

NEBRASKA SUPREME COURT

In re Interest of A.A. et al.

310 Neb. 679 (2022) · No. No. S-21-421 · Decided January 7, 2022

SUMMARY

The Nebraska Supreme Court held that a juvenile court’s order placing a child with the biological mother did not exceed the court’s authority under the appellate mandate. The mandate required development of a transition plan for temporary placement with the biological father but did not preclude reunification with the mother, over whom the juvenile court retained jurisdiction. The court affirmed the juvenile court’s order.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	January 7, 2022
DOCKET	No. S-21-421
DISPOSITION	affirmed
PROCEDURAL POSTURE	Joshua C. appealed a separate juvenile court order entered after remand that denied his request for legal custody and placement of B.C. and placed B.C.'s physical custody with B.C.'s biological mother, Stacy J., subject to a transition plan. He argued that the placement order was void because it exceeded the Nebraska Supreme Court's prior mandate.
STANDARD OF REVIEW	The construction of an appellate mandate is a question of law reviewed independently of the lower court's determination.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joshua C. v. State of Nebraska, Stacy J.

TOPICS

- family law procedure
- child custody
- appellate procedure
- standard of review
- civil procedure

PRACTICE AREAS

family law

juvenile law

appellate procedure

QUESTIONS PRESENTED

1. Whether the juvenile court's order placing B.C. with Stacy exceeded and therefore violated the Nebraska Supreme Court's prior mandate.
2. Whether the juvenile court retained authority and continuing jurisdiction to reunify B.C. with Stacy while proceedings concerning Joshua's potential temporary placement were pending.
3. Whether the appellate court should consider claims beyond the specifically assigned error concerning placement with Stacy.

HOLDINGS

1. Appellate review is guided and constrained by the assignments of error articulated by the appealing party, and the court will not consider additional claims that were not separately and concisely assigned.
2. The juvenile court's order placing B.C. with Stacy pursuant to a transition plan was consistent with the Nebraska Supreme Court's prior opinion and mandate and did not exceed the juvenile court's authority.
3. A juvenile court may develop a transition plan that reasonably and temporarily intrudes on a nonoffending parent's autonomy when necessary to protect the child and facilitate reunification, and temporary placement with a noncustodial parent does not displace the court's ability to reunify the child with the custodial parent.

KEY QUOTATIONS

“When a lower court is given specific instructions on remand, it must comply with the specific instructions and has no discretion to deviate from the mandate.” (310 Neb. at 686)

“nothing in our opinion or mandate was antithetical to reunification of B.C. with Stacy” (310 Neb. at 686)

FACTUAL BACKGROUND

B.C. had been removed from Stacy J.'s home after a child-endangerment adjudication proceeding. Joshua C., B.C.'s biological father, had an established parental relationship and sought temporary placement, which the Nebraska Supreme Court previously ordered the juvenile court to develop through an appropriate transition plan. On remand, Joshua refused to cooperate with proposed conditions, while Stacy completed reunification services, maintained safe housing and employment, and exercised monitored and overnight parenting time without reported safety concerns. The juvenile court therefore ordered B.C.'s physical custody returned to Stacy subject to a transition plan.

PROCEDURAL HISTORY

In an earlier appeal, the Nebraska Supreme Court reversed the juvenile court's denial of Joshua's request for temporary placement and remanded with directions to develop an appropriate transition plan for placement with Joshua based on current information. On remand, Joshua opposed the proposed transition plan and declined to

cooperate with its requirements. The juvenile court denied Joshua's motions, approved a placement change, and ordered physical custody transferred to Stacy after completion of a transition plan. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Harris, 307 Neb. 237, 948 N.W.2d 736 (2020)
- In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020)
- In re Interest of A.A. et al., 308 Neb. 749, 957 N.W.2d 138 (2021)
- In re Interest of Mekhi S. et al., 309 Neb. 529, 960 N.W.2d 732 (2021)
- Great Northern Ins. Co. v. Transit Auth. of Omaha, 308 Neb. 916, 958 N.W.2d 378 (2021)
- TransCanada Keystone Pipeline v. Tanderup, 305 Neb. 493, 941 N.W.2d 145 (2020)
- In re Interest of Jedidiah P., 267 Neb. 258, 673 N.W.2d 553 (2004)
- In re Interest of Ethan M., 15 Neb. App. 148, 723 N.W.2d 363 (2006)