

DA 13-0795

IN THE SUPREME COURT OF THE STATE OF MONTANA

2014 MT 219N

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IN THE MATTER OF:

J.N.,

A Youth in Need of Care.

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APPEAL FROM: District Court of the Third Judicial District,  
In and For the County of Anaconda-Deer Lodge, Cause No. DN 12-07  
Honorable Ray J. Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Anne-Marie K. Simeon, Attorney at Law, Billings, Montana

For Appellee:

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

Ben Krakowka, Deer Lodge County Attorney, Anaconda, Montana

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Submitted on Briefs: June 25, 2014  
Decided: August 12, 2014

Filed:

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Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), 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 This appeal is the companion of Mont. Sup. Ct. No. DA 13-0796, *In re M.S. & J.S.*, 2014 MT 220N. Both appeals arise from the same August 2013 parental rights termination hearing before the District Court in Deer Lodge County. The three children (Children) in both matters share the same biological mother (Mother), while J.N., the subject of this appeal, has a different biological father than M.S. and J.S.

¶3 Mother appeals the District Court's decision to terminate her parental rights to J.N., claiming that the District Court abused its discretion by concluding that the circumstances surrounding Mother's prior parental rights termination in Texas in 1998 were relevant to the present matter. We affirm.

¶4 J.N. was born in 2003. J.N.'s biological father relinquished all of his parental rights in 2013. In August 2012, the Department of Public Health and Human Services, Division of Family Services (DPHHS), removed the Children from Mother's care following reports that the Children were sexually abused by Mother's friend and that Mother knowingly took the Children to the home of a registered sex offender for a birthday party. DPHHS placed the Children in foster care and petitioned the District Court for Emergency Protective Services, Adjudication of the Children as Youths in Need of Care, Temporary Investigative Authority,

and Temporary Legal Custody of the Children. The District Court adjudicated the Children as youths in need of care, granting DPHHS temporary legal custody in December 2012, and approved a treatment plan for Mother in January 2013. Mother failed to complete the treatment plan.

¶5 In May 2013, DPHHS filed a Petition for Termination of Mother’s Parental Rights under § 41-3-609(1)(f), MCA.<sup>1</sup> In August 2013, DPHHS filed a motion seeking judicial notice of facts related to the prior termination of Mother’s parental rights to three other children in Texas in 1998. The same day, Mother filed a Motion in Limine requesting that the Court exclude any evidence and witnesses relating to the Texas termination, contending that the circumstances of that case were irrelevant to the present termination and would be unduly prejudicial, as the Texas termination was over fifteen years earlier. The District Court denied Mother’s motion, reasoning that evidence relating to the Texas termination was relevant to her ability to adequately care for the Children in the present matter, and entered its Findings of Fact, Conclusions of Law, and Order terminating Mother’s parental rights to the Children on October 30, 2013.

¶6 We review a district court’s decision to terminate parental rights for an abuse of discretion. *In re D.S.B.*, 2013 MT 112, ¶ 8, 370 Mont. 37, 300 P.3d 702. The district court abuses its discretion when it “acts arbitrarily, without employment of conscientious judgment, or in excess of the bounds of reason, resulting in substantial injustice.” *In re*

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<sup>1</sup> DPHHS subsequently filed an amended Petition with an alternate theory under § 41-3-609(1)(d), MCA. At the August 16, 2013 termination hearing, however, DPHHS withdrew the amended

*E.Z.C.*, 2013 MT 123, ¶ 19, 370 Mont. 116, 300 P.3d 1174. We presume the district court is correct and will not disturb its decision unless “there is a mistake of law or a finding of fact not supported by substantial evidence that would amount to a clear abuse of discretion.” *In re D.B.*, 2012 MT 231, ¶ 17, 366 Mont. 392, 288 P.3d 160.

¶7 A court may terminate parental rights upon a finding of clear and convincing evidence that the child has been adjudicated a youth in need of care, the parent has not complied with an approved treatment plan, and the condition or conduct rendering the parent unfit is unlikely to change within a reasonable time. Section 41-3-609(1)(f), MCA. Mother does not dispute that J.N. was adjudicated a youth in need of care, or that she has not complied with the approved treatment plan. Her sole argument is that evidence relating to the Texas termination was not relevant to the present termination, and therefore the District Court abused its discretion by admitting such evidence and by terminating her parental rights.

¶8 “When addressing whether a parent’s conduct is unlikely to change in a reasonable time, the court must assess the past and present conduct of the parent.” *In re Matter of E.K.*, 2001 MT 279, ¶ 47, 307 Mont. 328, 37 P.3d 690. Section 41-3-609(2), MCA, which guides the determination of whether a parent’s conduct is likely to change within a reasonable time, instructs courts to look into a parent’s past by considering factors such as the duration of mental illness or history of violent behavior. Section 41-3-609(2)(a), MCA; § 41-3-609(2)(b), MCA.

¶9 The District Court heard testimony from doctors and therapists who described Mother’s cognitive difficulties, poor judgment, and post-traumatic stress disorder. The Court also heard the testimony of caseworkers—including the caseworker from the Texas termination—each of whom described Mother’s deficient parenting skills. The Court concluded that the circumstances surrounding the Texas termination were relevant because Mother continued to display the same cognitive difficulties and deficient parenting skills as she had in Texas fifteen years ago. The Texas termination, therefore, provided an historical context that informed the Court’s consideration of whether Mother’s conduct was likely to change in a reasonable time, which the Court concluded was unlikely. This conclusion is certainly within the bounds of reason, and therefore the District Court did not abuse its discretion in considering evidence from the Texas termination and terminating Mother’s parental rights to J.N.

¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions. The issues in this case are ones of judicial discretion and there clearly was not an abuse of discretion.

¶11 Affirmed.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH  
/S/ BETH BAKER

/S/ LAURIE McKINNON  
/S/ MICHAEL E WHEAT