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V. CONCLUSION

We conclude that the Douglas County Separate Juvenile Court has subject matter jurisdiction to hear this case because the court has authority to adjudicate Breana as a child within the meaning of § 43-247(3)(a). In addition, we find that proof of venue is immaterial when a petition is filed alleging a juvenile to be within the jurisdiction of the Nebraska Juvenile Code. We find that the juvenile court erred in granting the motions to dismiss. We therefore reverse the dismissal order and remand the case for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

IN RE GUARDIANSHIP OF DAVID G., A MINOR CHILD. DANA G., APPELLANT, V. STEPHANIE P. AND JACK M., APPELLEES.

798 N.W.2d 131

Filed April 5, 2011. No. A-10-927.

1. **Judgments: Appeal and Error.** An appellate court determines questions of law independently of the determination reached by the lower court.
2. ____: ____. Generally, the right of the plaintiff to voluntary dismissal is a right that is not a matter of judicial grace or discretion.
3. **Jurisdiction: Dismissal and Nonsuit.** A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice.

Appeal from the County Court for Douglas County: LYN V. WHITE, Judge. Affirmed as modified.

Catherine Mahern and Patrick Erker, Senior Certified Law Student, of Milton R. Abrahams Legal Clinic, for appellant.

No appearance for appellees.

SIEVERS, CARLSON, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Prior to final submission of Dana G.'s petition for the appointment of a guardian for a minor child, Dana moved

to dismiss her petition without prejudice. The county court instead dismissed the petition with prejudice, and Dana appeals. Because the dismissal without prejudice was both a matter of right and compelled by the absence of subject matter jurisdiction, we modify the dismissal to be without prejudice.

BACKGROUND

Although the identity of the parties is unimportant to our analysis, we note that Stephanie P. and Jack M. are the biological parents of David G., born in Iowa in January 1997. Dana is David's paternal aunt.

On January 27, 2010, in the county court for Douglas County, Nebraska, Dana filed a petition for the appointment of a temporary and permanent guardian for David. She alleged that David had resided in Douglas County since September 2, 2009, that David's mother was unwilling and unable to care for him due to her drug abuse and child neglect, and that David's father had been incarcerated since September 2. Dana further alleged that the best interests of David required that she be appointed his guardian.

The county court entered an order on May 17, 2010, which stated that a court in Iowa "possibly has initial jurisdiction of the custody of the child." The court ordered Dana to provide it with a brief concerning whether it had jurisdiction and continued the hearing to June 21.

On August 16, 2010, Dana filed a motion to dismiss her petition without prejudice, stating that she no longer was seeking to become the child's legal guardian. On August 18, the county court held a hearing on the motion to dismiss. David's guardian ad litem was present, and his mother appeared telephonically, but neither Dana nor her counsel appeared. The county court judge called an Iowa district court judge and had the conversation placed on the record. The Iowa judge confirmed that there had been an action in Iowa which determined David's custody. That same day, the county court entered an order of dismissal with prejudice.

Dana filed a motion to alter or amend the judgment, requesting the county court to amend its dismissal from "with prejudice" to "without prejudice." After a hearing, the court entered

an amended order. The county court found that it lacked jurisdiction because a district court in Iowa had a divorce action with prior initial jurisdiction of the custody of the minor child. The court amended its August 18, 2010, order "to dismiss [Dana's] Petition for Guardianship with prejudice, unless [Dana] files with the Petition appropriate consents required by the law of the State of Iowa."

Dana timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENT OF ERROR

Dana assigns, restated, that the county court erred in dismissing her motion to dismiss with prejudice rather than doing so without prejudice.

STANDARD OF REVIEW

[1] An appellate court determines questions of law independently of the determination reached by the lower court. *Ashby v. State*, 279 Neb. 509, 779 N.W.2d 343 (2010).

ANALYSIS

Dana's argument concedes that her petition for appointment of guardian should have been dismissed, but urges that the dismissal should have been without prejudice. We agree and conclude that the county court erred for two reasons.

[2] First, an action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the court where the trial is by the court. Neb. Rev. Stat. § 25-601(1) (Reissue 2008). Generally, the right of the plaintiff to voluntary dismissal is a right that is not a matter of judicial grace or discretion. *Knapp v. Village of Beaver City*, 273 Neb. 156, 728 N.W.2d 96 (2007). Because Dana moved to dismiss her petition before submission of the case to the court, the court erred when it dismissed the action with prejudice.

[3] Second, a dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice. *Stalley v. Orlando Regional Healthcare System*, 524 F.3d 1229 (11th Cir. 2008). See, also, *Garman v. Campbell County*

School Dist. No. 1, 630 F.3d 977 (10th Cir. 2010); *Ernst v. Rising*, 427 F.3d 351 (6th Cir. 2005). If a court lacks subject matter jurisdiction, it lacks the power to reach the merits of the case. See, generally, *In re Interest of J.T.B. and H.J.T.*, 245 Neb. 624, 514 N.W.2d 635 (1994). As a general rule, a dismissal with prejudice is an adjudication on the merits. See *Simpson v. City of North Platte*, 215 Neb. 351, 338 N.W.2d 450 (1983). Clearly, the county court was properly concerned that it did not have subject matter jurisdiction because of the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act. Jurisdiction over a child custody proceeding is governed exclusively by the Uniform Child Custody Jurisdiction and Enforcement Act. *Carter v. Carter*, 276 Neb. 840, 758 N.W.2d 1 (2008). Jurisdiction over custody matters having interstate dimension must be determined independently by application of the Uniform Child Custody Jurisdiction and Enforcement Act. *Carter v. Carter, supra*. Having correctly determined that the county court lacked subject matter jurisdiction of the Nebraska proceeding and having chosen to dismiss the proceeding, the court should have done so without prejudice as it lacked the power to adjudicate the matter on the merits. These circumstances require us to modify the court's order accordingly. See *Hart v. U.S.*, 630 F.3d 1085 (8th Cir. 2011).

CONCLUSION

Because the county court erred in dismissing Dana's petition with prejudice, we modify its dismissal to be without prejudice. As so modified, we affirm.

AFFIRMED AS MODIFIED.