

DA 18-0300

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 91N

IN THE MATTER OF:

A.B.,

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 16-22B
Honorable Rienne McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Mark Taylor, self-represented, Bozeman, Montana

For Appellee:

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

Marty Lambert, Gallatin County Attorney, Deborah Pratt, Deputy County
Attorney, Bozeman, Montana

Submitted on Briefs: March 13, 2019

Decided: April 16, 2019

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 M.T. (Father) appeals from a May 3, 2018 order of the Eighteenth Judicial District Court terminating Father's parental rights to A.B. (Child). We affirm.

¶3 Child was born in 2004 and is the biological child of D.B. (Mother) and Father. On March 9, 2016, an ex-boyfriend murdered Mother. Prior to her death, Child lived with Mother. For a brief period after Mother's death, Child resided with Father, his roommate, and his roommate's daughter, in a hotel room in Belgrade, Montana. During this time, Father repeatedly called 911, used vulgar language, and received a citation for misusing the emergency system. On June 10, 2016, after Child stated that Father threatened to kill Child and Child's dogs, the Department removed Child from Father's care. The Department offered Father a voluntary protection plan to prevent Child's removal, but Father refused. Father became increasingly agitated after the Department removed Child, alleging that Mother's murder was part of a conspiracy to hide child abuse and remove Child from Father.

¶4 On September 9, 2016, following a contested adjudicatory hearing, the District Court adjudicated Child as a youth in need of care (YINC) within the meaning of § 41-3-102, MCA. At the hearing, Father testified that he believed everything was an

interconnected conspiracy between the Department, law enforcement, his attorney, Child's guardian ad litem, Child's principal, and the District Court, dating back to his parenting plan with Mother. Father stated he had evidence that "everybody" falsified documents and tampered with recordings to cover up Mother's murder and child abuse by Child's step-father, C.W.¹ Child testified in chambers that she had a good relationship with C.W. and thought of him as family.

¶5 On October 31, 2016, the District Court granted temporary legal custody to the Department and approved and ordered Father to complete a treatment plan addressing the issues rendering Father unfit or unable to parent Child. The treatment plan required Father to complete specific tasks addressing Father's mental health issues, lack of safe and stable housing, and parenting skills, including his ability to support, communicate with, respect, and understand Child's developmental needs. Father submitted to a brief psychological evaluation with clinical psychologist, Dr. Chessen, and attended some family therapy sessions, but otherwise stated he would not engage in the tasks required by the treatment plan. Father believed the treatment plan was part of the conspiracy between the Department, law enforcement, and the District Court.

¶6 Father's July 29, 2016 psychological evaluation with Dr. Chessen revealed traits consistent with paranoid personality disorder. Dr. Chessen verified his diagnosis with retired psychologist Dr. Wagner, who had previously worked with Father and diagnosed him with paranoid personality disorder.

¹ In 2015, Father reported that C.W. abused Child. Undersheriff Springer investigated Father's allegation and closed the investigation as unsubstantiated.

¶7 Family therapy sessions agitated Father. In therapy, Father focused his attention on past events. After Child refused to attend an August 18, 2016 therapy session with Father, Father left threatening messages on the therapist's voicemail. Thereafter, the therapist discontinued family therapy. Father did not complete any other tasks designed to address his mental health or improve his parenting skills.

¶8 Due to Father's lack of engagement and progress in completing the treatment plan, the Department filed a petition to terminate Father's parental rights. The Department sought to terminate Father's parental rights on the basis that Father failed to complete his treatment plan and the conduct or condition rendering Father unfit to parent Child was unlikely to change within a reasonable time. *See* § 41-3-609(1)(f), MCA.

¶9 In November 2017, Father was charged with three counts of violating privacy in communications, a misdemeanor, pursuant to § 45-8-213, MCA, for repeatedly leaving Child Protection Specialist (CPS) Erin Clemens threatening and profane voicemail messages.

¶10 On May 3, 2018, following a two-day contested hearing, the District Court issued its order terminating Father's parental rights to Child. Father appeals.

¶11 On appeal, Father asserts his due process rights were violated because the Department failed to make reasonable reunification efforts, his treatment plan was not appropriate, and the Department perpetrated a fraud on the court.

¶12 This Court reviews a district court's decision to terminate parental rights for an abuse of discretion. *In re J.B.*, 2016 MT 68, ¶ 10, 383 Mont. 48, 368 P.3d 715. This Court reviews a district court's findings of fact for clear error and conclusions of law for

correctness. *In re J.B.*, ¶¶ 9-10. “A factual finding is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence, or if review of the record convinces the Court a mistake was made.” *In re J.B.*, ¶ 10.

¶13 A natural parent’s right to the care and custody of a child is a fundamental liberty interest, which courts must protect with fundamentally fair procedures at all stages of a termination proceeding. *In re C.J.*, 2010 MT 179, ¶ 26, 357 Mont. 219, 237 P.3d 1282. However, the best interests of a child are of paramount concern, and take precedence over parental rights. *In re A.H.D.*, 2008 MT 57, ¶ 13, 341 Mont. 494, 178 P.3d 131.

¶14 Section 41-3-423(1), MCA, mandates that the Department must make reasonable efforts to “prevent the necessity of removal of a child from the child’s home and to reunify families that have been separated by the state.” Reasonable efforts are not herculean efforts and the analysis of what amounts to reasonable is highly case-dependent. *In re K.L.*, 2014 MT 28, ¶ 41, 373 Mont. 421, 318 P.3d 691; *In re J.H.*, 2016 MT 35, ¶ 17, 382 Mont. 214, 367 P.3d 339.

¶15 Father argues that the Department failed to make reasonable efforts to reunite him with Child because the Department did not allow Father contact with Child. The Department therefore violated Father’s due process rights. We disagree. The Department directly arranged for Father to participate in family therapy with Child. When Child refused to attend therapy due to Child’s fear of Father, the therapist continued to facilitate contact by encouraging Child to participate by phone. This upset Father. However, rather than focus on improving his relationship with Child over the phone, Father focused on his belief that the Department was again conspiring against him. Thereafter, Father left the

therapist threatening messages. Given Child's ongoing fear of Father and his inappropriate behaviors, the therapist discontinued family therapy. Father cannot argue that the consequences of his own behavior amount to the Department's failure to provide him with reasonable reunification efforts.

¶16 After reviewing the record, this Court concludes that the Department made reasonable efforts to reunite Father with Child. *See* § 41-3-423(1), MCA; *In re J.H.*, ¶ 17. The Department's reasonable efforts included: (1) exploring the feasibility of a voluntary protective services agreement; (2) developing an appropriate court-ordered treatment plan designed to address Father's mental health, housing, and parenting issues; (3) providing for services, including a psychological evaluation and family therapy; (4) repeatedly contacting and having meetings with Father to engage him with the Department and services; (5) and placing Child in a kinship placement. *See* § 41-3-423(1), MCA; *In re J.H.*, ¶ 17. Father chose not to engage with the Department despite the Department's reasonable efforts to reunify him with Child.

¶17 A district court may order the termination of the parent-child relationship where the district court has adjudicated a child as a YINC, a parent has not successfully completed an appropriate treatment plan, and the conduct rendering the parent unfit is unlikely to change within a reasonable time. Section 41-3-609(1)(f), MCA.

¶18 A treatment plan is an agreement between the Department and the parent or a court order specifying the actions a parent must take to resolve the conditions resulting in the need for protective services for the child. Section 41-3-102(30), MCA. "A treatment plan is appropriate if it is case specific and comports with the Department's mandate set forth

in § 41-3-423(1), MCA, to make reasonable efforts to reunify families.” *In re X.M.*, 2018 MT 264, ¶ 19, 393 Mont. 210, 429 P.3d 920.

¶19 While Father argues that his treatment plan was inappropriate, the record contains clear and convincing evidence that Father’s court-ordered treatment plan appropriately identified Father’s mental health concerns and provided tasks for Father to address those concerns. The District Court approved the Department’s treatment plan. Father distrusts the Department, and consequently, refuses to participate in what Father believes is a conspiracy against him. Father’s mental health thus substantially interferes with his ability to address the mental health, housing, and parenting tasks required by the treatment plan. The District Court did not abuse its discretion in finding that Father’s treatment plan was appropriate and that Father failed to complete it. *See* § 41-3-609(1)(f)(i), MCA.

¶20 Father’s preoccupation with a perceived conspiracy against him has negatively affected Child and has demonstrated Father is not capable of meeting Child’s emotional, developmental, or physical needs. Based on Father’s conduct and ongoing unaddressed mental health problems, the District Court did not abuse its discretion in finding that the conduct or condition rendering Father unfit to parent Child was unlikely to change within a reasonable time. *See* § 41-3-609(1)(f)(ii), MCA.

¶21 Finally, Father asserts fraud was perpetrated upon the court. Although not well delineated, Father’s briefing suggests his counsel was ineffective and that the District Court should have let him represent himself. Specifically, Father argues his counsel ineffectively assisted him by refusing to raise, argue, and present Father’s beliefs that law enforcement destroyed evidence, failed to set up a lie-detector test for Father, and conspired against him.

This Court finds no evidence of ineffective counsel in the record. Father fails to demonstrate how the representation he received prejudiced him, or how his self-representation would have led to a different outcome. Substantial evidence shows Father's treatment plan was appropriate, he failed to complete the treatment plan, and the conduct or conditions rendering Father unfit to parent Child were unlikely to change in a reasonable time.

¶22 In conclusion, Father's due process rights were not violated by the District Court's handling of this case. Father's court-approved treatment plan was appropriate and Father had full opportunity to participate in meaningful services designed to assist him in addressing his parenting deficiencies. This Court finds nothing in the record to suggest Father's counsel was ineffective. The proceedings provided Father with fundamental fairness and the District Court did not abuse its discretion in terminating Father's parental rights to Child pursuant to § 41-3-609(1)(f), MCA.

¶23 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.

¶24 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ JIM RICE