

In re Interest of Don'Kaveon S. et al.

Caselaw No.

A-14-019

Filed on

Tuesday, June 10, 2014

SUMMARY: Continued protective custody of the children was appropriate where the mother failed to follow a safety plan of appropriately monitoring the children in a case with sexual abuse history. An 8-month time lapse between removal and completion of the Protective Custody Hearing did not violate due process because the first hearing was scheduled 12 days after removal, the mother requested two of the continuances, services were provided and the mother was able to cross-examine witnesses and present evidence.

Kay is the mother of Don'Kaveon, born in 1999, Janeshja, born in 2001, Lovell, born in 2004, Jason, born in 2009, Kaden, born in 2011, and Jaylon, born in 2013. She is also the mother of Michael, who was previously adopted. The family has been involved with DHHS since February 2006. In January 2011, DHHS received a report of alleged sexual abuse of Janejsha and Lovell by Don'Kaveon, Michael and their cousins. The State filed a 3a petition on January 26, 2011, alleging the children had been subjected to inappropriate sexual behavior and that Kay failed to protect the children, and the children were removed. On June 21, 2011, Kay entered a no contest plea and the children were adjudicated under 3a. In December 2011, Lovell and Jason returned to Kay's home. Kaden was born in 2011. In May 2012, DHHS received a report that Lovell, Jason and Kaden were being left home alone. Additional services were provided. Janejsha returned home in October 2012. Jaylon was born in 2013. In March 2013, DHHS received a report of domestic violence between Kay and her boyfriend and of physical neglect of the children. On March 28, 2013, the State filed a motion for temporary custody and a second supplemental petition with the additional allegations that Kay was violating a safety plan designed to protect the children from inappropriate sexual behavior by allowing the children to have contact with one another outside her presence, allowing unsupervised access to the Internet, allowing the children to have contact with Michael, allowing Janeshja and Lovell to share a bed and failing to bring the children to therapy. On March 28, the court entered an order for immediate custody and the children were removed from Kay on March 29. On April 3, 2013, the court granted Kay's request for a continuance and re-scheduled the hearing for June 4. Hearings were held on June 4, June 26, August 29, and September 5 but time ran out at each hearing and the hearing was re-scheduled. The Protective Custody Hearing finally concluded on November 21, 2013, and the court entered its order on December 3, 2013, approving continued DHHS custody. Kay appealed.

The Nebraska Court of Appeals affirmed the juvenile court's order. It specifically addressed Kay's three arguments: that reasonable efforts were not made, that there was insufficient evidence for continued protective custody and that her due process rights were violated because of the court hearing delays. As to reasonable efforts, the Court of Appeals found after reviewing the evidence that the family had been provided intensive family preservation, visitation services, family support services, and therapy. It acknowledged Kay had transportation difficulties but noted DHHS attempted to help her fix her car and that Kay was reluctant to follow other suggestions. It also noted that the safety plan requiring close

supervision was necessary given the seriousness of the situation and past sexual abuse. As to continued protective custody, the Court of Appeals noted that multiple witnesses testified that failure to follow the safety plan could result in further sexual abuse, and that Kay was not properly supervising the children under the plan. It also noted that Kay was not properly addressing the children's medical needs, was not always providing nutritious meals and stopped taking her children to therapy, and concluded there was a preponderance of the evidence that continued protective custody was necessary. Finally, as to due process, the Court of Appeals acknowledged the 8-month time lapse between removal and the protective custody hearing order but noted that the mother requested two continuances. It also noted that this case had been open since 2011 where services were being provided and that throughout the delay she continued receiving services. She also was able to present evidence and cross-examine witnesses. For these reasons, the Court of Appeals concluded that Kay's due process rights were not violated.

Tags

abuse,
contact,
continuance,
continued,
custody,
detention,
Don?Kaveon,
due,
efforts,
inappropriate,
internet,
Janejsha,
Kay,
lapse,
Lovell,
plan,
present,
process,
protective,
reasonable,
safety,
sexual,
supervision,
time
