

DA 14-0495

IN THE SUPREME COURT OF THE STATE OF MONTANA

2015 MT 64N

IN THE MATTER OF:

M.V., J.M., J.L.M., and J.M.M.,

Youths in Need of Care.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause Nos. DN 13-3, DN 14-2 and
DN 14-3
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Kathryn McEnergy, McEnergy Law Office, PLLC, Hot Springs, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Pamela P. Collins, Emily
von Jentzen, Assistant Attorneys General, Helena, Montana

Submitted on Briefs: January 29, 2015
Decided: February 24, 2015

Filed:



Clerk

Chief Justice Mike McGrath 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 C.M. appeals from an order of the Twentieth Judicial District, Lake County, terminating her parental rights to M.V., J.M., J.L.M., and J.M.M. ("the children").¹ The sole issue on review is whether the District Court abused its discretion when it found that C.M. had subjected the children to chronic emotional/psychological abuse and terminated her parental rights based on aggravated circumstances.

¶3 C.M. ("Mother") is the biological mother of M.V., J.M., and twins J.L.M. and J.M.M. In November 2012, the Department of Health and Human Services ("Department") received a report of unsanitary conditions in the home and domestic abuse against Mother. On January 29, 2013, the Department filed a petition for emergency protective services, for adjudication as youths in need of care, and for temporary legal custody of the children. The Department intervened when the children's maternal step-grandmother brought M.V. to the hospital after observing extensive bruising to the child's face. The child had a large, purple bruise, consistent with a strike

¹ The District Court also terminated the biological father's ("Birthfather") parental rights to J.M., J.L.M., and J.M.M. The biological father's appeal is separate from this appeal. M.V. has a different father than the other children.

to the face by a hand. The child's eardrum was perforated by the force of the blow. The children were placed in kinship care in January 2013.

¶4 On April 24, 2013, the District Court adjudicated the older children, M.V. and J.M., as youths in need of care based on the unexplained physical abuse of M.V. while in his Mother and stepfather's care. Soon afterwards, the District Court approved Mother's treatment plan. The treatment plan required Mother to participate in parenting education and follow the recommendations, maintain a safe and sanitary home, and address her mental health issues, particularly as related to domestic violence. Later, the Department sought approval of a Phase II treatment plan, but it was withdrawn.

¶5 The children returned to the family home in December 2013 for a trial visit. In January 2014, during a home visit with community support worker James Roberts, Birthfather told Mother, in the presence of the children, "If you take my kids, I'll get my shotgun and just shoot you. I'll just shoot you because you're not—no one is going to take my kids again." A report was made to Amy Rehbein, Birthfather's probation officer, who searched the home. Ms. Rehbein observed an unsanitary home, guns within reach of the children, and a tin with drugs and drug paraphernalia in the bedroom next to a child's playpen. Subsequently, the children were removed and both parents were arrested. In February 2014, the District Court adjudicated the twins, J.M.M and J.L.M., as youths in need of care on grounds of physical neglect due to exposure to unreasonable risk, domestic violence, and drugs and drug paraphernalia in the home.

¶6 The Department moved to terminate Mother's parental rights in May 2014. The District Court held a three-day termination hearing. Numerous witnesses discussed the

medical issues of the children and allegations of physical abuse and neglect. Among them was Dr. John Foster, the children's pediatrician, who discussed the children's severe eczema and J.M.'s hydrocephalus, both of which could be caused by stress and trauma, respectively. Dr. Foster characterized the children's medical issues as significant and numerous, requiring "diligent adherences to treatment regiment," and "regular attendance at appointments." Additionally, Dr. Foster also testified to various bruises on the children's bodies including a contusion to J.M.M.'s chest wall and contusions on M.V.'s buttock, thigh, and face. Child Protection Specialist Pamela Toste testified to changing J.M.'s diaper on a home visit and discovering two significant areas on each side of his bottom where the skin had sloughed off and resembled raw meat.

¶7 Additionally, Shari Mundaniohl, a family support worker, testified to Mother's chemical dependency issues. Mother tested positive for methamphetamines and barbiturates, although she claimed to have a prescription for the latter. Mother admitted to using methamphetamine and marijuana.

¶8 On July 7, 2014, the District Court issued findings of fact, conclusions of law, and an order terminating Mother's parental rights. The District Court found that Mother had subjected J.M. and M.V. to aggravated circumstances of chronic emotional/psychological abuse, physical neglect and exposure to domestic violence and physical abuse. The court noted the multiple reports of unsanitary conditions and safety hazards in the home, physical abuse of M.V., and exposure to drugs and guns. The court also found that Mother physically neglected the children as evidenced by the stress-induced eczema, missed essential appointments for the children, significant diaper rashes, and extremely

flat heads on the babies. The court concluded that based on the aggravated circumstances, a treatment plan was not required for J.L.M. and J.M.M.

¶9 We review a district court’s decision to terminate parental rights for abuse of discretion. *In re D.B.*, 2007 MT 246, ¶ 16, 339 Mont. 240, 168 P.3d 691 (citations omitted). A district court abused its discretion only if it “acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice.” *In re D.B.*, ¶ 16 (citations omitted). Findings of fact are reviewed for clear error and conclusions of law for correctness. *In re D.B.*, ¶ 18 (citations omitted).

¶10 A parent has a fundamental liberty interest in the care and custody of her child, which must be protected by fundamentally fair proceedings. *In re E.Z.*, 2013 MT 123, ¶ 21, 370 Mont. 116, 300 P.3d 1174 (citations omitted). However, a district court must “give primary consideration to the physical, mental, and emotional conditions and needs of the children” and the best interests of the children “take precedence over the parental rights.” *In re T.S.B.*, 2008 MT 23, ¶ 19, 341 Mont. 204, 177 P.3d 429 (citations omitted).

¶11 A court may order termination of parental rights upon a finding of clear and convincing evidence that the child is an adjudicated youth in need of care, an appropriate treatment plan has not been complied with or not been successful, and the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time. Section 41-3-609(1)(f), MCA. In limited circumstances, the Department may seek termination without providing reunification or preservation services if the parent has subjected a child to an aggravated circumstance. Sections 41-3-609(1)(d), -423(2), MCA. Such situations include, but are not limited to abandonment, torture, chronic

abuse, sexual abuse, or chronic, severe neglect of a child. *In re E.Z.*, ¶ 21; § 41-3-423(2)(a), MCA.

¶12 Mother argues that the evidence presented did not support the conclusion that the aggravated circumstances were both chronic and severe. In *In re M.N.*, we stated, “[d]iscrete instances of neglect, when viewed within a consistent pattern of similar behavior, provide a clear basis by which a district court can find ‘chronic, severe neglect’.” 2011 MT 245, ¶ 30, 362 Mont. 186, 261 P.3d 1047. The case at bar is notably similar to *In re M.N.*, where the Court found chronic and severe neglect in the pattern of unsanitary and unsafe living conditions, a “serious and unexplained head injury,” and “failure by the parents to attend therapy treatments for the children.” *In re M.N.* ¶ 30. While Mother urges the Court to characterize the children’s physical and mental health issues as either typical of their peers or not associated with the family life, the expert testimony shows otherwise. Mother repeatedly failed to address the serious health needs of her children as evidenced by her failure to attend therapy appointments to address M.V.’s mental health issues and not following instructions for treating the children’s skin condition. Most importantly, Mother failed to take any action to prevent future physical abuse of the children despite the fact that M.V. was beaten severely enough to rupture the toddler’s eardrum.

¶13 Mother also asserts that there was no clear and convincing evidence that her condition was unlikely to change. Mother argues that she now understands the impact of domestic violence on herself and the children, and any concern over domestic violence in the home was abated by Birthfather’s custody with the Department of Corrections. While

Mother did successfully complete the parenting program “Circle of Security,” she failed to apply the skills. Mother repeatedly missed scheduled visitation appointments with the children. Additionally, as noted above, Mother’s home was not in a condition fit for children. In one particularly horrific account, the maternal step-grandmother testified to picking up the children from the home and finding J.M.’s arms, legs, and face covered in feces. The District Court emphasized the impact of the photo exhibits, taken in January 2014, which showed the home to be “shockingly filthy and dangerous” despite the provision of numerous services to the Mother.

¶14 Finally, Mother failed to complete any therapy aimed at addressing her mental health needs, particularly her experience with trauma and domestic violence.² Mother attended only seven sessions in total with two counselors. Ms. Eyre, who specializes in domestic violence counseling, stated that Mother stopped coming to sessions before they could address any deep issues. Additionally, Ms. Eyre testified to the effect of domestic violence on children, explaining that children who witness domestic violence withdraw from normal “kid stuff” and can experience delays in social and developmental skills due to the trauma.

¶15 Mother began to address her chemical dependency issues, attending fourteen sessions. However, Mother was discharged for no-shows and Mr. Holcomb, Mother’s addiction counselor, testified that she had failed to successfully address her chemical

² Mother denied any incidents of domestic violence, but numerous witnesses testified to observing Mother with a black eye and witnessing Mother flee from Birthfather after an incident of violence.

dependency issues. The drugs and paraphernalia found in Mother's home support the conclusion that the home was not safe for the children.

¶16 Finally, Mother argues that the Department denied her fundamentally fair procedures because the Phase II treatment plan required her to end her relationship with Birthfather, her common-law husband. This argument is moot as the Department withdrew the Phase II plan prior to petitioning the District Court for termination. The District Court based the termination decision on Mother's failure to successfully complete the original treatment plan, approved on June 5, 2013, and nothing in the record suggests that she was denied due process in the proceeding.

¶17 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for memorandum opinions. The District Court's findings of fact are supported by substantial evidence and the legal issues are controlled by settled Montana law, which the District Court correctly interpreted.

¶18 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ PATRICIA COTTER
/S/ LAURIE McKINNON
/S/ MICHAEL E WHEAT
/S/ JIM RICE