

NEBRASKA SUPREME COURT

Maria T. v. Jeremy S.

300 Neb. 563 (2018) · No. S-17-925 · Decided July 20, 2018

SUMMARY

The Nebraska Supreme Court affirmed the dismissal of a biological mother’s habeas corpus petition challenging adoptive parents’ custody of her child. The court clarified that Nebraska’s statutory habeas corpus procedures apply in child custody proceedings and held that the petition did not allege facts establishing entitlement to relief based on an alleged failure to honor a communication and contact agreement. The court also discussed the statutory limits on using noncompliance with such an agreement to invalidate a relinquishment or adoption.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Dobrovolny, District Judge; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	July 20, 2018
DOCKET	S-17-925
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Lancaster County District Court's dismissal on the pleadings of a biological mother's application for a writ of habeas corpus challenging the adoptive parents' custody of her biological child.
STANDARD OF REVIEW	A child-custody habeas decision and the sufficiency of allegations in an application for a writ of habeas corpus are reviewed de novo on the record.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Maria T. v. Jeremy S., Jamie S.

TOPICS

- family law procedure
- child custody
- adoption
- parental rights
- statutory interpretation

PRACTICE AREAS

family law

adoption

child custody

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. What procedural mechanism governs a child-custody habeas proceeding and a challenge to the sufficiency of the application?
2. Whether the district court could treat the matter as an ordinary motion-to-dismiss or summary-judgment proceeding.
3. Whether alleged noncompliance with a communication or contact agreement could invalidate a parental relinquishment or consent to adoption or support discharge of the child from the adoptive parents' custody.
4. Whether constitutional challenges to the adoption and contact-agreement statutes were preserved for appellate review.

HOLDINGS

1. The statutory procedure in Neb. Rev. Stat. §§ 29-2801 through 29-2824 applies to child-custody habeas proceedings. A motion to dismiss under Neb. Ct. R. Pldg. § 6-1112(b) has no role in such a proceeding; after issuance of the writ, a challenge to the sufficiency of the application should be made by motion to quash.
2. The application did not allege facts sufficient to warrant discharge of the child from the respondents' custody.
3. Neb. Rev. Stat. § 43-163 encompasses both written and oral agreements regarding communication or contact after an adoption when the prospective adoptee is in DHHS custody.
4. Maria waived her constitutional challenge because she raised it for the first time on appeal and failed to comply with Neb. Ct. R. App. P. § 2-109(E).

KEY QUOTATIONS

“Accordingly, a motion to dismiss under Neb. Ct. R. Pldg. § 6-1112(b) should play no role in a child custody habeas proceeding.” (577)

“Under § 43-163, such agreements are enforceable only if approved by the juvenile court and, pursuant to § 43-164, such agreements are never enforceable by way of revoking the consent and dissolving the adoption.” (580)

“Although the proper procedure was not followed, we affirm the court’s ultimate determination that the application failed to allege facts that could warrant relief in a habeas proceeding.” (581)

FACTUAL BACKGROUND

Maria T. relinquished her parental rights to the Nebraska Department of Health and Human Services and consented to the adoption of her child by foster parents Jeremy S. and Jamie S. She alleged that the

relinquishment and consent were conditioned on continued contact with the child and that the respondents failed to permit that contact. The parties had signed a communication and contact agreement, but the juvenile court approved the adoption without approving that agreement. Maria sought custody of the child and revocation of the relinquishment and consent.

PROCEDURAL HISTORY

Maria T. filed an application for a writ of habeas corpus alleging that her consent to adoption and relinquishment of parental rights had been obtained through coercion, false pretenses, or fraud, and that the adoptive parents had failed to honor a communication and contact agreement. The district court dismissed the application with prejudice for failure to state a claim and alternatively concluded that the respondents were entitled to summary judgment. The Nebraska Supreme Court held that the proper habeas procedure had not been followed but affirmed the ultimate conclusion that the allegations could not warrant relief.

DISPOSITION

affirmed

CASES CITED

- Monty S. v. Jason W., 290 Neb. 1048, 863 N.W.2d 484 (2015)
- State v. Determan, 292 Neb. 557, 873 N.W.2d 390 (2016)
- In re Application of Tail, Tail v. Olson, 144 Neb. 820, 14 N.W.2d 840 (1944)
- Sanders v. Frakes, 295 Neb. 374, 888 N.W.2d 514 (2016)
- Johnson v. Gage, 290 Neb. 136, 858 N.W.2d 837 (2015)
- In re Application of Dunn, 150 Neb. 669, 35 N.W.2d 673 (1949)
- Nebraska Children's Home Society v. State, 57 Neb. 765, 78 N.W. 267 (1899)
- O'Neal v. State, 290 Neb. 943, 863 N.W.2d 162 (2015)
- Rehbein v. Clarke, 257 Neb. 406, 598 N.W.2d 39 (1999)
- In re Interest of Joseph C., 299 Neb. 848, 910 N.W.2d 773 (2018)
- State v. Ortega, 290 Neb. 172, 859 N.W.2d 305 (2015)
- State ex rel. Shepherd v. Neb. Equal Opp. Comm., 251 Neb. 517, 557 N.W.2d 684 (1997)
- State v. Boche, 294 Neb. 912, 885 N.W.2d 523 (2016)
- Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016)