

FILED

June 03, 2025

IMAGE ID N25154Y42NSC, FILING ID 0000040226

**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

NO. A-25-137, A-25-138, A-25-139, A-25-140, A-25-141

IN THE COURT OF APPEALS
FOR THE STATE OF NEBRASKA

IN RE INTEREST OF JOHNNY H.
A Child Under the Age of 18

APPEAL FROM THE SEPARATE JUVENILE COURT
OF
SARPY COUNTY, NEBRASKA

Honorable Jonathan Crosby
Juvenile Court Judge

APPELLEE'S BRIEF

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II. JURISDICTIONAL STATEMENT

This Court is authorized jurisdiction over any final order or judgment entered by a separate juvenile court pursuant to Neb. Rev Stat. § 43-2,106.01 (Supp. 2010)

III. STATEMENT OF THE CASE

A. NATURE OF THE CASE

The Appellant has challenged the Findings and Order of the Separate Juvenile Court of Sarpy County, Nebraska entered on January 31, 2025 (A-25-137, T88-91; A-25-138, T56-59; A-25-139, T40-43; A-25-140, T27-30; A-25-141, T39-42) whereby the juvenile court determined that the Appellant was non-amenable to further services under the Nebraska Juvenile Code and further ordering Appellant's cases terminated.

B. ISSUES ADJUDICATED IN THE SEPARATE JUVENILE COURT OF SARPY COUNTY

Whether the Appellant is amenable to the rehabilitative services offered under the Nebraska Juvenile Code pursuant to Neb. Rev. Stat. § 43-2,106.03 (Reissue 2014).

C. DISPOSITIONAL OUTCOME

The Separate Juvenile Court of Sarpy County found that the Appellant is not amenable to the rehabilitative services under the Nebraska Juvenile Code pursuant to Neb. Rev. Stat. § 43-2,106.03.

D. STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches a conclusion independently of the juvenile court's findings. *In re Int. of Alan L.*, 294 Neb. 261, 882 N.W.2d 682 (2016).

E. ASSIGNMENTS OF ERROR

The Appellee contends that there was no error made by the Separate Juvenile Court of Sarpy County in reaching its determination that the Appellant is non-amenable to the rehabilitative services offered under the Nebraska Juvenile Code.

IV. PROPOSITIONS OF LAW

I.

“Any time after the disposition of a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, upon the motion of any party or the court on its own motion, a hearing may be held regarding the amenability of the juvenile to the rehabilitative services that can be provided under the Nebraska Juvenile Code. The court may enter an order, based upon evidence presented at the hearing, finding that a juvenile is not amenable to rehabilitative services that can be provided under the Nebraska Juvenile Code. The reasons for such a finding shall be stated in the order . . .” Neb. Rev. Stat. § 43-2,106.03

II.

The Nebraska Supreme Court has reasoned that the juvenile courts are not required to “ensure that every conceivable probationary condition has been tried and failed. . .” adding further that the Court declined to impose a standard that would “require repetition of ineffective measures or require . . . [the providing of] services that have

already proved to be unsuccessful.” *In re Int. of Nedhal A.*, 289 Neb. 711, 716, 856 N.W.2d 565, 569 (2014)

III.

In analogous circumstances involving the placement of a juvenile at the Youth Rehabilitation and Treatment Center, the Nebraska Supreme Court has encouraged “a report showing whether untried conditions of probation or community-based services has a reasonable possibility for success or were unfeasible.” *In re Int. of Alan L.*, 294 Neb. 261, 272, 882 N.W.2d 682 (2016)

IV.

Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process. *In re Int. of Alan L.*, 294 Neb. 261, 275, 882 N.W.2d 682 (2016)

V.

The statutory framework of the Juvenile Code is “to reduce the possibility of [a juvenile’s] committing future law violations through the provision of social and rehabilitative services to such juveniles and their families. . .” Neb. Rev. Stat. Ann. § 43-246 (Reissue 2019)

VI.

A court “has a right to examine its own records and take judicial notice of its own proceedings and judgment in an interwoven and dependent controversy where the same matters have already been considered and determined.” *State v. Norwood*, 203 Neb. 201, 204–05, 277 N.W.2d 709 (1979)

V. STATEMENT OF FACTS

In August of 2022, Johnny H. (hereinafter “Appellant”) was adjudicated for being truant from school on his case at JV 22-313 and was found to be a juvenile as described under § 43-247(b) of the Nebraska Revised Statutes. (A-25-137, T7-11). On October 26, 2022, a dispositional hearing was held on JV 22-313 and Appellant was placed under the supervision of Juvenile Probation with various rehabilitative services being ordered. (A-25-137, T19-22).

While still under probation supervision and the juvenile court’s jurisdiction for his initial case, Appellant was charged with Assault in the Third-Degree and Theft by Unlawful Taking in the Juvenile Court of Douglas County on December 7, 2023. (A-25-138, T1). That matter was eventually adjudicated and transferred to the Separate Juvenile Court of Sarpy County on February 27, 2024, becoming JV 24-99. (A-25-138, T1-20). Additional terms and conditions of rehabilitation and probation supervision were ordered as part of JV 24-99 on May 14, 2024. (A-25-138, T21-23). In July of 2024, Appellant was charged with Third-Degree Assault in the Separate Juvenile Court of Douglas County. (A-25-141, T1-26).

Soon after, in August of 2024, Appellant was arrested, detained, and charged for Burglary and Theft by Unlawful Taking, More than \$500, Less than \$1,500. (A-25-139, T1-3, T5-7). Appellant’s initial detention was extended based on the juvenile court’s finding that “the physical safety of persons within the community would be seriously threatened if he were not detained today.” (A-25-139, T5-7). Appellant later admitted to the theft pursuant to a plea agreement with the State wherein the burglary would be dismissed. (A-25-139, T23-26). At the adjudication/plea hearing, the juvenile court once again ordered additional terms and conditions of probation and rehabilitative services for Appellant to follow as part of a partial disposition. (A-25-139, T23-26).

Yet again, while still under probation supervision and the rehabilitative orders and services of the juvenile court, on October 7, 2024, Appellant was charged with Robbery following the investigation of an incident that took place the end of August 2024. (A-25-140, T1). Appellant admitted to the charge of robbery, a felony, on November 15, 2024. (A-25-140, T10-13). It was around this same timeframe that Appellant's Douglas County case for Third-Degree Assault from July of 2024 was resolved with his admission and transferred down to the Separate Juvenile Court of Sarpy County. (A-25-141, T1-26).

Not long after his dispositional hearing on December 19, 2024, where the juvenile court again continued and reaffirmed its orders for rehabilitative services, Appellant was arrested and detained for Attempted Robbery on December 31st, 2024. (A-25-140, T14-16; E28 pp.1-8). Those charges were summarily directly filed in adult court, eventually being bound over to the District Court of Sarpy County becoming CR 25-106, where the matters are still pending following the denial of his motion to transfer to juvenile court. (E28 pp.1-8).

Shortly thereafter, on January 8, 2025, the State filed a Motion for Finding of Non-Amenability to Rehabilitative Services and Termination of Jurisdiction on each of Appellant's respective open juvenile cases. (A-25-137, T86; A-25-138, T52; A-25-139, T36, A-25-140, T23; A-25-141, Supp. T6-7).

Appellant has been under the jurisdiction of the juvenile court and on probation supervision since October 26, 2022. (E25, 9:1-6). At the time of the hearing on the State's Motion for Non-Amenability, Appellant's probation officer, Juvenile Probation Officer (JPO) Nathan Bohy had run out of recommendations for services that would have a likelihood of success in rehabilitating Appellant and deterring him from continued criminal acts. (E25 pp. 3). JPO Bohy wrote in his probation summary report "[p]robation would respectfully defer to the courts for next steps in this case . . ." (E25 pp. 3). During the hearing, JPO Bohy testified that Appellant had been denied or removed from many of the services offered in juvenile court because of his continued

aggression, lack of participation, and involvement in further criminal behaviors. (10:12-13:25). When asked if the highest level of in-home therapeutic services would limit or rehabilitate Appellant's criminal behaviors, Bohy responded "[n]o, sir, not at this time." (12:25-13:22). Then when asked if there were any additional services that the juvenile court could offer that Appellant would be amenable to, JPO Bohy stated "[n]ot that comes to mind." (13:23-25). On redirect, JPO Bohy was asked to clarify these statements and his position regarding Appellant's amenability to juvenile court services and he responded that there are no additional services that he could think of that Appellant would be amenable to. (30:12-32:15).

At the conclusion of the hearing, the juvenile court found that Appellant was no longer amenable to the rehabilitative services available under the Nebraska Juvenile Code. (39:24-44:3, A-25-137, T88-91). In reaching its decision, the court considered the evidence presented at the hearing, including Appellant's continued pattern of criminal behavior, his failure to make progress despite multiple rehabilitative interventions, and his approaching eighteenth birthday. *Id.* The court also relied on the psychological evaluation by Dr. Gard, which raised concerns about Appellant's manipulative and criminal tendencies, as well as the fact that he now faced pending felony charges in adult court. *Id.* Based on the totality of this evidence, the court concluded that further juvenile services would be ineffective, stating, "[w]e have nothing else to offer you." *Id.*

In addition to the stated reasoning that the juvenile court provided during the hearing for reaching its conclusion, the court further entered its findings and rationale within its order finding that Appellant is non-amenable to rehabilitative services under the Nebraska Juvenile Code and accordingly terminating his juvenile court cases as such. (A-25-137, T88-91; A-25-138, T56-59; A-25-139, T40-43; A-25-140, T27-30; A-25-141, T39-42).

VI. SUMMARY OF ARGUMENT

The Separate Juvenile Court of Sarpy County did not err, nor did it commit plain error, in concluding that Appellant is non-amenable to further rehabilitative services available under the Nebraska Juvenile Code. The record demonstrates that Appellant was afforded extensive services and rehabilitative interventions, yet he continued to engage in persistent criminal and delinquent behavior, showing no meaningful progress or deterrence. The juvenile court's conclusion was based on appropriate evidence and was neither arbitrary nor unreasonable. Juvenile courts should not be required to repeatedly attempt ineffective measures or services that have already proved to be unsuccessful or where the possibility of success is unfeasible.

VII. ARGUMENT

I. THE JUVENILE COURT DID NOT ERR IN CONCLUDING THAT THE JUVENILE IS NON-AMENABLE TO FURTHER REHABILITATIVE SERVICES THAT CAN BE PROVIDED UNDER THE NEBRASKA JUVENILE CODE.

The Separate Juvenile Court of Sarpy County did not err in concluding that the juvenile is non-amenable to further rehabilitative services of the juvenile courts pursuant to Neb. Rev. Stat. § 43-2,106.03. The record and the evidence presented at the hearing provided sufficient reason and justification for the Separate Juvenile Court to conclude that Appellant is non-amendable to further rehabilitative services that can be provided under the Nebraska Juvenile Code.

Nebraska Revised Statute 43-2,106.03 provides in relevant part:

“Any time after the disposition of a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, upon the motion of any party or the court on its own motion, a hearing may be held regarding the amenability of the juvenile to the rehabilitative services that can be provided under the Nebraska Juvenile Code. The court may enter an order, based upon evidence presented at the hearing, finding that a juvenile is not amenable to rehabilitative services that can be provided under the Nebraska Juvenile Code. The reasons for such a finding shall be stated in the order . . .” *Id.*

Arguably, this is a case of first impression as to the standard by which a juvenile court’s determination of amenability to juvenile court rehabilitative services will be scrutinized or reviewed. No case law involving the actual application of Neb. Rev. Stat. 43-2,106.03, other than its reference within cases involving motions to transfer, have been discovered on the Appellee’s part. Without much, if any, case law to point this Court to for reference in comparable circumstances, it would seem proper to simply submit to the appellate court’s *de novo* review based on the facts already presented *supra* and the record preserved for the appeal.

In his brief, the Appellant fails to identify any specific error in the juvenile court’s decision. Instead, he appears to argue—without support—that the court simply made a poor judgment and that the Appellant remains amenable to further juvenile services, despite a record that overwhelmingly contradicts that claim.

The Appellee points out that in somewhat similar cases involving the commitment of juveniles to the Youth Rehabilitation and Training Center, the Nebraska Supreme Court has previously reasoned that the juvenile courts are not required to “ensure that every conceivable probationary condition has been tried and failed. . .” adding further that the Court declined to impose a standard that would “require repetition of ineffective measures or require . . . [the providing of] services that have already proved to be unsuccessful.” *In re Int. of Nedhal A.*, 289 Neb. 711, 716, 856 N.W.2d 565, 569 (2014). Rather, the

Court later explained that what was required was “a report showing whether untried conditions of probation or community-based services has a reasonable possibility for success or were unfeasible.” *In re Int. of Alan L.*, 294 Neb. 261, 272, 882 N.W.2d 682, 690 (2016).

The amenability hearing in this case functioned as an evaluation of whether the rehabilitative services available under the Juvenile Code had any reasonable chance of success with the Appellant, or whether continued efforts would be futile. The Appellee maintains that the latter is true, emphasizing that the Appellant’s lack of progress and ongoing criminal behavior demonstrate his un-amenability to juvenile court services. The Appellee further argues that the Separate Juvenile Court of Sarpy County did not err in reaching this same conclusion and finding the Appellant non-amenable to further juvenile services. Accordingly, the Appellee respectfully requests that this Court affirm the juvenile court’s findings and ruling.

II. THE JUVENILE COURT DID NOT COMMIT PLAIN ERROR IN CONCLUDING THAT THE JUVENILE IS NON-AMENABLE TO THE REHABILITATIVE SERVICES OF THE JUVENILE COURT SYSTEM.

The juvenile court did not commit plain error in concluding that Appellant is non-amenable to the rehabilitative services of the juvenile court system. “Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process.” *In re Int. of Alan L.*, at 275.

The Appellant suggests that the alleged plain error was substantive and the juvenile court’s determination was not supported by the evidence. However, the Appellant presented no evidence or witnesses at the hearing to contradict the State’s evidence. (34:25–35:6.) The Appellant also contends that the focus of the hearing improperly shifted from amenability to rehabilitation, and that the

juvenile court mischaracterized certain evidence. The Appellee disputes these claims and maintains that they do not constitute plain error.

First, rehabilitation and the progress towards that goal is entirely at issue in a hearing to determine whether a juvenile is amenable to rehabilitative services offered under the Nebraska Juvenile Code. To claim that rehabilitation is not at issue in this regard is to ignore both the statutory framework and the core mission of the juvenile justice system: to rehabilitate, not merely to punish. *See* Neb. Rev. Stat. Ann. § 43-246 (Reissue 2019). How a juvenile has progressed or failed while being offered juvenile services is the best evidence and indicator in determining whether they'll be amenable to additional or alternative services. In this case the evidence is overwhelmingly clear that the Appellant is non-amenable to the offerings of the juvenile court.

Second, the juvenile court neither mischaracterized the evidence presented nor erred in relying on its recollection of the history of the Appellant's five open juvenile cases, which have been ongoing for more than two years. While more evidence could have been presented during the hearing, amounting to that typically seen during hearings involving the termination of parental rights, the evidence was clear and sufficient in this case.

Moreover, to the extent that details about the Appellant's performance in juvenile court were not explicitly presented in the evidence at the hearing, the juvenile court was entitled to take judicial notice of its own records and prior proceedings. As the Nebraska Supreme Court recognized in *State v. Norwood*, a court "has a right to examine its own records and take judicial notice of its own proceedings and judgment in an interwoven and dependent controversy where the same matters have already been considered and determined." 203 Neb. 201, 204–05, 277 N.W.2d 709 (1979). In every juvenile delinquency case, a key issue is whether the juvenile is making rehabilitative progress which is generally reflected in a reduction of problematic behavior or legal violations. Juvenile cases are fundamentally an interwoven, dependent, and on-going controversy as they involve a

continuing assessment of the juvenile's behavior, progress, and needs over time, requiring the court to consider prior proceedings, interventions, and outcomes as part of a holistic approach to rehabilitation and public safety.

In this case, the juvenile court appropriately relied on its knowledge of the Appellant's case history and prior judgments in addition to the evidence that was presented at the hearing, which were part of a complex and interrelated series of juvenile proceedings. The evidence and case history are clear, the Appellant was not making progress towards meaningful rehabilitation and was continuing to commit further crimes.

As such, this Court should find that the juvenile court did not commit plain error in concluding that the Appellant is non-amenable to the rehabilitative services of the Nebraska Juvenile Code.

VIII. CONCLUSION

For the above and forgoing reasons, this Court should affirm the Separate Juvenile Court of Sarpy County's finding that Appellant is non-amenable to further rehabilitative services that can be provided under the Nebraska Juvenile Code and that the court did not commit plain error in reaching its conclusion.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify that the accompanying brief complies with Neb. Ct. R. § 2-103(c), in that it was prepared using Century Schoolbook 12-point typeface, drafted using Microsoft Word 365 subscription, and contains 3,042 words including this certificate.

DATED this 3rd day of June, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of June, 2025, a true and correct copy of the above Appellee's Brief has been sent via electronic service to Dennis Marks, Sarpy County Public Defender; and the Appellant at last known address via U.S. mail, postage prepaid.

/s/ ANDREW T. ERICKSON, NSBA #26568

Certificate of Service

I hereby certify that on Tuesday, June 03, 2025 I provided a true and correct copy of this *Brief of Appellee State* to the following:

Johnny Harvey represented by Dennis P Marks (18364) service method: Electronic Service to **pubdef4@sarpy.gov**

Signature: /s/ ERICKSON, ANDREW T. (26568)