

No. 05-239

IN THE SUPREME COURT OF THE STATE OF MONTANA

2006 MT 87N

IN RE THE MATTER OF M.S.S., JR.,

A Youth In Need Of Care.

APPEAL FROM: The District Court of the Tenth Judicial District,
In and For the County Fergus, Cause No. DN 03-10,
Honorable E. Wayne Phillips, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Craig R. Buehler, Attorney at Law, Lewistown, Montana (For Father)

Kris A. Birdwell, Stogsdill Law Office, P.C., Lewistown, Montana
(For Mother)

For Respondent:

Honorable Mike McGrath, Attorney General; Joslyn M. Hunt,
Assistant Attorney General, Helena, Montana

Thomas P. Meissner, County Attorney, Lewistown, Montana

Jon A. Oldenburg, Attorney at Law, Lewistown, Montana
(Guardian Ad Litem)

Submitted on Briefs: March 22, 2006

Decided: April 25, 2006

Filed:

Clerk

Justice W. William Leaphart delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 M.S. (Father) and M.K. (Mother) appeal the order terminating their parental rights to M.S.S., Jr. (M.S.S.). We affirm.

¶3 M.S.S. was born on March 25, 2003. Two days after his birth, upon receiving a referral alleging that Mother and M.S.S. tested positive for THC, the Department of Health and Human Services (the Department) removed M.S.S. from the care of his parents and placed him in foster care, where M.S.S. remained until February 2004 when he was returned to his parents. M.S.S. lived with Father and Mother for a brief period until the Department removed him for the second time upon learning that both parents admitted to a relapse in use of methamphetamine. M.S.S. has lived in foster care since that time.

¶4 After the District Court adjudicated M.S.S. a youth in need of care and granted temporary legal custody to the Department, the court ordered the preparation of treatment plans for both Father and Mother. The first treatment plans covered May 7, 2003, to August 27, 2003; the second plans covered December 11, 2003, to April 10, 2004. Although Mother and Father initially exhibited progress during the second phase of

treatment, the Department ultimately filed a petition for termination of parental rights and permanent legal custody with rights to consent to adoption based on Mother's and Father's continued drug use while caring for M.S.S. Subsequent to a termination hearing, the court concluded that the approved treatment plans had not been successfully complied with and that Father's and Mother's conduct or condition was unlikely to change within a reasonable time. Section 41-3-609(1)(f)(ii), MCA. The court therefore ordered termination of parental rights.

¶5 On appeal both Father and Mother argue that the State failed to prove all of the necessary elements of § 41-3-609(1)(f)(ii), MCA, and therefore the District Court incorrectly terminated their parental rights. The court received considerable testimony during the termination hearing with regard to the longtime drug addictions suffered by both Father and Mother. While the court was sympathetic to the parents' struggles, it concluded that the treatment plans had been unsuccessful and the behavior of Father and Mother would not change within a reasonable time.

¶6 It is appropriate to decide this case pursuant to our Order of February 11, 2003, amending Section 1.3 of our 1996 Internal Operating Rules and providing for memorandum opinions. It is manifest on the face of the briefs and the record before us that the appeal is without merit because the findings of fact are supported by substantial evidence, the legal issues are clearly controlled by settled Montana law which the District Court correctly interpreted, and there was clearly no abuse of discretion by the District Court.

¶7 We affirm the judgment of the District Court.

/S/ W. WILLIAM LEAPHART

We concur:

/S/ KARLA M. GRAY
/S/ PATRICIA COTTER
/S/ JIM RICE
/S/ BRIAN MORRIS