

SUPREME COURT OF MONTANA

In the Matter of S.S. and S.S., Youths in Need of Care

In re S.S., 364 Mont. 437 (Mont. 2012) · No. DA 11-0664, DA 11-0665 · Decided April 10, 2012

SUMMARY

The Montana Supreme Court affirmed the dismissal of a state abuse and neglect proceeding and placement of two children with their noncustodial father. The court held that the district court properly proceeded under Montana Code § 41-3-438(3)(d), and that the mother's appropriate avenue for future custody disputes was a parenting-plan action.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Mike McGrath; Michael E. Wheat; Brian Morris; Beth Baker; James C. Nelson
JURISDICTION	Montana
DECIDED	April 10, 2012
DOCKET	DA 11-0664, DA 11-0665
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed from a district court order dismissing the State's abuse and neglect proceeding and placing the children with their noncustodial father pursuant to Montana Code Annotated § 41-3-438(3)(d).
STANDARD OF REVIEW	The Supreme Court reviews a district court's conclusions of law in a youth-in-need-of-care proceeding for correctness.
PRECEDENTIAL VALUE	published opinion
PARTIES	T.S. (Mother) v. State of Montana, Department of Public Health and Human Services

TOPICS

- family law procedure
- child custody
- appellate jurisdiction
- standard of review
- parental rights

PRACTICE AREAS

- family law
- child welfare
- appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court's dismissal of the State's abuse and neglect proceeding and placement of the children with the noncustodial parent was appealable.
2. Whether the District Court erred by dismissing the abuse and neglect proceeding and placing the children with Father under Montana Code Annotated § 41-3-438(3)(d) without allowing Mother to present witnesses.

HOLDINGS

1. The order dismissing the abuse and neglect proceeding and placing the children with Father was a final, appealable order because it terminated the State's and the District Court's jurisdiction over the proceeding.
2. The District Court did not err by dismissing the State's abuse and neglect proceeding and placing the children with Father under Montana Code Annotated § 41-3-438(3)(d) without permitting Mother to present witnesses.

KEY QUOTATIONS

“The dismissal in this case had the effect of terminating both the State's and the District Court's jurisdiction over the abuse and neglect proceedings that gave rise to this appeal, thus this is an appealable order.” (¶ 10)

“order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding.” (¶ 13)

FACTUAL BACKGROUND

The State removed the two children from Mother's care after determining that her alcohol abuse caused their endangerment and physical neglect. The parents' marriage had been dissolved, and they previously shared legal custody; the children were placed with Father while Mother was limited to supervised contact. Mother continued to abuse alcohol despite treatment, while reports indicated that the children were doing well and performing better in Father's home. The District Court ultimately placed the children with Father and dismissed the State's case.

PROCEDURAL HISTORY

The State initiated abuse and neglect proceedings after substantiating allegations that Mother's alcohol abuse endangered and physically neglected the children. The children were adjudicated youths in need of care and placed with Father. At the subsequent dispositional hearing, the District Court denied Mother's request to present witnesses, dismissed the State's case, and awarded Father full legal custody. Mother appealed, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re A.C., 2004 MT 320, 324 Mont. 58, 101 P.3d 761
- In re B.P., 2008 MT 166, 343 Mont. 345, 184 P.3d 334
- In re J.J.G., 266 Mont. 274, 880 P.2d 808 (1994)
- In re M.L.H., 220 Mont. 288, 715 P.2d 32 (1986)
- In re C.L.A., 211 Mont. 393, 685 P.2d 931 (1984)
- In re T.S.B., 2008 MT 23, 341 Mont. 204, 177 P.3d 429

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