

SUPREME COURT OF NEBRASKA

In re Interest of J.K.

265 Neb. 253 (Neb. 2003) · No. S-02-438 · Decided January 31, 2003

SUMMARY

The Supreme Court of Nebraska held that a juvenile court did not abuse its discretion by refusing to appoint separate counsel for a juvenile whose guardian ad litem also served as counsel. The court interpreted Neb. Rev. Stat. § 43-272(3), concluding that whether “special reasons” require separate counsel is determined case by case based on the totality of the circumstances. The court found no actual conflict of interest, due process requirement, or divergence between the juvenile’s legal and social interests requiring separate counsel, and affirmed.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Hendry, C.J.; Wright, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	January 31, 2003
DOCKET	S-02-438
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by the juvenile's guardians ad litem from a juvenile court's refusal to appoint separate counsel for J.K. in a proceeding under Neb. Rev. Stat. § 43-247(3)(a).
STANDARD OF REVIEW	Statutory interpretation is reviewed independently as a question of law. The determination whether special reasons require separate counsel is reviewed de novo on the record for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Douglas R. Switzer, guardian ad litem, Jessica A. Kerkhofs, guardian ad litem v. State of Nebraska, William K. and Constance K., adoptive parents of child, Nebraska Department of Health and Human Services

TOPICS

guardian ad litem

guardianship procedure

procedural due process

statutory interpretation

appellate procedure

PRACTICE AREAS

juvenile law

family law

guardianship

constitutional law

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. § 43-272(3) required appointment of separate counsel for J.K. because special reasons existed in the particular case.
2. What standard of review governs a juvenile court's determination whether special reasons exist to separate the guardian ad litem and counsel roles.
3. Whether an actual conflict of interest, procedural due process, or divergence between J.K.'s legal and social interests required appointment of separate counsel.

HOLDINGS

1. The phrase "special reasons in a particular case" is not vague or ambiguous and gives juvenile courts broad authority to determine, on a case-by-case basis and considering the totality of the circumstances, whether the guardian ad litem and counsel roles should be separated.
2. A juvenile court's decision whether to separate the guardian ad litem and counsel roles is reviewed de novo on the record for abuse of discretion.
3. No actual conflict of interest required separate counsel because J.K. had not expressed wishes contrary to the guardians ad litem's best-interest position, and the record did not establish a conflict.
4. Procedural due process did not require appointment of separate counsel for J.K. in this non-delinquency proceeding under § 43-247(3)(a).
5. The asserted divergence between J.K.'s social interest in receiving treatment and legal interest in challenging the proceedings did not require separate counsel on this record.

KEY QUOTATIONS

"Thus, the determination whether "special reasons" exist must be based on a case-by-case basis, taking into consideration the totality of circumstances." (259)

"Parham does not require a right to counsel, let alone splitting the roles of guardian ad litem and counsel for the juvenile." (261)

FACTUAL BACKGROUND

J.K. had demonstrated suicidal and homicidal tendencies, and his treating psychiatrist recommended placement in a locked, structured residential treatment center providing psychiatric care, schooling, and chemical-dependency treatment. His parents had attempted to address his needs at home and through treatment but were unable to do so and sought state assistance. During the § 43-247(3)(a) proceeding, the guardians ad litem

supported residential treatment but sought separate counsel for J.K., asserting possible conflicts between their guardian ad litem and counsel roles.

PROCEDURAL HISTORY

The Douglas County Attorney petitioned the separate juvenile court to adjudicate J.K. under § 43-247(3)(a) because he was without proper support through no fault of his parents and required residential psychiatric treatment. A guardian ad litem moved for appointment of separate counsel, but the juvenile court denied the motion, accepted the parents' admissions, and adjudicated J.K. The guardians ad litem appealed, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Newman v. Thomas, 264 Neb. 801, 652 N.W.2d 565 (2002)
- In re Interest of Constance G., 247 Neb. 629, 529 N.W.2d 534 (1995)
- Betz v. Betz, 254 Neb. 341, 575 N.W.2d 406 (1998)
- In re Interest of Rachael M. & Sherry M., 258 Neb. 250, 603 N.W.2d 10 (1999)
- Orr v. Knowles, 215 Neb. 49, 337 N.W.2d 699 (1983)
- In re Interest of Anthony R. et al., 264 Neb. 699, 651 N.W.2d 231 (2002)
- In re Interest of Brandy M. et al., 250 Neb. 510, 550 N.W.2d 17 (1996)
- In re Interest of D.D.P., 235 Neb. 864, 458 N.W.2d 193 (1990)
- Gallner v. Hoffman, 264 Neb. 995, 653 N.W.2d 838 (2002)
- In re C.D., 27 S.W.3d 826 (Mo. App. 2000)
- In re Shaffer, 213 Mich. App. 429, 540 N.W.2d 706 (1995)
- In re Interest of G.Y., 486 N.W.2d 288 (Iowa 1992)
- In re Baby Girl Baxter, 17 Ohio St. 3d 229, 479 N.E.2d 257 (1985)
- In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967)
- Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979)