

DA 18-0538

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 135N

IN RE THE PARENTING OF:

S.F.R.T.,

Minor Child.

JUSTIN PALMER,

Petitioner, Appellee,
and Cross-Appellant.

and

TEAGAN TROMP,

Respondent and Appellant.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DR-17-99
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brandi R. Ries, Emily A. Lucas, Ries Law Group, P.C., Missoula, Montana

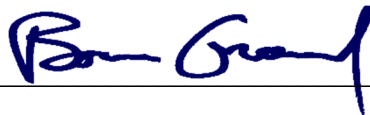
For Appellee:

Tyler G. Moss, O'Neill Law Office, PLLC, Polson, Montana

Submitted on Briefs: May 22, 2019

Decided: June 4, 2019

Filed:



Justice James Jeremiah Shea 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 Teagan Tromp (Mother) appeals the order of the Twentieth Judicial District, Lake County, denying her petition for termination of parental rights, denying her request for a permanent order of protection, and adopting a parenting plan. We affirm.

¶3 Mother and Justin Palmer (Father) were never married or in a dating relationship. They have one child together, S.F.R.T., born on August 30, 2013. Father was unaware of the child's conception and birth until several years later when Mother informed him in a letter. After learning about S.F.R.T., Father began developing a relationship with her, until a disagreement about parenting time arose. Eventually, Mother terminated all contact between Father and S.F.R.T.

¶4 On October 19, 2017, Father served Mother his Petition for Establishment of Permanent Parenting Plan. Mother filed a Petition for Permanent Order of Protection against Father and a Counter-Petition for Termination of Parental Rights, claiming S.F.R.T. was conceived from sexual intercourse without consent. On June 21, 2018, the District Court held a hearing, during which it received testimony from the parents and other

witnesses. The District Court denied both of Mother’s petitions and adopted a parenting plan. Mother appeals.¹

¶5 We review a district court’s decision to terminate parental rights for an abuse of discretion. *In re T.S.B.*, 2008 MT 23, ¶ 17, 341 Mont. 204, 177 P.3d 429. Because a parent’s right to the care and custody of his or her child is a fundamental liberty interest, a district court must make specific factual findings. *In re D.B.*, 2007 MT 246, ¶ 17, 339 Mont. 240, 168 P.3d 691. We review these findings for clear error. *In re T.S.B.*, ¶ 18. We review a district court’s decision regarding protective orders for a manifest abuse of discretion. *Shammel v. Canyon Res. Corp.*, 2003 MT 372, ¶ 12, 319 Mont. 132, 82 P.3d 912. We review a district court’s decision regarding a parenting plan for an abuse of discretion. *Woerner v. Woerner*, 2014 MT 134, ¶ 12, 375 Mont. 153, 325 P.3d 1244.

¶6 Section 41-3-801(2)(b), MCA, allows a district court to terminate a parent-child legal relationship, if, after an evidentiary hearing, the district court finds by clear and convincing evidence that the parent “committed an act of sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.” A person commits the offense of sexual intercourse without consent if the person “knowingly has sexual intercourse with another person without consent or with another person who is incapable of consent.” Section 45-5-503(1), MCA.

¶7 In this case, the District Court held an evidentiary hearing where it heard un rebutted evidence that Mother’s conduct “would have reasonably be[en] understood to indicate

¹ Father cross-appeals, claiming § 41-3-801(2)(b), MCA, does not apply retroactively. Because that issue would not change the outcome of our decision, we do not address that here.

consent, and no statements or conduct indicating lack thereof, other than the appearance of substantial intoxication that both parties were in.” Thus, based on this unrebutted evidence, the District Court concluded Mother failed to provide clear and convincing evidence that Father knowingly had sexual intercourse with another person who is incapable of consent. We agree. The District Court’s denial of Mother’s Counter-Petition for Termination of Parental Rights was not an abuse of discretion. *See In re T.S.B.*, ¶ 17.

¶8 Given the lack of threats of violence or force in the record and the finding that the sexual intercourse was consensual, the District Court’s denial of Mother’s Permanent Order of Protection was not a manifest abuse of discretion. *See Shammel*, ¶ 12.

¶9 Section 40-4-212(1), MCA requires a district court, when deciding parenting matters, to determine a parenting plan in accordance with the best interest of the child. The statute directs a district court to consider “all relevant parenting factors” and provides a lengthy, non-exhaustive list of factors that might be considered. Section 40-4-212(1), MCA. This Court has held that “trial courts have broad discretion when considering the parenting of a child, and we must presume that the court carefully considered the evidence and made the correct decision.” *In re Marriage of Crowley*, 2014 MT 42, ¶ 44, 374 Mont. 48, 318 P.3d 1031. In this case, we are not even forced to presume. The District Court provided a thorough analysis of the factors listed in § 40-4-212(1), MCA, including the parties’ wishes, the relationship of S.F.R.T. with the parents, S.F.R.T.’s ability to adjust to the parenting plan, and whether the parenting plan will foster continuity and stability of care by allowing both parents reasonable and established parenting time. After reviewing

this analysis, we conclude the District Court did not abuse its discretion in its adoption of the Parenting Plan. *See Woerner*, ¶ 12.

¶10 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.

¶11 Affirmed.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE