

SUPREME COURT OF NEBRASKA

In re Interest of Carmelo G., a child under 18 years of age: State of Nebraska v. Latika G.

In re Interest of Carmelo G., 296 Neb. 805 (2017) · No. No. S-16-981 · Decided June 2, 2017

SUMMARY

The Nebraska Supreme Court held that the mother’s procedural due process rights were violated by the more than eight-month delay between an ex parte temporary custody order and the protective custody order continuing the child’s removal from the parental home. The court vacated the juvenile court’s order and remanded for further proceedings, declining to reach the mother’s remaining assignment of error.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Wright, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	June 2, 2017
DOCKET	No. S-16-981
DISPOSITION	vacated
PROCEDURAL POSTURE	Latika G. appealed from an order of the Separate Juvenile Court of Douglas County continuing her child’s temporary custody with the Nebraska Department of Health and Human Services after an ex parte emergency-custody order.
STANDARD OF REVIEW	Juvenile cases are reviewed de novo on the record. Whether procedures satisfy constitutional procedural due process is a question of law reviewed independently.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Latika G. v. State of Nebraska

TOPICS

- procedural due process
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

family law

juvenile law

constitutional law

QUESTIONS PRESENTED

1. Whether the more than eight-month delay between the ex parte temporary-custody order and the protective custody order violated Latika's procedural due process rights.
2. Whether the December 3, 2015, safety plan was invalid and coercive and therefore could not support continued detention.

HOLDINGS

1. The delay was unreasonable and violated Latika's procedural due process rights because a parent is entitled to a prompt, meaningful hearing after the State takes emergency custody of the parent's child.
2. The court did not reach the assignment of error challenging the validity and coerciveness of the safety plan because the procedural-due-process ruling was dispositive.

KEY QUOTATIONS

“the State may not, in exercising its parens patriae interest, unreasonably delay in notifying a parent that the State has taken emergency action regarding that parent’s child nor unreasonably delay in providing the parent a meaningful hearing.” (296 Neb. at 814)

“The more than 8-month delay in this case between the filing of the ex parte order and that of the protective custody order is too long a duration and results in interference with Latika’s liberty interest in raising Carmelo.” (296 Neb. at 816)

“A delay of 8 months between the time a child is ‘temporarily’ taken from the child’s parent until the child and parent are given the evidentiary safeguards of an adjudication hearing cannot be condoned” (296 Neb. at 817)

FACTUAL BACKGROUND

Carmelo G., born in July 2015, had previously been placed in DHHS custody in an earlier juvenile case involving allegations related to Latika's substance use, mental health issues, and domestic violence. That case was dismissed on December 3, 2015, and Carmelo returned to Latika's home, subject to safety plans addressing drug testing, treatment, domestic violence, and supervision. After a December 20 domestic-violence incident, the State filed a new petition and obtained an ex parte order placing Carmelo in DHHS custody on January 5, 2016. Although a protective custody hearing began 16 days later, it continued through August 2, and the juvenile court did not enter its protective custody order until September 19, more than eight months after the ex parte order.

PROCEDURAL HISTORY

The State filed a juvenile petition and obtained an ex parte order placing Carmelo in DHHS custody on January 5, 2016. A protective custody hearing began on January 21 but was continued through August 2, 2016; the

juvenile court entered its protective custody order on September 19, 2016. The Nebraska Supreme Court vacated that order and remanded because the delay violated Latika's procedural due process rights.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The September 19, 2016, protective custody order was vacated, and the cause was remanded for further proceedings.

CASES CITED

- In re Interest of Noah B. et al., 295 Neb. 764, 891 N.W.2d 109 (2017)
- In re Interest of Joseph S. et al., 288 Neb. 463, 849 N.W.2d 468 (2014)
- In re Interest of Nicole M., 287 Neb. 685, 844 N.W.2d 65 (2014)
- Jeremiah J. v. Dakota D., 287 Neb. 617, 843 N.W.2d 820 (2014)
- Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)
- Zahl v. Zahl, 273 Neb. 1043, 736 N.W.2d 365 (2007)
- In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004)
- In re Interest of R.G., 238 Neb. 405, 470 N.W.2d 780 (1991)
- O'Connor v. Kaufman, 255 Neb. 120, 582 N.W.2d 350 (1998)
- Sherman T. v. Karyn N., 286 Neb. 468, 837 N.W.2d 746 (2013)
- In re Interest of D.M.B., 240 Neb. 349, 481 N.W.2d 905 (1992)
- Medicine Creek v. Middle Republican NRD, ante p. 1, 892 N.W.2d 74 (2017)