

NEBRASKA SUPREME COURT

In re Interest of Prince R.

308 Neb. 415 (2021) · No. No. S-20-342 · Decided February 12, 2021

SUMMARY

The Nebraska Supreme Court affirmed a juvenile court adjudication finding that Prince R. lacked proper parental care under Neb. Rev. Stat. § 43-247(3)(a). The court held that the parents’ decision to remove Prince from Nebraska and discontinue medically necessary cancer treatment established a lack of proper parental care and a definite risk of future harm. The State was required to prove the adjudication allegations by a preponderance of the evidence.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	February 12, 2021
DOCKET	No. S-20-342
DISPOSITION	affirmed
PROCEDURAL POSTURE	The separate juvenile court adjudicated Prince R. under Neb. Rev. Stat. § 43-247(3)(a), finding that he lacked proper parental care by reason of the faults or habits of Mohamed K. and Abak R. Mohamed appealed, and Abak cross-appealed.
STANDARD OF REVIEW	Juvenile cases are reviewed de novo on the record. The appellate court reaches an independent conclusion, but when evidence conflicts it may give weight to the trial court’s observation of witnesses and acceptance of one version of the facts.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Mohamed K., Abak R. (cross-appellant) v. State of Nebraska

TOPICS

- parental rights
- family law procedure
- appellate procedure
- standard of review
- evidence

PRACTICE AREAS

juvenile law

family law

child welfare

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the State proved by a preponderance of the evidence that Prince lacked proper parental care by reason of the faults or habits of Mohamed and Abak under Neb. Rev. Stat. § 43-247(3)(a).
2. Whether the State was required to prove that Prince actually suffered physical harm, rather than a definite risk of future harm, to establish juvenile-court jurisdiction.
3. Whether the evidence established that Mohamed was personally responsible for the lack of proper parental care, rather than responsibility resting exclusively with Abak.

HOLDINGS

1. To obtain jurisdiction under Neb. Rev. Stat. § 43-247(3)(a), the State must prove the petition's allegations by a preponderance of the evidence, and the appellate court reviews the juvenile adjudication de novo on the record.
2. A juvenile lacks proper parental care under § 43-247(3)(a) when the child is not receiving necessary care and that condition results from the fault or habits of a parent, guardian, or custodian; the State need not prove actual physical harm but must establish a definite risk of future harm without intervention.
3. The evidence established that Abak deprived Prince of proper parental care by removing him from Nebraska and stopping his medically necessary treatment indefinitely, thereby creating a definite risk of future harm.
4. The State proved that Mohamed supported and bore responsibility for removing Prince from treatment indefinitely, so the adjudication was proper as to Mohamed as well as Abak.

KEY QUOTATIONS

“The purpose of the adjudication phase is to protect the interests of the child.” (426)

“To show that a juvenile lacks proper parental care, the State is not required to prove that the child has actually suffered physical harm, but the State must establish that, without intervention, there is a definite risk of future harm.” (426)

“The Nebraska Juvenile Code does not require a juvenile court to wait until disaster has befallen a minor child before the court may acquire jurisdiction.” (428)

FACTUAL BACKGROUND

Prince R., born in August 2015, was diagnosed with alveolar rhabdomyosarcoma that had spread to lymph nodes. His oncologist testified that the recommended chemotherapy, radiation, and continued chemotherapy offered about a 60-percent chance of relapse-free long-term survival, while without treatment he would likely die within six months to a year. After initially participating in treatment, Mohamed and Abak missed appointments, removed Prince from Nebraska, and stopped bringing him to chemotherapy and radiation

appointments for more than three weeks while claiming they were seeking a second opinion. No evidence showed that they arranged another medical opinion or medical treatment during that period.

PROCEDURAL HISTORY

The State filed an adjudication petition alleging that Prince lacked proper parental care because his parents intentionally stopped or prevented medically necessary cancer treatment. Following a four-day adjudication hearing, the Lancaster County Separate Juvenile Court sustained the petition and adjudicated Prince under § 43-247(3)(a). Mohamed appealed and Abak cross-appealed; the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Interest of A.A. et al., 307 Neb. 817, 951 N.W.2d 144 (2020)
- In re Interest of Justine J., 286 Neb. 250, 835 N.W.2d 674 (2013)
- In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020)
- State v. Metteer, 203 Neb. 515, 279 N.W.2d 374 (1979)
- In re Interest of Kane L. & Carter L., 299 Neb. 834, 910 N.W.2d 789 (2018)
- In re Interest of Heather R. et al., 269 Neb. 653, 694 N.W.2d 659 (2005)
- In re Interest of Vladimir G., 306 Neb. 127, 944 N.W.2d 309 (2020)
- In re Interest of Leyton C. & Landyn C., 307 Neb. 529, 949 N.W.2d 773 (2020)