

SUPREME COURT OF NEBRASKA

In re Interest of Jordon B.

312 Neb. 827 (2022) · No. No. S-22-019 · Decided November 4, 2022

SUMMARY

The Nebraska Supreme Court affirmed a juvenile court order changing Jordon B.’s placement. It held that foster parents lacked standing to appeal the placement order and had no right to intervene, and that Andrew Todd was not Jordon’s sibling under the Foster Care Review Act because they did not share a common parent. The court also concluded that the record did not show a basis for appointing counsel for the guardian ad litem or new counsel for Jordon.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	November 4, 2022
DOCKET	No. S-22-019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Foster parents Andrew and Alicia Todd appealed a juvenile court order changing Jordon B.'s placement and denying their motions to intervene. Andrew also sought intervention as Jordon's purported sibling. The guardian ad litem cross-appealed rulings concerning Andrew's sibling status and the failure to appoint counsel.
STANDARD OF REVIEW	Juvenile cases are reviewed de novo on the record. Jurisdictional questions not involving factual disputes, intervention rights, and statutory interpretation are questions of law reviewed independently of the lower court's conclusions.
PRECEDENTIAL VALUE	Published and precedential Nebraska Supreme Court opinion
PARTIES	Andrew Todd, Alicia Todd v. State of Nebraska, Nebraska Department of Health and Human Services, Allen B., Leah B., Christina Boydston, guardian ad litem for Jordon B., Jason D. on behalf of J.D. and L.D.

TOPICS

family law procedure

child custody

standing

intervention

statutory interpretation

PRACTICE AREAS

family law

juvenile law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Todds, as foster parents, had standing to appeal the juvenile court's placement order.
2. Whether foster parents had a statutory or equitable right to intervene in the juvenile proceeding.
3. Whether Andrew had standing to appeal the placement order based on his alleged status as a sibling, foster parent, or both.
4. Whether Andrew was a sibling of Jordon under the Nebraska Foster Care Review Act and therefore had a limited statutory right to intervene.
5. Whether the juvenile court erred by failing to appoint counsel for the guardian ad litem or new counsel for Jordon when the guardian ad litem's report was challenged.
6. Whether the juvenile court's change-of-placement order should be affirmed.

HOLDINGS

1. Foster parents who were never awarded custody are not custodians or guardians under Neb. Rev. Stat. § 43-2,106.01(2)(c), and foster parents therefore lack standing to appeal a juvenile court order changing a child's placement.
2. Foster parents have a statutory right to participate in review hearings, but that participation is less than party status; they are not entitled to intervene as a matter of right and cannot intervene equitably where the juvenile court lacks statutory authority to permit it.
3. An appellate court may exercise jurisdiction over an appeal from an order denying intervention even when the appellant lacks standing to appeal the juvenile court's final order or judgment on the merits.
4. A sibling under the Foster Care Review Act is a person with whom the child shares a common parent or parents. Sharing siblings in common does not make two people siblings, so Andrew was not Jordon's sibling because they had no common parent.
5. The issue was not appropriate for appellate consideration because the guardian ad litem did not request appointment of counsel in the juvenile court and the record did not show that the issue was presented to or decided by that court.

KEY QUOTATIONS

"We conclude that under this authority, the Todds' status as foster parents did not authorize them either to intervene or to appeal the placement order." (837)

"The plain and ordinary meaning of "sibling" requires a common parent or parents." (841)

“Because the juvenile court was neither presented with nor ruled upon a request for appointment of counsel, whether such appointment was warranted is not appropriate for consideration on appeal.” (842)

FACTUAL BACKGROUND

Jordon B. was removed from his biological parents' home after DHHS raised concerns about their ability to care for him, and he was adjudicated under Nebraska's Juvenile Code. After an initial placement with relatives, DHHS placed Jordon with Andrew and Alicia Todd, who served as foster parents. Jordon's mother later sought placement with Rita Pospishil, while Jordon's older brothers sought a joint-sibling placement; the juvenile court found that placement with Pospishil better served reunification and Jordon's best interests. Andrew claimed intervention rights as both a foster parent and a sibling, although he and Jordon had no common parent.

PROCEDURAL HISTORY

The Dodge County juvenile court adjudicated Jordon as a child within the meaning of Neb. Rev. Stat. § 43-247(3)(a), placed him in the custody of DHHS, and later placed him with the Todds. After Jordon's mother moved to change placement and Jordon's older brothers sought a joint-sibling placement, the Todds moved to intervene as foster parents and Andrew separately asserted sibling status. The juvenile court denied intervention, granted the motion to change placement to Rita Pospishil, denied the older brothers' placement request, and overruled motions to reconsider. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Interest of Enyce J. & Eternity M., 291 Neb. 965, 870 N.W.2d 413 (2015)
- In re Interest of Joseph C., 299 Neb. 848, 910 N.W.2d 773 (2018)
- In re Interest of Jackson E., 293 Neb. 84, 875 N.W.2d 863 (2016)
- In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016)
- In re Interest of Mekhi S. et al., 309 Neb. 529, 960 N.W.2d 732 (2021)
- In re Interest of Meridian H., 281 Neb. 465, 798 N.W.2d 96 (2011)
- In re Guardianship of Jill G., 312 Neb. 108, 977 N.W.2d 913 (2022)
- In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018)