

In re Interest of Michael N.

Caselaw No.

A-17-218

Filed on

Tuesday, January 23, 2018

Summary: Heather appeals and Robert cross-appeals an order of the Separate Juvenile Court of Douglas County which granted DHHS custody of their son, Michael. One of the decisions they challenge is that they did not have notice of the detention hearing and the Court granted DHHS custody anyways. The decision of the Court is reversed and remanded because there was no evidence that the parents were given notice.

A petition was filed against Heather and Robert that their son is within the meaning of § 43-247(3)(a) and that termination is warranted pursuant to § 43-292(1), (2), and (9) and that termination would be in his best interests. It also asked for reasonable efforts to be excused. Michael was removed from his parents via an ex parte motion in February 2017. Five days after the ex parte, a detention hearing was held and neither parent appeared. However, their previously appointed lawyers did appear and asked for dismissal of the petitions due to improper service or notice of the proceedings and the hearing. The Court denied to motions to dismiss and said that because it was a matter of urgency, it would go forward with the hearing. The Court took judicial notice of the affidavit for removal, but it was not offered into evidence and no other evidence was offered. The Court ordered continued custody of Michael and set the case for adjudication in April.

The parents assign error to the failure to grant the motions to dismiss the petitions, the Court ruling on the continued custody, and that there was insufficient evidence to support the removal of Michael.

The appellate court reviews cases de novo on the record. *In re Interest of Carmelo G.*, 296 Neb. 805 (2017). However, whether procedural due process was provided is a question of law on which an appellate court reaches an independent conclusion. *Id.*

The Court of Appeals finds that the Juvenile Court did not err in denying the motions to dismiss. The time allowed to perfect service in civil actions is 6 months, Neb. Rev. Stat. § 25-217. There is no delineated time for juvenile cases, but it is longer than 5 days.

However, as to ruling on the motion for continued custody, the Court erred. A prompt detention hearing is required in juvenile cases. See *In re Interest of Carmelo G.*, *supra*. However, nothing in the record shows that the state made diligent efforts, or any efforts, to serve the parents with notice of the hearing. Without evidence of diligent efforts made to serve the parents or their presence, the Court should not have ruled on the custody. The case should have been scheduled for further detention hearing within the parameters of *In re Interest of Carmelo G.* *Id.*

The Court's order continuing custody of Michael with DHHS is reversed and remanded for further proceedings. The prior order of temporary custody shall remain in effect for a period of only 10 days following the mandate. If the parents are not present at the next hearing, the Court instructs that the State must show evidence of its efforts to serve and notify them. The

Juvenile Court shall then continue the detention hearing periodically until service is perfected or a hearing is scheduled with the parents. These protections are necessary to ensure due process of law.

The final assignment of error is not addressed.
