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IN RE INTEREST OF EDWARD B., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. EDWARD B., APPELLANT.

827 N.W.2d 805

Filed March 22, 2013. Nos. S-12-342 through S-12-345.

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. When the evidence is in conflict, however, an appellate court may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other.
2. **Statutes: Appeal and Error.** An appellate court independently decides questions of law, including issues of statutory interpretation, presented by an appeal.
3. **Judgments: Jurisdiction.** A jurisdictional issue that does not involve a factual dispute presents a question of law.
4. **Jurisdiction: Appeal and Error.** An appellate court does not acquire jurisdiction over an appeal if a party fails to properly perfect it.
5. **Juvenile Courts: Appeal and Error.** Under the Nebraska Juvenile Code, any final order entered by a juvenile court may ordinarily be appealed to the Nebraska Court of Appeals in the same manner as an appeal from the district court.
6. **Affidavits: Fees: Appeal and Error.** The filing of a poverty affidavit, properly confirmed by oath or affirmation, serves as a substitute for the docket fee for an appeal.
7. **Jurisdiction: Notice: Affidavits: Appeal and Error.** An in forma pauperis appeal is perfected when the appellant timely files a notice of appeal and an affidavit of poverty.
8. **Minors: Juvenile Courts.** Juvenile delinquency proceedings are civil proceedings directed toward the education, treatment, and rehabilitation of the child.
9. **Minors: Juvenile Courts: Affidavits: Parties: Appeal and Error.** In a juvenile's appeal from a delinquency proceeding, the poverty affidavit of the juvenile's parent may be filed in support of the juvenile's request to proceed in forma pauperis, and a parent is a party who may state a belief that the juvenile is entitled to relief.

Appeals from the County Court for Adams County: MICHAEL OFFNER, Judge. Affirmed.

Daniel C. Pauley, of Dunmire, Fisher & Hastings, for appellant.

Alyson Keiser Roudebush, Deputy Adams County Attorney, for appellee.

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

CONNOLLY, J.

SUMMARY

In these consolidated appeals, Edward B. appeals from a disposition order of the county court sitting as a juvenile court. The court found that Edward had violated the terms of his probation in two of these cases. In all four cases, the court found that it was in Edward's best interests to be committed to the Office of Juvenile Services (OJS) with placement at the Youth Rehabilitation and Treatment Center (YRTC) at Kearney, Nebraska.

The main issue is whether we have jurisdiction. The State contends that Edward failed to perfect this appeal because he did not sign the affidavit for an in forma pauperis appeal. Instead, his mother signed the affidavit.

We conclude that we have jurisdiction. In a juvenile's in forma pauperis appeal from a delinquency proceeding, the poverty affidavit of the juvenile's parent is sufficient to vest this court with appellate jurisdiction. We further hold that the court properly determined that Edward's best interests and the safety of the community required his placement at the YRTC.

BACKGROUND

In January and May 2011, the State filed the first two juvenile petitions against Edward. It alleged that on two separate days, Edward had been in a fight and had threatened another person in a menacing manner or had caused bodily harm to the other person. The alleged conduct constituted a third degree assault. Edward pleaded no contest in one case, and the court found that the State had proved its allegations in the other case. In both cases, the court adjudicated Edward under Neb. Rev. Stat. § 43-247(1) (Reissue 2008), meaning that Edward's conduct would constitute a misdemeanor if a court treated him as an adult. The court placed Edward on supervised probation for 4 years, under specified conditions. Those conditions included the requirements that Edward not violate any laws; that he not

possess firearms, alcohol, tobacco, or controlled substances; and that he attend school.

In January 2012, the State filed two new juvenile petitions. In the first petition, the State alleged that Edward had participated in an armed robbery of a store. In the second petition, the State alleged that Edward had stolen merchandise valued over $500 from a retail store and had sold an imitation controlled substance at school. He was in the 10th grade at that time, and the school expelled him over the latter allegation. Because Edward was on probation, the State removed him from his home and placed him in a juvenile detention facility pending the court's disposition order. Edward pleaded no contest in both cases, and the court accepted the State's factual bases for the pleas. For the allegation that he had sold an imitation controlled substance, the court again adjudicated Edward under § 43-247(1). For the allegations of theft and robbery, it adjudicated Edward under § 43-247(2), meaning that Edward's conduct would constitute felonies if a court treated him as an adult. The court ordered OJS to conduct a predisposition evaluation.

On the same day that the State filed the new petitions, it also filed allegations that Edward had violated the conditions of his probation in the two earlier cases. In February 2012, the State asked the court to revoke his probation in those cases.

On March 28, 2012, the court held a disposition hearing on all four cases. Edward's biological mother was present, as was Sharon B., Edward's biological grandmother and adoptive mother. The court asked Edward's counsel whether he had reviewed OJS' evaluation, which had been submitted that day. Edward's counsel said that he had reviewed the report but that he had only 10 to 15 minutes to go over it with Edward, which he believed was inadequate. So the court summarized to the parties why OJS was recommending that the court place Edward at the YRTC.

The court explained that Edward's score on the evaluation tests placed him in the high-risk category, requiring supervised treatment in a treatment facility. OJS concluded that Edward did not appreciate the seriousness of the charges against him and posed a safety risk to the public. The court stated that

in the evaluation, Edward had expressed no remorse for his involvement in the armed robbery and had stated that his involvement was "just charges to me." Although the court recognized that Edward's attitude might be due to a low intellect, it concluded that his lack of understanding was a reason for ordering treatment at the YRTC. The court found that Edward had a history of being physically aggressive and that Edward had admitted he was likely beyond the control of both Sharon and his biological mother.

The court stated that even when Edward was in school, he had skipped school two to three times per week and had admitted to frequently using marijuana. Sharon vigorously argued that Edward had learning disabilities, that almost all the school he had missed was for court hearings, and that she did not believe he had used drugs excessively, as OJS had reported. But Edward's probation officer testified that Edward had admitted to drug use during probation, and when asked by the court, Edward admitted that at one point, he had used marijuana every day. The court stated that Edward's placement at the YRTC was in his best interests and that Edward had no ability to pay court costs or restitution.

The court revoked Edward's probation in the two earlier cases. In all four cases, it found that because of Edward's ongoing and uncontrolled criminal conduct, he could not remain in his home, and that his best interests and protection of the public required his placement at the YRTC.

On April 4, 2012, Sharon moved for appointed counsel for Edward to prosecute an appeal in each case from the court's disposition orders. On April 5, the court granted appointed counsel. On April 16, Sharon filed poverty affidavits, which she signed, providing her income and liabilities. She again requested appointed counsel and requested waivers of fees, bonds, and costs. After reviewing Edward's applications to proceed in forma pauperis on appeal, the court granted his requests.

ASSIGNMENTS OF ERROR

Edward assigns, restated, that the county court erred as follows:

(1) finding that Edward's placement at the YRTC was necessary to protect the public and in his best interests under Neb. Rev. Stat. § 43-286(1)(b) (Supp. 2011); and

(2) implicitly finding—by relying on OJS' evaluation report for its disposition—that Edward was a delinquent and habitual offender under §§ 43-247 and 43-286, without (a) giving adequate consideration to Edward's reduced intellect and ability to understand questions posed to him during OJS' evaluation and the absence of any input from Edward's guardian, or (b) giving Edward an adequate opportunity to review the OJS report so that he could object to allegations that affected his disposition.

STANDARD OF REVIEW

[1-3] We review juvenile cases de novo on the record and reach our conclusions independently of the juvenile court's findings.[1] When the evidence is in conflict, however, we may give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other.[2] We independently decide questions of law, including issues of statutory interpretation, presented by an appeal.[3] A jurisdictional issue that does not involve a factual dispute presents a question of law.[4]

ANALYSIS

JURISDICTION

[4] As stated, the State contends that Edward has not perfected his appeals because Sharon, his adoptive mother, signed the poverty affidavits instead of Edward, as required by our court rules and by statute. We do not acquire jurisdiction over an appeal if a party fails to properly perfect it.[5]

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[1] *In re Interest of Kendra M. et al.*, 283 Neb. 1014, 814 N.W.2d 747 (2012).

[2] *Id.*

[3] See *id.*

[4] *Molczyk v. Molczyk, ante* p. 96, 825 N.W.2d 435 (2013).

[5] See, *In re Interest of Jamyia M.*, 281 Neb. 964, 800 N.W.2d 259 (2011); *State v. Ruffin*, 280 Neb. 611, 789 N.W.2d 19 (2010); *State v. Haase*, 247 Neb. 817, 530 N.W.2d 617 (1995).

The State argues that rules governing who can sign a poverty affidavit ensure that only an appellant with standing to seek redress can appeal from a court's order or judgment. It contends that in delinquency dispositional orders for juveniles adjudicated under § 43-247(1), (2), (3)(b) or (c), and (4), the juvenile's parent is not a party, and therefore cannot be a party entitled to redress. Because the poverty affidavit must state the affiant's belief that he or she is entitled to redress, the State argues that the juvenile must sign it.

Edward contends that the State did not contest Sharon's signing of the poverty affidavits at the trial level and that under *State v. Dallmann*,[6] it cannot do so now. Edward asserts that in his applications to proceed in forma pauperis, he stated that he did not have money to pay for the fees and costs of litigation and that he was entitled to redress. The State concedes this point. Edward argues that because the court granted his motions and appointed Edward counsel for the appeals, the State's questioning of his financial status is an attack on the court's previous determinations that Edward lacked the necessary resources for the appeals. Alternatively, he argues that under our previous decisions, his circumstances presented good cause for not personally signing the poverty affidavits.

In *Dallmann*, we rejected the State's argument that the defendant failed to perfect his appeal because he did not state the nature of the action and that he believed he was entitled to redress. We stated that challenges to the language in the affidavit must be made at the trial level. Because the trial court had sustained the defendant's motion to proceed in forma pauperis, we determined that we had jurisdiction over his appeal. In *State v. Ruffin*,[7] however, we clarified that *Dallmann* "does not change the requirement that the poverty affidavit must be properly signed under oath by the party, rather than the party's attorney, in order to serve as a substitute for the payment of the docket fee and to vest an appellate court with jurisdiction."

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[6] *State v. Dallmann*, 260 Neb. 937, 621 N.W.2d 86 (2000).

[7] *State v. Ruffin, supra* note 5, 280 Neb. at 618-19, 789 N.W.2d at 25.

We agree that the State cannot now attack Edward's ability to pay court fees and costs for his appeals.[8] But the State's argument is that Edward has not perfected his appeals because he did not personally sign the poverty affidavits accompanying his requests to proceed in forma pauperis. We turn to that argument.

[5] Under the Nebraska Juvenile Code,[9] any final order entered by a juvenile court may ordinarily be appealed to the Nebraska Court of Appeals in the same manner as an appeal from the district court.[10] That is true here. Neb. Rev. Stat. § 25-1912(1) (Reissue 2008) sets out the requirements for perfecting an appeal. Together, §§ 25-1912(1) and 43-2,106.01(1) require a party appealing from a juvenile court's final order to (1) file a notice of appeal with the juvenile court, (2) deposit the docket fee for an appeal with the clerk of the juvenile court, and (3) fulfill both requirements within 30 days of the court's order.[11] These requirements are mandatory, and a party must satisfy them for an appellate court to acquire jurisdiction over an appeal.[12] But under Nebraska's in forma pauperis statutes,[13] a juvenile court can authorize a party to prosecute an appeal without paying fees and costs.[14]

[6,7] The filing of a poverty affidavit, properly confirmed by oath or affirmation, serves as a substitute for the docket fee for an appeal.[15] An in forma pauperis appeal is perfected when

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[8] See Neb. Rev. Stat. § 25-2301.02(1) (Reissue 2008).

[9] See Neb. Rev. Stat. §§ 43-245 to 43-2,127 (Reissue 2008, Cum. Supp. 2010 & Supp. 2011).

[10] See, § 43-2,106.01(1); *In re Interest of Rebecca B.*, 280 Neb. 137, 783 N.W.2d 783 (2010).

[11] See, *In re Interest of Noelle F. & Sarah F.*, 249 Neb. 628, 544 N.W.2d 509 (1996); *In re Interest of T.W. et al.*, 234 Neb. 966, 453 N.W.2d 436 (1990).

[12] See *id.* See, also, Neb. Ct. R. App. P. § 2-101(A) (rev. 2010).

[13] See Neb. Rev. Stat. §§ 25-2301 to 25-2310 (Reissue 2008).

[14] *In re Interest of Noelle F. & Sara F., supra* note 11; *In re Interest of T.W. et al., supra* note 11.

[15] See *In re Interest of Fedalina G.*, 272 Neb. 314, 721 N.W.2d 638 (2006).

the appellant timely files a notice of appeal and an affidavit of poverty.[16]

In both civil and criminal cases, § 25-2301.01 sets out the procedures for applying to proceed in forma pauperis at trial or on appeal:

> An application to proceed in forma pauperis shall include an affidavit stating that the affiant is unable to pay the fees and costs or give security required to proceed with the case, the nature of the action, defense, or appeal, and the affiant's belief that he or she is entitled to redress.

In a juvenile case terminating the parents' parental rights, we held that "generally, in the absence of good cause evident in the record, it is necessary for a party appealing to personally sign the affidavit in support of her or his motion to proceed in forma pauperis."[17] In criminal cases, we have similarly held that absent good cause evident in the record, the affidavit must be signed by the party appealing—not the party's attorney.[18]

Contrary to the State's argument, however, this rule does not exist to ensure that the party appealing has standing to seek redress. Standing is jurisdictional, and we would address standing even if a party has properly perfected an in forma pauperis appeal. Instead, the rule is based on the statutory requirements for invoking an appellate court's jurisdiction. In addition, we have reasoned that an attorney's statement of a client's financial status is hearsay and puts the attorney in a position of a witness, "'thus compromising his role as an advocate.'"[19]

But appeals by a parent from a juvenile case or by an adult defendant in a criminal case are obviously distinguishable from a juvenile's appeal. When the appellant is an adult, only the

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[16] *Id*. See *In re Interest of N.L.B.*, 234 Neb. 280, 450 N.W.2d 676 (1990).

[17] See *In re Interest of T.W. et al., supra* note 11, 234 Neb. at 968, 453 N.W.2d at 437.

[18] *State v. Ruffin, supra* note 5.

[19] See *id*. at 615, 789 N.W.2d at 22 (quoting *In re Interest of T.W. et al., supra* note 11).

appellant's financial resources are relevant to a finding that the appellant is unable to pay the fees and costs of an appeal. That is not true with a juvenile's appeal. Section 25-2301.01 does not literally require that the affiant declaring poverty be the party appealing. And we have never held that in a juvenile's appeal, a poverty affidavit must be signed by the juvenile. That holding would be contrary to the juvenile code's concern with a parent's financial resources.

Specifically, § 43-272(1) requires a juvenile court to consider a parent's ability to pay for an attorney in determining whether to appoint counsel for the juvenile:

> When any juvenile shall be brought without counsel before a juvenile court, the court shall advise such juvenile *and his or her parent or guardian of their right to retain counsel* and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel. The court shall inform such juvenile and his or her parent or guardian of such juvenile's right to counsel at county expense *if none of them is able to afford counsel*. If . . . the court ascertains that none of such persons are able to afford an attorney, the court shall forthwith appoint an attorney to represent such juvenile for all proceedings before the juvenile court, except that if an attorney is appointed to represent such juvenile and *the court later determines that a parent of such juvenile is able to afford an attorney, the court shall order such parent or juvenile to pay for services of the attorney* . . . . If the parent willfully refuses to pay any such sum, the court may commit him or her for contempt . . . .

(Emphasis supplied.)

A juvenile court may also order a parent to pay for other state services related to juvenile proceedings.[20] It follows from these provisions that a parent's financial status is also a necessary inquiry in determining whether a juvenile has the means of paying the fees and costs for an appeal. Obviously, the State

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[20] See § 43-290.

can object if it believes that the juvenile has other resources.[21] But in the majority of cases, the financial status of the juvenile's parent, guardian, or custodian will be the only relevant consideration. So, in many cases involving a juvenile's appeal, a court could not sensibly apply the rule that the party appealing must personally sign the poverty affidavit.

[8] We also reject the State's argument that a parent is not a party to a delinquency proceeding and, thus, cannot be an affiant with a belief that he or she is entitled to redress. Contrary to the thrust of the State's argument, juvenile delinquency proceedings are civil proceedings directed toward the education, treatment, and rehabilitation of the child.[22] The juvenile code explicitly recognizes a parent's interests in his or her child's disposition by making the parent a party.

Under § 43-2,106.01(2), an appeal from a juvenile court's final order or judgment may be taken by, among other persons, the juvenile *or* the juvenile's parent. Section 43-2,106.01 confers a statutory right of appeal without making a distinction between neglect proceedings and delinquency proceedings. And we have previously stated that § 43-2,106.01 "delineates those persons or entities which may be considered parties and therefore have standing to appeal."[23]

But the State argues that because § 43-2,106.01(2) is necessarily broad enough to apply to both neglect and delinquency proceedings, we should not interpret it to apply to delinquency disposition orders. It argues that *In re Interest of Dalton S.*[24] supports its position that the juvenile is the only party with rights at stake in a delinquency proceeding. We disagree.

In *In re Interest of Dalton S.*, the juvenile court adjudicated a 9-year-old boy under § 43-247(1) for disorderly conduct at school. When the court explained to the child his rights and

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[21] See § 25-2301.02.

[22] See *In re Interest of Laurance S.*, 274 Neb. 620, 742 N.W.2d 484 (2007).

[23] See, *In re Interest of William G.*, 256 Neb. 788, 792, 592 N.W.2d 499, 503 (1999); § 43-245(15).

[24] *In re Interest of Dalton S.*, 273 Neb. 504, 730 N.W.2d 816 (2007).

accepted his plea, he was not represented, but his mother was present and advised the boy to waive his right to counsel. At a disposition hearing the next year, the court determined that the child should be placed in a treatment foster home. The child appealed, arguing that at the adjudication, the court had failed to adequately advise him of his right to counsel.

We rejected that argument. We concluded that the court had adequately advised the juvenile as required by statute. In determining whether the child had knowingly, voluntarily, and intelligently waived his right to counsel, we noted that the mother was actively involved in the waiver and that the record did not show that she had a conflict of interest which should discount her involvement.

The facts of *In re Interest of Dalton S.* undermine the State's argument that a parent does not have an interest in delinquency proceedings. It illustrates that the State may seek to adjudicate very young children under the delinquency provisions of § 43-247 and that a parent's participation may be crucial to the child's understanding of the proceedings.

Additionally, "unless the context otherwise requires," § 43-245(15) provides that the term "[p]arties" in the juvenile code shall mean "the juvenile as described in section 43-247 and his or her parent, guardian, or custodian." Section 43-279(1) clarifies that in the context of delinquency proceedings, a parent is a party with a right of appeal:

> When the petition alleges the juvenile to be within the provisions of subdivision (1), (2), (3)(b), or (4) of section 43-247 and the juvenile or his or her parent, guardian, or custodian appears with or without counsel, the court shall *inform the parties*:
>
> (a) Of the nature of the proceedings and the possible consequences or dispositions . . . .
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> . . . .
>
> . . . and
>
> (g) Of the right to appeal and have a transcript for such purpose.

(Emphasis supplied.)

Finally, apart from the parent's potential financial liabilities under the juvenile code, a parent obviously has a substantial

right at stake in a disposition order placing his or her child in a treatment facility. So we reject the State's argument that a parent has no interest to redress in a juvenile's appeal from a disposition order in a delinquency proceeding.

[9] We hold that in a juvenile's appeal from a delinquency proceeding, the poverty affidavit of the juvenile's parent may be filed in support of the juvenile's request to proceed in forma pauperis. We further hold that a parent is a party who may state a belief that the juvenile is entitled to relief. Because the affidavit was timely filed, the appeal was properly perfected. The State's jurisdiction argument is without merit. Having determined that we have jurisdiction, we turn to Edward's assigned errors.

Court's Disposition Order Was Correct

Section 43-286 governs a juvenile court's disposition of a juvenile when the court adjudicated the juvenile under § 43-247(1), (2), or (4). And it permitted the court to commit Edward to OJS and place him at the YRTC.[25] Also, because the court found that Edward had violated the terms of his probation, it could enter any disposition that it could have made at the time that that the original order of probation was entered.[26]

Edward contends that the court should have considered a different disposition than placing him at the YRTC, but he does not specify the disposition that he believes would have been appropriate. He also contends that the court failed to ensure that Edward's responses during the OJS evaluation were accurate because Edward lacked the requisite intellect to have knowingly answered the evaluator's questions. He also argues that Sharon was not present during the evaluation process.

The State argues that Edward's most serious offenses were committed while Edward was on probation and that the court correctly determined that Edward needed the help that he would get at the YRTC. We agree.

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[25] See § 43-286(1)(b).

[26] See § 43-286(5)(b)(v).

Edward cites no authority for his contention that a juvenile's parent must be present during the State's assessment of the juvenile's treatment needs, and the record shows that Sharon participated telephonically during a clinical evaluation. OJS included her comments in its report. Moreover, the record shows that the professionals evaluating Edward's treatment needs fully considered his psychiatric and intellectual needs during their testing. And Edward fails to identify any statements that he made during the evaluation process that were inaccurate or that would have changed the recommendation in these cases. More important, rehabilitation under any lesser disposition would depend on Edward's compliance with a probation program, which he had already failed.[27] The court did not err in concluding that probation had been inadequate and that Edward's conduct and the public's safety required his treatment in a secure facility.

AFFIRMED.

[27] See § 43-286(1)(a).

THOMAS L. PEARSON, APPELLANT, V. ARCHER-DANIELS-MIDLAND MILLING COMPANY, APPELLEE.

828 N.W.2d 154

Filed March 22, 2013. No. S-12-729.

1. **Workers' Compensation: Appeal and Error.** In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the findings of the trial judge who conducted the original hearing; the findings of fact of the trial judge will not be disturbed on appeal unless clearly wrong.
2. **Evidence: Words and Phrases.** Competent evidence means evidence that tends to establish the fact in issue.
3. **Workers' Compensation: Evidence: Appeal and Error.** In testing the sufficiency of the evidence to support the findings of fact by the Workers' Compensation Court, the evidence must be considered in the light most favorable to the successful party, every controverted fact must be resolved in favor of the successful party, and the successful party will have the benefit of every inference that is reasonably deducible from the evidence.