

Nebraska Case Law Summary and New Legislation

by

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Nebraska Court of Appeals



Fabulous Source of Information

www.throughtheeyes.org

Emergency Protective Custody

In re April E, A-08-036—038 (NFPP)

- Discusses, but does not decide, whether a person who testifies at an emergency protective custody hearing must have personal knowledge of the facts about which he or she is testifying
- Due process rights were not violated when court took 18 days after removal to have the temporary custody hearing

Domestic Violence

In re Ajal B., A-06-1354 (NFPP)

- 3a Adjudication
- Children not present during domestic violence incident
- Reversed adjudication
 - Young children (3 and 11/2)
 - Not aware of incident
 - No evidence likely to recur

Domestic Violence (cont.)

In re Ajal B., A-06-1354 (NFPP)

- Perhaps different result if:
 - History of domestic violence
 - Injury of parent requiring hospitalization or other parent's incarceration such that parent couldn't provide care
 - Children could comprehend the incident after the fact

Child Witness

State v. Archie, 273 Neb. 612 (2007)

- The district court “has wide discretion in fashioning procedures and modifying standard trial practices to accommodate the special needs of child witnesses.”
- No error in providing a “less formal and intimidating” environment for the juvenile’s testimony.

DHHS Plan—Presumption of Validity

In re Sierra W., A-07-1231 (NFPP)

- 3a adjudication on excessive discipline
- Court would not adopt plan of reunification and denied visitation
- Three judge panel affirmed
- Reversed because no party produced evidence showing reunification not in children's best interest

DHHS Plan—Use of Treatment Team

In re Amoria M., A-06-771 (NFPP)

- 3a adjudication for filthy living conditions
- Jurisdiction continued for years
- HHS recommended terminating jurisdiction
- Court referred case to LB 1184 Treatment Team for recommendations
- Court adopted those recommendations
- Upheld by three-judge panel and Court of appeals

Court's Plan Can Exceed One Year in Duration

In re Amoria M., A-06-771 (NFPP)

- NRS 43-288 places maximum duration of one year for conditions imposed upon children who are permitted to remain in their homes pursuant to NRS 43-284 or 286.
- If family fails to meet permanency objectives and court enters order substantially similar, but more than one time per year, each order imposes "new" conditions on the family for purposes of NRS 43-288.

Termination of Parental Rights-- Evidence

In re Brittany M., A-07-719 (NFPP)

- Children's statements to therapist and foster parents statements to therapist regarding sexual abuse by parents properly admitted into evidence under medical treatment exception to the hearsay rule NRS 28-803(3)
- Confrontation right satisfied because parents had right to call the witnesses to the witness stand and cross-examine them about those statements

Termination of Parental Rights— Foster Parents' Interest in Adoption

In re Marcus K., A-06-1050 (NFPP)

- Evidence admitted about children's potential for adoption
- Father asserts error
- Court says: "To the contrary, such evidence is necessary to show that termination of a parent's rights is in the children's best interests, specifically that the children would be provided with more permanency than they would have otherwise, citing Eden K.

Termination of Parental Rights— Foster Parents' Interest in Adoption

In re Eden K., 14 Neb. App. 867, 2006

- Termination overturned because no evidence that adoption was a possibility for the mother's two children.

Termination of Parental Rights— Foster Parents' Interest in Adoption (Reprise)

In re Destiny A., 274 Neb. 713 (2007)

NRS 43-292.02(2) precludes the court considering whether a foster parent is willing to adopt in a termination of parental rights trial brought under any subsection of 43-292

Termination of Parental Rights— Unexplained Injuries

In re Justyce J., A-07-878 (NFPP)

- 3a and TPR petition filed under 43-292 (2),(8) and (9) for both parents
- Unexplained injuries to child
 - Child in exclusive care of parents
 - Multiple rib fractures of one age and two subdural hematomas of yet two different ages
 - Would not have occurred in absence of abuse
 - Parents had no adequate explanation

Termination of Parental Rights— Unexplained Injuries (cont.)

Evidence presented that mother was loving and affectionate to child during visits, never aggressive and that she had sought medical treatment on several occasions to be sent home

- Court terminated parental rights and mother appealed
- Termination upheld
 - Given severity of injuries and mother's failure to protect (NO evidence cited in the opinion about what she did to fail to protect)

Termination of Parental Rights— 15/22 and “Unfitness”

In re Xavier H., 274 Neb. 331 (2007)

- 3a adjudication due to parents’ failure to provide proper care of child’s medical needs
- Parents’ two other children remained were never adjudicated and remained in their home at all times
- TPR brought under reasonable efforts failed to correct conditions of neglect and 15 out of 22 months
- Child’s special needs had resolved
- Court terminated on 15 out of 22 and best interests
- NCA affirmed
- NSP reversed, saying that “parental unfitness” needed to be proven, in light of the facts of the case.

ICWA—Tribal Transfer

In re Lawrence H., 16 Neb. App. 246 (2007)

- 3a and TPR petition filed
- Tribe made motion to transfer to Tribal Court
- Hearing held on motion—Court took it under advisement
- Trial on 3a and TPR held
- Appeals court held:
 - When motion to transfer is filed, subsequent hearings cannot be held until a finding of good cause to transfer has been made

Termination of Parental Rights— Duty to Provide Reasonable Efforts

In re Hailey M., 15 Neb. App. 323 (2008)

- Mother's boyfriend murdered her child approximately 10 years ago
- Mother has this child
- State brings TPR petition and motion to relieve DHHS of duty to provide reasonable efforts
- Court terminates parental rights and relieves DHHS of duty
- NCA affirms, finding that state proved mother aided and abetted murder or voluntary manslaughter by her knowledge of the boyfriend's behaviors and failure to protect
- NCA found best interest, despite passage of time due to mother's continuing negative lifestyle.

ICWA—Burden of Proof in TPR

In re Walter W., 274 Neb. 859 (2008)

- Beyond a Reasonable Doubt
 - Continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child
 - Including expert testimony
- Clear and Convincing Evidence
 - Active Efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and that these efforts have proved unsuccessful
 - All elements of 43-292, including Best Interest element
 - Does not require expert testimony

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Visitation—Denial of

In re Hailey M., 15 Neb. App. 323 (2008)

- Father had previously been barred from having visitation with Hailey due to his incarceration
- Mother's parental rights terminated
- Father appealed subsequent order denying visitation
- Court of Appeals had no jurisdiction to hear his appeal, as the order was a continuation of a previous order and the time for appeal of that order had run.

Visitation—Pending Appeal

In re Connor S., A-06-1371 (Check)

Once Appeals Court affirmed the order terminating parental rights, the issue as to whether the trial court's decision to deny visitation "pending appeal" was now moot.

Guardianship

In re Jazzmine W., A-08-076 (CHECK)

Grandmother appointed permanent guardian by juvenile court

Required DHHS to continue to monitor the case and DHHS appealed

NCA reversed and released DHHS from responsibility

LB 782

- Permits HHS to disclose certain information regarding child abuse or neglect and services
- If not contrary to best interests of the child, siblings, or other children in the household
- And one or more enumerated factor is present
- Only certain information can be released
- Can release results of criminal history record checks
- Cannot disclose information that would impede a pending criminal investigation

LB 457

- Caregiver information form
- Court must provide to caregiver
- Form has been approved now by Supreme Court
- “Shall be made part of the record in each court that reviews the child’s foster care proceedings”

LB 157—SAFE HAVEN LAW

“No person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.”

Nebraska Legislature



The meat is put through the mixer and ground coarse or fine, depending on the type of salami.



Each butcher has his own special composition of spices and seasonings.



Once the sausage dough has been evenly mixed, it is filled into long skins.

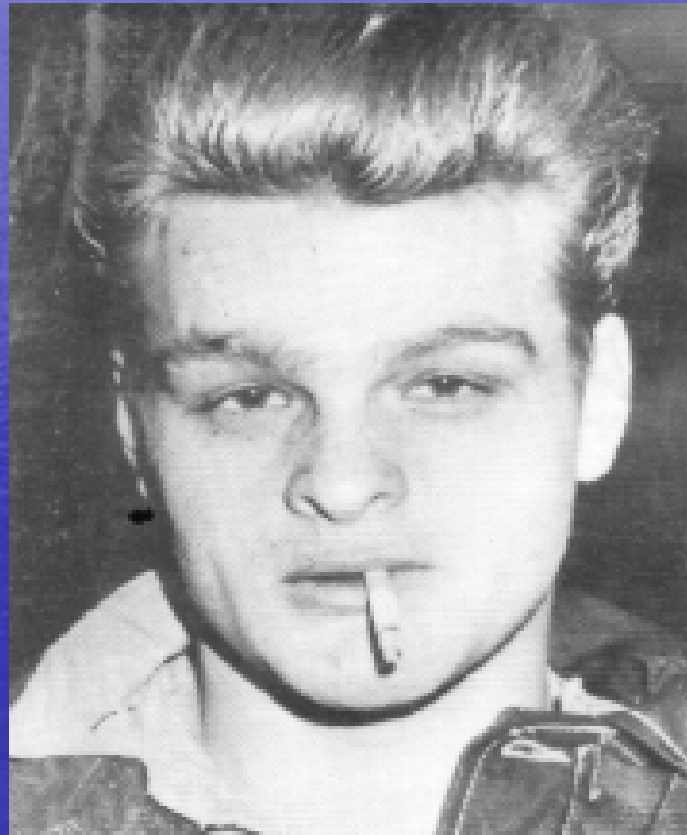


Wild boar salami is often made into small sausages.

“A Child”



“A Child”



“An Employee on Duty”



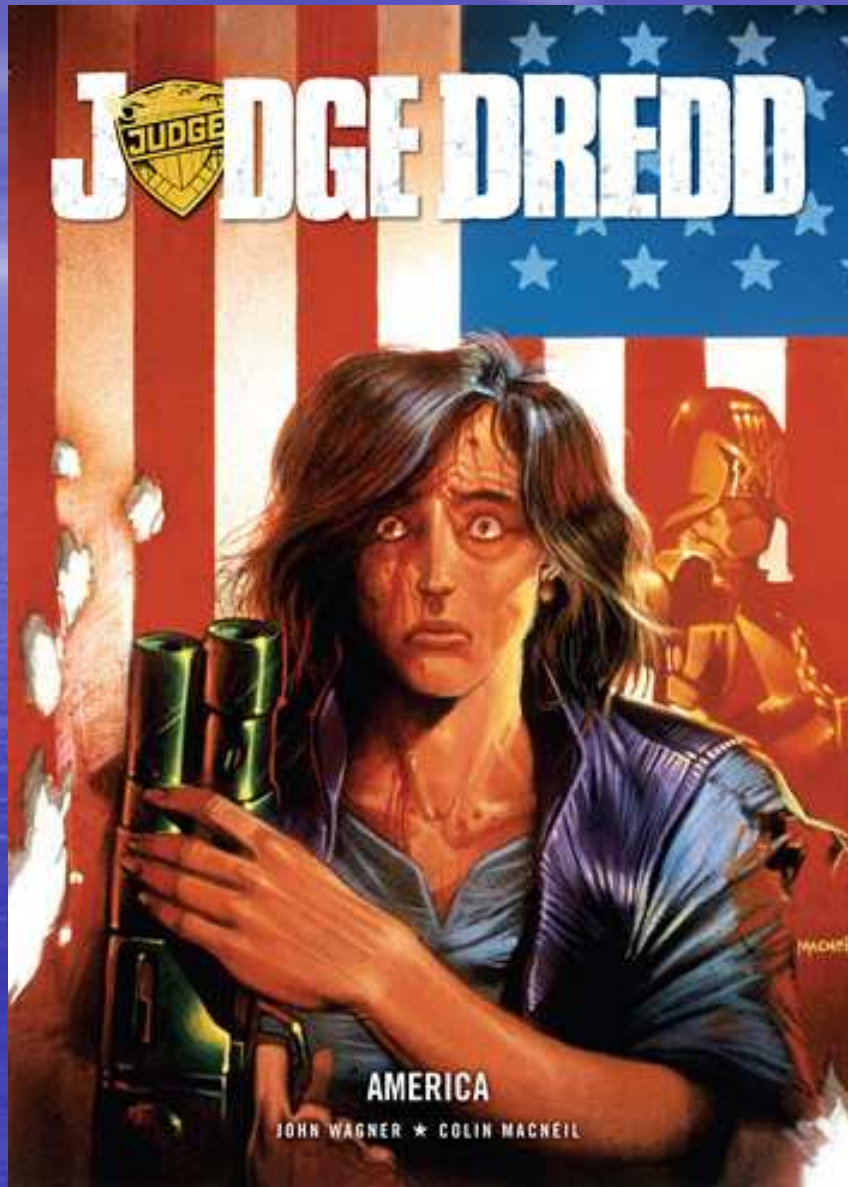
“An Employee on Duty”



LB 280

- Previously Juvenile Court had jurisdiction over paternity determinations when the court already had jurisdiction over the child
- Now Juvenile Court has jurisdiction over paternity and child custody determinations when the court already has jurisdiction over the child

JUDGE DREDD



AMERICA

JOHN WAGNER * COLIN MACNEIL

LB 1014—Section 49

“Child Support Referees shall be appointed when necessary by county courts and separate juvenile courts”



LB 1014—Section 7

Problem Solving Court Programs
are subject to the Supreme Court
for procedures implemented in
those programs

LB 1014—Section 38

- Provides for Facilitated Conferences (either prehearing conferences or family group conferences) in Juvenile Court System
- All discussions are confidential and privileged except for new allegations of abuse or neglect which were not previously known or reported

LB 1014—Section 39

- Juvenile court may enter an order that a juvenile is not amenable to rehabilitative services that can be provided under the juvenile code
- After disposition of law delinquent or ungovernable or truant child
- On Court's own motion or party's motion
- Reasons for the finding must be enumerated
- Shall be considered by county attorney or court during a transfer hearing

LB 1014—Section 43

- Following removal of child from home, the person or court in charge of the child shall required the child to attend the same school as prior to the foster care placement unless the person or court in charge determines it would not be in the child's best interest
- Foster care plan under 43-1312 shall include name of the school the child shall attend

