

NEBRASKA SUPREME COURT

In re Interest of Kane L. & Carter L.

299 Neb. 834 (2018) · No. Nos. S-17-720, S-17-775 · Decided May 4, 2018

SUMMARY

The Nebraska Supreme Court reviewed consolidated juvenile proceedings involving the adjudication of Kane L. and the nonadjudication of Carter L. The court held that the mother's due process rights were not violated by the absence of a separate detention hearing, upheld the admission of the toenail drug-test evidence, and affirmed Kane's adjudication. It reversed the juvenile court's refusal to adjudicate Carter and remanded for further proceedings.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Strong, District Judge
JURISDICTION	Nebraska
DECIDED	May 4, 2018
DOCKET	Nos. S-17-720, S-17-775
DISPOSITION	other
PROCEDURAL POSTURE	Angela L. appealed the adjudication of Kane L. and challenged evidentiary and due process rulings. The State appealed, and Angela cross-appealed, from the juvenile court's refusal to adjudicate Carter L.
STANDARD OF REVIEW	Juvenile cases are reviewed de novo on the record, with possible weight given to the juvenile court's observation of witnesses when evidence conflicts. Constitutional due process questions are reviewed as questions of law. Evidentiary foundation and authentication rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Angela L., State of Nebraska v. State of Nebraska, Scott L., Angela L.

TOPICS

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PRACTICE AREAS

juvenile law

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QUESTIONS PRESENTED

1. Whether Angela's due process rights were violated by the failure to hold a protective custody and detention hearing after the ex parte temporary custody order.
2. Whether the juvenile court abused its discretion by admitting the cord blood and toenail test results without additional chain-of-custody or testing testimony.
3. Whether the evidence established the required nexus between parental methamphetamine use and a definite risk of future harm to support Kane's adjudication under Neb. Rev. Stat. § 43-247(3)(a).
4. Whether the juvenile court erred by declining to adjudicate Carter when the evidence established a definite risk of future harm if he remained in his parents' care.

HOLDINGS

1. A parent has a due process right to a prompt, meaningful hearing after an ex parte temporary custody order, but no due process violation occurred because Angela was promptly represented, was advised of her rights, had an opportunity for a detention hearing, waived that hearing through counsel, and never sought another hearing.
2. The juvenile court did not abuse its discretion by admitting Kane's toenail test results where the collector testified about collection and packaging procedures and the laboratory director testified about receipt and testing procedures.
3. Any error in admitting the cord blood test results was harmless because the results were cumulative of Angela's positive hospital drug screen and her admission that she used methamphetamine.
4. The evidence was sufficient to adjudicate Kane under Neb. Rev. Stat. § 43-247(3)(a), because environmental methamphetamine exposure and evidence of parental methamphetamine use established a definite risk of future harm without court intervention.
5. The juvenile court erred by declining to adjudicate Carter because the evidence established a definite risk of future harm if Carter remained in Scott and Angela's care.

KEY QUOTATIONS

“The fundamental liberty interest of natural parents in the care, custody, and management of their child is afforded due process protection. Such due process rights include the right to be free from an unreasonable delay in providing a parent a meaningful hearing after the entry of an ex parte temporary custody order.” (at 840-41)

“While the State need not prove that the child has actually suffered physical harm, Nebraska case law is clear that at a minimum, the State must establish that without intervention, there is a definite risk of future harm.” (at 846)

FACTUAL BACKGROUND

Kane L. and Carter L. were removed from their family home after evidence indicated methamphetamine use by their mother, Angela L., and father, Scott L. Angela tested positive for drugs when she gave birth to another child, that child's cord blood tested positive for methamphetamine and other substances, and Kane's toenail testing confirmed environmental exposure to methamphetamine. The children were initially placed with their adult sister and later with their maternal grandparents. Kane was adjudicated, while Carter was not, although Carter returned to the family home shortly before the removal and had also been placed on probation partly because of positive drug screens.

PROCEDURAL HISTORY

The Buffalo County Court, sitting as a juvenile court, adjudicated Kane L. under Neb. Rev. Stat. § 43-247(3)(a) but declined to adjudicate Carter L. after the children were removed from the family home because of parental methamphetamine use. Angela appealed Kane's adjudication and raised due process and evidentiary objections in both matters. The State appealed the failure to adjudicate Carter, and the Nebraska Supreme Court affirmed in Kane's case, reversed in Carter's case, and remanded for further proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

In case No. S-17-775, the cause was remanded for further proceedings following reversal of the juvenile court's order declining to adjudicate Carter. The adjudication of Kane in case No. S-17-720 was affirmed.

CASES CITED

- In re Interest of Carmelo G., 296 Neb. 805, 896 N.W.2d 902 (2017)
- In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016)
- In re Interest of Joseph S. et al., 288 Neb. 463, 849 N.W.2d 468 (2014)
- Midland Properties v. Wells Fargo, 296 Neb. 407, 893 N.W.2d 460 (2017)
- State v. Grant, 293 Neb. 163, 876 N.W.2d 639 (2016)
- State v. Glazebrook, 282 Neb. 412, 803 N.W.2d 767 (2011)
- 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 Justine J. et al., 286 Neb. 250, 835 N.W.2d 674 (2013)

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