Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/25/2026 01:12 AM CST

CONCLUSION

We find that there were no genuine issues of material fact for trial and that Gaver was entitled to retain the $45,000 of earnest money under the lot and house purchase agreements as a matter of law. Therefore, we affirm the decision of the district court in all respects.

AFFIRMED.

IN RE INTEREST OF KARLIE D., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLANT, V. GARY D., APPELLEE, AND MARTHA D., INTERVENOR-APPELLEE.

809 N.W.2d 510

Filed August 2, 2011. No. A-11-323.

1. **Jurisdiction: Appeal and Error.** A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.
2. **Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken.
3. **Final Orders: Appeal and Error.** An order is final for purposes of appeal if it affects a substantial right and (1) determines the action and prevents a judgment, (2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered.
4. **Juvenile Courts: Appeal and Error.** A proceeding before a juvenile court is a "special proceeding" for appellate purposes.
5. **Words and Phrases.** A substantial right is an essential legal right, not a mere technical right.
6. **Final Orders: Appeal and Error.** A substantial right is affected if an order affects the subject matter of the litigation, such as diminishing a claim or defense that was available to an appellant prior to the order from which an appeal is taken.

Appeal from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge. Appeal dismissed.

Donald W. Kleine, Douglas County Attorney, Jennifer C. Clark, and Amy Schuchman for appellant.

Chad M. Brown, of Chad Brown Law Offices, for intervenor-appellee.

IRWIN, MOORE, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

The State attempts to appeal from a juvenile court's order making a finding that a grandparent was a reputable citizen of good moral character, but neither removing the State nor appointing the grandparent as the child's guardian. Having considered the parties' written responses to our inquiry regarding jurisdiction, we conclude that the order does not affect a substantial right and thus does not constitute a final order. We therefore dismiss the appeal for lack of jurisdiction.

BACKGROUND

This case has a complicated procedural history, involving two juveniles in two different juvenile courts. The instant appeal, however, involves only Karlie D., who has been the subject of some dispute between her foster parents and her paternal grandmother, Martha D., who was permitted to intervene in the proceedings in November 2009. Karlie's father died during the pendency of the proceedings. In March 2010, Martha filed a motion seeking Karlie's placement in Martha's home. An amended motion asked that the paternal grandparents, i.e., Martha and her husband, be appointed as Karlie's guardians. In the midst of these proceedings, a number of continuations were granted and a number of motions and amended motions for termination of parental rights were being filed.

In an order entered on March 31, 2011, the juvenile court stated that the issues before it were whether Karlie should remain in the custody of the Nebraska Department of Health and Human Services (DHHS), whether Martha was a reputable citizen of good moral character as defined in Neb. Rev. Stat. § 43-284 (Reissue 2008), and, if so, whether Martha should be appointed guardian for Karlie. After a lengthy analysis, the court stated that it

> cannot find by a preponderance of the evidence that it would be inconsistent with the best interest, safety, and welfare of Karlie if permanency occurs with Martha . .

> . . By a preponderance of the evidence, the court finds Martha . . . to be a reputable citizen of good moral character. . . .
>
> However, before the court removes [DHHS] as the guardian, [DHHS] shall submit a transition plan to the court by May 15, 2011.

The court scheduled a further hearing for June 16, 2011. The State appealed on April 18.

In order to identify jurisdictional defects at the outset and to conserve the resources of both the court and the parties, we review each appeal for jurisdictional defects at the earliest possible time. Noting such an issue in the case before us, we directed the parties to submit written responses. Having now considered their submissions, we dispose of the jurisdictional issue.

STANDARD OF REVIEW

[1] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law. *StoreVisions v. Omaha Tribe of Neb.*, 281 Neb. 238, 795 N.W.2d 271 (2011), *modified on denial of rehearing* 281 Neb. 978, 802 N.W.2d 420.

ANALYSIS

[2] For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken. *In re Adoption of David C.*, 280 Neb. 719, 790 N.W.2d 205 (2010).

[3] The parties agree upon the proper analytical framework for determining whether the juvenile court's order was final, but they disagree how the framework applies to this particular order. An order is final for purposes of appeal if it affects a substantial right and (1) determines the action and prevents a judgment, (2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered. *StoreVisions v. Omaha Tribe of Neb., supra*. Both Martha and the State respond that we must look to the second category of final orders, i.e., orders affecting a substantial right made in a special proceeding.

[4] Further, the parties agree that the juvenile court's order was made in a special proceeding and that the question therefore turns upon whether the order affected a substantial right. A proceeding before a juvenile court is a "special proceeding" for appellate purposes. *In re Interest of T.T.*, 18 Neb. App. 176, 779 N.W.2d 602 (2009). Thus, we examine whether this particular order affected a substantial right.

The State argues that the order was final because "although the [o]rder did not entirely dispose of the merits of the case, it is clear the [c]ourt had its mind made up as to who would be the permanent guardian of Karlie and who would take over the parental rights and responsibilities." Brief for appellant on jurisdiction at 8. Further, the State urges that the June 16, 2011, hearing "should be understood as an occasion to discuss whether the subsidy or Medicaid coverage is consistent with Karlie's best interests, safety, and welfare, not as an occasion to discuss whether a transition plan had been submitted." *Id.* at 9. According to the State, the juvenile court's order "show[ed that] the [c]ourt had made up its mind as to who would be Karlie's legal guardian and who would acquire parental rights and responsibilities as to Karlie." *Id.* Thus, the State argues, "For all intents and purposes, a substantial right was affected in the [c]ourt's . . . [o]rder, and the [o]rder should be considered final for purposes of appeal." *Id.* at 9-10.

Martha responds that the juvenile court "left for another day to determine the transition plan. The [c]ourt's [o]rder does not completely close the door as to the juvenile case. The timeframe is not indefinite, but actually specific and leaves [sic] for another day and another hearing." Brief for appellee on jurisdiction at 2.

[5,6] Although it is the State rather than a parent which is taking the appeal, we look to the well-established definition of a substantial right. A substantial right is an essential legal right, not a mere technical right. *In re Adoption of David C.*, 280 Neb. 719, 790 N.W.2d 205 (2010). A substantial right is affected if the order affects the subject matter of the litigation, such as diminishing a claim or defense that was available to an appellant prior to the order from which an appeal is taken. *Id.* Whether a substantial right of a parent has been

affected by an order in juvenile court litigation is dependent upon both the object of the order and the length of time over which the parent's relationship with the juvenile may reasonably be expected to be disturbed. *Id.* In the context of a parent, the substantial right affected is the parent's liberty interest in raising his or her children. See *In re Interest of Anthony G.*, 6 Neb. App. 812, 578 N.W.2d 71 (1998). In contrast to a parent's rights, the State's rights flow from its parens patriae interest in setting standards for the care and protection of children. See *id.*

Our quotation of the State's argument exposes its obvious flaw—the State speculates about the juvenile court's state of mind instead of focusing on the actual effect of the court's order. The order implemented only two requirements. First, it required the State to submit a transition plan. Second, it directed the State to "assess whether a subsidy or Medicaid coverage for the care of Karlie is consistent with Karlie's best interests, safety, and welfare." Contrary to the State's belief, the order did not remove the State or appoint Martha as guardian. In this context, the State's interpretation seems analogous to a conditional interlocutory order, which cannot mature into a final, appealable order without further court consideration regarding the task or obligation to be performed. See *Custom Fabricators v. Lenarduzzi*, 259 Neb. 453, 610 N.W.2d 391 (2000). According to the Nebraska Supreme Court, parties should not be left to guess or speculate as to the final effect of a conditional interlocutory order. *Id.* Similarly, we decline to speculate regarding the juvenile court's ultimate order. Because the juvenile court's order was interlocutory, the court was not committed to a transfer of guardianship and was free to change its mind after reviewing the transition plan required by the order. Thus, we conclude that the instant order did not affect a substantial right.

We also analogize the order's content to one in a contempt proceeding making findings of contempt but imposing no sanction. Where a court makes findings of contempt but imposes no sanction, there is no final order from which to appeal. See, *Meisinger v. Meisinger*, 230 Neb. 37, 429 N.W.2d 721 (1988); *State ex rel. Kandt v. North Platte Baptist Church*, 225 Neb.

657, 407 N.W.2d 747 (1987), *overruled on other grounds, Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010); *Hammond v. Hammond*, 3 Neb. App. 536, 529 N.W.2d 542 (1995), *overruled on other grounds, Smeal Fire Apparatus Co. v. Kreikemeier, supra*. In the case before us, the juvenile court makes findings of suitability but does not make an order either appointing Martha or removing the State as guardian. Thus, the order makes no change in the status of the child's placement or guardian. This order, like the order in a contempt proceeding making findings but imposing no sanction, is not a final, appealable order.

CONCLUSION

The juvenile court's order made findings of Martha's suitability as a potential guardian but did not remove the State or appoint Martha as guardian. The order left that question for a later day. Although the order was made in a special proceeding, it did not affect a substantial right of the State. Thus, it was not a final, appealable order and we lack jurisdiction of the instant appeal.

APPEAL DISMISSED.

MARCENA M. HENDRIX, APPELLEE, V.
ROBERT J. SIVICK, APPELLANT.
803 N.W.2d 525

Filed August 9, 2011. No. A-10-1174.

1. **Divorce: Judgments: Appeal and Error.** The meaning of a decree presents a question of law, in connection with which an appellate court reaches a conclusion independent of the determination reached by the court below.
2. **Judges: Recusal: Appeal and Error.** A motion to recuse for bias or partiality is initially entrusted to the discretion of the trial court, and the trial court's ruling will be affirmed absent an abuse of that discretion.
3. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
4. **Courts: Jurisdiction.** A court that has jurisdiction to make a decision also has the power to enforce it by making such orders as are necessary to carry its judgment or decree into effect.