

DA 22-0311

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 230

IN THE MATTER OF:

U.A.C.,

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 Appellant:

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For Appellee

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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 The foster parents of U.A.C., 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.

¶2 We affirm and restate the issues as follows:

1. Must abandonment be alleged before a foster parent is allowed to intervene pursuant to § 41-3-422(9)(b), MCA?

2. Can foster parents establish a parent-child relationship during the pendency of a Title 41, chapter 3, MCA, proceeding?

FACTUAL AND PROCEDURAL BACKGROUND

¶3 The Department of Public Health and Human Services (the Department) removed U.A.C. and her older half-sister, P.R.S., for physical neglect.¹ At the time of removal, U.A.C. was 20 months old and P.R.S. was 8 years old. Both children are Indian—U.A.C. is a member of the Little Shell Tribe of Chippewa Indians, and P.R.S. is a member of the Northern Cheyenne Tribe. The Department placed U.A.C. and P.R.S. with Foster Parents on October 23, 2018, and May 18, 2019, respectively. U.A.C. and P.R.S. 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 U.A.C.'s 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

¹ U.A.C.'s and P.R.S.'s cases were companion cases in the District Court but are not formally consolidated before this Court.

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 these proceedings, the Department did not allege that either child had been abandoned.

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

¶7 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.

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

STANDARD OF REVIEW

¶9 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 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.

DISCUSSION

¶10 *1. Must abandonment be alleged before a foster parent is allowed to intervene pursuant to § 41-3-422(9)(b), MCA?*

¶11 The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to abuse and neglect proceedings, except as modified in Title 41. Section 41-3-422(4), MCA. Subsection (a) of Rule 24 mandates intervention to anyone who possesses a statutory unconditional right to intervene or who “claims an interest relating to the property or transaction which is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless the existing parties adequately represent that interest.” M. R. Civ. P. 24(a). Subsection (b) of Rule 24 allows intervention at a district court’s discretion to a person who has a conditional, statutory right to intervene or who “has a claim or defense that shares with the main action a common question of law or fact.” M. R. Civ. P. 24(b). Title 41 also addresses intervention, §§ 41-3-422(9)(b) and 41-3-437(4), MCA, and provides procedures specific to a foster parent’s intervention in child dependency and neglect actions.

¶12 The plain language of § 41-3-422(9)(b), MCA, authorizes, in pertinent part, “[a] foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child . . . may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child.” Section 41-3-422(9)(b), MCA, explicitly cross references § 41-3-437(4), MCA, which provides that “[i]n a case in which abandonment has been alleged by the county

attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b)” regarding any of the following subjects:

- (a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child’s parents; and
- (b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:
 - (i) the intent of the parents in placing the child or allowing the child to remain with that person;
 - (ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and
 - (iii) the circumstances under which the child was placed or allowed to remain with that other person, including:
 - (A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 3, or of a conviction pursuant to 45-5-206; and
 - (B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

Accordingly, § 41-3-422(9)(b), MCA, “clearly modifies the circumstances under which a party may intervene in a proceeding under Title 41, chapter 3.” *A.G.*, at *6. In *A.G.*, this Court instructed that § 41-3-422(9)(b), MCA, rather than Rule 24, is the standard for determining whether a district court should grant intervention in an abuse and neglect case. *A.G.*, at *5-*7. We must therefore read and interpret §§ 41-3-422(9)(b) and 41-3-437(4), MCA, together as a whole.

¶13 When interpreting a statute, this Court begins with the plain language of the statute. *State v. Christensen*, 2020 MT 237, ¶ 95, 401 Mont. 247, 472 P.3d 622. The plain meaning of a statute controls when the legislative intent can be “determined from the plain meaning of the words used in the statute.” *Christensen*, ¶ 95. The rules of statutory construction

require this Court to construe several interrelated statutes in a manner which will give effect to each of them. *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898. It is “a well-settled rule of statutory construction that the specific prevails over the general.” *Busch v. Atkinson*, 278 Mont. 478, 483, 925 P.2d 874, 877 (Mont. 1996). “Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *Fox*, ¶ 18. The legislative intent behind a statute “may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole.” *State v. Heath*, 2004 MT 126, ¶ 27, 321 Mont. 280, 90 P.3d 426.

¶14 The Legislature passed Senate Bill 257, which is now codified as § 41-3-422(9)(b), MCA, to provide protection for abandoned children by allowing caretakers to participate in the proceedings as parties. The Legislature expressly enumerated only three categories of individuals who are authorized by statute to intervene in dependency and neglect cases. *A.G.*, at *6. Principles of basic statutory construction and the clear language of the statutes in question lead us to the conclusion that intervention as set forth in Title 41 mandates that persons seeking intervention must satisfy two threshold requirements before a district court may conduct a hearing to address the motion to intervene: (1) the party seeking intervention must be in one of the enumerated groups—a foster parent, a preadoptive parent, or relative of the child who has cared for a child; and (2) there must be an allegation of abandonment. Sections 41-3-422(9)(b), -437(4), MCA.

¶15 Foster Parents’ assertion that Rule 24 grants them a “conditional right” to intervene is misplaced. They argue that § 41-3-922(9)(b), MCA, only incorporates the enumerated subjects found in § 41-3-437(4), MCA, and not the abandonment language that precedes

the listed subjects. However, the prefatory language beginning § 41-3-437(4), MCA, cannot be ignored if we are to remain consistent with rules of statutory construction. Thus, “subjects” upon which a district court “shall hear offered evidence” occurs in cases where “abandonment has been alleged.” If we were to read the list of subjects in § 41-3-437(4), MCA, in the way that Foster Parents propose, we would have to sever the list from the remaining context of the statute and this prefatory language. We cannot edit a Montana statute and must interpret the plain language of §§ 41-3-422(9)(b) and 41-3-437(4), MCA, together.

¶16 The District Court correctly concluded that §§ 41-3-422(9)(b) and 41-3-437(4), MCA, “displace” Rule 24 in Title 41 dependency and neglect actions. Given the clear language of the statute, and taken in its entirety, we hold that § 41-3-422(9)(b), MCA, controls intervention and its cross-reference to § 41-3-437(4), MCA, expressly mandates that abandonment must be alleged before any of the enumerated persons—a foster parent, preadoptive parent, or primary caregiver—may intervene. The Department has not alleged abandonment in this case. Although Foster Parents are an enumerated party and entitled to notice and the right to be heard under § 41-3-422(9)(a), there is no allegation that U.A.C. has been abandoned as required § 41-3-437(4), MCA. Accordingly, the District Court did not err when it determined that §§ 41-3-422(9)(b) and 41-3-437(4), MCA, preclude Foster Parents from intervening.

¶17 Foster Parents also argue that their procedural due process rights were violated when the District Court denied them a hearing. We agree that Foster Parents are entitled to due process rights and fundamentally fair procedures and have long recognized that “[k]ey

components of a fair proceeding are notice and an opportunity to be heard.” *In re C.J.*, 2010 MT 179, ¶ 27, 357 Mont. 219, 237 P.3d 1282. However, as a matter of law Foster Parents were precluded from intervening and, therefore, the District Court was not obligated to hold a hearing on their request. The District Court’s interpretation of §§ 41-3-422(9)(b) and 41-3-437(4), MCA, was correct.

¶18 2. *Can foster parents establish a parent-child relationship during the pendency of a Title 41, chapter 3, MCA, proceeding?*

¶19 Montana has a strong policy to protect children “whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children’s care and protection.” Section 41-3-101(1)(a), MCA. Furthermore, “all children have a right to a healthy and safe childhood in a permanent placement.” Section 41-3-101(1)(d), (e), MCA. When implementing these policies, this Court must recognize that “the child’s health and safety are of paramount concern.” Section 41-3-101(7), MCA. This Court must also consider the best interest of the child when determining parental rights. *In re T.C.*, 2008 MT 335, ¶ 16, 346 Mont. 200, 194 P.3d 653.

¶20 A parent has a fundamental liberty interest to the care and custody of their child. *In re T.C.*, ¶ 16. In contrast, a foster care arrangement does not trigger fundamental rights associated with “familial association.” *Elwell v. Byers*, 699 F.3d 1208, 1216 (10th Cir. 2012) (holding that the foster parents possessed a liberty interest only because they were more akin to preadoptive parents since the foster parents had cared for the child for nearly his whole life).

¶21 Foster parents also differ from preadoptive parents. Foster parents enter into a contractual agreement with the Department to temporarily care for the child while the Department pursues reunification efforts with the child’s parents. *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 823, 97 S. Ct. 2094, 2098 (1977); *see also* Mont. Admin. R. 37.51.102(6). Although foster parents frequently and understandably develop emotional ties with their foster child, the relationship is nonetheless rooted in an arrangement with the State and does not entitle the foster parents to a parental liberty interest. *Smith*, 431 U.S. at 823; *see also Care & Protection of Zelda*, 534 N.E.2d 7, 10 (Mass. App. Ct. 1989) (“a liberty interest will not be recognized in the foster parents when the biological parents are demanding custody for themselves; indeed (barring an exceptional case) a liberty interest will be denied even when the biological parents are out of the case”).

¶22 Here, Foster Parents do not have a fundamental liberty interest in the care and custody of U.A.C. because the natural parents’ rights have yet to be terminated. We acknowledge that U.A.C.’s best interests and her health and safety are of “paramount concern.” However, Foster Parents entered into a contractual agreement with the State of Montana to care for U.A.C., so that U.A.C. could eventually be reunified with her natural parents. This arrangement does not trigger the constitutional right to parent and Foster Parents’ reliance on *Elwell* is misplaced. This case differs from *Elwell* in three primary ways: (1) Foster Parents are not preadoptive parents, (2) U.A.C.’s natural parents’ rights have not been terminated, and (3) Foster Parents have not cared for U.A.C. for her entire

life. *Elwell* presents an exceptional case with circumstances unlike the facts presented here.

¶23 Further, Foster Parents incorrectly classify themselves as “preadoptive foster parents.” The Department only confers preadoptive foster parent status after “a formal selection committee has [convened] following the termination of parent[al] rights.” A selection committee has not convened, nor has the District Court terminated parental rights in this case. Although the Department has petitioned the District Court for termination of U.A.C.’s natural parents’ rights, the termination proceedings, at the time this appeal was filed, remained pending. Foster Parents do not have a constitutional liberty interest to parent U.A.C.

¶24 Finally, Foster Parents rely on § 40-4-211, MCA, to establish that they have formed a parent-child relationship, which entitles them to a parental interest. However, “[i]n cases when a nonparent seeks a parental interest in a child under § 40-4-211. . . the provisions of [Title 40] apply *unless a separate action is pending under Title 41, chapter 3.*” Section 40-4-228(1), MCA (emphasis added). For example, in *Cromwell v. Schaefer*, 2018 MT 235, 393 Mont. 22, 427 P.3d 67, the grandmother was the caretaker of the child, but “lacked the ability to pursue an action to establish a parental interest while the Title 41 child dependency action was pending.” *Cromwell*, ¶ 21.

¶25 This Court recognizes that Foster Parents have provided U.A.C. with a stable residence, schooling, and extracurricular activities for over three years, while continuing to address U.A.C.’s physical, mental, and emotional needs. However, Foster Parents are

statutorily precluded from asserting a nonparent interest in the parent-child relationship while proceedings under Title 41, chapter 3, MCA, remain pending.

CONCLUSION

¶26 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.

¶27 Affirmed.

/S/ LAURIE McKINNON

We Concur:

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