

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF IPOLITA B.

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

STATE OF NEBRASKA, APPELLEE,

V.

BLANCA B., APPELLANT.

Filed April 20, 2010. No. A-09-1023.

Appeal from the Juvenile Review Panel, LINDA S. CASTER SENFF, DOUGLAS F. JOHNSON, and TONI G. THORSON, Judges, on appeal thereto from the County Court for Hall County, DAVID A. BUSH, Judge. Judgment of Juvenile Review Panel affirmed.

Rachel A. Daugherty, of Myers & Daugherty, P.C., for appellant.

Robert J. Cashoili, Deputy Hall County Attorney, for appellee.

Jay B. Judds and Brad Gianakos, Special Assistant Attorneys General, for appellee.

INBODY, Chief Judge, and MOORE and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Blanca B. filed a motion to change the placement of her child, Ipolita B., to her friend, Veronica J. The county court, sitting as a juvenile court, placed Ipolita with Veronica and rejected the placement recommended by the Department of Health and Human Services (DHHS) in its proposed plan. The juvenile review panel reversed, and ordered placement of Ipolita as recommended by the DHHS plan. Primarily because of the harm which would otherwise result to the relationship between Ipolita and her older half brother, we affirm the decision of the juvenile review panel.

BACKGROUND

Ipolita is the child of Blanca and Gildardo S. Gildardo is not involved in the instant appeal. In November 2008, when Ipolita was approximately 1 year old, she was removed from Blanca's care when Blanca was arrested on drug-related charges. Ipolita was immediately placed in the care of Laurie J. and her husband, who had adopted Ipolita's older half brother. On March 3, 2009, Ipolita was adjudicated to be a minor child within the definition of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). On April 14, Blanca filed a "Motion for Placement" in which she requested that physical custody of the child be placed with "Veronica [H.]" It subsequently became apparent that "Veronica [H.]" was actually a misspelling of the name "Veronica [J.]" On April 28, the county court heard Blanca's motion.

From the time that Blanca was arrested until the time of the hearing on the request for change of placement, she was imprisoned. Ultimately, Blanca was sentenced to 30 months' to 5 years' imprisonment as a result of controlled substance convictions. According to the case plan submitted by DHHS, U.S. Immigration and Customs Enforcement has filed a detainer on Blanca.

At the hearing, Blanca adduced evidence intended to establish that placing the child with Veronica would be in the child's best interests. Blanca testified that Veronica and her husband already had Blanca's youngest son in their care. At the time of trial, Blanca's youngest son was only a few months old and had been placed with Veronica shortly after his birth with the knowledge of DHHS. Veronica was in the process of seeking appointment as his guardian.

Blanca testified that she believed Veronica was good with children, Veronica had previously provided care for Ipolita, and Veronica and Ipolita had bonded. Blanca additionally stated that she and Veronica shared the same cultural background, which was Mexican, and that Veronica would be able to take the child to Mexico to visit Blanca's relatives if she was deported.

Veronica testified that when Blanca and Ipolita resided with her prior to Blanca's arrest, she would regularly provide care for Ipolita on the weekends. Blanca and Ipolita resided with Veronica from the time Blanca was 2 or 3 months' pregnant with her youngest son until October 2008. Veronica testified that she and her husband had adequate room and the financial ability to provide for Ipolita. Veronica stated that she could educate Ipolita about her cultural background and teach Ipolita Spanish. Veronica also stated that she could take Ipolita to Mexico to visit the child's brother and grandmother. A home study indicated that Veronica and her husband "are willing and able to provide a good home for Ipolita."

Veronica admitted that she knew that Blanca previously had drug problems before moving into her home, but was unaware of the drug problems that gave rise to Blanca's most recent criminal conviction until after Blanca was arrested.

The State offered a DHHS case plan which recommended that Ipolita stay in her current placement with Laurie. Ali Smith, Ipolita's case manager, testified that she has observed Ipolita in her placement, that she seems to have bonded with the foster family, and that she interacts well with her older half brother and plays with him every day. Smith testified that Ipolita and her older half brother had never met Blanca's youngest son. Smith stated that she believed it was in Ipolita's best interests to remain in her placement with Laurie because Ipolita had a relationship with her older half brother, but not with Blanca's youngest son.

The State also offered into evidence Laurie's affidavit in which she stated that she had Hispanic relatives and intended to educate Ipolita in Hispanic culture and the Spanish language. Ipolita has formed a bond with Laurie's family and with Ipolita's older half brother.

On June 17, 2009, the county court entered an order which granted Blanca's motion for a change in placement and placed Ipolita in the home of Veronica and her husband. DHHS filed a motion to have the placement reviewed by a juvenile review panel and alleged in the motion that the county court's placement was not in Ipolita's best interests. The review panel determined that placing Ipolita with Veronica and her husband was not in Ipolita's best interests and ordered that Ipolita remain in her placement with Laurie.

Blanca timely appeals to this court. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENT OF ERROR

Blanca assigns, as restated, that the review panel erred in determining that it was not in Ipolita's best interests to place her with Veronica and her husband.

STANDARD OF REVIEW

An appeal from a final order or judgment entered by the juvenile review panel shall be reviewed by the Court of Appeals or the Supreme Court de novo on the record submitted to the panel. *In re Interest of William H.*, 3 Neb. App. 869, 533 N.W.2d 670 (1995). See Neb. Rev. Stat. § 43-287.06 (Reissue 2008).

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. *In re Interest of Angelica L. & Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009).

ANALYSIS

Because the instant appeal involves a case plan, we briefly recount the process through which a DHHS case plan is created and litigated. After a juvenile is adjudicated, the court may order DHHS to prepare "a proposed plan for the care, placement, services, and permanency which are to be provided to [the] juvenile and his or her family." Neb. Rev. Stat. § 43-285(2) (Reissue 2008). Once DHHS provides the case plan, "[i]f any other party . . . proves by a preponderance of the evidence that [DHHS'] plan is not in the juvenile's best interests, the court shall disapprove [DHHS'] plan." *Id.* A party may request the expedited review of the county court's order by a juvenile review panel when the county court, sitting as a juvenile court, "makes an order directing the implementation of a plan different from the plan prepared by [DHHS] concerning the care, placement, or services to be provided to the juvenile and [DHHS] or any other party believes that the [county] court's order is not in the best interests of the juvenile." Neb. Rev. Stat. § 43-287.03 (Reissue 2008). This was true in the instant case because the DHHS plan recommended placement with Laurie, but the county court ordered placement with Veronica, and DHHS believed that the order was not in Ipolita's best interests. Pursuant to Neb. Rev. Stat. § 43-287.05 (Reissue 2008), the juvenile review panel was required to review the county court's order as follows:

A juvenile review panel shall review the disposition of a court de novo on the record. . . . A juvenile review panel shall affirm the disposition unless it is shown by a preponderance of the evidence that the disposition was not in the best interests of the juvenile, in which case the panel may modify the court-ordered plan or the plan of [DHHS] or may substitute [DHHS'] plan for the court-ordered plan and remand the case back to the court with directions to implement such plan.

We now review the review panel's determination de novo on the record. See § 43-287.06.

Blanca argues that the review panel erred in placing custody of Ipolita with Laurie because it was in the child's best interests that she be placed with Veronica's family. On our de novo review, we affirm the review panel's decision because we also conclude that the disposition ordered by the county court was not in Ipolita's best interests.

This is primarily based on the disruption to the existing bond between Ipolita and her older half brother. Ipolita has developed a bond with him and plays with him on a daily basis. The case plan notes that Ipolita and her older half brother "get along well and [he] is very protective of Ipolita." However, Ipolita has never met Blanca's youngest son.

Blanca argues that placing Ipolita with Veronica was in Ipolita's best interests because Blanca's youngest son was placed with Veronica with the knowledge of DHHS, Veronica is good with children, Veronica shares the same cultural background as the child and speaks Spanish, and Veronica travels to Mexico once a year and could take Ipolita to see her grandmother and an older brother. Blanca asserts that placing Ipolita with Laurie was not in the child's best interests due to the child's cultural background.

Essentially, Laurie can provide the same things as Veronica. Laurie has adopted one of Ipolita's other siblings, and she has provided Ipolita with adequate care. Laurie has also worked to ensure that Ipolita is educated regarding her cultural background and learns to speak Spanish. Although Laurie is not of Hispanic origin, she has Hispanic family members who help to educate Ipolita in this regard and will do so in the future.

Although the home study approved of Veronica as a potential placement, we note two issues of possible concern regarding illegal drugs. First, Veronica apparently did not notice Blanca's drug usage. Blanca lived with Veronica until October 2008, and Blanca was arrested on drug-related charges in November 2008. Even though Veronica regularly cared for Ipolita and seems to have known Blanca well, Veronica was unaware that Blanca was using methamphetamine until after Blanca was jailed. This circumstance came to light in the testimony at the hearing and was not discussed in the home study. Second, some of Veronica's family members have had drug problems, including two of Veronica's brothers and her mother. One brother was jailed on drug charges, and the home study reported Veronica's statement that she was not sure of the extent of the contact she would have with that brother but that "if he needs her she desires to be there for him." The problems confronted by members of Veronica's family did not prevent a favorable recommendation in the home study, and both of these circumstances may not reflect strongly on Veronica's suitability, but we must consider all of the evidence.

Due to Veronica's cultural background, she may be in a slightly better position than Laurie to educate Ipolita regarding Ipolita's own cultural background. However, any slight advantage in this regard is thoroughly outweighed by the disruption to the significant bond between Ipolita and her older half brother. For these reasons, a preponderance of the evidence

established that the county court's order placing Ipolita with Veronica and her husband was not in Ipolita's best interests.

CONCLUSION

Because of the harm that would result to Ipolita's relationship with her older half brother if she were placed with Veronica, we conclude that the county court's order placing Ipolita with Veronica was not in the child's best interests. We affirm the decision of the juvenile review panel, which directed the county court to implement the DHHS case plan.

AFFIRMED.