

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Malachi W., )  
DaeShawn W., and Marquice H., )  
Children under 18 years of age. )  
 )  
State of Nebraska, )  
 )  
Appellee, )  
 )  
v. )  
 )  
Tiffany W., )  
 )  
Appellant. )

No. A-13-0678

MEMORANDUM OPINION  
AND  
JUDGMENT ON APPEAL

**FILED**

JAN 06 2014

IRWIN, MOORE, and BISHOP, Judges.

MOORE, Judge.

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

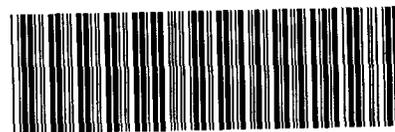
INTRODUCTION

Tiffany W. appeals from the order of the separate juvenile court for Lancaster County, which placed her son, DaeShawn W., with his father, Paul W. Because the court did not abuse its discretion in placing DaeShawn with Paul, we affirm.

BACKGROUND

Tiffany is the mother of Marquice H., born in March 1999; Malachi W., born in August 2005; and DaeShawn W., born in April 2007. Paul is DaeShawn's father. As the fathers of Tiffany's other children are not involved in this appeal we do not discuss them further in this opinion.

The State filed a petition in the juvenile court on January 13, 2009, alleging that the children were within the meaning of



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Neb. Rev. Stat. § 43-247(3)(a) and lacked proper parental care due to the faults or habits of both Tiffany and Paul. Specifically, the State alleged that the children were in a situation dangerous to life or limb or injurious to their health or morals in that between November 18 and 30, 2008, Tiffany and Paul were involved in one or more physical and/or verbal domestic confrontations with one another in the presence and/or in the home of one or more of the children and alcohol was involved on one or more occasion. The children were adjudicated on March 30, 2009 and remained in Tiffany's care until the end of March 2011 when they were removed for out-of-home placement. Marquice was placed with his maternal grandmother in September 2011. Malachi and DaeShawn were placed with their grandmother in July 2012. The children continued to be placed with their grandmother at the time of the hearing relevant to this appeal.

The present appeal arises out of an order entered following a dispositional review and permanency planning hearing held on July 2, 2013. The juvenile court heard testimony from both Paul and Tiffany and a caseworker with the Nebraska Department of Health and Human Services. The court also received exhibits, including a court report, a permanency planning report, and a guardian ad litem report, into evidence.

At the time of the hearing, Paul had just completed outpatient treatment for alcohol and drug counseling and was in

ongoing therapy for alcohol and drug issues. He has also been submitting to urinalysis tests (UAs) and the results show that he has been sober for 2 months.

Paul does have a history of less successful results from prior substance abuse treatment. The record shows that Paul completed outpatient substance abuse treatment in November 2009 and participated in an aftercare program that included continuing care through January 2010. At that time, both Paul and Tiffany were participating in domestic violence programs. In April 2010, Paul was submitting to UAs, which were negative, and was transitioning back into the family home with Tiffany and the children. Between April and August, Paul received multiple law enforcement encounters, including one occasion in July when he was found intoxicated and lying down in the street. He was jailed between August 4 and 23 for third offense driving under the influence. He was again incarcerated in the first part of 2011 and was not submitting to UAs as ordered. Tiffany and Paul's relationship apparently ended in early 2011. Between March and June 2011, Paul had little contact with the Department and in May informed the caseworker that he was homeless. As of June 2011, Paul had not complied with the recommendations of his previously completed substance abuse evaluation. As of April 2012, Paul was not submitting to court-ordered UAs.

At the present time, Paul is employed in the shipping and receiving department of a business. He lives in a 3-bedroom home, which he shares with his fiancée and her two daughters. Paul testified that if placed with him, DaeShawn would have his own room and the chance to spend time with Paul's daughter, who visits every other weekend. When Paul's daughter visits, she shares a room with his fiancée's daughters. Paul testified that DaeShawn will attend a school which is 2 blocks away from Paul's residence. Paul also detailed his plan for licensed daycare services within walking distance from his residence when DaeShawn is not in school and Paul and his fiancée are at work. The caseworker confirmed that Paul had arranged for daycare from a licensed provider that had been approved by the Department.

Paul asked the juvenile court to place DaeShawn with him. He claimed that DaeShawn is excited about living with him, is sad when their visits end, and does not want to return to his grandmother's residence. Paul does not get along well with DaeShawn's grandmother, but he agreed that it was important for Tiffany's children to maintain a relationship with one another and expressed his intent to cooperate with sibling visitations.

According to Paul, DaeShawn and his fiancée get along well and she agrees with placement of DaeShawn with their family unit. However, witnesses testified at the hearing about DaeShawn's report to Tiffany that Paul's fiancée hit him in the

face. Paul testified that he was at work when the alleged incident occurred. DaeShawn did not report the alleged hitting to the caseworker. The caseworker found no evidence of a physical bruise. The caseworker testified that she had spoken with Paul and DaeShawn about the incident but had not yet spoken with Paul's fiancée. When the caseworker spoke with Paul about the incident, he reported that his fiancée denied hitting DaeShawn. He also stated that he would speak with DaeShawn to ensure that he felt safe in the home and that he felt comfortable making a report in the event that he was being hurt. DaeShawn told the caseworker that he has fun visiting Paul and that he feels safe when visiting. On the other hand, DaeShawn did report to the guardian ad litem (GAL) that he was slapped in the face. He told the GAL that he likes to visit Paul but is now afraid of Paul's fiancée. DaeShawn also told the GAL that Paul was in the other room when the alleged incident occurred and that he was slapped because he had been bad. Aside from this one incident, the Department had not found any safety concerns during DaeShawn's visits in Paul's home.

The caseworker testified that if DaeShawn were placed with Paul, the Department would implement a safety plan for DaeShawn that would continue to include home drop-ins and would also include licensed daycare for DaeShawn when necessary and advising the Department when the fiancée would be staying alone

with DaeShawn. The safety plan would involve the entire family unit at Paul's residence and service providers would work with the fiancée as she is a part of the household. The caseworker indicated that she could implement family support transitioning services as needed to provide assistance with any parenting and disciplinary techniques.

The caseworker testified that it would be in DaeShawn's best interest to continue to have contact with the grandmother's family unit. She testified that the Department intends to develop and implement sibling visitation in the grandmother's home on a weekly or biweekly basis. DaeShawn's placement with his grandmother has not been without concerns. The caseworker testified that the Department had received an intake the weekend prior to the hearing regarding Marquice and DaeShawn. According to the report, Marquice used a tool and left red marks on DaeShawn's legs. The Department was currently investigating and planned to follow up with a safety assessment of the grandmother's residence. Prior to receiving the intake report, the Department had also set up IFP services for the grandmother's family unit due to Marquice's behavioral problems. Marquice has engaged in illegal activities with peers, has a law violation for vandalism, and is on diversion. He has demonstrated defiant behavior toward his grandparents by disregarding their redirections and responding aggressively

toward his grandfather. Prior to the February 2012 review hearing, DaeShawn, who had not yet been placed in his grandmother's home, had made allegations regarding sexual abuse by Marquice during overnight stays in the grandmother's home. Although investigation by the Department and law enforcement showed the allegations to be unfounded, DaeShawn continued to report, as of the February 2012 hearing, that the abuse occurred.

At the time of the present hearing, the Department was providing Paul with services in the form of random drop-ins occurring in the home, payment for treatment, and aftercare services. The caseworker testified that Paul was cooperating with all services. Paul was currently doing aftercare, which involved visiting with his therapist on a weekly basis. The caseworker has received e-mail communications from Paul's therapist, confirming his participation in and discharge from treatment, his continued participation in aftercare services, and, in general, his cooperation and consistency in participation. The caseworker testified that Paul was consistent in communicating with her as well as the individual providing his drug tests and drop-in workers, that he was engaged and interacting in therapy, and that he had benefited from the services provided. The Department recommended placement of

DaeShawn with Paul, and the caseworker testified that such placement would be in DaeShawn's best interests.

Tiffany was receiving in-patient treatment at the time of the hearing, which she described as a short-term residential substance abuse program that also included therapy to address her "criminal thinking." Tiffany confirmed that she was awaiting sentencing for a felony charge, facing the potential of serving "two zero-to-fives." The record does not reveal further information about these charges. Tiffany does receive visits with the children at the treatment center. According to Tiffany, DaeShawn told her that he would like to continue living with his grandmother and have visitation with Paul. Tiffany did not feel that placement with Paul would be in DaeShawn's best interests.

The juvenile court entered an order on July 10, 2013, which, among other things, ordered placement of DaeShawn with Paul. The court found that reasonable efforts had been made to finalize the previously approved primary permanency plan for Malachi and Marquice of guardianship with their grandmother and the concurrent permanency plans for DaeShawn of reunification with Paul and guardianship with his grandmother. The court found that returning custody to a parent would be contrary to the welfare of the children due to Tiffany's recent incarceration and pending criminal charges, Tiffany's continued instability in her living situation and lack of participation in court-ordered

services, Tiffany's agreement to consent to a guardianship with her mother, Paul's need to show continued compliance with court orders and to assume greater parental responsibility for DaeShawn, and due to the other fathers' current incarcerations. Accordingly, the court ordered that the children continue in the Department's temporary legal custody. The court found that it was in Malachi and Marquice's best interests to remain in out-of-home placement but that it was in DaeShawn's best interests to be placed with Paul. The court found that services had been provided in compliance with the case plan and that progress had been made by Paul to alleviate the causes of the court's adjudication and DaeShawn's out-of-home placement. The court approved a primary permanency plan for Malachi and Marquice of guardianship with their grandmother and for DaeShawn of family preservation with Paul. The court approved a rehabilitative plan for Paul, requiring him to not engage in any domestic violence or physical altercations with Tiffany; to reside in a permanent residence separate from Tiffany where drop-ins can occur; to maintain employment or other legal means of support; to not possess or consume alcohol, controlled substances, or any mind-mood-altering substances, except as prescribed by a physician, and to submit to random testing as directed by the Department; to follow any recommendations of his treatment provided for step-down levels of treatment and/or after care and relapse

prevention; and to cooperate with random drop-ins to his residence as arranged or approved by the Department.

#### ASSIGNMENTS OF ERROR

Tiffany asserts that the juvenile court erred in determining that it was in DaeShawn's best interests to be placed with Paul and separate from his siblings.

#### STANDARD OF REVIEW

Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. *Kenneth C. v. Lacie H.*, 286 Neb. 799, \_\_\_ N.W.2d \_\_\_ (2013). However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the district court observed the witnesses and accepted one version of the facts over the other. *Id.*

#### ANALYSIS

Tiffany asserts that the juvenile court erred in determining that it was in DaeShawn's best interests to be placed with Paul and separate from his siblings.

Juvenile courts are accorded broad discretion in determining the placement of an adjudicated child and to serve that child's best interests. *In re Interest of Montana S.*, 21 Neb. App. 315, 837 N.W.2d 860 (2013).

The record shows that Paul is making efforts to improve his situation in order to be able to parent DaeShawn. Paul has been

sober for 2 months. He successfully completed a treatment program and at the time of the hearing, was participating in aftercare and continued therapy. Paul has cooperated fully in his therapy and treatment and the services provided by the Department. While a longer record of sobriety might be desirable, particularly in light of Paul's past history, the record from the hearing supports the court's decision to place DaeShawn with Paul, a placement recommended by the Department. Paul has stable housing and employment. Paul is currently doing what is needed to allow for DaeShawn's placement in his home and there is a safety plan to allow for DaeShawn's integration into the home. DaeShawn will have his own room in Paul's house and the opportunity to spend time with Paul's daughter. He will attend school within walking distance of Paul's residence and Paul has arranged for licensed, Department-approved daycare, which is also within walking distance. There was conflicting evidence about the incident between Paul's fiancée and DaeShawn. We consider and give weight to the fact that the juvenile court resolved this issue in Paul's favor. See *Kenneth C. v. Lacie H.*, *supra*. We also note the evidence of conflict between DaeShawn and Marquice in the grandmother's home. We find no abuse of discretion in the juvenile court's placement decision.

CONCLUSION

The juvenile court did not err in placing DaeShawn with Paul.

AFFIRMED.