

In re Interest of Iyana P.

Caselaw No.

No. A-17-494

Filed on

Tuesday, January 9, 2018

Summary: Iyana appeals from an order of the Separate Juvenile Court of Douglas County which changed the terms of her probation. The Court finds that the Juvenile Court did not follow statutory procedures and denied Iyana due process and therefore reverses and directs the court to vacate its order and for further proceedings.

Iyana was detained on August 18 after a hearing. At a detention review hearing a week later, she was placed in "shelter care." In October, she was adjudicated and her disposition hearing was held in November, where she was placed on probation for 6 months. Also in November, Iyana was released to her parent for placement at home. In January, a warrant was issued for her because she was missing. A few days later, Iyana was taken to court and following a detention hearing, was placed on the "HOME Program," an alternative to detention. Later that month, Iyana was placed in "shelter care" and she was later ordered to be placed at the Youth Links shelter due to concerns for her well-being at home. On February 6, Probation was ordered to seek foster care or group home placement for Iyana.

On April 25, Iyana was placed at Uta Halee group home and it was also ordered that she remain under the supervision of a probation officer for an open ended period of time. On April 27, Iyana filed a motion to vacate that order, alleging that the procedures for changing a disposition enumerated in Neb. Rev. Stat. § 43-286 were not followed. This motion was denied.

An appellate court reviews juvenile cases de novo on the record and in reviewing questions of law, an appellate court reaches conclusions independently. *In re Interest of Candice H.*, 284 Neb. 935 (2012).

Neb. Rev. Stat. § 43-286 requires that in a revocation proceeding, the juvenile must have a right to confront and cross examine adverse witnesses. In particular, § 43-286(5)(b) lays out the procedure for revoking probation and changing the disposition. The procedure includes that a motion to revoke probation may be filed which set forth specific factual allegations and that the juvenile shall be entitled to a hearing. If the juvenile is found to have violated his or her terms of probation, supervision, or an order of the court, then the court may modify the terms. Additionally, the court "shall" enter a written statement as the evidence relied on and the reason for revocation.

This Court and the Nebraska Supreme Court have previously held that it is plain error to change a disposition when the State has not complied with procedures. See *In re Interest of Markice M.*, 275 Neb. 908 (2008). In *In re Interest of Torrey B.*, 6 Neb. App. 658 (1998), this Court held that § 43-286 does not allow the court to place a juvenile on probation and at the same time continue the disposition hearing. Similarly, in *In re Interest of Markice M.*, supra, the Supreme Court agreed that the Court cannot place a juvenile on probation or make any dispositional decisions and at the same time continue the disposition.

The Court here finds that the Juvenile Court erred in changing Lyana's probation terms without following statutory procedure and denied her due process in that there was no hearing and so she could not confront witnesses against her. The Court's order to deny her motion to vacate is reversed and the order is vacated, and the issue is remanded for further proceedings.
