

In re Interest of Lilly S. and Vincent S.

Caselaw No.

No. S-17-259

Filed on

Friday, December 1, 2017

Summary: The father, Kenny S., appeals the adjudication and disposition order of the separate juvenile court of Douglas County. The Court's decision is affirmed in part, vacated in part, and remanded with directions.

This case came to the Court's attention because of allegations that Kenny had tested positive for methamphetamines, uses alcohol and controlled substances, and engages in domestic violence with the mother. There were also allegations against the mother for failure to provide care, support or supervision for the children.

Kenny assigned error to the Court taking judicial notice of disputed facts and facts within the Court's personal knowledge. The Court took judicial notice of the mother's admission. Pursuant to the Nebraska Rules of Evidence, judicial notice cannot be taken of an adjudicative fact. See *State v. Vejvoda*, 231 Neb. 668 (1989). The Supreme Court finds that the Court took judicial notice of disputed facts, which are adjudicative and so erred. The Court here does not consider these facts in deciding the sufficiency of the evidence.

He also assigns error to the sufficiency of the evidence that Lilly and Vincent were at risk of harm. The adjudication hearing was held and the mother entered an admission to an incident of domestic violence. Kenny invoked his 5th Amendment right against self-incrimination and the State was unable to elicit any evidence about his use of methamphetamines. The mother did testify about the domestic violence incident, which she clarified was one incident. The Court found the children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) as to both parents for the incident of domestic violence. The Supreme Court agrees with the lower court that "a court need not await certain disaster to come into fruition before taking protective steps in the interest of a minor child." See *In re Interest of S.L.P.*, 230 Neb. 635 (1988). However, the Court here finds that there was no nexus between the parents' actions and the risk of harm to the children so conclude in adjudicating the children on the basis that the children were at risk for harm due to the habits and faults of Kenny.

Kenny's last assignment of error is that Neb. Rev. Stat. § 43-247(5) deprives a non-adjudicated parent of his or her procedural due process rights provided by the Constitution. Kenny challenges the interpretation of the statute that allows for courts to exercise jurisdiction over nonadjudicated parents, relying on the parental preference principal of the *Sloane O.* case. *In re Interest of Sloane O.*, 291 Neb. 892 (2015). However, the Court here finds that if at a dispositional hearing, the State or another party raises concerns about the parental fitness of a nonadjudicated parent, that parent has the burden to rebut that evidence. See *In re Interest of Amber G. et al.*, 250 Neb. 973 (1996). The reason the evidence must be rebutted is because the best interests of the child are paramount. *Id.* Because Kenny was not given notice of the dispositional hearing, the disposition is vacated and remanded for a disposition hearing for Kenny.
