

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Aletha K.,
A child under 18 years of age.

State of Nebraska,

Appellee,

v.

Matthew K.,

Appellant.

No. A-13-0672

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

JAN 01 2014

IRWIN, MOORE, and BISHOP, Judges.

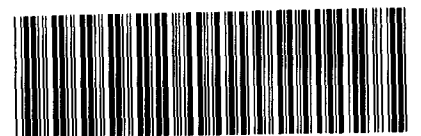
BISHOP, Judge.

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

Matthew K. and Crystal K. appeal from the decision of the county court for Richardson County, sitting as a juvenile court, that placed their daughter, Aletha K., in the temporary custody of the Nebraska Department of Health and Human Services (DHHS) with placement outside of the home. We affirm.

BACKGROUND

Matthew and Crystal are the biological parents of Aletha, who was born in June 2013. In March 2013, when Crystal was in the latter stage of her pregnancy with Aletha, she and Matthew relinquished their parental rights to Samara K., born in August 2005; Elijah P., born in October 2007; Mariska K., born in April 2009; and Natalia K., born in April 2010. We note that although Matthew relinquished his rights to Elijah, Matthew was not



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Elijah's biological father, and there is no evidence in our record showing that Matthew adopted Elijah.

In June 2013, the day after Aletha's birth, the State filed a petition alleging that she was a child as defined by Neb. Rev. Stat. § 43-247(3)(a) (Supp. 2013) because:

Aletha . . . lacks proper parental care by reason of the fault or habits of her parent, guardian, or custodian OR is in situation dangerous to life or limb or injurious to health or morals of such juvenile, to wit: [Aletha's] parents have substantially and continuously or repeatedly neglected and refused to give a sibling or siblings of the juvenile necessary parental care and protection.

The same day, the State also filed a motion for temporary custody, which was granted by the juvenile court in an ex parte order.

On July 2, 2013, the State filed its first amended petition alleging that Aletha was a child as defined by Neb. Rev. Stat. § 43-247(3)(a) because: (1) her parents had substantially and continuously or repeatedly neglected and refused to give a sibling or siblings of the juvenile necessary parental care and protection; (2) the juvenile court entered orders placing Aletha's siblings into the custody of DHHS, adjudicated those siblings because they lacked proper parental care or were in a situation dangerous to life or limb or injurious to their health, and found that reasonable efforts failed to alleviate

the conditions adjudicated; (3) Aletha's sibling reported being sexually assaulted/abused by Matthew; (4) Crystal knew or should have known about the sexual abuse and failed to protect the sibling of this juvenile; and (5) the parents were unable to discharge parental responsibilities because of mental health issues or mental deficiencies which need to be addressed.

Also on July 2, 2013, the State filed a motion to terminate Matthew's and Crystal's parental rights to Aletha pursuant to Neb. Rev. Stat. § 43-292 (Cum. Supp. 2012). With regards to Matthew, the State specifically alleged grounds for termination pursuant to § 43-292(2), (4), (5), and (9). With regards to Crystal, the State specifically alleged grounds for termination pursuant to § 43-292(2), (4), and (5).

On July 3, 2013, the State filed its second amended petition alleging that Aletha was a child as defined by Neb. Rev. Stat. § 43-247(3)(a). The State recited the same allegations it set forth in the first amended petition filed on July 2, but also alleged that one or more of those allegations placed Aletha at risk of harm.

A hearing was held on July 3, 2013. Several exhibits were received into evidence. Exhibit 1 contains pleadings and orders from a 2005 criminal case wherein Matthew pled guilty to and was convicted of the first degree sexual assault of Crystal, to whom he is now married. The sexual assault charge was based on the

fact that Matthew, being 19 years of age or older subjected Crystal, a person less than 16 years of age, to sexual penetration, when he knew or should have known that she was mentally or physically incapable of resisting or appraising the nature of her conduct. Matthew was subsequently sentenced to 18 to 30 months' imprisonment.

Exhibits 2-5 contain pleadings and orders from the prior juvenile court cases involving Elijah, Mariska, Natalia, and Samara, respectively. The children were removed from the parental home in October 2010. The children were adjudicated in February 2011 based on Crystal's and Matthew's admissions that in October 2010 the parental home was in a "filthy, unwholesome, unsafe, and unfit living condition[]." The children were adjudicated again in March 2012, after Crystal and Matthew answered "no contest" to the allegations that they "continue[d] to lack parenting knowledge, skills, or motivation necessary to assure the minor [children's] safety"; "continue[d] to not routinely perform parenting duties and responsibilities that assure the minor [children's] safety"; and were "unable to provide the basic medical needs to assure the minor [children's] safety." In an order filed in September 2012, the juvenile court suspended visitations because of "significant physical symptoms and actions being displayed by the juvenile[s]." Exhibit 6

contains Matthew's and Crystal's March 2013 relinquishments of their parental rights to Elijah, Mariska, Natalia, and Samara.

Wendy Stevenson, a children and family services specialist for DHHS, testified that she has worked with Matthew and Crystal off-and-on since October 2010. Stevenson was their case manager from October 2010 until January 2011. She became their case manager again in December 2011, and maintained that position as of the July 2013 hearing.

Stevenson worked with Matthew and Crystal in their previous juvenile cases involving Samara, Marisa, Natalia, and Elijah. Stevenson testified as to the concerns in those cases. At the time of removal, all four children had significant dental issues due to poor dental hygiene. Additionally, in November 2010, Elijah, Mariska, and Natalia each had a severe diaper rash, to the point of bleeding. Stevenson asked Crystal to make a medical appointment for the children, but Stevenson made the appointment after Crystal failed to do so. The doctor prescribed medication for the diaper rash, but Matthew and Crystal would not use it. DHHS also had concerns about the condition of the home. Matthew and Crystal would/could keep the home clean when the children were out-of-home, but not when the children were present.

Stevenson testified that Matthew and Crystal never moved beyond supervised visitation in the previous cases. In fact, no visitations took place from October 2011 to April 2012 (the

reason for the lack of visitation is not apparent from our record). From April to August, the parents resumed supervised visitation. But in August/September, DHHS recommended suspending the visits because Samara was having "extreme behavioral and sexual behavioral problems" that coincided with resuming visits. The juvenile court suspended visitations in August or September 2012, and the visits remained suspended at the time Matthew and Crystal relinquished their parental rights in March 2013.

Stevenson testified that Matthew and Crystal did not successfully correct the adjudicated issues in the previous cases. She is concerned about placing Aletha in their care because the reasons for suspending visits in the previous cases still exist. Stevenson testified that nothing has changed since the previous cases to alleviate concerns. According to Stevenson, foster care is the least restrictive placement. She testified that DHHS tried 24/7 supervision in the previous case, but it only lasted 36 hours before the parents decided to take a 1- or 2-day trip and voluntarily signed the children over to DHHS for placement.

Cassidy B. also testified. She is Aletha's foster parent. Cassidy testified that from July 2011 through April 2012, she was the foster parent for Samara, Mariska, and Natalia. Samara had to be removed from the foster home because there were

"concerns of sexual assault with her younger siblings." Cassidy subsequently adopted Mariska and Natalia.

Cassidy testified that during the previous juvenile cases, she transported the girls to visits with Matthew and Crystal. After visits, the girls had diarrhea and "extreme urination"; the girls had trouble holding urination or bowel movements right after visits and throughout the evening. She also observed "extreme masturbation" from Samara after visits. When asked if any of the children, while in her care, disclosed that they had been sexually assaulted by Matthew, Cassidy responded "yes," Samara had.

The juvenile court ordered continued custody of Aletha with DHHS. Matthew and Crystal were awarded "reasonable visitation" to be determined by DHHS. The juvenile court denied the parents' motion to dismiss. Hearings on the second amended petition and the motion to terminate parental rights were to be held on a later date. Matthew and Crystal timely appeal the order of the juvenile court granting custody of Aletha to DHHS.

ASSIGNMENTS OF ERROR

Matthew and Crystal assign that the trial court erred when it (1) determined that the State had proved by a preponderance of the evidence that continuation of the juvenile in her home would be contrary to the welfare of the child, (2) determined that placement outside the home was the least restrictive

placement to provide for the safety of the minor child, and (3) denied the parents' motion to dismiss.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Candice H.*, 284 Neb. 935, 824 N.W.2d 34 (2012).

ANALYSIS

The foremost purpose and objective of the Nebraska Juvenile Code is to promote and protect the juvenile's best interests. *In re Interest of Andrew S.*, 14 Neb. App. 739, 714 N.W.2d 762, (2006). In order to demonstrate that a preadjudication detention should continue, the State must prove by a preponderance of the evidence that the custody of a juvenile should remain in DHHS pending adjudication. See *In re Interest of Joshua M.*, 251 Neb. 614, 558 N.W.2d 548 (1997); *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991). In *Joshua M.*, *supra*, the court rejected the mother's argument that absent a specific showing of harm to a child, the trial court's detention order was not supported by the evidence. The court noted that a juvenile court need not wait until disaster has befallen a minor child before the court may acquire jurisdiction. *Id.*

The facts in this case are similar to those in *In re Interest of Andrew S.*, *supra*. In *Andrew S.*, the parents

relinquished their parental rights to their two daughters (after the girls had been in DHHS' custody for more than 2 years) just 3 months prior to having their third child, Andrew. The State sought to adjudicate Andrew based on the parents' failures to correct the conditions leading to the adjudications of their two daughters. This court said:

The parents' argument, when reduced to its essence, is that the relinquishments of their parental rights as to their two other children give them a 'clean slate' with respect to Andrew. (Stacey's and Brian's briefs both read, 'Currently, the logic behind a voluntary relinquishment, instead of proceeding to a contested hearing on the termination of parental rights, is the opportunity to have and protect the parental rights to after born children.' Brief for appellant at 13 and brief for appellee Brian S. on cross-appeal at 13.) We believe that the adoption of this 'clean slate' notion would ignore the larger purposes of the juvenile code, and it would produce an illogical result which could endanger Andrew. Clearly, the parents had plenty of 'work' to do to regain custody of their two daughters, but they chose to forgo such efforts and relinquished their parental rights as to those children. These facts do not bode well for Stacey's and Brian's stability and ability as parents, and they serve to convince us that this child, Andrew, is at risk. The fact that a parent has previously relinquished an adjudicated child is relevant evidence in an adjudication proceeding concerning a child born soon thereafter. In short, given the purpose of the juvenile code, one's history as a parent is a permanent record and may serve as a basis for

adjudication depending on the circumstances. Relinquishments of parental rights are not any sort of 'pardon,' which is how Stacey and Brian would have us treat the relinquishments they made. . . . [W]e suggest that one's history as a parent speaks to one's future as a parent. To ignore the fact that Stacey and Brian chose to relinquish their rights as to their first two children would be folly on our part and would unnecessarily expose Andrew to a risk of harm. Moreover, the time lag between those relinquishments and Andrew's birth was a mere 3 months, a fact which further convinces us that [the DHHS care coordinator] correctly apprehends the danger to Andrew, as did the trial court. We find that grounds for the adjudication of Andrew were shown by the requisite standard of proof.

In re Interest of Andrew S., 14 Neb. App. at 748-49, 714 N.W.2d at 769-70.

In the previous juvenile cases, Matthew and Crystal pled "no contest" to the allegations that they continued to lack parenting knowledge, skills, or motivation necessary to assure the minor children's safety; continued to not routinely perform parenting duties and responsibilities that assure the minor children's safety; and were unable to provide the basic medical needs to assure the minor children's safety. Matthew and Crystal failed to correct the adjudicated issues in those cases prior to relinquishing their parental rights. Additionally, in those previous juvenile cases, Matthew and Crystal never moved beyond

supervised visits. And visits were suspended in September 2012 and remained suspended at the time Matthew and Crystal relinquished their parental rights in March 2013.

When Elijah, Natalia, Mariska, and Samara did have visits with Matthew and Crystal, they had trouble holding bowel movements and urination. And Samara exhibited sexual behaviors following visits. Additionally, Samara disclosed sexual abuse by Matthew.

Matthew and Crystal relinquished their parental rights to Samara, Mariska, Natalia, and Elijah a mere 3 months prior to giving birth to Aletha. There was no indication that anything had changed since the previous cases to alleviate concerns. We find that the State has proven by a preponderance of the evidence that Aletha is at risk of harm and that custody should remain in DHHS pending adjudication. We also find that out-of-home placement was the least restrictive placement available. The parents had been provided with 24/7 supervision in the previous case, but it only lasted 36 hours as the parents prioritized other opportunities above parenting their children.

Matthew and Crystal also allege that "the trial court erred when it denied the parents' motion to dismiss, determining that probable cause existed for the case to proceed." Brief for appellant at 10. They cite no authority in support of their "probable cause" argument, which we view as a "deficiency of the

pleadings" argument. Neb. Rev. Stat. § 43-274 (Reissue 2008) is the governing statute for how the juvenile petition should be pled, and requires that the county attorney's petition specify which subdivision of § 43-247 is alleged and set forth the facts verified by affidavit. Section 43-247 also states that "[i]t shall be sufficient if the affidavit is based upon information and belief." The factual allegations of a petition seeking to adjudicate a child must give a parent notice of the bases for seeking to prove that the child is within the meaning of § 43-247(3)(a). See *In re Interest of Christian L.*, 18 Neb. App. 276, 780 N.W.2d 39 (2010). The petition and affidavit filed in this case satisfied both the statutory and notice requirements. It then becomes that State's burden at the adjudication hearing to prove the allegations in the petition by a preponderance of the evidence. See *In re Interest of Justine J. et al.*, 286 Neb. 250, 835 N.W.2d 674 (2013). The hearing on July 3, 2013, was not an adjudication hearing; it was merely a detention hearing. The adjudication hearing was to be held at a later date.

In addition to providing sufficient pleadings, the State presented more specific evidence at the detention hearing. As set forth more fully above, the evidence at the detention hearing was that Matthew and Crystal failed to correct the adjudicated issues in four other juvenile cases prior to relinquishing their parental rights. And the relinquishments

occurred a mere 3 months prior to Aletha's birth. There was no indication that anything had changed since the previous cases to alleviate concerns, and that Aletha was at risk of harm. In order to demonstrate that a preadjudication detention should continue, the State must prove by a preponderance of the evidence that the custody of a juvenile should remain in DHHS pending adjudication. See *In re Interest of Joshua M.*, 251 Neb. 614 558 N.W.2d 548 (1997). The State met its burden of proof regarding continued custody. Given our findings, the juvenile court properly denied the parents' motion to dismiss.

CONCLUSION

For the reasons stated above, we affirm the juvenile court's decision to place Aletha in the temporary custody of DHHS for placement outside of the home and to deny the parents' motion to dismiss.

AFFIRMED.