

DA 19-0197

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 270N

IN THE MATTER OF:

P.H.,

A Youth in Need of Care.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. DDN-17-024(B)
Honorable Elizabeth Best, 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, Helena,
Montana

Joshua A. Racki, Cascade County Attorney, Valerie M. Winfield, Deputy
County Attorney, Great Falls, Montana

Submitted on Briefs: October 2, 2019

Decided: November 12, 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 J.M. (Father) appeals the February 26, 2019 Order of the Eighth Judicial District Court, Cascade County, terminating his parental rights to his child P.H. (Child). We affirm.

¶3 Child, born in January 2017, is the biological child of Father and N.H. (Mother). Child was removed at birth by the Montana Department of Public Health and Human Services, Child and Family Services Division (Department), as Mother had tested positive for methamphetamine and Father was incarcerated in the Cascade County jail and unavailable to parent. Mother was involved with the Department at the time of Child's birth due to another abuse and neglect proceeding regarding her older child. On January 18, 2017, the Department filed a Petition for Emergency Protective Services, Adjudication as Youth in Need of Care (YINC) and Temporary Legal Custody (TLC). On February 24, 2017, at the show cause and adjudicatory hearing, in accordance with Mother and Father's stipulation, Child was adjudicated a YINC and the Department was granted TLC. At the dispositional hearing on March 30, 2017, the District Court approved the proposed treatment plans for Father and Mother and granted the Department TLC for six months. In

April 2017, the Department sought termination of Mother's parental rights and her parental rights were terminated in June 2017.

¶4 On November 17, 2017, the Department filed a petition to terminate Father's parental rights due to both Father's failure to complete his treatment plan and his long-term incarceration. Following extensions of TLC and continuances to permit Father to complete his parole hearing, hearing on the termination petition was ultimately held on June 14, 2018. After hearing testimony from Child Protection Specialist (CPS) Knapstad and Father, the District Court denied the Department's petition and extended TLC. In its written order, the District Court found Father had "made extraordinary strides in attempting to succeed in the treatment plan, is clearly highly motivated, and wants to be a good parent to the child."

¶5 On October 30, 2018, the Department filed its second termination petition, in which it sought to terminate Father's parental rights due to his failure to complete his court-ordered treatment plan, pursuant to § 41-3-609(1)(f), MCA. Following another extension of TLC, the District Court commenced hearing on the Department's second termination petition on January 17, 2019, and completed the hearing on February 21, 2019. At the conclusion of the hearing, the District Court found Father had not completed his treatment plan and terminated Father's parental rights. Father appeals.

¶6 We review a district court's determination to terminate parental rights for an abuse of discretion. *In re E.Y.R.*, 2019 MT 189, ¶ 21, 396 Mont. 515, 446 P.3d 1117. An abuse of discretion occurs when a district court acts arbitrarily, without employment of

conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re X.M.*, 2018 MT 264, ¶ 17, 393 Mont. 210, 429 P.3d 920 (citing *In re K.A.*, 2016 MT 27, ¶ 19, 382 Mont. 165, 365 P.3d 478). We review a district court’s findings of fact for clear error and its conclusions of law for correctness. *In re M.V.R.*, 2016 MT 309, ¶ 23, 385 Mont. 448, 384 P.3d 1058.

¶7 Section 41-3-609(1)(f), MCA, protects a parent’s fundamental right to the care and custody of a child in termination proceedings. *In re E.Y.R.*, ¶ 26. “Before the court may terminate the parent-child relationship of a YINC, the court must find by clear and convincing evidence that: (1) an appropriate court-approved treatment plan was not complied with by the parents or was not successful; and that (2) the conduct or condition of the parents rendering them unfit was unlikely to change within a reasonable time.” *In re X.M.*, ¶ 18 (citing § 41-3-609(1)(f)(i), (ii), MCA). The Department is required to make “reasonable efforts . . . to reunify families that have been separated by the state.” Section 41-3-423(1), MCA.

¶8 From our review of the record, the District Court’s decision to terminate Father’s parental rights was not an abuse of discretion. The District Court found Father had worked on his treatment plan with some areas of success but had ultimately failed to complete it. The District Court noted Father’s disengagement from Blue Thunder Lodge and his decision to leave that program without completion; Father’s discharge from parenting classes due to excessive absences; Father’s refusal to comply with CPS-requested UAs and refusal to wear the court-ordered drug patch; and Father’s admission to drug use. The

District Court found Father had not completed the court-ordered treatment plan and the conduct or condition rendering him unfit to parent was unlikely to change within a reasonable time pursuant to § 41-3-609(1)(f), MCA.¹

¶9 Father failed to complete his treatment plan due to his own decisions, which resulted in his continued instability and inability to provide a safe home for Child. After Father was released from the Montana State Prison (MSP) on parole, the Department made reasonable efforts to help Father complete his treatment plan—setting up treatment, drug testing, supervised visitation, and parenting classes—but was continually frustrated by Father’s own actions. Father failed to complete treatment at Blue Thunder Lodge, testifying that he left because Child would not be allowed to live with him there, but then moved from Great Falls to a different sober living home in Missoula where Child also could not live with him. Father was discharged from parenting classes due to excessive absences. Father had a positive test on his drug patch and then refused to wear the court-ordered drug patch any longer. Father refused to complete UAs as requested by CPS Knapstad. Father admitted to using drugs and his overall situation did not improve with continued instability and inability to provide Child a safe home. Father did not complete his treatment plan and given his lack of demonstrated change, the District Court correctly found that Father’s condition was unlikely to change within a reasonable time. Child had

¹ The District Court did note its concerns that DOC ignoring its sentence recommendation to place Father into Connections Corrections for treatment—instead placing Father at MSP—delayed Father’s ability to complete the treatment plan. Despite the delay, Father was provided sufficient time and opportunity to have successfully completed his treatment plan and demonstrated the ability to change the behaviors which rendered him unable to parent in a reasonable period of time.

been in the custody of the Department for his entire life—over two years at the time of termination—and deserved stability. The District Court’s decision to terminate Father’s parental rights was not an abuse of discretion.

¶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/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ LAURIE McKINNON