

# In re Interest of Skyleeya M.

**Caselaw No.**

No. S-16-763

**Filed on**

Tuesday, June 13, 2017

**Summary:** The biological father of Skyleeya M., appeals the juvenile court's order overruling his motion to have the child placed with her half-sibling and paternal grandmother. The child was adjudicated to be a juvenile within the meaning of Neb. Rev. Stat. § 43-247(3)(a).

Skyleeya M. and her mother, Lindsey M., tested positive for methamphetamines shortly after Skyleeya's birth. Consequently, DHHS interviewed Lindsey and discovered that she had used methamphetamine throughout her pregnancy and that she knew she would not be a fit mother because she has a drug addiction, is homeless, is jobless, and is without transportation. Therefore Lindsey signed temporary guardianship papers with Skyleeya's paternal aunt.

On July 27, the State sought emergency custody of Skyleeya and filed a petition alleging that Skyleeya was within the juvenile court's jurisdiction pursuant to § 43-247(3)(a). Emergency custody was granted, and Skyleeya was placed with a non-relative foster family.

Later, the court determined that Skyleeya was a juvenile within the meaning of § 43-247(3)(a) and that she should remain in the temporary custody of DHHS for appropriate care and placement.

Skyleeya was not initially placed with her parental aunt because paternity had not yet been established. At the time the child was first made a state ward, the mother had identified two possible fathers for Skyleeya.

On November 20, 2015, Ronald F. was officially identified as Skyleeya's biological father. Ronald is currently incarcerated and serving a sentence of 80 to 130 years.

The Nebraska Families Collaborative (NFC) was assigned to the case to find a biological family with which Skyleeya could be placed. Skyleeya's paternal grandmother was one of the family members considered for placement.

In January 2016, a study began on the paternal grandmother's home. The study was not completed until April 2016. The reason for the delay was stated because the grandmother's fiancé, who lived in the home, worked two jobs and could only meet on Saturdays. Because the NFC worker that conducted the study was not available every Saturday, the fiancé and worker were not able to meet until April 9.

Skyleeya's half-sibling was placed with the grandmother on June 14, 2015. The grandmother is the court-ordered guardian of the half-sibling. The home of the grandmother was found to be a suitable placement for Skyleeya, but NFC did not place her there.

In February 2016, the State moved to terminate the parental rights of both Lindsey and Ronald. Together, they filed a joint motion requesting that Skyleeya be placed with her paternal grandmother and half-sibling. Hearings on that motion were held on May 18 and July

18.

Evidence presented revealed that the paternal grandmother did not have her own separate visitation time with Skyleeya, but attended scheduled visits with the aunt and uncle. These visits occurred twice per week and the NFC worker who supervised the visits testified that the exact number of times that the grandmother visited was unknown, but an estimation was to be about 50 percent of the time.

Regarding the desire for placement, the paternal grandmother testified her love for Skyleeya and that she started seeking placement of Skyleeya after it became clear that the aunt would not get placement of her.

As for the best interests of Skyleeya, the paternal grandmother testified that she had a bond with Skyleeya and believed it would be in the child's best interests to be placed with her. The grandmother testified further that when she would visit Skyleeya, the child would smile and come to her. On the other hand, when the GAL asked the grandmother certain questions about the child (birthday, age, foster placement, and medical needs) the grandmother was unable to recall the information.

Regarding the foster family's bond with Skyleeya, an NFC worker testified that Skyleeya had been in her current placement for almost 1 year and that he believed it would be in her best interests to stay there. The worker observed a bond between the foster family and Skyleeya.

Also relevant to Skyleeya's best interests is the grandmother's ability to take care of Skyleeya's medical needs (acid reflux, a milk intolerance, and tremors in her legs). These medical needs require that Skyleeya drink a special milk formula and that she participates in physical therapy to address the tremors in her legs.

A home study was conducted of the grandmother's home. The report indicates that the grandmother understands the medical needs of the child and that she is willing to make sure Skyleeya is living in a smoke-free environment and in a home where she will not be exposed to anything that will overstimulate her.

The State and GAL have pointed to the grandmother's tobacco use as a significant issue because of Skyleeya's alleged diagnosis of "intranatal polycystic exposure." According to the GAL this diagnosis means that the child cannot have any exposure to smoke. However, upon further review, there is no medical records or evidence from a doctor regarding Skyleeya's alleged condition.

At the hearing on May 18, the grandmother testified that she had quit smoking approximately 5 years prior. However, the home study report revealed that the grandmother reported she has been trying to quit smoking cigarettes and her efforts have been nearly successful. The grandmother reported that when she does smoke, she does so on the back porch and never within her house or car due to the half-sibling's asthma. The NFC worker that conducted the home study reported that she did not detect any smell of cigarette smoke in the home during the walk-through or during either visit to the home.

On July 21, 2016, without explanation, the juvenile court denied the motion for change of placement. From that order, Ronald appeals.

The father's termination of parental rights was not before this court to consider on appeal because the record on appeal was never supplemented to reflect that fact. According to the

State's brief, despite the appeal, the juvenile court proceeded with a trial to terminate the father's rights and consequently, they were terminated on August 26, 2016.

Ronald's argument is that the juvenile court violated Neb. Rev. Stat. §§ 43-1, 311.02(1)(a), 43-246(5), and 43-533 when it refused to grant the motion to place Skyleeya with her paternal grandmother and half-sibling.

Under juvenile court proceedings Neb. Rev. Stat. § 25-1902, an order is final and appealable if it affects a substantial right. The substantial right of a parent in juvenile proceedings is a parent's fundamental, constitutional right to raise his or her child, which includes "the right of a parent to authorize another to assume temporary care of a child." In re Interest of Artharena D., 253 Neb. 613, 618, 571 N.W.2d 608, 612 (1997).

Therefore the current issue presented is whether the juvenile court's order denying Ronald's motion to have the child placed with her half-sibling and grandmother substantially affects Ronald's right to authorize another to assume temporary care of Skyleeya.

The court further exemplified the numerous facts used to determine whether an order affects a substantial right for purposes of interlocutory appeal. Whether the effect of an order is substantial depends on "whether it affects with finality the rights of the parties in the subject matter."

Further, an order affects a substantial right if it "affects the subject matter of the litigation, such as diminishing a claim or defense that was available to the appellant prior to the order from which he or she is appealing."

The current order does not affect with finality Ronald's right to authorize the grandmother to assume temporary care of Skyleeya. The order merely states that "the Motion for Change of Placement is denied" and does not preclude Ronald from filing a subsequent motion requesting the same.

If Ronald's parental rights have already been terminated, as the parties claim in their briefs, Ronald would no longer have standing to request that Skyleeya be placed with one of his family members. Standing involves a real interest in the cause of action, meaning some legal or equitable right, title, or interest in the subject matter of the controversy.

In conclusion, the court held that the juvenile court's order was not final and appealable and therefore the court lacked jurisdiction and dismissed the appeal.

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