

Case No. A25-832

In the Appellate Court of the State of Nebraska

IN THE INTEREST OF ESPERANZA C.

Appeal from the Separate Juvenile Court For
Douglas County, Nebraska
Honorable Judge Vernon Daniels
Juvenile Court Judge

BRIEF OF APPELLANT

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SUMMARY OF JURISDICTION OF APPELLATE COURT

This is an appeal from an order issued on October 6, 2025 by the Juvenile Court of Douglas County, Nebraska overruling, Ms. Heather Smith, the biological mother's motion for Negative Reasonable Efforts regarding family finding efforts by the Nebraska Department of Health and Human Services as outlined under Neb. Rev. Stat. § 43-1311.01 for failure of proof. (T96). An Order granting Ms. Smith's Notice of Appeal was filed on November 4, 2025 (T98) and Motion to Proceed *In Forma Pauperis* Appeal was filed on November 5, 2025. (T102). This Court has jurisdiction over this present Appeal pursuant to Neb. Rev. Stat. §§ 25-1911 (Reissue 2016), 25-1912 (Reissue 2016) and 43-2,106.01 (Reissue 2016).

STATEMENT OF THE CASE

(a) The Nature of the Case

This is an appeal from an order of the Juvenile Court overruling the biological mother's Motion for Negative Reasonable Efforts Finding pursuant to Neb. Rev. Stat. § 43-1311.0. The Negative Reasonable Efforts Hearing was held on June 17, 2025. (T72).

(b) The Issue Tried Below:

The issue tried in the Court below was whether or not the Nebraska Department of Health and Human Services provided family findings within the first thirty days (30) after the minor child was removed from the parental home.

(c) How the Issue Was Decided

The Juvenile Court found that that the biological's mother's Motion for Negative Reasonable Efforts was Overruled for Failure of Proof.

(d) Scope of Review

Juvenile court cases are reviewed *de novo* on the record, and the court reaches its conclusions independently of the juvenile court's findings. However, when evidence is in conflict, the appellate court will consider and give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *In re Rylee S.*, 285 Neb. 774, 778 (2017) (citing *In re Interest of Jagger L.*, 270 Neb. 828 (2006)).

ASSIGNMENT OF ERROR

I.

**THE SEPARATE JUVENILE COURT OF DOUGLAS COUNTY,
NEBRASKA ERRED IN OVERRULING THE BIOLOGICAL MOTHER'S
MOTION FOR NEGATIVE REASONABLE EFFORTS FOR FAILURE OF
PROOF.**

II.

**THE SEPARATE JUVENILE COURT OF DOUGLAS COUNTY,
NEBRASKA ERRED IN ITS' RULING DUE TO THE LACK OF**

SPECIFICITY IN ITS FINDINGS.

PROPOSITIONS OF LAW

I.

Pursuant to Neb. Rev. Stat. § 43-283.01 and the Adoption and Safe Families Act, the Department of Health and Human Services (DHHS) is required to make reasonable efforts to identify, locate and notify relatives for placement and to finalize a permanency plan.

II.

If a parent properly raises the issue of the State's failure to provide services, they are entitled to a specific ruling on whether the State complied with its legislative mandate. *In re Interest of Dewayne G., and Devon G.*, 263 Neb.43, 638 N.W.2d 510, (2002).

STATEMENT OF FACTS

On April 4, 2021 the State filed a petition against Heather Smith alleging that the juvenile, Esperanza Chavez, came within the meaning of Neb. Rev. Stat. § 43-247(3)(a). Specifically, the petition alleged under count I that Esperanza Chavez lacked proper parental care by reason of the fault or habits of Ms. Smith, to wit: a) Ms. Smith and her intimate partner, Rico Chavez, engage in domestic violence in front of the minor child; b) Ms. Smith has failed to take sufficient and adequate steps to ensure the safety of minor children from domestic violence; c.) Ms. Smith

has failed to provide proper parental care, support, supervision, and/or safety of said minor child; d) Ms. Smith has failed to provide safe, stable, and adequate housing for said minor child; e) due to the above reasons, said juvenile is at risk for harm. (T1).

An adjudication hearing was held on July 14, 2021 and the adjudication order was issued on July 20, 2021 finding Esperanza Chavez came within the meaning of Neb. Rev. Stat. § 43-247(3)(a). (T9). The minor child was placed in a non-relative placement.

On May 8, 2025, Ms. Smith filed a motion for negative reasonable efforts. (T66). The hearing was held on June 17, 2025. Ms. Lisa Ettleman, DHHS supervisor testified that her team received this case in July 2024. (38:4-6). The case was assigned to Morgan Pommier and Ms. Ettleman oversaw the case from July 22, 2024 until September 8, 2024, when Morgan Pommier was relieved. (38:17-24). When questioned regarding steps DHHS takes when receiving a case, Ms. Ettleman testified the unit reviews why the case came to be, any court orders in the file, look over safety assessment that have been completed and ask previous case team about the family. (42:8-15). When asked if she had knowledge if the department completed a family finding for Ms. Smith prior to May 2024, she stated she had no knowledge of that. (44:2-6).

Megan Ott, a child and family supervisor received this case in September 2024. (49:6-8). She testified that the case manager, Briana Cannon completed an

informal family finding and the names were relatives of the biological mother. (50:6-18). Ms. Ott also testified that she did not have any knowledge whether or not there was a specific family finding completed prior to 2024. (51:12-15). The order overruling Ms. Smith's motion for negative reasonable effort was entered on October 8, 2025. (T96). The delay in deciding the matter was detailed by the juvenile court judge in the negative reasonable efforts hearing on June 17, 2025; I'm going to enter my decision at the same time that I enter my decision regarding whether or not the motion to terminate parental rights shall be sustained. (61:14-17).

SUMMARY OF THE ARGUMENT

First, the juvenile court erred in overruling the biological mother's motion for negative reasonable efforts regarding family finding for failure of proof. Secondly, the juvenile court erred in its' ruling due to lack of specificity in its findings.

ARGUMENT

I.

**THE SEPARATE JUVENILE COURT OF DOUGLAS COUNTY,
NEBRASKA ERRED IN OVERRULING THE BIOLOGICAL MOTHER'S
MOTION FOR NEGATIVE REASONABLE EFFORTS FOR FAILURE OF
PROOF.**

Ms. Smith argues that the juvenile court erred in overruling her motion for negative reasonable efforts for failure of proof regarding family finding. Nebraska

law requires that when a child is removed from their home the Department must make “reasonable efforts to preserve and reunify the family. Neb. Rev. Stat. § 43-283.01(2). Furthermore, Neb. Rev. Stat. § 43-1311.01(2) specifically mandates the DHHS “investigate the names and locations of the relatives...and obtaining information regarding the location of the relatives. The testimony from DHHS supervisor, Lisa Ettleman and Megan Ott, after review of the case file, were both unaware of any specific family finding documentation in the file prior to 2024. Briana Cannon, case manager in Ms. Ott’s unit obtained names of relatives from Ms. Smith, (50:6-17), well over the initial thirty (30) days from removal.

ARGUMENT

II.

Ms. Smith argues that the order overruling her motion for negative reasonable effort failed to outline the specific evidence relied upon for denying the motion violated her due process.

CONCLUSION

For the aforementioned reasons, Appellant asks the Court to reverse the Juvenile Court’s decision to overrule the biological mother’s motion for negative reasonable efforts regarding family finding for failure of proof.

Date: February 21, 2026.

Respectfully submitted,
Heather Smith, Appellant,

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CERTIFICATE OF SERVICE

Comes now, Anne E. Troia, and hereby certifies that Appellant's Brief was electronically filed, a copy emailed to Counsel for the Appellee, via the Nebraska E-filing System.

/s/Anne E. Troia
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CERTIFICATE 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 and contains excluding 1,423 words excluding this certificate. This certificate was prepared in reliance on the word-count function of Microsoft Word, part of Microsoft Office Professional Plus 2016.

Anne E. Troia
Anne E. Troia, #18662

Certificate of Service

I hereby certify that on Saturday, February 21, 2026 I provided a true and correct copy of this *Brief of Appellant* to the following:

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