

In re Interest of Maximus B.

Caselaw No.

No. S-18-410

Filed on

Friday, March 1, 2019

Summary:

The State appeals an order of the Separate Juvenile Court of Douglas County to vacate an adjudication order accepting a plea of no contest. The Court found that a plea of no contest is not permitted under Neb. Rev. Stat. § 43-279. The Court here finds that this order was not a final order and so dismisses the appeal.

In October 2017, the State filed a petition against Maximus under Neb. Rev. Stat. § 43-247 because he had committed sexual assault in the first degree. At adjudication, with a different judge presiding, Maximus entered a plea of no contest, which the Court accepted. The assigned judge vacated the plea of no contest and set the case for hearing.

The state claims that the Court erred by vacating the adjudication order.

A jurisdictional issue is a matter of law, which requires an appellate court to reach its decision independent of the trial court. *Sandoval v. Ricketts*, 922 NW 2d 222 (2019).

Before reaching the issue, the Court engages in analysis to determine whether the order at issue is final. A juvenile court case is a special proceeding and so the Court here only needs to decide whether it affects a substantial right. *In re Interest of Zachary B.*, 299 Neb. 187 (2018). Here, the petition was not dismissed and the State can continue to pursue the case against Maximus, so it does not affect the right of the State with finality.

Therefore, the appeal is dismissed for lack of jurisdiction.

Justice Freudenberg concurs:

There are limited responses available under violations of Neb. Rev. Stat. § 43-247 (1), (2), (3)(b), or (4). Neb. Rev. Stat. § 43-279 outlines the options, which are an admission or denial. There is no option for a juvenile to enter a no contest response. This analysis would have been the relevant statutory language if the issue had been addressed.
