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In re Interest of LeAntonaé D. et al., children under 18 years of age. State of Nebraska, appellee, v. Stacy P., appellant.

___ N.W.2d ___

Filed April 7, 2020. No. A-19-703.

1. **Jurisdiction: Appeal and Error.** When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires an appellate court to reach a conclusion independent of the decision made by the lower court.
2. **Juvenile Courts: Jurisdiction: Appeal and Error.** In a juvenile case, as in any other appeal, 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.
3. **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 court from which the appeal is taken.
4. **Juvenile Courts: Parental Rights: Final Orders: Appeal and Error.** Juvenile court proceedings are special proceedings under Neb. Rev. Stat. § 25-1902 (Reissue 2016), and an order in a juvenile special proceeding is final and appealable if it affects a parent's substantial right to raise his or her child.
5. **Final Orders: Words and Phrases.** A substantial right is an essential legal right, not a mere technical right.
6. **Juvenile Courts: Parental Rights: Parent and Child: Time: Final Orders.** 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.
7. **Juvenile Courts: Final Orders: Appeal and Error.** Dispositional orders are final and appealable.

8. **Juvenile Courts: Judgments: Parental Rights.** A review order in a juvenile case does not affect a parent's substantial right if the court adopts a case plan or permanency plan that is almost identical to the plan that the court adopted in a previous disposition or review order.
9. **Juvenile Courts: Judgments: Appeal and Error.** A dispositional order which merely continues a previous determination is not an appealable order.

Appeal from the Separate Juvenile Court of Douglas County: Elizabeth G. Crnkovich, Judge. Appeal dismissed.

Peder Bartling, of Bartling Law Offices, P.C., L.L.O., for appellant.

Mark Hanna, Deputy Douglas County Attorney, and Emily Medcalf, Senior Certified Law Student, for appellee.

Pirtle, Riedmann, and Bishop, Judges.

Bishop, Judge.

Stacy P.'s five children were adjudicated on various dates to be within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2016), because they lacked proper parental care by reason of the faults or habits of Stacy. Subsequently, in an order filed on May 21, 2019, the separate juvenile court of Douglas County did not adopt the recommendations of the Nebraska Department of Health and Human Services (DHHS), including, but not limited to, the permanency plan of reunification of the children with Stacy, and the court found that no more reasonable efforts would be required in this matter. The juvenile court returned the case to DHHS for alternative permanency planning recommendations. At a hearing on June 20, evidence was received showing that DHHS recommended the permanency objective be changed to adoption pending the filing of a petition for the termination of Stacy's parental rights; and in its order on June 21, the court stated the permanency objective was adoption. Stacy appealed after only the June 21 order. However, because all of her assignments

of error and arguments relate to the May 21 order, which we find was a final, appealable order, we dismiss this appeal for lack of jurisdiction.

BACKGROUND

Stacy is the biological mother of LeAntonaé D. (born in 2006), Le'Than P. (born in 2008), Le'Anthony D. (born in 2012), Le'Yonnie D. (born in 2016), and Legend D. (born in 2019). Dexter D. is the father of LeAntonaé, Le'Anthony, Le'Yonnie, and Legend D.; he is Le'Than's stepfather. Le'Than's biological father is deceased. Dexter was subject to these same juvenile proceedings below, but because he is not part of this appeal, he will not be discussed any further.

In August 2018, the State filed a juvenile petition alleging that LeAntonaé and Le'Than were children within the meaning of § 43-247(3)(a) because they lacked proper parental care by reason of the faults or habits of Stacy. The State alleged the following: Stacy had not engaged in visits with LeAntonaé and Le'Than since April 28, 2018; she failed to provide safe, stable, and/or appropriate housing for them; she failed to provide proper parental care, support, and/or supervision for them; and for the above reasons, they were at risk for harm. These two children had apparently come into the care and custody of DHHS and been placed into separate foster homes in December 2017 because their parents were not able to follow a safety plan previously put in place to protect against intersibling sexual interaction.

In September 2018, LeAntonaé and Le'Than were adjudicated to be within the meaning of § 43-247(3)(a) based on Stacy's "no contest" plea to the allegations that she failed to provide proper parental care, support, and/or supervision for the children and that they were at risk for harm.

The State filed a second supplemental petition in September 2018 and an amended second supplemental petition in October, alleging that Le'Anthony and Le'Yonnie were children within the meaning of § 43-247(3)(a) because they lacked proper

parental care by reason of the faults or habits of Stacy. The State alleged the following: Stacy failed to therapeutically address the sexualized behaviors of Le'Anthony; Stacy's use of drugs and/or controlled substances placed the children at risk of harm; she failed to provide safe, stable, and/or appropriate housing for them; she failed to provide proper parental care, support, and/or supervision for them; and for the above reasons, they were at risk for harm. Also in September, the juvenile court granted the State's motion for temporary custody of Le'Anthony and Le'Yonnie, and they have remained in out-of-home placement ever since.

In an order filed in October 2018, the juvenile court ordered Stacy to comply with the following: submit to regular and random drug testing; not use alcohol, nonprescribed narcotics, illegal narcotics, and substances to include, but not be limited to, "marijuana and K-2 (synthetic marijuana)"; cooperate with all services provided by DHHS; complete a chemical dependency evaluation; complete a full-scale psychological evaluation to include intellectual functioning with a parenting assessment; submit to a psychiatric evaluation; and allow the family permanency specialist and the guardian ad litem access to the children and the home. The court also ordered that the home must have all necessities, including working utilities.

After a November 2018 first appearance and protective custody hearing on the amended second supplemental petition for Le'Anthony and Le'Yonnie and a disposition and permanency planning hearing on the petition for LeAntonaé and Le'Than, the juvenile court ordered Stacy to complete a psychiatric evaluation, complete a chemical dependency evaluation and follow all recommendations of that evaluation, and abstain from alcohol and all drugs not prescribed by a licensed physician. Stacy was to have supervised visitation with her children, but LeAntonaé and Le'Than's visits were to be "by themselves" with Stacy; Le'Anthony and Le'Yonnie were not to be involved in visits with their older siblings. As

to the disposition and permanency planning hearing on the petition for LeAntonaé and Le'Than, the court stated that the permanency objective was reunification.

In an order filed on December 14, 2018, the juvenile court ordered that Stacy was to have no visits with LeAntonaé and Le'Than until further order of the court.

After a team meeting in January 2019, the juvenile court ordered Stacy to complete a psychological evaluation with a specified person on January 17, complete the psychiatric evaluation on February 18, and see the children at scheduled visits only (not at school or medical appointments).

In March 2019, the State filed a fourth supplemental petition alleging that Stacy's recently born son, Legend, was a child within the meaning of § 43-247(3)(a) because he lacked proper parental care by reason of the faults or habits of Stacy. The State alleged the following: Stacy currently had an open juvenile docket; she failed to reunify with her children under that juvenile docket; her use of drugs and/or controlled substances placed Legend at risk of harm; she failed to provide safe, stable, and/or appropriate housing for Legend; and for the above reasons, Legend was at risk for harm. The juvenile court granted the State's motion for temporary custody of Legend (who had been in the neonatal intensive care unit of the hospital since his birth); he has remained in out-of-home placement ever since. In an order filed on April 4, the court ordered that Stacy could have reasonable rights of visitation with Legend while he was in the neonatal intensive care unit, but that if she was disruptive, visits would be canceled until further order of the court.

On April 10, 2019, the State filed a second amended second supplemental petition alleging that Le'Anthony and Le'Yonnie were children within the meaning of § 43-247(3)(a), because they lacked proper parental care by reason of the faults or habits of Stacy. The State alleged the following: Stacy failed to therapeutically address the sexualized behaviors of Le'Anthony; her use of drugs and/or controlled substances

placed the children at risk of harm; she currently had an open juvenile docket; she failed to reunify with her children under that juvenile docket; she failed to provide safe, stable, and/or appropriate housing for the children; she failed to provide proper parental care, support, and/or supervision for the children; and for the above reasons, the children were at risk for harm.

After a hearing, the juvenile court filed an order on April 12, 2019, adjudicating Le'Anthony, Le'Yonnie, and Legend to be within the meaning of § 43-247(3)(a) based on Stacy's admission to the allegations that she currently had an open juvenile docket; that she failed to reunify with her children under that juvenile docket; and that for the above reasons, the children were at risk for harm.

On April 30, 2019, the matter came on for a review and permanency planning hearing on the petition for LeAntonaé and Le'Than, and a disposition and permanency planning hearing on the fourth supplemental petition for Legend and the second amended second supplemental petition for Le'Anthony and Le'Yonnie. At the hearing, numerous exhibits were received into evidence, including the DHHS court report dated April 17, 2019. In the court report, DHHS stated:

> Given the lack of any substantive progress with [Stacy] regarding the court ordered services, this FPS is making a recommendation that the permanency objective for these five children be changed to Reunification concurrent Adoption. It seems unlikely that [Stacy] will make any real changes required to be able to successfully and safely parent [her] children.

At the hearing, the State and the children's guardian ad litem informed the juvenile court they agreed with DHHS' recommendation. The court then stated:

> I will take it under advisement to review each and every one of these exhibits. But based on what has transpired prior to today I do not find the recommendations

> to be in the best interests of these children, and I will be hard-pressed to continue to do so even upon review.
>
> . . . .
>
> I continue to find that [DHHS] has not — has made not just reasonable efforts, nor even just active efforts, but, in fact, extraordinary efforts.
>
> The matter is under advisement, and we are adjourned.

The juvenile court subsequently issued its written order on May 21, 2019, wherein it stated:

> The Court does not adopt the recommendations of [DHHS], including but not limited to, the permanency plan of reunification. This plan is not in the best interest of these children.
>
> The evidence, from the inception of this case through this Disposition, is clear that, despite extraordinary efforts made by [DHHS], . . . Stacy . . . lack[s] the capacity and/or willingness to gain insight into [her] problems and to make substantive changes to correct the circumstances which precipitated this court proceeding.
>
> Given the extraordinary efforts, this Court finds that no more reasonable efforts shall be required in this matter, AND IT IS SO ORDERED.

The court then returned the case to DHHS for "alternative permanency planning recommendations" and set a "Juvenile Review Hearing, Continued Disposition and Permanency Planning Hearing" for June 14; this hearing was later continued to June 20.

At the hearing on June 20, 2019, numerous exhibits were received into evidence, including the DHHS court report dated June 6, 2019, and the guardian ad litem's report dated June 18, 2019. The court report stated, "It is clear from the lack of efforts by [Stacy] that [she] will not be able to successfully and safely parent [her] five children." The court report further stated that the recommended permanency objective for all five children was to "be changed to adoption pending the

filing of a Petition for the Termination of the Parental Rights" of Stacy. The guardian ad litem's report stated that he agreed with the recommendations contained within the DHHS court report. The court-appointed special advocate's report was also received into evidence and stated agreement with the permanency objective of adoption. At the hearing, the State informed the juvenile court that it agreed with DHHS' recommendation. Stacy's counsel objected to the change in the permanency plan from reunification to adoption and asked the court to impose dispositional orders that would allow Stacy to facilitate a plan of reunification. The court responded, "You are asking me to make a different finding than the finding that this Court made in May?" And Stacy's counsel responded, "Yes." The court said it could not do that as the evidence was contrary to that request. The court then stated it was adopting the recommendations of DHHS. In its written order filed on June 21, the court stated the permanency objective was adoption. A juvenile review and permanency planning hearing was set for November.

Stacy filed her notice of appeal on July 18, 2019, stating her intent to appeal the "'Juvenile Review Order/Continued Disposition Order/Permanency Planning Order'" issued on June 21, "affirming/finalizing the Court's 'Order,' dated May 21, 2019."

ASSIGNMENTS OF ERROR

Stacy assigns, restated, that the juvenile court erred (1) by failing to order a rehabilitation plan, (2) in determining that reasonable efforts to preserve and reunify the family were not required, and (3) "by failing to hold the hearing that § 43-283.01(6) requires."

STANDARD OF REVIEW

[1] When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires an appellate court to reach a conclusion independent of the

decision made by the lower court. *In re Interest of Kamille C. & Kamiya C.*, 302 Neb. 226, 922 N.W.2d 739 (2019).

ANALYSIS

Stacy's assignments of error and arguments on appeal all relate to the hearing held on April 30, 2019, and the juvenile court's subsequent order filed on May 21. She did not file an appeal from that order. She waited to file her appeal until after the June 21 order. Whether we have jurisdiction over the May 21 order turns upon whether that order rejecting a permanency plan of reunification and stating that no more reasonable efforts were required affected a substantial right of Stacy's, and thus had to be appealed within 30 days of that order, or whether it was part and parcel of the June 21 order that changed the permanency objective to adoption.

[2-4] In a juvenile case, as in any other appeal, 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. *In re Interest of Octavio B. et al.*, 290 Neb. 589, 861 N.W.2d 415 (2015). For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken. *Id*. Juvenile court proceedings are special proceedings under Neb. Rev. Stat. § 25-1902 (Reissue 2016), and an order in a juvenile special proceeding is final and appealable if it affects a parent's substantial right to raise his or her child. See *In re Interest of Octavio B. et al., supra*.

[5-9] The governing principles are easily stated. *Id*. A substantial right is an essential legal right, not a mere technical right. *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*. Dispositional orders are final and appealable. *In re Interest of Taylor W.*, 276 Neb. 679, 757 N.W.2d 1 (2008). However, a review order does not

affect a parent's substantial right if the court adopts a case plan or permanency plan that is almost identical to the plan that the court adopted in a previous disposition or review order. *In re Interest of Octavio B. et al., supra*. Thus, a dispositional order which merely continues a previous determination is not an appealable order. *Id*.

In *In re Interest of Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009), this court determined that an order which changed the permanency plan from reunification to adoption was not appealable, because it did not affect the mother's substantial rights. This court observed that the terms of the new order had the effect of continuing reasonable efforts to preserve the family. This court reasoned that the new order contained the same services as the previous order, that it did not change the mother's visitation or status, and that it implicitly provided the mother an opportunity for reunification by complying with the terms of the rehabilitation plan.

However, in *In re Interest of Diana M. et al.*, 20 Neb. App. 472, 825 N.W.2d 811 (2013), this court found an order modifying a permanency goal from reunification to guardianship/adoption to be appealable when the order modifying the permanency plan objective was coupled with an order ceasing further reasonable efforts to bring about reunification. This court reasoned that because the order affected the mother's right to reunification with her children, it affected a substantial right and was appealable. See, also, *In re Interest of Octavio B. et al., supra* (order was final and appealable when it changed primary permanency objective from reunification to adoption and effectively ended services directed toward reunification).

The hearing on April 30, 2019, was an original disposition and permanency planning hearing for Le'Anthony, Le'Yonnie, and Legend, and it was a review and permanency planning hearing for LeAntonaé and Le'Than. The juvenile court's subsequent order on May 21 stated that no more reasonable efforts were required in this matter, and it rejected a permanency

objective of reunification. This original disposition order for Le'Anthony, Le'Yonnie, and Legend was certainly a final, appealable order. See, *In re Interest of Taylor W., supra* (dispositional orders are final and appealable); *In re Interest of Tabatha R.*, 255 Neb. 818, 587 N.W.2d 109 (1998) (finding under facts of case that order declining to order rehabilitation plan for either parent affected substantial right and was final, appealable order).

Additionally, as to all five children, the sequence of events differs from the typical scenario we have seen in prior cases, because in the instant case, the May 21, 2019, order ceasing reasonable efforts and rejecting the permanency plan of reunification did not also simultaneously specify a new permanency plan; the new permanency plan of adoption was not implemented until the June 21 order, and it is only this later order that is being appealed. We find that the May 21 order ceasing reasonable efforts was a crucial step in proceedings that could possibly lead to the termination of parental rights, and it certainly affected Stacy's substantial right to raise her children. See *In re Interest of Mya C. & Sunday C.*, 286 Neb. 1008, 840 N.W.2d 493 (2013) (order that adopts case plan with material change in conditions for reunification with parent's child is crucial step in proceedings that could possibly lead to termination of parental rights; such orders affect parent's substantial right in special proceeding and are appealable). See, also, *In re Interest of Octavio B. et al.*, 290 Neb. 589, 861 N.W.2d 415 (2015). Thus, the May 21 order was final and appealable, and should have been appealed within 30 days. See, Neb. Rev. Stat. § 43-2,106.01(1) (Reissue 2016) (any final order or judgment entered by juvenile court may be appealed to Court of Appeals in same manner as appeal from district court to Court of Appeals); Neb. Rev. Stat. § 25-1912 (Cum. Supp. 2018) (appeals must be filed within 30 days after entry of judgment). Because Stacy did not appeal within 30 days of the May 21 order, her assignments of error and arguments—all of which actually relate to the April 30 hearing

and subsequent May 21 order—are untimely, and we do not have jurisdiction to address such assignments of error and arguments.

Once the juvenile court found that reunification was no longer in the best interests of the children, there were essentially only two permanency options left for these children: guardianship, which would not require termination of Stacy's parental rights, and adoption, which would require termination of Stacy's parental rights. Adoption was ultimately the chosen permanency plan as stated in the court's order on June 21, 2019. Stacy did timely appeal the June 21 order. However, none of her assignments of error or arguments relate to the specific findings of the June 21 order, e.g., the change in permanency plan to adoption. As stated previously, all of Stacy's assignments of error and arguments relate to the May 21 order, which we determined was a final, appealable order in its own right. She cannot use an appeal of the June 21 order to collaterally attack the earlier May 21 order. And we need not decide whether the June 21 order changing the permanency objective to adoption was a separate final, appealable order, because none of Stacy's assignments of error or arguments are specific to the findings in the June 21 order.

CONCLUSION

For the reasons stated above, we find that the May 21, 2019, order of the juvenile court was a final, appealable order, which Stacy did not appeal. Because all of her assignments of error and arguments relate to the May 21 order, we dismiss this appeal for lack of jurisdiction.

Appeal dismissed.