

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF JAMES B. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE INTEREST OF JAMES B. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

ASHLEY P., APPELLANT.

IN RE INTEREST OF XYAIRAH B., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

ASHLEY P., APPELLANT.

Filed September 18, 2012. Nos. A-12-125, A-12-145.

Appeals from the Separate Juvenile Court of Lancaster County: ROGER J. HEIDEMAN,
Judge. Appeals dismissed.

Mark T. Bestul, of Legal Aid of Nebraska, for appellant.

Joe Kelly, Lancaster County Attorney, and Ashley Bohnet for appellee.

IRWIN, SIEVERS, and PIRTLE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Ashley P. appeals from two orders of the separate juvenile court of Lancaster County. In case No. A-12-125, Ashley appeals from the order suspending her visitation with her children James B., Xyanna B., and Dominick B. The court also suspended Ashley's visitation with her child Xyairah B., in case No. A-12-145. The two cases were consolidated on appeal for purposes of opinion and disposition. As more fully explained below, we find that the juvenile court's

orders are not final and appealable, and accordingly, the appeals are dismissed for lack of jurisdiction.

II. BACKGROUND

In March 2009, the State filed a petition with the juvenile court, alleging that James, Xyanna, and Dominick were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) because of the faults and habits of their parents, Ashley and James B. II (James II). As amended in May, the petition alleged that the parents had engaged in a domestic confrontation in front of the children resulting in law enforcement's responding to the residence, that the Nebraska Department of Health and Human Services had attempted to work with the family on a voluntary basis but the parents had declined to follow recommendations, and that the parents' actions placed the children at risk. In February 2010, a petition was filed as to Xyairah, who was born in December 2009, alleging that she was also within the meaning of § 43-247(3)(a) because of the faults and habits of Ashley and James II. James II is not a party to this appeal, and his involvement in the juvenile court proceedings will not be discussed further. In addition, because of the ultimate disposition of Ashley's appeal, we decline to engage in a detailed discussion of the allegations against Ashley. However, we note that Ashley pled no contest to the allegations as to all four children and that all were adjudicated under § 43-247(3)(a). Ashley was initially permitted to keep physical custody of the three older children, but all four children were removed from the family home in April 2010. Subsequently, Ashley's visitation with the children was supervised or "supervised/monitored," although for a brief time, Ashley was permitted monitored overnight visits. However, in November 2011, the court implemented fully supervised visitations for Ashley following an incident during a visitation that left a mark on one of the children's faces. On January 13, 2012, the State moved to terminate parental rights to all four children. A few days later, the State moved to suspend visitations with the children.

At the hearing on the motion to suspend visitation, Melissa Boldt, a family permanency specialist, testified that the visitation concerns were precipitated by some seriously disturbed behaviors exhibited by some of the children, as well as by Ashley's conversations with one of the older children about the upcoming hearing on termination of her parental rights. Boldt testified that the children, including 3-year-old Dominick, could benefit from individual therapy and that such therapy for the three oldest children was in their best interests. Boldt testified that the therapist would evaluate the children and give her recommendations as to the appropriateness of visitation. Boldt stated that she was not requesting a long-term suspension of visitation and anticipated therapeutic visitation as soon as therapy commenced.

In orders entered January 30, 2012, in each case, the juvenile court ordered that "visitation shall be modified to allow [the parents] therapeutic visitation at such time as recommended by the children's therapist." The court noted that Ashley had entered a denial of the allegations contained in the motion to terminate parental rights but the court canceled the upcoming hearing on the motion that had been set for February 10. Ashley appeals from these orders.

III. ASSIGNMENTS OF ERROR

Ashley contends, as summarized, that the juvenile court erred in suspending or modifying her visitations with the children and that the court had improperly delegated its authority to do so to the children's therapist.

IV. ANALYSIS

In a juvenile case, as in any other appeal, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *In re Interest of Meridian H.*, 281 Neb. 465, 798 N.W.2d 96 (2011). Under Neb. Rev. Stat. § 25-1902 (Reissue 2008), the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. See *In re Interest of Meridian H.*, *supra*. The first and third types of final orders clearly are not present in this case. But the second type may be, as a proceeding before a juvenile court is a special proceeding for appellate purposes. *Id.*

The Nebraska Supreme Court has addressed whether an order denying visitation affects a parent's substantial right. See *In re Interest of Clifford M. et al.*, 258 Neb. 800, 606 N.W.2d 743 (2000) (holding denial of motion for visitation was not final). The Nebraska Supreme Court has made it clear that the question of whether a substantial right of a parent is affected by an order entered in a juvenile proceeding is dependent upon both the object of the order and the length of time over which the parent's relationship with the juvenile may reasonably be expected to be disturbed by the order. *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991), *disapproved on other grounds*, *O'Connor v. Kaufman*, 255 Neb. 120, 582 N.W.2d 350 (1998).

The testimony in the instant case indicates that the suspension of visitation is intended to be short-lived and only until such time as individual therapy can commence with the older children. At that time, the therapist can make her recommendations for the terms of future visitation, which the court can choose to adopt or not. Thus, the juvenile court's order does not purport to terminate visitation permanently, and Ashley remains free to regain visitation rights upon a showing that visitation is in the best interests of the children. In addition, the petition to terminate Ashley's parental rights is not based on lack of visitation or abandonment. See *In re Interest of Clifford M. et al.*, *supra*. (holding that order denying motion to restore visitation was not appealable as it was not permanent in nature, did not perpetuate out-of-home placement of children, and was not sole factor in achieving reunification with mother).

We conclude that the facts of this case support the conclusion that the juvenile court's orders suspending Ashley's visitation did not affect her substantial rights and were, therefore, not final orders. Like the order in *In re Interest of Clifford M. et al.*, *supra*, the juvenile court's orders do not permanently terminate Ashley's visitation rights, and she will be able to regain her visitation rights upon a showing that visitation is in the children's best interests.

V. CONCLUSION

We find that the orders suspending Ashley's visitation in case No. A-12-125 and case No. A-12-145 did not affect her substantial rights and were, therefore, not final, appealable orders. The appeals are dismissed.

APPEALS DISMISSED.