

SUPREME COURT OF THE STATE OF MONTANA

In the Matter of M.S., A Youth in Need of Care

2014 MT 265 · No. DA 13-0790 · Decided September 30, 2014

SUMMARY

The Montana Supreme Court affirmed the termination of G.S.'s parental rights to M.S., an Indian child eligible for enrollment in the Northern Cheyenne Tribe. The court held that the Department failed to provide adequate proof of proper notice of the termination hearing under the Indian Child Welfare Act, but that the error was harmless. The court also concluded that the Department satisfied ICWA's active-efforts requirement and that the District Court made sufficient findings regarding the likelihood of serious emotional or physical damage to the child.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Beth Baker; Patricia Cotter; Michael E. Wheat; Laurie McKinnon; James Jeremiah Shea
JURISDICTION	Montana
DECIDED	September 30, 2014
DOCKET	DA 13-0790
DISPOSITION	affirmed
PROCEDURAL POSTURE	G.S. appealed the termination of his parental rights by the Montana Eighth Judicial District Court, arguing that the proceedings failed to comply with the Indian Child Welfare Act and violated due process.
STANDARD OF REVIEW	The termination decision was reviewed for abuse of discretion. In an ICWA-governed case, the Court would uphold termination if a reasonable fact-finder could conclude beyond a reasonable doubt that continued custody by the parent was likely to result in serious emotional or physical damage to the child. The District Court's application of law to facts was reviewed for correctness.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	G.S. v. Montana Department of Public Health and Human Services

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 the termination proceedings complied with ICWA's notice requirements.
2. Whether the Department satisfied ICWA's active-efforts requirement under 25 U.S.C. § 1912(d).
3. Whether the District Court made the findings required by 25 U.S.C. § 1912(f) concerning the likelihood of serious emotional or physical damage to the child.
4. Whether the District Court violated due process or improperly terminated parental rights through summary judgment and by relying on evidence from prior proceedings.

HOLDINGS

1. The Department failed to provide adequate proof that the Northern Cheyenne Tribe received proper notice of the termination hearing as required by ICWA and Montana Rule of Civil Procedure 5.
2. The notice error was harmless and did not require reversal because G.S. failed to show a reasonable probability that he would have obtained a more favorable result absent the error.
3. The Department satisfied ICWA's requirement to make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
4. The District Court made sufficient findings that continued custody by G.S. was likely to result in serious emotional or physical damage to M.S.
5. The District Court did not terminate G.S.'s parental rights through summary judgment and did not err by incorporating findings and relying on evidence presented at an earlier hearing.

KEY QUOTATIONS

“Once a tribe has filed a notice of intervention, it has appeared as a party in the case and is entitled to proper service under this rule.” (¶ 21)

“Because G.S. has not demonstrated a reasonable probability that he would have obtained a more favorable result in the absence of the Department’s error regarding proper ICWA notice, we hold that the error in this case was harmless.” (¶ 23)

“We hold that a reasonable trier of fact could have concluded that the Department made sufficient active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.” (¶ 27)

FACTUAL BACKGROUND

M.S. was removed from her mother's care in July 2011 and was later placed with a relative-like caregiver in Billings. M.S.'s father, G.S., was an enrolled member of the Northern Cheyenne Tribe and had been incarcerated since 2009 under a lengthy federal sentence for aggravated sexual abuse. The Department initially gave notice to the wrong tribe, but later notified the Northern Cheyenne Tribe, which intervened and acknowledged that M.S. was an Indian child eligible for tribal enrollment. The Department ultimately sought termination based on abandonment, and the District Court terminated G.S.'s parental rights after finding that active efforts had been made and that continued custody by G.S. would likely cause serious emotional or physical damage to M.S.

PROCEDURAL HISTORY

M.S. was adjudicated a youth in need of care and the Department was granted temporary legal custody. After an initial termination petition was dismissed without prejudice because of inaccurate tribal-affiliation information, the Department filed a modified petition seeking termination of G.S.'s parental rights. The District Court terminated G.S.'s parental rights and awarded the Department permanent legal custody; G.S. appealed.

DISPOSITION

affirmed

CASES CITED

- In re K.B., 2013 MT 133, 370 Mont. 254, 301 P.3d 836
- People ex rel. S.R.M., 153 P.3d 438 (Colo. Ct. App. 2006)
- In re J.C., 2008 MT 127, ¶ 43, 343 Mont. 30, 183 P.3d 22
- In re F.H., 266 Mont. 36, 39, 878 P.2d 890, 892 (1994)
- In re A.N., 2000 MT 35, ¶ 39, 298 Mont. 237, 995 P.2d 427
- In re N.N.E., 752 N.W.2d 1 (Iowa 2008)
- In re Christian P., 208 Cal. App. 4th 437 (Cal. App. 2d Dist. 2012)
- In re G.L., 177 Cal. App. 4th 683, 695-96 (Cal. App. 4th Dist. 2009)
- In re C.H., 2003 MT 308, ¶ 21, 318 Mont. 208, 79 P.3d 822
- In re D.S.B., 2013 MT 112, ¶ 15, 370 Mont. 37, 300 P.3d 702
- In re G.S., 2002 MT 245, ¶¶ 33, 36, 312 Mont. 108, 59 P.3d 1063
- Letitia v. Superior Court, 81 Cal. App. 4th 1009, 1016, 97 Cal. Rptr. 2d 303, 309 (Cal. App. 4th Dist. 2000)
- In re J.S., 2014 MT 79, ¶ 29, 374 Mont. 329, 321 P.3d 103
- Adoptive Couple v. Baby Girl, 570 U.S. ___, 133 S. Ct. 2552, 2559 (2013)
- Stevens v. Novartis Pharms. Corp., 2010 MT 282, ¶ 78, 358 Mont. 474, 247 P.3d 244
- In re Estate of Harmon, 2011 MT 84, ¶ 28, 360 Mont. 150, 253 P.3d 821