

SUPREME COURT OF NEBRASKA

In re Interest of Xandria P.

311 Neb. 591 (2022) · No. No. S-21-500 · Decided May 13, 2022

SUMMARY

The Nebraska Supreme Court affirmed the adjudication of Xandria P. as a juvenile under Neb. Rev. Stat. § 43-247(3)(a) based on allegations of sexual abuse and inadequate parental care. The court held that the child’s recorded forensic interview was admissible under the medical diagnosis or treatment exception to hearsay, and that the State proved the adjudication allegations by a preponderance of the evidence. The court also held that the juvenile court had jurisdiction because a temporary custody order was issued within 48 hours and, in any event, statutory timing violations would not necessarily deprive the court of jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 13, 2022
DOCKET	No. S-21-500
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dale A. appealed from a Platte County Court order, sitting as a juvenile court, adjudicating Xandria P. under Neb. Rev. Stat. § 43-247(3)(a).
STANDARD OF REVIEW	Juvenile cases are reviewed de novo on the record. The appellate court reaches its own conclusions independently but may give weight to the trial court's assessment of conflicting evidence because it observed the witnesses. In that review, inadmissible or improper evidence is disregarded, and adjudication under § 43-247(3)(a) must be established by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Dale A. v. State of Nebraska

TOPICS

hearsay

evidence

appellate procedure

standard of review

family law procedure

PRACTICE AREAS

juvenile law

evidence

appellate procedure

child protection

QUESTIONS PRESENTED

1. Whether the juvenile court properly admitted Xandria's recorded forensic interview under Neb. Evid. R. 803(3), the medical-diagnosis-or-treatment exception to the hearsay rule.
2. Whether the juvenile court improperly admitted other out-of-court statements, certified copies of Dale's criminal charges, and safety and risk assessments.
3. Whether the evidence was sufficient to adjudicate Xandria under Neb. Rev. Stat. § 43-247(3)(a).
4. Whether the juvenile court lacked jurisdiction because a temporary custody order was allegedly not entered within the statutory 48-hour period under § 43-250(2).

HOLDINGS

1. A child's statements to a forensic interviewer in the chain of medical care may be admissible under Neb. Evid. R. 803(3) even when the interview also partially assists a law-enforcement investigation, provided the declarant made the statements to assist medical diagnosis or treatment and the statements were reasonably pertinent to treatment by a medical professional.
2. Whether a statement was taken and given in contemplation of medical diagnosis or treatment is a factual determination relevant to admissibility under Neb. Evid. R. 803(3).
3. In a juvenile case, admission or exclusion of evidence is not reversible error unless it unfairly prejudices a substantial right, and evidentiary objections that have no independent legal significance in the de novo resolution of the case do not warrant reversal.
4. To assume jurisdiction under Neb. Rev. Stat. § 43-247(3)(a) at the adjudication stage, the State must prove the petition's allegations by a preponderance of the evidence.
5. Failure to comply with statutory requirements or time limits concerning an ex parte temporary detention or custody order does not, absent direct statutory language providing otherwise, deprive the juvenile court of jurisdiction or cause it to lose jurisdiction.

KEY QUOTATIONS

“A declarant’s out-of-court statement offered for the truth of the matter asserted is inadmissible unless it falls within a definitional exclusion or statutory exception.” (311 Neb. at 597)

“Statements made by a child victim of sexual abuse to a forensic interviewer in the chain of medical care may be admissible under rule 803(3), even though the interview has the partial purpose of assisting law enforcement’s investigation of the crimes.” (311 Neb. at 597-598)

“In a juvenile case, just as in a civil case, the admission or exclusion of evidence is not reversible error unless it unfairly prejudiced a substantial right of the complaining party.” (311 Neb. at 600)

“At the adjudication stage, in order for a juvenile court to assume jurisdiction of minor children under § 43-247(3)(a), the State must prove the allegations of the petition by a preponderance of the evidence.” (311 Neb. at 600)

FACTUAL BACKGROUND

Xandria, born in 2013, told her first-grade teacher that she had a secret involving her father figure and that they engaged in conduct associated with boyfriends and girlfriends. A sheriff's investigator and a DHHS specialist transported her to the Northeast Nebraska Child Advocacy Center, where a forensic interviewer conducted a recorded interview after explaining the center's connection to a hospital and the availability of doctors and nurses. Xandria described repeated sexual contact by Dale, her stepfather, and the juvenile court admitted the interview and other evidence before adjudicating her under § 43-247(3)(a). The record also showed that a temporary ex parte placement order was issued within approximately 21 hours after Xandria was taken into protective custody.

PROCEDURAL HISTORY

The State filed a petition alleging that Xandria was a juvenile within the meaning of § 43-247(3)(a) because Dale subjected her to sexual abuse and the home environment was injurious to her well-being. After a pretrial hearing, the juvenile court admitted Xandria's recorded forensic interview under Nebraska Evidence Rule 803(3), and after trial it sustained the petition. Dale appealed, challenging evidentiary rulings, the sufficiency of the evidence, and the juvenile court's jurisdiction based on the timing of the temporary custody order. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Interest of Prince R., 308 Neb. 415, 954 N.W.2d 294 (2021)
- In re Interest of Elainna R., 298 Neb. 436, 904 N.W.2d 689 (2017)
- In re Interest of D.P.Y. and J.L.Y., 239 Neb. 647, 477 N.W.2d 573 (1991)
- In re Interest of O.L.D. and M.D.D., 1 Neb. App. 471, 499 N.W.2d 552 (1993)
- In re Interest of L.H. et al., 241 Neb. 232, 487 N.W.2d 279 (1992)
- State v. Jedlicka, 297 Neb. 276, 900 N.W.2d 454 (2017)
- State v. Vaught, 268 Neb. 316, 682 N.W.2d 284 (2004)
- Vacanti v. Master Electronics Corp., 245 Neb. 586, 514 N.W.2d 319 (1994)
- State v. Dyer, 245 Neb. 385, 513 N.W.2d 316 (1994)
- State v. Red Feather, 205 Neb. 734, 289 N.W.2d 768 (1980)
- Morgan v. Foretich, 846 F.2d 941 (4th Cir. 1988)
- United States v. Renville, 779 F.2d 430 (8th Cir. 1985)
- State v. Smith, 315 N.C. 76, 337 S.E.2d 833 (1985)

- Gregory v. State, 56 S.W.3d 164 (Tex. App. 2001)
- State v. Herrera, 289 Neb. 575, 856 N.W.2d 310 (2014)
- State v. Vigil, 283 Neb. 129, 810 N.W.2d 687 (2012)
- State v. Cheloha, 25 Neb. App. 403, 907 N.W.2d 317 (2018)
- State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011)
- State v. Dady, 304 Neb. 649, 936 N.W.2d 486 (2019)
- In re Interest of B.R. et al., 270 Neb. 685, 708 N.W.2d 586 (2005)
- In re Interest of Vladimir G., 306 Neb. 127, 944 N.W.2d 309 (2020)
- In re Interest of Brian B. et al., 268 Neb. 870, 689 N.W.2d 184 (2004)
- In re Interest of Jeremy U. et al., 304 Neb. 734, 936 N.W.2d 733 (2020)
- In re Interest of Justine J. et al., 286 Neb. 250, 835 N.W.2d 674 (2013)
- In re Interest of Karlie D., 283 Neb. 581, 811 N.W.2d 214 (2012)
- In re Interest of Sabrina K., 262 Neb. 871, 635 N.W.2d 727 (2001)
- In re Interest of Kantril P. & Chenelle P., 257 Neb. 450, 598 N.W.2d 729 (1999)
- 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)
- In re Interest of S.S.L., 219 Neb. 911, 367 N.W.2d 710 (1985)