

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF IMELDA H.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF IMELDA H., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

ARNETTA H., APPELLANT.

Filed June 5, 2012. No. A-11-1016.

Appeal from the Separate Juvenile Court of Douglas County: WADIE THOMAS, Judge.
Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Zoë R. Wade for appellant.

Donald W. Kleine, Douglas County Attorney, Paulette Merrell, and Kailee Smith, Senior
Certified Law Student, for appellee.

INBODY, Chief Judge, and IRWIN and SIEVERS, Judges.

INBODY, Chief Judge.

INTRODUCTION

Arnetta H. appeals from the Douglas County Separate Juvenile Court's order continuing Imelda H.'s placement with the Nebraska Department of Health and Human Services (DHHS) pending adjudication and finding that reasonable efforts have been made to eliminate the need for removal or make it possible for Imelda to return to Arnetta's home.

STATEMENT OF FACTS

On October 24, 2011, at approximately 5:15 p.m., Omaha police officer Ryan Miller responded to a radio dispatch to check the well-being of a child in an apartment complex. Upon arrival, Officer Miller met with an apartment complex resident who reported that 6-year-old Imelda had arrived home after school and was unable to open the door to Imelda's apartment.

Approximately 20 or 30 minutes later, Officer Miller located another resident at the apartment complex who knew Imelda's mother, Arnetta, and provided him with Arnetta's telephone number. Officer Miller spoke to Arnetta who advised him that she would return to the apartment. When Arnetta had still not returned to the apartment approximately 1 hour later, Officer Miller contacted Arnetta again and advised her that he was placing Imelda into protective custody.

On October 24, 2011, following the removal, DHHS worker Dawn Coffey was notified that Imelda had been removed by law enforcement due to improper supervision and had been placed with her siblings' paternal grandmother. The next morning, Coffey telephoned Arnetta to schedule an appointment to discuss the circumstances of the removal. During this call, Arnetta was upset that Imelda had been removed and stated she thought someone was watching Imelda. Coffey also advised Arnetta that she had received a report alleging a concern regarding drug use by Arnetta. Coffey arranged to meet Arnetta at 1 p.m. on October 25; however, sometime between 12 and 12:30 p.m., Arnetta called to say that she had just gotten home, she had not showered, and she did not have clean clothes. The meeting was rescheduled for October 27 at 9:30 a.m. at Arnetta's apartment; however, when Coffey arrived at Arnetta's apartment, nobody was there and, although Coffey attempted to reach Arnetta by telephone while she was standing outside Arnetta's apartment door, she was unable to reach Arnetta. Coffey contacted Arnetta again on October 28 and arranged to meet her on November 1.

During the November 1, 2011, meeting, Arnetta reported that she was dropped off at her mother's house at approximately 1 p.m. on October 24 and was waiting for her other three children to be dropped off by the children's daycare provider. At approximately 4 p.m. that day, Arnetta contacted a friend named "Crystal" who was unable to pick up Imelda from school. Arnetta then called Imelda's school, which reported Imelda had been picked up by a neighbor named "Steve," Crystal's boyfriend, who walked Imelda home that day. Arnetta stated that she is ordinarily home by 3:45 p.m. to meet Imelda when she gets home from school.

On October 25, 2011, the State filed a petition alleging that Imelda, a minor child, came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) for the reason that she lacked proper parental care by reason of Arnetta's faults or habits in that, on October 24, Arnetta left Imelda with an inappropriate caregiver and failed to provide proper parental support and/or supervision and alleging that due to the above allegations, Imelda was at risk for harm. That same day, the juvenile court granted the State's motion for temporary custody to exclude Arnetta's home. The hearing was held on November 2. Coffey testified that as part of her initial investigation, she contacted collateral sources for information, including Arnetta's friends Crystal and Steve, the children's daycare provider, an assistant manager of the apartment complex, and Imelda. Crystal confirmed that she had received a call from Arnetta, that she had told Arnetta she was unable to pick up Imelda, and that she told Arnetta that if Steve was unable to pick up Imelda, Arnetta would need to find someone else to do it. Crystal reported that she later learned from Steve that he had walked Imelda to the building, but did not walk her all the way up to the apartment. The children's daycare provider reported to Coffey that she primarily watches Arnetta's three younger children, but she will also watch Imelda on days when Imelda does not have school; that she requires a parent to walk their children to the daycare van when they are dropped off and to meet the children at the daycare van when they are being picked up;

and that she has never had a problem with Arnetta not being there to meet her children or to walk them out to the van.

The assistant apartment manager informed Coffey that over the past month and a half, she had received three or four complaints from residents of Imelda's being left home alone or knocking on a neighbor's door to ask for a ride to school; however, Coffey was unable to verify whether the reports were true because the apartment manager did not disclose who had made the reports and conceded that she had never personally observed Imelda unattended. Imelda told Coffey that this was the first time that she had come home from school and Arnetta was not home.

Coffey testified her principal concern was the fact that Imelda was not supervised; however, when Coffey met Imelda, she observed that Imelda appeared to otherwise be properly cared for and Arnetta submitted to a urinalysis screen which had come back negative. Despite this, Coffey testified that she believed Imelda would be at risk for harm if she were allowed to return home and that this opinion was based on the contacts that she had made, as well as the contacts she had not been able to make due to the lateness of her appointment with Arnetta.

Coffey testified that, ordinarily, she tries to consider whether there are reasonable efforts or services to allow a child to not be removed or, in the alternative, to allow a child to return home. Coffey stated, "There are several more contacts that I need to make in the course of my investigation before I would be able to - to consider an in-home safety plan. There's several more people I need to talk to." When asked who else she needed to contact, Coffey replied that she needed to talk to Arnetta's 4-year-old son, his school, Imelda's school for a second time, and the therapist for Imelda and Arnetta. Coffey also wanted to contact individuals identified by Arnetta but had been unable to do so at the time of the hearing because she was given the information by Arnetta only the day before the hearing.

On November 2, 2011, the juvenile court entered an order continuing Imelda's custody with DHHS with placement to exclude Arnetta's home. The juvenile court found that "there appears to be inadequate care provided and inadequate concern by the mother for her child." The juvenile court also held that there were no efforts that are reasonable that would have prevented removal and reasonable efforts were made to return the child to the home and/or to finalize permanency, including, but not limited to, relative placement and case management. Arnetta timely appealed to this court and, 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.

ASSIGNMENT OF ERROR

Arnetta contends that the juvenile court erred in finding that continued detention of Imelda in out-of-home placement pending adjudication was necessary.

STANDARD OF REVIEW

Although an ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time is not final, an order under Neb. Rev. Stat. § 43-254 (Cum. Supp. 2010) and § 43-247(3)(a) after a hearing which continues to keep a juvenile's custody from the parent pending an adjudication hearing is final and thus appealable. See *In re Interest of*

Andrew S., 14 Neb. App. 739, 714 N.W.2d 762 (2006); *In re Interest of Stephanie H. et al.*, 10 Neb. App. 908, 639 N.W.2d 668 (2002).

Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Karlie D.*, 283 Neb. 581, 811 N.W.2d 214 (2012).

ANALYSIS

Arnetta contends that the evidence fails to sustain the juvenile court's findings that Imelda would be at risk for harm if returned to her care and that reasonable efforts were made to return Imelda home.

Continued detention pending adjudication is not permitted under the Nebraska Juvenile Code unless the State can establish by a preponderance of the evidence at an adversarial hearing that such detention is necessary for the welfare of the juvenile. *In re Interest of Anthony G.*, 255 Neb. 442, 586 N.W.2d 427 (1998). At a detention hearing, the State must prove by a preponderance of the evidence that the custody of a juvenile should remain in DHHS pending adjudication. *In re Interest of Cherita W.*, 4 Neb. App. 287, 541 N.W.2d 677 (1996); § 43-254. The State is not required to establish a specific harm or risk to the juvenile; it is enough if the evidence establishes by a preponderance of the evidence that the conduct or circumstances of the parent or custodian are such that it is contrary to the juvenile's welfare to remain in, or return to, the parental or custodial home. *In re Interest of Joshua M. et al.*, 251 Neb. 614, 558 N.W.2d 548 (1997). Pursuant to § 43-254, if a juvenile has been removed pursuant to Neb. Rev. Stat. § 43-248(2) (Cum. Supp. 2010), the juvenile court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under Neb. Rev. Stat. § 43-283.01(1) through (4) (Cum. Supp. 2010).

The evidence adduced at the detention hearing established that, on October 24, 2011, 6-year-old Imelda arrived home from school and Arnetta was not available to meet her, nor was another appropriate caregiver there to meet her. Although a neighbor provided care for Imelda for about 2 hours, this care was not prearranged, and even after being contacted by Officer Miller, Arnetta did not return home for at least another hour. Further, Arnetta missed two appointments with DHHS worker Coffey, one on October 25 and the other on October 27, and the appointment did not actually occur until 1 day prior to the date of the detention hearing. Although Arnetta contends that Coffey has conducted a sufficient investigation, Coffey testified that she needed to conduct further interviews, and we note, Coffey's inability to contact some of the individuals she desired to interview was due to Arnetta's failure to keep her appointments with Coffey, eventually meeting with her the day before the hearing.

Further, the court found that reasonable efforts were made to return Imelda to Arnetta's home including, but not limited to, relative placement and case management. We note that § 43-283.01 clearly indicates that the juvenile's health and safety are the paramount concern in

assessing reasonable efforts, and the juvenile court's determination that reasonable efforts were made is not unfounded.

CONCLUSION

Having considered and rejected Arnetta's assigned errors, we affirm the decision of the juvenile court continuing temporary custody of Imelda with DHHS pending adjudication.

AFFIRMED.