

**Legislative & Case Law Update**  
*Through the Eyes of the Child  
Regional Conferences*

SEPTEMBER 2011

NEBRASKA APPLESEED  
FOSTER CARE REFORM LEGAL RESOURCE CENTER



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*In re Interest of Leland B.*  
19 Neb. App. 17 (2011)

- **Incarceration alone cannot be the sole basis for TPR.**
  - In reversing a TPR of a father, the COA noted that the therapist & caseworker's opinions that TPR was in Leland's best interests were based solely on the incarceration and not on the father's ability to parent, and that many concerns were speculative.
  - In addition, the father had consistently followed through in contact with Leland through letters.

*In re Interest of Breana M.*  
18 Neb. App. 910 (2010)

- **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.**
  - On appeal, the COA reversed a motion to dismiss and held that a juvenile court has the authority/SMJ to adjudicate under § 43-247(3)(a) regardless of the child's temporary residence in another county.
  - The COA also noted that proof of venue "is immaterial" (state is not required to prove) when a petition is filed alleging that a juvenile is subject to the jurisdiction of the Nebraska Juvenile Code & that juvenile courts have authority under § 43-282 to transfer after adjudication.

*In re Interest of Nature B.*  
A-10-1133 (2011) (unpublished)

- **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.**
  - Adjudication affirmed based on evidence, including the 12 year old child's testimony regarding inappropriate discipline.
- **COA noted in dicta that a recent law change to § 43-285(2) removes the presumption of preference in favor of the DHHS case plan.**

*In re Interest of Corey W.*  
A-10-893 (2011) (unpublished)

- **If reasonable efforts have been made prior to out-of-state placement, such placement does not necessarily impermissibly hinder reunification efforts.**
  - COA affirmed out-of-state placement order of children with respective fathers.
  - Mother argued this obstructed reunification and cited previous case law where a placement change was overturned where RE had not first been provided with the custodial parent.
  - In this case, the COA held that RE had been provided for 14 months prior to the placement. Also, the COA noted the children had spent time in the summer with the fathers and NE law favors placement with a parent over non-relative foster care.

*In re Interest of Jamyia*  
281 Neb. 964 (2011)

- **COA:** reversed a TPR, finding that there is no aggravated circumstances exception to the active efforts requirement under ICWA.
- **Sup. Ct.:** reversed COA, finding father did not timely file notice of appeal and therefore the COA did not have jurisdiction over this issue.
  - The Sup. Ct. also reviewed whether TPR had been proven BRD because the court determined that order had been timely filed and concluded the TPR was proper based on evidence the parents had caused shaken baby syndrome.

### *Camreta v. Greene*

131 S. Ct. 1465 (2011) (vacating in part *Greene v. Camreta*, 588 F.3d 1011 (9<sup>th</sup> Cir. 2009))

- **9<sup>th</sup> Circuit:** held that the state must first obtain a warrant before interviewing a suspected child sexual abuse victim at school.
- **U.S. Supreme Court** took the case on appeal, but did not reach the merits and instead determined that the case was moot.
- The Sup. Ct. vacated a portion of the 9th Circuit's opinion, rendering the 9<sup>th</sup> Cir. decision no longer binding precedent but leaving open the question how courts might rule in the future.

### Other Cases of Note

- **In re Interest of Ramon N.**, 18 Neb. App. 574 (2010) – absence of ICWA allegations in petition did not invalidate adjudication, but COA reversed order continuing out-of-home placement because the court did not receive evidence of active efforts or testimony of a qualified expert witness as required by ICWA.
- **In re Interest of Kaden S.**, A-10-1151 (2011) (unpublished) – one-time meth use and past criminal history with no showing of neglect or definite risk of harm insufficient to uphold adjudication.
- **In re Interest of Kennedy & MacKenzie B.**, A-10-274 (2010) (unpublished) – TPR reversed where mother had substantially complied with case plan, showed progress in parenting, and, while there were some concerns about the cleanliness of the house, no significant safety concerns existed.
- **In re Interest of Justin H. et al.**, 18 Neb. App. 718 (2010) – upheld TPR as to children involved in inappropriate sexual contact because of the parents' inability to protect, but reversed as to other children because parents showed progress and case plan compliance, and were bonded to the children.

### Recent State Child Welfare Legislation

**LR 37** – Review, investigate & assess effect of CW reform  
**LB 80/648** – Eliminates presumption that DHHS case plan is in CBI & makes mandatory court inquiry into the well-being of the foster child to any willing foster, pre-adoptive or relative placement present at hearing  
**LB 94** – Petitioners for adoption of state wards given opportunity to review case file  
**LB 177** – Fostering Connections (sibling placement, relative notice, transition plans)

Also passed: LB 112, LB 124, LB 79/463, LB 479, LB 669

UPCOMING  
 LEGISLATIVE  
 ISSUES TO  
 WATCH...

- Results of Legislative performance audit of the child welfare reform and LR 37 study expected later this year.
- Possible legislation as a result of these reform studies during the 2012 session.
- 2011 LBs held in committee carry over to 2012 session.

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