

# In re Interest of Giavonni P

## Caselaw No.

No. S-18-1130, S-18-1135

## Filed on

Friday, November 22, 2019

## Summary:

DHHS appeals an order out of the Separate Juvenile Court of Douglas County placing Giavonni P. at the Lincoln Regional Center (LRC). The Court here affirms.

Giavonna was adjudicated to be within the meaning of Neb. Rev. Stat. § 43-247(3)(a) in 2010 and placed with DHHS. Since then, he has been in a variety of placements. In 2017, he was adjudicated under Neb. Rev. Stat. § 43-247(1), placed in a PRTF in Detroit, and placed on probation.

In 2018, Giavonni's GAL requested that he be returned to Nebraska and placed at the LRC. A hearing was held on the matter and the Court ordered that Giavonni return and be placed at DCYC with a placement review scheduled for a few weeks later.

At the placement review hearing the Court heard testimony from Giavonni's caseworker that his recent behaviors included violate behaviors toward residents and staff at the PRTF and property destruction. He also was not on his medications or participating in therapy. At DCYC, Giavonni was taking his medication. Testimony also established that Giavonni needed to be in a placement that was secure and allow him to have his own room because of his aggression. Only 20 facilities in the US met his treatment needs and none were able to take him at the time. At this hearing, the Court ordered that if Giavonni was not placed in a PRTF by November 26, 2019, he should be delivered to LRC until a PRTF could be found. A placement check was held on November 27 where the Court was informed that Giavonni was placed at LRC.

DHHS field a notice of appeal in each case. On May 6, 2019, Giavonni was moved from the LRC to a new placement.

DHHS assigns error to the order that Giavonni be placed at LRC on a specific date and that he stay there until placement was found.

The standard of review in this case is de novo on the record and on the meaning of statute, the Court here will resolve the question independent of the trial court.

DHHS's argument on both underlying adjudications is that placement at the LRC usurped its statutory authority to manage its own patient admissions and discharges.

The Court first takes up whether the Court made final orders. The GAL first argues that the orders were conditional. If the conditions have been met, a final judgement may have been found to be made. *Jensen v. Jensen*, 275 Neb. 921 (2008). The Court here finds that considering the orders together, the order was not conditional.

The GAL also argues that the orders do not affect a substantial right of DHHS. The Court

finds that it does because it affects DHHS's ability to oversee care at the LRC. Therefore, the orders of the Court are final.

The Court next takes up the matter of mootness as Giavonni is no longer at LRC. For jurisdiction to be proper there must be an actual case or controversy. *State ex rel. Peterson v. Ebke*, 303 Neb. 637 (2019). A moot case can still be considered if they involve a matter of great public interest. *Id.* Because Giavonni is no longer at LRC, the case is moot, but because other juveniles are currently being placed at LRC due to lack of appropriate placement settings, the public interest exception applies.

The primary issue here is whether the Court had the authority to place Giavonni at the LRC. Using Neb. Rev. Stat. § 43-285(1) as guidance, juvenile courts have the power to "assent to and dissent from the decisions of the Department." This power includes the "care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it." Neb. Rev. Stat. § 43-285(1). The Court also uses Neb. Rev. Stat. § 43-289 which allows the court to order that a juvenile be placed in a "public hospital or institution for treatment or special care." In light of these statutes, the Court had the power to order placement at LRC.

DHHS also argues that the Code prohibits placing juveniles in a detention facility. However, the LRC is not a detention facility, but a hospital. See Neb. Rev. Stat. § 71-911.

DHHS contends that the Court has interfered with the ability of DHHS and the LRC to decide on admissions and discharges. Under Neb. Rev. Stat. § 83-338, which sets priorities for admissions to hospitals for the mentally ill and § 43-289 which allows that a juvenile committed to an institution is under the control of the superintendent of the institution, the Court was acting with its authority. The Court placed Giavonni at LRC as a backup placement for a PRTF which DHHS failed to find. The Court here does emphasize that Courts should not be allowed to prioritize placement at LRC for certain individuals over others.

Because the LRC is secure and could provide Giavonni the treatment he needed, it was in his best interests at the time, although not an optimal placement option.

Therefore the decision of the Juvenile Court in each case is affirmed.

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