

DA 17-0652

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 169N

IN THE MATTER OF:

M.W., a/k/a M.S.,

A Youth in Need of Care.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DN 13-12A
Honorable Holly Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Meri K. Althausser, Forward Legal, PLLC, Missoula, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Katie F. Schulz, Assistant
Attorney General, Helena, Montana

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Submitted on Briefs: June 20, 2018

Decided: July 10, 2018

Filed:



Clerk

Justice Laurie McKinnon 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 C.W. (Mother) appeals from an order of the Eighteenth Judicial District Court, Gallatin County, terminating her parental rights to her natural child M.W., aka M.S. (M.W.). We affirm.

¶3 When M.W. was born in 2013, the Department of Health and Human Services, Child and Family Services (the Department) received reports that Mother and L.W. (Father) were using marijuana at the hospital. M.W. was adjudicated as a Youth in Need of Care (YINC) and both parents stipulated to and completed treatment plans. The case was, accordingly, dismissed. The Department became involved in M.W.'s life for a second time in 2015, following a domestic disturbance between Mother and Father. Mother stipulated to M.W.'s adjudication as a YINC and to Temporary Legal Custody (TLC). The Department placed M.W. in kinship care with Mother's mother (Grandmother) and Mother stipulated to a second treatment plan. In February 2016, Mother was reunified with M.W. and the court dismissed her case. Father, however, failed to comply with his treatment plan and the court subsequently terminated his parental rights.

¶4 In February 2017, Mother's probation officer discovered that Mother was using methamphetamine and the Department became involved in M.W.'s life for a third time. The Department removed M.W. from Mother's care, placed M.W. in kinship care with Grandmother, and asked the District Court to immediately terminate Mother's parental rights, contending that reunification efforts were not required. The District Court denied the Department's request, determining that the Department needed to work with Mother towards reunification. Therefore, the District Court adjudicated M.W. as a YINC, granted the Department TLC for six months, and approved Mother's third treatment plan (Treatment Plan), to which she stipulated.

¶5 Mother's Treatment Plan required her to complete various tasks, which included (1) completing chemical dependency and mental health evaluations within two weeks; (2) complying with drug and alcohol tests; (3) maintaining safe and appropriate housing; (4) obtaining a sustainable and legal source of income; (5) providing the Department with all necessary information, including releases of information as requested; and (6) maintaining communication with the Department. The Treatment Plan's effective dates were May 23, 2017, through November 22, 2017. As Mother worked on completing some of the Treatment Plan's tasks, it became obvious that Mother's severe drug addiction remained her most significant issue. She completed her chemical dependency evaluation and the evaluator diagnosed her with severe use disorder. Mother used alcohol and methamphetamine daily, and marijuana five times per week. The evaluator noted that Mother expressed a desire to stop using, but that her addiction was

too severe for Mother to achieve sobriety on her own. Thus, Mother required at least a year of intensive treatment to address her drug addiction.

¶6 At the end of July 2017, the Department petitioned to terminate Mother's parental rights pursuant to § 41-3-609(1)(f), MCA. Mother contested the termination and requested that the District Court appoint Grandmother as M.W.'s guardian. The District Court held a hearing on Mother's guardianship request, at which both Mother and Grandmother testified in support of guardianship. The court reserved its ruling on guardianship until after Mother's termination hearing. The District Court held Mother's contested termination hearing in September 2017, at which Mother did not appear due to illness. The Department presented evidence from five witnesses. The District Court terminated Mother's parental rights in an October 5, 2017 order, from which Mother appeals.

¶7 We review 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. This Court does not disturb a district court's decision on appeal 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 T.S.*, 2013 MT 274, ¶ 21, 372 Mont. 79, 310 P.3d 538. 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.

¶8 Mother raises four issues on appeal. She first argues that the District Court’s decision to terminate her parental rights due to her failure to complete her treatment plan was based on insufficient evidence. She contends that the Department set her up for failure because it did not give her enough time to work on or meaningfully assist her attempts to comply with her Treatment Plan. The Department responds, arguing that the District Court’s finding that Mother failed to successfully complete her treatment plan was supported by credible evidence.

¶9 A district court may terminate the parent-child relationship after adjudicating a child as a YINC and finding that (1) “an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful”; and (2) “the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.” Section 41-3-609(1)(f)(i)-(ii), MCA. The Department must present clear and convincing evidence that the statutory criteria are met. *In re C.B.*, 2014 MT 4, ¶ 13, 373 Mont. 204, 316 P.3d 177. A parent must comply with her treatment plan—partial or even substantial compliance is insufficient. *In re J.A.B.*, 2015 MT 28, ¶ 27, 378 Mont. 119, 342 P.3d 35. Even a parent’s “[w]ell-intentioned efforts toward successful completion of a treatment plan do not demonstrate either the completion or the success of the plan.” *In re D.A. and M.A.*, 2008 MT 247, ¶ 22,

344 Mont. 513, 189 P.3d 631 (quoting *In re J.W.*, 2001 MT 86, ¶ 17, 305 Mont. 149, 23 P.3d 916).

¶10 The District Court approved and Mother stipulated to her Treatment Plan on May 23, 2017, and the Department petitioned for termination of Mother's parental rights two months later, at the end of July 2017. In those two months, Mother made minimal progress on her Treatment Plan. She failed to maintain sobriety, treat her mental health needs, maintain a safe and appropriate home, or obtain legal employment. Mother also violated her release conditions and refused to follow her chemical dependency evaluation's recommendations, utilize programs offering assistance, or engage with the Department's services. The Department's termination petition was not premature given Mother's disengagement and severe drug addiction issues, which required intensive, long-term treatment. The Department tried to assist Mother with her Treatment Plan by scheduling meetings, referring her to services, offering to assist her with her tasks, and attempting to engage Mother. Another two months passed before the District Court held Mother's termination hearing in September 2017. The District Court did not abuse its discretion in determining that Mother did not comply with her Treatment Plan, even though it terminated her parental rights before the Treatment Plan's timeline expired, because the Department provided clear and convincing evidence that Mother had not yet completed and would not be able to demonstrate successful completion of her Treatment Plan before it expired on November 22, 2017.

¶11 Second, Mother argues that the Department did not make reasonable efforts to reunify her with M.W. The Department must make reasonable efforts "to reunify

families that have been separated by the state,” § 41-3-423(1), MCA, but when a district court terminates a parent-child relationship pursuant to § 41-3-609(1)(f), MCA, it does not have to make specific findings regarding the Department’s reunification efforts, *In re M.V.R.*, 2016 MT 309, ¶ 41, 385 Mont. 448, 384 P.3d 1058. The Department’s reasonable efforts “include but are not limited to” developing a treatment plan, providing services pursuant to a treatment plan, and “periodic review . . . to ensure timely progress toward reunification or permanent placement.” Section 41-3-423(1), MCA. The question of whether the Department made reasonable reunification efforts is considered on a case-by-case basis, as a court must independently evaluate each family’s situation. *In re K.L.*, 2014 MT 28, ¶ 41, 373 Mont. 421, 318 P.3d 691. While the Department must make reasonable efforts, § 41-3-423(1), MCA, “does not require herculean efforts.” *In re K.L.*, ¶ 41.

¶12 Mother contends that the Department should have been more helpful, specifically that it should have performed tasks such as scheduling Mother’s appointments, organizing her transportation, and checking her into inpatient treatment. We conclude, however, that the Department made reasonable efforts to reunify Mother and M.W. The Department developed Mother’s Treatment Plan and attempted to provide Mother with services. The fact that Mother did not engage with those services was mainly attributable to her severe drug addiction, for which she required extensive treatment. The District Court’s termination decision was supported by substantial credible evidence and it did not abuse its discretion.

¶13 Third, Mother argues that the District Court abused its discretion in ordering termination of Mother’s parental rights instead of establishing a guardianship with Grandmother. She reasons that the Department should preserve the family unit whenever possible and, accordingly, the District Court should have concluded that a guardianship with Grandmother was in M.W.’s best interests. In this case, the District Court held a separate hearing to gather evidence regarding the appropriateness of a guardianship. Based on that evidence, as well as evidence presented at Mother’s termination hearing, the District Court concluded that termination and adoption was in M.W.’s best interests. The court noted M.W.’s age, vulnerability, and need for stability in the context of this proceeding being the third time the Department was involved in M.W.’s life. The District Court did not act arbitrarily without conscientious judgment or exceed the bounds of reason by concluding that M.W.’s best interests were achieved by termination and adoption.

¶14 Finally, we address Mother’s fourth argument—that she was denied due process of the law because the Treatment Plan’s timeline was cut short. Mother urges us to exercise plain error review of this issue, contending that failing to address it will result in a manifest miscarriage of justice and will leave unsettled the question of the proceeding’s fundamental fairness. A parent’s right to the care and custody of her child is a fundamental liberty interest that must be protected by “fundamentally fair procedures,” *In re J.W.*, 2013 MT 201, ¶ 30, 371 Mont. 98, 307 P.3d 274, but “due process is flexible, and the process that is due in any given case varies according to the factual circumstances of the case and the nature of the interests involved,” *In re D.B.J.*, 2012 MT 220, ¶ 27,

366 Mont. 320, 286 P.3d 1201 (internal citations and quotations omitted). A parent is not guaranteed a certain period of time to work on a treatment plan and the Department was not prohibited from petitioning for termination of Mother's rights even though her Treatment Plan's timelines had not yet expired. We accordingly decline to exercise plain error review of this issue.

¶15 As the District Court appropriately noted, the paramount concern in a termination proceeding is the child's physical, mental, and emotional conditions and needs. M.W. needed stability, safety, security, and permanency. Mother required extensive treatment to overcome her severe drug addiction and she recognized that she would not be capable of parenting M.W. for several years. Substantial evidence supports the District Court's termination of Mother's parental rights and we accordingly affirm its order.

¶16 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶17 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER
/S/ INGRID GUSTAFSON