

SUPREME COURT OF MONTANA

In the Matter of K.B. and T.B.

2013 MT 133 (Mont. 2013) · No. DA 12-0705 · Decided May 15, 2013

SUMMARY

The Montana Supreme Court reversed an order terminating a mother's parental rights to two Indian children under the Indian Child Welfare Act. The court held that the record did not establish adequate notice of the termination proceedings, required expert testimony concerning likely serious emotional or physical damage from continued custody, or findings addressing the State's active efforts to prevent breakup of the Indian family. The case was remanded for a new termination hearing.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Beth Baker; Beth Baker; Brian Morris; Patricia Cotter; Laurie McKinnon; Jim Rice
JURISDICTION	Montana
DECIDED	May 15, 2013
DOCKET	DA 12-0705
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mother appealed an order terminating her parental rights to two Indian children, arguing that the termination proceedings failed to comply with the Indian Child Welfare Act and parallel Montana statutory requirements.
STANDARD OF REVIEW	The decision to terminate parental rights is reviewed for abuse of discretion. The district court's application of law to facts is reviewed for correctness. In an ICWA-governed termination case, the termination may be upheld only if a reasonable fact-finder could conclude beyond a reasonable doubt that continued custody by the parent is likely to result in serious emotional or physical damage to the child.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	C.B. v. State of Montana

TOPICS

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indian child welfare act

tribal jurisdiction

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether C.B.'s failure to object in the district court waived her challenge to the adequacy of notice under ICWA.
2. Whether the State provided C.B. and the Chippewa Cree Tribe notice of the termination proceeding in compliance with 25 U.S.C. § 1912(a).
3. Whether the termination order was supported by the qualified-expert testimony required by 25 U.S.C. § 1912(f) and § 41-3-609(5), MCA.
4. Whether the State demonstrated the active efforts required by 25 U.S.C. § 1912(d) to prevent the breakup of the Indian family.

HOLDINGS

1. A parent may raise an ICWA notice-compliance challenge for the first time on appeal because 25 U.S.C. § 1914 authorizes a parent to petition a court of competent jurisdiction, including an appellate court, to invalidate an action that violated ICWA.
2. The termination order could not stand because the record did not establish that C.B. and the Chippewa Cree Tribe received notice of the termination proceeding by registered mail with return receipt requested at least ten days before the hearing.
3. A termination of parental rights in an ICWA case requires qualified-expert testimony addressing whether continued custody by the parent is likely to result in serious emotional or physical damage to the child; testimony that the children would be at risk, that the mother lacked a stable home, or that termination was in the children's best interests was insufficient.
4. The State must prove beyond a reasonable doubt that it made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and the district court must address those efforts expressly. Placement with a family member does not automatically satisfy the active-efforts requirement.

KEY QUOTATIONS

“Accordingly, failure to elicit expert testimony regarding whether continued custody will result in serious emotional or physical damage to the children requires reversal of the termination order.” (¶ 28)

“The evidence must show the causal relationship between the conditions that exist and the damage that is likely to result.” (¶ 30)

“In meeting this “heightened responsibility,” the State “cannot simply wait for a parent to complete a treatment plan.”” (¶ 31)

“ICWA sets minimum federal standards for proceedings involving Indian children, and we are compelled to make sure its requirements are followed.” (¶ 34)

FACTUAL BACKGROUND

C.B., an enrolled member of the Chippewa Cree Tribe, was involved in a January 2011 incident in which she was extremely intoxicated while taking her two young children outside in cold weather; the children suffered hypothermia and were removed from her care. The children, who qualified as Indian children under ICWA, were placed with their maternal grandmother, and the district court approved a treatment plan addressing sobriety, chemical-dependency treatment, housing, employment, and visitation. After repeated extensions of temporary custody and limited progress on the treatment plan, the State sought termination. At the termination hearing, the State's ICWA expert testified that the children would be at risk if returned to C.B. and that termination was in their best interests, but did not testify that continued custody was likely to cause serious emotional or physical damage.

PROCEDURAL HISTORY

The Cascade County District Court adjudicated K.B. and T.B. youths in need of care, granted the Department temporary legal custody, approved a treatment plan, and later terminated C.B.'s parental rights after a termination hearing. The Montana Supreme Court reversed the termination order and remanded for a new termination hearing and correction of the statutory deficiencies.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court's termination order, provide C.B. and the Tribe notice of the termination petition at least ten days before the hearing in compliance with 25 U.S.C. § 1912(a), conduct a new termination hearing with the required qualified-expert testimony concerning likely serious emotional or physical damage, and develop and expressly address the State's active efforts under 25 U.S.C. § 1912(d).

CASES CITED

- In the Matter of T.W.F. and A.R.M., 2009 MT 207, ¶¶ 17, 18, 26-27
- In the Matter of A.N., 2005 MT 19, ¶¶ 19, 23, 32
- In re J.W.C., 2011 MT 312, ¶ 15
- In re C.H., 2000 MT 64, ¶ 9
- In re Gabriel G., 206 Cal. App. 4th 1160, 1166 (Cal. App. 2012)
- In the Interest of W.D.H., 43 S.W.3d 30, 38 (Tex. App. 2001)
- In re L.A.M., 727 P.2d 1057, 1059 (Alaska 1986)

- In re S.M.H., 103 P.3d 976, 981-82 (Kan. App. 2005)
- People ex rel. S.R.M., 153 P.3d 438, 442 (Colo. App. 2006)
- S.H. v. Calhoun Co. Dept. of Human Res., 798 So. 2d 684, 692 (Ala. Civ. App. 2001)
- In re D.S.B., 2013 MT 112, ¶¶ 15, 18
- Letitia v. Superior Court, 81 Cal. App. 4th 1009, 1016 (Cal. App. 2000)
- Thea G. v. State, 291 P.3d 957, 963 (Alaska 2013)
- David S. v. State, Department of Health & Social Services, Office of Children's Services, 270 P.3d 767, 780 (Alaska 2012)
- In re A.A., 167 Cal. App. 4th 1292, 1318 (Cal. App. 2008)

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