

Case No. A-19-000215

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IN THE NEBRASKA COURT OF APPEALS

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IN THE INTEREST OF JEREMY U., et al.,  
Children Under Eighteen Years of Age.

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APPEAL FROM THE SEPARATE JUVENILE COURT  
FOR DOUGLAS COUNTY, NEBRASKA

Honorable Chad Brown  
Juvenile Court Judge

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APPELLANT'S ANSWER TO APPELLEE'S BRIEF ON CROSS-APPEALS

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**TABLE OF CONTENTS**

Statement of the Basis of Appellate Court Jurisdiction.....4

Statement of the Case.....5

    A. Nature of the Case.....5

    B. Issues Tried to the Court.....6

    C. How the Issues Were Decided.....6

    D. Scope of Review.....6

Propositions of Law.....7

Statement of Facts.....8

Argument.....12

    I.    THE STATE PROPERLY ESTABLISHED VENUE DURING THE  
        ADJUDICATION PROCEEDING.....12

    II.   THE JUVENILE COURT CORRECTLY FOUND THAT APPELLEE FAILED TO  
        PROVIDE PROPER PARENTAL CARE, SUPPORT AND OR PROTECTION TO  
        HER CHILDREN.....12

    III.  THE JUVENILE COURT CORRECTLY FOUND THAT APPELLEE FAILED TO  
        PROVIDE HER CHILDREN WITH SAFE, SUITABLE HOUSING.....18

Conclusion.....20

**TABLE OF AUTHORITIES**

**Cases Cited:**

*In re Tabatha R.*, 587 N.W.2d 109 (Neb. 1998).....4  
*In re Interest of Michael R.*, 11 Neb. App. 903, 662 N.W.2d 632 (2003).....6  
*In re Interest of Ty M. & Devon M.*, 655 N.W.2d 672 (Neb. 2003).....7  
*In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992).....7, 13  
*In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 13 (1999).....7, 13  
*In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007).....7, 13, 15, 18  
*In re Interest of Brooklyn T.*, 26 Neb. App. 669, 922 N.W.2d 240 (2018).....15, 16, 17  
*In re Interest of Shepherd*, 211 Neb. 313, 318 N.W.2d 288 (1982).....16  
*In re Interest of Kane L.*, 299 Neb. 834, 910 N.W.2d 789 (2018).....17  
*In re Interest of Dylan Z.*, 13 Neb. App. 586, 697 N.W.2d 707 (2005).....17  
*In re Interest of Justin H.*, 18 Neb. App. 718, 791 N.W.2d 765 (2010).....19

**Statutes Cited:**

*Neb. Rev. Stat.* § 43-2,106.01 (R.S. Supp. 2014).....4  
*Neb. Rev. Stat.* § 43-292.....7, 13, 14  
*Neb. Rev. Stat.* § 43-247 (3)(a).....passim

## **STATEMENT OF THE BASIS OF APPELLATE COURT JURISDICTION**

The Appellant has provided a statement as to the basis of the jurisdiction of the appellate court as required by certain Nebraska statutes. The State of Nebraska would add that the jurisdiction of this Court is invoked per statutes, which provide in relevant part that,

Any final order or judgment entered by a juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from the district court to the Court of Appeals. The appellate court shall conduct its review in an expedited manner and shall render the judgment and write its opinion, if any, as speedily as possible.

*Neb. Rev. Stat. § 43-2,106.01 (R.S. Supp. 2014).*

Actions before the juvenile court are determined to be:

A “special proceeding” for appellate purposes... To be appealable, the order in the special proceeding must affect a substantial right... It is well settled that a judicial determination made following an adjudication is a special proceeding which affects the substantial rights of parents to raise their children is a final, appealable order.

*In re Tabatha R.*, 587 N.W.2d 109 (Neb. 1998).

The judgment of the Separate Juvenile Court of Douglas County, Nebraska is a final order as defined above and this appeal was properly filed herein thus conferring jurisdiction upon the Appellate Court.

## STATEMENT OF THE CASE

### Nature of the Case:

Jeremy U. (hereinafter “Jeremy”), Ashton M. (hereinafter “Ashton”), and Savannah M. (hereinafter “Savannah”) are children under eighteen years of age. Tiffany Gardner (hereinafter “Ms. Gardner”) is the mother of each child.

On October 30, 2018, the Separate Juvenile Court for Douglas County, Nebraska, before the Honorable Christopher E. Kelly, began the proceedings with a first appearance and protective custody detention hearing. (5:12-16) At this first appearance, the State of Nebraska (hereinafter “the State”) asked for continued protective custody to exclude the mother’s home. (9:12-16)

On November 21, 2018, the continued protective custody hearing was held in the Separate Juvenile Court for Douglas County, Nebraska, before the Honorable Chad Brown. (16:17-21) At this continued protective custody hearing, the State asked for continued protective custody. (19:19-22) The court found that exigent circumstances existed and concluded that Ashton and Savannah be placed in the temporary custody of the Department of Health and Human Services, placement to exclude Ms. Gardner’s home. (20:13-18)

On December 7, 2018, the same court began proceedings on a motion to continue the adjudication hearing. (29:17-19) At this hearing, Ms. Gardner chose to renege her prior decision to plead nolo contendere and instead have the allegations adjudicated. (29:20-25; 30:1-3)

On February 11, 2019, the Honorable Chad Brown again began proceedings upon the motion of Ms. Gardner’s motion for a formal pretrial hearing. (35:22-25) The court scheduled the formal adjudicative proceeding for February 14, 2019.

On February 14, 2019, held in the same courtroom, the formal adjudicative proceeding began. The State called Kelci Christensen as a witness in regard to Ms. Garner. The juvenile

court ultimately found that there was insufficient evidence to support a finding that the juveniles came within *Neb. Rev. Stat. § 43-247(3)(a)* due to Ms. Gardner's use of alcohol and/or controlled substances [did not] place said juveniles at risk for harm. (Petition: A and D) The State now appeals the juvenile court's dismissal of the Petition and the Appellee cross-appeals the court's findings.

**The Issues Tried to the Court:**

The issue tried before the juvenile court at the time of adjudication was whether Jeremy, Ashton, and Savannah came within the meaning of *Neb. Rev. Stat. § 43-247 (3)(a)* insofar as Ms. Garner is concerned.

**How Issues Were Decided:**

The juvenile court found that there was insufficient evidence to support a finding that the juveniles came within the meaning of *Neb. Rev. Stat. § 43-247 (3)(a)*, stating that the evidence did not support a finding that the children were at risk of harm due to Ms. Gardner's use of alcohol and/or controlled substances. Specifically, the juvenile court found that the State failed to prove by a preponderance of the evidence that Ms. Gardner's use of alcohol and/or controlled substances placed the juveniles at risk of harm; due to the allegation, the juveniles were at risk of harm. (Petition: A and D) The juvenile court did find the following true by a preponderance of the evidence: Ms. Gardner failed to provide the juveniles with proper parental care, support, supervision, and/or protection, and Ms. Gardner failed to provide the juveniles with safe, stable housing. (Petition: B and C)

**Scope of Review:**

Juvenile cases are reviewed *de novo* on the record, and the Appellate Court is required to reach a conclusion independent of the juvenile court's findings. *In re Interest of Michael R.*, 11

Neb. App. 903, 662 N.W.2d 632 (2003). However, when the evidence is in conflict, the Appellate Court will consider and give weight to the fact the lower court observed the witnesses and accepted one version of the facts over the other. *Id.* In reviewing questions of law arising under the Nebraska Juvenile Code, an Appellate Court must reach conclusions independent of the lower court's ruling. *In re Interest of Ty M. & Devon M.*, 655 N.W.2d 672 (Neb. 2003).

## **PROPOSITIONS OF LAW**

### **I.**

As evidenced by Nebraska's definition for abandonment, parents have an obligation to provide, without just cause of excuse, their children with proper presence, care, love, protection, maintenance, and the opportunity for the display of parental affection. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992).

### **II.**

Children cannot and should not remain in foster care to await uncertain parental maturity. *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999).

### **III.**

This state's juvenile courts have the discretion to terminate parental rights if a juvenile has been in an out-of-home placement for 15 out of the most recent 22 months. *Neb. Rev. Stat.* § 43-292.

### **IV.**

Courts have determined that 15 out of the most recent 22 months provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness. *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007).

## STATEMENT OF FACTS

### Procedural History:

On October 22, 2018, the State filed a Petition alleging Jeremy, Ashton, and Savannah came within the meaning of *Neb. Rev. Stat. § 43-247 (3)(a)(3)* in that the children lacked proper parental care by reason of the faults or habits of Ms. Gardner, their mother, because of her use of controlled substances placed the juveniles at risk for harm; Ms. Gardner failed to provide said juveniles with proper parental care, support, supervision, and/or protection; Ms. Gardner failed to provide the children with safe, stable housing; and due to those allegations, the children were at risk for harm.

On October 30, 2018, the Separate Juvenile Court for Douglas County, Nebraska, before the Honorable Christopher E. Kelly, began the proceedings with a first appearance and protective custody detention hearing. (5:12-16) At this first appearance, the State of Nebraska (hereinafter “the State”) asked for continued protective custody of all three children to exclude the mother’s home. (9: 12-16) The motion could not be decided that day so the proceeding was continued to the Honorable Chad Brown at a later date. (11:22-25)

On November 21, 2018, the continued protective custody hearing was held in the Separate Juvenile Court for Douglas County, Nebraska, before the Honorable Chad Brown. (16: 17-21) At this continued protective custody hearing, the State asked for continued protective custody. (19:19-22) Referring to Exhibit No. 1, the court found that exigent circumstances existed and concluded that Ashton and Savannah be placed in the temporary custody of the Department of Health and Human Services, placement to exclude Ms. Gardner’s home. (20:13-18) On December 7, 2018, the same court began proceedings on a motion to continue the adjudication hearing. (29:17-19) At this hearing, Ms. Gardner chose to renege her prior decision

to plead nolo contendere and instead to have the allegations adjudicated. (29:20-25; 30:1-3)

On February 11, 2019, the Honorable Chad Brown again began proceedings upon the motion of Ms. Gardner's motion for formal pretrial hearing. (35:22-25) At this proceeding, the court scheduled the formal adjudicative proceeding for February 14, 2019.

On February 14, 2019, held in the same courtroom, the formal adjudicative proceeding began. The State called Kelci Christensen as a witness in regard to Ms. Garner. After her testimony, the juvenile court found that there was insufficient evidence to support a finding that the juveniles came within the meaning of Neb. Rev. Stat. § 43-247(3)(a), specifically, there was insufficient evidence to show that Ms. Gardner's use of controlled substances place[d] said juveniles at risk for harm. (Petition: A and D) Further, the juvenile court found that the State failed to prove that Ms. Gardner's use of alcohol and/or controlled substances placed the juveniles at risk of harm, and that due to the allegation, the juveniles were at risk for harm. (Petition: A and D). The juvenile court did, however, find that Ms. Gardner failed to provide the juveniles with proper parental care, support, supervision, and/or protection, and Ms. Gardner failed to provide the juveniles with safe, stable housing by a preponderance of the evidence.

**Factual History:**

The adjudication hearing regarding the State's petition affecting Ms. Gardner was held on February 14, 2019. The State called Kelci Christensen (hereinafter "Christensen") as the first witness. (44:23-24) Christensen stated that at the time she was an employee at Omni Inventive Care, but before that, she was a Child and Family Services Specialist at the Department of Health and Human Services (hereinafter "DHHS"). (45:15-22) Christensen stated that prior to her employment at Omni Inventive Care, which began on November 29, 2018, she had worked at DHHS for a little over a year, beginning in September of 2017. (45:23-25; 46:1-4) Christensen

stated she received forty hours of training a week for four months as a child family specialist, beginning at the commencement of her employment and continued to have ongoing training accumulating to twenty-four hours after the initial four months of training. (46:5-19; 57:21-23) She stated the topics covered in her initial training she received regarded child trauma, child abuse and neglect, domestic violence, sexual abuse, and a significant amount of training dealing with drug abuse. (46:20-25; 47:1) Christensen further testified that regarding drug usage, specifically with request to the use of methamphetamine, she received training about how drugs affect the body, children, and signs and symptoms of how to determine whether a person is using drugs. (47:7-11; 15-17) As a result of this training, Christensen testified that she was able to determine when a child is at risk of harm. (47:21-25) In conjunction with Christensen's duties as an initial assessment worker, she determined the risk of harm with which children are faced when there is a call made to the DHHS' hotline concerning potential child abuse or neglect. (48:23-25; 49:1-11) Christensen testified that when she investigated allegations made to the hotline, she formed opinions and concluded whether children were at risk for harm by looking at factors such as child vulnerabilities, age of the children, disabilities, parental abilities, parental disabilities, drug usage, and the living arrangements of the child. (49:12-24)

Christensen stated she received an intake regarding Ms. Gardner because she had just given birth to a son with methamphetamine in her system. (50:4-20) During her investigation, Christensen learned from Ms. Gardner herself that the latter had used methamphetamine almost daily since she was 14 years old, including within the week of her son's birth. (52:21-23; 54:14-17; 55:6-10) Testifying to there being a spectrum of drug use that causes concerns about a parent's ability to parent, Christensen stated that a parent under the influence of methamphetamine cannot appropriately parent due to the inebriation and manic state the drug

causes, and those who are under the influence of methamphetamine often make inappropriate decisions. (59:4-6; 60:9-14; 17-19) Christensen stated that Ms. Gardner had legal custody of all three of her children, thus categorizing the children as vulnerable children in Ms. Gardner's custody, albeit legal custody. (62:2-5; 16-19) When asked by the State whether Christensen formed an opinion that the children would be at a risk for harm in Ms. Gardner's custody, Christensen answered in the affirmative due to Ms. Gardner's drug use and Ms. Gardner's own admission that she believed her newborn son, Jeremy, would test positive for methamphetamine. (63:21-25; 65:1-5)

On cross-examination, Christensen testified about the Temporary Delegation of Parental Powers Form, stating that they are forms which allow a parent to designate another person to temporarily care for the parent's children. (79:20-23; 82:10-12) Christensen stated that Ms. Gardner found someone to care for her son because Ms. Gardner knew that she would be unable to properly care for her newborn son due to her drug use. (68:15-20) Furthermore, on cross examination, Christensen testified that, at least to one of Ms. Gardner's children, the grandmother had cared for Savannah for two to three years, long enough that Ms. Gardner "would [have] fe[lt] guilty if she just were to uproot them out of her – Tina's care." (93:2-7) On redirect examination, and with no statutory knowledge, Christensen stated that a parent can revoke the temporary delegation of parental powers whenever the parent chooses to do so, and the person holding the temporary delegation has no legal recourse to cease the parent taking the child. (96:7-8; 97:1-6) The State connected the freely revocable nature of the delegation with Ms. Gardner's methamphetamine use reiterating Christensen's testimony stating that persons under the influence of methamphetamine do not make appropriate decisions and a fourteen-year use of methamphetamine is categorized as a severe category. (97:8-11; 98:3-17) Christensen stated that

the potential act of a methamphetamine-induced parent taking their child from one holding temporary delegation of powers is an example of risk. (100:4-6)

## **ARGUMENT IN RESPONSE TO APPELLEE’S CROSS-APPEALS**

### **I.**

#### **THE STATE PROPERLY ESTABLISHED VENUE DURING THE ADJUDICATION PROCEEDING.**

The State appropriately established venue during the adjudication. The State asked, “And you [Ms. Christensen] testified that an affidavit had been filed around the time that you received the intake, correct? Correct [responded Ms. Christensen].” (62:10-12) Next, the State asked Ms. Christensen, “And were the children located in Douglas County, Nebraska, at that period?” to which Ms. Christensen responded in the affirmative. (62:13-15)

The affidavit referred to the minor child, Jeremy, testing positive for methamphetamine at the time of his birth, and Ms. Gardner’s (hereinafter “Appellee”) admission that she believed he would test positive for methamphetamine due to her recent drug use. Because the State questioned Ms. Christensen about the children’s location at the period the affidavit was filed, and further that Ms. Christensen stated the children were located in Douglas County, Nebraska at that time, the State clearly established venue.

### **II.**

#### **THE JUVENILE COURT CORRECTLY FOUND THAT APPELLEE FAILED TO PROVIDE PROPER PARENTAL, CARE, SUPPORT AND OR PROTECTION TO HER CHILDREN.**

The State presented sufficient evidence for the court to conclude that Appellee’s drug use prevented her from providing her children with appropriate parental care, support, supervision and or protection by a preponderance of the evidence. As evidenced by Nebraska’s definition for abandonment, parents have an obligation to provide their children with proper presence, care,

love, protection, maintenance, and the opportunity for the display of parental affection. *In re Interest of L.V.*, 240 Neb. 404, 482 N.W.2d 250 (1992). Therefore, a parent may not withhold such conduct from a child without just cause or excuse. *Id.* Further, courts have consistently held that children cannot and should not remain in foster care to await uncertain parental maturity. *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999). This state's juvenile courts also have the discretion to terminate parental rights if a juvenile has been in an out-of-home placement for 15 out of the most recent 22 months. *Neb. Rev. Stat.* § 43-292. Courts have determined that this period of time provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness. *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13 (2007).

Here, Appellee merely handed off her three children to suitable caregivers in an attempt to “get clean.” (68:15-20) Such an action in addition to temporarily signing over her parental rights clearly does not preclude a finding that she has failed to provide her children with proper parental care. In fact, it does just the opposite. It is rather clear that a parent is not providing proper parental care, support or supervision when their child is in the custody of someone else due to their faults and habits. Explicit in the adjudication testimony, Christensen stated that Appellee signed two temporary delegation of parental authority forms—one for Jeremy and the other for Ashton and Savannah. (80:8-16) Christensen went on to state that a parent signs such a form to allow another caregiver to parent their children temporarily. (79:16-23; 80:17-22) Thus, by signing these forms, Appellee made it clear that she was not only unable to, but also that she had not provided any of her children with proper parental support, care, supervision, and or protection. Instead, she decided to hand off her parental responsibilities to someone else.

Additionally, several times throughout the hearing, Christensen testified to the fact that other individuals were caring for Appellee's minor children. She stated Appellee found someone to *care* for her son because she knew that due to her drug usage, she would be unable to, that Appellee was agreeable to someone else taking *care* of her children, and that Ashton and Savannah were to remain in Tina's *care*. (68:16-20; 77:9-11; 77:15-25) (emphasis added) Such language demonstrates Appellee's incompetence in caring for her children beginning at the time her eldest two children were placed with their grandmother to the time of adjudication. Thus, the children were and still are left with no option other than to await their mother's uncertain parental maturity.

Moreover, it is undisputed that Appellee has only legal custody and not physical custody of her three minor children. (62:16-19) Proven as an expert, Christensen herself stated that legal custody is when a parent has legal rights over their children while physical custody is when a parent is actually physically caring for their children. (62:25-63:1-5) Due to the fact that Appellee does not have physical custody of her three minor children and hasn't for the past two to three years, she is clearly unable to provide them with proper parental care, support, supervision, and or protection they both need and deserve. (92:25-93:1-12)

Although one could perhaps assume that Appellee had just cause or excuse in that her goal was to "get clean" before taking over her children, such a reason is not a proper excuse for the length of time her children have been without proper parental care on her behalf. As mentioned prior, there is a reason why parental rights can be terminated if children remain out of their parent's care for 15 out of the most recent 22 months. *Neb. Rev. Stat.* § 43-292. Here, two of Appellee's children have remained in the care of their grandmother for approximately two to three years while the youngest child has similarly remained out of Appellee's care for nearly four

months. (92:25-93:1-12) Meanwhile, Appellee's daily methamphetamine use has not improved over this lengthy period of time as evidenced by the Appellee's statements that she had used methamphetamine the week prior to her son's birth. (52:21-23, 62:6-9) Despite having been to treatment while her children remained out of her care, Appellee did not successfully complete it. (55:25-25-56:1-3) Along the same lines, there is unquestionably no acceptable excuse for Appellee's use of a controlled substance while her child was in utero. Such an action is contrary to a parent's obligation to provide their children proper parental care, support and supervision. In addition to the preceding reasons, nothing in the record indicates that Appellee has taken any positive steps towards rehabilitating herself during the two to three years her children have been out of her care, much longer than the 15 months deemed reasonable for minimal rehabilitation. *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13.

Further in support of our argument, Nebraska courts have formerly dealt with drug use in relation to a parent's ability to provide proper parental care, support, supervision and or protection. In *In re Interest of Brooklyn T.*, the mother in which whom court proceedings were brought against tested positive for amphetamine the day her youngest daughter was born. *In re Interest of Brooklyn T.*, 26 Neb. App. 669, 671, 922 N.W.2d 240, 243 (2018). Following termination of the mother's parental rights to her eldest daughter, the State filed a supplemental petition seeking termination to her newborn in which one of the counts alleged that her child lacked proper parental care under *Neb. Rev. Stat. § 43-247 (3)(a)* due to her drug use during pregnancy. *Id.* Although the mother admitted to the aforesaid count, the State was still required to present a factual basis. *Id.* at 672, 244. In doing so, the State indicated that its evidence would've shown that the mother had not rectified her drug use from the time her eldest was placed out of the home to the time her youngest was born. *Id.* For the reasons above, this court

held that the State's factual basis satisfactorily displayed that the mother's drug use prevented her from providing adequate parental care to both of her children and subsequently affirmed the lower court's ruling. *Id.* at 675, 245.

Also similar to the circumstances in our case, courts have previously considered a parent's lack of physical custody in adjudication proceedings as we are dealing with here. For instance, the Nebraska Supreme Court in *In re Shepherd* deliberated with the fact that a mother abandoned custody of her child in determining whether the lower court properly adjudicated the minor child. *In re Interest of Shepherd*, 211 Neb. 313, 318 N.W.2d 288 (1982). In this case, the mother relinquished her child to the care and custody of her maternal grandmother who provided care and support to the minor child until her death nearly four years later. *Id.* at 315, 289. In the end, the court found adjudication to be proper for the reason that the Appellant was unwilling to provide her child with proper parental care and support as evidenced by the child's long-term placement with her grandmother. *Id.* at 318, 291.

Our case is nearly identical to the circumstances presented in the two cases above. In both cases, the court found that the parent failed to provide their children with proper parental care. With respect to *Shepherd*, the Appellee here has not had physical custody of her elder two children for approximately two to three years while her youngest has been placed out of her care from nearly the moment he was born. Further, similar to the mother in *Brooklyn T.*, Appellee tested positive for amphetamines and has since not been able to cure her drug use habits since her two children were placed with their grandmother years before. Due to the similarities between the two cases mentioned prior and the case we are concerned with here, there is no reason as to why this court should reach a different conclusion other than that Appellee has continuously failed to provide her children with proper parental care.

Although Appellee argues that the State failed to present evidence showing that Appellee's youngest child was affected in any way by her drug use, such an argument is rather absurd. As made apparent by both the trial testimony and the affidavit signed by Darcy Peterson, the minor child tested positive for methamphetamine at birth and Appellee specifically admitted that she believed he would. (64:5-8; 65:1-5) Courts have continuously held that exposing a child to drugs is a proper ground for finding a child to be within the meaning of *Neb. Rev. Stat.* § 43-247 (3)(a) or even an appropriate condition for terminating parental rights. Such findings plainly infer that drug use, whether it has occurred while a child is in utero or not, affects a child in an extremely negative way. *See In re Interest of Kane L.*, 299 Neb. 834, 910 N.W.2d 789 (2018) (The State proved the minor child to be within the meaning of § 43-247 (3)(a) after results of toenail testing showed that the minor child had been environmentally exposed to methamphetamine); *In re Interest of Dylan Z.*, 13 Neb. App. 586, 697 N.W.2d 707 (2005) (The juvenile court adjudicated Dylan to be within the meaning of § 43-247 (3)(a) after he tested positive for amphetamines at birth); *In re Interest of Brooklyn T.*, 26 Neb. App. 669, 922 N.W.2d 240 (The State presented a sufficient factual basis to terminate a mother's parental rights after establishing, among other allegations, that the mother had struggled with drug use throughout the case and further used while she was pregnant).

For the number of foregoing reasons, the juvenile court correctly found that Appellee failed to provide her children with proper parental care, support, supervision and or protection. Appellee has placed her children out of her care, leaving them with no other option than to await her hopeful, yet uncertain, rehabilitation with regards to her drug use habits. In addition, Appellee's two eldest children have been out of her care ranging anywhere from 24-36 months and she has yet to improve her drug use, despite the belief that such rehabilitation should be

reached within approximately 15 months. (92:25-93:1-12); *In re Interest of Xavier H.*, 274 Neb. 331, 740 N.W.2d 13. Overall, Appellee has failed to provide her three children with the parental love, protection and affection that they not only deserve, but are required to have. Therefore, the juvenile court's findings should be affirmed.

### III.

#### **THE JUVENILE COURT CORRECTLY FOUND THAT APPELLEE FAILED TO PROVIDE HER CHILDREN WITH SAFE, SUITABLE HOUSING.**

The lower court did not err in finding that Appellee has failed to provide her children with safe and suitable housing. Similar to the argument prior, Appellee did not provide her children with proper housing, their grandmother did. Christensen testified during adjudication that when she went to the grandmother's home, she observed a bedroom, suitable clothes, a clean kitchen, and cabinets and a refrigerator that were stocked with food. (71:7-12, 18-20; 72:25-73:1-2, 10-22) However, the said rooms observed along with the clothes and food were all in regard to the grandmother's house, not the Appellee's.

Further, although all three minor children were living with their grandmother at the time of adjudication, such a placement was only temporary. Specific in the trial testimony, Christensen testified that she brought forms to the hospital when meeting with the Appellee which were classified as *temporary* delegations of parental powers. (79:16-25) (emphasis added) Christensen then went on to testify that such a designation accomplished by these forms can be revoked by a parent at any time with no legal recourse power on behalf of the holder of the document. (97:1-7) Due to Appellee's extensive and continuous drug use over the course of the past 14 years, it would not be considered abnormal for one to assume there is a possibility that Appellee may act out and revoke such delegations. In fact, Christensen herself testified that

being under the influence of methamphetamine may influence inappropriate decision making.  
(97:8-11)

If Appellee did take action to revoke the parental delegations, she does not have appropriate housing for the children. Christensen testified that Appellee personally reported that she was couch surfing at the time of her youngest child's birth and therefore, did not have a safe, stable place to live. (75:13-15) For this reason, Christensen stated that she had previously communicated to Appellee that PromiseShip would assist her in finding appropriate and suitable housing. (75:4-18) Yet, no evidence was presented during the adjudication that Appellee has since obtained such housing. Even if she had, the testimony proved that her three children were still residing at their grandmother's home, and therefore, Appellee herself has clearly failed to provide her children with safe, suitable housing.

This court has previously dealt with housing issues in *In re Interest of Justin H.* In this case, the State filed a petition against a father alleging that his two children were within the meaning of § 43-247 (3)(a) for multiple reasons, with one of them being that he failed to provide safe and suitable housing. *In re Interest of Justin H.*, 18 Neb. App. 718, 746, 791 N.W.2d 765, 784 (2010). However, the evidence presented at the hearing revealed that the father obtained appropriate housing during the length of his pending court proceedings. *Id.* at 747-748, 785-786. More specifically, at the time of the hearing, evidence was produced demonstrating that the father had lived in his home for over a year and that the house was both clean and appropriate for the children. *Id.* Therefore, this court ultimately found that the State did not present sufficient evidence to prove that the father concerned failed to provide his children with appropriate housing and reversed the finding of the juvenile court. *Id.* at 749, 787.

Our case substantially differentiates from the evidence presented in the case above. Here, we are left with no testimony or evidence demonstrating that Appellee has obtained any sort of housing. We are instead left with the fact that the children are residing with their grandmother as they have been for the past two to three years. Without any evidence to prove otherwise, there is no way for the court to conclude that Appellee has provided her children with safe, stable housing. Instead, it is rather apparent that the children's grandmother, Tina, and Jeremy's previous caregiver are the only ones who have provided appropriate housing for the children. Thus, it is clear that the juvenile court properly found that Appellee has failed to provide her children with safe and suitable housing.

### **CONCLUSION**

Accordingly, the State respectfully requests this court to find that venue is proper and to further affirm the findings of the juvenile court with respect to Appellee's failure to provide her children with proper parental care and with safe, suitable housing.

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# Certificate of Service

I hereby certify that on Monday, August 12, 2019 I provided a true and correct copy of this *Reply Brief* to the following:

Brandon Medina represented by Jackie Lafaye Barfield (19966) service method: Electronic Service to **jbarlaw@aol.com**

Health and Human Services (Self Represented Litigant) service method: **First Class Mail**

Tiffany Gardner represented by Reginald L Young (20760) service method: Electronic Service to **reggie@youngandyounglaw.net**

Jamie Cooper represented by Jamie Christine Cooper (24287) service method: Electronic Service to **jamie@johnsonpeknylaw.com**

Signature: /s/ Anthony M. Hernandez (24935)