

SUPREME COURT OF NEBRASKA

Calkins ex rel. Antonio S. v. Nebraska Department of Health & Human Services

708 N.W.2d 614, 270 Neb. 792 (2005) · No. S-05-262 · Decided December 23, 2005

SUMMARY

The Supreme Court of Nebraska considered whether establishing a guardianship under the Nebraska Juvenile Code necessarily transfers custody from the Nebraska Department of Health and Human Services to the appointed guardians. The court held that a permanent guardianship for adjudicated children who had been in DHHS custody necessarily transfers custody by operation of law, and it affirmed the juvenile court's order granting the foster parents care and custody and relieving DHHS of custody, case management, and supervision.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stephan, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; McCormack, J.; Miller-Lerman, J. participating on briefs
JURISDICTION	Nebraska
DECIDED	December 23, 2005
DOCKET	S-05-262
DISPOSITION	affirmed
PROCEDURAL POSTURE	The guardian ad litem appealed a juvenile court order appointing foster parents as the children's guardians, placing the children in their care and custody, and relieving DHHS of custody, case-management, and supervisory obligations. The Nebraska Supreme Court removed the appeal to its docket.
STANDARD OF REVIEW	Questions of law and statutory interpretation are reviewed independently of the decision of the court below.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Richard Calkins, guardian ad litem, on behalf of Antonio S. and Priscilla S. v. Marlin M., Sharon M., Ellis S., Nebraska Department of Health and Human Services, other appellees

TOPICS

guardianships

guardianship procedure

statutory interpretation

appellate procedure

standard of review

PRACTICE AREAS

juvenile law

guardianship

child welfare

family law

QUESTIONS PRESENTED

1. Whether establishing a guardianship under the Nebraska Juvenile Code as a permanency arrangement necessarily transfers custody from DHHS to the appointed guardians.
2. Whether the juvenile court could place the children in the care of Marlin and Sharon while retaining their legal custody in DHHS solely to preserve eligibility for former-ward benefits.

HOLDINGS

1. When a guardianship is established under the Nebraska Juvenile Code as a permanency arrangement for adjudicated children previously in DHHS's temporary custody, custody necessarily transfers from DHHS to the appointed guardians by operation of law.
2. The juvenile court may not appoint guardians who have only care while DHHS retains custody; appointment of the permanent guardians necessarily transfers both care and custody from DHHS.

KEY QUOTATIONS

“We therefore conclude that where a guardianship is established under the Nebraska Juvenile Code as a means of providing permanency for adjudicated children who have been in the temporary custody of DHHS, custody is necessarily transferred from DHHS to the appointed guardian(s) by operation of law.” (619)

FACTUAL BACKGROUND

Antonio S. and Priscilla S. were adjudicated as children described by Neb. Rev. Stat. § 43-247(3)(a) because of abuse by their biological father and were placed in DHHS custody. They were eventually placed in foster care with Marlin and Sharon M., who sought appointment as their guardians pursuant to DHHS's permanency plan. The guardian ad litem supported placement of care with the foster parents but opposed transferring custody because the children might lose eligibility for Nebraska's former-ward educational and insurance benefits.

PROCEDURAL HISTORY

The children were adjudicated under the Nebraska Juvenile Code because of abuse by their biological father and were placed in DHHS custody. After an earlier guardianship was dissolved, the children were placed with Marlin and Sharon M., who petitioned to become their guardians while DHHS sought to be relieved of its custodial and supervisory duties. The Franklin County juvenile court appointed Marlin and Sharon as guardians and ordered that they have care and custody; the guardian ad litem appealed, arguing that care could be separated from custody so the children could retain eligibility for former-ward benefits.

DISPOSITION

affirmed

CASES CITED

- In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999)
- In re Interest of Amber G. et al., 250 Neb. 973, 554 N.W.2d 142 (1996)
- In re Interest of Eric O. & Shane O., 9 Neb. App. 676, 617 N.W.2d 824 (2000)

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