

DA 19-0078

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 206N

IN THE MATTER OF:

K.R.E.,

A Youth in Need of Care.

APPEAL FROM: District Court of the Second Judicial District,
In and For the County of Butte-Silver Bow, Cause No. DN-18-55-BN
Honorable Edward P. McLean, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael P. Sinks, Attorney at Law, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, C. Mark Fowler, Assistant
Attorney General, Helena, Montana

Eileen Joyce, Butte-Silver Bow County Attorney, Butte, Montana

Submitted on Briefs: August 7, 2019

Decided: August 27, 2019

Filed:


Clerk

Justice Beth Baker 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 R.M.E. ("Mother") appeals the order of the Second Judicial District Court, Butte-Silver Bow County, terminating her parental rights to her son K.R.E. She argues that the District Court erred in concluding that the circumstances related to the prior terminations of her parental rights to three of her other children in 2007, 2009, and 2017 were relevant to her ability to adequately care for K.R.E. She further argues that the court erred in concluding that the Department of Public Health and Human Services (the "Department") engaged in statutorily required reasonable efforts to reunify Mother with K.R.E.

¶3 The Department removed K.R.E. from Mother four days after his birth in June 2018, before he was discharged from the hospital. Mother told the Child Protection Specialist at the hospital that she had remained sober since finding out she was pregnant. She admitted to methamphetamine use in the beginning of the pregnancy and marijuana use during her pregnancy. Both Mother and K.R.E. tested negative for all substances immediately after K.R.E.'s birth. On the day the Department removed K.R.E., birth father was arrested for

drug possession and two explosive devices were found in the home Mother shared with him.

¶4 Mother and birth father have an extensive history with the Department. Mother has six children, four with K.R.E.'s birth father. Before K.R.E.'s birth, Mother's and birth father's parental rights had been terminated to their other three children in 2007, 2009, and 2017, due to drug use by both parents and failed treatment plans. In addition, Mother lost custody of her two oldest children to their father in 2004.

¶5 In approving a treatment plan for Mother in August 2018, the District Court explained that "mother's got a difficult choice to make[a]nd if she chooses to reunify with the father, she does so at the peril of losing her children." The Department filed for termination of Mother's parental rights to K.R.E. less than two months later, citing the prior termination of rights to her other children.

¶6 Child Protection Specialist Supervisor Melinda Newman provided an affidavit with the petition for termination and testified at the December termination hearing. She attested to the circumstances of the three prior terminations, which involved drug use by both parents. She also attested that Mother was dishonest with the Department about her ongoing relationship with birth father, whose rights to K.R.E. were terminated in November 2018. Further, Newman reported that a few days before the Department filed the petition for termination, Mother arrived to produce a urinalysis sample wearing two pairs of pants and acting "weird and very anxious." While at the facility, a contraction under her right arm broke and leaked fluid all over her sweatshirt. Mother refused to stay

and provide another urinalysis sample. The Department considered this a failed drug test. The court terminated Mother's parental rights in January 2019, finding that Mother "has struggled with drug abuse and mental health issues for an extended period of time" and that "[t]he conditions that led to the prior terminations are the same or similar to this termination."

¶7 When reviewing a district court's decision to terminate parental rights, "we review the district court's findings for clear error, its conclusions of law for correctness, and the court's ultimate decision regarding adjudication and disposition for abuse of discretion." *In re M.J.*, 2013 MT 60, ¶ 16, 369 Mont. 247, 296 P.3d 1197.

¶8 Under § 41-3-609(1)(d), MCA, a district court may order the termination of the parent-child relationship upon a finding established by clear and convincing evidence that the parent has subjected a child to any of the circumstances listed in § 41-3-423(2)(a)-(e), MCA. Section 41-3-423(2)(e), MCA, provides that the Department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has "had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue." Section 41-3-423(2)(e), MCA; *In re A.H.D.*, 2008 MT 57, ¶ 21, 341 Mont. 494, 178 P.3d 131. "Circumstances surrounding previous involuntary terminations remain relevant, unless the circumstances have changed. This construction of relevant recognizes that a parent is not to be afforded multiple chances to remedy the same problems at the

expense of an abused or neglected child’s welfare.” *In re J.W.*, 2013 MT 201, ¶ 39, 371 Mont. 98, 307 P.3d 274 (internal quotations and citations omitted).

¶9 Mother’s drug use led to the termination of her parental rights to three of her children in separate proceedings over an approximate ten-year period before K.R.E. was born. Notably, Mother’s rights to her son C.E. were terminated just eight months before K.R.E.’s birth due to drug use that occurred after Mother successfully graduated from drug treatment court. The circumstances of these terminations remained relevant to the proceedings regarding K.R.E. Mother’s drug use continued—Mother admitted to using methamphetamine at the beginning of the pregnancy and she was deemed to have failed a drug test in October 2018 after she was caught attempting to tamper with her urinalysis sample. Further, Mother’s and birth father’s joint drug use was well-documented, and Newman testified that Mother was being dishonest with the Department about her ongoing relationship with birth father.

¶10 The District Court found that the conditions that led to the terminations of her parental rights for three other children are the same or similar to conditions at issue here. The District Court specifically found that the prior terminations “involved drug use and failed treatment plans.” Based on the record before the court, we conclude that the District Court did not err when it determined that clear and convincing evidence showed that the prior terminations of Mother’s parental rights supported the termination of her parental rights to K.R.E.

¶11 The District Court terminated Mother’s rights under § 41-3-609(1)(d), MCA. “This statute frees [the Department] from making further efforts to reunify the family once the statutory elements are met.” *In re Custody & Parental Rights of A.P.*, 2007 MT 297, ¶ 17, 340 Mont. 39, 172 P.3d 105. The Department was not required to provide reasonable efforts to Mother when seeking termination under this statutory section. Upon review of the record, we conclude that the District Court did not err.

¶12 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. The District Court’s interpretation and application of the law were correct. The court did not abuse its discretion in terminating Mother’s parental rights to K.R.E.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ INGRID GUSTAFSON

/S/ JIM RICE