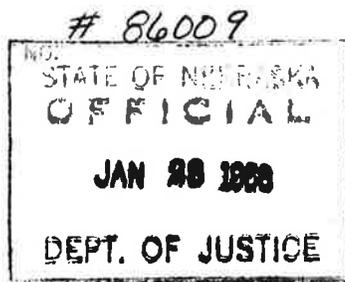


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

January 28, 1986



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

SUBJECT: The termination of parental rights under the Nebraska Juvenile Code.

REQUESTED BY: Vernon Tweedie, Deputy County Attorney, Red Willow County, Nebraska.

OPINION BY: Robert M. Spire, Attorney General, Laura L. Freppel, Assistant Attorney General.

QUESTION: Whether a guardian ad litem may file a petition or motion to terminate parental rights absent the consent of the county attorney.

Neb.Rev.Stat. §43-245 through §43-2,130 (Reissue 1984) is known as the Nebraska Juvenile Code. Under the Juvenile Code, the rights of a parent may be terminated. Section 43-247(3).

Section 43-274 provides as follows:

Juvenile court; proceedings; by whom and how instituted. The county attorney or any reputable person residing in the county, with the consent of the county attorney, having knowledge of a juvenile in his or her county who appears to be a juvenile described in subdivision (1), (2), (3), or (4) of section 43-247 may file with the clerk of the court having jurisdiction in the matter, a petition in writing specifying which subdivision of section 43-247 is alleged and setting forth the facts verified by affidavit.

(Emphasis added.)

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Page -2-

Section 43-272.01.2(h) provides that a guardian ad litem "may file a petition in the juvenile court on behalf of the juvenile." Superficially, these two statutes seem to conflict. However, the legislative history of the Juvenile Code clarifies the relationship of the two sections.

In 1981, the Legislature enacted the Nebraska Juvenile Code. Among the stated purposes of the new Juvenile Code was the placement of related topics into an organized structure in order to enhance comprehension and use of the Code. Committee on the Judiciary, LB 346, 87th Sess., 47-70 (February 23, 1981). Section 43-274 is found in the "prosecution" section of the Code. Section 42-272.01, however, is placed in the "preadjudication procedures" section. Additionally, §43-272.01 was enacted with the express purpose of clarifying the duties and responsibilities of a guardian ad litem. Committee on the Judiciary, LB 787, 87th Sess., 6-61 (February 2, 1982). Viewed in this context, section 43-272.01.2(h) only affords the guardian ad litem standing to file petitions under the Code.

Given the legislative history of the Nebraska Juvenile Code, the unambiguous wording of §43-274, and the placement of §43-274 in the "prosecution" section of the Code, we conclude that a guardian ad litem may institute proceedings to terminate parental rights only with the consent of the county attorney.

Sincerely,

ROBERT M. SPIRE  
Attorney General



Laura L. Freppel  
Assistant Attorney General

LLF:pjs

APPROVED:



Attorney General