

IN THE NEBRASKA COURT OF APPEALS

In re Interest of Mya C. and Sunday C., Children under 18 years of age. State of Nebraska, Appellee, v. Nyamal M., Appellant.

No. A-12-0811

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

FILED APR 01 2014

CLERK NEBRASKA SUPREME COURT COURT OF APPEALS

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

MOORE, Judge.

INTRODUCTION

Nyamal M. appealed from a juvenile court dispositional order which required her to actively pursue a high school diploma or a GED diploma through the GED program as part of a rehabilitative plan. In In re Interest of Mya C. & Sunday C., 20 Neb. App. 916, 835 N.W.2d 90 (2013), we dismissed Nyamal's appeal, finding that the juvenile court's dispositional order was not final and appealable because it essentially continued the court's previous orders. Nyamal petitioned the Nebraska Supreme Court for further review and our decision was reversed in In re Interest of Mya C. & Sunday C., 286 Neb. 1008, ___ N.W.2d ___ (2013). The Supreme Court found that the juvenile court's order imposed a new requirement that Nyamal obtain a



000040490NSC

high school diploma or a GED diploma as a condition of reunification with her children and, therefore, did not merely continue the terms under its previous orders.

The Supreme Court remanded the case to this court for consideration of Nyamal's assigned error: whether the juvenile court's requirement that she obtain a diploma or GED diploma was reasonably related to the plan's objective of reunification. Because we find that this educational requirement is not reasonably related to correct the conditions underlying the adjudication, we affirm the disposition plan as modified to remove this provision of the order of the juvenile court.

FACTUAL BACKGROUND

Nyamal is the mother of Mya C. and Sunday C. In July 2010, Nyamal was living in her mother's home with her daughters when all three were removed from the home because of her mother's inadequate supervision and unsanitary conditions. Mya and Sunday were adjudicated under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) because of Nyamal's neglect. In March 2011, Nyamal and her children were placed together in an apartment. Mya and Sunday have been in the legal custody of the Department of Health and Human Services since their removal.

The disposition order in this case was entered on December 10, 2010. Among the provisions of this order included requirements that Nyamal participate in therapy, seek part-time

employment to provide financial support for her children, and cooperate with family support services. The order also required her to "continue her education a[t] Lincoln High School" and "not switch her education plans without approval from the Department."

The June 7, 2011, and December 8, 2011, review orders contained provisions that were similar to the original disposition order. The court required Nyamal to "continue with her education at Bryan Community School." There is no explanation in the record for the change in schools. The other requirements from the original order were continued. After the December order, Nyamal turned 19 and aged out of the juvenile court system.

In March 2012, the Department removed Mya and Sunday from Nyamal's care because of Nyamal's inappropriate physical discipline. The children were placed in a foster home and Nyamal was allowed supervised visitation. Nyamal dropped out of school that same month. She explained at the May 2012 review hearing that her decision to drop out of school was based on losing her children and not being able to reach the caseworker. Before dropping out of school, Nyamal had been on pace to graduate in December 2012. She began taking GED classes at a program offered by a youth services center.

The May 2012 hearing was continued until July 31. In July 2012, prior to the review hearing resuming, Nyamal obtained a temporary full-time job that paid her \$9.37 per hour. Nyamal testified that the company she worked for often hired on a temporary basis, but would hire an employee full-time when the employee demonstrated reliable attendance. After obtaining this job, Nyamal's attendance at GED classes waned. A GED program instructor informed Mya and Sunday's guardian ad litem by email that Nyamal had below-average reading, writing, mathematical skills and still had to make substantial progress in order to obtain a GED diploma. Nyamal testified that she wanted to get her GED diploma, but did not believe she had time to do so while working full time.

As part of its August 9, 2012, order, the juvenile court required Nyamal to actively pursue a GED or a high school diploma. Nyamal appealed to this court, arguing that the juvenile court's requirement that she actively pursue a high school diploma or a GED diploma was not reasonably related to the conditions that caused the adjudication. She also claimed that turning 19 and aging out of the juvenile system broke the chain of continuity in the previous orders. We dismissed her appeal on jurisdictional grounds. We concluded that the August 2012 order's requirement that Nyamal actively pursue a GED or high school diploma was merely a continuation of the original

December 10, 2010 order. Specifically, we found that the juvenile court had required Nyamal to work towards the equivalent of a high school education throughout the duration of the case and Nyamal had not appealed from any previous order.

The Nebraska Supreme Court reversed our decision on further review. The Supreme Court found that there was a significant difference between requiring a minor ward to continue in school and requiring an adult with below-average academic skills to obtain a diploma, or its equivalent, as a condition of reunification. The Supreme Court reversed our judgment and remanded the cause with directions that we consider the merits of Nyamal's appeal.

ASSIGNMENTS OF ERROR

Nyamal argues that the juvenile court erred when it ordered that she actively pursue either a diploma through the GED program or a high school diploma as part of its rehabilitative plan.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Danaisha W.*, 287 Neb. 27, 840 N.W.2d 533 (2013).

ANALYSIS

Nyamal contends that there is no relationship between an adult parent in a juvenile case pursuing a high school diploma or GED diploma and reunification with the parent's children. She believes there are no factual circumstances that could reasonably lead a court to conclude that an adult parent of a juvenile should be ordered to obtain a high school diploma or GED diploma as a condition for reunification.

A juvenile court has the discretionary power to prescribe a reasonable program for parental rehabilitation to correct the conditions underlying the adjudication that a child is a juvenile within the Nebraska Juvenile Code. *In re Interest of Rylee S.*, 285 Neb. 774, 829 N.W.2d 445 (2013). While there is no requirement that the juvenile court must institute a plan for rehabilitation of a parent, the rehabilitation plan must be conducted under the direction of the juvenile court and must be reasonably related to the plan's objective of reuniting parent with child. *Id.*

The Nebraska Supreme Court has noted that the following question should be addressed when analyzing the reasonableness of a juvenile court plan:

Does a provision in the plan tend to correct, eliminate, or ameliorate the situation or condition on which the adjudication has been obtained under the Nebraska Juvenile Code? An affirmative answer to the preceding question

provides the materiality necessary in a rehabilitative plan for a parent involved in proceedings within a juvenile court's jurisdiction. Otherwise, a court-ordered plan, ostensibly rehabilitative of the conditions leading to an adjudication under the Nebraska Juvenile Code, is nothing more than a plan for the sake of a plan, devoid of corrective and remedial measures. Similar to other areas of law, reasonableness of a rehabilitative plan for a parent depends on the circumstances in a particular case and, therefore, is examined on a case-by-case basis.

Id. at 779, 829 N.W.2d at 449, quoting *In re Interest of J.S., A.C., and C.S.*, 227 Neb. 251, 268, 417 N.W.2d 147, 158 (1987).

The underlying issue of this juvenile adjudication was Nyamal leaving her children with an inadequate caregiver who failed to supervise Mya and Sunday and unsanitary conditions in the home. Nyamal's children were later removed from her care because of inappropriate physical discipline. Based on these circumstances, we must decide whether requiring Nyamal to obtain a high school diploma or GED diploma will tend to correct, eliminate, or ameliorate Nyamal's improper parenting methods. We conclude that this requirement is not material to the underlying reasons for adjudication.

Our review of the record shows that Nyamal is the mother of two minor children who require her for care and support. Because of Nyamal's improper parenting, this case was opened and the children were removed from her care. Clearly, the juvenile

court's requiring that she attend therapy, provide a legal means of financial support for her children, engage in parental education, not use physical discipline with the children, and participate in family support services will tend to correct, eliminate, or ameliorate the conditions underlying the adjudication. Those plan requirements are material.

However, we conclude that requiring Nyamal to obtain the equivalent of a high school education will not tend to correct her inappropriate caregiving. Further, the State did not present any evidence that obtaining a diploma will make Nyamal a better parent or was required for reunification. When asked at the hearing whether it was important for Nyamal to get a GED diploma or high school equivalency diploma in order to reunify herself with the children, the caseworker testified that "I think if [Nyamal] chooses to get her G.E.D. [diploma], that would only benefit her in looking for employment. When she is able to have her girls returned to her." (Emphasis supplied). Such testimony does not constitute a showing that this requirement will correct Nyamal's caregiving issues. Further, in July 2012 Nyamal was able to obtain full-time employment, albeit temporary, without a high school equivalency diploma. Finally, as suggested by the Supreme Court, "requiring an adult with below-average academic skills to obtain a diploma or its equivalent as a condition of

reunification may lengthen the time the children are in out-of-home placement." *In re Interest of Mya C.*, 286 Neb. at 1017.

The specific circumstances of this case do not justify the juvenile court's requirement that Nyamal obtain a high school diploma or GED as a condition for reunification. Thus, we conclude that this requirement in the dispositional plan was unreasonable.

CONCLUSION

The juvenile court's requirement that Nyamal actively pursue a high school diploma or GED diploma is not reasonably related to the plan's goal of reuniting Nyamal with her children. We affirm the disposition plan as modified to remove the foregoing provision.

AFFIRMED AS MODIFIED.