

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF SEHERZADA M.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF SEHERZADA M., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

DZEMILA M., APPELLANT.

Filed August 3, 2010. No. A-09-1269.

Appeal from the Separate Juvenile Court of Lancaster County: LINDA S. PORTER, Judge.
Affirmed.

Joy Shiffermiller, of Shiffermiller Law Office, P.C., L.L.O., for appellant.

Gary E. Lacey, Lancaster County Attorney, Jenna L. Venema, and Michelle Clarke,
Senior Certified Law Student, for appellee.

SIEVERS and CARLSON, Judges.

CARLSON, Judge.

INTRODUCTION

Dzemila M. appeals from an order of the juvenile court for Lancaster County finding that her daughter, Seherzada M., is a child as defined by Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008), because she lacks proper parental care. On appeal, Dzemila argues that the court erred in adjudicating Seherzada under § 43-247(3)(a). For the reasons set forth below, we affirm.

BACKGROUND

In a petition filed August 31, 2009, the State alleged that Seherzada is a child under 18 years of age who lacks proper parental care by reason of the fault or habits of her mother, Dzemila, and that Seherzada is in a situation dangerous to life or limb or injurious to her health or morals in that on one or more occasion on or about or between August 25 and 27, Dzemila

failed to protect Seherzada from (1) knowing, intentional, or reckless bodily injury by Seherzada's siblings and (2) allowed Seherzada's siblings to subject her to inappropriate physical discipline which resulted in physical injury or pain.

The State also alleged that in 2007, the juvenile court adjudicated Seherzada under § 43-247(3)(a) in part due to Dzemila's failure to properly address an assault on Seherzada by her brother Jahija M. Dzemila participated in a plan to correct the conditions of that adjudication, and the case was closed on April 27, 2009. The State alleged that as of August 25, Dzemila had again failed to protect Seherzada from one or more of her siblings.

A hearing was held on the State's petition, and the evidence from that hearing will be set forth below.

After the hearing, the trial court found that Seherzada is a child as defined by § 43-247(3)(a) in that she lacks proper parental care by reason of the fault or habits of her mother and that Seherzada is in a situation dangerous to life or limb or injurious to her health or morals.

Dzemila appeals.

ASSIGNMENTS OF ERROR

On appeal, Dzemila argues that the juvenile court erred in (1) finding that the State proved that Seherzada lacked proper parental care by reason of any faults or habits of Dzemila and that she failed to protect Seherzada from her siblings and (2) failing to find that the previous adjudication had conclusively established that Dzemila had corrected the conditions which led to that adjudication.

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. *In re Interest of Shayla H.*, 17 Neb. App. 436, 764 N.W.2d 119 (2009). When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

ANALYSIS

Initially, Dzemila argues that the juvenile court erred in failing to find that the previous adjudication had conclusively established that Dzemila had corrected the conditions which led to that adjudication. More specifically, Dzemila argues that the State is attempting to collaterally attack the court's termination of jurisdiction in the first adjudication by alleging that Dzemila had not really corrected the conditions leading to the first adjudication. We disagree.

In its petition, the State indicated that one of the grounds for the present adjudication was that Seherzada had previously been adjudicated in part due to Dzemila's failure to address an assault on Seherzada by one of her brothers. The State alleged that Dzemila "participated in a plan to correct the conditions of that [first] adjudication and the case was closed successfully on April 27, 2009." The State further alleged that "as of August 25, 2009, [Dzemila] has again failed to protect said child from one or more of said child's siblings."

We do not consider the State to be arguing that Dzemila never corrected the conditions leading to the first adjudication. Rather, the State is alleging that although those conditions were

corrected at one time, similar conditions now again exist, placing Seherzada at risk for harm. Therefore, we cannot say that the juvenile court erred in failing to find that the State was attempting to collaterally attack the juvenile court's order in the first adjudication, terminating jurisdiction.

Dzemila also argues that the juvenile court erred in finding that the State proved that Seherzada lacked proper parental care by reason of the faults or habits of Dzemila and that Dzemila failed to protect Seherzada from her siblings.

The purpose of the adjudication phase is to protect the interests of the child. The parents' rights are determined at the dispositional phase, not at the adjudication phase. *In re Interest of Marcella B. & Juan S.*, 18 Neb. App. 153, 775 N.W.2d 470 (2009).

In order for a juvenile court to assume jurisdiction of minor children under § 43-247(3)(a), the State must prove the allegations of the petition by a preponderance of the evidence. *In re Interest of B.R. et al.*, 270 Neb. 685, 708 N.W.2d 586 (2005). The court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of § 43-247. *In re Interest of B.R. et al., supra*.

At the adjudication hearing, the State introduced evidence showing that in the previous adjudication, Seherzada's brother Jahija caused injury to Seherzada's face. The court found that Seherzada's mother, Dzemila, was made aware of the injury and how it occurred and that she failed to appropriately address the psychological and physical impact of that incident on Seherzada.

Specifically, in May 2007, a police officer made contact with Seherzada at her home after Seherzada missed 1½ weeks of high school. The officer noted that Seherzada still had obvious signs of bruising to her face and that Seherzada admitted that Jahija hit her in the face because she was talking with a black male student. Seherzada told the officer that Jahija "beats her up all the time" and that she is afraid of him. Seherzada also stated that she was embarrassed to go to school because of the bruising on her face. The officer noted that when Jahija was contacted about the incident, he raised his voice and said it was "family business." Jahija was also uncooperative and upset and refused to talk about what had occurred.

In December 2008, the Department of Health and Human Services recommended that Seherzada return to Dzemila's home and noted that Dzemila was aware that Jahija was not to have any contact with Seherzada and that Dzemila was willing and able to carry that out.

At the adjudication hearing in the instant case, Seherzada testified that despite the court's orders, Jahija was in the home when she returned in December 2008. Seherzada testified that in August 2009, Jahija began driving her to and from school. Seherzada testified that on August 25, Jahija gave her a ride home from her friend's house and Jahija was upset because he was unsure of where to pick her up. Seherzada testified that Jahija then punched her in the left shoulder while they were in the vehicle. Seherzada testified that she told Dzemila that Jahija had punched her and showed her the bruise. Seherzada testified that the resource officer at her school saw the bruise and reported the incident to the police.

Seherzada testified that she then stayed overnight with a friend and that when she returned the next day, Jahija and another brother, Sehad M., were at home. Seherzada testified that Sehad moved to Chicago earlier in August 2009, but returned home briefly later in August "because of her." Seherzada testified that Sehad was mad at her and started yelling at her.

Seherzada testified that Sehad shoved her into a wall and slapped her multiple times. Seherzada testified that Sehad was upset with her because she had not answered her cellular telephone, and Sehad told her that there was no point in her having a telephone if she did not know how to answer it. Seherzada stated that Dzemila told Sehad to calm down while he was yelling at her, but Sehad did not listen. Seherzada testified that she does not feel safe in Dzemila's home and that Dzemila does not have the ability to protect her from her brothers.

Dzemila testified that she never saw Jahija do anything physically to Seherzada since April 2009. Dzemila testified that Seherzada never told her Jahija punched her in August 2009 and that all she was told by police officers was that Seherzada is afraid of her brothers and does not want to come home. Dzemila stated that Sehad did talk to Seherzada about her telephone. Dzemila testified that she did not see Sehad physically touch Seherzada.

Dzemila testified that Seherzada should not be afraid of her brothers. Dzemila testified that she will ask Jahija to stay away from the home if Seherzada comes back home to live with her.

Jahija testified that he started taking Seherzada to school and would ordinarily pick her up from school, right in front of the school. Jahija stated that in August 2009, he did not hit Seherzada and that when Sehad came home, he did not see Sehad push Seherzada or slap her.

Jahija testified that Dzemila is "too nice" and that as a result, Seherzada does not show her any respect. Jahija stated that as the older brother he has the right to tell Seherzada, "'Hey . . . don't do that. That's wrong.'" Jahija testified that he feels he needs to step in because there is no "man of the household" and he is Seherzada's older brother.

After the hearing, the trial court found that Seherzada is a child as defined by § 43-247(3)(a) in that she lacks proper parental care by reason of the fault or habits of her mother and that Seherzada is in a situation dangerous to life or limb or injurious to her health or morals. Specifically, the court stated:

The Court had the opportunity to observe the demeanor and credibility of Seherzada [M.], Jahija [M.], and . . . Dzemila [M.] while testifying at the formal hearing in this case. The Court finds that Seherzada [M.]'s testimony as to two separate incidents between August 25, 2009, and August 27, 2009, in which she was struck by Jahija [M.] and Sehad [M.] was credible and without any apparent motivation to fabricate or embellish. Jahija [M.]'s testimony, on the other hand, evidenced a lack of credibility in terms of his complete denial of any physical contact with his sister on August 25, 2009. He also conveyed an apparent sense of entitlement to discipline and control his sister's behaviors in general. He also demonstrated a lack of deference in any way to his mother's role as a parent. Given the previous adjudication, where Jahija [M.] essentially beat his sister as a form of discipline, the fact that . . . Dzemila [M.] is again allowing Jahija [M.] and another sibling to assume a parental role in disciplining Seherzada places her at risk of harm and evidences a lack of proper parental care by her mother.

After reviewing the record de novo, we cannot say the trial court erred in finding that the State proved by a preponderance of the evidence that Seherzada is a child as defined by § 43-247(3)(a). The State proved that Seherzada lacks proper parental care by reason of the fault

or habits of her mother and that Seherzada is in a situation dangerous to life or limb or injurious to her health or morals.

CONCLUSION

After reviewing the record, we conclude that the juvenile court did not err in finding that the State proved that Seherzada lacked proper parental care by reason of any faults or habits of Dzemila and that Dzemila failed to protect Seherzada from her siblings. The juvenile court properly adjudicated Seherzada under § 43-247(3)(a). Additionally, the juvenile court did not err in failing to find that the State was attempting to collaterally attack the previous order of the juvenile court terminating the court's jurisdiction in the prior adjudication. The juvenile court's order is affirmed.

AFFIRMED.

IRWIN, Judge, participating on briefs.