

DA 21-0269

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 311N

IN THE MATTER OF:

E.J.G. and C.R.G.,

Youths in Need of Care.

APPEAL FROM: District Court of the Second Judicial District,
In and For the County of Butte-Silver Bow, Cause No. DN-19-97
Honorable Robert J. Whelan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Taryn Gray, Driscoll Hathaway Law Group, Missoula, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Katie F. Schulz,
Assistant Attorney General, Helena, Montana

Eileen Joyce, Butte-Silver Bow County Attorney, Mark Vucurovich,
Special Deputy County Attorney, Butte, Montana

Submitted on Briefs: November 10, 2021

Decided: December 7, 2021

Filed:



Clerk

Chief Justice Mike McGrath 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 K.E.T. appeals from the Second Judicial District Court's decisions to terminate her parental rights to E.J.G. and C.R.G. pursuant to § 41-3-609(1)(f), MCA. We affirm.

¶3 E.J.G. and C.R.G. are twins who were seven years old when removed from K.E.T.'s care. K.E.T. adopted the children in February 2019 and is their paternal grandmother. The children's birth parents' rights were terminated due to abuse and neglect stemming from the parents' ongoing drug use.

¶4 On November 15, 2019, the Department of Public Health and Human Services (Department) filed a Petition for Emergency Protective Services, Adjudication of Child as Youth in Need of Care, and Temporary Legal Custody of E.J.G. and C.R.G. The supporting affidavit alleged the children were in immediate danger because of K.E.T.'s "out of control mental health and lack of protective capacities." The affidavit cited a previous report from October 2018 wherein E.J.G. alleged an unknown male visitor had sexually abused her while she was in K.E.T.'s care.¹ K.E.T.'s abuse and neglect included

¹ The Department closed this report and noted K.E.T. responded appropriately and protectively at that time by taking E.J.G. to the emergency room.

having her son, the children's birth father, watch the children, even though he remained an active methamphetamine user.

¶5 K.E.T. told the investigator she suffered from high anxiety, which resulted in her sleeping for long periods during the day. Reports indicated another relative was taking the children to school because K.E.T. was not getting up and that the children were afraid to wake her due to her anger. K.E.T. also reportedly hit C.R.G. and failed to address the children's mental health needs. She failed to consistently administer C.R.G.'s medication and did not sign the children up for recommended mental health services to address their trauma.

¶6 The Department's Immediate Danger Assessment from November 7, 2019, also reported K.E.T. behaved erratically and aggressively with investigators, prompting them to call police to the home for safety.

¶7 The show cause hearing was postponed over a month and a half due to K.E.T.'s refusal to answer the door for service. Upon Department motion, the District Court allowed service by publication. Following the hearing, the court issued its February 10, 2020 order ruling the children were youths in need of care and continuing the Department's custody for six months.

¶8 On April 22, 2020, the court approved K.E.T.'s stipulated treatment plan. A primary goal was K.E.T. achieving and maintaining safe and stable housing, which the plan articulated as a "safe home environment." The plan described a safe environment including K.E.T. protecting the children and keeping the home free from persons using drugs and alcohol. The plan also required K.E.T. to demonstrate she understood the children's

trauma, to take responsibility for how her choices had adversely affected the children, and to address her own mental health.

¶9 K.E.T. stipulated to a six-month extension of the Department's custody in June 2020. The court granted the extension to allow K.E.T. more time for plan completion. At that time, K.E.T. had yet to complete her mental health evaluation.

¶10 At the end of the six-month extension, the Department petitioned for termination of K.E.T.'s parental rights citing her failure to successfully complete the treatment plan and that her conduct or condition causing the neglect and abuse was unlikely to change within a reasonable time pursuant to § 41-3-609(1)(f), MCA. The nature of K.E.T.'s neglect was her "inability to manage her own mental health needs in order to parent the child[ren] and keep the child[ren] safe."

¶11 On March 30, 2021, the District Court held a termination hearing. The court heard testimony from the children's counselor, who had also conducted family therapy with K.E.T.; the Department's caseworker; and K.E.T.

¶12 The District Court terminated K.E.T.'s rights in its May 4, 2021 order. The court held that clear and convincing evidence showed K.E.T. had failed to demonstrate improved parenting skills and understanding of the children's trauma, refused responsibility for how her actions adversely impacted the children, and ignored therapeutic suggestions to assist her with meeting the children's needs. The court held termination of K.E.T.'s rights was in the best interests of the children.

¶13 "We review a district court's decision to terminate parental rights for an abuse of discretion, considering the applicable standards of Title 41, chapter 3, MCA. . . ."

In re D.D., 2021 MT 66, ¶ 9, 403 Mont. 376, 482 P.3d 1176. A court abuses its discretion if its decision rests on clearly erroneous factual findings or incorrect conclusions of law, or if it otherwise “acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice.” *In re D.D.*, ¶ 9.

¶14 On appeal, K.E.T. argues the District Court erred in finding she was unsuccessful in her treatment plan. K.E.T. contests the court’s conclusions that she failed to obtain safe and stable housing and was unlikely to change within a reasonable time.

¶15 A court may terminate parental rights if clear and convincing evidence demonstrates the child is an adjudicated youth in need of care; the parent was noncompliant with or unsuccessful in an appropriate, court-approved treatment plan; and the parent’s unfit conduct or condition is unlikely to change within a reasonable time. *In re X.M.*, 2018 MT 264, ¶ 18, 393 Mont. 210, 429 P.3d 920 (citing § 41-3-609(1)(f)(i), (ii), MCA).

¶16 Clear and convincing evidence means a definite preponderance of the evidence or establishing a particular issue by a clear preponderance of proof, but it does not require conclusive evidence. *In re T.D.H.*, 2015 MT 244, ¶ 28, 380 Mont. 401, 356 P.3d 457.

¶17 Successful treatment plan completion requires the parent effectuate the purposes for which the plan was designed. *In re A.K.*, 2015 MT 116, ¶ 28, 379 Mont. 41, 347 P.3d 711.

¶18 Here, testimony and investigators’ affidavits provided substantial evidence K.E.T. failed the purposes of her treatment plan by refusing accountability, not prioritizing the children’s safety and emotional needs, and not following therapeutic recommendations.

¶19 A principal issue was that K.E.T. brought another person to a visitation, who the children believed to be their father. Testimony and reports by the children’s counselor and

investigators show the children experienced fear and an eroded sense of safety around K.E.T. after the visitation. Because of the trauma this incident caused, visitations with K.E.T. were discontinued at the children's counselor's recommendation. The court's findings also emphasized the counselor's testimony about K.E.T.'s continued "explosive anger episodes." The court noted the counselor's opinion that the children would experience permanent trauma and mental health issues if reunification efforts with K.E.T. continued.

¶20 At the hearing, K.E.T.'s own testimony confirmed her refusal to acknowledge how her actions had impacted the children. Regardless of evidence she submitted showing the children's father could not have been the person in the car, the record establishes she brought another person to a visitation, who was hidden in the backseat. K.E.T. remained adamant the children's fears were irrational because the person in the car could not be their father. However, her testimony supports the court's finding that she refused to recognize how her conduct contributed to the children's fear and eroded sense of safety.

¶21 K.E.T.'s testimony demonstrates she failed to understand her conduct was counter to protective parental care and support for the children's mental and emotional needs. The Department's affidavit supporting termination also indicated K.E.T.'s interactions with the children at visitations were not always appropriate. Evidence in the record repeatedly references K.E.T.'s impulsive, aggressive, and overly combative responses to Department and counselor interventions and suggestions for help.

¶22 In *In re A.K.*, we upheld termination of parental rights on similar conclusions that a parent's deflection of blame, refusal to accept full responsibility for the children's removal,

and failure to demonstrate changes necessary to foster a healthy relationship with the children constituted noncompliance with the treatment plan. *In re A.K.*, ¶ 29.

¶23 The court’s findings were not clearly erroneous. The children’s needs for safety and mental health treatment and K.E.T.’s inability to demonstrate an understanding of their needs or accountability for her actions such that she could provide adequate parental care and protection are established in the record by a clear preponderance of proof.

¶24 K.E.T. also argues the court erred in holding such factors fall under safe and stable housing. The treatment plan articulated these expectations as part of a safe home environment. No statute limits “safe and stable housing” to physical elements. Treatment plans are geared to resolve the conditions or conduct requiring emergency protective services, § 41-3-102(31), MCA (2019).² Section 41-3-102(20), (21), MCA, specifically contemplate such conduct to include exposing children to psychological harm.

¶25 As to a parent’s likelihood of change within a reasonable time, a court must find *either* continuation of the parent-child relationship will likely result in continued abuse or neglect *or* that the parent’s conduct or condition renders them unfit, unable, or unwilling to give the child adequate parental care. Section 41-3-609(2), MCA. *See also In re M.T.*, 2020 MT 262, ¶ 32, 401 Mont. 518, 474 P.3d 820. The court must consider a parent’s emotional or mental illness and any parental history of violent behavior. Section 41-3-609(2)(a), (b), MCA. Primary consideration is given to the physical, mental, and emotional needs of the child. *In re X.M.*, ¶ 20 (citing § 41-3-609(3), MCA).

² Section 41-3-102, MCA, has since been amended. The definition for “treatment plan” remains unchanged but is now found at § 41-3-102(33), MCA (2021).

¶26 K.E.T. disputes the court's consideration of her emotional or mental illness because there is no expert testimony or medical record in evidence confirming she has been diagnosed. However, the statute is not limited to medically-diagnosed issues. It explicitly emphasizes any such mental or emotional illness "of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time." Section 41-3-609(2)(a), MCA; *see also In re T.D.H.*, ¶ 35 (holding substantial evidence supported mother was unlikely to change though her history of mental illness was self-reported).

¶27 K.E.T. admitted to suffering from anxiety and drew her own connection between this and her inability to supervise and protect the children. There is also substantial evidence in the record of her violent behavior. Reports indicate she hit C.R.G. and fought with her neighbors, including keying their cars. Caseworkers characterized K.E.T. as "reactive" and "impulsive." K.E.T.'s treatment plan outlined the necessary progress required of her, and the court provided an extension when she delayed in getting a mental health evaluation and seeking therapy. K.E.T. remained resistant to the therapeutic assistance provided to her and the children. The record provides a definite preponderance of the evidence that K.E.T. remained unfit, unable, or unwilling to provide adequate care and protection of E.J.G. and C.R.G.

¶28 Further, the statute requires only one prong be met, and substantial evidence in the record supports the District Court's findings and conclusions under both. In addition to K.E.T.'s unfitness, by the termination hearing, the children had been in the Department's custody for over 16 months. Termination was presumed to be in their best interests.

Section 41-3-604(1), MCA. The children's counselor also testified continuing reunification with K.E.T. would result in the children's permanent mental and emotional damage. Substantial evidence supported the court's conclusion a continued parent-child relationship with K.E.T. would continue her neglect and the children's traumatization.

¶29 The District Court did not abuse its discretion in holding K.E.T. did not successfully complete her treatment plan, was unlikely to change the conduct or condition rendering her unfit within a reasonable time, and that termination of her parental rights was in the children's best interests.

¶30 K.E.T. also argues the Department failed to provide reasonable efforts to reunify her family as required by § 41-3-423(1), MCA. She claims the Department impeded her treatment plan compliance by discontinuing her visits with the children.

¶31 “[I]n making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.” Section 41-3-423(1)(c), MCA. “Although the State may assist the parents in completing the treatment program, the parents retain the ultimate responsibility for complying with the plan.” *In re R.H.*, 250 Mont. 164, 171, 819 P.2d 152, 156 (1991).

¶32 Here, K.E.T.'s own actions triggered visitations ending. The children's counselor testified the children would be harmed if visits continued. K.E.T. had other avenues to demonstrate plan success, such as demonstrating her understanding of the children's trauma and her own responsibility for adverse impacts on the children through therapy and Department contacts. The Department's investigator testified K.E.T. “was not willing to follow the recommendations of the department or the providers” and “was very resistant to

any input regarding the children's well-being or mental health." The investigator stated he shared these concerns with K.E.T.'s counselor, but the situation further declined.

¶33 Efforts were made to support K.E.T.'s continued connection with the children. She received referrals to and support in accessing parenting classes, mental health counseling, and family therapy. The Department communicated with her counselor and continued to monitor her progress. Nothing in the record suggests the court's conclusion that K.E.T. was unlikely to change could be called into question because of the Department's lack of reasonable efforts.

¶34 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. The District Court's ruling was not an abuse of discretion. Its findings of fact were not clearly erroneous nor suggestive of mistake, it did not misapprehend the evidence, and its interpretation and application of the law were correct.

¶35 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ JIM RICE