

NEBRASKA SUPREME COURT

In re Interest of A.A. et al.

307 Neb. 817 (2020) · No. Nos. S-20-009, S-20-244 · Decided November 20, 2020

SUMMARY

The Nebraska Supreme Court considered consolidated appeals concerning a father's request for temporary placement of his child during juvenile proceedings and the juvenile court's subsequent adjudication order. The court addressed parental preference, due process and notice, the effect of a parent's disability, continuing juvenile-court jurisdiction during an appeal, and judicial disqualification. The judgment in case No. S-20-009 was reversed and remanded with directions, while the judgment in case No. S-20-244 was affirmed.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	November 20, 2020
DOCKET	Nos. S-20-009, S-20-244
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Joshua C., the legal father of B.C., appealed two orders of the Separate Juvenile Court of Lancaster County: the denial of his motion for temporary physical placement of B.C. and the subsequent order adjudicating B.C. under Neb. Rev. Stat. § 43-247(3)(a). The Nebraska Supreme Court consolidated the appeals.
STANDARD OF REVIEW	Jurisdictional questions not involving factual disputes and due process determinations are reviewed as questions of law independently. Juvenile cases are reviewed de novo on the record, with possible consideration of the trial court's opportunity to observe witnesses when evidence conflicts.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joshua C. v. State of Nebraska

TOPICS

family law procedure

child custody

parental rights

procedural due process

appellate jurisdiction

PRACTICE AREAS

juvenile law

family law

constitutional law

appellate procedure

disability and parental rights

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had jurisdiction over Joshua's appeal from the denial of temporary placement.
2. Whether alleged procedural irregularities in the ex parte emergency custody order deprived the juvenile court of subject matter jurisdiction.
3. Whether the parental preference doctrine required temporary placement with the nonoffending parent absent notice and proof that he was unfit, had forfeited custody, or that exceptional circumstances threatened serious harm to the child.
4. Whether the juvenile court could require a nonoffending parent to cooperate with a temporary transition or reunification plan without violating due process.
5. Whether a parent's physical disability creates a presumption of unfitness or shifts the burden to the parent to prove fitness.
6. Whether the juvenile court retained jurisdiction to adjudicate B.C. while Joshua's appeal from the temporary placement order was pending.
7. Whether the juvenile court judge was required to disqualify himself based on questioning during the placement hearing and a statement concerning reunification with the mother.

HOLDINGS

1. The December 23, 2019, order denying Joshua's motion for temporary physical placement was a final, appealable order because it was the first adjudication of Joshua's parental right to temporary custody and affected a substantial right.
2. The juvenile court had subject matter jurisdiction over B.C. and the proceedings despite alleged irregularities in the ex parte emergency custody order, including filing and notice issues.
3. When a juvenile adjudication petition alleges fault or habits of only one parent, the State may deny the other parent's request for temporary physical custody in lieu of foster care only if it pleads and proves by a preponderance of the evidence that the other parent is unfit, has forfeited custody, or that exceptional circumstances involving serious physical or psychological harm to the child or a substantial likelihood of such harm exist.
4. Procedural due process requires reasonable notice of the factual bases on which the State seeks to prove that a nonoffending parent is unfit, has forfeited parental rights, or presents exceptional circumstances sufficient to defeat parental preference.
5. A parent's disability does not create a presumption of unfitness, forfeiture of parental rights, or exceptional circumstances involving serious harm, and does not shift the burden to the disabled parent to

prove fitness.

6. The juvenile court retained continuing jurisdiction to accept the mother's plea and adjudicate B.C. while Joshua's appeal from the temporary placement order was pending.
7. The juvenile court judge was not required to disqualify himself based on questions posed during the placement hearing or the statement that the current goal was reunification with the mother.

KEY QUOTATIONS

“when the allegations of a petition for adjudication invoking the jurisdiction of the juvenile court are against one parent only, the State cannot deny the other parent’s request for temporary physical custody in lieu of a foster care placement unless it pleads and proves by a preponderance of the evidence that the other parent is unfit or has forfeited custody or that there are exceptional circumstances involving serious physical or psychological harm to the child or a substantial likelihood of such harm.” (849)

“reasonable notice must include the factual bases for seeking to prove that the parent is unfit or has forfeited parental rights or that exceptional circumstances exist involving serious physical or psychological harm to the child or a substantial likelihood of such harm.” (850-851)

“Such a presumption is unlawful.” (854)

FACTUAL BACKGROUND

B.C. and his half siblings were removed from their mother's home after allegations that she threatened one child with a knife. No allegations were made against Joshua C., B.C.'s legal and biological father, who had lived with and supported B.C. for most of the child's life before developing Guillain-Barre syndrome. After learning that B.C. was in foster care, Joshua sought temporary placement, but the juvenile court denied the request because of his disability-related limitations and his refusal to cooperate with DHHS in developing a detailed safety plan. The court later adjudicated B.C. based on the mother's conduct while Joshua's appeal of the placement denial was pending.

PROCEDURAL HISTORY

The juvenile court placed B.C. and his half siblings in the temporary legal and physical custody of DHHS after allegations of endangerment by B.C.'s mother. Joshua, who had not been named in the adjudication petition or given notice of the initial custody hearing, later intervened and sought temporary placement of B.C. The juvenile court denied placement, finding Joshua currently unfit because he would not cooperate with DHHS in creating a safety plan, and later adjudicated B.C. based on the mother's no-contest plea while Joshua's placement appeal was pending. The Supreme Court reversed the placement order and remanded with directions, but affirmed the adjudication order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In case No. S-20-009, reverse the order denying Joshua's motion for temporary physical placement and remand with directions to grant temporary physical placement after establishing, using the most up-to-date information, an appropriate temporary transition plan for B.C. The State may pursue a properly pleaded and proven fitness challenge on remand. In case No. S-20-244, the adjudication order was affirmed.

CASES CITED

- In re Interest of Enyce J. & Eternity M., 291 Neb. 965, 870 N.W.2d 413 (2015)
- In re Interest of Kane L. & Carter L., 299 Neb. 834, 910 N.W.2d 789 (2018)
- In re Interest of Karlie D., 283 Neb. 581, 811 N.W.2d 214 (2012)
- State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018)
- In re Guardianship of Rebecca B. et al., 260 Neb. 922, 621 N.W.2d 289 (2000)
- In re Interest of Devin W. et al., 270 Neb. 640, 707 N.W.2d 758 (2005)
- In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015)
- In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991)
- In re Interest of Kamille C. & Kamiya C., 302 Neb. 226, 922 N.W.2d 739 (2019)
- In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002)
- In re Interest of Jaydon W. & Ethan W., 25 Neb. App. 562, 909 N.W.2d 385 (2018)
- Lehr v. Robertson, 463 U.S. 248 (1983)
- Stanley v. Illinois, 405 U.S. 645 (1972)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Lassiter v. Department of Social Services, 452 U.S. 18 (1981)
- In re Interest of Jedidiah P., 267 Neb. 258, 673 N.W.2d 553 (2004)
- In re Interest of Joshua M. et al., 251 Neb. 614, 558 N.W.2d 548 (1997)
- Tierney v. Four H Land Co., 281 Neb. 658, 798 N.W.2d 586 (2011)
- In re Interest of J.K., 300 Neb. 510, 915 N.W.2d 91 (2018)