

DA 20-0473

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 140N

IN THE MATTER OF:

T.A.K.A.,

A Youth in Need of Care.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Toole, Cause No. DN 17-3
Honorable Robert G. Olson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Tracy Labin Rhodes, Attorney at Law, Missoula, Montana

For Appellee:

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

Merle Raph, Toole County Attorney, Shelby, Montana

Submitted on Briefs: May 12, 2021

Decided: June 8, 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 T.A.K.A. was born in December 2016. Prior to T.A.K.A.'s birth, Mother had a significant history with the Department of Public Health and Human Services (Department). Reports were submitted beginning in 2010 when Mother was 14 years old that she was using drugs while pregnant. In 2013 she was unable to care for her three children, and T.A.K.A.'s maternal grandmother (Grandmother) became guardian to Mother's two oldest children. In 2014 Mother's sister was granted custody of Mother's youngest child.

¶3 In September 2017, the Department investigated a report that Mother's fourth child, nine-month-old T.A.K.A., was physically neglected because Mother was using drugs. T.A.K.A. was removed from Mother's care, and the Department filed for emergency protective services (EPS), adjudication as a youth in need of care (YINC), and for temporary legal custody (TLC) related to Mother's drug use. The District Court granted the Department's petition.

¶4 In January 2018, the Department filed a motion to dismiss the action with the caveat that Mother and T.A.K.A. stay with Grandmother and Mother address her substance abuse issues and maintain sobriety.

¶5 In March 2018, the Department filed a second petition for EPS, adjudication as a YINC, and TLC because Mother left T.A.K.A. with Grandmother for three days without planning for his care. Grandmother contacted the Department as she was unable to care for T.A.K.A. due to her health issues. Grandmother expressed that she believed Mother was using methamphetamine again. When Mother returned, she refused to submit to a drug test.

¶6 In April 2018, the District Court granted the Department's petition. Between March and August of 2018 Mother tested positive for methamphetamine nine out of ten times and tested positive once for benzodiazepines. She attended several appointments for mental health treatment beginning in August 2018. At the adjudicatory hearing, Mother acknowledged that she was working on her treatment plan with the Department. The District Court ordered that Mother continue with the treatment plan. In September 2018, the District Court held a dispositional hearing. Mother's counsel reiterated that Mother agreed with her treatment plan and was working on it.

¶7 Mother had her first negative drug test on October 2, 2018, and had three subsequent negative tests. She completed her chemical dependency evaluation in October 2018 as well. In November 2018, Mother and T.A.K.A. began living at Aspen House, a sober living environment program that lasts approximately one year. Aspen House had requirements such as no cell phones on the premises, and Mother was not allowed to leave

with T.A.K.A. Mother left Aspen House against staff recommendation, despite knowing that T.A.K.A. would be placed back in foster care if she did so. Mother took someone else's prescription while at Aspen House, and had a cell phone. The Department removed T.A.K.A. and placed him back into foster care.

¶8 The Department petitioned for an extension of TLC in January 2019 to allow Mother more time to complete her treatment plan. T.A.K.A.'s Court Appointed Special Advocate recommended that the Department pursue termination if Mother failed to make progress. The District Court held a hearing on January 24, 2019, and granted the extension of TLC. The court discussed with Mother the importance of her working with the Department to complete her treatment plan.

¶9 Following the hearing in January, Mother and T.A.K.A. resumed supervised visitation. Mother also began wearing a drug patch, and her first three checks in January and February 2019 were negative; however, she did not comply with the next two drug patch tests and her subsequent checks were positive for methamphetamine. Between February and June 2019, Mother attended two of her nine scheduled chemical dependency appointments. She had a negative drug patch check in September and one in October 2019, but she tampered with a patch that tested positive for marijuana. From then on, she failed to get her drug patches applied and tested positive once for marijuana in January 2020. When she submitted to a urinalysis test, it was positive for methamphetamine and marijuana. Moreover, Mother did not consistently participate in counseling during this time.

¶10 In March 2020, the Department filed a petition to terminate Mother's parental rights. In May 2020, Mother tested positive for multiple drugs for which that she did not have a prescription, and marijuana. The termination hearing was held on May 26, 2020.

¶11 At the hearing, child protective specialist Jody Kolwyck (Kolwyck) testified for the State. Kolwyck began working on T.A.K.A.'s case at removal. Kolwyck testified that Mother did not make consistent progress on her treatment plan over the course of the two years that the Department was involved in T.A.K.A.'s case. Mother did not maintain stable housing, and she was inconsistent in complying with her chemical dependency requirements.

¶12 Kolwyck testified regarding the placement of Mother and T.A.K.A. at Aspen House. Mother stayed at Aspen House for only five weeks and did not successfully complete the program. Kolwyck testified that Mother tested positive for methamphetamine in February 2020 and tested positive in May 2020 for marijuana and three drugs for which she did not have a prescription.

¶13 Mother argues that the District Court erred in terminating her rights because she did not have a court-ordered treatment plan. She argues further that the Department imposed an unconstitutional requirement on her by not allowing her to live with her mother and two eldest children and that the Department failed to provide reasonable efforts to reunify the family.

¶14 We review a district court's decision to terminate parental rights for an abuse of discretion. *In re R.J.F.*, 2019 MT 113, ¶ 20, 395 Mont. 454, 443 P.3d 387 (citation omitted). We review a district court's findings of fact for clear error and conclusions of

law for correctness. *R.J.F.*, ¶ 20 (citation omitted). To reverse a district court’s evidentiary ruling for an abuse of discretion, this Court must determine that the district court either acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. *R.J.F.*, ¶ 20 (citation omitted).

¶15 A district court may terminate the parent-child relationship if a child is adjudicated a YINC and the court finds “by clear and convincing evidence that: (1) an appropriate court-approved treatment plan was not complied with by the parents or was not successful; and that (2) the conduct or condition of the parents rendering them unfit was 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). We will not consider issues raised on appeal that were not preserved below. *In re T.E.*, 2002 MT 195, ¶ 20, 311 Mont. 148, 54 P.3d 38.

¶16 Mother acknowledged multiple times throughout these proceedings that she was working on her treatment plan. While the treatment plan does not appear in the record in physical form, the parties acknowledged the existence of it, and the District Court ordered Mother to complete it. She failed to complete major components of her treatment plan including maintaining safe and stable housing, complying with her chemical dependency treatment, and maintaining sobriety. Mother continued to use methamphetamine and other drugs without a prescription. She tested positive for marijuana and other drugs the same month as the termination hearing. During T.A.K.A.’s three years of life, he spent two years in the same foster care placement.

¶17 Finally, Mother raises her constitutional claim for the first time in her appeal. Consequently, we decline to address it here.

¶18 The District Court did not abuse its discretion by terminating Mother's parental rights. T.A.K.A. was three years old and in foster care for over 24 months prior to termination. Mother failed to complete her treatment plan and with her long history was unlikely to change within a reasonable period. Termination was in the best interest of T.A.K.A.

¶19 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.

¶20 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR

/S/ JIM RICE