Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/02/2026 03:38 PM CST

imposing sentences within the statutory limits. This assignment of error is without merit.

CONCLUSION

In conclusion, having found no merit to any of Reyes' assignments of error, we affirm Reyes' convictions and sentences.

AFFIRMED.

IN RE INTEREST OF BREANA M., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLANT, V. KAYLIN B. AND TRAVIS M., APPELLEES.

795 N.W.2d 660

Filed April 5, 2011. No. A-10-734.

1. **Jurisdiction: Words and Phrases.** Jurisdiction is the inherent power or authority to decide a case.
2. ____: ____. Jurisdiction of the subject matter means the authority to hear and determine both the class of actions to which the action before the court belongs and the particular question which it assumes to decide.
3. ____: ____. Personal jurisdiction is the power of a tribunal to subject and bind a particular person or entity to its decisions.
4. **Juvenile Courts: Jurisdiction: Words and Phrases.** The commonly used phrase that a juvenile court "takes jurisdiction over a juvenile" refers to the authority of the juvenile court to utilize the powers conferred on it by the Nebraska Juvenile Code, Neb. Rev. Stat. §§ 43-245 to 43-2,129 (Reissue 2008), to provide for the treatment and rehabilitation of certain juveniles and their parents, after the State has met its burden of proof at an adjudication hearing.
5. **Juvenile Courts: Dismissal and Nonsuit: Appeal and Error.** It is error for a juvenile court to dismiss a petition because a child is currently residing in a different county.
6. **Juvenile Courts: Venue: Proof.** In a proceeding under the Nebraska Juvenile Code, the State is not required to prove proper venue, because proof of venue is immaterial to the determination of whether a juvenile falls within the meaning of Neb. Rev. Stat. § 43-247 (Reissue 2008).
7. **Juvenile Courts: Venue: Motions to Dismiss.** Because venue is immaterial in juvenile proceedings, a court should not grant a motion to dismiss based on an allegation of improper venue; instead, a juvenile court should first hold an adjudication hearing, and after the adjudication hearing, it should determine whether it would be proper to transfer the proceedings to a court in the county where the juvenile resides.

Appeal from the Separate Juvenile Court of Douglas County: VERNON DANIELS, Judge. Reversed and remanded for further proceedings.

Donald W. Kleine, Douglas County Attorney, Amy Schuchman, and Daniel Gubler, Senior Certified Law Student, for appellant.

Joan Garvey, P.C., L.L.O., for appellee Kaylin B.

Thomas C. Riley, Douglas County Public Defender, and John J. Jedlicka for appellee Travis M.

IRWIN, SIEVERS, and MOORE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. The State of Nebraska appeals from an order of the Douglas County Separate Juvenile Court, which order granted Kaylin B.'s and Travis M.'s motions to dismiss the adjudication proceedings concerning their minor child, Breana M. Although the record does not reveal the court's explanation for granting the motions to dismiss, the motions were premised on an alleged lack of personal jurisdiction and improper venue because Breana does not reside in Douglas County.

For the reasons set forth below, we find that the juvenile court erred in granting the motions to dismiss. We therefore reverse the dismissal order and remand the case for further proceedings.

II. BACKGROUND

On May 17, 2010, the State filed a petition in the Douglas County Separate Juvenile Court alleging that Breana, born in December 2008, came within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) as to Kaylin and Travis, her natural parents. Specifically, the petition alleges that both Kaylin and Travis use alcohol or controlled substances and have failed

to provide Breana with parental care, support, and supervision. The petition also alleges that Breana is enrolled in or is eligible for enrollment in the Rosebud Sioux Tribe.

That same day, the State also filed a motion for temporary custody of Breana. The affidavit in support of the motion reveals that Breana resides with her maternal grandmother in Cass County, Nebraska, and that Breana has resided there intermittently since March 2009, when Kaylin brought Breana to her grandmother because Kaylin was unable to care for her properly. Kaylin and Travis continue to reside in Douglas County.

Since March 2009, Kaylin has removed Breana from her grandmother's home in Cass County on several occasions and taken Breana back to her home in Douglas County, presumably because Kaylin was upset when Breana's grandmother reported Kaylin's drug use to authorities. Ultimately, however, Breana has always returned to her grandmother's home because Kaylin is unable to care for Breana due to her continuing drug use. At the time the petition and the motion for temporary custody were filed, Kaylin and Travis were threatening to take Breana from her grandmother again.

The juvenile court granted the State's motion for temporary custody and scheduled a hearing date. Prior to the hearing on the allegations in the petition, Kaylin and Travis each filed a motion to dismiss the proceedings, arguing that the Douglas County Separate Juvenile Court lacked personal jurisdiction over Breana and that Douglas County was not the proper venue in which to hear this case because Breana did not reside in Douglas County, but, instead, continued to reside in Cass County with her grandmother.

On July 19, 2010, after the hearing, the court issued an order granting Kaylin's and Travis' motions to dismiss. The court did not provide any authority or explanation for this action.

The State appeals from the order of dismissal.

III. ASSIGNMENT OF ERROR

The State alleges that the juvenile court erred in granting the parents' motions to dismiss, because the court had jurisdiction to hear the case.

IV. ANALYSIS

1. Standard of Review

A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent from the lower court's decision. *In re Interest of Tegan V., ante* p. 857, 794 N.W.2d 190 (2011).

Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court. *Id.*

2. Jurisdiction

The State alleges that the juvenile court erred in granting the parents' motions to dismiss. Although it is not entirely clear why the juvenile court granted the motions to dismiss, based on the allegations in the motions, we can assume that the juvenile court concluded either that it lacked jurisdiction to adjudicate Breana or that Douglas County was not the proper venue for this case. We address each basis for dismissal in turn.

(a) Jurisdiction to Adjudicate Breana

In their motions to dismiss, Kaylin and Travis allege that the Douglas County Separate Juvenile Court does not have "personal jurisdiction" over Breana because Breana does not reside in Douglas County. Personal jurisdiction, or in personam jurisdiction, is the power of a tribunal to subject and bind a particular person or entity to its decisions. See *Ashby v. State*, 279 Neb. 509, 779 N.W.2d 343 (2010). Although Kaylin and Travis use the legal term "personal jurisdiction," we understand their argument to assert that the Douglas County Separate Juvenile Court does not have subject matter jurisdiction because Breana is not residing in Douglas County.

[1-3] We begin our discussion by defining certain jurisdictional terms to avoid confusion herein and in future cases. Jurisdiction is the inherent power or authority to decide a case. *In re Interest of Tegan V., supra*. Jurisdiction of the subject matter means the authority to hear and determine both the class of actions to which the action before the court belongs and the particular question which it assumes to decide. *Id*. As we explained above, personal jurisdiction is the power of a tribunal

to subject and bind a particular person or entity to its decisions. *Ashby v. State, supra*.

[4] We contrast the above jurisdictional terms with the commonly used phrase that a juvenile court "*takes jurisdiction over a juvenile*" after the State has met its burden of proof at an adjudication hearing. This commonly used phrase refers to the authority of the juvenile court to utilize the powers conferred on it by the Nebraska Juvenile Code, Neb. Rev. Stat. §§ 43-245 to 43-2,129 (Reissue 2008), to provide for the treatment and rehabilitation of certain juveniles and their parents.

In their motions to dismiss, Kaylin and Travis argue that the Douglas County Separate Juvenile Court does not have the authority (they incorrectly term this personal jurisdiction) to adjudicate Breana because she does not reside in Douglas County. This argument relates to the juvenile court's subject matter jurisdiction because it is an assertion concerning the court's authority to hear and determine whether Breana is within the meaning of § 43-247(3)(a).

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. *In re Interest of Tegan V., ante* p. 857, 794 N.W.2d 190 (2011). Thus, we look to the Nebraska Juvenile Code to determine the extent of the juvenile court's subject matter jurisdiction over this case.

Pursuant to the juvenile code, the juvenile court's subject matter jurisdiction is far reaching. Moreover, the Nebraska Supreme Court has directed that we construe the Nebraska Juvenile Code liberally to accomplish its purpose of serving the best interests of the juveniles who fall within it. See *In re Interest of Gabriela H.*, 280 Neb. 284, 785 N.W.2d 843 (2010).

Section 43-247 provides that the juvenile court in "each county" shall have jurisdiction over "[a]ny juvenile" who lacks proper parental care by reason of the fault or habits of the child's parent, guardian, or custodian. See § 43-247(3)(a). This statutory language is referring to subject matter jurisdiction. In this case, the State's petition alleges that Breana comes within the meaning of § 43-247(3)(a) because she is lacking

proper parental care by reason of the faults or habits of Kaylin and Travis.

[5] Considering the purposes of the juvenile code, including protecting children and placing them in a stable and secure living environment, we find that to the extent the juvenile court based its decision to grant the motions to dismiss on the court's lack of subject matter jurisdiction to adjudicate Breana, such decision was erroneous. Under the juvenile code, the juvenile court has subject matter jurisdiction over "any juvenile" who lacks proper parental care by reason of the fault or habits of the child's parents. The juvenile code does not indicate that this subject matter jurisdiction is limited by the child's temporary residence in another county. And we are unable to find any other statute or case law which suggests that a juvenile court must dismiss a petition because the child temporarily resides in a different county. In fact, this court has recently held that it is error for a juvenile court to dismiss a petition because a child is currently residing in a different county. *In re Interest of Tegan V., supra* (reversing juvenile court's dismissal of petition when child was placed outside of county after original petition was filed).

(b) Proper Venue

In their motions to dismiss, Kaylin and Travis also allege that the Douglas County Separate Juvenile Court is not the proper venue for these proceedings because Breana does not reside in Douglas County. In the motions, Kaylin and Travis assert that a court in Cass County is the appropriate venue because at the time the State filed its petition, Breana resided in Cass County with her maternal grandmother.

[6] Venue is the place of trial of an action—the site where the power to adjudicate is to be exercised. *Muir v. Nebraska Dept. of Motor Vehicles*, 260 Neb. 450, 618 N.W.2d 444 (2000). The Nebraska Supreme Court has previously held that in a proceeding under the Nebraska Juvenile Code, the State is not required to prove proper venue, because proof of venue is immaterial to the determination of whether a juvenile falls within the meaning of § 43-247. See *In re Interest of Leo L.*, 258 Neb. 877, 606 N.W.2d 783 (2000). Moreover, § 43-282 allows an adjudication

proceeding to be filed in any county and allows for discretionary transfer, after adjudication, to the county where the juvenile is living or domiciled, stating in part:

> If a petition alleging a juvenile to be within the jurisdiction of the Nebraska Juvenile Code is filed in a county other than the county where the juvenile is presently living or domiciled, the court, *at any time after adjudication and prior to final termination of jurisdiction, may transfer the proceedings to the county where the juvenile lives or is domiciled* and the court having juvenile court jurisdiction therein shall thereafter have sole charge of such proceedings and full authority to enter any order it could have entered had the adjudication occurred therein.

(Emphasis supplied.) Based on the language of § 43-282, proof of venue is immaterial when a petition is filed alleging a juvenile to be within the subject matter jurisdiction of the Nebraska Juvenile Code.

[7] Because venue is immaterial in juvenile proceedings, a court should not grant a motion to dismiss based on an allegation of improper venue. Pursuant to the statutory language, a juvenile court should first hold an adjudication hearing, and after the adjudication hearing, it should determine whether it would be proper to transfer the proceedings to a court in the county where the juvenile resides.

In this case, the Douglas County Separate Juvenile Court should have held an adjudication hearing to determine whether Breana was a child within the meaning of § 43-247(3)(a) as the State's petition alleged. If the court adjudicated Breana as such, then it should have considered transferring the case to a court in Cass County. To the extent the juvenile court based its decision to grant the motions to dismiss on the allegation that venue was not proper, such decision was erroneous.

(c) State's Argument

Although we agree with the State's basic assertion that the juvenile court erred in granting the motions to dismiss, we briefly digress to make clear that we do not agree with the State's argument in favor of that basic assertion. In its brief to this court, the State focuses its argument on Breana's eligibility

for enrollment in the Rosebud Sioux Tribe and on the application of the Nebraska Indian Child Welfare Act (the Act). See Neb. Rev. Stat. §§ 43-1501 to 43-1516 (Reissue 2008).

The State has misinterpreted the application of the Act to this case. The petition filed by the State alleges that Breana is an Indian child as defined by the Act because she is enrolled in or is eligible for enrollment in the Rosebud Sioux Tribe. The record reveals that despite Breana's status as an Indian child, neither she nor her parents reside on the reservation. Because Breana does not reside on the reservation, § 43-1504(2) controls the determination of which court has subject matter jurisdiction of these juvenile proceedings. That subsection provides:

> In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe, except that such transfer shall be subject to declination by the tribal court of such tribe.

In this case, no one has filed a petition to transfer the case to a tribal court. As such, at this time, the state courts retain subject matter jurisdiction over the juvenile court proceedings.

The jurisdictional rules cited by the State in its brief apply to a determination of whether a tribal court or a state court has subject matter jurisdiction over a juvenile proceeding when an Indian child is involved. See *Mississippi Choctaw Indian Band v. Holyfield*, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989). Here, the issue is not whether a state court or a tribal court has subject matter jurisdiction, but which state juvenile court has subject matter jurisdiction. A determination of which state juvenile court has subject matter jurisdiction over a juvenile proceeding is outside the scope of the Act.

Despite the State's misplaced reliance on the Act, we agree with the State's ultimate contention that the juvenile court erred in granting the motions to dismiss the proceedings.

V. CONCLUSION

We conclude that the Douglas County Separate Juvenile Court has subject matter jurisdiction to hear this case because the court has authority to adjudicate Breana as a child within the meaning of § 43-247(3)(a). In addition, we find that proof of venue is immaterial when a petition is filed alleging a juvenile to be within the jurisdiction of the Nebraska Juvenile Code. We find that the juvenile court erred in granting the motions to dismiss. We therefore reverse the dismissal order and remand the case for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

IN RE GUARDIANSHIP OF DAVID G., A MINOR CHILD. DANA G., APPELLANT, V. STEPHANIE P. AND JACK M., APPELLEES.

798 N.W.2d 131

Filed April 5, 2011. No. A-10-927.

1. **Judgments: Appeal and Error.** An appellate court determines questions of law independently of the determination reached by the lower court.
2. ____: ____. Generally, the right of the plaintiff to voluntary dismissal is a right that is not a matter of judicial grace or discretion.
3. **Jurisdiction: Dismissal and Nonsuit.** A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice.

Appeal from the County Court for Douglas County: LYN V. WHITE, Judge. Affirmed as modified.

Catherine Mahern and Patrick Erker, Senior Certified Law Student, of Milton R. Abrahams Legal Clinic, for appellant.

No appearance for appellees.

SIEVERS, CARLSON, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Prior to final submission of Dana G.'s petition for the appointment of a guardian for a minor child, Dana moved