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# Claudina Salguero-Arriaza, appellant, v. Juan V. Navarijo-Davila, appellee.

___ N.W.3d ___

Filed September 8, 2026. No. A-25-948.

1. **Statutes.** Statutory interpretation presents a question of law.
2. **Judgments: Appeal and Error.** An appellate court independently reviews questions of law decided by a lower court.
3. **Federal Acts: Minors: Appeal and Error.** An appellate court, when reviewing a trial court's special immigration juvenile determinations, applies the same standard of review ordinarily applied to judicial determinations in the type of action or proceeding in which the determinations were requested.
4. **Federal Acts: Minors.** Under 8 U.S.C. § 1101(a)(27)(J) (2018) of the federal Immigration and Nationality Act, special immigrant juvenile status provides certain immigrant children the ability to seek lawful permanent residence in the United States.
5. **Jurisdiction: Minors: Child Custody.** In Nebraska, a court with jurisdiction to determine custody of a child has jurisdiction to make special immigrant juvenile status determinations regarding such child.
6. **Courts: Minors.** The role of state courts in the special immigrant juvenile status determination is to make the findings of fact necessary to the U.S. Citizenship and Immigration Service's legal determination of the immigrant child's entitlement to special immigrant juvenile status.
7. **Jurisdiction: Minors: Child Custody: Evidence.** Pursuant to Neb. Rev. Stat. § 43-1238(b) (Cum. Supp. 2024), if the preponderance of the evidence supports making the requested special immigrant juvenile status findings, a Nebraska court exercising jurisdiction over an initial child custody proceeding shall issue an order including them.
8. **Paternity: Minors: Appeal and Error.** In a filiation proceeding in which special immigrant juvenile findings are requested, an appellate court reviews for an abuse of discretion.

9. **Judges: Words and Phrases.** A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition.
10. **Courts: Minors: Evidence.** Courts requested to make special immigrant juvenile status decisions are required to either make the requested special findings or find that the evidence was not credible or insufficient to do so.
11. **Courts: Minors: Child Custody: Evidence.** In making a best interests determination for purposes of determining special immigrant juvenile status, a court should consider the best interests factors routinely considered in making custody and removal determinations to the extent evidence of such factors is present in the record.

Appeal from the District Court for Douglas County: PETER C. BATAILLON, Judge. Affirmed in part, and in part vacated and remanded with directions.

Tyler D. McIntosh, of Roth Weinstein, L.L.C., for appellant.

No appearance for appellee.

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

RIEDMANN, Chief Judge.

## I. INTRODUCTION

Claudina Salguero-Arriaza (Claudina) filed a complaint against Juan V. Navarijo-Davila (Juan) to establish paternity and custody of her two minor children in the district court for Douglas County. In the course of the proceedings, she also requested the court make specific factual findings under Neb. Rev. Stat. § 43-1238(b) (Cum. Supp. 2024) that would allow the children to petition the federal government for special immigrant juvenile (SIJ) status.

Following evidentiary hearings, the district court entered an order that established Juan's paternity and awarded Claudina sole physical and legal custody of the two children. The court also entered a separate order concerning the requested SIJ findings. This order is the subject of Claudina's appeal. For

the foregoing reasons, we affirm in part, and in part vacate and remand with directions.

## II. BACKGROUND

Claudina and Juan were unmarried and living in Guatemala when their two children were born, one in August 2008 and the other in December 2015. Claudina and Juan's relationship ended in 2017, and she and the children moved from Guatemala to the United States sometime in 2019.

Claudina filed her complaint to establish paternity and custody in the district court in February 2025. The complaint alleged, in relevant part, that Juan had physically abused both Claudina and the older child; that Juan had abandoned the familial home in Guatemala in 2017 and had not had any "verbal contact" with the children since 2022; that reunification of the children with Juan was not possible because of his abuse, neglect, and "constructive abandonment"; and that it was not in the children's best interests to return to Guatemala because of such abuse, neglect, and constructive abandonment.

Claudina filed a motion requesting that the court allow her to serve Juan by substitute service because service could "not be made with reasonable diligence by any other method provided by statute." Her counsel submitted an affidavit with the motion that stated efforts to obtain Juan's address had failed and his whereabouts could not be verified despite diligent search and inquiry. However, counsel had been able to find a "Facebook" profile belonging to an individual with the same name as Juan. The court granted Claudina's motion and ordered that she give Juan notice by publication and send notice through Facebook as well. The record shows that Claudina complied with the statutory requirements of notice by publication and that notice was sent to this Facebook profile.

After Juan failed to enter an appearance, Claudina filed a motion for a "default hearing." Hearings were held on July 2 and 23, 2025, and Claudina testified to the following.

Claudina, Juan, and the two children lived together in Guatemala in the home of Juan's parents. Starting around 2013, Juan began physically and verbally abusing Claudina, and he did so several times in front of the children. On one occasion, her older child attempted to intervene, and Juan hit the child "[a]bout three times" to the point of leaving "a mark." Claudina once reported Juan's abuse to the police, but the police never came, which she testified was "customary" in Guatemala.

In 2017, Juan left the familial home to pursue a relationship with another woman. Claudina did not know where he went and did not have any contact with him after he left, although he did provide her with monthly payments by giving them to his mother, who then gave them to Claudina. However, after about 6 months, Claudina and the minor children moved from Juan's parents' home because she was afraid Juan would return, it was uncomfortable living with them, and she did not feel she had their support. Claudina denied that Juan's parents helped care for her or the children.

Claudina and the children moved into a house that was "about two streets" away. Claudina did not know if Juan knew where she and the children had moved after she left his parents' home. When Claudina and the children moved into their own home, Juan stopped making payments. Claudina did not know why Juan stopped sending money, but he had not provided for the children since that time. Claudina also had not spoken to Juan since he left the family home in 2017. In fact, both Juan and his parents had blocked Claudina from contacting them through the messaging application they had previously used to communicate.

Claudina and the children lived in the same house for approximately 1½ years before coming to the United States. Claudina brought her children to the United States because she feared Juan would come back and would hurt her and she believed her children would be safer in the United States. In the United States, the children went to school and had

excellent grades. Claudina held a job and was able to financially provide for them. She testified that she did not believe Juan knew where she was living at the time of the hearing.

At the close of evidence, Claudina's counsel made an oral motion for specific findings under § 43-1238(b) and requested the court find that the minor children had been abused, neglected, and abandoned by Juan; that as a result of this abuse, neglect, and abandonment, reunification with Juan was not viable; and that it was in the best interests of the minor children to reside in the United States with Claudina and it would not be in their best interests to be removed from the United States and returned to Guatemala. The court took the matter under advisement.

In December 2025, the district court adopted in part the default decree offered by Claudina, which established Juan's paternity and awarded her sole physical and legal custody of the minor children. The court also entered a separate order entitled "Order as to Special Immigration Juvenile Status." The order stated that the evidence was insufficient to conclude Juan had abandoned the children, but that it did show Juan had abused Claudina. However, it made no finding regarding whether he abused or neglected the minor children. The order further concluded that reunification of the children with Juan "may not be possible as [h]is whereabouts [were] unknown" to Claudina. However, reunification may have been possible with the "paternal grandparents who had provided care for the children." The court also stated it was making no finding as to the "safety of the children in Guatemala as there was insufficient evidence to make such a finding." The court found that it was in the children's best interests to "remain with their mother, [Claudina,] who now resides in the United States." Claudina has appealed from this order.

## III. ASSIGNMENTS OF ERROR

Claudina assigns, restated, that the district court erred as a matter of law (1) by failing to find the children had been

abandoned, abused, and neglected by Juan, even though such findings were supported by the evidence; (2) by finding reunification with Juan was not viable for reasons other than those contemplated by § 43-1238(b) and by considering the plausibility of reunification with the children's paternal grandparents; and (3) by failing to conduct a full analysis concerning whether the children's best interests required remaining in the United States, rather than returning to Guatemala; or, alternatively, that it abused its discretion (4) by failing to make the requested findings.

## IV. STANDARD OF REVIEW

[1,2] Statutory interpretation presents a question of law. *Hernandez v. Dorantes*, 314 Neb. 905, 994 N.W.2d 46 (2023). An appellate court independently reviews questions of law decided by a lower court. *Id.*

[3] Because an appellate court, when reviewing a trial court's SIJ determinations, applies the same standard of review ordinarily applied to judicial determinations in the type of action or proceeding in which the determinations were requested, we review for an abuse of discretion. See *id.* See, also, *Franklin M. v. Lauren C.*, 310 Neb. 927, 969 N.W.2d 882 (2022) (stating standard of review for child custody determinations in filiation proceedings are reviewed de novo on record and trial court's judgment upheld in absence of abuse of discretion).

## V. ANALYSIS

[4] Under 8 U.S.C. § 1101(a)(27)(J) (2018) of the federal Immigration and Nationality Act, SIJ status provides certain immigrant children the ability to seek lawful permanent residence in the United States. It is a unique form of immigration relief in that the application process requires determinations made by both the state courts and the federal government. *Hernandez, supra.* Generally speaking, the application for SIJ status involves a two-step process. *Id.*

[5] To be eligible for SIJ status, a petitioning juvenile must first obtain certain determinations from a state juvenile court. 8 C.F.R. § 204.11(a) (2024). In Nebraska, a court with jurisdiction to determine custody of a child has jurisdiction to make SIJ determinations regarding such child. See *Hernandez, supra.* By federal statute and regulation, the state juvenile court—rather than the U.S. Citizenship and Immigration Services (USCIS), the federal adjudicating entity—is designated as the appropriate forum for child welfare determinations regarding abuse, neglect, and abandonment, as well as determination of a child's best interests. *Id*. In pertinent part, 8 U.S.C. § 1101(a)(27)(J) defines a "special immigrant" as:

> [A]n immigrant who is present in the United States—
>
> (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
>
> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
>
> (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status[.]

Federal regulation instructs that subpart (i) and (ii) reflect the determinations to be made by the state juvenile court, when there is sufficient evidence, as the first step in the SIJ procedure. See, generally, 8 C.F.R. § 204.11(c). See, also, *Hernandez v. Dorantes*, 314 Neb. 905, 994 N.W.2d 46 (2023).

The second step in the SIJ procedure requires the juvenile to file a petition with USCIS that includes the state court's determinations, after which USCIS conducts a plenary review and makes the final determination regarding SIJ status. *Id*. If SIJ status is approved by USCIS, the juvenile can apply for legal permanent residence in the United States. *Id*.

The Nebraska State Legislature has implemented legislation to support the federal SIJ procedure. See *id*. In 2018, the Legislature amended Nebraska's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Neb. Rev. Stat. §§ 43-1226 to 43-1266 (Reissue 2016 & Cum. Supp. 2024), to clarify that Nebraska courts with jurisdiction over an "initial child custody determination" as that term is used in § 43-1238(a) also have jurisdiction and authority to make special findings of fact similar to those contemplated by 8 U.S.C. § 1101(a)(27)(J). See *Hernandez, supra.*

Section 43-1238(b) of the UCCJEA provides, in relevant part, that these courts have the authority to make factual findings regarding:

> (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such factual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.

[6] Because the federal courts have exclusive jurisdiction over immigration status, the merits of a juvenile's application for SIJ status, if any, will be determined in immigration proceedings in accordance with federal law. *Hernandez, supra.* Accordingly, the role of state courts in the SIJ status determination is to make the findings of fact necessary to USCIS'

legal determination of the immigrant child's entitlement to SIJ status. See *id*. See, also, *Sabino v. Ozuna*, 305 Neb. 176, 939 N.W.2d 757 (2020).

[7] Pursuant to § 43-1238(b), if the preponderance of the evidence supports making the requested SIJ findings, a Nebraska court exercising jurisdiction over an initial child custody proceeding shall issue an order including them. See *Hernandez, supra.* Federal regulations state that a juvenile court's order should include the factual basis for any determinations. See 8 C.F.R. § 204.11(d)(5)(i).

In the present case, Claudina requested the district court make the requisite SIJ findings under § 43-1238(b), but it failed to do so. The district court's order stated that the evidence was insufficient to establish abandonment, but it did not address whether the children had been abused or neglected. Therefore, although it concluded that reunification with Juan "may not be possible as [h]is whereabouts are unknown," it did not address whether reunification was not viable due to abuse or neglect. And although it stated it was in the children's best interests to remain with Claudina, "who now resides in the United States," it did not make an unqualified finding whether removal would be in the children's best interests independent of Claudina's residency. Claudina assigns multiple errors regarding the district court's order.

### 1. Court's Findings Regarding Abuse, Abandonment, or Neglect of Children

In its order, the district court found that the evidence was insufficient to show the children had been abandoned by Juan. It found that the evidence was sufficient to show "there was abuse by [Juan] upon [Claudina]" but did not make a finding whether there was abuse upon the children, nor did it make any finding whether the children had been neglected by Juan. Claudina assigns that the district court erred by failing to find the children had been abused, abandoned, and neglected by Juan because § 43-1238(b) requires a court to

issue such findings when they are supported by the evidence, as was the case here.

(a) Abandonment

The district court found the evidence was insufficient to support a finding that Juan had abandoned the children. Claudina argues the preponderance of the evidence supported otherwise. We disagree.

[8,9] Courts asked to make SIJ determinations are not required to make determinations favorable to the party seeking them and may conclude that there was insufficient evidence. See *Hernandez v. Dorantes*, 314 Neb. 905, 994 N.W.2d 46 (2023). When SIJ findings are requested, it is ordinarily appropriate to apply the preponderance of the evidence standard that generally applies in civil cases. See *id*. In a filiation proceeding in which SIJ findings are requested, we review for an abuse of discretion. See *Hernandez, supra* (applying standard of review applicable to proceedings in which SIJ findings are requested). A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition. *Id*.

Here, the court found that Claudina had failed to provide sufficient evidence to show that Juan had abandoned the children despite evidence he had left their residence to be with another woman. The court explained that Juan provided support for 6 months after he left and that after those 6 months, Claudina moved out of the family residence. Claudina believed that Juan did not know where she and the children had moved. Because her move coincided with the termination of Juan's payments, the court found there was insufficient evidence to conclude whether the payments stopped because he did not know where Claudina and the children were or "for no reason."

The UCCJEA is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

Section 43-1227(1) provides the definition of abandonment that controls inquiries in child custody cases, including when making SIJ findings under § 43-1238(b). It states that "[a]bandoned means left without provision for reasonable and necessary care or supervision." See § 43-1227(1). The Nebraska Juvenile Code also defines "[a]bandonment" as "a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child"; a "[j]uvenile" is defined as "any person under the age of eighteen." Neb. Rev. Stat. § 43-245 (Supp. 2025).

Although the evidence is undisputed that Juan has not provided financially or otherwise for the children for years, the cessation of his financial contribution coincided with Claudina's departure from his parents' home. And by her own admission, she did not believe Juan knew where she and the children had gone. Due to this evidence, the district court stated it was unable to conclude that there was abandonment. We find no abuse of discretion in the district court's determination that there was insufficient evidence to support the requested finding of abandonment. See *Hernandez, supra* (applying abuse of discretion standard).

(b) Abuse and Neglect

The district court's order made no mention of whether the children had been abused or neglected by Juan. Claudina argues that the district court erred by failing to make these findings because § 43-1238(b) requires a court to issue such findings when they are supported by the evidence. We agree that the court erred as a matter of law by failing to issue findings concerning whether the children had been abused or neglected by Juan or whether the evidence was insufficient to do so; however, because the district court has not addressed this issue, we decline to do so on appeal. See *De Mateo v. Mateo-Cristobal*, 27 Neb. App. 969, 938 N.W.2d 372 (2020)

(stating appellate court will not consider issue on appeal not passed upon by trial court).

As stated, the role of state courts in the SIJ status determination is to make the findings of fact necessary to USCIS' legal determination of the immigrant child's entitlement to SIJ status. *Sabino v. Ozuna*, 305 Neb. 176, 939 N.W.2d 757 (2020). We iterate that obtaining SIJ status in part requires preliminary findings by a state court that a juvenile has experienced abuse, abandonment, or neglect. See § 43-1238(b).

[10] Because a state court is requested to make findings for purposes of SIJ status does not mean that it must make findings favorable to the party seeking them. See *Sabino, supra.* However, courts are required to either make the requested special findings or find that the evidence was not credible or insufficient to do so. See, e.g., *Sabino, supra* (citing *In re J.J.X.C.*, 318 Ga. App. 420, 734 S.E.2d 120 (2012) (explaining that state court has duty to consider SIJ factors and make findings because appellate courts cannot affirm without positive indication that court addressed issues)); *De Mateo, supra*.

Thus, because Claudina requested the court make SIJ findings that the children had been abused and neglected by Juan, the district court was required under § 43-1238(b) to issue an order either making such findings or stating its basis for refusing to do so. See *Sabino, supra*; *De Mateo, supra*. However, it did not do so. We find the court erred by failing to make findings concerning abuse and neglect of the children, and we remand the cause to the district court to enter an order that includes findings regarding whether the children have been abused or neglected.

For the sake of completeness, we note that an alien juvenile is the focus of SIJ proceedings, and the relevant preliminary findings consider only whether said juvenile has suffered abuse, abandonment, or neglect. See § 43-1238(b). See, also, 8 U.S.C. § 1101(a)(27)(J). The language of § 43-1238(b) requires a finding of whether the juvenile has suffered abuse. A finding of abuse by one parent upon another parent, without

more, does not satisfy this requirement. Thus, the district court's finding that Juan abused Claudina was insufficient to address whether the children suffered abuse.

### 2. Court's Findings Regarding Viability of Reunification

The district court's order stated that "reunification with [Juan] may not be possible as [h]is whereabouts are unknown by [Claudina]. However, the children might be properly reunited with their paternal grandparents." Claudina assigns the court erred as a matter of law by making this finding because it relied upon factors that are irrelevant to the inquiry under § 43-1238(b)(2).

Section 43-1238(b) requires, in part, that the court make a finding regarding the nonviability of reunification with at least one of the child's parents *due to such abuse, abandonment, neglect, or a similar basis under state law*. Because the district court did not make a finding that Juan had abused, abandoned, or neglected the children, it was unable to determine viability of reunification because of such findings. Instead, it turned to matters outside of the statutory language. And while the statute allows a determination based on "a similar basis under state law," we do not read the court's bases to be similar to abuse, abandonment, or neglect. Consequently, the district court erred in its findings of the nonviability of reunification on the bases of Juan's whereabouts and the possible reunification with his parents.

We vacate that portion of the district court's order regarding the viability of reunification with Juan and instruct the district court upon remand to address the issue consistent with the language of § 43-1238(b).

### 3. Court's Findings Regarding Children's Best Interests

The district court's order states that it made "no finding as to the safety of the children in Guatemala as there was insufficient evidence to make such a finding." However, the court did

find that, "at the present, it is in the children's best interest[s] to remain with their mother, [Claudina,] who now resides in the United States." Claudina assigns the court erred by failing to conduct a full analysis concerning whether the children's best interests required remaining in the United States, rather than limiting its consideration to whether the children were safe in Guatemala.

Before addressing Claudina's argument, we note that in its order, the district court found that it was in the children's best interests "to remain with their mother, [Claudina,] who now resides in the United States." However, the proper inquiry under § 43-1238(b)(3) is "whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence," not whether it is in the child's best interests to remain with a specific individual. Under the court's language, if Claudina returned to Guatemala, or moved to any other country, it would be in the children's bests interests to go with her. This, however, is not the question under § 43-1238(b)(3).

The district court was required to consider whether it was in the children's best interests to be removed from the United States to Guatemala. The court erred as a matter of law by failing to address the requisite inquiry. We vacate this portion of the court's order and instruct the court on remand to make findings consistent with the proper inquiry under § 43-1238(b)(3).

[11] Claudina argues that in making a finding of the children's best interests, the district court should analyze the factors contained in Neb. Rev. Stat. § 43-2923 (Reissue 2016). As observed in *Hernandez v. Dorantes*, 314 Neb. 905, 919, 994 N.W.2d 46, 58 (2023), 8 C.F.R. § 204.11(c), in making a best interests determination, "'[n]othing in this part should be construed as altering the standards for best interest determinations that juvenile court judges routinely apply under relevant State law.'" We agree that upon remand, the district court

should consider the best interests factors routinely considered in making custody and removal determinations to the extent evidence of such factors is present in the existing record.

### 4. Sufficiency of Evidence

Claudina further argues, in the alternative, that the district court abused its discretion by failing to make findings because the evidence was sufficient to show that Juan had abused and neglected the minor children; that reunification with him was not viable because of his abuse, abandonment, or neglect; and that it was in the children's best interests to remain in the United States, rather than return to Guatemala. However, the district court did not address these issues. We therefore decline to address whether the evidence was sufficient to support these findings and thus whether the court abused its discretion in failing to make these findings. See *De Mateo v. Mateo-Cristobal*, 27 Neb. App. 969, 938 N.W.2d 372 (2020) (stating appellate court will not consider issue on appeal not passed upon by trial court).

## VI. CONCLUSION

We affirm the district court's finding that the evidence was insufficient to conclude Juan had abandoned the minor children. However, because the court either failed to address the other requested findings or considered irrelevant factors in doing so, we vacate the remainder of the order and remand the cause with directions for the court to enter a new order consistent with § 43-1238(b) and this opinion, based on the existing record.

Affirmed in part, and in part vacated and remanded with directions.