

In re Interest of Isaiah M.

Caselaw No.

No. A-18-055

Filed on

Tuesday, September 11, 2018

Summary:

Brett S., the father of Isaiah, appeals the order of the Separate Juvenile Court of Douglas County. The court dismisses the appeal for lack of jurisdiction.

Brett S. is the father of Isaiah, born in May 2001, and one of Nicole's five children. In August 2017, Isaiah and his siblings were removed from his mother Nicole's care after the state filed a petition with concerns about Nicole's drug use and her leaving one of the children with an inappropriate caregiver. The State alleged Isaiah and his siblings were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) due to the faults and habits of Nicole. Upon removal, the five children were placed in the temporary custody of the Nebraska Department of Health and Human Services (DHHS) for placement in foster care or other appropriate placement. On October 23, 2017, Brett filed a motion for placement of Isaiah alleging that his paternity was established in 2006 and he was entitled to placement because it was in Isaiah's best interest and the State had not filed any allegations against him. On October 31, 2017, Isaiah and his siblings were adjudicated under Neb. Rev. Stat. § 43-247(3)(a) based on Nicole's no contest plea to the allegations.

On December 5, 2017, a hearing was held on Brett's motion for placement. Brett offered into evidence a certified copy of a final order for support from 2006 establishing that Brett was Isaiah's father and it was received without objection. While Brett's counsel argued that Brett is a "non-filed on parent," "we have established paternity," and "he is entitled to have placement of his child," Isaiah's guardian ad litem (GAL) objected to the tentative placement date (set for December 27 or 28) due to issues between Isaiah and his father and on the guidance from Isaiah's therapist that Isaiah and Brett should engage in family therapy to work out the issues they have between them before placement occurs. According to the GAL, the first family therapy session was set for December 11, and the GAL felt that there would be insufficient time and too few sessions for those issues to be resolved before the placement occurred. The State "echo[ed] the comments made by the GAL" and was in agreement that they would like to see the transition period extended. Nicole objected to the motion for placement, claiming that Brett was unfit at the current time, but would agree to placement after therapy, and if the therapist recommends it. DHHS was given a chance to respond and indicated they had no safety concerns, but acknowledged the situation may not have been the happiest for the child at times, but that the purpose of family therapy was to work on those issues. When asked by the court if he had anything to say, Isaiah responds saying life with his dad would be different and that he didn't know, but did affirm that he would like to extend the transition period and attend additional family therapy sessions to attempt to mend any hard feelings.

The court recognizes that Brett should have placement because he has an absolute right and has no filings making allegations against him, and appreciates that parties involved have discussed transition plans. However, given that the GAL's concern was that there may not be

sufficient time, and Isaiah's desire to extend the transition time, the court said it was going to order that placement occur as soon as the therapist says that Isaiah and Brett were ready understanding that potential issues that creates down the road. The court said it would set a placement check at the end of the month at which time it would look to see if there was an update from the therapist to see if Isaiah was ready to move forward with a transition plan at that point, and if not, if there was some thought to a set number of weeks before he would be ready to move forward with a transition plan.

In its order filed on December 18, 2017, the juvenile court denied Brett's motion for placement "at this time" and the matter was set for a "placement check to be heard on December 28.

At the "placement check" on December 28, an order was filed with the court stating that Isaiah was to participate in unsupervised visitation, including overnight visits with Brett, and that both shall continue to participate in family therapy. The "placement check" was continued to February 5, 2018.

On January 16, 2018, Brett filed his notice of appeal regarding the court's December 18, 2017 order assigning the juvenile court violated his due process rights and erred in denying his motion for placement.

In order for an appeals court to take jurisdiction of the case, the appeal must be taken against a final order. In re Interest of Octavio B. et al., 290 Neb. 589 (2015). Neb. Rev. Stat. § 25-1902 lays out which orders are appealable. Juvenile cases are special proceedings, so whether this order is final hinges on whether it affects a substantial right and if its affect is substantial. Orders that temporarily suspend a parent's custody do not affect a substantial right and so are not appealable. In re Interest of Becka P. et al., 296 Neb. 365 (2017).

In this case, the Court set a placement check 10 days after the order and was still considering placement with the father based on recommendations by the therapist. The plan to revisit placement shows that this order was not intended to be final in nature.

The appeal is dismissed for lack of jurisdiction.
