

FILED

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**NEBRASKA SUPREME COURT
COURT APPEALS**

In re Interest of C.B. and M.B.,)
 children under 18 years of age,)
)
 State of Nebraska,)
)
 Appellee,)
)
 v.)
)
 Angel B.,)
)
 Appellant.)

No. S-16-938.

MEMORANDUM OPINION
 AND
 JUDGMENT ON APPEAL

HEAVICAN, C.J., WRIGHT, MILLER-LERMAN, CASSEL, STACY, KELCH, and
 FUNKE, JJ.

KELCH, J.

I. NATURE OF CASE

In 2012, the separate juvenile court of Lancaster County adjudicated Angel B.'s children, C.B. and M.B., and granted temporary legal custody of both girls to the Nebraska Department of Health and Human Services (DHHS). Angel now appeals an order issued on August 26, 2016, which continued DHHS's temporary legal custody of M.B. Because that order merely extends the time for which a previous order is applicable, we find that the order appealed from does not affect a substantial right and is therefore not a final, appealable order.

II. FACTS

Angel is the biological mother of two children: C.B. and M.B., born in 1998 and 2008, respectively. On August 1, 2012, the children were adjudicated to be under the jurisdiction of the



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juvenile court pursuant to Neb. Rev. Stat. § 43-247(3)(a).¹ In the adjudication order, the juvenile court found that C.B. had "severe mental and behavioral health needs" which required "immediate intervention for the safety and well-being of both minor children."² The juvenile court further found that "[o]n one or more occasion[s]," Angel had "used inappropriate discipline when trying to handle [C.B.'s] extensive needs [and that Angel] needs assistance in addressing the extensive needs of [C.B.] . . . The above situation places both of the minor children at risk of harm."³ While M.B. remained in Angel's physical care, C.B. was placed outside the home.

In October 2012, the juvenile court adopted a case plan that, among other things, required Angel to comply with all recommended treatment and to participate in family therapy. The order also provided for supervised visits between C.B. and Angel and between C.B. and M.B.

Throughout this case, the juvenile court conducted periodic review hearings. After each hearing, the juvenile court continued the prior order concerning custody, placement, and visitation.

¹ *In re Interest of Cassandra B.*, 290 Neb. 619, 861 N.W.2d 398 (2015).

² *Id.* at 620, 861 N.W.2d at 400 (2015).

³ *Id.*

While the permanency objective for M.B. has remained family preservation, C.B.'s permanency objective was eventually changed to guardianship. After that, C.B. moved in with her paternal grandparents in Cadiz, Ohio. After C.B. moved to Ohio, the communication between Angel and C.B. deteriorated. For at least a year, C.B. declined to speak to Angel over the telephone. C.B. also turned down counseling with Angel.

Despite the declining relationship between Angel and C.B., Angel has helped facilitate visitations between C.B. and M.B., including weekly telephone or skype visitations. In June 2015, C.B. spent a month in Nebraska, and Angel cooperated with visitation between C.B. and M.B. and had some interaction with C.B. herself. Angel was present at all but one of C.B.'s visits with M.B., and by most accounts, the visits went well and there were mostly positive exchanges among everyone involved.

On April 1, 2016, DHHS received a report that M.B. had acted out inappropriately during an overnight at school. According to M.B.'s therapist, this incident suggested that M.B. was not receiving "a healthy environment/emotional security." He recommended that Angel pursue services with a pediatric specialist. To address the behavior, M.B. saw a therapist at Williamsburg Behavioral Health. DHHS had requested to speak to the therapist, but as of August 24, 2016, DHHS had not yet heard back from her.

As early as April 2016, DHHS was no longer providing any services to M.B. and Angel other than case management. Starting in July 2015, DHHS consistently recommended that legal custody of M.B. be returned to Angel. By August 2016, counsel for the State also recommended case closure. The Guardian Ad Litem initially opposed returning legal custody of M.B. to Angel, but ultimately, in 2016, stated that she would not object if the juvenile court ordered the case closed for having reached "maximum benefit."

Nevertheless, the juvenile court repeatedly ordered on September 21, 2015; January 26, 2016; May 5, 2016; and August 26, 2016 that M.B. remain in the temporary legal custody of DHHS. At the review hearing 2 days prior to the August 26 order, the juvenile court indicated that it was not likely to terminate jurisdiction of M.B. for several reasons, including that it wanted to ensure that M.B. had the opportunity to have a relationship with C.B. as long as the juvenile court exercised jurisdiction over C.B., who turned 19 in December 2017. Further, the juvenile court requested that DHHS gather more information about M.B.'s counseling and confirm that any issues regarding M.B.'s behaviors at school have been addressed. The juvenile court also indicated that it was likely to terminate jurisdiction for both children once a guardianship had been established for C.B. or once C.B. had been in her new placement for 6 months.

The August 26, 2016, order made few changes to the case plan. The order reflected C.B.'s new foster placement; required DHHS to arrange for C.B. to have in-person contact with M.B. in the future, rather than in 2016; and removed the requirement that Angel participate in family therapy with C.B. As in the previous order, the juvenile court required Angel to allow DHHS to have access to C.B. and M.B. and their information; cooperate with sibling contact; ensure that M.B. attended therapy; and participate in individual therapy and, if recommended, M.B.'s therapy. The next review hearing was scheduled for January 30, 2017.

Angel now appeals the August 26, 2016, order.

III. ASSIGNMENT OF ERROR

Angel assigns that the juvenile court erred in failing to terminate its jurisdiction over M.B.

IV. 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.⁴ However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other.⁵

⁴ *In re Interest of Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009).

⁵ *Id.*

V. ANALYSIS

Before reaching the legal issues presented for review, an appellate court must determine whether it has jurisdiction.⁶ For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken.⁷ Juvenile court proceedings are special proceedings under Neb. Rev. Stat. § 25-1902 (Reissue 2008), and an order in a juvenile special proceeding is final and appealable if it affects a substantial right.⁸ Whether a substantial right has been affected by an order in juvenile court litigation is dependent upon both the object of the order and the length of time over which the relationship with the juvenile may reasonably be expected to be disturbed.⁹ We first consider the object of the order before considering the length of time over which the relationship with the juvenile may reasonably be expected to be disturbed.

As to the object of an order, we have held that where an order from a juvenile court is already in place and a subsequent order

⁶ *In re Interest of Jamyia M.*, 281 Neb. 964, 800 N.W.2d 259 (2011); *Cargill Meat Solutions v. Colfax Cty. Bd. of Equal.*, 281 Neb. 93, 798 N.W.2d 823 (2011).

⁷ *In re Interest of Darryn C.*, 295 Neb. 358, 888 N.W.2d 169 (2016).

⁸ *Id.*

⁹ *Id.*

merely extends the time for which the previous order is applicable, the subsequent order by itself does not affect a substantial right and does not extend the time in which the original order may be appealed.¹⁰ Thus, a dispositional order which merely continues a previous determination is not an appealable order.¹¹

Here, the August 26 order merely extended the time for which the previous order was applicable; the order continued DHHS's temporary legal custody of M.B. and did not make significant changes to the case plan as to M.B. Therefore, the August 26 order was not a final order.

In spite of the fact, Angel's counsel acknowledged at oral argument that the August 26 order merely extended the time for which the previous order was applicable, he argued that the length of time over which the court continued DHHS's temporary legal custody of M.B. rendered the August 26 order a final, appealable order. Angel argued that prior to that order, she had been seeking to have the case closed for 18 months, and despite two review hearings held during that period of time, the juvenile court had denied her request.

¹⁰ *In re Interest of Sarah K.*, 258 Neb. 52, 601 N.W.2d 780 (1999); *In re Interest of Joshua M. et al.*, 251 Neb. 614, 558 N.W.2d 548 (1997).

¹¹ *Id.*

Although the length of time is not dispositive to the resolution of this case, it appears that the issue regarding legal custody of M.B. will be disposed of within a reasonable amount of time. In the August 26 order, as reasons for continuing DHHS's temporary legal custody of M.B., the juvenile court stated that it wanted to ensure that M.B.'s behavioral issues at school had been addressed and that M.B. had the opportunity to have a relationship with C.B. as long as the juvenile court exercised jurisdiction over C.B. Because DHHS already requested to speak with the therapist from Williamsburg Behavioral Health about M.B.'s behavioral issues at school, and because C.B. will turn age 19 in December of this year, these issues will likely be resolved relatively soon. Moreover, the juvenile court indicated that once a guardianship had been established for C.B. or once C.B. had been in her new placement for 6 months, the court was likely to terminate jurisdiction for both children at that point in time. Thus, it is clear that the August 26 order will not disturb Angel's relationship with M.B. for an unreasonable period of time.

Because we conclude that the order on appeal is not a final, appealable order, we lack jurisdiction to address Angel's assignment of error, and we dismiss her appeal.

VI. CONCLUSION

For the foregoing reasons, we conclude that the juvenile court's order was not final and appealable. When an appellate court

is without jurisdiction to act, the appeal must be dismissed. We therefore dismiss this appeal for lack of jurisdiction.

APPEAL DISMISSED.