IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

IN RE INTEREST OF SELENA P. ET AL.

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IN RE INTEREST OF SELENA P. ET AL., CHILDREN UNDER 18 YEARS OF AGE, ET AL.

STATE OF NEBRASKA, APPELLEE,

V.

RICARDO P., APPELLANT.

Filed November 24, 2026. No. A-25-912.

Appeal from the Separate Juvenile Court of Lancaster County: ROGER J. HEIDEMAN, Judge. Affirmed.

Joshua D. Barber, of Barber & Barber, P.C., L.L.O., for appellant.

Christopher M. Reid, Deputy Lancaster County Attorney, for appellee.

RIEDMANN, Chief Judge, and PIRTLE and PICCOLO, Judges.

PICCOLO, Judge.

I. INTRODUCTION

Ricardo P. appeals from the order of the separate juvenile court of Lancaster County, which continued temporary legal custody of his three children with the Nebraska Department of Health and Human Services (the Department). On appeal, he challenges certain rulings made by the court in that order. He also challenges the court's prior ex-parte order removing the children from his home. Upon our de novo review, we affirm.

II. STATEMENT OF FACTS

Ricardo and Autumn B. are the parents of Selena P., born in 2020; Mateo P., born in 2021; and Emilio P., born in 2023 (the children). Ricardo and Autumn were divorced in October 2024, and Ricardo was given physical custody of the children. After a November 10, 2025, forensic

interview, when Selena reported that her uncles, Jose P. and Juan P., had sexually abused her (as recently as November 9), the children were removed from Ricardo's care and subsequently placed with Autumn.

1. Petition and Ex Parte Removal

On November 13, 2025, the State filed a petition in the juvenile court, alleging the children were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Cum. Supp. 2024). Specifically, the State alleged the children were at risk for harm because (1) Selena disclosed sexual assault and/or inappropriate touching by Jose and/or Juan on one or more occasions and (2) Ricardo was made aware of Selena's disclosures and failed to take appropriate steps to protect the children from physical, emotional, and/or mental harm. The State made similar allegations concerning Autumn. Because Autumn has not appealed, we only discuss her as necessary to address Ricardo's appeal. The State also filed a motion for an ex parte order of emergency temporary custody of the children. The accompanying affidavit describes the police investigation following Selena's disclosures of sexual abuse by her uncles in 2024 and 2025. The juvenile court granted the State's ex parte motion, ordered the Department to take temporary custody of the children, and scheduled a protective custody hearing for November 19. The ex parte order included a finding that the Department could, "at its discretion," either return the children home pending a placement hearing or place the children with Autumn.

2. Protective Custody Proceedings

Ricardo and Autumn both appeared with their respective attorneys at the November 19, 2025, protective custody hearing and entered denials to the allegations of the petition. The State asked the juvenile court to take judicial notice of "the [m]otion for [t]emporary [c]ustody and the affidavit of emergency removal for the limited purposes of this hearing." Ricardo's counsel made "a due process objection" to the affidavit. The court overruled the objection and took judicial notice "of that motion and affidavit." The affidavit was not marked as an exhibit and was not included in the bill of exceptions. The State offered testimony from a police officer and a Department caseworker, and Ricardo testified on his own behalf.

Corbin Eisenmenger, an officer with the Lincoln Police Department, testified about his involvement in the investigation of Selena's allegations of sexual abuse. Eisenmenger was assigned to the current investigation on October 27, 2025, and he contacted Autumn the next day. Autumn reported to Eisenmenger that the children were not in Nebraska. Once the children returned to Nebraska, Selena participated in a forensic interview on November 10. Eisenmenger confirmed that he authored the affidavit in support of the Department's motion for an ex parte temporary custody order. Eisenmenger contacted Ricardo following the forensic interview. According to Eisenmenger's testimony on direct examination, Ricardo "answered some questions" but never provided requested contact information for "the alleged perpetrators," despite Eisenmenger's additional attempts to obtain that information.

Ricardo's attorney conducted an extensive cross-examination of Eisenmenger, eliciting further details about the investigation and Eisenmenger's contact with Ricardo. Eisenmenger confirmed Ricardo was not a suspect in his investigation of Selena's current allegations of abuse. Eisenmenger stated that he first contacted Ricardo by phone immediately following Selena's

forensic interview. In this initial phone call, Eisenmenger apprised Ricardo of the investigation and told him the children were being taken into temporary custody. Eisenmenger asked Ricardo for Juan and Jose's phone numbers. Although Ricardo indicated that he was "going to attempt to retrieve those" for Eisenmenger, he did not do so. Eisenmenger testified that Ricardo did confirm where Juan and Jose were living. Eisenmenger affirmed that Ricardo was "generally cooperative" during this first phone call. Ricardo called Eisenmenger later that day and told Eisenmenger that he wanted to communicate with the Department and that he "did not agree with what had transpired so far with the investigation and the children being removed from his custody."

During his cross-examination of Eisenmenger, Ricardo's attorney read from Eisenmenger's affidavit and inquired about the concerns Eisenmenger expressed therein. In response to this questioning, Eisenmenger affirmed that one concern underlying the request for removal was that upon being contacted by law enforcement on November 11, 2025, Ricardo denied the possibility of any abuse, despite his report that Selena and Juan had both slept in his home the previous night. Upon further questioning, Eisenmenger also expressed his concern that when he investigated Selena's reports of abuse a year earlier, Ricardo's family seemed "primarily concerned with protecting the suspect," rather than with Selena's safety.

Specific details of where Selena's uncles were living and their access to her prior to the children's removal from Ricardo's care were revealed during cross-examination by the children's guardian ad litem and redirect by the State. In response to questioning by the guardian ad litem, Eisenmenger expressed his understanding that Juan was living with Ricardo and that Jose was living with his sister at a different residence. During redirect by the State, Eisenmenger affirmed his understanding that "all the family members . . . would have access to the family home or at least be present at the family home on . . . some occasions." Eisenmenger also confirmed that the police investigation of the abuse allegations was ongoing.

Phoebe Stripling, the initial assessment caseworker assigned to the case, testified about the services offered to the family. The Department had offered in-home family support, parenting classes, co-occurring evaluations, and transportation assistance to both parents. The Department had completed trauma screenings on all three children and had made "[f]oster care closet referrals" for the children to obtain clothing. The Department was also working with providers to "start Child-Parent Psychotherapy as well as ABA therapy" for one of the children. Ricardo declined the offer of family support when Stripling first met with him on November 17, 2025, but by November 19, he had agreed to accept that service. Ricardo declined the offer of transportation assistance because he had a car.

According to Stripling, the Department recommended that any court-ordered visitation between Ricardo and the children be fully supervised by an agency in Lincoln, with visits taking place either at the agency or in the community. Stripling expressed her understanding that the family "is bilingual" and that they "also speak Spanish." She testified, however, that she had not inquired directly about "their bilingual status." When asked whether she would ask the court to order that "only English" be spoken during supervised visits if the children were able to speak or understand Spanish, she testified, "I would either request that or request a bilingual . . . visitation worker be assigned to the case." According to Stripling, because law enforcement had advised that there be no contact between Ricardo and the children prior to the hearing, the Department had not yet contacted agencies to determine the availability of bilingual visitation workers.

Ricardo then testified, telling the juvenile court that he had physical custody of the children since his divorce from Autumn in October 2024. Ricardo acknowledged that his brother Juan lived with him. He also acknowledged that if the children were returned to his care, Juan would have to live elsewhere. Ricardo asked the juvenile court to return the children to his care and affirmed that he would ensure neither Juan nor Jose returned to his residence "so long as an investigation [was] pending."

On cross-examination by the State, Ricardo testified that he would not let his brothers in if they did come to his residence and that he would tell them they had to leave. Ricardo indicated Jose had not been allowed at his residence in a little over 9 months "because of the allegations the first time," and he denied Jose having had contact with Selena since then. Ricardo stated he did not believe Selena's reports of such contact.

On her cross-examination of Ricardo, Autumn's counsel asked about a phone call Ricardo made to Autumn and whether he told her that another individual "walked in on" Jose and Selena but that Ricardo "didn't report it because [he was] afraid to lose the children." In response, Ricardo testified, "That is not how that happened." He testified further that he told Autumn, "[That individual] has some issues and when he gets mad[,] he likes to make allegations."

Following the hearing, the juvenile court entered an order on November 19, 2025, finding that continuation of the children in Ricardo's home would be contrary to their welfare; that reasonable efforts were made, prior to placement, to prevent or eliminate the need for removal and to make it possible for them to return home; and that the Department had made reasonable efforts since removal to make it possible for the children to safely return home, including "[c]o-occurring evaluation, family support services, transportation, EDN referral, parenting education, CAC interview, trauma screening, [and] Foster Care Closet referral." The court ordered that the children continue in the Department's custody and ordered their continued placement with Autumn. The court ordered the Department to determine reasonable visitation between Ricardo and his children. It imposed the conditions that visitation be "[f]ully supervised as arranged by [the Department] with all interaction with the children to be in English."

III. ASSIGNMENTS OF ERROR

Ricardo assigns, consolidated and restated, that the juvenile court erred by (1) granting the State's motion for an ex parte order of emergency temporary custody; (2) overruling Ricardo's due process objection and taking judicial notice of the "affidavit of emergency removal" at the protective custody hearing; (3) finding that continuation of the children in their home would be contrary to their welfare; (4) finding that reasonable efforts were made, prior to placement, to prevent or eliminate the need for removal and make it possible for the children to return home; and (5) imposing certain conditions on Ricardo's visitation with the children.

IV. STANDARD OF REVIEW

A jurisdictional question that does not involve a factual dispute is determined by an appellate court as a matter of law. *In re Interest of Jordon B.*, 316 Neb. 974, 7 N.W.3d 894 (2024).

The determination of whether the procedures afforded to an individual comport with the constitutional requirements for procedural due process presents a question of law. *Id.* An appellate court independently reviews questions of law decided by a lower court. *Id.*

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 Bosileo D. et al.*, 321 Neb. 490, 35 N.W.3d 434 (2026).

V. ANALYSIS

1. JURISDICTION

The State argues that we lack appellate jurisdiction to consider the juvenile court's ex parte temporary custody order and the portions of the November 19, 2025, continued protective custody order relating to visitation because they were not final, appealable orders. In a juvenile case, as in any other appeal, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *In re Interest of Johnny H.*, 320 Neb. 675, 29 N.W.3d 808 (2026). For an appellate court to acquire jurisdiction of an appeal, there must be a final order or judgment entered by the court from which the appeal is taken; conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders. *In re Interest of Jordon B., supra*. Accordingly, we address the State's jurisdictional arguments first.

Under Neb. Rev. Stat. § 25-1902 (Cum. Supp. 2024), the four types of final orders that may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered, and (4) an order denying a motion for summary judgment when such motion is based on the assertion of sovereign immunity or the immunity of a government official. *In re Interest of Sayrah P.*, 315 Neb. 436, 996 N.W.2d 623 (2023). A proceeding before a juvenile court is a special proceeding for appellate purposes. *Id.*

An order in a juvenile special proceeding is final and appealable if it affects a parent's substantial right to raise his or her child. *In re Interest of Joel T. et al.*, 321 Neb. 106, 32 N.W.3d 640 (2026). A substantial right is an essential legal right, not a mere technical right. *Id.* Whether an order affects a substantial right of a parent is dependent upon both the object of the order and the length of time over which the parent's relationship with the juvenile may reasonably be expected to be disturbed. *Id.*

(a) Ex Parte Order

Ricardo assigns error to the juvenile court's order granting the State's motion for an ex parte order of emergency temporary custody. We are without jurisdiction, however, to address this assignment of error. An ex parte temporary custody order keeping a child's custody from his or her parent for a short period of time is not a final order. *In re Interest of Chloe P.*, 21 Neb. App. 456, 840 N.W.2d 549 (2013). Because this court is without jurisdiction to consider orders which are not final in nature, we are without jurisdiction to consider Ricardo's argument that the court erred in granting the ex parte temporary custody order.

(b) Continued Protective Custody Order

The juvenile court's November 19, 2025, order continued the children in the Department's custody and their placement with Autumn and imposed certain conditions on Ricardo's visitation with the children. The portion of the November 19 order continuing the children's custody with

the Department and their placement outside Ricardo's home was a final, appealable order. A preadjudication order granting continued detention affects a parent's substantial right. *In re Interest of Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009). See, also, *In re Interest of Ty M. & Devon M.*, 265 Neb. 150, 655 N.W.2d 672 (2003) (detention order issued under § 43-247(3)(a) and § 43-254 after hearing which continues to withhold custody of juvenile from parent pending adjudication hearing to determine whether juvenile is neglected is final order and thus appealable).

Ricardo assigns error both to the children's continued detention and placement outside of his home pending adjudication and to the visitation conditions imposed by the court in the November 19, 2025, order. While the State agrees that the portion of the order continuing the children's detention and placement outside of Ricardo's home pending adjudication affected Ricardo's substantial right and was appealable, it argues that we lack jurisdiction to consider Ricardo's arguments about the visitation portion of the November 19 order.

The State notes that orders which temporarily suspend a parent's custody, visitation, or education rights for a brief period of time do not affect a substantial right and therefore are not appealable. *In re Interest of Sayrah P.*, 315 Neb. 436, 996 N.W.2d 623 (2023). Then, citing *In re Interest of Danaisha W. et al.*, 287 Neb. 27, 840 N.W.2d 533 (2013), the State argues that the visitation portion of the November 19, 2025, order was temporary in nature because the court scheduled an "Adjudication - Docket Call" hearing for December 11 and scheduled a hearing on January 26, 2026, for "Trial - Trial Term" (presumably an adjudication hearing).

In *Danaisha W.*, after the juvenile court had temporarily suspended a mother's visitation rights with her children, the State filed a petition to terminate the mother's parental rights. The juvenile court thereafter entered an order that ended the temporary suspension of the mother's visitation rights but imposed specific conditions on the mother's visitation. On the same day, the juvenile court scheduled a hearing on the State's motion to terminate parental rights for about 6 weeks in the future. The mother appealed the visitation order, and the Nebraska Supreme Court dismissed her appeal for lack of a final, appealable order. The court reasoned that because the juvenile court entered its order reinstating visitation with conditions so near in time to the scheduled hearing on the State's motion to terminate her parental rights, the order's effects were only temporary and did not affect a substantial right. As a result, the order was not appealable.

Here, the conditions imposed by the juvenile court only temporarily affected Ricardo's relationship with his children. The court's November 19, 2025, order allowed fully supervised visitation with the children "as arranged by [the Department] with all interaction with the children to be in English." The court also scheduled a docket call hearing for December 11 and an adjudication hearing for January 26, 2026. While the court did not specifically designate the imposed visitation conditions as temporary in nature in its November 19, 2025, order, they were effectively so, given the subsequently scheduled adjudication hearing. Because the portion of the November 19 order relating to visitation was necessarily temporary in nature, it did not affect a substantial right and was not a final, appealable order. Accordingly, we do not have jurisdiction to consider Ricardo's assignment of error relating to the visitation conditions imposed by the juvenile court.

2. Remaining Assignments of Error

(a) Due Process

Ricardo assigns that the juvenile court erred by overruling his due process objection and taking judicial notice of the "affidavit of emergency removal" at the protective custody hearing. Ricardo argues that the State did not clearly identify the document in its request, and, thus, he was not properly notified of its contents and was denied due process. Ricardo also argues that, assuming the court took judicial notice of the affidavit attached to the State's motion for an order for ex parte emergency temporary custody, he was denied due process because the affidavit contained multiple layers of hearsay, and he was not allowed to cross-examine each of the declarants.

We first note that papers requested to be judicially noticed must be marked, identified, and made a part of the bill of exceptions. *Trausch v. Hagemeier*, 313 Neb. 538, 985 N.W.2d 402 (2023). Although that procedure was not followed here, it is reasonably clear that, in its request for judicial notice, the State was referring to its motion for an order for ex parte emergency temporary custody and the supporting affidavit attached to it. The State asked the juvenile court to take judicial notice of "the [m]otion for [t]emporary [c]ustody and the affidavit of emergency removal for the limited purposes of this hearing." Ricardo objected only to the request to take judicial notice of the affidavit. The court overruled the objection and stated that it was taking judicial notice "of that motion and affidavit." We also note that because the State's ex parte motion and attached affidavit were not marked and included as exhibits in the bill of exceptions on appeal, they are not properly before us as evidence. A bill of exceptions is the only vehicle for bringing evidence before an appellate court; evidence which is not made a part of the bill of exceptions may not be considered. *Kuehn v. Evnen*, 322 Neb. 161, 39 N.W.3d 85 (2026). See, also, *North Star Mut. Ins. Co. v. Stewart*, 311 Neb. 33, 970 N.W.2d 461 (2022) (affidavit used as evidence in trial court cannot be considered on appeal unless it is offered in evidence and preserved in and made part of bill of exceptions). Procedural due process includes notice to the person whose right is affected by the proceeding; reasonable opportunity to refute or defend against the charge or accusation; reasonable opportunity to confront and cross-examine adverse witnesses and present evidence on the charge or accusation; representation by counsel, when such representation is required by the Constitution or statutes; and a hearing before an impartial decisionmaker. *In re Interest of Lilly S. & Vincent S.*, 298 Neb. 306, 903 N.W.2d 651 (2017).

Here, Ricardo was not denied due process of law. First, he was provided with proper notice of the November 19, 2025, protective custody hearing, demonstrated by his appearance and representation by counsel at the hearing. Although the affidavit judicially noticed by the juvenile court was not marked as an exhibit and included in the bill of exceptions, Eisenmenger was identified as the author of the affidavit in support of temporary custody during his testimony. Eisenmenger testified about his investigation and the affidavit, including statements made to him by Autumn and Ricardo. During the State's examination of Eisenmenger, Ricardo's counsel made a hearsay objection when the State asked Eisenmenger what Autumn disclosed when he first contacted her. The court overruled the objection "for limited purposes of this hearing." Ricardo's attorney made no other hearsay objections during the hearing. During his cross-examination of Eisenmenger, Ricardo's counsel specifically referenced and read from the affidavit. Ricardo testified on his own behalf and had the opportunity to present his own version of events. Upon the

juvenile court's inquiry at the conclusion of Ricardo's testimony, his attorney indicated that he had no additional evidence to present. Autumn was present at the November 19, 2025, hearing. Ricardo could have called Autumn to testify regarding any statements she made to law enforcement, but he chose not to do so.

The record does not show that Ricardo's due process rights were violated. This assignment of error fails.

(b) Continued Temporary Custody with Department

Ricardo assigns that the juvenile court erred by finding that continuation of the children in their home would be contrary to their welfare. He argues that the State failed to meet its burden of proof for the children's continued detention pending adjudication.

Neb. Rev. Stat. § 43-254 (Cum. Supp. 2024) sets forth the requirements for continuing to withhold a juvenile from his or her parent pending adjudication and provides, in part, as follows:

> If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (6) of section 43-248 [without a warrant where juvenile is seriously endangered in his or her surroundings and immediate removal appears necessary for the juvenile's protection], the 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 section 43-283.01.

The State must prove the requirements of § 43-254 by a preponderance of the evidence. See *In re Interest of Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009). See, also, *In re Interest of Harley S.*, 32 Neb. App. 707, 4 N.W.3d 886 (2024) (to demonstrate that preadjudication detention should continue, State must prove by preponderance of evidence that custody of juvenile should remain in care of Department pending adjudication).

The State's evidence showed that the children were removed from Ricardo's care after Selena's allegations of sexual abuse against her uncles and her participation in a forensic interview. When police contacted Ricardo to inform him of the emergency removal of the children from his home, he denied the possibility of any abuse despite one of the uncles having stayed in Ricardo's home the night prior to the forensic interview. Eisenmenger testified that when he investigated similar allegations of sexual abuse about a year prior, Ricardo's family seemed more focused on the safety of the suspect at that time (one of the uncles), rather than Selena's safety. Eisenmenger was concerned that Ricardo would not enforce an order prohibiting the uncles from his home. The current police investigation of the allegations of sexual abuse was ongoing.

Upon our de novo review, we find that the State met its burden to prove, by a preponderance of the evidence, that placement of the children with Ricardo would be contrary to their health, safety, or welfare.

(c) Reasonable Efforts

Ricardo assigns that the juvenile court erred in finding that reasonable efforts were made, prior to placement, to prevent or eliminate the need for removal and make it possible for the children to return home.

Neb. Rev. Stat. § 43-283.01 (Cum. Supp. 2024) indicates that reasonable efforts to preserve and reunify the family shall be required except in a limited set of circumstances, and reasonable efforts are required both before a juvenile is removed from the home and after the juvenile has been placed in foster care to make it possible for the juvenile to return to the home. *In re Interest of Dewayne G. & Devon G.*, 10 Neb. App. 177, 625 N.W.2d 849 (2001), *reversed on other grounds* 263 Neb. 43, 638 N.W.2d 510 (2002). "In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern." § 43-283.01(1).

Here, law enforcement conducted a removal of the children from Ricardo's home following Selena's allegations of sexual abuse against her uncles (one of whom lived in Ricardo's home) and her forensic interview describing that recent abuse, including her allegation that some abuse occurred in Ricardo's home the night prior to her interview. The record shows that law enforcement also investigated similar allegations about a year prior and that the investigation of Selena's current allegations of sexual abuse was ongoing. After the children's removal, the Department offered services to Ricardo, including in-home family support, parenting classes, a co-occurring evaluation, and transportation assistance.

Ricardo concedes that he was offered services by the Department a couple of days prior to the protective custody hearing, but he argues that there was no evidence of any efforts, such as safety planning, to prevent the children's removal. This court has previously observed:

> The statute [§ 43-283.01] does not specifically delineate what constitutes 'reasonable efforts to preserve and reunify the family,' and it seems apparent that what level of efforts are considered 'reasonable' will vary greatly from case to case. For example, it is likely that what constitutes reasonable efforts as required by . . . § 43-254 . . . prior to an emergency removal may well be a different level of efforts than what is required in postdetention situations where the juvenile has been placed in foster care.

In re Interest of Dewayne G. & Devon G., 10 Neb. App. at 181, 625 N.W.2d at 852. Under the circumstances of this case, the juvenile court did not err in finding that reasonable efforts had been made prior to removal.

VI. CONCLUSION

For the reasons stated above, we affirm the juvenile court's November 19, 2025, order continuing the temporary legal custody of Ricardo's children with the Department pending adjudication.

AFFIRMED.