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IN RE INTEREST OF TREY H., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. TREY H., APPELLEE, AND DEPARTMENT OF HEALTH AND HUMAN SERVICES, APPELLANT.

798 N.W.2d 607

Filed June 17, 2011. No. S-10-953.

1. **Administrative Law: Appeal and Error.** An appellate court independently reviews questions of law decided by a lower court.
2. **Jurisdiction: Judgments.** A jurisdictional issue that does not involve a factual dispute presents a question of law.
3. **Statutes.** The meaning and interpretation of a statute present a question of law.
4. **Juvenile Courts: Child Custody: Appeal and Error.** When a juvenile court has given the department of Health and Human Services custody of a juvenile, Neb. Rev. Stat. § 43-285(5) (Reissue 2008) authorizes the department to seek review of a juvenile court order denying it requested relief.
5. **Juvenile Courts: Jurisdiction: Statutes.** Juvenile courts are courts of limited and special jurisdiction and have authority to act only if a statute confers such authority on them.
6. **Juvenile Courts: Jurisdiction: Child Custody.** A juvenile court's jurisdiction over an adjudicated juvenile continues even when it commits a juvenile to the Office of Juvenile Services. So for at least some purposes, the court has jurisdiction over the juvenile from the time it adjudicates the juvenile until the Office of Juvenile Services discharges the juvenile.
7. **Juvenile Courts: Final Orders.** When a court adjudicates a juvenile under both subsection (2) and subsection (3)(b) of Neb. Rev. Stat. § 43-247 (Reissue 2008) and commits the juvenile to the Office of Juvenile Services with a placement at a youth rehabilitation and treatment center, it has determined that the subsection (2) adjudication will control the juvenile's disposition.
8. ____: ____. When a juvenile court decides to place a juvenile adjudicated under Neb. Rev. Stat. § 43-247(2) and (3)(b) (Reissue 2008) at a youth rehabilitation and treatment center, the placement decision controls and Neb. Rev. Stat. § 43-278 (Reissue 2008) does not authorize the court to conduct review hearings.
9. **Jurisdiction: Words and Phrases.** Subject matter jurisdiction is a court's power to hear and determine a case in the general class or category to which the proceedings in question belong and to deal with the general subject involved in the action or proceeding before the court and the particular question which it assumes to determine.
10. **Jurisdiction.** The question of a court's subject matter jurisdiction does not turn solely on the court's authority to hear a certain class of cases. It also involves determining whether a court has authority to address a particular question that it assumes to decide or to grant the particular relief requested.
11. **Juvenile Courts: Jurisdiction.** A juvenile court lacks jurisdiction to conduct or order review hearings to monitor a juvenile's progress while the juvenile is placed at a youth rehabilitation and treatment center.

12. **Judgments: Jurisdiction.** A court action taken without subject matter jurisdiction is void.
13. **Judgments: Final Orders: Jurisdiction: Appeal and Error.** A void order is a nullity which cannot constitute a judgment or final order that confers appellate jurisdiction on this court.
14. **Judgments: Jurisdiction: Appeal and Error.** An appellate court has the power to determine whether it lacks jurisdiction over an appeal because the lower court lacked jurisdiction to enter the order; to vacate a void order; and, if necessary, to remand the cause with appropriate directions.

Appeal from the County Court for Cheyenne County: RANDIN ROLAND, Judge. Vacated and dismissed.

Eric M. Stott, Special Assistant Attorney General, for appellant.

Paul B. Schaub, Cheyenne County Attorney, for appellee State of Nebraska.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

In yet another ongoing turf battle between the juvenile courts and the Department of Health and Human Services (Department), a juvenile court determined that it had authority to conduct review hearings for a juvenile placed at a youth rehabilitation and treatment center (YRTC). The Department argues that the juvenile court did not have statutory authority to order the review hearings. After examining the juvenile code's statutory maze, we conclude that a juvenile court lacks subject matter jurisdiction to conduct review hearings for such juveniles. Because the order is void, we vacate the order and dismiss the Department's appeal.

BACKGROUND

In March 2010, the county court for Cheyenne County, sitting as juvenile court, adjudicated Trey H. under Neb. Rev. Stat. § 43-247(2) and (3)(b) (Reissue 2008). The original disposition committed him to the custody of the Office of Juvenile Services (OJS) with placement in his parental home. But in June, after Trey violated his treatment plan, the court changed

his placement to a YRTC. OJS operates the YRTC.[1] OJS is a section of the Department's Division of Children and Family Services.[2] A court's commitment of a juvenile to OJS is a commitment to the Department's care and custody "for the purpose of obtaining health care and treatment services."[3]

In September 2010, the court conducted a review hearing with Trey appearing telephonically. The Department argued that the court lacked jurisdiction to conduct the hearing. The court agreed that under *In re Interest of Jorge O.*,[4] it could not order Trey's release or a different disposition. But it concluded that it could monitor Trey's progress and determine what his attorney and guardian ad litem knew about Trey's progress at the YRTC. It concluded by scheduling another review hearing for a date 3 months later.

ASSIGNMENT OF ERROR

The Department assigns that the juvenile court erred in ordering a review hearing for a juvenile residing at the YRTC.

STANDARD OF REVIEW

[1-3] We independently review questions of law decided by a lower court.[5] A jurisdictional issue that does not involve a factual dispute presents a question of law.[6] The meaning and interpretation of a statute present a question of law.[7]

ANALYSIS

[4] When a juvenile court has given the Department custody of a juvenile, Neb. Rev. Stat. § 43-285(5) (Reissue 2008) authorizes the Department to seek review of a juvenile court

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[1] See Neb. Rev. Stat. § 43-404 (Reissue 2008).

[2] See Neb. Rev. Stat. §§ 81-3113 and 81-3116(2) (Reissue 2008).

[3] Neb. Rev. Stat. § 43-408(1) (Reissue 2008).

[4] *In re Interest of Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010).

[5] See *Jameson v. Liquid Controls Corp.*, 260 Neb. 489, 618 N.W.2d 637 (2000).

[6] *Middle Niobrara NRD v. Department of Nat. Resources, ante* p. 634, 799 N.W.2d 305 (2011).

[7] *Id.*

order denying it requested relief.[8] The Department argues that § 43-408(2) precludes review hearings for these juveniles.

The county attorney views it differently. It contends that (1) juvenile courts have jurisdiction to hold review hearings every 6 months for juveniles adjudicated under § 43-247(3)(b) and (2) the court can conduct review hearings for juveniles committed to a YRTC even if the juvenile is not adjudicated under subsection (3).

[5] Juvenile courts are courts of limited and special jurisdiction and have authority to act only if a statute confers such authority on them.[9] The Nebraska Constitution explicitly permits the Legislature to define a juvenile court's jurisdiction and its powers.[10] The Legislature, however, has not been consistent. It has sometimes sent mixed messages by withholding the statutory authority to act in areas for which it has conferred jurisdiction on juvenile courts.

[6] Section 43-247 gives a juvenile court continuing jurisdiction over an adjudicated juvenile:

> Notwithstanding any disposition entered by the juvenile court under the Nebraska Juvenile Code, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

A juvenile court's jurisdiction over an adjudicated juvenile continues even when it commits a juvenile to OJS. Section 43-408(2) provides that "[t]he court shall continue to maintain jurisdiction over any juvenile committed to [OJS] until such time that the juvenile is discharged from [OJS]." So for at least some purposes, the court has jurisdiction over the juvenile from the time it adjudicates the juvenile until OJS discharges the juvenile.

But despite this grant of jurisdiction, the Legislature has limited the court's authority to review the progress of a juvenile

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[8] See *In re Interest of C.G. and G.G.T.*, 221 Neb. 409, 377 N.W.2d 529 (1985).

[9] See *In re Interest of Jorge O., supra* note 4.

[10] See Neb. Const. art. V, § 27.

committed to OJS when the court approves placement of the juvenile at a YRTC. On further examining § 43-408(2), the next sentence states, "The court shall conduct review hearings every six months, or at the request of the juvenile, for any juvenile committed to [OJS] who is placed outside his or her home, *except for a juvenile residing at a* [*YRTC*]." (Emphasis supplied.) Section 43-408(2) also gives a court authority to determine that an out-of-home placement is not in the juvenile's best interests. But the court is handcuffed if it has placed the juvenile at a YRTC. In that circumstance, it cannot conduct review hearings to determine if it is in the best interests of the juvenile to be placed at a YRTC.

Recently, we addressed a juvenile court's lack of authority to conduct review hearings in *In re Interest of Jorge O.*[11] That case involved two consolidated appeals. In one case, the court sustained OJS' request to transfer a juvenile, who was already committed to OJS' custody, to a YRTC. In the other, the court committed the juvenile to OJS for placement at a YRTC in the original disposition order. In both cases, the court ordered OJS not to discharge the juvenile without the court's approval and to schedule a review hearing after the juvenile's discharge from the YRTC.

We held that only OJS has the statutory authority to determine whether a juvenile will be discharged from a YRTC. We further held that a juvenile court lacks authority to conduct review hearings for juveniles after OJS has discharged them from a YRTC. We stated that § 43-408(2) precludes a juvenile court from conducting review hearings while the juvenile is placed at a YRTC. We also stated that Neb. Rev. Stat. § 43-412(2) (Reissue 2008) precludes the court from conducting review hearings after the juvenile's discharge from a YRTC. We concluded that a juvenile's discharge from a YRTC is a "'complete release'" that precludes a juvenile court from exercising jurisdiction over a juvenile after the discharge.[12] Because the court had exceeded its powers, we reversed and vacated those portions of the court's orders that required OJS

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[11] *In re Interest of Jorge O., supra* note 4.

[12] *Id.* at 417, 786 N.W.2d at 347.

to obtain the court's approval for discharge and to schedule a review hearing.

But we did not view the court's order as an action taken without subject matter jurisdiction. The juvenile code authorizes a court to approve a transfer to a YRTC for juveniles already placed in OJS' custody[13] or to commit a juvenile age 12 or older to a YRTC in a disposition order.[14] In other cases, we have similarly vacated or reversed a juvenile court's order if the order included requirements that exceeded the court's authority or if the court failed to comply with prerequisites for taking the action.[15] We have not treated these orders as nullities that fail to confer jurisdiction on an appellate court if the juvenile statutes authorized the court to take an action. But here, the statutes do not authorize the action that the juvenile court purported to take—conducting or ordering a review hearing for juveniles committed to OJS and placed at a YRTC.

We recognize that the court adjudicated Trey under subsections (2) (felonious conduct if committed by an adult) and (3)(b) (uncontrolled conduct) of § 43-247. But we disagree with the county attorney that Neb. Rev. Stat. § 43-278 (Reissue 2008) is controlling here. It is correct that § 43-278 requires a juvenile court to conduct review hearings at least every 6 months for juveniles adjudicated under § 43-247(3) (neglected or uncontrolled). We also note that Neb. Rev. Stat. § 43-251.01(2) (Reissue 2008) prohibits a court from committing a juvenile adjudicated under subsection (3) (neglected or uncontrolled) to OJS or placing them in a YRTC.

[7] But these statutes do not prohibit a court from placing a juvenile at a YRTC if the court also adjudicated the juvenile under § 43-247(2) (felonious conduct). As noted, the court also adjudicated Trey under subsection (2), and § 43-286(1)(b)

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[13] See § 43-408(4).

[14] See Neb. Rev. Stat. § 43-286 (Reissue 2008).

[15] See, *In re Interest of Jorge O., supra* note 4; *In re Interest of Dakota M.*, 279 Neb. 802, 781 N.W.2d 612 (2010); *In re Interest of Dustin S.*, 276 Neb. 635, 756 N.W.2d 277 (2008); *In re Interest of Markice M.*, 275 Neb. 908, 750 N.W.2d 345 (2008). See, also, *In re Interest of Jeremy T.*, 257 Neb. 736, 600 N.W.2d 747 (1999).

explicitly permitted the court to place him at a YRTC in that circumstance. So when a court adjudicates a juvenile under both subsection (2) and subsection (3)(b) of § 43-247 and commits the juvenile to OJS with a placement at a YRTC, it has determined that the subsection (2) adjudication will control the juvenile's disposition.

[8] It follows that when a court determines that a juvenile's adjudication under § 43-247(2) controls the juvenile's disposition, the disposition must necessarily control which review hearing statute applies. Obviously, § 43-278's requirement for 6-month review hearings for juveniles adjudicated under § 43-247(3) and § 43-408(2)'s prohibition of review hearings for juveniles placed at a YRTC cannot both be enforced. We conclude that when a juvenile court decides to place a juvenile adjudicated under § 43-247(2) (felonious conduct) and (3)(b) (uncontrolled conduct) at a YRTC, the placement decision controls and § 43-278 does not authorize the court to conduct review hearings. This lack of statutory authorization raises the issue of the court's subject matter jurisdiction.

[9-11] Subject matter jurisdiction is a court's power to hear and determine a case in the general class or category to which the proceedings in question belong and to deal with the general subject involved in the action or proceeding before the court and the particular question which it assumes to determine.[16] But the question of a court's subject matter jurisdiction does not turn solely on the court's authority to hear a certain class of cases. It also involves determining whether a court has authority to address a particular question that it assumes to decide or to grant the particular relief requested.[17] We conclude that a juvenile court lacks jurisdiction to conduct or order review hearings to monitor a juvenile's progress while the juvenile is placed at a YRTC.

[12-14] Here, the juvenile court lacked subject matter jurisdiction to conduct or order review hearings for Trey. A court

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[16] See *In re Estate of Hockemeier*, 280 Neb. 420, 786 N.W.2d 680 (2010).

[17] See, *State ex rel. Lamm v. Nebraska Bd. of Pardons*, 260 Neb. 1000, 620 N.W.2d 763 (2001); *Ryan v. Ryan*, 257 Neb. 682, 600 N.W.2d 739 (1999); *In re Interest of J.T.B. and H.J.T.*, 245 Neb. 624, 514 N.W.2d 635 (1994).

action taken without subject matter jurisdiction is void.[18] A void order is a nullity which cannot constitute a judgment or final order that confers appellate jurisdiction on this court.[19] But an appellate court has the power to determine whether it lacks jurisdiction over an appeal because the lower court lacked jurisdiction to enter the order; to vacate a void order; and, if necessary, to remand the cause with appropriate directions.[20]

Because the juvenile court's order was void, the Department has not appealed from a final order or judgment. We therefore vacate the juvenile court's order and dismiss the appeal for lack of jurisdiction.

VACATED AND DISMISSED.

WRIGHT, J., not participating.

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[18] See, *Kovar v. Habrock*, 261 Neb. 337, 622 N.W.2d 688 (2001); *State v. Bracey*, 261 Neb. 14, 621 N.W.2d 106 (2001).

[19] See, *Macke v. Pierce*, 263 Neb. 868, 643 N.W.2d 673 (2002); *Bracey, supra* note 18; *State v. Rieger*, 257 Neb. 826, 600 N.W.2d 831 (1999).

[20] See, *Bracey, supra* note 18; *Rieger, supra* note 19.