

DA 18-0008

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 314N

IN THE MATTER OF:

J.Q. and J.Q.,

Youths in Need of Care.

APPEAL FROM: District Court of the Second Judicial District,
In and For the County of Silver Bow, Cause Nos. DN 15-82-BN and DN 15-82-BN
Honorable Brad Newman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Paul D. Sullivan, Measure, Sampsel, Sullivan & O'Brien, P.C., Kalispell,
Montana

For Appellee:

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

Eileen Joyce, Silver Bow County Attorney, Butte, Montana

Submitted on Briefs: November 28, 2018

Decided: December 27, 2018

Filed:



Clerk

Justice Ingrid Gustafson 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 S.N. (Mother) appeals the Second Judicial District Court, Silver Bow's December 11, 2017 Order terminating her parental rights to her children J.Q. (born in 2013) and J.Q. (born in 2014) (Children). Although a separate cause number was assigned for each child's case, proceedings occurred simultaneously in the District Court with shared facts and procedural histories. We consolidated these two cases for purposes of appeal. We affirm.

¶3 On October 1, 2015, the Child and Family Services Division of the Montana Department of Public Health and Human Services (Department) filed a Petition for Emergency Protective Services, Adjudication of Child as Youth in Need of Care (YINC), and Temporary Legal Custody regarding the Children due to concerns of physical neglect. The Department had worked with Mother on a voluntary basis over the prior two years and had offered in-home services. This was the Department's seventh call to the house in the two years since the first child was born. The house had a sticky substance on the floors; the bathroom sink was filled with brown paper towel and other detritus; dirty laundry, dirty diapers, and alcohol and pill bottles littered the floor; food was rotting in the fridge; and the Children were found in dirty clothes and full diapers. The Children were removed from Mother, adjudicated as YINC, and have been living with their maternal grandparents

(Grandparents) ever since. The Department averred the Children are Indian children under the Indian Child Welfare Act (ICWA) and are associated with the Confederated Salish and Kootenai Tribes.

¶4 The court found Mother's first treatment plan was appropriate and ordered it in November 2015. In January 2016, Mother completed a psychological evaluation which found she has a cognitive nonverbal deficit that makes it difficult for her to understand written instructions. The court ordered a second treatment plan in July 2016. In May 2017, the court held a hearing on the Department's first Petition to Terminate Parental Rights, at which the Department asked for six more months to work with Mother (who was the only party not present at the hearing), the Tribes, and the ICWA expert to work to reunite the family. In June 2017, the department accounted for Mother's learning disability by making the third and final treatment plan more simplistic. Mother agreed to all three treatment plans. The Department and Mother's attorney sat down with Mother to discuss all three treatment plans verbally before each was implemented.

¶5 The Department worked with Mother throughout the case to provide rides or take resources to Mother whenever possible as she did not own a vehicle; however, this was made difficult because Mother was often out of contact with the Department, Grandparents, and the Children. Sometimes neither the Department nor Grandparents knew where Mother was living. Mother failed to engage in the supervised visitation component of all three treatment plans and was terminated from two separate supervised visitation groups for failure to show up on more than fifteen occasions. Mother failed to attend most UAs the Department requested, attending less than 25 and missing over 170. From October

2015 to December 2017, Mother had multiple addresses in Butte, Deer Lodge, and Whitehall (even though Mother was welcome to stay with Grandparents and Children at any time), and had at least seven different jobs. Mother failed to attend three of the seven hearings held in this matter. The Department sought termination for failure to complete the third treatment plan and the Court terminated her parental rights on December 11, 2017. Mother appeals.

¶6 We review a district court decision to terminate parental rights for an abuse of discretion under the applicable standards of Title 41, chapter 3, MCA, and ICWA, Title 25, Chapter 21, U.S.C. In this context, a court abuses its discretion if it terminates parental rights based on clearly erroneous findings of fact, erroneous conclusions of law, or otherwise “acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice.” Findings of fact are clearly erroneous if not supported by substantial evidence, the court misapprehended the effect of the evidence, or this Court has a definite and firm conviction that the lower court was mistaken. We review conclusions of law de novo for correctness. *In re D.E.*, 2018 MT 196, ¶ 21, 392 Mont. 297, 423 P.3d 586 (internal citations omitted).

¶7 Mother argues the District Court erred in concluding that she would not have rendered herself fit to parent the Children within a reasonable amount of time because only the third parenting plan considered Mother’s learning disability. But Mother was significantly non-compliant with each of the three treatment plans even though the Department verbally worked through them step-by-step and discussed barriers with her before they were implemented. She agreed to each treatment plan before it was

implemented and acknowledged she could have asked the Department questions at any time if she was confused. Mother failed to establish she made any significant gains in her parenting abilities before or during her third treatment plan. The Department attempted to work with Mother and assist her in gaining necessary parenting abilities on an informal basis for approximately two years and then on a formal basis for another two years. Based on Mother's history of failing to engage with services and her lack of demonstrated improved parenting skills during the time the Department was involved with her, the District Court appropriately concluded the conditions rendering Mother unable or unfit to parent were not likely to change within a reasonable amount of time. Reviewing the record as a whole, we find the District Court did not abuse its discretion in terminating mother's parental rights.

¶8 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.

¶9 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ LAURIE McKINNON

/S/ JIM RICE

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR