Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 08:27 AM CST

accrue on the judgment "from and after November 1, 2010," as ordered by the county court, but, rather, from and after July 8, 2013. We modify the judgment to that extent and affirm as modified.

AFFIRMED AS MODIFIED.

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.

811 N.W.2d 214

Filed March 23, 2012. No. S-11-616.

1. **Juvenile Courts: Evidence: Appeal and Error.** Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other.
2. **Juvenile Courts: Jurisdiction: Appeal and Error.** In juvenile cases, as elsewhere, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
3. **Juvenile Courts: Adoption: Child Custody.** A juvenile court, except where an adjudicated child has been legally adopted, may always order a change in the juvenile's custody or care when the change is in the best interests of the juvenile.
4. **Final Orders: Appeal and Error.** Under Neb. Rev. Stat. § 25-1902 (Reissue 2008), the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after judgment is rendered.
5. **Final Orders: 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 the appellant prior to the order from which the appeal is taken.
7. **Juvenile Courts: Final Orders: Constitutional Law: Parent and Child.** The substantial right of a parent in juvenile proceedings is a parent's fundamental, constitutional right to raise his or her child.

8. **Juvenile Courts: Words and Phrases.** The State's right in juvenile cases is derived from its parens patriae interest in the proceedings. This means, in essence, that the State has a right to protect the welfare of its resident children.
9. **Juvenile Courts: Jurisdiction.** The purpose of the adjudication phase of a juvenile proceeding is to protect the interests of the child. This same purpose forms the foundation for the State's parens patriae interest; thus, once the child is adjudicated, the State's interest in protecting the child becomes greater and more necessary.
10. **Statutes: Time.** Procedural amendments to statutes are ordinarily applicable to pending cases, while substantive amendments are not.
11. **Statutes: Words and Phrases.** A procedural amendment simply changes the method by which an already existing right is exercised, while a substantive amendment creates a right or remedy which did not previously exist.
12. **Juvenile Courts: Minors.** The foremost purpose and objective of the Nebraska Juvenile Code is to promote and protect the juvenile's best interests, and the code must be construed to assure the rights of all juveniles to care and protection.
13. **Juvenile Courts: Jurisdiction: Child Custody.** Once a child has been adjudicated under Neb. Rev. Stat. § 43-247(3) (Reissue 2008), the juvenile court ultimately decides where a child should be placed. Juvenile courts are accorded broad discretion in determining the placement of an adjudicated child and to serve that child's best interests.
14. **Juvenile Courts: Child Custody.** The Nebraska Juvenile Code clearly expresses a preference for placement with blood relatives.

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

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

Christine P. Costantakos for intervenor-appellee.

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

MCCORMACK, J.

The issue in this case is where Karlie D., a minor child, should live. Karlie's mother voluntarily relinquished her parental rights to Karlie. While termination proceedings against the biological father were pending, he died. The Nebraska Department of Health and Human Services (Department) placed Karlie in foster care. But Karlie's paternal grandmother, Martha D., moved to have Karlie placed with her and her husband and to become

Karlie's guardian. The juvenile court adopted a transition plan, against the Department's recommendation, which permanently moved Karlie to live with her grandparents. Because the court's order affected a substantial right of the State, the order was final and appealable. And because Martha is fully capable of caring for Karlie, has established a relationship with her, and is her grandmother, we conclude it is in Karlie's best interests to be placed with Martha. We affirm.

I. BACKGROUND

Karlie was born in August 2007 to Kara B. The State immediately petitioned the juvenile court to adjudicate Karlie, and moved for her to be placed in the Department's temporary custody, because Karlie tested positive for drugs at birth. The juvenile court granted temporary custody of Karlie to the Department, who placed her in foster care a few days after her birth. At the time, the father's identity was unknown.

On September 10, 2007, Gary D. moved to intervene in the proceedings, claiming that he was Karlie's father. Gary also asked for Karlie to be placed with him. The juvenile court adjudicated Karlie under Neb. Rev. Stat. § 43-247(3)(a) (Cum. Supp. 2006), with temporary custody to remain with the Department. The juvenile court ordered that Karlie remain in the Department's custody, and thus with her foster parents, because Gary had not yet established that he was Karlie's father. However, Gary was granted visitation, and Martha would sometimes get to accompany Gary during his visits.

Following a positive paternity test and in light of successful supervised visitation, the juvenile court placed Karlie with Gary in August 2008. At the time, Gary was working second shift, from 3 p.m. to 1:30 a.m., 6 days a week. He was unable to find a daycare which was open until 2 a.m., so he arranged for Martha to watch Karlie while he was at work. The Department knew of this arrangement and approved it. If the weather was poor, Karlie would stay overnight at Martha's home. The Department never expressed any concern over Karlie's staying with Martha.

On March 23, 2009, the Department discovered that Gary had tested positive for methamphetamines. A test of Karlie's

hair also came back positive for methamphetamines. Karlie's first caseworker asked Martha whether it would be all right if Karlie stayed with her for a few days until a safety assessment could be completed. Martha said yes. Gary likewise agreed to this arrangement, and Karlie was sent to live with Martha on a temporary basis.

But just a few days later, on March 26, 2009, the Department removed Karlie from Martha's home and placed her back with her foster parents. Karlie's current caseworker testified that the Department removed Karlie from Martha's home because of the earlier positive drug tests. But Martha testified that the Department removed Karlie because it had received a call accusing Karlie's uncle of having sexually molested Karlie. At the time, Karlie's uncle lived in Martha's basement apartment. Although the basis for the removal is disputed, it is undisputed that someone made a sexual abuse allegation against Karlie's uncle, that the allegation was false, and that the Department's investigation of the allegation lasted no more than a few days.

Martha further testified that the Department did not notify her that the investigation had been resolved until several months after Karlie had been removed. At that point, Martha asked the Department to return Karlie to her, but the Department refused. The Department explained that it did not wish to further traumatize Karlie with another home change. Martha then asked for visitation with Karlie, which was granted. Martha's visitation included two mornings each week and two overnight visits each month.

In November 2009, Martha filed a motion to intervene in the juvenile proceedings, which the juvenile court granted. Afterward, the State moved to terminate Gary's parental rights to Karlie. Martha then moved to have Karlie placed with her. The juvenile court proceeded to trial on both issues; namely, whether to place Karlie with Martha and whether to terminate Gary's parental rights. Over the course of several days during 2010, the juvenile court heard testimony and received exhibits, which will be discussed in more detail below. During these proceedings, Martha filed an amended motion to also be named as Karlie's guardian.

Following the hearings, but before the court's ruling, Gary died. As a result, the State moved to dismiss its motion to terminate Gary's parental rights to Karlie, which the court granted. This left pending before the court only Martha's motion to have Karlie placed in her home and to be named as Karlie's guardian.

On March 31, 2011, the juvenile court entered its order. The juvenile court determined that it could not

> find by a preponderance of the evidence that it would be inconsistent with the best interest, safety, and welfare of Karlie if permanency occur[red] 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 the Department as the guardian, the Department shall submit a transition plan to the court by May 15, 2011. Also, by May 15, 2011, the Department shall assess whether a subsidy or Medicaid coverage for the care of Karlie is consistent with Karlie's best interests, safety, and welfare.

A hearing on the above was scheduled for June 16, 2011.

The State appealed the March 31, 2011, order. While that appeal was pending before the Nebraska Court of Appeals, the juvenile court held the scheduled June 16 hearing. At the hearing, the Department presented its transition plan to the court. The transition plan set forth a graduated, increasing visitation schedule between Martha and Karlie which, over the course of about 1½ months, ended with Karlie's permanently living with Martha. That same day, the court ordered that the transition plan be adopted, although the court did not remove Karlie from the Department's custody or appoint Martha as her guardian.

The State also appealed the June 16, 2011, order. Later, the Court of Appeals determined that the juvenile court's March 31 order was not a final, appealable order and dismissed the case.[1] It is the appeal of the second order, issued on June 16, which is before us now.

---

[1] See *In re Interest of Karlie D.*, 19 Neb. App. 135, 809 N.W.2d 510 (2011).

II. ASSIGNMENT OF ERROR

The State assigns, restated, that the juvenile court erred in finding that Karlie's best interests were served by permanent placement with Martha.

III. STANDARD OF REVIEW

[1] Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings. However, when the evidence is in conflict, an appellate court may consider and give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other.[2]

IV. ANALYSIS

1. Jurisdiction

[2] In juvenile cases, as elsewhere, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.[3] Martha argues that for an order to be final and appealable, it must affect a substantial right of the appealing party, and that no substantial right of the State was affected by this order. This is because the order left Karlie in the Department's custody and did not remove the Department as Karlie's guardian. Furthermore, although the court adopted the transition plan, Martha asserts that the court could still "change its mind and stop the process at any . . . point" upon a showing that such a change would be in Karlie's best interests.[4] For those reasons, Martha claims that the order is not final and appealable and that we lack jurisdiction to reach the merits of this case.[5]

[3] At the outset, we note that a juvenile court, except where an adjudicated child has been legally adopted, may *always* order a change in the juvenile's custody or care when the

---

[2] See *In re Interest of Hope L. et al.*, 278 Neb. 869, 775 N.W.2d 384 (2009).

[3] *In re Interest of Thomas M.*, 282 Neb. 316, 803 N.W.2d 46 (2011).

[4] Brief for intervenor-appellee at 2.

[5] See *In re Adoption of David C.*, 280 Neb. 719, 790 N.W.2d 205 (2010).

change is in the best interests of the juvenile.[6] Obviously, this would include the juvenile's placement. But the court's ability to do so has no bearing on whether the court's order is final and appealable, despite Martha's argument to the contrary. Concluding otherwise would result in no orders of the juvenile courts' being final and appealable, since the court could always "change its mind." We reject Martha's argument in that regard.

[4] Under Neb. Rev. Stat. § 25-1902 (Reissue 2008), the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after judgment is rendered.[7]

We recognize that our final order jurisprudence is difficult to follow—it has been criticized in the past for a lack of clarity,[8] and understandably so. Here, only the second type of final order—an order affecting a substantial right made during a special proceeding—is at issue. We have long held that juvenile court proceedings are special proceedings.[9] So we are tasked with determining whether the juvenile court's order affected a substantial right.

[5,6] We have defined a "substantial right" in various ways. For example, we have stated that a substantial right is an essential legal right, not a mere technical right.[10] We have also explained that 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 the appellant prior to the order from which the appeal is taken.[11] But the application of these

---

[6] See Neb. Rev. Stat. § 43-295 (Reissue 2008).

[7] See *In re Adoption of David C., supra* note 5.

[8] See John P. Lenich, *What's So Special About Special Proceedings? Making Sense of Nebraska's Final Order Statute*, 80 Neb. L. Rev. 239 (2001).

[9] See *In re Adoption of David C., supra* note 5.

[10] *Id.*

[11] *Id.*

definitions in juvenile cases—where the best interests of the child are the primary concern—is not always clear. Most of our cases dealing with the finality of juvenile court orders involve the substantial right of a parent.[12] Here, it is the substantial right of the State, if any, which is at issue. For purposes of this analysis, the Department and the State are one and the same because the Department is a state agency.

[7,8] The substantial right of a parent in juvenile proceedings is a parent's fundamental, constitutional right to raise his or her child.[13] The State's right in juvenile cases, however, is derived from its parens patriae interest in the proceedings.[14] This means, in essence, that the State has a right to protect the welfare of its resident children.[15] We have addressed the scope of the State's parens patriae interest in juvenile proceedings before. In *In re Interest of Anthony G.*,[16] we held that an order denying continued detention of a juvenile pending adjudication did not affect a substantial right of the State.

We explained that the filing of an abuse and neglect proceeding pursuant to § 43-247(3) subjected the juvenile to the jurisdiction of the juvenile court but did not automatically confer custody rights upon the State.[17] Furthermore, the denial of a request for temporary custody pending adjudication did not affect any then-existing right of the State. Rather, such a finding indicated only that removal of the juvenile from parental custody, pending adjudication, was not warranted on the facts

---

[12] See, e.g., *id.*; *In re Interest of Ty M. & Devon M.*, 265 Neb. 150, 655 N.W.2d 672 (2003); *In re Guardianship of Rebecca B. et al.*, 260 Neb. 922, 621 N.W.2d 289 (2000); *In re Interest of Sarah K.*, 258 Neb. 52, 601 N.W.2d 780 (1999); *In re Interest of Tabatha R.*, 255 Neb. 818, 587 N.W.2d 109 (1998).

[13] See, *In re Interest of Anthony G.*, 255 Neb. 442, 586 N.W.2d 427 (1998); *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991), *disapproved on other grounds, O'Connor v. Kaufman*, 255 Neb. 120, 582 N.W.2d 350 (1998).

[14] See *In re Interest of Anthony G., supra* note 13.

[15] See *In re Interest of R.G., supra* note 13.

[16] *In re Interest of Anthony G., supra* note 13.

[17] *Id.*

before the juvenile court. We said that the order did not foreclose the State, in its parens patriae role, from pursuing adjudication and disposition, nor did it foreclose the State from taking other measures to protect the child pending adjudication.[18] In short, the order in *In re Interest of Anthony G.* did not confer any custody right on the State, it did not end or foreclose a discrete phase of the juvenile proceeding, and it did not affect any then-existing right of the State. For those reasons, the order did not affect a substantial right of the State.[19]

But those factors we found lacking in *In re Interest of Anthony G.* are present in this case. Karlie has been adjudicated under § 43-247(3); the juvenile court granted the Department, and thus the State, custody of Karlie; and by statute, the Department became Karlie's guardian.[20] As Karlie's guardian and custodian, the Department had the right to recommend where Karlie should live[21] and had already placed Karlie in state-sponsored foster care. So the order permanently moving Karlie to live with her grandparents did affect an existing right of the State.

Furthermore, the order, in effect, terminated the dispositional phase of the juvenile proceeding. While a juvenile court may always change the care or custody of an adjudicated child when such a change is in the child's best interests,[22] it can be assumed that no such change would be ordered absent a material change in the child's circumstances. Logically, once the juvenile court has found that one living arrangement is in a child's best interests, that finding would remain the same unless the original circumstances had changed. In that sense, then, the dispositional order moving Karlie to permanently live with her grandmother put an end to the dispositional phase of the juvenile proceedings. Thus, the order is final, as that term is ordinarily understood, and explains why we have

---

[18] See *id.*

[19] See *id.*

[20] Neb. Rev. Stat. § 43-285(1) (Reissue 2008).

[21] *Id.*

[22] § 43-295.

previously stated that, as a rule, dispositional orders are final and appealable.[23]

[9] While we have not yet addressed a factual situation similar to the one before us now, the Court of Appeals has. In *In re Interest of Tanisha P. et al.*,[24] the State appealed from a decision of a juvenile court which approved the return of the adjudicated child, Tanisha P., to the home of her grandmother and legal guardian. The Court of Appeals distinguished its case from *In re Interest of Anthony G.* and explained that Tanisha had already been adjudicated as a juvenile under § 43-247(3) at the time of the order. The purpose of the adjudication phase of a juvenile proceeding is to protect the interests of the child.[25] This same purpose forms the foundation for the State's parens patriae interest; thus, once the child is adjudicated, the State's interest in protecting the child becomes greater and more necessary.[26] The Court of Appeals explained that the order was "entered subsequent to Tanisha's adjudication and her placement in State-sponsored foster care, [which] affected an existing right of the State."[27] Therefore, the Court of Appeals determined that the order affected a substantial right of the State and was final and appealable.[28] We approve of this reasoning.

We conclude that the juvenile court's order on June 16, 2011, affected a substantial right of the State, making its

---

[23] See, *In re Interest of Taylor W.*, 276 Neb. 679, 757 N.W.2d 1 (2008); *In re Interest of Jeremy T.*, 257 Neb. 736, 600 N.W.2d 747 (1999); *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); *In re Interest of V.T. and L.T.*, 220 Neb. 256, 369 N.W.2d 94 (1985). See, also, Lenich, *supra* note 8 (arguing that order which ends distinct phase of multifaceted special proceeding, such as juvenile proceeding, ought to be treated as final order).

[24] *In re Interest of Tanisha P. et al.*, 9 Neb. App. 344, 611 N.W.2d 418 (2000).

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

[26] See *In re Interest of Tanisha P. et al., supra* note 24.

[27] *Id.* at 351, 611 N.W.2d at 423.

[28] See *In re Interest of Tanisha P. et al., supra* note 24.

order final and appealable. The State's interest in this case is greater than in *In re Interest of Anthony G.*, because Karlie has been adjudicated and placed in the Department's custody and the Department is Karlie's guardian. The order denied the Department, as Karlie's guardian and custodian, its recommended placement. And the court's order ended the dispositional phase of the juvenile proceeding. For these reasons, we conclude that the juvenile court's order is final and appealable. We have jurisdiction to reach the merits of this appeal.

2. Best Interests Analysis

(a) Burden of Proof

At the time of these proceedings, recommendations made by the Department were legally presumed to be in the best interests of the child over other possible courses of action.[29] But that changed in August 2011, when L.B. 648 came into effect. Before L.B. 648, § 43-285(2) contained the following sentence: "If any other party . . . proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan." L.B. 648 struck that sentence from the statute.[30] The Court of Appeals has concluded that this change shifted the burden of proof to the State to show that the Department's proposed action was in the best interests of the juvenile.[31] We agree. Someone must have the burden of proof. The Legislature decreed that it shall not be on those opposed to the Department's plan; logically, then, the burden is now on the State. The initial question is whether L.B. 648 applies to this case on appeal.

[10,11] Procedural amendments to statutes are ordinarily applicable to pending cases, while substantive amendments are not.[32] A procedural amendment simply changes the method by which an already existing right is exercised, while a substantive amendment creates a right or remedy which did not

---

[29] See § 43-285(2) (Cum. Supp. 2010).

[30] 2011 Neb. Laws, L.B. 648.

[31] See *In re Interest of Ethan M.*, 19 Neb. App. 259, 809 N.W.2d 804 (2011).

[32] *Harris v. Omaha Housing Auth.*, 269 Neb. 981, 698 N.W.2d 58 (2005).

previously exist.[33] The amendment to § 43-285(2) did not create a new right or remedy, but only altered the way an existing right is exercised. Thus, this was a procedural amendment which is applicable here on our de novo review. It is the State's burden to show that its plan is in Karlie's best interests.

(b) Merits

The State argues that Karlie's placement with Martha is not in Karlie's best interests and that Karlie should remain with her foster parents. Specifically, the State claims that Martha's advanced age and deteriorating health make her unable to care for a growing child. The State also asserts that Karlie suffered behavioral problems as a result of her contact with Martha and that Karlie has already bonded with her foster parents. We recognize that Martha is older, but that alone is not enough to disqualify her as a potential caretaker for Karlie. Furthermore, the record is insufficient to conclude that Martha's health is deteriorating or that Karlie's behavioral problems were caused by contact with Martha. And while we recognize that Karlie is affectionate toward her foster parents, the record also supports a finding that Karlie has established a bond with Martha. We therefore affirm the juvenile court's placement order.

[12,13] The foremost purpose and objective of the Nebraska Juvenile Code is to promote and protect the juvenile's best interests, and the code must be construed to assure the rights of all juveniles to care and protection.[34] Once a child has been adjudicated under § 43-247(3), the juvenile court ultimately decides where a child should be placed.[35] Juvenile courts are accorded broad discretion in determining the placement of an adjudicated child and to serve that child's best interests.[36]

We do not doubt that Karlie's foster parents have been good to her and wish to adopt her. But the juvenile court exercised its discretion in this case and determined that Karlie should

---

[33] See *id.*

[34] See *In re Interest of Veronica H.*, 272 Neb. 370, 721 N.W.2d 651 (2006).

[35] See § 43-285(2) (Supp. 2011).

[36] See *In re Interest of Veronica H., supra* note 34.

live with Martha. In doing so, the court made numerous factual findings which, after our de novo review, we find to be amply supported by the record.

The State does not contest that Martha is a reputable citizen of good moral character. Nor does the State question Martha's motive—it is undisputed that Martha wishes to have Karlie placed with her, because Martha loves Karlie and believes that Karlie should remain with family. Martha is interested in adopting Karlie. Evidence also indicates that Martha is able to financially provide for Karlie.

Even so, the State claims that Martha's advanced age and deteriorating health make her a poorer choice to care for Karlie than Karlie's foster parents. In our de novo review, we are unwilling to exclude Martha as a viable caretaker for Karlie because of her age. While being older may create some difficulties in raising a child, it also has its advantages. Martha has a wealth of experience to draw upon in raising Karlie. Indeed, the record shows that Martha has raised 6 children and has 14 grandchildren. She has also successfully provided foster care for two other children, including one of her other grandchildren. Certainly, Martha's advanced age means that she may not live as long as younger individuals like Karlie's foster parents. But that is not enough to disqualify her as a caretaker for Karlie. Nothing in life is certain, least of all whether a person will be around tomorrow, and this is true regardless of age. We do not view Martha's age with the same trepidation as the State.

Nor are we convinced that health problems detrimentally affect Martha's ability to care for Karlie. There was no expert medical testimony detailing any current health issues that Martha (or her husband) may have had. While the record shows that Martha has had a number of surgeries in the past, all of the testimony at trial indicated that she was fully recovered and fit. And while her husband, Karlie's grandfather, might have health concerns as well, there is no indication that he is unable to care for Karlie. In fact, the record shows that he was employed as a nighttime security guard.

The State claims Karlie's behavior was negatively affected by her visits with her grandparents. But the juvenile court

specifically found no causal link between Karlie's behavioral problems and those visits. The evidence presented was that Karlie had sleeping problems, some difficulty in her relationship with her foster parents' other child, and a speech impairment. The only evidence of causation was her foster mother's testimony that these behaviors occurred or worsened upon Karlie's return from staying with her grandparents. But, as noted by the juvenile court, there could be many causes for this behavior, and we cannot attribute these behavioral changes to the grandparents without more definitive proof of causation.

The State also argues that Karlie has bonded with her foster parents, and so Karlie should remain in their home. We do not doubt that Karlie has bonded with her foster parents. She has lived with them for a significant time, and the evidence shows that Karlie feels affection for her foster parents. Karlie's current caseworker opined that Karlie should remain with her foster parents for that reason. But the evidence also shows that Karlie has a strong bond with her grandparents. Martha has been involved with Karlie since her birth and has had consistent visitation with Karlie, including overnight visits. Martha testified that those visits have gone well and that Karlie is a "happy little girl." This is reinforced by numerous photographs admitted into evidence which depict Karlie obviously enjoying her time with her grandparents.

The State also argues that its expert testimony showed that Karlie should remain with her foster parents. Notably, Amanda Schraut, a therapist and early childhood consultant, opined that it was in the best interests of Karlie to remain with her foster parents. This was based on her evaluation of Karlie's individual interaction with her grandparents and foster parents, along with collateral interviews and other background information regarding Karlie. The juvenile court gave this testimony little weight, and, after our de novo review of the record, we likewise give little weight to this testimony.

Schraut conducted a parent-child relationship assessment. The purpose of the assessment was to make recommendations regarding Karlie's permanency planning and to identify any therapy treatment that Karlie might need. The record

demonstrates that the assessment, as a whole, lacked reliability, and the resulting recommendations were suspect at best. Notably, Schraut was not provided with all of the information she requested to conduct the assessment. Schraut did not receive home studies for each family, Child Protective Services investigation records, court reports, or case plans. Schraut testified that such information is helpful in completing the assessment because it provides a better picture of the family situation and the child's history. Schraut never observed Karlie within each of the homes, but only in a neutral setting. Furthermore, the study does not account for the many variables that come with dealing with a toddler. For example, on cross-examination, Schraut testified that she did not know where Karlie stayed the night before the examination, when she went to bed, or whether she had eaten beforehand. Schraut testified that those variables could all affect Karlie's mood and the resulting analysis.

The juvenile court also questioned Schraut as to the repeatability of the assessment's results; in other words, whether the results would remain the same or fluctuate from day to day. Schraut testified that the scores used in her assessment could fluctuate from day to day depending on the maturity, mood, and activity of the child. And, as noted on cross-examination, because Karlie had been living with her foster parents on a full-time basis, and had only relatively sparse visitation with Martha, the foster parents had an inherent advantage in this assessment. As a result, we give little weight to Schraut's recommendations in our analysis.

[14] The Nebraska Juvenile Code clearly expresses a preference for placement with blood relatives. For example, under Neb. Rev. Stat. § 43-246(5) (Cum. Supp. 2010), when separation from the juvenile's home is necessary, relatives are to be considered "as a preferred potential placement resource." And Neb. Rev. Stat. § 43-533 (Reissue 2008) lists a number of principles to guide the actions of state government and its departments and agencies, one of which, stated in subsection (4), is "to give preference to relatives as a placement resource" when a child cannot remain with his or her parents. That preference is also expressed in the Department's own administrative rules

and regulations.[37] Martha, Karlie's grandmother, wishes to care for and ultimately adopt Karlie. The record shows that Martha is physically, financially, and in all other ways able to care for Karlie on a permanent basis, and we are not convinced by the State's arguments otherwise. Karlie's best interests are served by placement with Martha.

V. CONCLUSION

We conclude that the juvenile court's order was a final, appealable order. And in our de novo review of the record, we find that the placement of Karlie with her grandparents is in her best interests. We affirm the judgment of the juvenile court.

AFFIRMED.

---

[37] 390 Neb. Admin. Code, ch. 7, § 004.01A (2000).