

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF APRIL E. ET AL.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF APRIL E. ET AL., CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

DIXIE S., APPELLANT.

Filed May 27, 2008. Nos. A-08-036 through A-08-038.

SIEVERS, MOORE, and CASSEL, Judges.

SIEVERS, Judge.

Dixie S.' children were removed from her custody due to her home being unsanitary and uninhabitable. Dixie appeals the orders of the county court placing her children in the temporary custody of the State. Pursuant to the authority granted this court under Neb. Ct. R. of Prac. 11B(1) (rev. 2006), this case was ordered submitted without oral argument. We affirm the county court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

On November 5, 2007, the State filed a petition and affidavit in the county court for Scotts Bluff County alleging that the home of juveniles April E., Rex E., and Alex E. was dirty and unsanitary. The children lived with Dixie, their mother, and Evan D., their mother's domestic partner and fiance, in two mobile homes or trailers which were attached in some manner or otherwise located in close proximity to each other.

On November 5, 2007, Bob Culek, a child protection and safety worker, presented a petition and an ex parte motion requesting that the children be temporarily placed in the custody of the State due to the unsanitary condition of trailers where Dixie, Evan, and the children lived. Culek had not observed the unsanitary conditions himself, but gave a sworn affidavit detailing a police report that described those conditions. The police report stated that on November 3, police were notified of juvenile abuse and neglect at the trailers of Dixie and Evan. Police investigated the report and found the trailers in an unsanitary condition, which included, among other things,

feces, vomit, filth, and garbage on the floors and throughout the trailers and nonfunctioning toilets and utilities, as well as a lack of clean and appropriate places for the children to sleep. The police removed the children from the home on November 3.

The county court sitting as a juvenile court granted the ex parte motion for temporary custody of the children, the police took them into protective custody on November 5, 2007, and the children were transported to Norfolk, Nebraska, approximately 400 miles away from Scottsbluff due to a lack of a place to take them in the Scottsbluff area at the time.

On November 6, 2007, a hearing was conducted in the county court, during which hearing Dixie denied the allegations in the State's petition and a public defender was appointed to represent her. The court found that reasonable efforts had been made to prevent the children's removal from Dixie's home.

Dixie filed a motion for a temporary custody hearing. On November 20, 2007, at the hearing, Culek testified to the contents of the police report detailing Dixie's trailers' unsanitary and uninhabitable condition. Culek said that he did not have personal knowledge of the condition of the trailers. Dixie and Evan testified to the condition of the trailers. Their testimony was that they had been working on making the trailers habitable, but that at least one of the trailers was still unsanitary and uninhabitable and one of the trailers did not have heat.

On November 27, 2007, a further status hearing was held and Culek testified that he had visited the trailers twice since the previous hearing. He said that one trailer was habitable, but the other was still uninhabitable. The county court ordered unsupervised visitation between Dixie and her children in the habitable trailer.

On December 11, 2007, a further status hearing was held before the appeal was filed on December 12. That hearing revealed that the county court has not yet returned the children to the custody of Dixie due to the continuing uninhabitability of the trailers. The children were then in foster care in Scotts Bluff County. Dixie has appealed the orders of the county court of November 20 and 27, which placed her children in the temporary custody of the State.

ASSIGNMENTS OF ERROR

Dixie assigns the following errors to the county court: The county court erred in (1) granting an ex parte removal order based on Culek's affidavit which was not based on his actual knowledge; (2) admitting Culek's hearsay testimony; (3) allowing Culek to testify to prior conditions unrelated to the instant case; (4) finding that reasonable efforts had been made to prevent removal; (5) allowing the children to be placed in temporary custody more than 400 miles away; and (6) allowing an unreasonable delay between the issuance of the order of removal of the children from their home on November 3, 2007, and the first temporary custody hearing on November 20.

STANDARD OF REVIEW

The standard of review of a juvenile proceeding in this court is de novo upon the record. The findings of fact made by the juvenile court will be accorded great weight because it heard and observed the witnesses. Those findings will be affirmed unless they are against the weight of the evidence or there is clear abuse of discretion. *In re Interest of Moen*, 208 Neb. 337, 303 N.W.2d 303 (1981).

ANALYSIS

Culek's Affidavit and Testimony Regarding Condition of Trailers.

Dixie assigns error to the county court's issuance of an ex parte removal order because it was based on an affidavit from Culek in which he describes the contents of the police report regarding Dixie's trailers. Culek admits that at the time he gave the affidavit, November 5, 2007, he did not have personal knowledge of the conditions described in the police report. He admits that his knowledge of the conditions of the trailers on November 3 was based on the police report, and he has never claimed otherwise. This is an evidence issue.

For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken. Conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders. *Village of Orleans v. Dietz*, 248 Neb. 806, 539 N.W.2d 440 (1995).

Unlike a detention order after a hearing, an ex parte temporary detention order keeping a juvenile from his or her parent for a short period of time pending a hearing as to whether the detention should be continued is not final. See, *In re Interest of R.R.*, 239 Neb. 250, 475 N.W.2d 518 (1991); *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991).

Therefore, even though the county court granted the ex parte removal order based on the affidavit of an affiant who lacked personal knowledge of the situation, an ex parte temporary detention order keeping a juvenile from his or her parent for a short period of time pending a hearing as to whether the detention should be continued is not final. Thus, we lack jurisdiction to entertain the evidentiary underpinnings of a nonfinal order. This conclusion also dispenses with Dixie's argument that the county court erred in allowing Culek to testify about the police report's contents.

Culek also testified to the contents of the police report at the November 20, 2007, status hearing, again without personal knowledge of what the report described. Again, this evidence issue cannot be decided in an appeal from a nonfinal order. In any event, Dixie and Evan also testified to the condition of the trailers, stating that the trailers were basically uninhabitable. This provided the county court with sufficient evidence on which to base its orders, even if Culek's testimony should not have been admitted.

This same reasoning applies to whether the county court erred in allowing Culek to testify to prior conditions of the trailers and his prior involvement with Dixie. Even if allowing such testimony of prior contacts was error, which we need not decide, it would be harmless error, as Dixie and Evan testified to the fact that the trailers were uninhabitable, providing the county court with sufficient evidence on which to base its orders placing the children in the State's custody temporarily.

Culek again testified to the condition of the trailers at the November 27, 2007, hearing; however, by that time, he had personal knowledge of the situation, as he had visited the trailers twice and inspected them both. The county court did not err in its orders of November 20 and 27, placing Dixie's children in the temporary custody of the State, and such orders were based on sufficient evidence from people with personal knowledge of the situation.

Whether County Court Erred in Having Children Removed to Norfolk?

Dixie claims that the children should not have been transported 400 miles away between November 3, 2007, when they were initially removed, and November 20, when a hearing was held on her motion for temporary custody. However, this issue is moot because the children have been returned to Scotts Bluff County, their home county, and placed in temporary foster care there.

A moot case is one which seeks to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive. *Chambers v. Lautenbaugh*, 263 Neb. 920, 644 N.W.2d 540 (2002). A case becomes moot when the issues initially presented in litigation cease to exist or the litigants lack a legally cognizable interest in the outcome of litigation. *Id.*

Because the children have been returned to Scotts Bluff County and are no longer placed in Norfolk, there is no live issue for us to decide. Therefore, the issue is moot and we do not address it.

Whether County Court Violated Dixie's Due Process Rights?

Dixie argues that her due process rights were violated because of the length of time that the county court allowed to pass between the children's initial removal on November 3, 2007, and the first hearing on temporary custody on November 20.

In *In re Interest of R.G.*, *supra*, it was concluded that a mother's due process rights were not violated by a 14-day delay between the entry of an ex parte order and the date when she was given the opportunity to be heard by the court, but the Supreme Court said that 14 days between the entry of the ex parte order and the hearing was on the brink of unreasonableness. Here, it appears to us there was an 18-day delay between the entry of the ex parte order and the hearing, and while we will concede that this is on the outer edge of reasonableness, we cannot say it is unreasonable. The county court did not err in this regard.

CONCLUSION

For the reasons stated above, we affirm the order of the county court.

AFFIRMED.