

DA 18-0636

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 168N

IN THE MATTER OF:

A.W.-S.

A Youth in Need of Care.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DN 17-17
Honorable Robert L. Deschamps, III, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Gregory D. Birdsong, Birdsong Law Office, PC, Santa Fe, New Mexico

For Appellee:

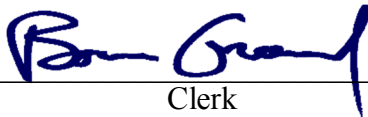
Timothy C. Fox, Montana Attorney General, Damon Martin, Assistant
Attorney General, Helena, Montana

Kirsten H. Pabst, Missoula County Attorney, Missoula, Montana

Submitted on Briefs: May 15, 2019

Decided: July 23, 2019

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 N.W. (Mother) appeals from a Fourth Judicial District Court order terminating her parental rights to her child, A.W.-S. We affirm.

¶3 On January 17, 2017, the Department of Public Health and Human Services, Child and Family Services Division (Department) filed a petition for emergency protective services, adjudication as a youth in need of care (YINC), and temporary legal custody (TLC) of A.W.-S. In the petition, the Department outlined concerns related to purported incidents of sexual molestation perpetrated by A.W.-S. against his younger sibling, and Mother's alleged inability to prevent further harm. The District Court granted emergency protective services and scheduled a show cause hearing for January 31, 2017. On January 30, 2017, Mother and her counsel attended an intervention conference. The conference report states, "[t]he Mother [N.W.] stipulates to temporary legal custody as does the father, [B.S.]."¹ The following day, the court held the scheduled show cause hearing at which both parents were represented by counsel. Before Mother's counsel

¹ A.W.-S.'s biological father, B.S., voluntarily relinquished his parental rights and is not a party to this appeal.

arrived, counsel for the Department informed the court that “[i]t was anticipated that both parents would stipulate to adjudication and six months [of TLC] for the Department.” Father’s attorney affirmed and stated that Father was “willing to stipulate to adjudication and [TLC] for six months.” Once Mother’s attorney arrived, the court informed him of what was discussed and the fact that “[t]he father has just stipulated to [TLC] for a period of six months.” The court asked, “[w]hat is [Mother’s] position?” Mother’s counsel replied, “[s]he also stipulates.” Following this exchange, the court awarded TLC to the Department for six months and there was no further inquiry regarding the adjudication of A.W.-S. as a YINC.

¶4 The District Court later approved a treatment plan for Mother and she was offered mental health, parenting, and addiction services. Mother failed to comply with the treatment plan and, on May 15, 2018, the Department filed a petition to terminate Mother’s parental rights to A.W.-S. Following a hearing on the matter, the District Court issued an October 16, 2018 order terminating Mother’s parental rights.

¶5 On appeal, Mother asserts that A.W.-S. was not formally adjudicated a YINC prior to the termination of her parental rights as required by § 41-3-609(1)(f), MCA, and therefore, the termination violated her constitutional right to a fundamentally fair procedure.

¶6 This Court reviews a district court’s decision to terminate an individual’s parental rights for an abuse of discretion. *In re A.S.*, 2006 MT 281, ¶ 24, 334 Mont. 280, 146 P.3d 778. To satisfy the relevant statutory requirements for terminating a parent-child

relationship, a district court must make specific factual findings and this Court reviews those findings for clear error. *In re Custody & the Parental Rights of C.J.K.*, 2005 MT 67, ¶ 13, 326 Mont. 289, 109 P.3d 232. Conclusions of law are reviewed for correctness. *In re C.J.K.*, ¶ 13. Whether a district court violated a parent’s constitutional right to fundamentally fair proceedings is a question of constitutional law for which this Court’s review is plenary. *In re B.W.S.*, 2014 MT 198, ¶ 10, 376 Mont. 43, 330 P.3d 467.

¶7 “A parent’s right to the care and custody of a child is a fundamental liberty interest which must be protected by fundamentally fair procedures.” *In re D.B.*, 2007 MT 246, ¶ 17, 339 Mont. 240, 168 P.3d 691. Accordingly, § 41-3-609(1)(f), MCA, provides the procedure a court and the Department must follow in terminating a parent-child relationship. Before a parent’s rights can be terminated under § 41-3-609(1)(f), MCA, the child must first be adjudicated a YINC. Section 41-3-609(1)(f), MCA. “By definition, a [YINC] . . . is a youth who has been adjudicated or determined, after a hearing, to be or to have been abused or neglected. Such a finding, pursuant to [§ 41-3-437(2), MCA], must be determined by a preponderance of the evidence.” *In re B.N.Y.*, 2003 MT 241, ¶ 26, 317 Mont. 291, 77 P.3d 189. A parent’s stipulation that a child is a YINC will satisfy the threshold requirement of a YINC adjudication in the absence of a formal adjudication hearing. *In re J.C.*, 2008 MT 127, ¶ 45, 343 Mont. 30, 183 P.3d 22. Following adjudication, the Department must also establish, by clear and convincing evidence, that the parent failed to comply with or failed to succeed at an appropriate, court-ordered treatment plan, and that the conduct rendering the parent unfit

is unlikely to change within a reasonable time. Section 41-3-609(1)(f), MCA; *In re D.B.*, ¶ 29. While these statutes ensure that parents receive a fundamentally fair process throughout termination proceedings, “the child’s health and safety are of paramount concern.” Section 41-3-101(7), MCA. The court’s foremost priority is the best interests of the child, and there is a presumption that the child’s best interests are served by termination of parental rights if the child has been in foster care for more than fifteen of the last twenty-two months. *In re T.S.*, 2013 MT 274, ¶ 30, 372 Mont. 79, 310 P.3d 538; § 41-3-604(1), MCA; *In re D.B.*, ¶ 40; *In re X.M.*, 2018 MT 264, ¶ 21, 393 Mont. 210, 429 P.3d 920. The Department must prove each of the applicable statutory requirements before terminating a parent’s rights. *In re J.C.*, ¶ 35.

¶8 Mother asserts that because a YINC adjudication is a threshold requirement to parental termination under § 41-3-609(1)(f), MCA, and no such adjudication occurred, the District Court erred in granting the Department’s petition. At the January 31, 2017 hearing, Mother’s counsel was absent from the courtroom when adjudication was addressed directly and stipulated to by Father’s counsel. However, in subsequent proceedings Mother and her counsel acknowledged adjudication took place and failed to raise the alleged procedural error, although they had ample opportunities to do so. For example, at the February 21, 2017 dispositional hearing concerning Mother’s treatment plan, there was no discussion about adjudication. Further, Mother never objected to court documents declaring that adjudication occurred, and she stipulated to two separate TLC extensions. Each of the petitions for extension of TLC included similar language along

the lines of: “The Court previously adjudicated the above-named child as a [YINC].” Moreover, at a March 21, 2017 show cause hearing for A.W.-S.’s biological brother, C.W.-S.,² the parties discussed the status of A.W.-S.’s case and specifically, adjudication. The Department’s counsel explained, “I believe we have an adjudication,” regarding A.W.-S. The court asked, “So, we don’t have a show cause hearing in [A.W.-S.’s] case?” To which Mother’s counsel replied: “[t]hat’s correct. They were completely different—completely different issues in [A.W.-S.’s case]. And at that time, *we agreed to that* because of the completely different issues” (Emphasis added.)

¶9 This Court has previously held that when a parent who is represented by counsel repeatedly stipulates to TLC petitions that allege the child is a YINC and continuously fails to object to the absence of a formal adjudication, he or she cannot then raise that issue on appeal. *In re J.C.*, ¶ 55. Not only did Mother and her counsel fail to object to the fact that no formal adjudication occurred, Mother’s counsel explicitly acknowledged at the March 21, 2017 hearing that Mother previously stipulated to A.W.-S.’s adjudication as a YINC.

¶10 Mother fails to establish that the District Court terminated her parental rights before A.W.-S. was adjudicated a YINC, as required by § 41-3-609(1)(f), MCA. We find this threshold requirement was satisfied. Mother raises no other claims indicating that the proceedings were fundamentally unfair. Accordingly, we conclude that Mother’s

² C.W.-S. was the subject of a concurrent case but is not involved in this appeal.

constitutional rights were not violated and the District Court's termination of her parental rights to A.W.-S. did not amount to an abuse of discretion.

¶11 We have determined to decide this cause pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶12 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON