

SUPREME COURT OF MONTANA

In the Matter of B.P. and B.P., Youths in Need of Care

2009 MT 339N (2009) · No. DA 09-0202 · Decided October 15, 2009

SUMMARY

The Montana Supreme Court affirmed the termination of a father's parental rights to two children adjudicated as youths in need of care. The court held that the district court did not abuse its discretion in denying an untimely motion to continue the termination hearing and properly terminated parental rights under § 41-3-609(1)(f), MCA. The court also concluded that the Department of Public Health and Human Services made reasonable reunification efforts and that the district court's findings were supported by the record.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Justice W. William Leaphart; Justice Patricia O. Cotter; Justice Brian Morris; Justice Jim Rice
JURISDICTION	Montana
DECIDED	October 15, 2009
DOCKET	DA 09-0202
DISPOSITION	affirmed
PROCEDURAL POSTURE	M.P. appealed the District Court's order terminating his parental rights to B.P. and B.P.
STANDARD OF REVIEW	A decision to grant or deny a continuance in an abuse and neglect action is reviewed for abuse of discretion. A decision to terminate parental rights is reviewed for abuse of discretion; underlying factual findings are reviewed for clear error and conclusions of law for correctness.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	M.P., birth father v. State of Montana, Department of Public Health and Human Services

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

family law

juvenile law

child welfare

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by denying M.P.'s oral motion to continue the termination hearing while he was incarcerated in Illinois.
2. Whether the District Court erred in terminating M.P.'s parental rights under § 41-3-609(1)(f), MCA.
3. Whether the State made reasonable efforts to reunify M.P. with his children as required by § 41-3-423, MCA.
4. Whether the District Court's findings regarding M.P.'s treatment-plan compliance and the grounds for termination were sufficiently supported by the record.

HOLDINGS

1. The District Court did not abuse its discretion by denying M.P.'s untimely motion to continue the termination hearing.
2. The District Court did not abuse its discretion in terminating M.P.'s parental rights because the children had been adjudicated youths in need of care, the appropriate treatment plan was unsuccessful, and M.P.'s conduct was unlikely to change within a reasonable time.
3. The State made reasonable efforts to reunify M.P. with his children as required by § 41-3-423, MCA.
4. The District Court's findings regarding M.P.'s treatment-plan compliance and the grounds for termination were sufficiently supported by the record and were not clearly erroneous.

KEY QUOTATIONS

“The District Court did not abuse its discretion when it denied M.P.’s untimely motion to continue the termination hearing.” (¶ 14)

“Thus, the District Court did not abuse its discretion in terminating M.P.’s parental rights pursuant to § 41-3-609(1)(f), MCA.” (¶ 17)

“It is manifest on the face of the briefs and the record that the appeal is without merit because the issues are ones of judicial discretion and there clearly was not an abuse of discretion.” (¶ 23)

FACTUAL BACKGROUND

B.P. and B.P. were placed in foster care after domestic violence in their mother's home and a plan to flee with the children. M.P. stipulated that the children were youths in need of care and signed a court-approved treatment plan, but he failed to complete significant requirements, including substance testing, a psychological evaluation, parenting education, regular visitation, and maintaining contact with the assigned social worker. At the termination hearing, evidence showed that M.P. had ongoing legal and alcohol-related problems, had provided inaccurate information during a home study, and had not demonstrated adequate parenting or consistent efforts to reunify with the children.

PROCEDURAL HISTORY

The children were adjudicated youths in need of care after being placed in foster care. The District Court approved a treatment plan, later granted an extension of temporary legal custody, and then terminated M.P.'s parental rights following a termination hearing. The Montana Supreme Court affirmed, concluding that the District Court did not abuse its discretion in denying a continuance or terminating parental rights.

DISPOSITION

affirmed

CASES CITED

- In re H.E., 2002 MT 257, 312 Mont. 182, 59 P.3d 29
- In re D.B. and D.B., 2007 MT 246, 339 Mont. 240, 168 P.3d 691