

**In re Interest of Joel Anaya, a child under 18 years of age. State of Nebraska, appellee, v. Josue Anaya and Mary Anaya, appellants. 758 N.W.2d 10 Filed December 5, 2008. No. S-07-1136.**

**SUPREME COURT JUSTICES COMMENTS\*:**

(original larger paragraph has been separated for easier reading)

*“Nothing presented at the October 12, 2007, hearing was tantamount to proof that the Anayas had neglected Joel. On the contrary, the evidence at the October 12 hearing established that during a DHHS home visit, the staff observed that Joel’s needs were being met and that he was a healthy 6-week-old baby.*

*Although failure to comply with the newborn screening statutes may be relevant, along with other facts, to a determination that a child was neglected as that term is understood under § 43-247(3)(a), the fact of failure to test under the newborn screening statutes, standing alone, does not establish neglect.*

*Our review of the record convinces us that the State failed to establish that this was an emergency situation, that harm was imminent, or that continued detention of Joel was warranted. At 5 weeks old, Joel was well past the first 24- to 48-hour 838 276 Nebraska reports emergency time period set forth in the newborn screening statutes and regulations. “The only evidence presented at the hearing with respect to the need for testing at 5 or 6 weeks of age was the testimony of Dr. Lutz to the effect that the testing was still relevant for a 6-week-old infant because some of the conditions can still be detected.*

*The record suggests that testing can still identify beneficial information after the first week of life; however, this fact alone does not prove that without immediate testing, a 5-week-old infant is at immediate risk of harm warranting jurisdiction under § 43-247(3)(a) or that such an infant’s continued detention after a blood specimen is obtained is necessary.*

*There simply was no legal, factual, or logical basis to keep Joel in State custody after the blood sample was taken. Because the State failed to meet its burden of proof under § 43-247(3)(a), the separate juvenile court did not acquire jurisdiction over Joel and all orders entered by the separate juvenile court were a nullity.”*

*\* [NOTE: These comments were extracted from a longer written decision by the Nebraska Supreme Court justices in an appeal by the parents and specifically about the cruel and unnecessary actions of Judge Crnkovich’s excessive detention of a newborn baby in foster care — whom she intentionally and without cause kept away from his nursing mother and distressed family.*

*In addition, Crnkovich made the unilateral decision to limit the mother’s access to her infant, Joel, to nurse as frequently as she and her baby required. This case is yet another stark example of how this judge routinely over-exerts her power to punish parents and children, even though it causes undue harm and distress and does not serve the purpose of keeping a child safer].*