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

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

809 N.W.2d 274

Filed February 24, 2012. Nos. S-11-450, S-11-451.

1. **Juvenile Courts: Appeal and Error.** In reviewing questions of law arising under the Nebraska Juvenile Code, an appellate court reaches conclusions independent of the lower court's rulings.
2. **Juvenile Courts: Judgments: Child Custody: Appeal and Error.** Placement orders in juvenile cases are dispositional in nature and therefore final orders for purposes of appeal.

Appeals from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge. Affirmed.

Jon C. Bruning, Attorney General, and John M. Baker, Special Assistant Attorney General, for appellant.

Donald W. Kleine, Douglas County Attorney, Cody Miltenberger, and Kailee Smith, Senior Certified Law Student, for appellee State of Nebraska.

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

HEAVICAN, C.J.

INTRODUCTION

The sole question presented by this appeal is whether the juvenile court had the authority to discharge the Office of Juvenile Services (OJS) and instead place the juveniles at issue in the instant cases on probation. We conclude that the juvenile court does have such power and accordingly affirm.

BACKGROUND

The facts are undisputed. The juveniles in these two cases, Charlicia H. and Jauvier P., were both adjudicated for law violations. Charlicia was adjudicated for shoplifting, and Jauvier was adjudicated as being an accessory to a felony.

For Charlicia, who was adjudicated under Neb. Rev. Stat. § 43-247(1) (Reissue 2008), a predispositional investigation was done by the Office of Probation Administration (Probation), followed by a temporary placement with OJS, an agency of the Nebraska Department of Health and Human Services (DHHS), for an evaluation. Following that evaluation, Charlicia was placed with OJS. Subsequently, the juvenile court discharged OJS and Charlicia was transferred to juvenile probation.

Jauvier's path was similar, though not identical. Following a predispositional investigation, Jauvier, who was adjudicated under § 43-247(2), was temporarily placed with DHHS at OJS for an evaluation. Following that evaluation, the juvenile court placed Jauvier with Probation. The juvenile court subsequently also committed Jauvier to the temporary custody of OJS for placement. Jauvier was then placed first in the parental home, then with an aunt. Following that placement, the juvenile court discharged OJS and transferred Jauvier to Probation.

DHHS appealed, arguing that the juvenile court lacked jurisdiction to transfer a juvenile from OJS to Probation. DHHS does not contend that the placements with Probation are harmful to the juveniles or not in their best interests. We consolidated these cases and moved them to our docket.

ASSIGNMENT OF ERROR

DHHS assigns, restated and consolidated, that the juvenile court lacked the jurisdiction to discharge a juvenile from OJS and instead place that juvenile on probation.

STANDARD OF REVIEW

[1] In reviewing questions of law arising under the Nebraska Juvenile Code, an appellate court reaches conclusions independent of the lower court's rulings.[1]

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[1] *In re Interest of Mainor T. & Estela T.*, 267 Neb. 232, 674 N.W.2d 442 (2004).

ANALYSIS

Juvenile Court's Authority.

In these cases, DHHS concedes that the juvenile court has the authority to place a juvenile on probation, but then subsequently revoke that probation and place the juvenile with OJS. However, DHHS argues that there is no legislative authority to do the opposite and that the juvenile court was without the authority to discharge OJS and place Charlicia and Jauvier with Probation.

We begin with a primer on the relevant statutes. Under § 43-247, the juvenile court has jurisdiction over certain categories of juveniles. Once the court adjudicates a juvenile under § 43-247(1) or (2), the court has the ability to order a predispositional investigation under Neb. Rev. Stat. § 43-281 (Reissue 2008). Following a predispositional investigation, a juvenile appears for disposition. In these cases, because both Charlicia and Jauvier were accused of law violations, disposition occurred under Neb. Rev. Stat. § 43-279 (Reissue 2008).

The juvenile court has the ability under Neb. Rev. Stat. § 43-286 (Supp. 2011) to order several different dispositions: It may (1) place the juvenile on probation subject to the supervision of a probation officer[2]; (2) permit the juvenile to remain in the family home, but under the supervision of a probation officer;[3] (3) place the juvenile in a suitable family home or institution, again subject to the supervision of a probation officer; or (4) place the juvenile with OJS.[4] This court has noted that it is permissible to order both OJS and Probation to be simultaneously involved in the dispositional plan for a juvenile.[5]

If the juvenile court places a juvenile on probation under § 43-286(1)(a), it retains the authority, as it would under the criminal code, to revoke that probation.[6] The possible results of that revocation are as follows:

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[2] § 43-286(1)(a)(i).

[3] § 43-286(1)(a)(ii).

[4] § 43-286(1)(b).

[5] See *In re Interest of Katrina R.*, 281 Neb. 907, 799 N.W.2d 673 (2011).

[6] § 43-286(5)(b).

> If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered[.][7]

If, instead of probation, the juvenile court chooses to place a juvenile with OJS, the juvenile court then orders an initial level of treatment[8] and continues to monitor the juvenile until the juvenile is legally discharged or attains the age of 19.[9] The monitoring includes the ability to change treatment options[10] and to determine whether in-home or out-of-home placement is in the best interests of the juvenile.[11]

Throughout this process, the juvenile court's jurisdiction

> shall continue over any juvenile brought before the court or committed under the Nebraska Juvenile Code and the court shall have power to order a change in the custody or care of any such juvenile if at any time it is made to appear to the court that it would be for the best interests of the juvenile to make such change.[12]

According to § 43-412(1), "[e]very juvenile committed to [OJS] shall remain committed until he or she attains the age of nineteen or is legally discharged."

We turn to DHHS' argument that the juvenile court lacks jurisdiction to place a juvenile on probation after it has committed the juvenile to OJS. DHHS acknowledges that upon adjudication, the court may elect to place the juvenile on probation or commit him or her to OJS,[13] and that if probation is ordered but later revoked, the juvenile court may exercise any

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[7] § 43-286(5)(b)(v).

[8] Neb. Rev. Stat. § 43-408(2) (Reissue 2008).

[9] Neb. Rev. Stat. § 43-412(1) (Reissue 2008).

[10] § 43-408(3).

[11] *Id.*

[12] Neb. Rev. Stat. § 43-295 (Reissue 2008).

[13] See § 43-286.

of its original disposition options, including commitment to OJS.[14] But, DHHS contends, when a juvenile court commits a juvenile to OJS, it has no authority to subsequently revoke the commitment and place the juvenile on probation.

We find both §§ 43-295 and 43-412 relevant to our resolution of this question. When Charlicia and Jauvier were committed to OJS, § 43-412 provided in full:

> (1) Every juvenile committed to [OJS] pursuant to the Nebraska Juvenile Code or pursuant to subsection (3) of section 29-2204 shall remain committed until he or she attains the age of nineteen or is legally discharged.
>
> (2) The discharge of any juvenile pursuant to the rules and regulations or upon his or her attainment of the age of nineteen shall be a complete release from all penalties incurred by conviction or adjudication of the offense for which he or she was committed.

DHHS argues that § 43-412 explicitly provides that a juvenile committed to OJS remains committed until he or she attains the age of 19 or is legally discharged. The crux of DHHS' argument, then, is that once the juvenile court has placed a juvenile with OJS, it cannot undo that placement. We disagree that § 43-412 should be read as such.

To begin, we find DHHS' interpretation of § 43-412 to be inconsistent with the juvenile court's ongoing power to monitor a juvenile's progress while he or she is under the juvenile court's authority as set forth in § 43-408 and, in particular, with the juvenile court's powers under § 43-295. That section provides:

> Except when the juvenile has been legally adopted, the jurisdiction of the court shall continue over any juvenile brought before the court or committed under the Nebraska Juvenile Code and the court shall have power to order a change in the custody or care of any such juvenile if at any time it is made to appear to the court that it would be for the best interests of the juvenile to make such change.

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[14] See § 43-286(5)(b)(v).

Nor do we believe that DHHS' proposed interpretation is consistent with our recent decisions suggesting that a flexible approach must be taken in juvenile cases similar to these cases. Recently in *In Re Interest of Katrina R.*,[15] we were presented with the question of whether a juvenile adjudicated under § 43-247(3)(b) could be simultaneously committed to DHHS and placed on probation. We reasoned that the juvenile court had been vested with the authority to order both types of dispositions and noted that concurrent supervision was envisioned by the relevant statutory provisions. We declined to adopt DHHS' narrow interpretation of the relevant statutes because we felt that to do so would "fail[] to maintain a sensible scheme which gives effect to every provision of the [Nebraska Juvenile] Code."[16]

Particularly when the question is considered in light of the discretion given by § 43-295, we conclude that a sensible reading of § 43-412 would limit its application to a procedural one, setting forth the consequences of discharge from OJS. We do not believe that § 43-412 should be read as a policy statement regarding OJS' perpetual involvement in juvenile court cases. Nor do we believe that the juvenile court's action in placing these juveniles with Probation equates with discharge as contemplated by § 43-412.

In *In re Interest of Katrina R.*, we reasoned that "[a]bsent any provision affirmatively stating otherwise, it is within the juvenile court's discretion to issue whatever combination of statutorily authorized dispositions . . . the court deems necessary to protect the juvenile's best interests."[17] There is nothing to explicitly prevent the juvenile court from doing what it did in these cases. And the juvenile court has been vested with the power to place a juvenile with either OJS or Probation. Because of this, and because there is no contention that the juvenile court's action harmed either of these juveniles or was not in their best interests, we conclude that the juvenile court

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[15] *In re Interest of Katrina R., supra* note 5.

[16] *Id.* at 915, 799 N.W.2d at 679.

[17] *Id.*

had the authority to discharge OJS and place these juveniles with Probation. We accordingly affirm the decisions of the juvenile court.

State's Arguments on Appeal.

In addition to the arguments made in its brief filed in case No. S-11-451 pertaining to the issues discussed above, the State also argues that the juvenile court erred on December 16, 2010, when it originally placed Jauvier on probation. The State contends that the juvenile court was without authority to place Jauvier on probation and set the matter for continued disposition. According to the State,

> [h]ad it not been for the court committing plain error on December 16, 2010, in setting the matter for continued disposition after entering a [§] 43-286 dispositional order, the April 15, 2011 order and all subsequent orders would not have been issued as they were. Accordingly, the juvenile should never have been removed from probation and placed in OJS custody because the court failed to utilize the applicable statutory procedure which constituted plain error.[18]

[2] We decline to reach the State's arguments regarding the December 16, 2010, order. First, this order would be appropriately appealed within 30 days following entry of the December 16 order, which as a placement order is dispositional in nature and therefore final.[19] No such appeal was taken. And even if the December 16 order was not final, the proper avenue for raising an argument such as the one raised here by the State would be by cross-appeal.[20] This was not done.

CONCLUSION

The decisions of the juvenile court are affirmed.

AFFIRMED.

WRIGHT, J., not participating.

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[18] Brief for appellee State in No. S-11-451 at 20.

[19] See *In re Interest of Taylor W.*, 276 Neb. 679, 757 N.W.2d 1 (2008).

[20] Neb. Ct. R. App. P. § 2-109(D)(4) (rev. 2008). See, also, *Trieweiler v. Sears*, 268 Neb. 952, 689 N.W.2d 807 (2004).