

SUPREME COURT OF MONTANA

In the Matter of C.M.C., C.C., and C.J., Youths in Need of Care

2009 MT 153, 350 Mont. 391, 208 P.3d 809 · No. DA 08-0468 · Decided May 5, 2009

SUMMARY

The Supreme Court of Montana affirmed the termination of S.P.'s parental rights to three children adjudicated as youths in need of care. The court held that clear and convincing evidence established that the mother failed to comply with or successfully complete her treatment plan and that her conduct was unlikely to change within a reasonable time. The court also rejected her ineffective-assistance-of-counsel claims for lack of demonstrated prejudice and, in a concurrence, discussed the potential use of an appellate offer of proof to seek a limited evidentiary hearing.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; James C. Nelson; John Warner; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	May 5, 2009
DOCKET	DA 08-0468
DISPOSITION	affirmed
PROCEDURAL POSTURE	S.P. appealed the District Court's order terminating her parental rights to C.M.C., C.C., and C.J.
STANDARD OF REVIEW	Termination orders are reviewed for abuse of discretion; factual findings are reviewed for clear error; legal conclusions are reviewed for correctness; and ineffective-assistance claims in termination proceedings receive plenary review.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	S.P. v. State of Montana

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court erred in concluding that the State proved the statutory criteria for terminating the mother's parental rights by clear and convincing evidence.
2. Whether the mother was denied effective assistance of counsel in the termination proceedings.

HOLDINGS

1. The District Court did not err in terminating the mother's parental rights because clear and convincing evidence showed that the children were adjudicated youths in need of care, the approved treatment plan had not been complied with or successfully completed, and the mother's conduct or condition rendering her unfit was unlikely to change within a reasonable time.
2. The mother failed to establish ineffective assistance of counsel because she did not make the required threshold showing concerning counsel's training and experience or demonstrate material prejudice from the alleged deficiencies.

KEY QUOTATIONS

“A natural parent's right to the care and custody of his or her child is a fundamental liberty interest which must be protected by fundamentally fair proceedings.” (¶ 23)

“This requirement does not call for unanswerable or conclusive evidence.” (¶ 23)

FACTUAL BACKGROUND

The mother left her three young children with her parents because she was homeless and believed she could not safely care for them. She stipulated that the children were youths in need of care and agreed to a treatment plan requiring, among other things, substance-abuse treatment, counseling, stable employment and housing, and disclosure of household members. Over approximately one year, she completed only portions of the plan, continued associating with violent or substance-abusing men, used alcohol, failed to maintain stable employment or housing, and did not consistently participate in counseling or maintain contact with her social worker. The children improved in stable alternative placements, and the District Court found that the mother's conduct was unlikely to change within a reasonable time.

PROCEDURAL HISTORY

The Department of Health and Human Services petitioned for emergency protective services and temporary legal custody after the mother left the children with her parents and stated that she could not safely care for them. The mother stipulated that the children were youths in need of care, agreed to a court-approved treatment plan, and later agreed to an extension of temporary legal custody. After an evidentiary hearing, the District Court terminated her parental rights for failure to comply successfully with the treatment plan. The Supreme Court of Montana affirmed.

DISPOSITION

affirmed

CASES CITED

- In the Matter of C.J.K., 2005 MT 67, ¶¶ 13-14, 326 Mont. 289, 109 P.3d 232
- In the Matter of J.V., 2003 MT 68, ¶ 7, 314 Mont. 487, 67 P.3d 242
- In the Matter of E.K., 2001 MT 279, ¶ 32, 307 Mont. 328, 37 P.3d 690
- In the Matter of A.T., 2006 MT 35, ¶ 20, 331 Mont. 155, 130 P.3d 1249
- In the Matter of A.S., 2004 MT 62, ¶¶ 9, 12, 20, 21, 26, 31, 320 Mont. 268, 87 P.3d 408
- State v. MacKinnon, 1998 MT 78, ¶ 15, 288 Mont. 329, 957 P.2d 23
- In re K.G.F., 2001 MT 140, ¶ 93, 306 Mont. 1, 29 P.3d 485
- People in Interest of C.H., 166 P.3d 288 (Colo. App. 2007)

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