

DA 18-0279

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 316N

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IN THE MATTER OF:

M.B.,

A Youth in Need of Care.

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APPEAL FROM: District Court of the Fourth Judicial District,  
In and For the County of Missoula, Cause No. DN 15-85  
Honorable Leslie Halligan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael P. Sinks, Attorney at Law, Bozeman, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy A. Hinderman,  
Assistant Attorney General, Helena, Montana

Kirsten H. Pabst, Missoula County Attorney, Jessica Finley, Deputy County  
Attorney, Missoula, Montana

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Submitted on Briefs: November 28, 2018

Decided: December 27, 2018

Filed:



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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 The father of M.B. appeals from the Findings of Fact, Conclusions of Law and Order Terminating Father's Parental Rights and Awarding CFS Permanent Legal Custody with the Right to Consent to Adoption of the Montana Fourth Judicial District Court, Missoula County, which terminated his parental rights to M.B. We affirm.

¶3 In October 2016, M.B.'s paternal grandmother contacted the Department of Public Health and Human Services' Child and Family Services Division ("the Department") because Father had left M.B. in her care, she could not locate Father, and she was unable to care for M.B. The Department removed M.B. Father stipulated to M.B.'s adjudication as a youth in need of care with the Department assuming temporary legal custody.

¶4 In February 2017, the District Court approved a treatment plan for Father which required him, in part, to: undergo a chemical dependency evaluation and follow its recommendations; submit to random drug and alcohol testing; successfully complete parenting classes; attend visits and maintain contact with M.B.; submit to a mental health evaluation and follow its recommendations; successfully participate in counseling/therapy; obtain and maintain safe and adequate housing; and maintain contact with the Department.

¶5 On October 16, 2017, the Department petitioned the District Court for termination of Father's parental rights. The Department alleged the only progress Father had made on his treatment plan was completion of a mental health evaluation, but he failed to follow the recommendations. The Department acknowledged Father had participated in a chemical dependency evaluation, but noted the evaluator recommended re-evaluation because Father was uncooperative and the results were unreliable.

¶6 After hearing, the District Court terminated Father's parental rights. The court noted Father had been only sporadically engaged in the case, failing to appear at many of the hearings. It found Father failed to complete his treatment plan, including failing to: follow the recommendations of the chemical dependency evaluator; demonstrate an ability to remain sober and drug-free; participate in random drug testing; complete parenting classes; maintain regular contact with M.B.; participate in counseling; and maintain safe and stable housing.

¶7 The court further found Father's conduct was unlikely to change within a reasonable time. Although it acknowledged Father had recently obtained employment and housing, it found his overall progress had been marginal and inconsistent, and he had failed to demonstrate an ability to remain consistently in M.B.'s life, to provide M.B. with long-term stability, and to meet M.B.'s needs. The court based the finding that Father's conduct was unlikely to change within a reasonable time on Father's lack of motivation to be integrated into M.B.'s daily life, his unwillingness to accept accountability for M.B.'s circumstances, and his unwillingness or inability to address concerns regarding chemical dependency and mental health.

¶8 Father raises two issues on appeal: The District Court violated his due process rights by failing to advise him of his rights as required by § 41-3-432(4), MCA, and the District Court erred in concluding his conduct was unlikely to change within a reasonable time.

¶9 Pertinent to the facts of this case, § 41-3-432(4), MCA, requires a court at the show cause hearing to explain the procedures and the parties' rights, including the right to request appointment or assignment of counsel and the right to challenge the allegations contained in the petition. The parent must be given the opportunity to admit or deny the allegations contained in the petition. The Department concedes the District Court failed to orally advise Father of his rights pursuant to § 41-3-432(4), MCA. However, Father did not raise this issue below, and thus he must first convince this Court that failure to review the error may result in a manifest miscarriage of justice or may compromise the integrity of the judicial process. *In re S.C.*, 2005 MT 241, ¶ 35, 328 Mont. 476, 121 P.3d 552 (citation omitted). Here, Father was personally served with a petition that explicitly informed him of his rights and the allegations made. At the show cause hearing, Father appeared with counsel, and counsel indicated he had reviewed the allegations with Father and Father would stipulate M.B. was a youth in need of care because Father could not currently provide a stable home, but would not stipulate to the remaining allegations of the petition. Thus, the District Court's failure to comply with § 41-3-432(4), MCA, did not render the proceedings fundamentally unfair such that plain error review is warranted.

¶10 Father next argues the District Court erred in concluding the conduct or condition rendering him unfit was unlikely to change within a reasonable time. He asserts that at the time of the termination hearing, he had recently spent one month in Oregon visiting M.B.,

and he was now employed, had obtained suitable housing, and was successfully complying with his employer's drug screening program. Although the court noted Father had made progress recently, it weighed that evidence against Father's failure to complete his treatment plan and his continued non-compliance with the treatment plan's requirements. To reverse a district court's ruling for an abuse of discretion, we must determine the court either acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. *In re O.A.W.*, 2007 MT 13, ¶ 32, 335 Mont. 304, 153 P.3d 6 (citations and quotations omitted). We review conclusions of law to determine whether the court interpreted the law correctly. *In re J.B.*, 2016 MT 68, ¶ 9, 383 Mont. 48, 368 P.3d 715 (citations omitted). Here, Father has not convinced us the District Court either abused its discretion or misinterpreted the law.

¶11 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.

¶12 Affirmed as set forth above.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR