

DA 17-0560

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 172N

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IN THE MATTER OF:

E.V.C.C.,

A Youth in Need of Care.

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APPEAL FROM: District Court of the Second Judicial District,  
In and For the County of Butte-Silver Bow, Cause No. DN-15-53-BN  
Honorable Brad Newman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jennifer Dwyer, Law Office of Jennifer Dwyer, PLLC,  
Bozeman, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Ryan Aikin, Assistant  
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Submitted on Briefs: May 16, 2018

Decided: July 10, 2018

Filed:



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Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 S.C. (Mother) appeals from the Second Judicial District Court's order terminating Mother's parental rights to her child, E.V.C.C. We affirm.

¶3 E.V.C.C. was born on August 20, 2014. On May 27, 2015, the Department of Public Health and Human Services, Child and Family Services Division (the Department) received a report that Mother was arrested at her residence for possession of drug paraphernalia, marijuana, and possible methamphetamine. The Department had investigated Mother for child abuse and neglect on eight prior occasions. Upon her arrest, Mother was taken to Butte Pre-Release for a urinary analysis. She tested positive for methamphetamine. After completing a present danger plan, the Department removed E.V.C.C. and placed E.V.C.C. in foster care.<sup>1</sup>

¶4 On June 23, 2015, the Department filed a Petition for Emergency Protective Services, Adjudication as Youth in Need of Care (YINC), and Temporary Legal Custody (TLC). On July 8, 2015, the District Court held a hearing regarding the Department's petition. Mother and Father stipulated to adjudication of E.V.C.C. as a YINC and to

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<sup>1</sup> C.C. (Father) was incarcerated throughout this case, and his parental rights were terminated on May 22, 2017.

TLC. A treatment plan was prepared for Mother and approved by the District Court on July 31, 2015. The treatment plan was designed to address Mother's chemical dependency and mental health issues. She was required to abstain from using drugs and alcohol, "maintain a safe and stable home that is drug/alcohol free," and prohibited from allowing known drug users into her home. It also required supervised visits and Mother to regularly contact the Department.

¶5 Numerous petitions to extend TLC of E.V.C.C. were filed over the next year and a half, all of which were approved by the District Court. On June 18, 2017, almost two years after the child was removed from Mother's custody, the Department filed a Petition for Permanent Legal Custody and Termination of Parental Rights with Right to Consent to Adoption. On August 23, 2017, the District Court held a hearing on the Department's petition. Testimony from the hearing established that while Mother complied with some of her treatment plan's requirements, she did not comply with the chemical dependency and safe and stable housing requirements. Specifically, Mother continued to use marijuana and consistently failed to maintain housing that was safe and appropriate for a child. The District Court concluded that termination of Mother's parental rights was in the best interest of E.V.C.C., and that Mother's conduct or condition was unlikely to change within a reasonable time. On August 25, 2017, the District Court terminated Mother's parental rights. Mother appeals.

¶6 This Court reviews a district court's decision to terminate parental rights for an abuse of discretion. *In re A.S.*, 2016 MT 156, ¶ 11, 384 Mont. 41, 373 P.3d 848. A district court abuses its discretion when it acts arbitrarily, without employing

conscientious judgment, or exceeds the bounds of reason, resulting in substantial injustice. *In re K.A.*, 2016 MT 27, ¶ 19, 382 Mont. 165, 365 P.3d 478. We review findings of fact for clear error and conclusions of law for correctness. *In re E.Z.C.*, 2013 MT 123, ¶ 19, 370 Mont. 116, 300 P.3d 1174. A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence, or if this Court is left with a definite and firm conviction that the district court made a mistake. *In re T.W.F.*, 2009 MT 207, ¶ 17, 351 Mont. 233, 210 P.3d 174.

¶7 A court may terminate parental rights when (1) a child has been adjudicated as a YINC; (2) an appropriate treatment plan that has been approved by the court has not been complied with by the parent or has not been successful; and (3) the conduct or condition of the parent's rendering him or her unfit is unlikely to change within a reasonable time. Section 41-3-609(1)(f), MCA. Each factor must be supported by clear and convincing evidence. Section 41-3-609(1), MCA.

¶8 Mother argues that the District Court abused its discretion when it concluded the factors of § 41-3-609(1)(f), MCA, were satisfied. The District Court determined that Mother failed to comply with her treatment plan. A parent must completely comply with her treatment plan, as partial or even substantial compliance is not sufficient. *In re S.M.*, 2001 MT 11, ¶ 44, 304 Mont. 102, 19 P.3d 213. Although Mother complied with parts of her treatment plan, she tested positive for marijuana on multiple occasions after her treatment plan was established. Urinary analyses performed on February 7, February 23, March 1, and March 21, 2017, were all positive for marijuana. Mother asserts that methamphetamine was the Department's main concern when it created her treatment

plan, and that she uses marijuana for medical purposes. However, her treatment plan specifically requires her to maintain a drug-free home. Mother does not have a medical marijuana card and there is no evidence in the record that proves her use is medically necessary. Clearly, Mother failed to comply with her treatment plan's chemical dependency requirements.

¶9 Mother also failed to comply with the treatment plan's safe and stable housing requirement. Mother argues that she complied with this requirement because she had stable housing with her boyfriend for several months leading up to the termination hearing. However, Mother's termination hearing occurred over two years after the District Court ordered her treatment plan, and in that time Mother held six different residences—one of which did not have running water—and was homeless on multiple occasions. *See In re J.M.J.*, 1999 MT 277, ¶¶ 23-27, 296 Mont. 510, 989 P.2d 840 (holding one to two months of stable housing with a mother's boyfriend over a twenty-month period was not substantial evidence that the mother had met her treatment plan goals regarding the safe and stable housing requirement). The Department attempted to assist Mother with finding a home; however, she was either evicted from housing communities or did not qualify for them.

¶10 The District Court did not err in concluding that Mother's condition regarding her drug use and lack of safe and stable housing was unlikely to change within a reasonable time. The District Court considered Mother's past and present conduct, including her history with the Department and continued drug use. *See In re A.H.*, 2015 MT 75, ¶ 36, 378 Mont. 351, 344 P.3d 403; § 41-3-609(2), MCA. At the time of the termination

hearing, E.V.C.C. had been in foster care for over two years. Section 41-3-604(1), MCA, provides that termination of parental rights is presumed to be in a child's best interest if the child has been in foster care "for 15 of the most recent 22 months." *In re B.M.*, 2010 MT 114, ¶ 19, 356 Mont. 327, 233 P.3d 338. The District Court did not abuse its discretion when it terminated Mother's parental rights for failure to comply with her treatment plan, and did not err in concluding that Mother's conditions regarding drug use and safe and stable housing were unlikely to change within a reasonable time.

¶11 Mother makes a number of arguments regarding failures of the Department and the District Court to comply with statutory requirements for abuse and neglect proceedings. Although Mother concedes that she did not raise these arguments in a timely fashion with the District Court, she requests this Court invoke the plain error doctrine to review the claimed procedural errors. "This Court may invoke the plain error doctrine to enable review in those limited situations where the failure to review the claimed error may result in a manifest miscarriage of justice or compromise the integrity of the judicial process." *In re D.A.*, 2008 MT 247, ¶ 33, 344 Mont. 513, 189 P.3d 631. As a general rule, this Court does not consider issues raised for the first time on appeal. *In re T.E.*, 2002 MT 195, ¶ 20, 311 Mont. 148, 54 P.3d 38. We decline to invoke plain error. Mother's arguments do not convince the Court that there has been a miscarriage of justice in this case.

¶12 The District Court did not abuse its discretion when it terminated Mother's parental rights. E.V.C.C. was adjudicated a YINC on July 8, 2015, Mother's treatment

plan was not successful, and it is unlikely that the conduct or condition rendering Mother's behavior unfit will change within a reasonable time.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶14 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR