

In re Interest of Braxton D.,)
 A child under 18 years of age.)
 State of Nebraska,)
 Appellant,)
 v.)
 Braxton D.,)
 Appellee.)

No. 13-0100
 No. 13-0101
 No. 13-0102.

**MEMORANDUM OPINION
 AND
 JUDGMENT ON APPEAL**

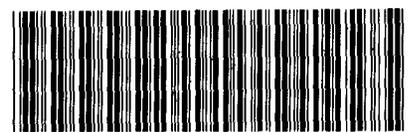
FILED

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INBODY, Chief Judge, and IRWIN and RIEDMANN, Judges. ^{CLERK} ~~NEBRASKA SUPREME COURT~~
 INBODY, Chief Judge. ~~COURT OF APPEALS~~

INTRODUCTION

In these consolidated appeals, the State of Nebraska appeals from the orders of the separate juvenile court for Douglas County that dismissed with prejudice its petitions to adjudicate Braxton D. as a juvenile under various subsections of Neb. Rev. Stat. § 43-247 (Reissue 2008). Case No. A-13-100 pertains to the petition alleging Braxton had committed the offense of possession of marijuana of one ounce or less; case No. A-13-101 pertains to the petition alleging Braxton had committed the offense of carrying a concealed weapon and that he had deported himself so as to injure or endanger seriously the morals of himself or others; and case No. A-13-102 pertains to the petition alleging Braxton had committed the offenses of false reporting, reckless driving, and operating a motor vehicle without a driver's license. As more fully explained below, we modify the juvenile court's dismissals of these cases to be without prejudice.



STATEMENT OF FACTS

The record shows that the three matters were set for an adjudication hearing at 8:30 a.m. on January 11, 2013. At nearly 10 minutes after the scheduled start time, the juvenile court began the proceedings without the presence of the State. Counsel for Braxton immediately moved to dismiss the matters for lack of prosecution, which motion was granted. In its written order in each of the three cases, the court noted that it was granting the motion to dismiss for lack of prosecution, and did so with prejudice. The court denied the State's motion to reconsider, and the State timely appeals.

ASSIGNMENTS OF ERROR

The State contends that the juvenile court erred in dismissing each of the cases with prejudice.

STANDARD OF REVIEW

An appellate court reviews questions of law independently of the lower court's conclusion. *Abdouch v. Lopez*, 285 Neb. 718, 829 N.W.2d 662 (2013).

ANALYSIS

The State's argument, as summarized, is not that the juvenile court erred in dismissing the juvenile cases for lack of prosecution, but that court erred in dismissing the cases *with prejudice*.

Generally, a dismissal with prejudice is an adjudication on the merits. *In re Guardianship of David G.*, 18 Neb. App. 918, 798

N.W.2d 131 (2011). In contrast, a dismissal for lack of prosecution does not result in a disposition on the merits of a controversy. *Billups v. Jade, Inc.*, 240 Neb. 494, 482 N.W.2d 269 (1992); *Pressey v. State*, 173 Neb. 652, 114 N.W.2d 518 (1962). Thus, a dismissal for want of prosecution is a dismissal without prejudice. See, e.g., *Billups v. Jade, Inc.*, 240 Neb. 494, 482 N.W.2d 269 (1992); *Pressey v. State*, 173 Neb. 652, 114 N.W.2d 518 (1962). Cf. Neb. Rev. Stat. § 25-601 (Reissue 2008) (dismissals without prejudice).

The juvenile court did not reach the merits of the cases underlying the three petitions filed as to Braxton. While the juvenile court may have been justified in dismissing the petitions when the State failed to appear at the scheduled hearing, we agree with the State that the dismissals should have been without prejudice.

CONCLUSION

We conclude that the juvenile court erred in dismissing with prejudice the State's petitions filed against Braxton. We therefore modify the dismissals to be without prejudice. As so modified, we affirm.

AFFIRMED AS MODIFIED.