

In re Interest of Dana H.

Caselaw No.

No. S-17-612

Filed on

Friday, March 2, 2018

Summary: Dana H. appeals two orders from the Separate Juvenile Court of Lancaster County ? one providing for out of home placement and the other continuing it. The issues in this appeal are:

1. Was this a final order? and
2. Did the state exhaust available community resources and is the juvenile a risk of harm to himself or the community?

The Court here finds that the order was a final order, but that the placement complied with statute and so affirms.

In October 2014, a petition was filed against Dana for unlawfully possessing a switchblade knife. He unsuccessfully appealed and no disposition order was entered. The State filed a second supplemental petition for habitual truancy to which Dana entered a plea. The dispositions for both cases were consolidated. There were numerous interim orders entered for in home services, which failed. The Court then ordered placement at Omaha Home for Boys. The Court then continued this order and continued the dispositional hearing.

Dana assigns error to his removal from his family home when community based resources were not exhausted and that he was not a danger to the community or himself.

An appellate court reviews juvenile cases de novo. Jurisdictional questions are determined as a matter of law. *In re Interest of Zachary B.*, 299 Neb. 187 (2018).

First the Court determines whether the order is final. *In re Interest of Zachary B.*, supra, sets out the analysis. Because this is a Juvenile Court case, it is a special proceeding. And, because Dana was residing with his parents, it affects a substantial and constitutionally protected right. Here, the order was meant to be indefinite in duration. The record reveals a practice of continuing interim orders and the dispositional hearing up to 12 times over the course of the year before entering dispositional orders. Because it is a substantial right and indefinite in duration, it is a final and appealable order.

Now the Court goes to the merits of the case, which hinge on Neb. Rev. Stat. § 43-251.01(7). This statute says that a juvenile in a delinquency proceeding shall not be placed out of home unless:

1. All community based resources have been exhausted to assist the juvenile and his or her family; and
2. Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

The interpretation of this statute is a matter of first impression. However a similar statute has

been interpreted in the case of a YRTC placement. See *In re Interest of Nedhal A.*, 289 Neb. 711 (2014). The Court here follows the previous interpretation of a similar statute and finds that there is no requirement to exhaust services that do not have a reasonable possibility for success, only those that offer a reasonable possibility of helping need to be exhausted. Here, Dana has had probation supervision for several years and had not complied with tracker services, evening reporting, or intensive family preservation. The officer testified that there were no other appropriate services available. In interpreting harm, the Court finds that it includes also "material or tangible detriment." See *Black's Law Dictionary* 832. Dana's refusal to attend school puts him at risk of harm in this way.

The Court made appropriate statutory findings and therefore the out of home placement is affirmed.
