

# In re Interest of Noah B. et al.

**Caselaw No.**

No. S-16-031

**Filed on**

Friday, February 3, 2017

This case considers how claim and issue preclusion apply in abuse and neglect cases where the state asserts additional grounds under 43-247(3)(a).

Griel and Michaela are biological parents of Noah, Cheyenne, and Ciara. In March of 2014, the state filed a petition under 43-247(3)(a) that the children were subjected to inappropriate physical contact by Griel. The children were taken into the temporary custody of NDHHS. In May, DHHS filed to suspend contact between the children and the parents because Ciara and Cheyenne alleged that Griel sexually abused them, which was granted. The case proceeded to adjudication on the original petition. During adjudication, both Noah and Cheyenne testified. Cheyenne testified about the sexual abuse, but the court recessed during her testimony. During cross examination two weeks later, Cheyenne recanted. She admitted on redirect that she had spoken to her parents in violation of a court order the previous evening and that she wanted to go back home.

At adjudication, the Court found all three children within the meaning of 43-247(3)(a) as to both parents due to physical abuse. As to sexual abuse, the Court found that Cheyenne was not a credible witness. At disposition, the case plan included supervised visits, family therapy, and parenting assessments.

In November 2015, the state filed a supplemental petition for all three children alleging inappropriate sexual contact. Griel moved to dismiss this petition alleging it failed to state a claim upon which relief could be granted because the allegations were barred by claim and issue preclusion. Michaela filed similar motions. At the hearing on the motions, the State argued that the doctrines of claim and issue preclusion apply differently in child welfare proceedings. The Court granted the parents' motions and dismissed the supplemental petition.

The State assigns error to the dismissal of the supplemental petitions. The appellate court reviews juvenile cases de novo on the record, but questions of law are reviewed independently.

Because there was a summary judgment motion filed and not decided upon first, the court of appeals vacates the order and remands for further proceedings consistent with this opinion.

The issues regarding the applicability of claim preclusion are likely to recur on remand, so the court offers some guidance. The Court reviews other state cases, as well as Nebraska's appellate history. In Nebraska, claim preclusion is not applied strictly in child welfare cases. If the State relies solely on evidence known at the time of the prior hearing, claim preclusion will apply, but if there is new evidence, the doctrine of claim preclusion will not bar the evidence. This flexibility is due to the importance of protecting Nebraska's children.

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