

10/02/2020

FILED AUG 25 2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

By *Danna M. Duffy*
SHIRLEY E. FAUST, CLERK
Case Number DA-20-0489
Deputy

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5 Attorneys for Petitioner

10 **MONTANA FOURTH JUDICIAL DISTRICT COURT**
11 **MISSOULA COUNTY**

12 IN RE THE ADOPTION OF:

Dept. No.4

13 K.H.,

Cause No.: DA-20-18

14 A Minor Child.

15 **PETITIONER'S PROPOSED**
16 **FINDINGS OF FACT,**
17 **CONCLUSIONS OF LAW AND**
18 **ORDER**

16 Roberto Guerrero,

17 Petitioner.

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20 This matter came before the Court for hearing on August 19, 2020, on the Petition
21 to Terminate the parental rights of the birth father, Kevin Hubbard, to the minor child
22 Kaden Hubbard born on September 18, 2008. Petitioner, Roberto Guerrero the
23 prospective adoptive parent, were represented by Jason A. Williams, Datsopoulos,
24 MacDonald & Lind, P.C., Missoula, Montana.
25

1 Kevin Hubbard was represented by Karl Pitcher, the Public Defender. Having
2 heard the testimony of the witnesses presented at hearing, the admitted exhibits,
3 memorandum and proposed findings of counsel and the pleadings in this proceeding, the
4 Court now enters the following:

5 **Procedural History**

6
7 In this matter, birth mother of the minor children, Elena Guerrero, died on July
8 07, 2019. Elena was living in Butte, Montana with her three minor children. The three
9 minor children were placed in the custody of Roberto Guerrero and Esequiel Guerrero.

10
11 On August 27, 2019, Roberto and Esequiel Guerrero petitioned the court to be
12 appointed permanent Co-Guardians and Co-Conservators. Appropriate notice was
13 provided to all parties and the minor children were appointed a Public Defender to
14 speak as to their interest. On September 17, 2019, the court appointed Roberto and
15 Esequiel the full Co-Conservator and Guardianship of the minor children.

16
17 On May 15, 2020, Roberto Guerrero petitioned the court to terminate the birth
18 rights of Kevin Hubbard and for the adoption of the minor children. Appropriate notice
19 was provided to interested parties. On June 2, 2020, at the initial hearing for this matter,
20 Mr. Hubbard was appointed representation through the Public Defenders' office.

21
22 On August 19, 2020, the parties met for a contested hearing regarding the petition
23 to terminate Mr. Hubbard's parental rights. Roberto Guerrero and the minor children
24 appeared in person with counsel Jason Williams, attorney at law. Karl Pitcher, of the
25

1 Public Defender's Office, appeared via Zoom on behalf of Mr. Hubbard. Mr. Hubbard
2 appeared via telephonic conference from the Airway Heights Corrections Center where
3 he is serving a sentence for:

- 4 1. Rape of a child in the second degree with aggravating circumstances of position
5 of trust and pattern of sexual abuse;
- 6 2. Child molestation in the second degree with aggravating circumstances of
7 position of trust and pattern of sexual abuse;
- 8 3. Rape of a child in the third degree with aggravating circumstances of position of
9 trust and pattern of sexual abuse; and
- 10 4. Distribution of a controlled substance to a person under the age of 18 with sexual
11 motivation.

12 At the hearing evidence was presented and witnesses were called on behalf of the
13 respective parties.
14

15 FINDINGS OF FACT

- 16 1. Kaden Hubbard was born on September 18, 2008.
- 17 2. That Kaden Hubbard's birth mother, Elena Guerrero, passed away on July
18 7, 2019.
- 19 3. That Kaden Hubbard's birth father, Kevin J. Hubbard, is incarcerated at
20 Airway Heights Corrections Center in the state of Washington. Mr.
21 Hubbard was incarcerated for the crimes of:
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- a. Rape of a child in the second degree with aggravating circumstances of position of trust and pattern of sexual abuse;
- b. Child molestation in the second degree with aggravating circumstances of position of trust and pattern of sexual abuse;
- c. Rape of a child in the third degree with aggravating circumstances of position of trust and pattern of sexual abuse; and
- d. Distribution of a controlled substance to a person under the age of 18 with sexual motivation.

4. Petitioner, Mr. Guerrero, was granted full co-guardianship and custody of the minor child on August 27, 2019 in case number: DG-19-71, Dept. 4.
5. Mr. Guerrero petitioned for the termination of Mr. Hubbard's rights and adoption of Kaden Hubbard on May 15, 2020.
6. Mr. Hubbard was provided appropriate notice and was appointed counsel through the public defender's office.
7. On July 7, 2020, after Mr. Hubbard had time to communicate with his counsel a contested hearing was set for August 19, 2020.
8. On August 17, 2020, an unopposed motion for telephonic appearance of witnesses of the petitioner was granted by this court.
9. A hearing was held on August 19, 2020, in which testimony and evidence was presented by both sides.

- 1 10. At the August 19, 2020 hearing on the termination of parental rights, upon
2 inquiry regarding Mr. Hubbard's position that he wanted to be able to send
3 letters and make monitored phone calls as he was aware that he could not
4 physically raise the minor child.
5
- 6 11. Selena Luke, who was a victim of sexual abuse at the hands of Mr.
7 Hubbard testified, that she has and will have lasting psychological impact
8 from the sexual abuse perpetrated by Mr. Hubbard.
9
- 10 12. Selena Luke testified that she did not believe that Mr. Hubbard felt remorse
11 or was sorry for his actions of abuse against her.
12
- 13 13. Selena Luke testified that she sustained, physical, sexual, and emotional
14 abuse.
15
- 16 14. Selena Luke testified that she feared for the safety of the minor child if Mr.
17 Hubbard was still allowed to interact with the minor child.
18
- 19 15. Selena Luke testified that she has witnessed physical and emotional abuse
20 being given to one of the minor children subject to this matter by Mr.
21 Hubbard.
22
- 23 16. Mr. Hubbard was in a parental role over Selena Luke at the time that he
24 sexually abused her.
25

- 1 17. Mr. Hubbard, after being charged with the crimes listed above, did not
2 enter a guilty plea, did not accept a plea deal, made the court go to a jury
3 trial for his actions and appealed the decision of the criminal judgment.
4
5 18. Mr. Hubbard will not be eligible for parole until May of 2040.
6
7 19. Mr. Hubbard has earned income during his time of incarceration but has
8 not made any payment for the support of the minor children since being
9 incarcerated.
10
11 20. Mr. Guerrero is the minor child's biological grandparent.
12
13 21. Mr. Guerrero has been involved with the minor child since their birth and
14 has provided care for them on a regular basis.
15
16 22. Prior to the passing of the birth mother, Mr. Guerrero was assisting with
17 the care of the minor children while the birth mother was working.
18
19 23. Mr. Guerrero testified that the minor child would be eligible for health
20 insurance and survivor benefits through his retirement plan.
21
22 24. The minor child has resided with Mr. Guerrero since the passing of birth
23 mother Elena Guerrero.
24
25 25. The minor child has developed a connection with Mr. Guerrero more than a
grandparent role as the Mr. Guerrero has provided daily support.
26
27 26. Suzanne XXXXX is the fiancé of Mr. Guerrero and has been living with
him for the past six years.

1 27. Suzanne xxxxxx has assisted Mr. Guerrero in caring for the minor child
2 both before and after the passing of the birth mother.

3 28. During the guardianship and custodianship matter, the public defender
4 interviewed Mr. Guerrero and inspected the living residence without
5 raising issues or objections.
6

7 29. Mr. Guerrero testified regarding his deep parental affection for the minor
8 child and the close relationships that has developed. Mr. Guerrero testified
9 that he was willing and able to raise the minor child as his own.

10 30. Mr. Guerrero had several witnesses testify as to his ability to properly
11 provide care, protection, stability, continuity of care and opportunities
12 essential for healthy personal growth and development to the minor child.
13

14 CONCLUSIONS OF LAW

15 1. Mr. Hubbard was personally served the Petition to Terminate the Father's
16 Rights and for Adoption of Minor Child. Mr. Hubbard has corresponded with
17 the clerk of court and with counsel, has appeared in pre-hearing conferences,
18 appeared in the contested hearing, was appointed a Public Defender prior to
19 the contested hearing and has had an opportunity to be heard. This Court
20 herein determines that Notice to Mr. Hubbard is proper according to Mont.
21 Code Ann. § 42-2-605. After review of the pleadings in this case, the contests
22 of the Petition for Termination of Parental Rights are statutorily appropriate.
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1 2. The "primary purpose of adoption is to help a child become a permanent
2 member of a nurturing family that can give the child the care, protection, and
3 opportunities essential for healthy personal growth and development." Mont.
4 Code Ann. § 42-1-102(2).

5
6 3. "The needs of the child must be the primary focus of adoption proceedings,
7 with full recognition of the interdependent needs and interests of birth parents
8 and adoptive parents." Mont. Code Ann. § 42-1-102(3).

9
10 4. A "court may terminate parent's rights to a child who is the subject of an
11 adoption proceeding based upon:

12 (2) a determination under Sec. 42-2-608 that a parent is unfit; or

13 (3) a determination under Mont. Code Ann. § 42-2-609 that the relationship
14 of parent and child does not exist.:

15
16 5. Unfitness of a parent is a basis for termination of parental rights and can be
17 proven in a number of ways. First, unfitness is established if a court finds that
18 a parent, having proper notice of hearing, "has been convicted of either a
19 crime of violence, or of violating a restraining or protective order, and the
20 facts of the crime or violation and the parent's behavior indicate that the parent
21 is unfit to maintain a relationship of a parent and child with the child." Mont.
22 Code Ann. § 42-2-608(1)(g)(i)-(ii).

1 6. Second, unfitness is also established for a parent who is given proper notice of
2 hearing, and is a respondent to the petition to terminate parental rights, "by a
3 preponderance of the evidence it is found that termination is in the best
4 interests of the child," and that adequate grounds for such termination exist.
5 Mont. Code Ann. § 42-2-608(1)(h)(i)-(ii).
6

7 7. Grounds for termination in the best interest of the child exist if proven, by
8 clear and convincing evidence, that "placing the child in the respondent's legal
9 and physical custody would pose a risk of substantial harm to the physical or
10 psychological well-being of the child because the circumstances of the child's
11 conception, the respondent's behavior during the mother's pregnancy or since
12 the child's birth, or the respondent's behavior with respect to other children
13 indicates that the respondent is unfit to maintain a relationship of parent and
14 child with the child;" Mont. Code Ann. § 42-2-608(1)(h)(ii)(A).
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16

17 8. Additional grounds for termination of parental rights exist if "placing the child
18 in the respondent's legal and physical custody would pose a risk of substantial
19 harm to the physical or psychological well-being of the child... or the
20 respondent's behavior with respect to other children indicates that the
21 respondent is unfit to maintain a relationship of a parent and child with the
22 child." Mont. Code Ann. § 42-2-608(1)(h)(ii)(C).
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1 9. Other grounds for termination of parental rights exist if a "failure to terminate
2 the relationship of parent and child would be detrimental to the child." Mont.
3 Code Ann. § 42-2-608(1)(h)(ii)(D).

4 10. In determining whether failure to terminate parental rights would be
5 detrimental to the child, the Court shall consider any relevant factor, including
6 the "respondent's ability to care for the child, the age of the child, the quality
7 of any previous relationship between the respondent and the child ..., the
8 duration and suitability of the child's present custodial environment, and the
9 effect of a change of physical custody on the child." Mont. Code Ann. § 42-2-
10 608(2).
11

12 11. The Court finds that Mr. Hubbard has been convicted of crimes of violence,
13 including sexual abuse of a minor with aggravating circumstances of position
14 of trust and pattern of sexual abuse. He will be incarcerated for a significant
15 portion of his adult life as well as the remainder of the minor child's
16 adolescent life. The Court further finds that Mr. Hubbard's extensive criminal
17 history, including distribution of a controlled substance with sexual motivation
18 indicate he is either unable or unwilling to conduct himself in an appropriate
19 situation around minor children, and demonstrates that he is unfit to provide
20 this child with the care, protection and opportunities essential for healthy
21 personal growth and development.
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1 12. Based upon the evidence, witness testimony and in person interview of the
2 minor child in judge's chambers, the minor child is clearly bonded and
3 attached to Mr. Guerrero and his fiancé.

4 13. Mr. Guerrero will be able to provide care, protection, stability, continuity of
5 care and opportunities essential for healthy personal growth and development
6 to the minor child.

7
8 14. The testimony of Selena Luke about the fear of the potential harm that could
9 befall the minor child if Mr. Hubbard's rights were not terminated was
10 compelling.

11
12 15. In addition to Mr. Hubbard's significant criminal record, his lack of
13 commitment to financially support the minor child despite receiving income
14 while incarcerated demonstrates his unwillingness to provide support.

15
16 16. Mr. Hubbard will be incarcerated until 2040 and he will be unable to promptly
17 assume legal and physical custody of the minor child.

18 17. The Court further finds that Mr. Hubbard is an unfit parent based upon the
19 preponderance of the evidence and that failure to terminate the relationship of
20 parent and child would be detrimental to the minor child.

21
22 18. The minor child shall remain a permanent member of an adoptive, nurturing
23 family that can give her the care, protection, and opportunities essential for
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1 healthy personal growth and development. There are profound negative
2 impacts that may occur if this family relationship is disrupted.

3 From the Findings of Fact and Conclusions of Law, the Court enters the
4 following:

5 ORDER

6
7 1. The Petitioner has proven, by a preponderance of the evidence, that failure
8 to terminate the relationship of parent and child between Kevin Hubbard and Kaden
9 Hubbard is detrimental to the child.

10
11 2. The Petitioner has proven, by a preponderance of the evidence, that the
12 Kaden Hubbard's best interests are served by ordering the termination of the parental
13 rights of Kevin J. Hubbard.

14
15 3. Kaden Hubbard shall remain a permanent member of the Roberto Guerrero
16 family who can provide care, protection, stability, continuity of care and opportunities
17 essential for healthy personal growth and development. Should this relationship be
18 interrupted, there are long lasting detrimental effects on the physical and psychological
19 well-being of Kaden Hubbard.

20
21 4. The Parental rights of Kevin Hubbard to the child Kaden Hubbard born
22 September 18, 2008, are hereby terminated pursuant to and in conformity with Montana
23 law and Kevin J. Hubbard has no further legal claim or relationship with said child.
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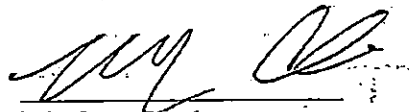
Certificate of Service

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The following was sent via email and first class mail to:

Karl Pitcher
Karl.Pitcher@mt.gov
Office of the Public Defender
610 N. Woody
Missoula, Montana 59802

Dated this 21 day of August, 2020



Marley Clark