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demeanor and attitude and all the facts and circumstances surrounding the defendant's life.[48]

Given Kass' age, his education, the offense, and the fact that he was a police officer, we conclude that the court did not abuse its discretion in sentencing Kass to 1 year in prison.

V. CONCLUSION

We conclude that none of Kass' assignments of error have merit. We affirm his conviction and sentence.

AFFIRMED.

WRIGHT, J., not participating.

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[48] *Id.*

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

799 N.W.2d 673

Filed July 15, 2011. No. S-10-643.

1. **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.
2. **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.
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. ____: ____: ____. Absent any provision affirmatively stating otherwise, it is within the juvenile court's discretion to issue whatever combination of statutorily authorized dispositions as the court deems necessary to protect the juvenile's best interests.
5. **Juvenile Courts: Jurisdiction: Statutes: Child Custody.** It is within the juvenile court's statutory power to issue a dispositional order for juveniles adjudicated under Neb. Rev. Stat. § 43-247(3)(b) (Reissue 2008), which includes both legal custody with the Department of Health and Human Services and supervision by a probation officer.

Appeal from the County Court for Lincoln County: KENT D. TURNBULL, Judge. Affirmed.

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

Jennifer Wellan, Deputy Lincoln County Attorney, for appellee State of Nebraska.

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

MCCORMACK, J.

NATURE OF CASE

The Nebraska Department of Health and Human Services (DHHS) and the Lincoln County Attorney dispute whether a juvenile court has the statutory authority to order a juvenile adjudicated under Neb. Rev. Stat. § 43-247(3)(b) (Reissue 2008) to be placed in the legal custody of DHHS while simultaneously placing the juvenile on probation. We hold that in the case of a juvenile adjudicated under § 43-247(3)(b), the juvenile court has authority to issue a dispositional order of concurrent custody with DHHS and supervision by a probation officer. We accordingly affirm the juvenile court's order in this case.

BACKGROUND

In November 2009, Katrina R., who was 15 years old at that time, sent two nude photographs of herself to her boyfriend's cellular telephone. When, in February 2010, these pictures, and pictures of other girls, were found on the hard drive of a school computer checked out to the boyfriend, Katrina was adjudicated under § 43-247(3)(b) as a child who deports herself so as to injure or endanger seriously the morals or health of herself or others. Katrina was active in school, was an honor roll student, and had no history of prior incidents with law enforcement or juvenile court. Katrina is not a party to this appeal and does not contest her adjudication or the court's subsequent dispositional order.

DHHS appeals the order, contesting whether the juvenile court acted within its statutory powers in the manner in which it crafted the order to address various concerns over Katrina's welfare. At the dispositional hearing, the juvenile court spent

considerable time discussing with Katrina emotional issues pertaining to Katrina's relationship with her father. Katrina had accused her father of emotional abuse. He had brain cancer and was in the process of obtaining a divorce from her mother. The court stressed that Katrina needed to resolve these issues. The court also questioned whether certain psychotropic medications prescribed to Katrina were necessary.

DHHS, in its case plan, had recommended that it be dismissed from the case, that Katrina be placed on probation, and that her care, custody, and control be returned to her mother. But the guardian ad litem thought Katrina should not be placed "just" on probation. The guardian ad litem believed that Katrina would benefit from counseling available through DHHS. On the other hand, the guardian ad litem did not think Katrina should be placed solely with DHHS, because it was more limited "on what they can and can't do," given the "reason that she came into care." Thus, the guardian ad litem believed a combination of custody with DHHS and supervision by a probation officer was in Katrina's best interests. The guardian ad litem agreed that Katrina should stay in the physical custody of her mother.

The juvenile court followed the guardian ad litem's recommendations. On May 27, 2010, the court ordered that Katrina serve 6 months' probation; that she be placed in the legal custody of DHHS, with physical custody with her mother; and that she participate in counseling and community service. The court explained that the Office of Probation Administration (Office of Probation) would be the "primary caretaker," but that DHHS would "make sure [the] counseling component is in place." The court noted that DHHS would be the secondary insurance provider for counseling services and could operate generally as a "safety net." Otherwise, DHHS was "to take a back seat . . . so that probation can do what they want." The court adopted DHHS' case plan as so modified, and DHHS appealed.

ASSIGNMENT OF ERROR

DHHS assigns that the juvenile court erred in simultaneously committing Katrina to DHHS and placing her on probation in the same juvenile court case.

STANDARD OF REVIEW

[1] 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.[1]

ANALYSIS

In *In re Interest of Jeremy T.*,[2] we held that the Nebraska Juvenile Code (the Code)[3] does not authorize placement of a juvenile in the "custody" of two separate agencies simultaneously. We were also careful to distinguish "custody" from the "supervision" or "care" of the juvenile. We have not directly addressed whether the Code permits juvenile courts to simultaneously order the "custody" of the juvenile with DHHS, while ordering "supervision" by the Office of Probation.

DHHS argues such an order is outside the court's statutory authority. DHHS is responsible for the costs of placing and caring for juveniles within its "custody,"[4] and does not want to pay for whatever services its "'back seat'"[5] custody entails in this case. It also does not want to share control over a juvenile with the Office of Probation. DHHS believes that an order of concurrent DHHS custody and supervision by probation involves the inequitable expenditure of public money,[6] involves a "duplication of . . . services,"[7] and interferes with DHHS' ability to carry out its statutorily mandated responsibilities. DHHS does not contest that the order of concurrent DHHS custody and probation supervision was in Katrina's best interests.

The Lincoln County Attorney asserts that the order was both within the juvenile court's statutory power and in Katrina's best interests. The Lincoln County Attorney points out that there are

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[1] *In re Interest of Gabriela H.*, 280 Neb. 284, 785 N.W.2d 843 (2010).

[2] *In re Interest of Jeremy T.*, 257 Neb. 736, 600 N.W.2d 747 (1999).

[3] See Neb. Rev. Stat. §§ 43-246 through 43-2,129 (Reissue 2008 & Cum. Supp. 2010).

[4] *In re Interest of Jeremy T., supra* note 2.

[5] Brief for appellant at 8.

[6] See § 43-290.

[7] Brief for appellant at 10.

no DHHS supervisory services available where Katrina lives and that taking her out of the home would be neither beneficial nor cost effective. It argues that DHHS' support for counseling was necessary because Katrina's family could not afford it and the Office of Probation does not provide this service.

The Code provides that the juvenile court has jurisdiction over any juvenile adjudged to be within the provisions of § 43-247. Juveniles commonly referred to as "status offenders" are described in § 43-247(3).[8] Section 43-247(3) is divided into subsections (3)(a), (3)(b), and (3)(c). Subsection (3)(a) concerns a juvenile who is homeless, destitute, without proper support and care, abandoned, or neglected. Subsection (3)(b) concerns a juvenile who is wayward and uncontrolled; deports himself or herself so as to injure or endanger the morals or health of himself, herself, or others; or is habitually truant from home or school. Subsection (3)(c) concerns a juvenile who is mentally ill and dangerous.

Juveniles referred to as "law violators"[9] are described in § 43-247(1), (2), and (4). Subsection (1) describes a juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state or a violation of a city or village ordinance. Subsection (2) concerns any juvenile who has committed an act which would constitute a felony. Subsection (4) concerns a juvenile who has committed a traffic offense.

Section 43-284 describes dispositions for juveniles adjudicated under subsections (3), (4), or (9). Subsection (9) concerns a ward whose guardianship has been disrupted or terminated. Section 43-284 states that the court

> may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to (1) the care of some suitable institution, (2) inpatient or outpatient treatment at a mental health facility or mental health program, (3) the care of some reputable citizen of good moral character, (4) the

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[8] See *In re Interest of C.G. and G.G.T.*, 221 Neb. 409, 377 N.W.2d 529 (1985).

[9] See *In re Interest of J.M.N.*, 237 Neb. 116, 464 N.W.2d 811 (1991).

> care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, which association shall have been accredited as provided in section 43-296, (5) the care of a suitable family, or (6) the care and custody of [DHHS].

Section 43-286(1) lists dispositions for any juvenile adjudicated under subsections (1), (2), or (4):

> (a) The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:
>
> (i) Place the juvenile on probation subject to the supervision of a probation officer;
>
> (ii) Permit the juvenile to remain in his or her own home or be placed in a suitable family home, subject to the supervision of the probation officer; or
>
> (iii) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of [DHHS], the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Subsection (1)(b) of § 43-286 states that the court may commit such juveniles to the Office of Juvenile Services, but shall not place a juvenile under the age of 12 years in the Youth Rehabilitation and Treatment Centers in Geneva or Kearney unless the juvenile has committed murder or manslaughter, violated the terms of probation, or committed an additional offense.

Subsection (2) of § 43-286 states that for any juvenile adjudicated under § 43-247(3)(b), "the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or enter an order committing or placing the juvenile to the care and custody of [DHHS]."

Thus, § 43-284, which lists care and custody with DHHS as a possible disposition, but does not list probation as a possible disposition, is for status offenders, traffic offenders, and wards of the state whose guardianship has been disrupted. Section 43-286(1), which lists probation as a possible element of the dispositional order, but does not list placement in the care and custody of DHHS, generally covers law violators.

Traffic offenders and juveniles adjudicated under § 43-247(3)(b) are covered by §§ 43-284 and 43-286. For traffic offenders, the juvenile court has all the options listed under § 43-286(1), as well as all the options listed under § 43-284. But for status offenders under § 43-247(3)(b), the juvenile court does not have all the options listed under § 43-286(1). It only has the options listed in § 43-286(1)(a). For a juvenile adjudicated under subsection (3)(b), the juvenile court also has all the options listed in § 43-284.

Other than serving the purpose of excluding the option under § 43-286(1)(b) of commitment to a rehabilitation center, and emphasizing the option of DHHS care and custody, we do not find any special significance to the fact that § 43-286(2) states that for juveniles adjudicated under § 43-247(3)(b), the court may enter such order as empowered to enter under § 43-286(1)(a) "or" place the juvenile to the care and custody of DHHS. DHHS admits that under § 43-284, juvenile courts have the power to concurrently order care with one entity, including placement in the family home, and order custody with DHHS for juveniles adjudicated under § 43-247(3)(b). There have been several cases before this court and the Nebraska Court of Appeals of juveniles adjudicated under § 43-247(3)(b) wherein custody was with DHHS while placement and supervision was with another person or entity.[10] In *In re Interest of Amber G. et al.*,[11] we said that the liberal use of the word "may" in § 43-284 authorizes the juvenile court to exercise broad discretion in its disposition.

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[10] See, *In re Interest of Kevin K.*, 274 Neb. 678, 742 N.W.2d 767 (2007); *In re Interest of Jeffrey R.*, 251 Neb. 250, 557 N.W.2d 220 (1996); *In re Interest of Emily C.*, 15 Neb. App. 847, 738 N.W.2d 858 (2007).

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

DHHS argues simply that probation is different. It asserts that as soon as the juvenile court orders probation, DHHS must be discharged from all further responsibility for the juvenile. But by placing juveniles adjudicated under § 43-247(3)(b) under both §§ 43-284 and 43-286, the Legislature clearly meant to expand the dispositional options available so as to include probation—not to limit the juvenile court's ability to provide for the juvenile's best interests by forcing it to make a choice between probation or DHHS involvement. Such a dilemma would be contrary to the foremost purpose and objective of the Code, which is to promote and protect a juvenile's best interests.[12]

Indeed, § 43-286(1)(a)(iii) affirmatively recognizes the possibility of concurrent DHHS custody and supervision by a probation officer. Section 43-286(1)(a)(iii) sets forth the dispositional option of causing the juvenile to be "placed in a suitable family home or institution, subject to the supervision of the probation officer." It further states, "If the court has committed the juvenile to the care and custody of [DHHS], the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents."

DHHS argues that this reference to concurrent DHHS custody and probation supervision is meant to be only for the law violators for which § 43-286(1) is principally concerned, and not for juveniles adjudicated under § 43-247(3)(b), for which § 43-286(1)(a) is incorporated by reference. Again, DHHS places special emphasis on the "or" statement of § 43-286(2)—that the court may enter such order as it is empowered to enter under subsection (1)(a) "or" enter an order committing or placing the juvenile to the care and custody of DHHS.

[2] Statutes relating to the same subject matter will be construed so as to maintain a sensible and consistent scheme, giving effect to every provision.[13] To read § 43-286(2) in the limiting manner DHHS suggests not only runs contrary to the objectives of the Code, but would ignore the myriad of other

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[12] *In re Interest of Leo L.*, 258 Neb. 877, 606 N.W.2d 783 (2000).

[13] *In re Interest of Gabriela H., supra* note 1.

options listed in § 43-284. Those options, insofar as they include numerous placements without probation, are different from the options listed in § 43-286(1)(a). They are also more expansive than simply "the care and custody of [DHHS]," which DHHS argues is the only alternative, once probation is imposed, to the options listed in § 43-286(1)(a). We fail to see how DHHS' suggested narrow interpretation of § 43-286(2) could operate only to exclude shared DHHS custody and probation supervision, but not exclude the options listed in § 43-284. And the dispositional options listed in § 43-284 plainly apply to "any juvenile . . . adjudged to be under subdivision (3)." DHHS' narrow reading of § 43-286(2) thus fails to maintain a sensible scheme which gives effect to every provision of the Code.

[3-5] DHHS is correct that 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.[14] However, for juveniles adjudicated under § 43-247(3)(b), the statutes confer upon the juvenile court the power to commit the juvenile to DHHS' custody, and they also confer the power to order supervision by the Office of Probation. Absent any provision affirmatively stating otherwise, it is within the juvenile court's discretion to issue whatever combination of statutorily authorized dispositions as the court deems necessary to protect the juvenile's best interests. We do not find any statutory provision which states that the juvenile court cannot concurrently order DHHS custody and supervision by a probation officer for a juvenile adjudicated under § 43-247(3)(b). Therefore, we hold that it is within the juvenile court's statutory power to issue a dispositional order for juveniles adjudicated under § 43-247(3)(b), which includes both legal custody with DHHS and supervision by a probation officer.

Not only are the juvenile's best interests protected by such range of discretion, but the ability to concurrently order DHHS custody and supervision by the Office of Probation allows for the most equitable use and availability of public money.[15] We

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[14] *In re Interest of Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010).

[15] See *In re Interest of Jeremy T., supra* note 2.

are unconvinced by DHHS' assertion that concurrent DHHS custody and probation supervision wastes funds in a duplication of services. Both entities provide unique services. Furthermore, it is only through the crafting of a dispositional order that provides for both DHHS custody and probation supervision that certain juveniles, such as Katrina, are able to stay in the family home. It would be much more costly to remove a juvenile from the family home and place that juvenile in foster care or an institution in order to obtain the support and supervision that the juvenile requires.

We note that in a recent decision, *In re Interest of Emily R.*,[16] the Court of Appeals held that for a juvenile adjudicated under § 43-247(1), the aforementioned "if" statement in § 43-286(1)(a)(iii) signifies that a juvenile court is without statutory authority to order concurrent DHHS legal custody and probation supervision when the juvenile is allowed to stay in the family home, but that a juvenile court does have authority to order concurrent custody and supervision when placement is outside the family home. We do not read the "if" statement of § 43-286(1)(a) as affirmatively addressing what combinations of DHHS custody and care or supervision are prohibited or allowed. It is simply a recognition of a possibility that is allowed by other provisions of the Code. In this case, DHHS care and custody for juveniles adjudicated under § 43-247(3)(b) is authorized by §§ 43-284 and 43-286(2)—not the "if" statement of § 43-286(1)(a)(iii). To the extent that *In re Interest of Emily R.* is inconsistent with this opinion, it is overruled.

CONCLUSION

A juvenile adjudicated under § 43-247(3)(b) ordered to be in the "care" of one entity while under the "supervision" of the Office of Probation may not necessarily require the support that DHHS legal custody entails. But that does not mean that under specific instances where it would be in the juvenile's best interests, the court is statutorily prohibited to give "custody" to DHHS while "care" and "supervision" are placed elsewhere.

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[16] *In re Interest of Emily R.*, 18 Neb. App. 845, 793 N.W.2d 762 (2011).

No one contests that, in this case, the juvenile court crafted its dispositional order so as to serve Katrina's best interests. We therefore affirm.

AFFIRMED.

WRIGHT, J., not participating.

IN RE INTEREST OF D.I., ALLEGED TO BE A DANGEROUS SEX OFFENDER. D.I., APPELLANT, V. MENTAL HEALTH BOARD OF THE FOURTH JUDICIAL DISTRICT, APPELLEE.

799 N.W.2d 664

Filed July 15, 2011. No. S-10-717.

1. **Judgments: Jurisdiction: Appeal and Error.** A jurisdictional issue that does not involve a factual dispute presents a question of law, which an appellate court independently decides.
2. **Statutes.** The interpretation of a statute is a question of law.
3. **Mental Health: Appeal and Error.** The district court reviews the determination of a mental health board de novo on the record.
4. **Judgments: Appeal and Error.** In reviewing a district court's judgment, an appellate court will affirm unless it finds, as a matter of law, that clear and convincing evidence does not support the judgment.
5. **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.
6. **Mental Health: Convicted Sex Offender.** The Sex Offender Commitment Act provides a separate legal standard for sex offenders, which allows dangerous sex offenders to meet the standards of a mentally ill, dangerous sex offender who would not meet the traditional standards of mentally ill and dangerous under the Nebraska Mental Health Commitment Act.
7. **Mental Health: Convicted Sex Offender: Appeal and Error.** While the Sex Offender Commitment Act and the Nebraska Mental Health Commitment Act have similar procedures for commitment and appeals, they represent two separate acts.
8. **Final Orders: Appeal and Error.** Under Neb. Rev. Stat. § 25-1902 (Reissue 2008), an 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, is a final order which may be vacated, modified, or reversed.
9. **Actions: Statutes.** Special proceedings include every special civil statutory remedy not encompassed in civil procedure statutes which is not in itself an action.