

SUPREME COURT OF MONTANA

Matter of K.A.P.

2015 MT 334N (2015) · No. DA 15-0216 · Decided December 1, 2015

SUMMARY

The Montana Supreme Court affirmed the termination of the mother’s parental rights after the district court found that she had abandoned her child. The court held that the mother failed to preserve her argument that termination required evidence supporting the statutory abandonment finding because she did not raise that objection in the district court. The memorandum opinion is noncitable under the Montana Supreme Court’s Internal Operating Rules.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Beth Baker; Michael E. Wheat; James Jeremiah Shea; Patricia Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	December 1, 2015
DOCKET	DA 15-0216
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the District Court's order terminating her parental rights after the court found that she had abandoned her child.
STANDARD OF REVIEW	The Court reviewed whether Mother preserved the claimed error and whether there was another basis to conclude that the District Court abused its discretion in terminating parental rights.
PRECEDENTIAL VALUE	Nonprecedential; memorandum opinion designated noncitable under Montana Supreme Court Internal Operating Rules § I, ¶ 3(c).
PARTIES	T.N. (Mother) v. Montana Department of Public Health and Human Services, K.A.P. (Youth)

TOPICS

termination of parental rights

parental rights

family law procedure

preservation of error

appellate procedure

PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. Whether Mother preserved for appellate review her argument that the District Court could not terminate her parental rights without taking evidence establishing abandonment and the other statutory termination requirements.
2. Whether the District Court otherwise abused its discretion in terminating Mother's parental rights.

HOLDINGS

1. Mother waived appellate review of her argument that the District Court was required to take evidence supporting abandonment because she did not timely present that argument to the District Court.
2. The Court found no other basis to conclude that the District Court abused its discretion in terminating Mother's parental rights.

KEY QUOTATIONS

“Failure to make a timely objection constitutes a waiver of the party’s right to appeal.” (¶ 9)

“we will not fault a district court for failing to address statutory deficiencies that are not brought to its attention during the proceedings because doing so would encourage litigants to withhold objections rather than raise the issues appropriately in the district court.” (¶ 10)

FACTUAL BACKGROUND

The Department removed K.A.P. from his parents' care after the father physically assaulted Mother in the child's presence; the family was homeless and had a history of domestic violence, and the father had chemical-dependency issues. Mother appeared with counsel at the initial show cause hearing but made no further court appearances, lost contact with appointed counsel, and was placed in default. At the termination hearing, Mother was absent, although counsel stated that contact had recently been reestablished and objected to proceeding for reasons unrelated to the claimed lack of evidentiary support for abandonment.

PROCEDURAL HISTORY

The Montana Department of Public Health and Human Services removed K.A.P. from his parents' care and petitioned for emergency protective services, temporary legal custody, and adjudication as a youth in need of care. Mother appeared at the initial show cause hearing but failed to appear thereafter; the District Court entered her default, adjudicated K.A.P. a youth in need of care, and later terminated Mother's parental rights after a termination hearing at which Mother did not appear. Mother appealed, arguing that termination required supporting evidence taken at the hearing; the Supreme Court held that the issue was not preserved and affirmed.

DISPOSITION

affirmed

CASES CITED

- In re A.T., 2006 MT 35, ¶ 15, 331 Mont. 155, 130 P.3d 1249
- In re A.S., 2006 MT 281, ¶ 35, 334 Mont. 280, 146 P.3d 778
- In re A.N.W., 2006 MT 42, ¶ 41, 331 Mont. 208, 130 P.3d 619

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