

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Te'shaun P.)
et al., Children Under 18 Years)
of Age.)
State of Nebraska,)
Appellee,)
v.)
Takeyla B., Appellant, and)
Terrence P., Appellee and)
Cross-Appellant.)

No. A-12-0489

MEMORANDUM OPINION
AND
JUDGMENT ON APPEAL

FILED

JAN 02 2013

IRWIN, MOORE, and PIRTLE, Judges.
MOORE, Judge.

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

INTRODUCTION

Takeyla B. appeals and Terrence P. cross-appeals from a detention order of the juvenile court, which order granted the Department of Health and Human Services (DHHS) continued temporary custody of their children pending adjudication and provided that placement of the children was to be outside of Takeyla and Terrence's home. On appeal, both Takeyla and Terrence challenge the sufficiency of the evidence to support the juvenile court's order granting DHHS' continued custody of the children. For the reasons set forth herein, we affirm the juvenile court's order.



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BACKGROUND

Takeyla and Terrence have four children: Te'shaun P., Tierré P., Tivean P., and Tre'sor P. Takeyla and Terrence have been in an "on again/off again" relationship for 8 years. During most of the relevant time period, both parties were residing in the same home with the children.

On March 22, 2012, the State filed a petition alleging that all four children are within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) because (1) Takeyla's use of alcohol and/or controlled substances places the children at risk for harm; (2) Takeyla failed to provide proper parental care, support, and/or supervision; (3) Takeyla engages in erratic and disorderly conduct in the presence of the children; (4) Terrence has failed to protect the children from Takeyla; and (5) these allegations put the children at risk for harm. The State also filed a motion for temporary custody of the children with placement to exclude the home of Takeyla and Terrence. On that same day, the juvenile court entered an ex parte order granting DHHS temporary custody of the children, with placement to exclude Takeyla's and Terrence's home. The children were placed with their paternal grandmother.

A detention hearing was held before the juvenile court on April 11, April 25, and May 9, 2012. Testifying on behalf of the State were Maryann Groh, the DHHS initial assessment worker, and

Erica Bush, a family permanency specialist with Nebraska Families Collaborative (NFC).

On January 20, 2012, Groh investigated a call received that day reporting that Tivean, age 7; Tre'sor, age 2; and Tierré, age 1, had been left at home unsupervised. The investigation revealed that Tivean arrived at school on that day at approximately 12:30 p.m. at which time he indicated that he had been home alone with his 1- and 2-year-old siblings. Tivean said that he was alone long enough to watch a movie twice. Groh's investigation revealed that in August 2011 Takeyla was cited by police for leaving the children alone in her vehicle while she was shopping. In September 2011, Takeyla was cited for driving while intoxicated, and police reports indicated that there was a child in the car at the time.

Bush and Groh spoke with Takeyla at her home on January 23, 2012. Takeyla admitted that she had left the children home alone. Takeyla told Bush and Groh that she took Te'shaun to school, washed her car, bought gas, picked up snacks, and returned home. She did not feel like she was "gone that long." Takeyla agreed to and signed a 30-day safety plan which provided that Takeyla would not leave the children home alone, that Takeyla's great-grandmother and cousin would babysit if she needed help, and that Bush would check on the children weekly by phone or in person.

The next day, Bush and Groh returned to Takeyla's home because Groh's supervisor felt the family needed more support in place. Groh explained to Takeyla why they needed to amend the safety plan, but the conversation escalated to the point that Groh and Bush exited the house. Groh called her supervisor for consultation and Takeyla called the police. Upon their arrival, the police officers explained to Takeyla what Bush and Groh were trying to accomplish and encouraged Takeyla to sign the amended safety plan. The officers told Takeyla that if she did not sign the amended safety plan, they "would have to take the issue to the next level." Takeyla signed the amended plan which added that her cousin would visit once or twice a week to check on the children's well-being.

Terrence was not present when Bush and Groh spoke with Takeyla on January 23, 2012, but he was present on January 24. Terrence advised that he was at work all day, and he did not know if Takeyla left the children home alone during the day. Terrence was not listed on the safety plan.

Following placement of the children in DHHS' temporary custody, Takeyla and Terrence were allowed visitation with the children in their home five times per week for periods of 2 to 3 hours, with visits supervised by the staff of "Caring People of Sudan." Bush testified that she was contacted by a visitation worker who reported that while trying to set up visitation for

the family, Takeyla stated that she would not be held responsible for what would happen when she came into their office that day and that she was going to destroy everyone involved with the case. However, there were no concerns regarding the behavior of the parents at the visits, and Takeyla and Terrence were described as willing and participatory.

Per the safety plan, Bush checked on Takeyla and the children once per week. Some of the appointments were unscheduled drop-ins and others were scheduled. Bush attempted four drop-in checks, but the family was not home during those times. Bush was able to make contact at the home five total times. Bush testified that she did not have any concerns about the condition of the home. When Bush observed the children they appeared well-clothed, well-fed, and happy with no obvious signs of abuse or neglect. Further, the children were always being supervised.

During the safety plan, Bush continued to have concerns for the children's safety because Bush felt that Takeyla was resistant to services. Takeyla gave Bush the impression that she was going between two households at that time and had some housing needs. Bush was also concerned about Takeyla's mental health because Takeyla acted erratically. Bush observed that at times Takeyla was hyperactive and "escalated." Takeyla yelled and screamed, oftentimes in front of the children. On one

occasion, Bush observed Takeyla slap Tre'sor's hands a couple of times which Bush felt was excessive discipline for a 3-year-old.

On February 23, 2012, Takeyla agreed to Bush's request to visit that day, but she told Bush that this would be the last time she would allow Bush into her home because the safety plan was to expire that day. Bush testified that she explained to Takeyla when the plan was signed that it was subject to being re-evaluated; however, the plan did not specifically include this information. At this visit, Bush discussed with Takeyla setting up daycare for the children. Takeyla told Bush that she had reapplied for daycare and contacted the State to apply for child care assistance, but Bush was still concerned about who was going to watch the children when Takeyla went to work or ran errands.

On March 13, 2012, Bush and Groh tried to meet with Takeyla to see the children again, but Takeyla did not grant them permission. Bush and Groh spoke with school officials instead. They were advised that on one recent occasion, Takeyla forgot to pick the children up from the school and did not arrive until 6:00 p.m. It was also reported that the children were frequently tardy to school. Finally, Tivean had told his teacher on three previous occasions that he was left home alone to care for his siblings. On March 13, 2012, Bush and Groh were able to meet with Terrence at the home. Terrence reported that Takeyla had

been diagnosed with postpartum depression after the birth of their last child. Terrence indicated that Takeyla was acting erratically and violently, and that she had left the home. Terrence shared that they had been in an argument and Takeyla threw something across the room, putting a hole in the wall of the home. Terrence also stated that Takeyla came to the home the day before and broke a window. Terrence said that their relationship had a long history of violence with Takeyla usually being the perpetrator. On one occasion, Takeyla stabbed him in the shoulder. Terrence also reported that Takeyla had lost up to \$11,000 gambling and was smoking marijuana daily. Terrence did not want to leave the children home alone with Takeyla. Based upon this conversation, Terrence said he was not going to allow Takeyla back into the residence because he felt that the children were unsafe around her. Terrence was encouraged to get immediate temporary custody of the children and a protection order and was given information on how to accomplish this. The day following this meeting, Bush left a message for Terrence asking him whether he had obtained custody or a protection order, but Terrence never returned the call.

Groh also spoke with Adam Smith, Terrence's friend who was also living in the home on March 13, 2012. Smith told Groh that the day before, Takeyla came to the house and Smith called the police twice because she was outside of the door acting violent.

Groh also spoke with Te'shaun on this day who told her that Takeyla was no longer staying in the home. Te'shaun told Groh that Takeyla had broken holes in the wall and that she and Terrence were cussing and yelling at each other.

On March 21, 2012, Groh returned to the home to reassess the safety of the children. No one answered the door, but Groh saw the children and Takeyla in the home through the window.

Finally, Takeyla's cousin, Tanisha B., testified on Takeyla's behalf. Tanisha testified that she was asked to provide supervision for the children when needed and to check on the children as part of the safety plan. When Tanisha dropped by the home, she never observed the children to be unattended.

At the close of the evidence, the court made the following remarks:

From January to February there was no compliance with the safety plan. [DHHS] tried to make drop-ins, and no one was there. In February, [Takeyla] was still resistant to services. There was concern about excessive discipline, slapping the kids on the head. And one was three years old. Concerns on -- on behalf of [Takeyla], I am worried about mental health and/or drug use.

The children's father is not off the hook. You lived with this woman, and you have an obligation to know how your kids are being cared for. And you knew that she was not doing all right. So with all due respect, it is not okay to come in today and say, I was at work, I didn't know the kids were unattended. You have a responsibility to them

as well. And there was testimony that you had concerns about their care and yet still continued in the same fashion.

The court went on to state that Takeyla and Terrence "have the ability to be good parents" but that "there are challenges here that need to be addressed" to settle the case. The court encouraged Takeyla and Terrence to take advantage of the services that DHHS offers.

On May 10, 2012, the juvenile court entered an order continuing temporary custody of the children with DDHS. The court found that reasonable efforts to prevent the children's continued removal from the parental home had been made, including but not limited to the risk assessment. The court went on to find that it would be contrary to the children's health, safety, or welfare to be returned to the home of Takeyla and Terrence at this time. The court scheduled a "case settlement conference" for May 22; however, this conference was postponed due to the instant appeal.

Takeyla appeals and Terrence cross-appeals from the juvenile court's order.

ASSIGNMENTS OF ERROR

On appeal and cross-appeal, Takeyla and Terrence challenge the sufficiency of the evidence to support the juvenile court's order granting DHHS continued custody of the children.

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 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 Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012).

When an appellate court reviews questions of law, it resolves the questions independently of the lower court's conclusions. *In re Interest of Destiny A. et al.*, 274 Neb. 713, 742 N.W.2d 758 (2007).

ANALYSIS

Takeyla's Appeal.

Takeyla alleges that the juvenile court erred in finding sufficient evidence to warrant DHHS's continued custody of the children. Upon our de novo review of the record we find that the juvenile court did not abuse its discretion in ordering that DHHS retain temporary custody of the children pending further juvenile court proceedings.

Neb. Rev. Stat. § 43-254 (Cum. Supp. 2010) 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 were made to preserve and reunify the family if required under subsections (1) through (4) of section 43.283.01.

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. *In re Interest of Anthony G.*, 255 Neb. 442, 586 N.W.2d 427 (1998). A detention hearing is a parent's opportunity to be heard on the need for removal and the satisfaction of the State's obligations. See *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232 674 N.W.2d 442 (2004).

A review of the record reveals that the State presented sufficient evidence to demonstrate that continued placement of the children in Takeyla's home would be contrary to their health, safety, or welfare. In addition, there was evidence that reasonable efforts to preserve and reunify the family were made pursuant to Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2010).

Takeyla has a pattern of leaving her children unsupervised. There was testimony that in August 2011 Takeyla was cited for leaving her children unsupervised in her vehicle in a parking lot while shopping. Takeyla was then cited for driving under the influence while one of her children was in the car in September 2011. DHHS became involved with the family after the January 2012 report that Takeyla left Tivean home alone with his two younger siblings long enough to watch a full-length movie twice. The record shows that the oldest children are frequently tardy to school and were not picked up from school until 6:00 p.m. on one occasion. Tivean reported being left alone to care for his siblings on three previous occasions. Takeyla admitted to leaving the children unsupervised, and she agreed to a safety plan which allowed the children to remain in the home. When Bush contacted Takeyla on February 23, Takeyla stated that she would no longer work with Bush after the safety plan expired. Since that date, Takeyla refused to answer phone calls or meet with any workers. Terrence has reported continued erratic behavior by Takeyla, and there are concerns with violence in the home as well as possible marijuana usage by Takeyla.

Taken together, this evidence is sufficient to establish that the continued detention of the children is necessary for their health, safety, and welfare. The State is not required to establish a specific harm or risk to the juvenile; it is enough

if the evidence establishes by a preponderance of the evidence that the conduct or circumstances of the parent or custodian are such that it is contrary to the juvenile's welfare to remain in, or return to, the parental or custodial home. *In re Interest of Joshua M. et al.*, 251 Neb. 614, 558 N.W.2d 548 (1997). We need not wait for disaster to strike before taking protective steps in the interests of a minor child. *In re Interest of Ryder J.*, 283 Neb. 318, 809 N.W.2d 255 (2012).

The evidence also revealed that reasonable efforts to preserve and reunify the family were made with the implementation of the safety plan. Although Takeyla did not violate the safety plan, she was not cooperative or participatory with DHHS's attempts to ensure the children's safety. After the safety plan expired, there were additional concerns for the children's safety, as reported by Terrence, and neither Terrence nor Takeyla took steps to alleviate these concerns when DHHS tried to assist. Neb. Rev. Stat. § 43-283.01 clearly indicates that the juvenile's health and safety are the paramount concern in assessing reasonable efforts. The juvenile court's determination that reasonable efforts were made was supported by a preponderance of the evidence.

Takeyla argues that the juvenile court made several incorrect factual findings on the record following the presentation of evidence. Takeyla asserts that the evidence does

not support the court's assertion that she was not in compliance with the safety plan or that she slapped the children on the head. Takeyla also notes that the court's concern for possible mental health issues or drug use were only based upon allegations made by Terrence and were not substantiated by any further evidence. While we do not agree with all of the court's statements, the evidence presented by the State and considered in our de novo review was sufficient to meet the State's burden to prove that temporary custody of the children should remain with DHHS.

Terrence's Appeal.

In Terrence's cross-appeal, he also alleges that the juvenile court erred in finding sufficient evidence to warrant DHHS's continued custody of the children. Upon our de novo review of the record, we find that the State presented sufficient evidence to warrant DHHS's continued temporary custody of the children.

As we discussed more thoroughly above, in order to continue DHHS's custody of the children, the juvenile court had to find that the continued detention of the children in Terrence's home would be contrary to their health, safety, or welfare and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of § 43-283.01.

Terrence reported to Bush and Groh that Takeyla had moved out of the home, was smoking marijuana on a daily basis, was behaving erratically, and was violent with him. Terrence was advised to obtain temporary custody of the children and acquire a protection order against Takeyla. Terrence told Bush that he would not allow Takeyla to be alone with the children. Despite these reports, Terrence took no action to protect the children.

The evidence also revealed that reasonable efforts to preserve and reunify the family were made pursuant to § 43-283.01. Although Terrence was not specifically named in the safety plan, he was well aware of its parameters because he was present at Takeyla's second meeting with Bush and Groh. At this meeting, Terrence advised that he was unaware whether Takeyla was leaving the children unsupervised because he was at work all day. A few weeks later, Terrence expressed concern about a variety of Takeyla's behaviors and was advised of steps he could take to protect the children, which he chose not to do. The status of the children's supervision in the home was uncertain given the report that Takeyla was not in the home following an argument with Terrence in March 2012.

Upon our de novo review of the record, we conclude that the juvenile court did not abuse its discretion in ordering that DHHS retain temporary custody of the children pending further juvenile court proceedings. The evidence revealed that the

continued detention of the children is necessary for their health, safety, and welfare and that reasonable efforts to preserve and reunify the family were made. Accordingly, we affirm the order of the juvenile court.

CONCLUSION

Upon our de novo review of the record, we affirm the order of the juvenile court continuing the temporary custody of the children with DHHS pending adjudication.

AFFIRMED.