

SUPREME COURT OF NEBRASKA

In re Interest of Mainor T. & Estela T.; State v. Mercedes S., 267 Neb.
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674 N.W.2d 442 (2004) · No. S-02-1229 · Decided January 16, 2004

SUMMARY

The Nebraska Supreme Court reviewed the termination of Mercedes S.'s parental rights to Mainor T. and Estela T. The court addressed due process concerns arising from the juvenile court proceedings, including the absence of a detention hearing, inadequate notice and representation, and the mother's deportation and inability to participate. The opinion concludes that plain error permeated the proceedings and denied the mother fundamental fairness.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	January 16, 2004
DOCKET	S-02-1229
DISPOSITION	vacated
PROCEDURAL POSTURE	Mercedes S. appealed from the Hall County Court's order terminating her parental rights to Mainor T. and Estela T. The Nebraska Supreme Court conducted a de novo review and reviewed the entire juvenile proceeding for plain error and due process violations.
STANDARD OF REVIEW	In an appeal from an order terminating parental rights, factual questions are tried de novo on the record, with possible weight given to the juvenile court's opportunity to observe witnesses when evidence conflicts. Questions of law under the Nebraska Juvenile Code are reviewed independently. Plain error may be noticed for the first time on appeal or by the court on its own motion.
PRECEDENTIAL VALUE	published, precedential opinion
PARTIES	Mercedes S. v. State of Nebraska

TOPICS

termination of parental rights

parental rights

procedural due process

family law procedure

immigration

PRACTICE AREAS

juvenile law

family law

constitutional law

immigration

QUESTIONS PRESENTED

1. Whether the juvenile court denied Mercedes procedural due process by failing to conduct a prompt detention hearing after the children's emergency removal.
2. Whether the adjudication hearing violated due process because Mercedes was absent, unrepresented, and given no meaningful opportunity to defend against the petition.
3. Whether the disposition and review proceedings were fundamentally unfair because the court failed to conduct required evidentiary hearings on the record and adopted a reunification plan without corrective or remedial tasks.
4. Whether the evidence clearly and convincingly established abandonment as a ground for termination of parental rights.
5. Whether termination based on the children's placement outside the home for 15 of the preceding 22 months was shown to be in the children's best interests.

HOLDINGS

1. A prompt adversarial detention hearing is required after emergency removal of a child; continued detention pending adjudication is not permitted unless the State establishes by a preponderance of the evidence that detention is necessary for the child's welfare and satisfies applicable reasonable-efforts requirements.
2. When a juvenile court knows that a parent cannot attend an adjudication hearing because of incarceration or confinement, the court must afford procedural due process, including notice, a reasonable opportunity to defend, representation by counsel when required, and a meaningful opportunity to participate, confront witnesses, and present evidence.
3. Before adopting a parental rehabilitation plan, a juvenile court must conduct an evidentiary disposition hearing on the record and state factual findings supporting the plan; review proceedings required by statute must likewise be conducted on the record.
4. The evidence did not clearly and convincingly establish that Mercedes abandoned her children because the record did not show that she intentionally withheld her presence, care, love, protection, or maintenance without just cause or excuse.
5. Termination under the 15-month out-of-home-placement ground was not shown to be in the children's best interests where the parent was making efforts toward reunification but had not been given a sufficient or meaningful opportunity to comply with a reunification plan.

KEY QUOTATIONS

“"[C]ontinued detention pending adjudication is not permitted under the Nebraska Juvenile Code unless the State can establish by a preponderance of the evidence at an adversarial hearing that such detention is necessary for the welfare of the juvenile.” (456-457)

“This hearing is a parent's opportunity to be heard on the need for the removal and the satisfaction of the State's obligations under § 43-283.01, and it is not optional when a child is detained for any significant period of time.” (457)

“Fundamental fairness, at the very least, requires the adducing of appropriate evidence as a factual foundation for a rehabilitative plan which eventually may be used as a ground or condition for termination of parental rights.” (461)

“The State cannot prove that termination of parental rights is in a child's best interests by implementing a case plan that precludes a parent's compliance.” (464)

FACTUAL BACKGROUND

Mercedes S., a Guatemalan native who did not understand English and was apparently illiterate, was arrested after allegedly striking her six-year-old son, and both children were placed in protective custody. While the juvenile proceedings were pending, immigration authorities detained and deported Mercedes to Guatemala, preventing her from attending hearings or directly participating in reunification services. The juvenile court conducted the adjudication without Mercedes's presence or appointed counsel, adopted case plans without an adequate evidentiary record or meaningful reunification tasks, and later terminated her parental rights based on abandonment and the children's placement outside the home for 15 of the preceding 22 months. The record showed that Mercedes had attempted to obtain immigration assistance to return and participate in the proceedings, but the State and DHHS had not provided a meaningful means for reunification or contact with the children.

PROCEDURAL HISTORY

The Hall County Court, sitting as a juvenile court, removed the children from Mercedes's custody, adjudicated them under Neb. Rev. Stat. § 43-247(3)(a), and later entered disposition and review orders. The State moved to terminate Mercedes's parental rights based principally on the children's placement outside the home for 15 of the preceding 22 months. The juvenile court terminated her parental rights on September 17, 2002. After an earlier appeal was dismissed because the original termination order was illegible, Mercedes timely appealed from the typed order. The Nebraska Supreme Court vacated the adjudication, disposition, and termination orders and remanded for new detention and adjudication hearings consistent with due process.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the adjudication order, disposition order, and termination order. Remand to the juvenile court to conduct a detention hearing and a new adjudication hearing and to provide Mercedes due process consistent with the

opinion.

CASES CITED

- In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003)
- In re Interest of D.W., 249 Neb. 133, 542 N.W.2d 407 (1996)
- Law Offices of Ronald J. Palagi v. Dolan, 251 Neb. 457, 558 N.W.2d 303 (1997)
- In re Interest of Kelley D. & Heather D., 256 Neb. 465, 590 N.W.2d 392 (1999)
- In re Interest of L.V., 240 Neb. 404, 482 N.W.2d 250 (1992)
- Zadvydas v. Davis, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001)
- In re Interest of D.M.B., 240 Neb. 349, 481 N.W.2d 905 (1992)
- In re Interest of N.M. and J.M., 240 Neb. 690, 484 N.W.2d 77 (1992)
- In re Interest of J.S., A.C., and C.S., 227 Neb. 251, 417 N.W.2d 147 (1987)
- In re Interest of J.H., 242 Neb. 906, 497 N.W.2d 346 (1993)
- In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991)
- In re Interest of Anthony G., 255 Neb. 442, 586 N.W.2d 427 (1998)
- In re Interest of Boriis H. et al., 251 Neb. 397, 558 N.W.2d 31 (1997)
- In re Interest of Rebecka P., 266 Neb. 869, 669 N.W.2d 658 (2003)
- In re Interest of Sunshine A. et al., 258 Neb. 148, 602 N.W.2d 452 (1999)
- In re Interest of L.J., J.J., and J.N.J., 220 Neb. 102, 368 N.W.2d 474 (1985)
- In re Interest of Stephen Tyler R., 213 W. Va. 725, 584 S.E.2d 581 (2003)
- Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972)