

FILED

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**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Baby Boy R.,)
 a child under 18 years of age.)
)
 State of Nebraska,)
)
 Appellee,)
)
 v.)
)
 Kerri R.,)
)
 Appellant.)

No. A-14-41

**MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL**

MOORE, PIRTLE, and RIEDMANN, Judges.

RIEDMANN, Judge.

INTRODUCTION

Kerri R. appeals from the order of the juvenile court for Douglas County granting the Department of Health and Human Services (DHHS) continued custody of her son, Baby Boy R., and providing that placement of Baby Boy was to exclude Kerri's home. Finding no merit to Kerri's arguments on appeal, we affirm.

BACKGROUND

Kerri is the biological mother of Baby Boy, who was born in October 2013. He was removed from her care at birth, and a detention hearing was held on three dates in October and November 2013.

The evidence presented at the detention hearing revealed that Kerri has three older children who were removed from her



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care and placed in DHHS custody in July 2011 due to the unsafe and unsanitary conditions of Kerri's home and her failure to provide her children safe, stable, and adequate housing. Kerri was adjudicated in juvenile court on those allegations, and a case plan for reunification was developed.

DHHS offered numerous services to Kerri in an effort to reunify her and her older children. Specifically, DHHS offered supervised visitation, family support services, a chemical dependency evaluation, a psychological evaluation, substance abuse treatment, and case management services. Kerri's participation in these services was inconsistent over the 2 year period between removal of the older children and the detention hearing regarding Baby Boy. Kerri only attended 3 out of 7 family support meetings and was therefore discharged from family support for lack of participation. Kerri completed a psychological evaluation which recommended outpatient individual therapy, family therapy, and a parenting class, but Kerri never followed these recommendations.

Chemical dependency issues also persisted throughout this time period. Kerri underwent a chemical dependency evaluation in April 2012, which recommended outpatient treatment. She was also ordered by the court to participate in outpatient treatment, but failed to do so. She completed a second chemical dependency evaluation at some point, which recommended a substance abuse

education class, and Kerri did complete the one-day class. However, Kerri never provided a copy of the second evaluation to the family permanency specialist on her case, Megan Mohrman, because Kerri said that the evaluator believed she was being dishonest about her substance use.

At the beginning of the case involving her older children, Kerri was ordered to undergo urinalysis testing more than once a month; however, in March 2012, the requirement was decreased to only once per month due to Kerri's noncompliance with all of the required testing. Mohrman testified at the detention hearing that although Kerri's compliance had improved during the most recent months, when looking at the case overall, Kerri had not been compliant with submitting to urinalysis requests. In addition, Mohrman was concerned when the results of Kerri's September 2013 test were invalid because the sample was diluted, and Kerri missed the October test.

Mohrman also expressed concerns about Kerri's living arrangement and ability to safely parent Baby Boy. At the time of the detention hearing, Kerri was living with Michael D., the father of Baby Boy, and Michael's parents. Kerri had lived with Michael and his parents in 2012 but was evicted due to conflicts with Michael's mother. Thus, Mohrman did not consider Kerri's current residence to be stable because of the previous eviction. Further, Kerri was unemployed and relied on others to pay for

supplies for Baby Boy. Mohrman's concerns about Kerri's ability to ensure Baby Boy's safety were raised because of recent incidents where Kerri had been smoking cigarettes around her older children and smoking in the house, as well as the fact that visitation supervisors had to provide supervision to the older children that Kerri should have been providing.

Ultimately, Mohrman opined that Baby Boy should remain in the custody of DHHS and should not be placed with Kerri. This opinion was due to Kerri's inconsistency with visiting her older children; her lack of parenting skills including her ability to care for all of the children all of the time, to supervise them, and to feed them and change diapers; her unstable housing; her ability to provide for Baby Boy given her unemployment; and her unresolved chemical dependency issues.

Subsequent to the detention hearing, the juvenile court entered an order sustaining the State's motion for continued detention. The juvenile court found that it would be contrary to the health and safety of Baby Boy to be returned to Kerri's home and that it was in his best interests to remain in the custody of DHHS with placement to exclude the home of Kerri. Kerri timely appealed.

ASSIGNMENTS OF ERROR

Kerri assigns that the juvenile court erred in finding sufficient evidence to support granting DHHS continued custody of Baby Boy with placement to exclude Kerri's home.

STANDARD OF REVIEW

Juvenile cases are reviewed do novo on the record, and an appellate court is required to reach a conclusion independent of the trial court's findings; however, where the evidence is in conflict, the appellate court will consider and may give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over another. *In re Interest of Damien S.*, 19 Neb. App. 917, 815 N.W.2d 648 (2012).

ANALYSIS

Kerri challenges the sufficiency of the evidence to support the order granting DHHS continued custody of Baby Boy with placement to exclude her home. A detention hearing serves a very limited purpose. *Damien S.*, *supra*. At a detention hearing, the only matter to be considered is whether a child should continue to be detained in DHHS' custody pending further juvenile court proceedings. *Id.*

Neb. Rev. Stat. § 43-254 (Cum. Supp. 2012) sets forth the requirements for continuing to withhold a juvenile from his or her parent pending adjudication, and it provides, in part, as follows:

If a juvenile has been removed from his or her parent [without a warrant as a result of concerns for the juvenile's safety], the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts to preserve and reunify the family were not required pursuant to Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2012).

Continued detention pending adjudication is not permitted under the Nebraska Juvenile Code unless the State can establish by a preponderance of the evidence at an adversarial hearing that such detention is necessary for the welfare of the juvenile.

Damien S., supra.

The evidence presented at the detention hearing revealed that Kerri's older children had been out of her custody for more than 2 years without achieving reunification. Kerri was inconsistent with participating in services offered to her and required of her in order to rehabilitate herself to the point of regaining custody of her children. The services offered to Kerri included supervised visitation, family support, a chemical dependency evaluation, a psychological evaluation, substance abuse treatment, and case management. Yet, as of November 2013, concerns about Kerri's ability to parent her children remained. Namely, Mohrman believed that Kerri had unresolved chemical

dependency issues, her housing was unstable, she was unemployed and depended on others to provide for her children's basic needs, and she lacked necessary parenting skills to ensure the health and safety of her children. Mohrman thus believed that Baby Boy was at risk for harm if returned to Kerri. Accordingly, Mohrman recommended that Baby Boy remain in the custody of the DHHS with placement to exclude Kerri's home.

Upon our de novo review of the record, we conclude the State presented sufficient evidence establishing that the continued detention of Baby Boy was necessary for the welfare of the child. We therefore find no error in the juvenile court's decision.

CONCLUSION

We affirm the order of the juvenile court which granted DHHS continued custody of Kerri's son, Baby Boy, and provided that placement of Baby Boy was to exclude Kerri's home.

AFFIRMED.