

NEBRASKA SUPREME COURT

State v. Justine R.

268 Neb. 870 (2004) · Decided December 3, 2004

SUMMARY

The Nebraska Supreme Court reviewed a juvenile court adjudication finding three children to be abused or neglected under Neb. Rev. Stat. § 43-247(3)(a). The court held that allowing a child to testify in chambers, while permitting the parent’s counsel to cross-examine and providing the parent with near-real-time access to the testimony, did not violate due process. The court also concluded that the evidence was sufficient to establish sexual abuse by a preponderance of the evidence and affirmed the adjudication.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Stephan, J.; Connolly, J.; Gerrard, J.; Hendry, J.; Lerman, J.; McCormack, J.; Miller-Lerman, J.; Wright, J.
JURISDICTION	Nebraska
DECIDED	December 3, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a juvenile court adjudication finding three children to be abused or neglected minors under Neb. Rev. Stat. § 43-247(3)(a).
STANDARD OF REVIEW	Juvenile cases are reviewed de novo on the record. The appellate court reaches an independent conclusion but may give weight to the lower court's observation of witnesses and acceptance of one version of conflicting evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kevin R. v. State of Nebraska

TOPICS

- family law procedure
- due process
- hearsay
- evidence
- appellate procedure

PRACTICE AREAS

- juvenile law
- family law
- evidence
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether allowing Stephanie to testify in chambers outside Kevin's physical presence violated Kevin's due process rights.
2. Whether the juvenile court properly adjudicated the children under Neb. Rev. Stat. § 43-247(3)(a) based on proof by a preponderance of the evidence that Kevin sexually assaulted Stephanie.
3. Whether Stephanie's statements to her therapist were properly admitted under the residual hearsay exception.

HOLDINGS

1. A juvenile court may permit a child to testify in chambers outside a parent's physical presence when the State provides notice, the court conducts a separate hearing, and the State shows legitimate concerns regarding a risk of harm to the child; the procedures used here adequately protected Kevin's due process rights.
2. The allegations that Kevin sexually assaulted Stephanie were proved by a preponderance of the evidence, and the adjudication of all three children under § 43-247(3)(a) was proper.
3. The court did not decide the hearsay issue because the challenged testimony was cumulative and unnecessary to establish the sufficiency of the evidence.

KEY QUOTATIONS

“A child should be allowed to testify in chambers at a separate hearing when there are legitimate concerns about the child’s testifying in the presence of his or her parents,” (876)

“it is ‘only logical that the child not be faced with the risk of being harmed when that is what the court is trying to prevent.’” (876)

FACTUAL BACKGROUND

Brian and Stephanie had previously been adjudicated under the juvenile court's jurisdiction, and all three children were later removed from the home and placed in foster care. The State alleged that Kevin sexually assaulted four-year-old Stephanie and that six-month-old Raymond suffered an unexplained broken femur while in Justine's care. At a pretrial hearing, a therapist testified that Stephanie was developmentally delayed, had posttraumatic stress disorder, and faced a risk of harm if required to testify in Kevin's presence. Stephanie testified in chambers that Kevin had touched and hurt her private parts, while Kevin denied sexual contact and offered alternative explanations for her sexualized behavior and knowledge.

PROCEDURAL HISTORY

The Sarpy County Separate Juvenile Court adjudicated Brian B., Stephanie B., and Raymond R. under § 43-247(3)(a), finding the allegations in the State's second amended supplemental petition true by a preponderance of the evidence. The juvenile court permitted Stephanie to testify in chambers and admitted statements she made to her therapist under the residual hearsay exception. Kevin R. appealed, and the Nebraska Supreme Court moved the case to its docket on its own motion.

DISPOSITION

affirmed

CASES CITED

- In re Interest of Jac'Quez N., 266 Neb. 782, 669 N.W.2d 429 (2003)
- In re Interest of Kelley D. & Heather D., 256 Neb. 465, 590 N.W.2d 392 (1999)
- State v. Vaught, ante p. 316, 682 N.W.2d 284 (2004)
- In re Interest of L.V., 240 Neb. 404, 482 N.W.2d 250 (1992)
- In re Interest of Danielle D. et al., 257 Neb. 198, 595 N.W.2d 544 (1999)
- In re Petition of Omaha Pub. Power Dist., ante p. 43, 680 N.W.2d 128 (2004)
- 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)
- State v. Canady, 263 Neb. 552, 641 N.W.2d 43 (2002)
- In re Interest of T.M.B. et al., 241 Neb. 828, 491 N.W.2d 58 (1992)
- In re Estate of Jeffrey B., ante p. 761, 688 N.W.2d 135 (2004)
- In re Interest of S.S.L., 219 Neb. 911, 367 N.W.2d 710 (1985)