

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF DESIREE F. & BRIANA F.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE INTEREST OF DESIREE F. AND BRIANA F.,
CHILDREN UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLANT,
v.
BECKY F. AND RONNIE F., APPELLEES.

Filed March 30, 2010. No. A-09-1013.

Appeal from the Separate Juvenile Court of Douglas County: CHRISTOPHER KELLY,
Judge. Appeal dismissed.

Donald W. Kleine, Douglas County Attorney, and Ryan Lindberg for appellant.

Kenneth J. LeRoy, of Anderson & Bressman Law Firm, P.C., L.L.O., for appellee
Becky F.

Kim D. Erwin-Loncke, of Loncke Law Office, for appellee Ronnie F.

IRWIN, CARLSON, and MOORE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Becky F. and Ronnie F. are the adoptive parents of Desiree F. and Briana F. In June 2009, the State filed a petition, based upon allegations of sexual abuse, to adjudicate the children under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). Before the adjudication hearing, the State and the children's appointed guardian ad litem made a joint motion to have the children's testimony be heard in chambers. In an order filed on October 7, 2009, the juvenile court overruled the joint motion. The State appeals from that order.

On appeal, the State generally alleges that the juvenile court erred in overruling the motion to permit the children to testify in chambers. As a part of that argument, the State asserts that the court applied an “erroneous legal standard” when considering the motion. Brief for appellant at 18. We dismiss the appeal because the juvenile court’s order is not a final, appealable order, and therefore, this court lacks jurisdiction over this appeal.

II. BACKGROUND

On June 25, 2009, the State filed a petition in juvenile court, alleging that Desiree and Briana were children within the meaning of § 43-247(3)(a) by reason of the faults or habits of their adoptive parents, Becky and Ronnie. Specifically, the petition alleged that Ronnie had subjected the children to inappropriate sexual contact and that Becky had failed to protect the children from Ronnie’s actions. The State also filed a motion for temporary custody of Desiree and Briana. The court granted the motion and placed both children in the custody of the Department of Health and Human Services. The court scheduled an adjudication hearing for October 21, 2009.

On September 17, 2009, the children’s appointed guardian ad litem, Brandie Fowler, filed a motion requesting that the court permit Desiree and Briana to testify in chambers at the adjudication hearing. Fowler indicated in the motion that the children would be testifying concerning the allegations of sexual abuse and that the presence of their parents during this testimony would be harmful to the children.

A hearing was held on the motion on October 6, 2009. At the start of the hearing, the State joined in Fowler’s motion to allow the children to testify in chambers. The children’s therapist then testified that having Desiree and Briana testify in front of their parents would cause them harm.

In an order filed on October 7, 2009, the court overruled the motion to allow the children to testify in chambers. The court found that there was insufficient evidence to demonstrate a “compelling need” for the children to testify in chambers.

III. ANALYSIS AND CONCLUSION

In *In re Interest of Marcella B. & Juan S.*, 18 Neb. App. 153, 775 N.W.2d 470 (2009), this court addressed whether an order overruling a motion for in-chambers testimony in a juvenile proceeding affects a substantial right. The facts in *In re Interest of Marcella B. & Juan S.*, *supra*, are substantially similar to the facts in the present case. There, the appointed guardian ad litem made a motion to permit the child to testify in chambers during an adjudication hearing where the issue of physical abuse would be addressed. The court overruled the motion and the guardian ad litem appealed to this court. Upon our review, we held that we did not have jurisdiction over the matter because the juvenile court’s order overruling the motion for in-chambers testimony was not a final, appealable order. In so holding, we determined that the child did not have a substantial right to testify outside the presence of her mother in the juvenile court proceeding. *Id.*

Recently, the Nebraska Supreme Court affirmed our decision in *In re Interest of Marcella B. & Juan S.*, *supra*. See *In re Interest of Marcella B. & Juan S.*, 279 Neb. 568, ___ N.W.2d ___

(2010). As such, we conclude that this court lacks jurisdiction over this appeal and that the appeal must be dismissed.

APPEAL DISMISSED.