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elsewhere that allows this as a sanction, we find the limitations of the Legislature's delegation clear. Therefore, in enacting Regulation 2-020.09B2f, DHHS unlawfully enlarged upon the authorizing statutes and violated the principles of separation of powers. The district court was correct in declaring Regulation 2-020.09B2f invalid.

AFFIRMED.

GERRARD, J., not participating.

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

785 N.W.2d 843

Filed July 23, 2010. No. S-09-1261.

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. **Juvenile Courts: Jurisdiction: Statutes.** As a statutorily created court of limited and special jurisdiction, a juvenile court has only such authority as has been conferred on it by statute.
4. **Juvenile Courts: Minors.** The Nebraska Juvenile Code must be liberally construed to accomplish its purpose of serving the best interests of the juveniles who fall within it.
5. **Juvenile Courts: Child Custody.** Juvenile courts are accorded broad discretion in their determination of the placement of children adjudicated abused or neglected and to serve the best interests of the children involved.
6. **Statutes.** Statutes relating to the same subject matter will be construed so as to maintain a sensible and consistent scheme, giving effect to every provision.
7. **Juvenile Courts: Parental Rights: Adoption.** Where a juvenile has been adjudicated pursuant to Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) and a permanency objective of adoption has been established, a juvenile court has authority under the Nebraska Juvenile Code to order the Nebraska Department of Health and Human Services to accept a tendered relinquishment of parental rights.

Appeal from the Separate Juvenile Court of Douglas County: DOUGLAS F. JOHNSON, Judge. Affirmed.

Carla Heathershaw Risko, Special Assistant Attorney General, for appellant.

Donald W. Kleine, Douglas County Attorney, and Lindsey Grove for appellee.

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

STEPHAN, J.

This appeal requires an examination of the interplay between Nebraska's adoption statutes[1] and the Nebraska Juvenile Code.[2] The specific question presented is whether a juvenile court may order the Nebraska Department of Health and Human Services (DHHS) to accept a voluntary relinquishment of parental rights when a child has been adjudicated pursuant to § 43-247(3)(a) and adoption is the permanency objective. We conclude that a juvenile court has authority to issue such an order.

BACKGROUND

Gabriela H. was born in September 1997. On or about November 7, 2008, Gabriela's biological mother left Gabriela at an Omaha hospital. On November 7, the State filed a petition in the separate juvenile court of Douglas County alleging that Gabriela was a child under § 43-247(3)(a) because her mother was "refusing to provide [her] with appropriate care, support and/or supervision." The petition alleged that Gabriela was then in the custody of DHHS.

On February 23, 2009, the juvenile court adjudicated Gabriela under § 43-247(3)(a) and ordered that she remain in the temporary custody of DHHS. The court also ordered Gabriela's mother to pay child support.[3] The record indicates that a supplemental petition was also filed against Gabriela's natural father, which also resulted in an adjudication and a child support order. At a permanency planning hearing held on March 30, the court found that reunification efforts were not required

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[1] Neb. Rev. Stat. §§ 43-101 to 43-165 (Reissue 2008).

[2] Neb. Rev. Stat. §§ 43-245 to 43-2,129 (Reissue 2008).

[3] See § 43-290.

because Gabriela's parents did not wish to have a relationship with her and were contemplating relinquishment.

At a subsequent permanency planning hearing held on November 10, 2009, a representative of the State Foster Care Review Board recommended adoption as the permanency objective, noting that there had been no contact between Gabriela and her biological parents during the 11 months that she had been in foster care. The deputy county attorney and the guardian ad litem agreed that the permanency objective should be adoption, noting that both parents were willing to relinquish parental rights but that DHHS was refusing to accept relinquishment. Counsel for Gabriela's mother confirmed that he had informed DHHS of the mother's decision to relinquish her parental rights, but that DHHS was unwilling to accept relinquishment. Counsel for Gabriela's father also indicated that he had informed DHHS that the father was willing to relinquish his parental rights. But counsel for DHHS told the court that DHHS "doesn't like to accept relinquishments when [it doesn't] have a permanent home for the child yet" and expressed concern over accepting relinquishment when a parent was paying a "substantial amount" of child support. DHHS requested that the court defer any action on the relinquishment for 3 months while DHHS attempted to find an adoptive home for Gabriela.

In an order entered on November 12, 2009, the juvenile court found as follows:

> . . . [N]o further reasonable efforts are required toward reunification due to the lack of parental participation or desire to parent [Gabriela], and the parents' desire to relinquish their rights.
>
> . . . There is nothing in the law that prevents [DHHS] from accepting relinquishment by the parents;
>
> . . . The permanency objective is Adoption. Negative reasonable efforts are being made to finalize the permanency objective, but [Gabriela] is in a foster/adoptive placement.
>
> . . . [I]t is in the best interests and welfare of [Gabriela] to remain as placed, in the custody of [DHHS], for appropriate care and placement.

Based upon these findings, the court ordered that Gabriela remain in the custody of DHHS for appropriate care and placement and that DHHS "shall accept relinquishment by the parents." DHHS perfected an appeal from this order, which we moved to our docket pursuant to our statutory authority to regulate the caseloads of the appellate courts of this state.[4]

ASSIGNMENT OF ERROR

DHHS assigns, restated, that the juvenile court erred in ordering it to accept the relinquishments of parental rights.

STANDARD OF REVIEW

[1,2] An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.[5] 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.[6]

ANALYSIS

Nebraska's statutory procedures for adoption include the following provision:

> When a child shall have been relinquished by written instrument . . . to [DHHS] or to a licensed child placement agency and the agency has, in writing, accepted full responsibility for the child, the person so relinquishing shall be relieved of all parental duties toward and all responsibilities for such child and have no rights over such child. Nothing contained in this section shall impair the right of such child to inherit.[7]

DHHS contends that the decision to accept a relinquishment of parental rights is within its sole discretion and that it cannot be compelled by a juvenile court to do so.

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[4] See Neb. Rev. Stat. § 24-1106(3) (Reissue 2008).

[5] *In re Interest of C.H.*, 277 Neb. 565, 763 N.W.2d 708 (2009); *In re Interest of Dustin S.*, 276 Neb. 635, 756 N.W.2d 277 (2008).

[6] *In re Interest of Dustin S., supra* note 5; *In re Interest of Markice M.*, 275 Neb. 908, 750 N.W.2d 345 (2008).

[7] § 43-106.01.

Statutory Authority

[3-5] As a statutorily created court of limited and special jurisdiction, a juvenile court has only such authority as has been conferred on it by statute.[8] But the Nebraska Juvenile Code must be liberally construed to accomplish its purpose of serving the best interests of the juveniles who fall within it.[9] This includes promoting "adoption, guardianship, or other permanent arrangements for children in the custody of [DHHS] who are unable to return home."[10] And juvenile courts are accorded broad discretion in their determination of the placement of children adjudicated abused or neglected and to serve the best interests of the children involved.[11]

Although the juvenile code gives DHHS a certain degree of discretion with respect to children placed in its custody, that discretion is subject to the superior right of the juvenile court to determine what is in the child's best interests. For example, § 43-284 authorizes various placement options for adjudicated children, including "some association willing to receive the juvenile" or DHHS. This language indicates that while other child placement agencies have a choice as to whether to take placement, DHHS can be ordered by the court to accept the juvenile's placement. Additionally, if a juvenile is voluntarily relinquished by his or her parents, § 43-284.01 requires that the juvenile shall remain in the custody of DHHS or another authorized placement agency unless the court finds by clear and convincing evidence that such placement is not in the child's best interests. And the juvenile court is not bound by a placement plan created by DHHS. Section 43-285(2) expressly authorizes the court to reject a placement plan created by DHHS

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[8] *In re Interest of Dustin S., supra* note 5.

[9] *In re Interest of R.A. and V.A.*, 225 Neb. 157, 403 N.W.2d 357 (1987), *overruled on other grounds, State v. Jacob*, 242 Neb. 176, 494 N.W.2d 109 (1993). See, also, *In re Interest of Veronica H.*, 272 Neb. 370, 721 N.W.2d 651 (2006).

[10] § 43-246(6).

[11] *In re Interest of Veronica H., supra* note 9. See *In re Interest of Amber G. et al.*, 250 Neb. 973, 554 N.W.2d 142 (1996).

and implement an alternative plan based on the juvenile's best interests. These statutes clearly demonstrate that the juvenile court has the authority to determine placement of a juvenile under its jurisdiction even if such determination is contrary to DHHS' position.

Furthermore, pursuant to § 43-285(1), DHHS is expressly limited in its authority over juveniles placed in its custody; § 43-285(1) provides that DHHS has "authority, *by and with the assent of the court*, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it." (Emphasis supplied.) We have recognized the authority of a juvenile court to order the removal and replacement of a DHHS case manager, noting that juvenile courts have been given the power by the Legislature to assent and, by implication, to dissent from the placement and other decisions of DHHS.[12]

DHHS argues that § 43-285(1) does not apply to Gabriela's case because the juvenile court did not award DHHS care of Gabriela, but, rather, care was voluntarily relinquished by the parents. This argument ignores the fact that the juvenile court awarded DHHS temporary custody of Gabriela prior to the November 2009 permanency hearing. DHHS also argues that § 43-285(1) does not apply to Gabriela's case because § 43-106.01, which authorizes DHHS to accept a voluntary relinquishment of parental rights, is not included in the juvenile code. However, as Gabriela was adjudicated under § 43-247(3)(a), she is under the juvenile court's jurisdiction, and in determining its disposition, the court is guided by the juvenile code.

[6] Finally, we note that the juvenile code also contains the following provision:

> If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, [DHHS] *shall recommend termination of parental rights* and referral for adoption, guardianship, placement

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[12] *In re Interest of Veronica H., supra* note 9. See, also, *In re Interest of Crystal T. et al.*, 7 Neb. App. 921, 586 N.W.2d 479 (1998).

> with a relative, or, as a last resort, another planned permanent living arrangement.[13]

Statutes relating to the same subject matter will be construed so as to maintain a sensible and consistent scheme, giving effect to every provision.[14] It would violate the principle of § 43-1312 to conclude that DHHS is required to recommend termination of parental rights in the case of an abandoned child but, at the same time, has the authority to prevent such termination by refusing to accept a tendered relinquishment of parental rights.

Separation of Powers

We also reject DHHS' argument that permitting a juvenile court to order DHHS to accept a parent's relinquishment would be an infringement on the separation of powers between the judicial and executive branches in violation of art. II, § 1, of the Nebraska Constitution. DHHS argues that the court's authority to enter an order relieving a parent of his or her rights comes only *after* DHHS or another child placement agency has accepted the relinquishment pursuant to § 43-106.01. In support of its argument, DHHS relies upon its own regulations as published in the Nebraska Administrative Code. These regulations specify the process by which DHHS accepts a relinquishment, including a determination by DHHS as to whether relinquishment is in the best interests of the child and family.[15] But in the context of a juvenile proceeding such as this, it is the court which must determine what is in the best interests of the child, and we will not construe an administrative regulation as a limitation upon that judicial authority, because to do so would indeed be contrary to separation of powers principles.

Resolution

It is clear from the record that DHHS declined to accept the relinquishment of parental rights because one of the

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[13] Neb. Rev. Stat. § 43-1312(2) (Reissue 2008) (emphasis supplied).

[14] *In re Estate of Reed*, 271 Neb. 653, 715 N.W.2d 496 (2006); *Curran v. Buser*, 271 Neb. 332, 711 N.W.2d 562 (2006).

[15] See 390 Neb Admin. Code, ch. 8, § 004.02 (1998).

parents was paying a "pretty substantial amount" of child support which partially offset DHHS' cost with respect to Gabriela's care.[16] While conservation of public resources is a worthy objective, it cannot justify the legal perpetuation of a parental relationship which no longer exists in fact, thereby permitting an abandoned child to linger indefinitely in foster care. We agree with the observation of the juvenile court that the position taken by DHHS has made Gabriela a "de facto orphan."

[7] Accordingly, for the reasons discussed, we hold that where a juvenile has been adjudicated pursuant to § 43-247(3)(a) and a permanency objective of adoption has been established, a juvenile court has authority under the juvenile code to order DHHS to accept a tendered relinquishment of parental rights. Here, the juvenile court did not err in exercising that authority.

CONCLUSION

For the reasons discussed, we affirm the judgment of the separate juvenile court.

AFFIRMED.

[16] See § 43-290.

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

785 N.W.2d 849

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