

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF JAZZMINE W.

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IN RE INTEREST OF JAZZMINE W., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES, APPELLANT.

Filed July 1, 2008. No. A-08-076.

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

SIEVERS, Judge.

Jazzmine W. was adjudicated in the separate juvenile court of Douglas County to be a minor child within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2004), and she was placed in the temporary custody of the Department of Health and Human Services (DHHS). Ultimately, Jazzmine's grandmother was appointed to be her permanent guardian. However, despite appointing a guardian, the juvenile court required DHHS to continue monitoring Jazzmine, and the court retained its own jurisdiction over Jazzmine's case. DHHS now claims that once a guardian was appointed for Jazzmine, it should have been released from its responsibility for her, and that the juvenile court should not have retained its jurisdiction over the case.

FACTUAL AND PROCEDURAL BACKGROUND

On December 20, 2004, Jazzmine was adjudicated in the separate juvenile court of Douglas County to be a minor child within the meaning of § 43-247(3)(a) due to the failure of her mother, Jennifer W., to provide proper or necessary subsistence, education, or other care necessary for the health morals, or well-being of Jazzmine. The court ordered that Jazzmine be placed in the temporary custody of DHHS.

During the next 3 years, many additional orders were issued by the separate juvenile court regarding Jazzmine, the precise nature of which are not necessary for the purposes of this appeal or opinion. Ultimately, in an order on December 20, 2007, Jazzmine's maternal

grandmother, Tammy R., with whom Jazzmine had been living during the progress of the case, was appointed Jazzmine's guardian. However, at the hearing at which Tammy was appointed Jazzmine's guardian, the juvenile court judge stated that the court would retain jurisdiction of the matter, that DHHS was not relieved of its responsibility in the matter, and that reviews of the guardianship would be conducted every 6 months at which DHHS would inform the juvenile court as to the well-being of Jazzmine. DHHS timely appealed.

ASSIGNMENTS OF ERROR

DHHS assigns the following errors to the separate juvenile court of Douglas County: (1) as a matter of law, failing to relieve DHHS of its responsibility for Jazzmine despite appointing her grandmother as her guardian, and (2) as a matter of law, retaining jurisdiction over this matter when awarding guardianship to the maternal grandmother in a separate probate proceeding.

STANDARD OF REVIEW

Juvenile cases are reviewed de novo on the record, and the appellate court is required to reach a conclusion independent of the trial court's findings; however, when the evidence is in conflict, the appellate court will consider and give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over another. *In re Interest of Kiana T.*, 262 Neb. 60, 628 N.W.2d 242 (2001). In reviewing questions of law in juvenile proceedings, the appellate court reaches a conclusion independent of the lower court's ruling. *In re Interest of Krystal P. et al.*, 251 Neb. 320, 557 N.W.2d 26 (1996).

ANALYSIS

Whether Separate Juvenile Court Erred as Matter of Law by Failing to Relieve DHHS of Its Responsibility for Jazzmine Despite Appointing Her Grandmother as Her Guardian.

At the December 20, 2007, hearing when Tammy was appointed Jazzmine's guardian, the judge said that "(t)he Department is not relieved of its responsibility in this matter. We will have reviews every six months and the Department will keep the Court apprised as to the well-being of this child." DHHS argues that it should have been relieved of its custody of and responsibility for Jazzmine once Tammy was appointed her guardian. We agree. The Nebraska Supreme Court has already held that once a guardianship is established, that it is proper for DHHS' authority and responsibility for the child to be terminated. *In re Interest of Antonio S. & Priscilla S.*, 270 Neb. 792, 708 N.W.2d 614 (2005) (court concluded that where guardianship is established under Nebraska Juvenile Code as means of providing permanency for adjudicated children who have been in temporary custody of DHHS, custody is necessarily transferred from DHHS to appointed guardian(s) by operation of law). The court in *In re Interest of Antonio S. & Priscilla S.*, *supra*, relied in large part on a DHHS regulation which provided: "Upon approval of the court of the guardianship, the worker will close the case. Once the court order establishes guardianship, [DHHS] no longer has any authority or responsibility for the child except as might exist due to a subsidized guardianship." 390 Neb. Admin. Code, ch. 6, § 004(4) (1998).

Nebraska case law does not authorize dual custody by two “separate agencies” simultaneously. See *In re interest of Jeremy T.*, 257 Neb. 736, 600 N.W.2d 747 (1999). Here, the juvenile court’s order has the effect of creating simultaneous custody by a guardian and an “agency.” We briefly examine the nature of a guardianship. A legal guardian has the powers and responsibilities of a parent who has not been deprived of custody of his or her minor and unemancipated child. See *In re Interest of Eric O.*, 9 Neb. App. 676, 617 N.W.2d 824 (2000). Clearly, Neb. Rev. Stat. § 43-286(1)(a)(iii) (Reissue 2004) allows a juvenile to be “placed” in a suitable home or institution and remain in the “care and custody” of DHHS. However, appointment as a juvenile’s guardian is materially different than mere “placement” in a home, for example, a foster home. Tammy was appointed as Jazzmine’s guardian, and thus she became, for all intents and purposes, her parent. Once the juvenile court appointed Tammy as Jazzmine’s guardian, Tammy had all the powers and responsibilities of a parent, as well as physical custody of Jazzmine, and she is viewed essentially as a parent who has custody of his or her child. Therefore, it is inconsistent with Nebraska law for the juvenile court to have appointed Tammy as Jazzmine’s guardian, but to have required DHHS to retain its custodial responsibilities for her at the same time. As a matter of law, the juvenile court erred in requiring DHHS to maintain responsibility and custody for Jazzmine, and DHHS is now relieved of those responsibilities.

Whether Juvenile Court Erred as Matter of Law by Retaining Jurisdiction Over This Matter When Awarding Guardianship to Maternal Grandmother in “Separate Probate Proceeding.”

DHHS argues that the juvenile court erred in retaining jurisdiction over Jazzmine in this matter once it appointed Tammy as her guardian. However, because we have sustained DHHS’ first assignment of error, thereby releasing DHHS from its responsibility in this matter, we find that DHSS lacks standing to object to the juvenile court’s retaining jurisdiction over Jazzmine. There appears to be some controversy over whether a party can “lose” standing during the course of a case. See *Myers v. Nebraska Invest. Council*, 272 Neb. 669, 724 N.W.2d 776 (2006). We read *Myers* as the Nebraska Supreme Court’s having apparently opted for the view that standing is judged at the time the action is begun and that, thereafter, the analysis is under the rubric of mootness. Nonetheless, we note the following from *Myers*:

Both standing and mootness are key functions in determining whether a justiciable controversy exists, or whether a litigant has a sufficient interest in a case to warrant declaratory relief. . . . To obtain declaratory relief, a plaintiff has the burden to prove the existence of a justiciable controversy and an interest in the subject matter of the action.

Id. at 683, 724 N.W.2d at 793 (citation omitted).

The purpose of a standing inquiry is to determine whether one has a legally protectable interest or right in the controversy that would benefit by the relief to be granted. *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 550 N.W.2d 907 (1996).

Because we have released DHHS from any further responsibilities for Jazzmine, DHHS would not benefit nor should it have any interest in whether the juvenile court retains jurisdiction over Jazzmine after it appointed Tammy to be her guardian. Putting aside the question of terminology between standing and mootness, the Nebraska Supreme Court has previously ruled against DHHS’ argument in *In re Interest of Antonio S. & Priscilla S.*, 270 Neb. 792, 799, 708

N.W.2d 614, 619 (2005), where the court said, “The guardian ad litem correctly argues that a guardianship under the Nebraska Juvenile Code is subject to the continuing jurisdiction of the juvenile court which retains the power to terminate the guardianship.”

CONCLUSION

For the foregoing reasons, we reverse the decision of the separate juvenile court which found that DHHS was not relieved of its responsibilities toward Jazzmine. The separate juvenile court properly retained jurisdiction over the guardianship which it created in Tammy for Jazzmine.

AFFIRMED IN PART, AND IN PART REVERSED.