Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/12/2026 07:28 PM CST

the caller's number, where the call came from, and the time and length of the call. Landell further testified that the computer servers where the records are stored are serviced and tested by the company on a regular basis to make sure they are accurate. We determine that Landell's testimony provided sufficient authentication to support the admission of the cellular telephone records. Taylor's arguments to the contrary are without merit.

VI. CONCLUSION

For the foregoing reasons, the district court committed reversible error in giving jury instruction No. 9. Accordingly, we reverse, and remand the cause for a new trial. On remand, any step jury instruction given should conform to NJI2d Crim. 3.1, as discussed above.

REVERSED AND REMANDED FOR A NEW TRIAL.

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

803 N.W.2d 46

Filed September 16, 2011. No. S-10-819.

1. **Juvenile Courts: Appeal and Error.** An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.
2. **Statutes: Appeal and Error.** To the extent an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent conclusion irrespective of the determination made by the court below.
3. **Moot Question.** A case becomes moot when the issues initially presented in litigation cease to exist or the litigants lack a legally cognizable interest in the litigation's outcome.
4. **Moot Question: Jurisdiction: Appeal and Error.** Although mootness does not prevent appellate jurisdiction, it is a justiciability doctrine that can prevent courts from exercising jurisdiction.
5. **Moot Question: Appeal and Error.** Under the public interest exception, an appellate court may review an otherwise moot case if it involves a matter affecting the public interest or when other rights or liabilities may be affected by its determination.

6. ____: ____. When determining whether a case involves a matter of public interest, an appellate court considers (1) the public or private nature of the question presented, (2) the desirability of an authoritative adjudication for future guidance of public officials, and (3) the likelihood of future recurrence of the same or a similar problem.
7. **Courts: Contempt.** Generally, a court may punish for contempt as a part of the court's inherent contempt powers.
8. **Juvenile Courts: Contempt.** The juvenile court, as a court of record, has the statutory authority pursuant to Neb. Rev. Stat. § 25-2121 (Reissue 2008) to punish contemptuous conduct by fine or imprisonment.
9. ____: ____. To find a party in contempt in juvenile court, there must be a finding of willful violation of a juvenile court's order.
10. **Final Orders: Notice.** Whenever a court must determine an uncertain fact before entering an order, the party affected by the order is entitled to reasonable notice and an opportunity to be heard.
11. **Jurisdiction: Appeal and Error.** It is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
12. **Juvenile Courts: Appeal and Error.** A proceeding before a juvenile court is a "special proceeding" for appellate purposes.
13. **Final Orders: Appeal and Error.** To be final and appealable, an order in a special proceeding must affect a substantial right.
14. **Final Orders: Words and Phrases.** A substantial right is an essential legal right, not a mere technical right.

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

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

Krista Shaul, Deputy Cheyenne County Attorney, for appellee State of Nebraska.

Sarah Helvey, for amicus curiae Nebraska Appleseed Center for Law in the Public Interest.

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

MILLER-LERMAN, J.

I. NATURE OF CASE

The Nebraska Department of Health and Human Services (DHHS) appeals the July 27, 2010, order of the county court for Cheyenne County, sitting as a juvenile court, which found DHHS in contempt of an order requiring it to identify

appropriate placement, including counseling, for Thomas M., a juvenile under the court's jurisdiction. DHHS also appeals the August 9, 2010, order in which the court stated that DHHS would be in contempt of court if it did not provide satisfactory evidence that certain future billings related to Thomas' placement were timely paid. Although the issues surrounding the July 27 order are moot, we consider them under the public interest exception. Because the August 9 order is not a final, appealable order, we do not consider it. In view of the foregoing, we dismiss this appeal.

II. STATEMENT OF FACTS

In April 2010, the county court for Cheyenne County, sitting as a juvenile court, adjudicated Thomas to be a juvenile within the meaning of Neb. Rev. Stat. § 43-247(1), (2), and (3)(b) (Reissue 2008) on the bases that he had committed acts which would constitute a felony and misdemeanors and that he was uncontrollable by his parents. The court ordered Thomas to be placed in the custody of DHHS and committed to detention. In May 2010, the court further adjudicated Thomas to be a juvenile who was mentally ill and dangerous under § 43-247(3)(c). Because of the basis of these adjudications, Thomas was considered under the Nebraska Juvenile Code as both a law violator and a status offender and therefore subject to statutory provisions relevant to an adjudication under § 43-247(1), (2) and (3). See *In re Interest of Katrina R.*, 281 Neb. 907, 799 N.W.2d 673 (2011) (distinguishing between "status offenders" and "law violators" under Nebraska Juvenile Code). The court ordered placement at a youth detention center in Gering, Nebraska.

After a disposition hearing on July 8, 2010, the court filed an order in which it required, inter alia, that Thomas participate in counseling no less than three times per week and that DHHS arrange such counseling. On July 20, the court held another disposition hearing and directed DHHS to provide the court with a list of appropriate placement locations for Thomas after DHHS had consulted with a doctor regarding recommended options. In an order filed July 21, the court stated that if no appropriate placement was immediately available and presented to the

court at the next placement hearing on July 26, then DHHS "shall be in contempt of court and pay $400.00 per day into the Court until Thomas is . . . placed appropriately."

In an order filed July 27, 2010, following the July 26 placement hearing, the court found that Thomas did not have appropriate placement, because DHHS had failed to comply with the court's July 8 order requiring DHHS to place Thomas at a facility which would provide Thomas with counseling no less than three times per week. The court stated that "[p]ursuant to this court's contempt order of July 20, 2010, [D]HHS shall pay into this Court $400.00 per day until it provides written verification that THOMAS . . . is receiving counseling as ordered." The court also approved Thomas' proposed placement at a group home when a bed would become available in 2 to 3 weeks.

Following another placement hearing, the court entered an order on August 9, 2010, in which it ordered that Thomas be placed at Colorado Boys Ranch in La Junta, Colorado. The court ordered that a representative of DHHS transport Thomas to the ranch, tour the ranch, meet the staff, and report findings to the court. The court also stated that all billings from the ranch should be paid within 20 days of receipt and that "[i]f not paid in full as ordered herein, [D]HHS shall be in contempt of court and pay $500.00 per day into the court until the court is provided with satisfactory evidence that the bill has been paid in full." The court further ordered that copies of all billings from the ranch be provided to the court, "with the court setting a contempt hearing on payment of the same about twenty days thereafter."

On August 16, 2010, DHHS filed a notice of appeal in which it stated its intent to appeal the juvenile court's orders of July 27 and August 9.

III. ASSIGNMENTS OF ERROR

Regarding the July 27, 2010, order, DHHS claims that the juvenile court erred when it found DHHS in contempt, because (1) sovereign immunity prevented the court from entering a contempt order against DHHS, which is an agency of the State of Nebraska, and (2) the court failed to give DHHS proper

notice and an opportunity to be heard on the issue of contempt and the element of willfulness. Regarding the August 9 order, DHHS claims that the juvenile court erred when it ordered hearings to determine proof of payment of all billings associated with Thomas' placement at the Colorado Boys Ranch, because such order interfered with DHHS' right to contract without interference.

IV. STANDARDS OF REVIEW

[1] 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 Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010).

[2] To the extent an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent conclusion irrespective of the determination made by the court below. *Id.*

V. ANALYSIS

1. The July 27, 2010, Order

(a) Although the July 27, 2010, Contempt Order Is Moot, It Will Be Considered Under the Public Interest Exception

The juvenile court found DHHS in contempt at the hearing of July 26, 2010, and the order was later reduced to writing and filed on July 27. The contempt order was based on DHHS' failure to adhere to the court's placement order, which placement was to have included counseling. Although on appeal the parties did not raise the issue of mootness with respect to this contempt order, the record shows that DHHS complied with the court's order to arrange counseling for Thomas three times a week later in the day on July 26. The record from the hearing on August 9 shows that the juvenile court acknowledged that DHHS had satisfied its order. Thus, DHHS purged itself of contempt almost immediately and DHHS' interest in seeking relief from the order of contempt was extinguished. The contempt issue became moot.

[3-6] We have explained mootness and our authority to review a moot issue as follows:

> A case becomes moot when the issues initially presented in litigation cease to exist or the litigants lack a legally cognizable interest in the litigation's outcome. Although mootness does not prevent appellate jurisdiction, it is a justiciability doctrine that can prevent courts from exercising jurisdiction.
>
> But under the public interest exception, we may review an otherwise moot case if it involves a matter affecting the public interest or when other rights or liabilities may be affected by its determination. And when determining whether a case involves a matter of public interest, we consider (1) the public or private nature of the question presented, (2) the desirability of an authoritative adjudication for future guidance of public officials, and (3) the likelihood of future recurrence of the same or a similar problem.

Evertson v. City of Kimball, 278 Neb. 1, 7, 767 N.W.2d 751, 758 (2009).

This appeal presents valid reasons for applying the public interest exception. Previous appellate cases have questioned the authority of the juvenile court to hold DHHS or individuals associated therewith in contempt, but the issue has evaded review. E.g., *In re Interest of Simon H.*, 8 Neb. App. 225, 590 N.W.2d 421 (1999), *overruled on other grounds, Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010). We believe authoritative guidance is warranted regarding the power of the juvenile court to hold DHHS in contempt for violation of its order. Accordingly, this case falls within the public interest exception and we consider the contempt issue.

(b) The Juvenile Court Had the Power to Hold DHHS in Contempt

On July 27, 2010, the juvenile court issued the following written order:

> THOMAS . . . does not have appropriate placement at this time at the Youth Detention Center in Gering, Nebraska due to [D]HHS failing to comply with this court's prior order of July 8, 2010 requiring [D]HHS

> to provide THOMAS . . . with counseling no less than three times per week. Pursuant to this court's contempt order of July 20, 2010, [filed July 21,] [D]HHS shall pay into this Court $400.00 per day until it provides written verification that THOMAS . . . is receiving counseling as ordered.

On appeal, DHHS claims that the juvenile court erred when it found DHHS in contempt, because the juvenile court did not have jurisdiction to issue a contempt order due to DHHS' sovereign immunity. We reject this argument.

[7] We have recognized in a juvenile case that generally, a court may punish for contempt as a part of the court's contempt powers. See *In re Interest of Krystal P. et al.*, 251 Neb. 320, 557 N.W.2d 26 (1996). In *In re Interest of Krystal P. et al.*, we affirmed an award of attorney fees against DHHS where DHHS had been held in contempt by the county court sitting as a juvenile court for failure of DHHS to abide by a visitation order issued by the juvenile court. We recognized a limited waiver of sovereign immunity with respect to the issue on appeal. Implicit in our decision in *In re Interest of Krystal P. et al.* was the recognition of the juvenile court's authority to issue the visitation and contempt orders and to hold DHHS, which had appeared in the case, in contempt.

DHHS acknowledges that under the Nebraska Juvenile Code, it became a "'party'" to the action when the juvenile court awarded Thomas to the care and custody of DHHS. Brief for appellant at 13. The juvenile court has jurisdiction over DHHS as the "custodian" of Thomas. See § 43-247(5) (providing that juvenile court has jurisdiction over "[t]he parent, guardian, or custodian of any juvenile described in this section"). See, also, Neb. Rev. Stat. §§ 43-284 (Reissue 2008) and 43-285 (Cum. Supp. 2010).

In the instant case, the State, through the county attorney, initiated the action by filing a juvenile petition as supplemented, alleging that Thomas was a child within the meaning of § 43-247(1), (2), and (3)(b). Because the State, through the county attorney, initiated the action under the juvenile code, the State had elected to sue and waived sovereign immunity to the extent encompassed by the juvenile code. See Neb. Const.

art. V, § 22 (providing that State "may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought").

It logically follows that where the State has waived sovereign immunity in the case and the agency (DHHS) has appeared in the case, the breadth of the waiver by the State is equally applicable to the agency. See *In re Interest of Krystal P. et al., supra*. See, also, *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010) (equating agency and State for purposes of waiver of sovereign immunity); *County of Lancaster v. State*, 247 Neb. 723, 529 N.W.2d 791 (1995). Given that the juvenile court had contempt power, as we will explain below, and given that DHHS had appeared in the case and waived sovereign immunity, the juvenile court had authority to enforce its contempt order against DHHS. See, also, Neb. Rev. Stat. § 43-246 (Cum. Supp. 2010) (providing generally for judicial procedure through which purposes of Nebraska Juvenile Code shall be enforced).

Under § 43-285(1), "*the assent of the court*" is required regarding "placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile" committed to DHHS. (Emphasis supplied.) Under § 43-285(2), the juvenile court has the authority to order DHHS to prepare and file a placement plan for the court's approval. See, also, Neb. Rev. Stat. § 43-286(1) (Reissue 2008) (regarding law violators); § 43-286(2) (regarding status offenders). Section 43-285 has been read to grant broad authority to the juvenile courts to make orders which are in the best interests of juveniles under their jurisdictions. See *In re Interest of Veronica H.*, 272 Neb. 370, 721 N.W.2d 651 (2006). A placement order is one such order.

[8] In addition, Neb. Rev. Stat. § 25-2121 (Reissue 2008) provides that "[e]very court of record shall have power to punish by fine and imprisonment . . . persons guilty of" contemptuous conduct. We have repeatedly held that under the Nebraska Juvenile Code, separate juvenile courts and county courts sitting as juvenile courts are courts of record. See, e.g., *In re Interest of Tyler T.*, 279 Neb. 806, 781 Neb. 922 (2010). Therefore, the juvenile court, as a court of record, has the

statutory authority pursuant to § 25-2121 to punish contemptuous conduct by fine or imprisonment, as it did in this case. See *Hofferber v. Hastings Utilities, ante* p. 215, 803 N.W.2d 1 (2011). We read the July 27, 2010, order as an order of contempt in which the juvenile court determined at the July 26 hearing that DHHS had failed to comply with the juvenile court's properly issued placement order. The failure to place Thomas where he could receive counseling was the specific manner in which the placement order was breached. In sum, the juvenile court had authority to find DHHS in contempt of its properly issued placement order, although for reasons explained below, the process by which contempt was found was flawed.

(c) DHHS Did Not Receive Reasonable Notice and Opportunity to Be Heard Regarding Potential Contempt

The juvenile court's order filed July 21, 2010, notified DHHS that "[i]f no appropriate placement is presented to the Court . . . at the next Placement Hearing, [scheduled for July 26,] [D]HHS shall be in contempt of court and pay $400.00 per day into the Court until Thomas . . . is placed appropriately."

DHHS was found in contempt. DHHS claims that the notice of the proceedings of July 26, 2010, as well as the proceeding itself were flawed. We agree.

The written order of July 21, 2010, did not notify DHHS of the specific attributes of an "appropriate placement" and, in particular, failed to advise DHHS that the failure to arrange counseling three times a week for Thomas would be deemed insufficient and result in contempt. Further, the record does not contain a show cause order which would have alerted DHHS that the counseling feature of the placement was critical to the juvenile court's assent to placement and that failure to provide for this attribute of placement without cause would result in contempt. See *In re Contempt of Potter*, 207 Neb. 769, 301 N.W.2d 560 (1981) (noting importance of show cause order prior to holding party in contempt). The notice regarding the hearing of July 26 was inadequate. Finally, a review of the bill of exceptions of the July 26 hearing fails to show a

meaningful opportunity for DHHS to submit evidence which would have negated a finding of a willful violation of the juvenile court's order.

U.S. Const. amend. XIV and Neb. Const. art. I, § 3, prohibit the State from depriving any "person" of life, liberty, or property without due process of law. *Rock Cty. v. Spire*, 235 Neb. 434, 455 N.W.2d 763 (1990). In the instant case, DHHS is neither a natural nor an artificial "person" and, therefore, cannot invoke due process protection against the State. See *id*. See, also, *City of Lincoln v. Central Platte NRD*, 263 Neb. 141, 638 N.W.2d 839 (2002); *Loup City Pub. Sch. v. Nebraska Dept. of Rev.*, 252 Neb. 387, 562 N.W.2d 551 (1997). Although not framed as a due process issue, DHHS nevertheless contends and we agree that adequate notice and a meaningful opportunity to be heard prior to entry of a contempt order are warranted.

[9,10] To find a party in contempt in juvenile court, there must be a finding of willful violation of a juvenile court's order. See *In re Contempt of Miller*, 212 Neb. 864, 326 N.W.2d 680 (1982). The Nebraska Court of Appeals has observed that only a willful failure to abide by the juvenile court's order would be contemptuous and, further, that willfulness is a fact which must be established on the record. See *In re Interest of Simon H.*, 8 Neb. App. 225, 590 N.W.2d 421 (1999), *overruled on other grounds, Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010). The Court of Appeals observed: "It seems basic that whenever a court must determine an uncertain . . . fact before entering an order, the party affected by the order is entitled to reasonable notice and an opportunity to be heard." *Id*. at 232-33, 590 N.W.2d at 426. In *In re Interest of Simon H.*, the Court of Appeals concluded that the contempt order was void for lack of notice and opportunity to be heard. In a similar manner, we conclude that the process surrounding the contempt order of July 27, 2010, stemming from the July 26 hearing was deficient.

2. The August 9, 2010, Order Regarding Payment Is Not a Final, Appealable Order

The juvenile court order filed August 9, 2010, provides as follows:

> 6. A copy of all billings from the Colorado Boys Ranch shall be provided to the court and all interested parties, with the court setting a contempt hearing on payment of the same about twenty days thereafter.
>
> 7. All billings from the Colorado Boys Ranch shall be paid in full within twenty (20) days of receipt. If not paid in full as ordered herein, [D]HHS shall be in contempt of court and pay $500.00 per day into the court until the court is provided with satisfactory evidence that the bill has been paid in full.

On appeal, DHHS claims that paragraphs 6 and 7 of the August 9, 2010, order will interfere with its statutory right to contract with private institutions and that this juvenile court order should be reversed. Based on the record presented, DHHS has not yet been held in contempt as a result of this order. Thus, DHHS' objection to this order is limited to the terms of the order itself. We conclude that the order appealed from is not a final, appealable order.

DHHS refers us to Neb. Rev. Stat. §§ 81-3117 (Reissue 2008) (providing generally for duties of chief executive officer of DHHS, including duty to enter into agreements to provide services) and 68-1206 (Reissue 2009) (providing generally for DHHS to contract with other social agencies for purchase of social services) as support of its power to contract with private institutions. To the extent relevant, reference to Neb. Rev. Stat. § 43-290 (Reissue 2008) is also made. Section 43-290 provides in part: "If the juvenile has been committed to the care and custody of [DHHS], *the department shall pay* the costs for the support, study, or treatment of the juvenile which are not otherwise paid by the juvenile's parent." (Emphasis supplied.)

We recognize that DHHS has a right to enter into contracts and the responsibility to pay its obligations. We do not read the juvenile court's order as interfering with DHHS' ability to select vendors or enter into contracts. That is, we do not read the juvenile court's order as affecting a substantial right.

[11] In juvenile cases, as elsewhere, we have long observed that "it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it." *In re Interest of Taylor W.*, 276 Neb. 679, 681, 757 N.W.2d 1, 4 (2008). Neb.

Rev. Stat. § 25-1911 (Reissue 2008) provides for appellate review of final orders. A final order is defined as "[a]n order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment . . . ." Neb. Rev. Stat. § 25-1902 (Reissue 2008). Since the challenged order of August 9, 2010, neither determines the action and prevents a judgment nor was made upon a summary application in an action after judgment, we must determine whether the challenged order affects a substantial right and is made in a special proceeding.

[12-14] A proceeding before a juvenile court is a "special proceeding" for appellate purposes. *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). To be final and appealable, an order in a special proceeding must affect a substantial right. *In re interest of Anthony R. et al.*, 264 Neb. 699, 651 N.W.2d 231 (2002). A substantial right is an essential legal right, not a mere technical right. *In re Estate of Muncillo*, 280 Neb. 669, 789 N.W.2d 37 (2010).

DHHS has the technical right to enter into contracts. The August 9, 2010, order does not hinder or affect DHHS' right to contract or select contractors based on criteria which meet the obligations of DHHS. Because the August 9 order does not affect a substantial right of DHHS, it is not a final, appealable order.

VI. CONCLUSION

We conclude that the appeal taken from the July 27, 2010, order is moot, although we discuss it under the public interest exception to mootness. We conclude that the August 9 order does not affect a substantial right and is not a final, appealable order. Accordingly, we dismiss this appeal.

APPEAL DISMISSED.

WRIGHT, J., not participating.