

In re Interest of Madison V.

Caselaw No.

A-14-859

Filed on

Tuesday, April 28, 2015

Summary: In this case the children were adjudicated under 43-247(3)(a) based upon the faults and habits of the father surrounding a domestic violence incident between the mother and the father. The factual basis for the adjudication included evidence that the father had been drinking prior to the incident and marijuana was found in the home. Following the adjudication, the children remained at in the legal and physical custody of the mother. At the disposition hearing the court ordered the father to complete a substance abuse treatment and also placed the children in the legal custody of Health and Human Services (HHS), but physical custody remained with the mother. The father appealed and the Court of Appeals found the dispositional orders surrounding substance abuse reasonably related to the underlying adjudication. The Court of Appeals, however, reversed the portion of the order putting the children into the legal custody of HHS, as there was no evidence to warrant legal custody being removed from the mother.

Following a domestic violence incident in November 2013, the State filed a petition in February 2014 alleging the minor children were at harm based upon the faults and habits of the father. The father entered a no contest plea in April 2014 to the petition which referenced the domestic violence incident, failure to provide a safe and stable home and his actions placed the children at risk of harm. At the disposition hearings, the court ordered the father to participate in drug testing, not possess or consume alcohol or controlled substances and to complete outpatient treatment. The Court also placed legal custody of the children with HHS. The father appealed the dispositional order, arguing that the substance abuse related orders were not material to the underlying adjudication and also that the court erred in placing the legal custody of the children with HHS.

The Court of Appeals affirmed the dispositional orders related to substance abuse, distinguishing the present case from *In re Shayla H.*, 22 Neb. App. 1 (2014). In the present case, there was evidence that substance abuse contributed to the domestic violence incident. The police report provided as the factual basis for the adjudication noted that the father had an elevated blood alcohol level and the father also reported there was marijuana in the home. In addition, the factual basis included an indication that the father tested positive for T.H.C. a week after the incident. As such, there was evidence that substance abuse contributed to the domestic violence incident and unsafe home, and therefore, the dispositional orders were reasonable and designed to correct the condition which led to the adjudication.

The Court of Appeals reversed the portion of the order from the Separate Juvenile Court of Lancaster County, which placed temporary legal custody of the children with HHS. At the dispositional hearing, HHS confirmed that there was no issue with the mother's parenting, but requested HHS custody, "to ensure safety of the children," and to ensure that HHS would "arrange and pay for services." The Court of Appeals found that it was an abuse of discretion to remove legal custody from the mother because there was no showing that the

mother was unfit to parent, had forfeited her right or because the State feels another person could better provide for the children. In re Interest of Amber, 250 Neb. 973 (1996). The State argued that the father could not appeal this issue because it concerned the mother's custody rights. The Court of Appeals, however, found that the father "certainly" has a legal interest over where the court places legal custody of his children.

In conclusion, the Court of Appeals sustained the trial court's dispositional orders as it pertained to substance abuse treatment for the father, but reversed the portion of the dispositional order placing the children in the legal custody of HHS.

Tags

Madison,
Vincent,
Related,
disposition,
reasonably,
custody,
legal custody,
domestic violence,
adjudication,
(3)(a),
Amber,
Shayla,
Lancaster
