

SUPREME COURT OF MONTANA

In re the Marriage of S.M.J., T.I.J., and J.W.

2012 MT 202N · No. DA 11-0698 · Decided September 11, 2012

SUMMARY

The Montana Supreme Court affirmed the District Court’s reinstatement of an order denying J.W., the biological father, parenting rights and visitation with the child. The Court relied on its prior decision in Johnson I and concluded that the District Court did not abuse its discretion; the memorandum opinion is noncitable and nonprecedential.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Patricia O. Cotter; Patricia O. Cotter; James C. Nelson; Michael E. Wheat; Beth Baker; Brian Morris
JURISDICTION	Montana
DECIDED	September 11, 2012
DOCKET	DA 11-0698
DISPOSITION	affirmed
PROCEDURAL POSTURE	J.W., an intervenor in a marital dissolution proceeding, appealed the District Court's reinstatement of its original order denying him parental rights and visitation privileges. The Montana Supreme Court affirmed.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	nonprecedential
PARTIES	J.W. v. S.M.J., T.I.J.

TOPICS

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

PRACTICE AREAS

- family law
- family law procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by reinstating its original order denying J.W. parental rights and visitation privileges after the Supreme Court's prior remand.

HOLDINGS

1. The District Court did not abuse its discretion in reinstating its original order denying J.W.'s request for parental rights and visitation because ample evidence supported that decision and nothing in the present record undermined the Supreme Court's prior analysis.

KEY QUOTATIONS

“this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (§ 1)

“As there was ample evidence to support the District Court’s reinstatement of its earlier decision, it was not an abuse of the court’s discretion to do so.” (§ 7)

FACTUAL BACKGROUND

S.M.J. dated both T.I.J. and J.W. during the period when she became pregnant and informed both men that either could be the child's father. T.I.J. married S.M.J. and assumed the responsibilities of fatherhood after the child's birth, while J.W. later obtained DNA testing establishing his biological paternity. Although the District Court initially denied J.W.'s request for parenting rights and visitation, it later granted the request, and the Supreme Court's prior decision directed reinstatement of the original denial. On remand, S.M.J. and T.I.J. continued to provide a stable and loving home for their children.

PROCEDURAL HISTORY

S.M.J. filed for dissolution of her marriage to T.I.J. J.W. intervened and sought paternity testing and a parenting plan after DNA testing established that he was the child's biological father. The District Court initially denied J.W.'s request for an interim parenting plan, later granted it, and then, after the Montana Supreme Court reversed in an earlier appeal, reinstated its original order denying parental rights and visitation. J.W. brought the present appeal from that reinstatement.

DISPOSITION

affirmed

CASES CITED

- In re Marriage of Johnson, 2011 MT 255, 362 Mont. 236, 262 P.3d 1105

OPINION

PER CURIAM.

September 11 2012 DA 11-0698 IN THE SUPREME COURT OF THE STATE OF MONTANA
2012 MT 202N IN RE THE MARRIAGE OF: S.M.J., Petitioner and Appellee, and T.I.J.,
Respondent and Appellee, and J.W., Intervener and Appellant. APPEAL FROM: District Court of

the Eighth Judicial District, In and For the County of Cascade, Cause No. ADR-09-284 Honorable Thomas M. McKittrick, Presiding Judge COUNSEL OF RECORD: For Appellant: Jeffrey S. Ferguson, Attorney at Law, Great Falls, Montana For Appellee: Barbara E. Bell, Marra, Sexe, Evenson & Bell, P.C., Great Falls, Montana Submitted on Briefs: July 25, 2012 Decided: September 11, 2012 Filed: _____ Clerk Justice Patricia O. Cotter delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.

Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 This is the second appeal by these parties to this Court.

For a full factual recitation, procedural background and legal analysis, see *In re Marriage of Johnson*, 2011 MT 255, 362 Mont. 236, 262 P.3d 1105 (*Johnson I*). ¶3 In summary, in 2005, S.M.J., having dated both T.I.J. and J.W. during the same time frame, became pregnant. She informed both men that either of them could be the father. Shortly thereafter, J.W. ended the relationship, and T.I.J. married S.M.J.

C.I.J. was born in December 2005 and T.I.J. immediately took on the responsibilities of fatherhood. In June 2009, S.M.J. and T.I.J. experienced marital difficulties and S.M.J. filed for dissolution. She took the children to Pennsylvania to spend time with her family. While there, she contacted J.W. and she and the child began spending time with him. Subsequently, S.M.J. and T.I.J. reunited and the family returned to Montana. ¶4 J.W. followed S.M.J. and C.I.J. to Montana and intervened in S.M.J.'s dissolution proceeding seeking paternity testing to identify C.I.J.'s biological father.

The DNA tests showed J.W. was the child's biological father. J.W. moved for a parenting plan granting him visitation rights. The District Court initially entered a full order denying J.W.'s 2 motion for an interim parenting plan.

However, the court subsequently reversed its decision and granted J.W.'s motion. S.M.J. and T.I.J. appealed. ¶5 On appeal, we reversed the District Court and remanded the matter with instructions that the court reinstate its original Findings of Fact, Conclusions of Law and Order regarding Parent/Child Relationship, wherein it denied J.W.'s motion for parental rights and visitation privileges.

Johnson I, ¶ 25. On remand, the District Court vacated its amended order granting J.W. rights and reinstated its original order denying such rights. J.W. appeals. ¶6 There is nothing in the present record to indicate that our analysis set forth in *Johnson I* was incorrect or inappropriate.

We concluded in our earlier Opinion that there was sufficient evidence in the record to support the District Court's original order denying J.W.'s request for parenting rights and visitation. Nothing has changed in C.I.J. or J.W.'s lives to cause us to reconsider this conclusion. S.M.J. and T.I.J., whose dissolution proceeding was dismissed in 2010, continue to provide a stable and loving home for their three children. ¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions.

As there was ample evidence to support the District Court's reinstatement of its earlier decision, it was not an abuse of the court's discretion to do so. CONCLUSION ¶8 For the foregoing reasons, we affirm the judgment of the District Court. 3 /S/ PATRICIA COTTER We concur: /S/ JAMES C. NELSON /S/ MICHAEL E WHEAT /S/ BETH BAKER /S/ BRIAN MORRIS 4