S-10-000819

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

In re Interest of Thomas M.

Minor Child Under Eighteen Years of Age

APPEAL FROM THE COUNTY COURT OF CHEYENNE COUNTY, NEBRASKA
SITTING AS A JUVENILE COURT

The Honorable Randin Roland, County Judge

BRIEF OF AMICUS CURIAE

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INTRODUCTION

On March 7, 2011, the Nebraska Appleseed Center for Law in the Public Interest ("Nebraska Appleseed") filed a *Motion for Leave to File an Amicus Curiae Brief.* This Court sustained the motion on March 15, 2011. Nebraska Appleseed refers the Court to the statement of interest set forth in the *Motion for Leave to File an Amicus Curiae Brief* and focuses its argument in this *Amicus Curiae* brief on: 1) the authority of juvenile courts in Nebraska to hold the Nebraska Department of Health and Human Services ("the Department" or "DHHS") in contempt for failure to comply with an order of the court, and 2) the juvenile court's authority to order court reviews to determine proof of payments for billings associated with the juvenile's placement. As discussed more fully in this brief, the juvenile courts in Nebraska have broad jurisdiction to make orders in the best interest of children.

ARGUMENT

I. NEBRASKA JUVENILE COURTS HAVE THE AUTHORITY TO HOLD THE DEPARTMENT IN CONTEMPT FOR FAILURE TO COMPLY WITH A COURT ORDER

On July 26, 2010, the Cheyenne County Court, sitting as a juvenile court, found the Department in contempt for failure to provide Thomas M. with an appropriate placement due to the Department's failure to comply with the court's order to provide Thomas M. with an appropriate placement that included access to counseling no less than three times per week. (T24-25, Journal Entry and Order dated 7/27/2010) The Appellant argues that the juvenile court erred in finding the Department in contempt because the court lacked jurisdiction due to sovereign immunity. (Brief of Appellant at 12-14) The Appellee argues that Neb. Rev. Stat. § 25-1803 operates as a limited waiver of sovereign immunity in this case and therefore the juvenile court had jurisdiction and the contempt order is valid. (Brief of Appellee at 12-13)

Amicus Curiae concurs in the Appellee's argument and, in the alternative, respectfully submits that, for the reasons set forth below, the juvenile courts in Nebraska have the inherent and express authority to find DHHS in contempt for failure to comply with an order of the court. *Amicus Curiae* further submits that sovereign immunity is not implicated in this context, but, in the alternative, that a waiver of sovereign immunity exists in that DHHS is a party this action, initiated this action, and engaged in *ultra vires* actions violating the court's order. Finally, *Amicus Curiae* submits that policy considerations weigh heavily in favor of the juvenile court having the authority to hold DHHS in contempt in order to effectuate the best interests of children.

A. Juvenile courts in Nebraska have inherent and express contempt powers

Nebraska statutes set forth the contempt power of Nebraska courts at Neb. Rev. Stat. § 25-2121 which provides in relevant part: "*Every court of record* shall have power to punish by fine and imprisonment, or by either, as for criminal contempt, persons guilty of ... (3) willful disobedience of or resistance willfully offered to any lawful process or order of said court ..." (emphasis added). The county court sitting as a juvenile court in this case is a "court of record" and therefore has the statutory power to hold parties in contempt. In addition, case law in Nebraska has stated that "[the contempt] power exists as an incident to *every* judicial tribunal without the aid of statute" and that "§ 25-2121 is a codification of the common law of contempt and does not supplant the court's inherent contempt powers." *Rhodes v. Houston*, 202 F.Supp. 624, 630 (D. Neb. 1962) (emphasis added); *In re Interest of Krystal P.*, 251 Neb. 320, 324 (1996). Thus, as acknowledged by the Appellant, in addition to contempt authority under Neb. Rev. Stat. § 25-2121, the juvenile court has inherent contempt power. (Brief of Appellant at 12) Indeed, in *In re Interest of Krystal P.* this Court recognized the inherent power of a county court

sitting as a juvenile court to hold that the court had authority under Neb. Rev. Stat. § 25-1803 to order attorneys fees in connection with a civil contempt proceeding where the Department of Social Services (DSS) failed to implement a visitation order even though attorneys fees are not explicitly listed as a punishment for contempt in Neb. Rev. Stat. § 25-2121. *In re Interest of Krystal P.*, 251 Neb. 320 (1996). While the underlying contempt order was not the subject of the appeal in *Krystal P.*, it would be an illogical reading of the law to find that a juvenile court could award attorneys fees for a contempt proceeding against DSS but lacks authority to hold the Department in contempt in the first place. *Id.* at 323.

In this Court's recent decision in *Burnham v. Pacesetter,* 280 Neb. 707 (2010), this Court stated that the inherent contempt power does not apply to the Workers' Compensation Court which is not a court of general jurisdiction, but a statutorily created court, and determined that a separate statute specifically provided the appellant employee with a remedy to enforce his award in the district court but that no statutory authority vested the compensation court with authority to issue contempt orders. However, *Burnham v. Pacesetter* can be distinguished from the instant case and should be limited to its facts. As an initial matter, although both are statutorily created courts, the Workers' Compensation Court is quite different from the juvenile court. For example, the Workers' Compensation Court has the authority to adopt and promulgate rules and regulations. Neb. Rev. Stat. § 48-163. In addition, the Workers' Compensation Court is specifically limited by statute as to the relief it can afford to parties. *See, e.g.*, Neb. Rev. Stat. § 48-121 and § 48-125. By contrast, juvenile courts have much broader authority in this regard. *See, e.g.,* Neb. Rev. Stat. § 43-285(2) ("The court may modify the [Department's] plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests.") Secondly, Nebraska statutes provide a specific remedy in Neb. Rev. Stat. § 48-188

for workers' compensation awards to be filed in the district court. By contrast, no similar remedy exists in the juvenile court context. Because the juvenile court has exclusive original jurisdiction over the matter under Neb. Rev. Stat. § 43-247, it is doubtful that parties could bring a separate action in district court to enforce a juvenile court order - nor would such an alternative be desirable in this context, leaving no recourse for the enforcement of such orders. As a result, *Burnham v. Pacesetter* should not be read to suggest that juvenile courts do not have inherent contempt power. For the reasons set forth above, the county court sitting as a juvenile court has inherent contempt power and was authorized to use that power when the Department failed to comply with a court order.

While it is the position of *Amicus Curiae* that the juvenile courts have inherent contempt power, making it unnecessary for there to be an express statutory grant of contempt power, if express statutory authority is necessary, such authority is found first in the statute granting contempt power to every court of record as noted above. In addition, express authority is also found in the Juvenile Code. Specifically, Neb. Rev. Stat. § 43-246 provides:

> "Acknowledging the responsibility of *the juvenile court* to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:
>
> (1) To assure the rights of all juveniles to care and protection and *a safe and stable living environment* and to development of their capacities for a *healthy personality, physical well-being, and useful citizenship* and to protect the public interest;
>
> (2) To provide for the *intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code*, with due regard to parental rights and capacities and the availability of nonjudicial resources. . .
>
> (7) *To provide a judicial procedure through which these purposes* and goals are accomplished and *enforced* in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and *enforced*." (Emphasis added)

Furthermore, Neb. Rev. Stat. § 43-2,128 states, "The Nebraska Juvenile Code shall be liberally construed to the end that its purpose may be carried out as provided in section 43-246."

The contempt power is precisely a judicial procedure through which legal rights and the purposes of the Nebraska Juvenile Code are enforced under Neb. Rev. Stat. § 43-246. Moreover, in the case at hand, the contempt order was directed at the Department's failure to arrange counseling for Thomas M. as ordered by the court. This order falls squarely within the court's authority under the Juvenile Code to assure the right of Thomas M. to a safe and stable living environment and to the development of Thomas M.'s capacities for a healthy personality, physical well-being, and useful citizenship. (T24-25, Journal Entry and Order dated 7/27/2010)(139:11-17)

In addition, as discussed more fully below, Neb. Rev. Stat. § 43-285(1), which provides that "the department shall have authority, *by and with the assent of the court*, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it," has been interpreted as granting broad authority to juvenile courts to make orders in the best interests of children. Neb. Rev. Stat. § 43-285(1) (emphasis added); *See also In re Interest of Veronica H.*, 272 Neb. 370 (2006). The contempt order in this case was such an order.

Specifically, the contempt order in this case was intended to compel compliance by the Department with the court's previous order to provide counseling to Thomas three times per week. (139:11-23) In this case, there was a history of the Department's non-compliance with this order (to the extent the "horse program" does not constitute counseling) and the Department's failure to provide placement at the recommended level of care, which resulted in Thomas lingering inappropriately in detention for more than three months. (E3, Detention

Center Log:7,9,Vol.II)(E6, Detention Center Log:112,Vol.II)(E6,Psychological Evaluation of Sarah Schaffer, Ph.D.:112,Vol.II)(91:25-94:23)(102:10-105:20)(153:9-25) While the issue is not directly raised in this appeal, Magellan's denial of the level of placement and treatment recommended by Dr. Bruce Buehler and Dr. Sarah Schaffer did not preclude the Department from providing such a placement for Thomas. (E4,1:7,9,Vol.II)(E5,2-3:7,9,Vol.II)(82:22-88:7)(E6,Psychological Evaluation of Sarah Schaffer, Ph.D.:112,Vol.II)(91:25-94:23) On the contrary, the Department was legally obligated to do so. Magellan Health Services is a contracted Administrative Services Organization ("ASO") of the Department and the Department should have timely provided the treatment recommended by the child's provider, not only as ordered by the juvenile court in this case, but also as required by and in accordance with the child's rights under the Early Periodic Screening Diagnosis and Treatment (EPSDT) provisions of the Medicaid Act. *See* 42 U.S.C. §1396d(r)(5) (regarding coverage of medically necessary services); 42 C.F.R. § 441.56(e) (regarding the state agency's obligation to ensure timely treatment); *Weaver v. Reagen*, 886 F.2d 194 (8th Cir. 1989) (regarding the Medicaid statutory and regulatory presumption in favor of deference to the treating provider in determining medical necessity of treatment); *John B. v. Menke*, 176 F.Supp. 2d 786 (M.D. Tenn. 2001) (regarding the state agency's obligation to comply with EPSDT even when utilizing a managed care company).

In this case, there was an ongoing history of the Department's failure to timely comply with orders in the best interests of the child and to fulfill its legal obligation to protect the right of the juvenile to a safe and stable living environment and to the development of the juvenile's capacities for a healthy personality, physical well-being, and useful citizenship. Therefore, the contempt order in this case was designed to advance these goals under the express statutory authority granted to juvenile courts in Neb. Rev. Stat. § 43-246 and § 43-285.

B. Sovereign immunity does not bar a contempt finding against DHHS

1. Sovereign immunity is not implicated in the context of this case or was waived by the Department

As a secondary matter, the Appellant argues that the juvenile court erred in finding the Department in contempt because the court lacked jurisdiction due to sovereign immunity. (Brief of Appellant at 12-14) However, the situation presented in this case does not implicate sovereign immunity. Sovereign immunity is a question of whether or not the state can sue and be sued. *See* Neb. Const. art. V, § 22 ("The state may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought.") Here, the state already "sued" when the petition was filed and therefore any sovereign immunity was waived. Thereafter, once the juvenile court had jurisdiction over the parties, and there was no other "suit" or award against the state, sovereign immunity is inapplicable.

Specifically, the Department acknowledges that they are a party to the action when the court awards a juvenile to the care of the Department under Neb. Rev. Stat. § 43-285(1). (Brief of Appellant at 13) In fact, as recognized in *In re Interest of Krystal P.*, this action was brought by the state under the authority of the Juvenile Code and was instituted by the county attorneys of Cheyenne County on behalf of the state. *In re Interest of Krystal P.*, 251 Neb. 320, 325-326 (1996); (T1-3, Petition filed 3/29/2010)(T12-14, Supplemental Petition filed 5/24/2010) As a party to the action and having initiated the action, the Department is subject to orders of the court and to contempt for failure to comply with orders of the court. Moreover, under Neb. Rev. Stat. § 43-247(5), the juvenile court has exclusive original jurisdiction over the Department as the "custodian" of the juvenile. *See In re Interest of Veronica H.*, 272 Neb. 370, 374 (2006) ("Section 43-247(5) provides that the juvenile court has jurisdiction over '[t]he parent, guardian, or custodian who has custody of any juvenile described in this section.' Therefore, the juvenile

court had jurisdiction over DHHS as the custodian of Veronica.") Once jurisdiction is established, DHHS cannot raise sovereign immunity thereafter as a shield to unfavorable consequences of being subject to the jurisdiction of the court. *State v. Kennedy*, 60 Neb. 300, 305 (1900) ("when a state invokes the judgment of a court for any purpose, it lays its sovereignty aside and consents to be bound by the decision, whether such decision be favorable or adverse.").

Moreover, in this case there was no other "suit" or award against the state that is subject to this appeal. *See In re Interest of Krystal P.*, 251 Neb. 320, 325 (1996) (determining that an "award of attorneys fees against an agency of the state is the same as an award against the state.") Although the juvenile court ordered DHHS to "pay into this Court $400 per day until it provides written verification that [Thomas M.] is receiving counseling as ordered," the question of the permissibility of that civil sanction is not before the Court in this appeal as DHHS only assigned as error the finding of contempt, which was incidental to the underlying action, and not the imposition of the sanction. (T24-25, Journal Entry and Order dated 7/26/2010); (Brief of Appellant at 4) In addition, in this case, DHHS came into compliance with the court order and purged the sanction. (E11,1-2:141,Vol.II); *See McFarland v. State*, 165 Neb. 487, 492-493 (1957) (regarding mootness of a purged civil sanction). Even if DHHS had paid a fine as a sanction for contempt, it is questionable whether such a payment made to a court, rather than to a private party as in *Krystal P.*, would implicate sovereign immunity, in addition to the other reasons set forth herein.

Finally, an *ultra vires* action done in violation of a court order cannot be protected by sovereign immunity. This reasoning was articulated by the Supreme Court of Arkansas in a delinquency case in which a juvenile court ordered restitution and other fees against the Arkansas Department of Human Services (DHS) in accordance with a statute that authorized

such fees against a "custodian" of the juvenile. *Arkansas Department of Human Services v. State of Arkansas*, 850 S.W.2d 847 (1993). The Arkansas Supreme Court ultimately reversed the orders for restitution and other fees against DHS because DHS was not the initial moving party, but stated with regard to previous holdings: "A state agent or agency having full knowledge of a court order and its import cannot disregard it and claim entitlement to sovereign immunity in response to a contempt citation." *Id.* at 851.

While the Department argues in the instant case that there was no evidence that the Department's failure to comply with the court's order was "willful" and that the Department was "making every effort" to comply with the order, it is important to note that, once the Department was faced with the prospect of a $400 per day fine, DHHS promptly complied with the court's order. (Brief of Appellant at 14-16) (E11,1-2:141,Vol.II) As a result of the Department's *ultra vires* actions, the defense of sovereign immunity is unavailable.

2. If sovereign immunity is implicated, it is waived by statute and authority exists for holding DHHS in contempt

The Appellant argues that, "unless and until there is an express statutory waiver by the Nebraska Legislature, sovereign immunity applies." (Brief of Appellant at 13) The Appellant also argues that juvenile courts are courts of limited jurisdiction and only have that authority as expressly granted in statute and that there is no statute expressly granting juvenile courts the authority to enter a contempt order. (Brief of Appellant at 16-17)

If an express statutory waiver of sovereign immunity is required in this situation, Neb. Rev. Stat. § 43-247(5), which states that the juvenile court has exclusive original jurisdiction as to the Department as the "custodian" of the juvenile, operates as a statutory waiver. With regard to this issue, the Appellant contends that, "the Legislature's intent to make DHHS a party to the action does not equate to a clear and express waiver of sovereign immunity as anticipated by the

Nebraska Supreme Court." (Brief of Appellant at 13-14) However, the Legislature must have contemplated that subjecting the Department to the jurisdiction of the juvenile court would expose the state to orders of the court and to possible contempt for failure to comply with such orders. The natural result of Neb. Rev. Stat. § 43-247(5) is that DHHS is a party to juvenile court actions when DHHS is the custodian of the child and is therefore subject to the orders and the enforcement of orders of the juvenile court. To follow the Department's logic leads to a result that the Department could never be held to following a court order despite being subject to the jurisdiction of the court. Such a result could not have been the intent of the Legislature.

C. Policy considerations weigh heavily in favor of the authority of the juvenile court to hold DHHS in contempt in order to effectuate the best interests of children

As a matter of policy, it is imperative that juvenile courts in Nebraska have the power to hold the Department in contempt when the Department fails to comply with orders of the court designed to address the best interests of children. This authority has been recognized by a number of courts in a variety of situations. *See, e.g., Arkansas Department of Human Services v. R.P.*, 970 S.W.2d 225 (1998) (The Arkansas Supreme Court affirmed an order of a juvenile court finding the Department of Human Services through the area manager in contempt and ordering the area manager to serve time in jail for refusing, based on DHS policy, to provide cash assistance to a family adjudicated in need of services); *People in Interest of S.C.*, 802 P.2d 1101 (1989) (The Colorado Court of Appeals held that the juvenile court had the authority to enforce an order by finding officials of the Department of Institutions in contempt for refusal to accept a juvenile under a commitment order); *In re Warrick*, 501 So.2d 1223 (1985) (The Alabama Court of Civil Appeals affirmed contempt orders against officials of the Department of Mental Health responsible for discharging a youth committed by the juvenile court).

Without the ability to enforce orders, the juvenile court would lack power in certain cases to effectuate the goals of the Juvenile Code to "assure the rights of juveniles to care and protection." Neb. Rev. Stat. § 43-246. Moreover, DHHS could ignore orders of the court without recourse. This is of particular concern given the likelihood that there are times in which the child's best interests and the interests of DHHS are in conflict. *See Division of Family Services v. State*, 319 So. 2d 72, 77 (1975) (The Florida Court of Appeals held that a juvenile court may impose restrictions and requirements upon the Division of Family Services to prevent them from separating five siblings in different foster homes and stated that "we may not overlook the probabilities that instances may occur wherein the best interests of the child and of the agency may be divergent") Finally, without the power to enforce orders, the jurisdiction of juvenile courts in Nebraska would be severely curtailed. Again, this is not and could not have been the intent of the Legislature, which, as discussed more fully below, vested juvenile courts with oversight responsibility as to determinations regarding the best interests of children under the jurisdiction of the court.

II. THE JUVENILE COURT HAS AUTHORITY TO ORDER COURT REVIEWS OF PAYMENTS FOR BILLINGS ASSOCIATED WITH THE JUVENILE'S PLACEMENT

On August 9, 2010, the juvenile court ordered that billings for Thomas M.'s placement be made within 20 days with copies of billings provided to the court and all interested parties or DHHS shall face contempt. (T27-28, Journal Entry and Order dated 8/9/2010) The Appellant argues that the juvenile court erred in this order because the juvenile court is a court of limited jurisdiction and there is no statutory authority that permits the court to enter this order, which interferes with the state's right to contract. (Brief of Appellant at 16-17) The Appellee asserts that the contempt aspect of this order is not ripe for appeal and, in the alternative, that the role of the juvenile court is to consider and act in the child's best interest. (Brief of Appellee at 9, 14-

16) *Amicus Curiae* concurs with Appellee and suggests as a corollary to Appellee's ripeness argument that the order requiring DHHS to provide proof of payment within 20 days is not a final appealable order. As described further below, this order does not interfere with the Appellant's right to contract and therefore does not affect a substantial right. Neb. Rev. Stat. § 25-1902. In addition, *Amicus Curiae* further elaborates as to the role of the juvenile court.

This Court has repeatedly indicated that Nebraska Juvenile Code must be liberally construed to accomplish its purpose of serving the best interests of children and that the juvenile court has broad discretion as to the disposition of those who fall within its jurisdiction. *See, e.g., In re Interest of J.S., A.C., and C.S.*, 227 Neb. 251, 262 (1987); *In re Interest of L.D.*, 224 Neb. 249, 257 (1986). The origin of this authority is both statutory, as set forth in Neb. Rev. Stat. § 43-246 and § 43-2,128, and derived from the *parens patriae* power. *In re McCauley,* 178 Neb. 412, 418 (1965).

> "The juvenile court is a product of the solicitude of the law for the welfare of infants. Its powers and duties are described more or less in detail in our statutes, and because of their humanitarian and beneficient purpose, they should be liberally construed to the end that their manifest purpose may be effectuated to the fullest extent compatible with their terms. As was said in *State ex rel. Miller v. Bryant*, 94 Neb. 754, 144 N. W. 804, the juvenile court law did not create a new court, it merely gave a court with general common law and equity jurisdiction new and additional powers. These powers do not supersede its original jurisdiction but are supplemental to it.

Nebraska's statutory scheme setting forth the balance of power between the juvenile courts and DHHS is found at Neb. Rev. Stat. § 43-285, which provides in relevant part:

> "(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, *by and with the assent of the court*, to determine the *care*, *placement*, medical services, psychiatric services, training, *and expenditures* on behalf of each juvenile committed to it. ...

> (2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. *The health and safety of the juvenile shall be the paramount concern in the proposed plan.* ... If any other party, including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, 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. *The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests.* ..."

This statute has been consistently interpreted as granting juvenile courts in Nebraska broad jurisdiction to make orders in the best interests of children. *See In re Interest of Veronica H.*, 272 Neb. 370 (2006) (affirming the juvenile court's authority to order DHHS to assign a case manager with particular experience); *In re Interest of Crystal T.*, 7 Neb. App. 921 (1998) (affirming the authority of the juvenile court to order DHHS to make unannounced home visits); *In re Interest of Teela H.*, 3 Neb. App. 604 (1995) (juvenile court improperly delegated its authority by ordering that visitation would be as recommended by examining psychiatrist); *In re Interest of Vincent P.*, 15 Neb. App. 437 (2007) (affirming juvenile court's decision not to terminate jurisdiction, ordering of age-appropriate sex offender therapy, and determination that therapy with a specific provider should cease, which were contrary to Department's recommendations but supported by evidence of best interests); *Carson P. v. Heineman*, 240 F.R.D. 456, 523-533 (D. Neb. 2007) (U.S. District Court for the District of Nebraska outlining the "expansive scope of authority" of juvenile courts as to decisions of DHHS and holding that the federal court's imposition of an injunction placing parameters on DHHS would interfere with the plenary jurisdiction and decision making authority of the juvenile courts and would impermissibly give the federal court an oversight role currently vested in the juvenile court.).

Specifically, in *In re Interest of Veronica H.*, 272 Neb. 370, 374-375 (2006), this Court held that the "by and with the assent of the court" provision in Neb. Rev. Stat. § 43-285 grants

the juvenile court authority to assent and dissent from decisions by the Department, such as those relating to placement of the juvenile, and that the Legislature intended under this statute to remove from the Department complete control when a child is placed with the Department under the juvenile code. In accordance with the broad discretion afforded juvenile courts to make orders in the best interests of children, the juvenile court in this case did not exceed its authority in entering an order to provide oversight to ensure the stability of Thomas M.'s placement. Given the history of inappropriate placement in this case and the Department's significant delays in securing an appropriate placement, ensuring the stability of Thomas M.'s placement at the Colorado Boys Ranch by requiring the Department to provide proof of payment was in the child's best interest.

The Appellant also argues that the juvenile court's order in this case directly interferes with the Department's right to contract and cites Neb. Rev. Stat. § 81-3117 and § 68-1206 in support of the Department's authority to contract with private institutions. (Brief of Appellant at 17) While DHHS may have the general statutory authority to contract with private institutions to purchase social services to fulfill a public purpose, the Department is still ultimately responsible to "manage" services and programs of the Department under Neb. Rev. Stat. § 81-3117.

To be sure, Appellant appears to be arguing that DHHS cannot be held in contempt for their contractor's lack of timely payment for services ordered by the court and cannot be required to show proof of a contractor's payment. (Brief of Appellant at 17) However, even when DHHS contracts with a private provider, DHHS is still ultimately responsible to ensure that payment is made for the costs of the support, study, and treatment of juveniles in their custody. Neb. Rev. Stat. § 43-290 provides, "If the juvenile has been committed to the care and custody of the Department of Health and Human Services, *the department shall pay* the costs for the support,

study, or treatment of the juvenile which are not otherwise paid by the juvenile's parent." (emphasis added)

In this case, Thomas M. was committed to the care and custody of the Department and there was no order for the parents to pay child support. (T15-17, Journal Entry and Order dated 5/24/2010) In addition, Thomas M.'s placement in this case constitutes "treatment" under Neb. Rev. Stat. § 43-290 as the placement at the Colorado Boys Ranch, which is a residential treatment facility, is intended to provide treatment to address his adjudicated mental health needs. (143:4-16; 148:19-149:1; T27-28, Journal Entry and Order dated 8/9/2010); *see also In re Interest of Lisa O.*, 248 Neb. 865 (1995) (court ordered detention for purpose of placement into treatment program constitutes "treatment" for purpose of this section). Therefore, even though the Department contracted with a private provider, it is the Department's obligation to ensure such payments are made and, as a result, the juvenile court did not interfere with the Department's right to contract and was within its authority to require DHHS to provide proof of timely payment for Thomas M.'s placement.

CONCLUSION

For all the reasons set forth in this brief and the brief of the Appellee, *Amicus Curiae* respectfully urges this Court to affirm the orders of the Cheyenne County Court sitting as a juvenile court.

DATED this 29th day of March, 2011.

Respectfully submitted,

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