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and hearsay analysis are not the same, we conclude that Britt's preserving the confrontation issue did not also preserve the hearsay issue and that hearsay issues were not encompassed by Britt's assignments of error regarding a purported confrontation violation. The Court of Appeals did not err when it did not consider Britt's hearsay arguments as plain error.

## CONCLUSION

We conclude that the Court of Appeals did not err when it determined that the certificate was not testimonial and not subject to confrontation analysis. We further conclude that the Court of Appeals did not abuse its discretion when it did not note plain error with regard to Britt's hearsay objections. We therefore affirm the decision of the Court of Appeals which determined that the admission of the certificate was not error and affirmed the decision of the district court which affirmed Britt's conviction and sentence.

AFFIRMED.

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# IN RE INTEREST OF SHALEIA M., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. SHALEIA M. AND JANE M. MCNEIL, GUARDIAN AD LITEM, APPELLEES, AND NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES, APPELLANT.

812 N.W.2d 277

Filed March 30, 2012. Nos. S-11-532, S-11-553.

1. **Judgments: Justiciable Issues: Appeal and Error.** Justiciability issues that do not involve a factual dispute present a question of law, for which an appellate court reaches a conclusion independent of the court below.
2. **Moot Question: Appeal and Error.** A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive.
3. **Courts: Judgments.** In the absence of an actual case or controversy requiring judicial resolution, it is not the function of the courts to render a judgment that is merely advisory.

Appeals from the Separate Juvenile Court of Douglas County: ELIZABETH CRNKOVICH, Judge. Appeals dismissed.

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

Thomas C. Riley, Douglas County Public Defender, and Allyson A. Mendoza for appellee Shaleia M.

Jane M. McNeil, of McNeil Law Office, P.C., L.L.O., guardian ad litem.

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

MCCORMACK, J.

## NATURE OF CASE

The juvenile court signed a written order committing a juvenile to the Youth Rehabilitation and Treatment Center (YRTC) in Geneva, Nebraska, and further written orders transferring her to the YRTC. The orders were made in error and did not reflect the court's orally pronounced intention to pursue foster placement for the juvenile. In a subsequent written order, the court vacated and corrected the erroneous orders, but the juvenile had already been transferred to the YRTC. Despite the court's insistence that the juvenile be returned, the Nebraska Department of Health and Human Services (DHHS) refused to do so and appealed the juvenile court's corrected order. While the appeal was pending, DHHS obtained an order from the Nebraska Court of Appeals staying the juvenile court's corrected order. This left the juvenile in the YRTC, where she completed her program, was paroled, and was subsequently discharged from parole. We dismiss the case as moot.

## BACKGROUND

Shaleia M. was adjudicated under Neb. Rev. Stat. § 43-247(1) (Cum. Supp. 2006) as a juvenile who had committed an act other than a traffic offense which would constitute a misdemeanor or infraction under state law or a violation of a city or village ordinance. She was being held at the Douglas County

Youth Center (DCYC) pending disposition. At the dispositional hearing held on May 17, 2011, DHHS and the county attorney recommended that Shaleia be sent to the YRTC. The guardian ad litem (GAL) argued that Shaleia should be placed in foster care or Boys Town instead. The court agreed, stating it was "going to hold off on [the YRTC in] Geneva." From the bench, the court ordered DHHS to apply with Boys Town for Shaleia to be placed there. The court's written order on May 26, however, committed Shaleia to the YRTC.

The May 26, 2011, order stated that Shaleia should remain in the custody of DHHS and the Office of Juvenile Services (OJS) until discharged, as provided by law, and that the jurisdiction of the juvenile court was terminated. An order issued that same date authorized Shaleia's release from the DCYC to the custody of DHHS for transportation to the YRTC. A mittimus order filed May 27, 2011, authorized the Douglas County Sheriff's Department to transport her to the YRTC. In accordance with these orders, Shaleia was transferred to the YRTC.

Soon thereafter, the GAL alerted the juvenile court that its written orders did not reflect the court's stated intention at the dispositional hearing. On June 3, 2011, the juvenile court issued an order vacating and setting aside the May 26 order on the ground that it was made in error. The court then set forth its "true and intended Order" that Shaleia remain at the DCYC until further order of the court and that DHHS apply with Boys Town for a placement for Shaleia. The court stated that DHHS' recommendations for commitment to the YRTC were still "under advisement" and ordered a "Placement Status Check hearing" for June 13.

At the hearing on June 13, 2011, the court discovered Shaleia was still at the YRTC. DHHS explained to the court that it did not believe the juvenile court had jurisdiction to correct its order committing Shaleia to the YRTC. DHHS asserted that when a mistaken order operates to terminate the juvenile court's jurisdiction, there is no longer jurisdiction to correct that order.

The juvenile court disagreed. The court stated it had an "ethical obligation" to correct the mistake, which it considered

a clerical error. The court further explained that it had made an assurance to a child and that it did not "believe in breaking promises to children." The court said: "I stand by my order to return this child to Douglas County and to make application to the full Boys Town continuum, group home on up, and appropriate foster care." DHHS continued to object, noting that Boys Town had, in fact, rejected its application and that there were no foster care placements available. The court responded: "[Y]ou will bring her back here to the [DCYC], as I ordered weeks ago."

On June 22, 2011, the court issued a written order finding that the June 3 order still stood and ordering DHHS to comply with that order.

In case No. S-11-532, DHHS appealed the June 3, 2011, order. In case No. S-11-553, DHHS appealed the June 22 order. Subsequently, the two appeals were consolidated.

While the case was pending in the Court of Appeals, DHHS asked the court to stay the juvenile court's June 3 and 22, 2011, orders. DHHS explained that Shaleia was still at the YRTC. DHHS argued that it was in Shaleia's best interests to continue at the YRTC pending the outcome of DHHS' appeals. The YRTC offered services and treatment, while the DCYC did not. Furthermore, if DHHS complied with the order to transport Shaleia back to the DCYC, she would not be given "'credit'" for the work she had accomplished since arriving at the YRTC. On July 8, the Court of Appeals granted the stay, subject to reconsideration upon timely objection. No objection was filed.

On December 7, 2011, we moved the consolidated case to our docket. All parties agree that Shaleia has now completed her program at the YRTC. She was paroled from the YRTC on August 26. Shaleia was discharged from parole and from the custody of OJS in September.

## ASSIGNMENTS OF ERROR

DHHS assigns that the juvenile court erred in (1) entering a subsequent order after terminating its jurisdiction over the case and (2) entering a nunc pro tunc order which substantially changed the original order.

## STANDARD OF REVIEW

[1] Justiciability issues that do not involve a factual dispute present a question of law, for which an appellate court reaches a conclusion independent of the court below.[1]

## ANALYSIS

[2] A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive.[2] The underlying question in this appeal was whether the juvenile court had jurisdiction to correct its mistaken orders which sent Shaleia to the YRTC instead of to foster care. The Court of Appeals' stay effectively determined the outcome of that question.

Because of the stay, the previous orders committing Shaleia to the YRTC remained in effect while the appeal was pending. Shaleia completed the YRTC program and was discharged from OJS before this case came on for argument. No one proposes that in addition to a fully completed program through OJS, Shaleia could now be committed to foster care for the same offense for which she was adjudicated. Therefore, what remains is an abstract question of a juvenile court's jurisdiction to vacate prior erroneous orders—a question which no longer rests upon existing facts or rights of the parties.

Shaleia's attorney and DHHS argue that we should accordingly dismiss DHHS' appeals as moot. DHHS has obtained the outcome it desired, and Shaleia is content to be done. Shaleia and DHHS concede they no longer have any legally cognizable interest in the outcome of this litigation, and both assert that no exception to the mootness doctrine applies.

But the GAL, an appellee in this case, argues that exceptions to the mootness doctrine apply and that we should address the merits of the underlying issues presented by DHHS' assignments of error.

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[1] See *In re Interest of Justin V.*, 18 Neb. App. 960, 797 N.W.2d 755 (2011).

[2] *In re Interest of Anaya*, 276 Neb. 825, 758 N.W.2d 10 (2008).

The GAL first argues that the collateral consequences exception applies. According to the GAL, because of Shaleia's commitment to the YRTC, Shaleia will have to apply to have her juvenile record sealed. But if she had been committed to foster care, the records would have been sealed automatically. Furthermore, the GAL points out that any sealed record is accessible for certain law enforcement purposes and for sentencing criminal defendants.[3] According to the GAL, commitment to the YRTC, unlike commitment to foster care, "carries a message to all knowledgeable prosecutors, probation officers and judges that this person is not amenable to treatment and services."[4] Commitment to the YRTC is, according to the GAL, "a proverbial black eye on a person's record."[5]

The GAL asserts that these collateral consequences are similar to those justifying the collateral consequences exception to the mootness doctrine in *In re Interest of Justin V.*[6] In that case, the juvenile had been discharged from OJS. Nevertheless, the juvenile argued that he should be allowed to proceed with the appeal seeking to set aside his admission to the underlying charges that formed the basis for his adjudication. The Court of Appeals agreed. The court explained that there were various collateral consequences as a result of having a juvenile record.[7] These include consideration of juvenile records if the juvenile is later subjected to sentencing in an adult criminal case and a lifelong duty to divulge the dispositional order on various admissions and applications.[8] Therefore, the court considered the merits of the juvenile's appeal, despite the fact that he had been discharged from the juvenile system while the appeal was pending.

Shaleia may have similar consequences from having a juvenile record, but being sent to foster care versus the YRTC will

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[3] See Neb. Rev. Stat. § 43-2,108.05(3) (Supp. 2011).

[4] Brief for appellee GAL in case No. S-11-532 at 11.

[5] *Id.*

[6] *In re Interest of Justin V., supra* note 1.

[7] *Id.*

[8] *Id.*

not change the fact that Shaleia has a juvenile record. The GAL fails to cite any case where the collateral consequence that justified an exception to the mootness doctrine concerned one disposition over another for the adjudicated juvenile. As illustrated by the Court of Appeals' discussion in *In re Interest of Justin V.*, the collateral consequences exception usually warrants review of a moot case when the underlying issue to be addressed could exonerate the juvenile—and thus result in the absence of a juvenile record at all.[9]

There is no issue here that Shaleia was properly adjudicated under § 43-247(1) and that her case thus demanded some dispositional order. Furthermore, upon our review of the statutes pertaining to sealing juvenile records, we find no discernible difference between the rights of juveniles committed to foster care and those committed to the YRTC.[10] This leaves us with only the stigma alleged by the GAL of a YRTC commitment versus a foster home placement. Even if this is so, it is an insufficient collateral consequence to compel our review of an appeal which has ceased to present an actual case or controversy.

The GAL also argues that a public interest exception to the mootness doctrine should apply to this case. The GAL argues that our determination of the question of juvenile court jurisdiction to correct erroneous orders can provide guidance to the juvenile court and the parties usually before it. Under the public interest exception, we may review an otherwise moot case if it involves a matter affecting the public interest or when other rights or liabilities may be affected by its determination.[11]

However, an application of the public interest exception to the mootness doctrine is inappropriate when the issue presented on appeal does not inherently evade appellate review.[12] Not all commitments to the YRTC and the custody of OJS are so short

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[9] See *id.*

[10] See Neb. Rev. Stat. §§ 43-2,108.01 to 43-2,108.05 (Supp. 2011).

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

[12] *Johnston v. Nebraska Dept. of Corr. Servs.*, 270 Neb. 987, 709 N.W.2d 321 (2006).

as Shaleia's. To the extent that this scenario is likely to recur, and we hope it does not, the GAL has not demonstrated it will likely again evade review.

[3] The GAL is frustrated by the fact that DHHS has obtained its desired outcome through obstinacy and procedural maneuverings. But such complaints fail to provide an exception to the mootness doctrine. Shaleia, the party whose interests are most at stake, asks that we dismiss the appeals. In the absence of an actual case or controversy requiring judicial resolution, it is not the function of our court to render a judgment that is merely advisory.[13] We dismiss the appeals as moot.

APPEALS DISMISSED.

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[13] *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009).