent in a prior proceeding that are close in time to the later removal and reasonably related to the circumstances causing the removal are sufficient to satisfy the reasonable effort requirement for the later removal.□

Amari A., born in September 2010, was removed from her mother and father, Michael, one week after her birth. On September 16, 2010, the State filed a petition alleging Amari to be within the meaning of N.R.S. 43-247(3)(a) as to Michael and a protective custody hearing was held on October 25, 2010. Michael had recently been involved in a child welfare case pertaining to his four stepchildren (their mother being Amari’s mother) and had admitted in that case that he failed to maintain safe and adequate housing for them. That case had ended in August 2010 with a voluntary relinquishment by the mother to all four children. During that case, Michael had been ordered to maintain stable housing, comply with random drug testing, complete a psychological evaluation and participate in supervised visits. Michael completed the assessment and participated in family support services, but stopped attending visits in February 2010 and did not comply with random drug testing. He had also moved 6 times since May 2009 and was living with his mother in October 2010. After Amari was removed from Michael’s care, Michael was offered a pretreatment assessment, visitation services and bus passes, but he indicated he did not want to participate until he could obtain a cell phone. After the hearing, the juvenile court found that it would be contrary to the best interests and safety of the child to return to the parents. Michael appealed, challenging that finding and arguing that reasonable efforts had not been provided.

The Nebraska Court of Appeals affirmed the juvenile court’s order. It noted the services that were offered to Michael during the prior proceedings that continued until August 2010, just prior to the later removal, but that Michael chose not to participate in many of them. The Court of Appeals concluded that reasonable efforts had been made to prevent the removal, stating “the efforts [of the prior removal] were close in time to Amari’s removal and were reasonably related to the circumstances the State alleged necessitated Amari’s removal from Michael’s care.” *Supra* at page 5. The Court of Appeals also concluded that the evidence established keeping Amari in Michael’s home would be contrary to her best interests based on Michael’s failure to comply with prior services and failure to maintain stable housing.

In re Interest of Dut A. and Akon A.

Filed on July 5, 2011

Not designated for permanent publication, A-10-

1036

SUMMARY: Termination was in the children’s best interest where the mother failed to comply with the rehabilitation plan despite assistance from state workers, which included additional efforts addressing cultural barriers.

Dut A., DOB 1/96, and Akon A., DOB 11/99 were removed from the care of the mother, Achol, on March 25, 2008, after the mother was found on top of Akon assaulting her. The family are Sudanese refugees and Achol does not speak English. Achol admitted to allegations pursuant to N.R.S. 43-247(3)(a) on June 11, 2008, and was ordered to comply with a rehabilitation plan at hearings in August and November 2008 and February and April 2009. The plan included obtaining stable house, maintaining a source of income, completing a chemical dependency evaluation and treatment, submitting to random UAs, and participating in individual therapy. Achol was also ordered to participate in therapeutic and supervised visits. On March 30, 2010, a motion to terminate Achol's parental rights was filed. After trial, the juvenile court terminated Achol's parental rights pursuant to 43-292(7). Between removal and termination, Achol had held a job for only two months. She could not maintain stable housing as she continued getting in fights with other residents. She sporadically attended individual therapy and did not follow through on inpatient and outpatient treatment opportunities offered to her. The family support worker made efforts to resolve cultural barriers, such as understanding English, by offering English as a second language classes and job training classes. DHHS also consulted with a cultural anthropologist concerning the Sudanese culture to make efforts appropriate. Her visits with the children were sporadic and her conduct at times inappropriate and the children eventually indicated that they no longer wanted to visit with her. After trial terminating her parental rights, Achol appealed.

The Nebraska Court of Appeals affirmed the termination. Because Achol did not argue the statutory basis for termination, the Court of Appeals only considered whether termination was in the children's best interests. It rejected Achol's argument that her inability to speak English and cultural differences were barriers to complying with a rehabilitation plan, noting DHHS' efforts to respond to the cultural issues and to Achol's refusal to comply with many provisions of the plan. The Court of Appeals reviewed the failure of Achol to comply with the rehabilitation plan. It also discussed her inability to have appropriate visits with the children and the children's eventual unwillingness to visit with her.

In re Interest of Kaden S.

Filed on July 5, 2011

Not designated for permanent publication, A-10-1151

SUMMARY: Evidence of one-time methamphetamine use and past criminal history with no showing of child neglect or definite risk of harm is not sufficient for adjudicating the child within the meaning of N.R.S. 43-247(3)(a).□

Kaden, DOB 1/10, was removed from the mother's home on March 30, 2010, after the State filed a petition alleging he lacked proper parental care due to parental substance use, domestic violence between the mother (Dezera) and father (Shawn), and the father's history of drug use and violence against previous partners. At the adjudication hearing on July 15, 2010, Dezera's probation officer testified that Dezera refused to take a urinalysis test on March 29th and admitted to using methamphetamine on March 25th. A CFS specialist also testified that Dezera admitted to use. At the time, Dezera was living with Kaden at her parents' home. Her parents had guardianship of Dezera's 4-year-old child. There was some testimony about disagreements between the parents but no allegations of physical altercations. A police officer also testified that in 2008, Shawn overdosed after swallowing a quarter-sized amount of methamphetamine to avoid being caught in possession. The court also received several certified court documents showing Shawn's criminal history, which included violation of a harassment protection order, possession of drugs and intimidation by phone. After the hearing, the juvenile court dismissed the petition for lack of evidence. The State appealed.

The Nebraska Court of Appeals affirmed the juvenile court's order. It noted that all of Shawn's convictions occurred prior to Kaden's birth and that none included Dezera. The Court of Appeals also noted that there was no evidence that the drug use occurred in the presence of Kaden, that either parent had drugs in their possession, or that Shawn's history placed Kaden at risk for harm. Therefore, the Court of Appeals concluded that the evidence did not establish that Kaden lacked parental care or was a definite risk for harm.

In re Interest of Erika J. Tyler J.

Filed on July 12, 2011

Not designated for permanent publication, A-10-1038, A-10-1039

SUMMARY: Termination of parental rights was proper because the father continually failed to deal with his ongoing issues with alcohol abuse and the mother failed to understand and seek proper treatment for her mental health disorder, and neither made acceptable progress in improving their parenting skills and relationships with the children. The person testifying as an ICWA qualified expert witness was sufficient based on her extensive background and continued involvement with a tribe and Native American families and extensive knowledge of social and cultural standards in tribal child-rearing practices. There was sufficient evidence that serious emotional or physical damage to the children as required under ICWA would occur if the children were returned home because the father had significant alcohol issues that he failed to address and made little progress in improving his parenting skills.

Erika, DOB 2007, and Tyler, DOB 2008, are the children of Edward and Tonya. The family became involved with DHHS in February 2009 due to Edward's alcohol use, Tonya's failure to take bipolar disorder medication and frequent domestic disputes. The parents voluntarily agreed to family support services, which included full-time daycare, supervision of Tonya with the children, life skills teaching and family team meetings. These efforts were unsuccessful and the children were removed from the home and a petition was filed on April 28, 2009, alleging the children to be within the meaning of N.R.S. 43-247(3)(a) due to domestic violence and Edward's alcohol use. The petition also alleged that ICWA applied. Two tribes were notified and the Rosebud Tribe filed a notice of intervention on March 25, 2010, but took no further action.

Tonya was ordered to take her medication, participate in outpatient counseling, and participate in community support services so that she could put the children's needs first, improve her parenting skills and maintain impulse control. Edward was ordered to participate in substance dependency treatment, attend AA, and participate in outpatient counseling and family support services. Both parents were ordered to attend family and couples' counseling. Over several months, the parents were offered family support workers, counseling, visitation, gas and food vouchers, transportation and budget education. Edward made minimal use of visitation and Tonya had cancelled several visits; both appeared inattentive and disinterested during visits. Tonya refused to do a mental status evaluation and stopped taking medication due to a pregnancy. Edward did not complete an outpatient program and did not attend AA meetings. Both parents had also missed several family support meetings. The State filed a motion to terminate the parental rights of Edward and Tonya on March 24, 2010. At a hearing on April 20, 2010, the permanency goal was changed from reunification to adoption. Trial was held on August 20, 2010. Cassandra Whipple-Benitez, a tribal member familiar with customs and culture of the tribe and liaison of the Circle of Pride youth group for Native American youth testified that active efforts had been provided to the family, that the cultural plan was appropriate and that substantial physical or emotional harm would likely result if the children were returned to the parents. At the end of trial, the court held that there was sufficient evidence to terminate parental rights of both parents, entering the order on September 20, 2010. Both parents appealed.

The Nebraska Court of Appeals upheld the terminations of parental rights. It first found that statutory grounds under 43-292(2) of substantial and continuous neglect was met because despite the multitude of services offered to the parents, the parents did not consistently use those services; they did not consistently attend visitation, complete evaluations and attend treatment, or attend family support meetings. The record established that the parents did not adequately address the issues that led to the children being removed from the home and showed that the parents were unable to provide necessary parental care and protection. The Court of Appeals also found that Whipple-Benitez was a qualified expert witness as defined under ICWA because she was a member in good standing with the tribe, is a professional in the community, previously worked with the Chadron Native American Center as a community liaison, and currently works with the Circle of Pride youth group for Native American youth and with Speak Out providing family classes for Native American families. The Court of Appeals also found that there was sufficient evidence showing reunification would likely cause "serious emotional or

physical damage” to the children given the prolonged removal from the parental home and the minimal progress the parents have made in resolving their issues.

In re Interest of Karlie D.	Filed on August 2, 2011 19 Neb. App. 135, _____ N.W.2d _____
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SUMMARY: An order finding a grandparent to be a good moral citizen but making no appointment of guardianship is not a final order.

Martha, the paternal grandmother of Karlie D. intervened in her abuse/neglect proceedings in November 2009. Karlie’s father died during the proceedings. In March 2010, Martha filed a motion seeking placement of Karlie in her home and an amended motion that she and her husband be appointed Karlie’s guardians. On March 31, 2011, the juvenile court entered an order finding that Martha was a reputable citizen of good moral character as defined in N.R.S. 43-284 but that “before the court removes [DHHS] as the guardian, [DHHS] shall submit a transition plan to the court...” The State appealed the order.

The Nebraska Court of Appeals dismissed the appeal for lack of jurisdiction. There was no dispute among the parties that these proceedings were “special proceedings” as required to appeal. However, the Court of Appeals found that the order did not affect a substantial right because the actual effect of the juvenile court’s order did not establish guardianship. The Court of Appeals noted that the parties must not speculate as to the court’s state of mind but must only look to the effect of the order. In this case, the juvenile court’s order was interlocutory and the court did not commit itself to a transfer of guardianship; therefore, the order did not affect a substantial right and the Court of Appeals dismissed for lack of jurisdiction.

In re Interest of Tyler W.	Filed on August 9, 2011 Not designated for permanent publication, A-11-115, A-11-116
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SUMMARY: Termination of parental rights was proper where the children had been in foster care for a substantial period of time, where the father had been incarcerated off and on during that time and had only sporadically visited the children.□

Tyler W., DOB 5/07, and Landon W., DOB 10/08, were removed from the home on November 26, 2007, and February 3, 2009, respectively. Casey was ordered to comply with a case plan which included completing a full psychological evaluation and follow recommendations, paying child support, completing a parenting class and demonstrating ability, and ensuring sex offender registration. Casey did not complete the psychological evaluation, register as a sex offender or complete the parenting class. Casey was on probation for failure to register as a sex offender, and had earlier been incarcerated, but continued to avoid registering which the caseworker testified compromised the ability of him to provide permanency. He had also had several protection orders against him and subsequent violations. Casey had been offered parenting time twice a week but never was able to make both visits and requested a decrease to one time a week. On June 25, 2010, the State filed a petition to terminate the parental rights of the father, Casey. After trial on December 1, 2010, the juvenile court terminated his parental rights. The father appealed.

The Nebraska Court of Appeals affirmed the termination of parental rights. It first addressed Casey’s claim that evidence of prior convictions were erroneously admitted but the Court of Appeals held that similar testimony was adduced during trial without Casey’s objection. The Court of Appeals then held that termination was in the children’s best interests because the children had been in foster care a substantial amount of time, Casey had been “in and out of incarceration” and did not consistently visit the children.