

NEBRASKA SUPREME COURT

In re Interest of Zachary B.

299 Neb. 187 (2018) · No. No. S-17-466 · Decided March 2, 2018

SUMMARY

The Nebraska Supreme Court dismissed Zachary B.'s appeal for lack of jurisdiction. It held that a juvenile's statutory right to remain in the home is a substantial right, but a temporary placement order that suspends that right briefly and does not finally determine placement is not an appealable final order. The court concluded that the juvenile court's order placing Zachary at Boys Town pending a later disposition hearing was temporary and therefore not final.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	March 2, 2018
DOCKET	No. S-17-466
DISPOSITION	dismissed
PROCEDURAL POSTURE	Zachary appealed an order of the Separate Juvenile Court of Lancaster County that removed him from his family home and placed him at Boys Town while continuing disposition of the State's motion to revoke probation.
STANDARD OF REVIEW	A jurisdictional question not involving a factual dispute is determined as a matter of law. Appealability of a juvenile court order is a fact-intensive inquiry under the final-order requirements.
PRECEDENTIAL VALUE	published opinion
PARTIES	Zachary B. v. State of Nebraska

TOPICS

[final judgment rule](#)[appellate jurisdiction](#)[appellate procedure](#)[family law procedure](#)[parental rights](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the April 12, 2017, juvenile court order temporarily placing Zachary at Boys Town was a final, appealable order under Neb. Rev. Stat. §§ 43-2,106.01(1) and 25-1902.
2. Whether the temporary placement order substantially affected Zachary's essential legal right to remain in his home.

HOLDINGS

1. An order that temporarily suspends a juvenile's right to remain in the home for a brief period and does not determine placement with finality does not affect a substantial right for purposes of Neb. Rev. Stat. § 25-1902(2) and is not appealable.
2. Because the challenged placement order was not final and appealable, the Nebraska Supreme Court lacked jurisdiction to review the merits of Zachary's claims concerning the exhaustion of community-based resources and risk of harm.

KEY QUOTATIONS

"We determine that Nebraska law as reflected in § 43-251.01(7) recognizes that a juvenile has an essential legal right, and therefore a substantial right, to remain in his or her home." (194)

"Similar to our holding with regard to orders that suspend a parent's rights, we hold that orders which temporarily suspend a juvenile's right to stay in the home for a brief period of time and do not purport to determine the juvenile's placement with finality do not affect a substantial right and are therefore not appealable." (194-195)

"Because the April 12, 2017, order is not a final order, we do not have jurisdiction of this appeal. Accordingly, we dismiss the appeal for lack of jurisdiction." (196)

FACTUAL BACKGROUND

Zachary, born in April 2000, was adjudicated a juvenile under Nebraska's juvenile code after admitting that he had been truant from school. He was placed on probation in his family home, but later admitted violating probation by failing to attend school regularly and failing to cooperate with services. After finding that extensive community-based services had been unsuccessful and that remaining in the home posed a significant risk to his education and future, the juvenile court ordered him placed at Boys Town while continuing disposition for approximately 60 days and identifying return home as the goal.

PROCEDURAL HISTORY

The juvenile court adjudicated Zachary under Neb. Rev. Stat. § 43-247(3)(b) based on truancy and later placed him on probation in his family home. After Zachary admitted probation violations, the court continued disposition, ordered temporary placement at Boys Town, and scheduled a further hearing. The Nebraska

Supreme Court dismissed the appeal for lack of jurisdiction because the placement order was not a final, appealable order.

DISPOSITION

dismissed

CASES CITED

- In re Interest of Becka P. et al., 296 Neb. 365, 894 N.W.2d 247 (2017)
- In re Interest of Cassandra B. & Moira B., 290 Neb. 619, 861 N.W.2d 398 (2015)
- In re Guardianship of Benjamin E., 289 Neb. 693, 707, 856 N.W.2d 447, 457 (2014) (Stephan, J., concurring)
- In re Guardianship of D.J., 268 Neb. 239, 682 N.W.2d 238 (2004)
- In re Interest of Noah B. et al., 295 Neb. 764, 891 N.W.2d 109 (2017)
- In re Interest of Karlie D., 283 Neb. 581, 587, 811 N.W.2d 214, 221 (2012)