

In re Interest of Kirsten H.

Caselaw No.

No. A-17-981

Filed on

Tuesday, May 22, 2018

Summary:

Victoria, the mother for Kirsten, appeals orders out of the County Court of Box Butte. The Court here finds that the County Court acting as a juvenile court did not have subject matter jurisdiction and so vacates the orders, dismisses the appeal, and remands with direction.

Victoria and Garvin, Kirsten's parents, divorced in North Dakota in 2009. Victoria and Kirsten then moved to Nebraska and Victoria married John. In 2016, Kirsten went to North Dakota to spend time with her grandparents. While there, she disclosed that John had sexually abused her. The state of North Dakota filed for emergency custody and "deprivation." Kirsten has remained with her grandparents since that time. She was placed with the Director of Foster County Social Services in North Dakota for a period of time between February to July 2017, at which time the North Dakota Court found that the petitions would be dismissed and Kirsten would be returned to Nebraska.

On June 16, 2017, the State of Nebraska filed a juvenile court petition on behalf of Kirsten in Box Butte County. The Court granted an ex parte motion for temporary custody of Kirsten, deciding she should stay with her grandparents in North Dakota, but made no mention of the proceedings in North Dakota. On July 17, 2017, Victoria made a motion to dismiss for lack of subject matter jurisdiction. A hearing was held and her motion was overruled without prejudice. Victoria later filed a motion to change Kirsten's placement to her home, which was denied. In August 2017, the State filed an amended petition that Victoria was not facilitating Kirsten's needed treatment and was making decision dangerous to the health and morals of Kirsten.

Victoria filed a renewed motion to dismiss pursuant to Neb. Rev. Stat. § 6-1112 for lack of subject matter jurisdiction and added that under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Neb. Rev. Stat. §§ 43-1226 through 43-1266, Nebraska also lacked jurisdiction. The Court overruled this motion and set an adjudication hearing.

Victoria assigns error to the juvenile court in:

Overruling her motion to dismiss for lack of subject matter jurisdiction,
Continuing temporary custody of Kirsten and finding the reasonable efforts were made to prevent the need for removal,
Finding that Kirsten's placement in North Dakota was the least restrictive placement, and
Delegating DHHS, Kirsten, and Kirsten's counselor authority to determine Victoria's visitation rights.

An appellate court reviews juvenile cases de novo, but a jurisdictional question is a matter of law. *In re Interest of Dana H.*, 299 Neb. 197 (2018).

A denial of a motion to dismiss is not generally a final order. But here, it is not the only order being appealed. The order that Kirsten remain in the custody of her grandparents is a final order, which is appealable. The Court must consider whether the juvenile court had subject matter jurisdiction to make that order first.

Nebraska could not use *parens patriae* jurisdiction because Kirsten was not in Nebraska. In *re Interest of Violet T.*, 286 Neb 949 (2013). The Court now addresses the UCCJEA. Both Nebraska and North Dakota have adopted the UCCJEA and Nebraska has found that it is relevant to juvenile proceedings under Neb. Rev. Stat. §43-247(3)(a). In *re Interest of Maxwell T.*, 15 Neb. App. 47 (2006).

Under the UCCJEA, the court which makes an initial custody determination will have exclusive, continuing jurisdiction until certain findings are made under § 43-1239. North Dakota made the initial custody determination during Victoria's divorce from Garvin and has continuing jurisdiction still. In fact, North Dakota affirmed this when it made findings over Kirsten's custody in May 2017. There is no evidence that the petitions were dismissed on July 1. Nebraska had no authority to exercise jurisdiction in June 2017 because there was no finding by North Dakota that Nebraska was a more convenient forum under § 43-1244(a) and Nebraska did not comply with § 43-1243(b), which requires a state, prior to a hearing to communicate with the other court.

The Court in Nebraska did not have subject matter jurisdiction under the UCCJEA or *parens patriae* and so the other court actions taken are void. See *In re Interest of Trey H.*, 281 Neb 760 at 766-67 (2011).

Other assignments of error cannot be addressed. The orders of Box Butte County are void, therefore vacated, the appeal is dismissed, and the case is remanded with directions to comply with the UCCJEA.
