

In re Interest of Becka P. et al., children under 18 years of age

Caselaw No.

S-16-1131 through S-16-1133

Filed on

Friday, October 27, 2017

Summary: Robert P. and Veronica M. are the parents of Becka P., Thomas P., and Robert P., Jr. In December 2015, the State filed juvenile petitions and affidavits as a result of multiple physical neglect claims made against the parents. Specifically, Robert and Veronica had been cited four times for failure to use a child safety restraint in their vehicle. One of the children was involved in several automobile accidents where they were riding unrestrained in the front seat while Robert was driving. One such accident involved a fire and another a rollover experienced while the child rode unrestrained on Robert's lap. The children were subsequently adjudicated which was also later affirmed by the Court of Appeals on October 16, 2016.

While the adjudication was on appeal, the juvenile court appointed an educational surrogate for the children which Robert and Veronica also appealed. The Nebraska Supreme Court affirmed the appointment of the surrogate. Meanwhile, juvenile court proceedings continued. During these proceedings, the DHHS case report recommended a permanency goal of family preservation and for custody to be returned to the parents. The children's GAL did not agree.

The juvenile court eventually declined to adopt the DHHS case plan and ordered care, custody, and control for the children remain with DHHS while they were still placed in Robert and Veronica's home, as well as other directives including confirmation of the children's immunizations and updating those not current. Robert and Veronica appealed these orders, alleging that the court lacks the power to set its own conditions and can only "assent" to decisions made by DHHS under § 43-285(1). Thus, they argue that because DHHS did not recommend the immunization condition, the court acted outside its authority.

In its de novo review, the Nebraska Supreme Court points out that Robert and Veronica failed to address § 43-288 which gives the court the ability to order conditions to a juvenile's continuing to remain in his or her home, including the provision for "medical care and for other needs of the juvenile" under § 43-288(2). Thus, the Supreme Court concluded that the juvenile court did not exceed its authority and that to hold otherwise "would limit the powers of a juvenile court to order DHHS and parents to undertake actions for the betterment of juveniles and their families within the juvenile court system."
