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CONCLUSION

Therefore, we affirm the district court's decision in all respects. We note that the provision for "subsequent administration" after the closure of an estate, Neb. Rev. Stat. § 30-24,122 (Reissue 2008), contains an express provision that "no claim previously barred may be asserted in the subsequent administration." It goes without saying that Wimer's claim on behalf of her deceased parents arising out of the automobile accident of January 9, 2006, is forever barred, given that, at the time of oral argument of this case, some 6 years and 10 months had elapsed since the accident and the applicable statute of limitations is 4 years.

AFFIRMED.

IN RE INTEREST OF DIANA M. ET AL., CHILDREN UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. MARIA C., APPELLANT.

825 N.W.2d 811

Filed January 15, 2013. No. A-12-151.

1. **Juvenile Courts: 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.
2. **Juvenile Courts: Jurisdiction: Appeal and Error.** In a juvenile case, as in any other appeal, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
3. **Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken.
4. **Final Orders: Appeal and Error.** 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. **Juvenile Courts: Appeal and Error.** A proceeding before a juvenile court is a "special proceeding" for appellate purposes.
6. **Juvenile Courts: Parental Rights: Final Orders.** Whether a substantial right of a parent has been affected by an order in juvenile court litigation is dependent upon both the object of the order and the length of time over which

the parent's relationship with the juvenile may reasonably be expected to be disturbed.

7. **Juvenile Courts: Final Orders: Time: Appeal and Error.** In juvenile cases, where an order from a juvenile court is already in place and a subsequent order merely extends the time for which the previous order is applicable, the subsequent order by itself does not affect a substantial right and does not extend the time in which the original order may be appealed.
8. **Juvenile Courts: Appeal and Error.** A dispositional order which merely continues a previous determination is not an appealable order.
9. **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.
10. **Juvenile Courts: Jurisdiction: Child Custody.** Juvenile courts are accorded broad discretion in determining the placement of an adjudicated child and to serve that child's best interests.
11. **Juvenile Courts: Minors: Proof.** The State has the burden of proving that a case plan is in the child's best interests.

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

Bilal A. Khaleeq, of Khaleeq Law Firm, L.L.C., for appellant.

Christine P. Costantakos, Special Prosecutor, for appellee.

Lynnette Z. Boyle, of Tietjen, Simon & Boyle, guardian ad litem.

INBODY, Chief Judge, and SIEVERS and RIEDMANN, Judges.

INBODY, Chief Judge.

INTRODUCTION

Maria C., the biological mother to four minor children, appeals the order of the Douglas County Separate Juvenile Court changing the permanency plan objective for three of her four children from reunification to guardianship/adoption.

STATEMENT OF FACTS

On November 30, 2009, the State filed an amended petition alleging that Diana M., born in 1994; Daniel M., born in 1996; Eduardo M., born in 1998; and Melissa M., born in 2000, were children within the meaning of Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) as a result of Mauro M.'s subjecting Diana to inappropriate sexual contact. Maria and Mauro are not legally

married, and Mauro is Melissa's biological father, but he is not the biological father of the other three children. The petition further alleges that all of the children reside together in the family home with Mauro and that Maria had failed to protect Diana from the inappropriate sexual contact. On November 13, 2009, the children were removed from the home, and they were eventually adjudicated on February 23, 2010, as children within the meaning of § 43-247(3)(a).

Maria was ordered to complete a psychological evaluation, and Mauro was ordered to complete a sex offender evaluation. On April 7, 2010, a case plan and court report was received which indicates that the permanency objective for the family was reunification, with guardianship as an alternative for Diana and adoption as an alternative for the other children. The Nebraska Department of Health and Human Services (DHHS) provided the family with numerous services, including family support, visitation, foster care, individual therapy, family therapy, case management, psychological testing, transportation, and vouchers. Mauro was ordered to have no contact with any of the children, while Maria exercised visitation with all four children twice a week for 2 hours each visit. At that time, because Maria had not acknowledged the sexual abuse, supervised home visitations were recommended pending Mauro's release from incarceration for driving under suspension.

On June 2, 2010, the court adopted its previous orders, but added that the court was to be provided with progress reports from Maria's therapy regarding her "insight and appreciation that [Diana] was sexually abused by Mauro." In July, Maria began having supervised visitation with the children at her home. Progress reports indicate that visitations continued to occur without issue, but that Maria continually failed to understand sexual abuse and did not accept Diana's claim that Mauro had sexually abused her. Mauro similarly denied that he sexually abused Diana at any time.

The March 31, 2011, case plan and court report, adopted by the juvenile court, indicates that Maria had unlimited, unsupervised visitation because the children had all been placed

with her, while Mauro still was not receiving any visitation per the juvenile court's order. DHHS continued to provide services, and the primary permanency plan of family preservation remained intact.

In July 2011, Maria's therapist reported that although Maria participated in therapy every single week without fail, she continued to refuse to accept the findings of the juvenile court that Mauro had subjected Diana to inappropriate sexual contact and was continuing to maintain a relationship with Mauro. As a result of Maria's lack of progress, she was unsuccessfully discharged from therapy with no further recommendation. Also in July, reports indicating that Mauro was having significant contacts with Maria through telephone calls to the family home during visitation, that Mauro had been sitting outside the home in his car, and that Diana was increasingly fearful as a result of Maria's continual defense of Mauro led again to the children's removal from Maria's home. On July 27, the juvenile court ordered Maria to have supervised visitation with Daniel, Eduardo, and Melissa and therapeutic visitation with Diana.

On January 6, 2012, a hearing was held during which numerous exhibits were received. An updated report from a DHHS case manager indicates that in July 2011, there were numerous concerns regarding Maria's involvement with Mauro and her repeated statements that she was going to "'fight for'" Mauro to be a part of the family again. The case manager reported that Diana refused to participate in family therapy because Maria did not believe Diana's allegations of sexual abuse and continued to maintain contact with Mauro. A June 2011 report from the "Douglas County Child Abuse and Neglect 1184 Treatment Team" was also received. The team found that there were several treatment issues preventing the case from moving forward, including Maria's continued contact with Mauro and the fact that Mauro's biological child, Melissa, did not know the reason for his leaving the home, which placed the children at risk of emotional harm; Maria's increasingly defensive stance regarding Mauro and continual minimization of the sexual abuse; the fact that Diana was not ready for family therapy

with Maria; and the lack of therapeutic goals for Mauro as a result of his denial that he sexually abused Diana. The treatment team recommended continued therapy for Diana, no contact between Maria and Mauro in order to ensure that Diana feels safe and ready to begin therapy with Maria, no contact between Mauro and Melissa, individual therapy for Melissa to reveal why Mauro was not in the home, family therapy, and individual therapy for Maria and Mauro focusing on intrafamilial sexual abuse. In December, the team again reviewed the case and found that even though the case had been open for 2 years, there was a "great deal of work" that needed to be done with Maria before reunification could ever be considered. The team opined that it supported moving the permanency goal for the family to a goal of guardianship. At the hearing, the guardian ad litem for the children also recommended that the permanency plan for all four children be guardianship.

Mauro's individual therapist from July 27, 2010, through June 30, 2011, reported that Mauro addressed the issue of his "strained relationship" with Diana, but denied any sexual contact or sexual intent. Meanwhile, on November 1, 2011, Diana's individual therapist diagnosed Diana with adjustment disorder with depressed mood and anxiety. The therapist indicated that the juvenile court had ordered family therapy in July, but that the first session was suspended because Maria "was being extremely disrespectful and aggressive" to both Diana and the therapist. The therapist reported that Diana continued to feel intimidated by Maria's violent and aggressive responses in the past and also felt vulnerable because Maria still refused to acknowledge that Diana had been sexually abused.

The January 3, 2012, case plan and court report was also received and indicated that Daniel, Eduardo, and Melissa were participating in fully supervised visitations with Maria at her home for a total of 9 hours each week, while Diana had refused to have any contact with Maria, and that all of the children had no contact with Mauro. The report indicates that although Maria has kept the children away from Mauro, she herself continues to see him and allows him to provide her with

financial support and transportation. The report recommended that Diana's primary permanency plan be changed to guardianship with adoption as an alternative and that the other three children remain in a plan of reunification.

A report by the State Foster Care Review Board was received, which recommended that there was a continued need for out-of-home placement of the children. The board opined that the return of Daniel, Eduardo, and Melissa to Maria and Mauro was "likely or possible" and that Diana's return was not likely. The board recommended that Diana's permanency objective be changed to guardianship or some other permanent living arrangement other than adoption.

On January 23, 2012, the juvenile court ordered that all previous orders remain in full force and effect, except that the permanency plan be modified to "guardian/adoption" with no further reasonable efforts provided to Maria or Mauro to bring about reunification. It is from this order that Maria has timely appealed to this court, but only as to Daniel, Eduardo, and Melissa.

ASSIGNMENTS OF ERROR

Maria assigns, rephrased and consolidated, that the juvenile court erred by modifying the permanency objective for Daniel, Eduardo, and Melissa and by failing to elicit testimony from the children. We note that throughout her brief, Maria randomly raises other arguments regarding a myriad of other issues, but has failed to assign any error as to any of those issues. Furthermore, based upon our review of the record, many of those issues were never presented to the juvenile court. Accordingly, we shall not address any of those issues. See *State v. Albrecht*, 18 Neb. App. 402, 790 N.W.2d 1 (2010) (absent plain error, issue raised for first time in appellate court will be disregarded inasmuch as trial court cannot commit error regarding issue never presented and submitted for disposition in trial court). See, also, *Bedore v. Ranch Oil Co.*, 282 Neb. 553, 805 N.W.2d 68 (2011) (in order to be considered by appellate court, alleged error must be both specifically assigned and argued in brief of party asserting error).

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. *In re Interest of Taylor W.*, 276 Neb. 679, 757 N.W.2d 1 (2008).

ANALYSIS

Jurisdiction.

In this case, Maria appeals the juvenile court's order changing the permanency plan for all four children from reunification to guardianship/adoption. The appealability of such an order is not always clear.

[2,3] In a juvenile case, as in any other appeal, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *In re Interest of Taylor W., supra*. For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the tribunal from which the appeal is taken. *In re Guardianship of Sophia M.*, 271 Neb. 133, 710 N.W.2d 312 (2006).

[4-6] 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. *Id*. A proceeding before a juvenile court is a "special proceeding" for appellate purposes. *In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (2008). "[W]hether a substantial right of a parent has been affected by an order in juvenile court litigation is dependent upon both the object of the order and the length of time over which the parent's relationship with the juvenile may reasonably be expected to be disturbed." *In re Interest of R.G.*, 238 Neb. 405, 415, 470 N.W.2d 780, 788 (1991), *disapproved on other grounds, O'Connor v. Kaufman*, 255 Neb. 120, 582 N.W.2d 350 (1998).

[7,8] In juvenile cases, where an order from a juvenile court is already in place and a subsequent order merely extends the time for which the previous order is applicable, the subsequent

order by itself does not affect a substantial right and does not extend the time in which the original order may be appealed. *In re Guardianship of Rebecca B. et al.*, 260 Neb. 922, 621 N.W.2d 289 (2000). Thus, a dispositional order which merely continues a previous determination is not an appealable order. *In re Interest of Sarah K.*, 258 Neb. 52, 601 N.W.2d 780 (1999).

Maria appeals from the January 23, 2012, order following a review and permanency plan hearing. The court found that all previous orders should remain in full force and effect, except for five additions to those orders: (1) The permanency plan shall change to guardianship/adoption; (2) Diana shall participate in independent living skills; (3) all the children shall undergo updated psychological evaluations; (4) Melissa shall complete a pretreatment assessment; and (5) "[b]ased upon the evidence as set forth on the record, no additional reasonable efforts shall be provided to [Maria and Mauro] to bring about reunification." To determine whether the order can be appealed in this case, it is necessary to consider the nature of the order and what parental rights, if any, the order affected. See, *In re Guardianship of Rebecca B. et al., supra*; *In re Interest of Tayla R.*, 17 Neb. App. 595, 767 N.W.2d 127 (2009).

In *In re Interest of Sarah K., supra*, the Nebraska Supreme Court examined orders from October 22 and December 22, 1998. The October 22 order approved the case plan, which provided for long-term foster care for the child, supervised visitation by the parents, and reunification as the goal. The December 22 order adopted the State's permanency plan of long-term foster care transitioning to independent living, which plan provided for the possibility of reunification. On appeal, the Supreme Court stated that the terms of the December order "merely repeat the essential terms" of the October order, that "[t]here is nothing inconsistent with the December 22 order compared to the plan approved by the court in its October 22 order," and that "[t]he parents were not disadvantaged by the juvenile court's order of December 22, nor were their substantial rights changed or affected thereby." *Id.* at 58, 601 N.W.2d at 785. The court further stated that the December order

"effects no change in the parents' status or the plan to which the parents and [child] were previously subject." *Id.* at 59, 601 N.W.2d at 785.

In *In re Interest of Tayla R., supra*, the mother appealed from a review order in which the permanency plan goal changed from reunification to adoption. This court stated that in determining whether this provision affected a substantial right of the mother, a pertinent inquiry was whether there was still a plan allowing her to take steps to reunite with the children. *Id.* This court determined that the order at issue in that case implicitly provided the mother with an opportunity for reunification by complying with the terms of the rehabilitation plan, which terms had not changed from the previous order, and concluded that the order did not affect a substantial right. *Id.*

In this case, the juvenile court's modification of the permanency goal from reunification to guardianship/adoption, coupled with the order to cease all reasonable efforts, clearly affects Maria's right to reunification with the children. The order does not appear to include any rehabilitation plan which provides Maria an opportunity for reunification. See *In re Interest of Tabatha R.*, 255 Neb. 818, 587 N.W.2d 109 (1998) (initial dispositional order which did not include rehabilitation plan for parents deprived them of opportunity for reunification and affected substantial right). Therefore, we conclude that the January 23, 2012, order affects a substantial right and is a final, appealable order.

Change in Permanency Objective.

Maria argues that the juvenile court erred by changing the permanency objective for Daniel, Eduardo, and Melissa from reunification to guardianship/adoption.

First, we point out that in her brief, Maria spends a considerable amount of time arguing that her rights have been terminated and raises numerous arguments in that light. However, the record before the court does not contain any petition for termination of Maria's parental rights and the order from which Maria appealed has nothing to do with the termination of her parental rights. Therefore, we do not address any

of Maria's contentions regarding termination. See *State v. Albrecht*, 18 Neb. App. 402, 790 N.W.2d 1 (2010) (absent plain error, issue raised for first time in appellate court will be disregarded inasmuch as trial court cannot commit error regarding issue never presented and submitted for disposition in trial court).

[9-11] 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. *In re Interest of Karlie D.*, 283 Neb. 581, 811 N.W.2d 214 (2012). Once a child has been adjudicated under § 43-247(3), the juvenile court ultimately decides where a child should be placed. *Id.* See Neb. Rev. Stat. § 43-285(2) (Cum. Supp. 2012). Juvenile courts are accorded broad discretion in determining the placement of an adjudicated child and to serve that child's best interests. See *In re Interest of Karlie D., supra*. The State has the burden of proving that a case plan is in the child's best interests. *In re Interest of Ethan M.*, 19 Neb. App. 259, 809 N.W.2d 804 (2011). Therefore, the questions in this case become whether the State met its burden to show that reunification was not in the children's best interests and whether the juvenile court's decision to change the permanency objective was supported by the evidence.

The evidence indicates that DHHS became involved with Maria and the children in November 2009, after allegations that Mauro had sexually abused Maria's oldest child, Diana, who was 15 at the time, over a period of 2 years in the family home. All four of the children were removed and eventually adjudicated as children within the meaning of § 43-247(3)(a) as a result of Mauro's sexual abuse of Diana and Maria's failure to protect the children. The record indicates that Maria and Mauro are not married and that Mauro is the biological father of only Melissa and not the other three children. The permanency objective for all of the children, until the January 23, 2012, order, had been reunification. Since the children's initial removal from the home, DHHS had provided the family with family support, visitation, foster care, individual therapy, family therapy, case management, psychological testing, sex

offender evaluation, service coordination, and transportation. Maria was ordered to obtain and maintain safe, stable housing and a legal, stable source of income and to participate in individual therapy to gain insight regarding intrafamilial sexual abuse and its effect on Diana.

Initially, Maria was ordered reasonable rights of supervised visitation with the children. On November 19, 2010, the juvenile court ordered that the children could be placed in Maria's home under certain conditions, including that she not allow any contact between Mauro and the children "in any manner whatsoever" and participate in family therapy with Diana. However, numerous reports and concerns regarding contact with Mauro arose in July 2011, and the children were again removed from Maria's home and have remained placed outside of the home since that time.

The record is evident that the main issue in this case, which led to the juvenile court's determination to change the permanency plan from reunification to guardianship/adoption, revolves around Maria's repeated and continual denial that Mauro sexually abused her oldest child, Diana. The record is replete with evidence that Maria did not believe any such abuse occurred and that she repeatedly minimized or dismissed Diana's contentions, eventually leading up to Maria's being violent and aggressive toward Diana at family therapy. Throughout the proceedings, the juvenile court was very clear that the main concern was that Maria gain "insight and appreciation that [Diana] was sexually abused by Mauro."

The reason for the children's initial removal was the sexual abuse perpetrated upon Diana. Nonetheless, Maria defended Mauro throughout the case and continued to allow Mauro to have contact with the children by allowing him to call the home when the children, including Diana, were home, in direct violation of the juvenile court's orders. Maria was unsuccessfully discharged from individual therapy for her constant denial of the sexual abuse and was further not allowed to participate in family therapy because she did not believe Diana. The record contains numerous therapy reports for Diana which describe the detrimental effect that this has had on Diana and

indications that Melissa had no knowledge of why Mauro had been removed from the home.

Essentially, this case has stood stagnant for over 2 years, waiting only on Maria's acceptance that sexual abuse occurred in her home by Mauro. Maria was given time, resources, and numerous opportunities to address and correct that one main issue. She failed to do so until the hearing on January 6, 2012, when it was quite clear that the juvenile court had had enough and her counsel indicated that Maria "now believes that there was inappropriate contact, and she is willing to follow the Court's recommendation."

In sum, after our de novo review of the record, we find that the State met its burden to show reunification was not in the children's best interests and that the juvenile court's decision to change the permanency objective is likewise clearly supported by the evidence. For over 2 years, Maria has been unable or unwilling to rehabilitate herself, and Daniel, Eduardo, and Melissa should not be suspended in foster care to await Maria's uncertain parental maturity. See *In re Interest of Sunshine A. et al.*, 258 Neb. 148, 602 N.W.2d 452 (1999). Therefore, we find that the juvenile court did not err by changing the permanency objective from reunification to guardianship/adoption. This assignment of error is without merit.

Juvenile Court's Explanation.

Maria argues that the juvenile court's order is invalid because it does not explain the "[e]xtreme [s]teps" taken. Brief for appellant at 27.

Maria has provided no authority to this court in support of her argument. However, even if Maria had set forth any authority, we find that it is quite clear that the juvenile court made its reasoning for a possible change known to counsel at the January 6, 2012, hearing. The juvenile court stated that with respect to Maria, "given the length of time that it's taken, the Court feels it would be justified in calling time. There's been enough time provided to do something. [Maria] has persisted in a denial, and we're over two years in this case. . . . [T]he Court has implemented a plan." Furthermore, given our

determination in the previous section, based upon our careful de novo review of the record, we find that there is sufficient explanation as to why the permanency plan was modified. This assignment of error is wholly without merit.

Testimony of Children.

Maria contends that the best interests of the children were limited because they were never able to testify. This assignment of error is both specifically raised and is also argued, although no authority is set forth in support of Maria's contention. However, as noted in the assignments of error section, this issue is one of many which do not appear to have been raised at any time at the trial court level. Upon our review of the record, we can find no instance where either one of the parties attempted to call any of the children to testify or that the district court entered any orders denying any testimony by the children. Therefore, we find no plain error and, as such, shall not address this issue for the first time on appeal. See *State v. Albrecht*, 18 Neb. App. 402, 790 N.W.2d 1 (2010) (absent plain error, issue raised for first time in appellate court will be disregarded inasmuch as trial court cannot commit error regarding issue never presented and submitted for disposition in trial court).

CONCLUSION

In conclusion, we find that the juvenile court's order changing the permanency plan objective is a final, appealable order. Upon our de novo review of the record, we also find that the record supports the juvenile court's order changing the permanency plan from reunification to guardianship/adoption and that such order is in the children's best interests. Therefore, we affirm.

AFFIRMED.