

ORIGINAL

FILED

02/24/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0712

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 24-0712

FILED

FEB 24 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN RE THE MATTER OF GUARDIANSHIP

OF:

ASHLOND DRAKE HENSLEY,

A Minor child

EDWARD MAX NELLIS AND LENNORE JEAN NELLIS

Petitioners and Appellants

-VS-

KIMERLY ROSE AND

SETH HENSELEY

Respondent and Appellees

APPELLANTS BRIEF

On Appeal from Montana Twentieth Judicial District Court, Lake County

Cause No. DG-20-14

Appearances:

Kalmbach Law Office, PLLC	Pro Se	Pro Se
Justin Kalmbach	Kimberly Rose	Seth Hensley
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Attorney for Appellants

Appellees Pro Se

Appellees Pro Se

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Statement of Issues

1. Lake county District Court denied my motion to terminate guardianship, Petitioners and their lawyer referenced a sealed case as an objection to motion and stated that the guardianship was order in the matter of the sealed case that had nothing to do with the guardianship case, as well as stating that the case needs to be moved to Oregon, Lake County District Court ignored the facts that the petitioners/guardians failed to notify the courts and legal parents of the move to Oregon.

2. Lake County District Court on September 18th, 2024, Ordered an Abeyance which directed the petitioners to file for adoption in the state of Oregon, Petitioners failed to meet the time requirement from the 30-day order; the district court still granted the petitioners to move the case to Klamath County and denied my motions.

Statement of the Case

This case is a disagreement of termination of guardianship, as well as Montana Jurisdiction. Lake County District Court denied my motions and sent the original court documents to Klamath County November 6th, 2024, and ordered the case go to Oregon see docket 42. As of December 2nd, 2024, Klamath County (Klamath Falls)

Circuit Court had not received anything for a case made by Petitioners or their Lawyer.

Statement of Facts

Kimberly Rose (Hensley at one time) and Seth Hensley were married and had A.D.H. Kimberly and Seth got divorced in 2017. There was a case that is closed and sealed as of the summer of 2020, this case should not be considered in the matter of the guardianship as it is not the reasoning for the guardianship being put in place please see docket 25. Since the guardianship was put in place I Kimberly Rose have a stable home near a school were A.D.H. will get the education and socialization that he needs for healthy growth of a young boy. I have a job that provides insurance so A.D.H. can get all the care that he needs please see docket 27-30. I Kimberly Rose (Hensley at the time of the guardianship was put in place) was to be getting to all Ms. Nellis' phone at 7pm the first and third Friday of each month, please see docket number 24 page 2 section 6, on February 4th, 2021, the day before I normally would get to talk to A.D.H. (my son), Lennore called to let me know that I would no longer get to make the calls to A.D.H. please see docket 38. I would send Lennore a text every month with no response, after months of silence I did a welfare check, Lennore told the officer that I have no parental rights and I need not call back, I was devastated. I reached out to Lennore and Edward's lawyer please see docket 40-page 1 paragraph 2. After doing a bit of

research and found out that I would need to be notified if I no longer had parental rights to A.D.H. I Kimberly Rose tried to file something in court in July of 2023, I called the clerk of courts to see if they received my documents that I wanted to file, the court said they had received them and I would need to pay \$185.00 for the amount of paperwork I wanted to file and since I do not live in Lake County that I do not qualify for reduced filing fees, I had just started my new job so I didn't have the money right at that time, please see docket 40 page 1 paragraph 2, later in 2024 when I filed a motion to terminate the guardianship was informed that it is only a \$75.00 onetime filing fee per case. In July of 2024 I Kimberly Rose the respondent/Appellees motioned Lake County to terminate guardianship of A.D.H. due to petitioners not following visitation plan set forth in docket 24-page 2 section 6. Kimberly and James Rose have completed parenting class please certificates from 2021. All Parties agree that Ms. Hensley (now Rose) may petition the court to terminate the guardianship pursuant to MCA 72-5-234 at a later, appropriate date found in docket 24-page 2 section 2a. All parties agree that Ms. Hensley (now Rose) reserves the right in the future to terminate the permanent guardianship and increase parenting time, found in docket 24-page 2 section 2b. I Kimberly Rose have a stable home and stable job with insurance, please see docket 27-30. I Kimberly Rose tried to serve the petitioners at the last known address in Lake County in which they were no longer at, they had moved without notifying parents

or the court, please see docket 34-page 1 for Lennore and Edward Nellis. I sent a copy to Seth Hensley, see docket 34-page 2. After going to the police station in Broadwater County, the officer was able to find Lennore and Edward with A.D.H. in Klamath Falls, Oregon, I was able to get them served there please see docket 34-page 3-5 certificates of service from Klamath county. Petitioners try to use a sealed case that has been closed for 5 years please see docket 32-page 2 sections 1-7 and please see docket 33-page 1 paragraph 1. Petitioners and lawyer mention that the guardianship was order in the matter of the sealed case, see docket 32-page 2 section 9, this incorrect please see docket 25. Petitioners wish to adopt A.D.H. please see docket 32-page 2 conclusion -page 3. I Kimberly Rose have been doing what I can do to stay in contact, please see docket 33-page 1 paragraph 2. I have done welfare checks and tried to file back in July of 2023 when I was told an outrageous amount of money for filing fee, please see docket 40-page 1 paragraph 2. My motion to terminate guardianship and transfer venue to Broadwater County was held in abeyance, it states that the petitioners have 30 days of the date on the order to provide contact information for the Oregon court, please see docket 35. I Kimberly Rose asked the district court to reevaluate the situation, the petitioners did not ask to transfer prior to moving please see docket 37 and supporting documents. I asked the court to terminate the guardianship and stop any adoption proceedings because the petitioners have not been fallowing the visitation plan that

was put in place by the court in 2020. On February 4th, 2021, Lennore called to let me know that I would no longer be able to call A.D.H. A.D.H. was born in Montana it is his home state like it is mine, see docket 38. As of October 20th, 2024, and October 31st, 2024, Lennore and Edward still had not filed anything with the Oregon State, so I asked the court to move forward with the termination of the guardianship, see docket 40. District court ordered the case be moved to Oregon see docket 42. The district court Ordered that my motion is denied see docket 41. District court sent case to Oregon see letter document dated November 13th, 2024. After the case was sent to Oregon, I called them and sent copies of the case to the Klamath Couty circuit court, they held on to them for a bit then sent them back when they had not received anything for a case with our party's names, please see letter document dated December 2nd 2024.

Summary of Argument

I Kimberly Rose have been denied my hearing, denied my natural parent rights to be exercised. I have been continually denied my maternal relationship with my child by the courts when they denied my motion to terminate the guardianship. Ignored the fact that petitioners moved minor child without notifying court of natural parents.

Standard Review

The Montana Supreme Court reviews a lower court's analysis and application of statutes of correctness and its findings of fact for clear error. *Hansen v Moats (in the parenting of S.J.H)*, 2014 MT 40, Paragraph 8, 374 Mont 31, 318 P.3d 1021. A factual finding is clearly erroneous if it is not supported by substantial credible evidence of if this court's review of the evidence leaves it with the definite and firm conviction that a mistake has been made.

More specifically, this court will overturn a district court's application of the statute regarding parenting and visitation matters between natural parents and third parties if the District Court abused its discretion or if its findings are not supported by substantial credible evidence. A District Court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *In re Marriage of Crilly*, 2009 MT 187, Paragraph 9, 351 Mont. 71, 209 P.3d 249.

Argument

The district court denied my natural parents rights to terminate guardianship MCA 72-5-234. MCA 40-4-212 is a Montana state law that states that the courts should make parenting decisions based on the best interest of the child, the district court didn't consider this when denying my motion to terminate the guardianship. I am a natural parent and I have the right to parent my own child per MCA 40-4-227

(1)(a) and MCA 40-4-227 (1)(b). A natural Parent's right to care and custody of his or her child is a fundamental liberty interest *in re E.W.*, 1998 MT 135, Paragraph 12, 289 Mont. 190, 959 P.2d 951 (quoting *n re R.B., Jr.* 217 Mont 99, 103, 703, p.2d 846, 848 (1985)) The fundamental constitutional rights of natural parents to the custody of their own children are based upon the "integrity of the family unit," which "has found protection in the Due Process Clause of the Fourteenth Amendment, the equal protection Clause of the Fourteenth Amendment and the Ninth Amendment.

District court did not follow MCA 40-9-102 (2) instead denied my motion and demand Oregon jurisdiction. Petitioners failed to notify court and natural parents of intent to move per MCA 40-4-217 which failed to allow the natural parents to file an objection per MCA 40-4-217 section 5 Lake County district court denied revocation of guardianship not allowing a hearing of petition of removal of the child's guardians, that continuation is not in the best interest of the child per MCA 41-3-444, as well as the court did not recognize that the parents' rights have not been terminated and in the original case docket 24-page 2 that the natural parent Kimberly Rose could terminate guardianship at a later date.

Conclusion

I Kimberly Rose respectfully request that this court reverse the District Courts ruling and terminate the guardianship of A.D.H.

DATED this 24th Day of Feb 2025

Kimberly Rose

Kimberly Rose

Certificate of Compliance

I Kimberly Rose hereby certify that the document complies with Rule 11. The document is double-spaced, 14-point Times New Roman. The word count is 1,760 and the character count without spaces is 8,353 with no spaces. This calculation excludes the certificate of compliance and certificate of service but includes footnotes.

Dated this 24th day of Feb., 2025

Kimberly Rose
Kimberly Rose

Certificate of Service

I hereby certify that, on the 24th day of February 2025 a true and correct copy of the document proceedings have been served upon the fallow named person(s):

(x) by US Mail, postage paid addressed as follows:

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2) Seth Hensley

PO Box 44

Kingston OK 73439

Dated this 24th day of Feb., 2025



Kimberly Rose