

DA 22-0177

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 232N

IN THE MATTER OF:

P.R.S.,

A Youth in Need of Care.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DN-18-411
Honorable Rod Souza, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Kathleen A. Molsberry, Matthew B. Lowy, Lowy Law, PLLC,
Missoula, Montana

For Appellee

Austin Knudsen, Montana Attorney General, Cori Losing, Assistant
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Submitted on Briefs: October 19, 2022

Decided: November 15, 2022

Filed:



Clerk

Justice Laurie McKinnon 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 foster parents of P.R.S., B.D. and J.D. (Foster Parents), appeal the June 28, 2021 Order of the Montana Thirteenth Judicial District Court, Yellowstone County, denying their motion to intervene. This is a companion case to *In the Matter of U.A.C.*, 2022 MT 230, ___ Mont. ___, ___ P.3d. ___..

¶3 The Department of Public Health and Human Services (the Department) removed P.R.S., and her younger half-sister, U.A.C. for physical neglect. At the time of removal, P.R.S. was 8 years old and U.A.C. was 20 months old. Both children are Indian—P.R.S. is a member of the Northern Cheyenne Tribe, and U.A.C. is a member of the Little Shell Tribe of Chippewa Indians of Montana. The Department placed P.R.S. and U.A.C. with Foster Parents on May 18, 2019, and October 23, 2018, respectively. P.R.S. and U.A.C. have remained continuously in Foster Parents' care for the last three years while the Department has had temporary legal custody (TLC). During the period of TLC, the Department had sought reunification with the natural parents.

¶4 The Department submitted an Interstate Compact for the Placement of Children for U.A.C. to be placed with her paternal grandmother in Virginia. Foster Parents opposed the placement and filed a motion to intervene, arguing that they have a conditional statutory

right to intervene under M. R. Civ. P. 24 (Rule 24) and that the District Court denied them their fundamental right to notice and a hearing. Foster Parents also asserted that they possessed a fundamental liberty interest in the parent-child relationship under § 40-4-211, MCA.

¶5 The Department opposed the motion to intervene on two grounds: (1) § 41-3-422(9)(a), MCA, provided Foster Parents notice and the right to be heard so intervention by Foster Parents was unnecessary; and (2) § 41-3-422(9)(b), MCA, only allows intervention by one of the enumerated parties when the Department has alleged abandonment. During the proceedings, the Department has only alleged physical neglect—not abandonment.

¶6 The District Court ruled in favor of the Department, reasoning that Foster Parents do not have a right to intervene as a matter of law, although they have the right to fundamentally fair procedures, such as the rights to notice and to be heard.

¶7 The District Court supported its decision by relying on this Court's order in *A.G. v. Mont. Eighteenth Judicial Dist. Court*, No. OP. 19-0728, 399 Mont. 552, 460 P.3d 401 (Feb. 18, 2020). The District Court specifically concluded:

The prerequisite threshold to intervene under M. R. Civ. P. 24 is materially different from the prerequisite to intervene under § 41-3-422(9)(b). Therefore, the Court concludes § 41-3-422(9)(b) has modified M. R. Civ. P. 24 and displaces the Rule under § 41-3-422(4).

The District Court further reasoned that the Legislature expressly intended to allow a party to intervene under § 41-3-422(9)(b), MCA, only upon an allegation of abandonment. As such, the District Court ordered that Foster Parents were precluded from intervening under

the statute because the Department did not allege abandonment.

¶8 After the District Court denied Foster Parents' motion to intervene, it conducted a contested placement hearing on July 29, 2021, and July 30, 2021. The Department had requested the District Court find good cause to deviate from the Indian Child Welfare Act to maintain a placement with Foster Parents rather than place U.A.C. with her paternal grandmother in Virginia. The guardian ad litem agreed with the Department that U.A.C. should remain in Foster Parents' care. On November 9, 2021, the District Court granted the Department's motions and ordered that U.A.C. remain with Foster Parents.

¶9 On May 9, 2022, the Department petitioned for termination of parental rights regarding both P.R.S. and U.A.C. on May 9, 2022. The termination petitions are pending in the District Court.

¶10 We normally review a district court's order granting or denying a motion to intervene for abuse of discretion. *Connell v. Dept. of Soc. & Rehab. Servs.*, 2003 MT 361, ¶ 13, 219 Mont. 69, 81 P.3d 1279. However, the correct interpretation of a statute is a question of law that we review de novo. *Bates v. Neva*, 2014 MT 336, ¶ 9, 377 Mont. 350, 339 P.3d 1265. This Court reviews a district court's interpretation of the law for correctness. *In re S.B.C.*, 2014 MT 345, ¶ 20, 377 Mont. 400, 340 P.3d 534.

¶11 Our decision in the companion case of *In the Matter of U.A.C.*, DA 22-0311, 2022 MT 230 is dispositive of the issues in this case. U.A.C. and P.R.S. were handled as companion cases in the District Court and the same issues have been raised by Foster Parents in both cases on appeal. For the reasons set forth in *In the Matter of U.A.C.*, DA 22-0311, 2022 MT 230, the District Court did not err when it denied Foster Parents'

motion to intervene because § 41-3-422(9)(b), MCA, precludes intervention in cases where the Department has not alleged abandonment. Foster Parents do not possess a parental interest in the parent-child relationship while the neglect and dependency proceedings are pending.

¶12 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.

¶13 Affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE