

SUPREME COURT OF MONTANA

In the Matter of the Custody and Parental Rights of A.P., a Youth in Need of Care

172 P.3d 105 (Mont. 2007) · No. DA 07-0336 · Decided November 13, 2007

SUMMARY

The Montana Supreme Court affirmed the termination of A.H.P.'s parental rights to A.P. under Montana statutes permitting termination based on the prior termination of parental rights to a sibling when the circumstances are relevant to the parent's ability to care for the child. The court held that the statutory framework did not violate due process because the State retained the burden to prove the statutory elements by clear and convincing evidence and the parent received notice, a hearing, and representation.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Brian Morris; Karla M. Gray; W. William Leaphart; John Warner; Jim Rice
JURISDICTION	Montana
DECIDED	November 13, 2007
DOCKET	DA 07-0336
DISPOSITION	affirmed
PROCEDURAL POSTURE	A.H.P. appealed from an order of the Eighth Judicial District Court, Cascade County, terminating her parental rights to A.P. The Montana Supreme Court reviewed the constitutional and statutory challenges to the termination.
STANDARD OF REVIEW	Constitutional due-process questions are reviewed de novo or plenary. The termination decision is reviewed for abuse of discretion; factual findings are reviewed for clear error; and legal conclusions are reviewed for correctness.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	A.H.P. v. Department of Public Health and Human Services

TOPICS

termination of parental rights

parental rights

due process

procedural due process

statutory interpretation

PRACTICE AREAS

family law

constitutional law

parental rights

termination of parental rights

QUESTIONS PRESENTED

1. Whether Montana Code §§ 41-3-609(1)(d) and 41-3-423(2)(e) violate due process by creating a presumption of parental unfitness or shifting the burden of proof to the parent when parental rights to a sibling previously have been terminated.
2. Whether the circumstances surrounding the prior termination of A.H.P.'s parental rights to A.P.'s sibling were relevant to her ability to adequately care for A.P.
3. Whether the District Court abused its discretion in terminating A.H.P.'s parental rights to A.P.

HOLDINGS

1. Montana Code §§ 41-3-609(1)(d) and 41-3-423(2)(e) do not violate a parent's constitutional right to due process. The provisions do not create a presumption of parental unfitness or shift the burden of proof to the parent because DPHHS must prove by clear and convincing evidence both the prior sibling termination and the relevance of its circumstances to the parent's ability to care for the child at issue.
2. The prior termination of A.H.P.'s parental rights to K.S. was relevant to her ability to care for A.P. because the evidence showed that she had failed every goal of the treatment plan intended to address her parenting of both children, and she offered no evidence that her circumstances had changed.

KEY QUOTATIONS

“We hold that §§ 41-3-609(1)(d) and 41-3-423(2)(e), MCA, do not violate a parent's constitutional right to due process.” (¶ 25)

“We have determined that the circumstances of a prior termination continue to be relevant in a later termination of a sibling under § 41-3-609(1)(d) and 41-3-423(2)(e), MCA, unless the circumstances have changed.” (¶ 30)

FACTUAL BACKGROUND

A.H.P. had a long history of substantiated concerns involving neglect, unsafe conditions, inadequate supervision, and exposing her children to unsafe adults. She minimally complied with a fifteen-month treatment plan addressing mental health, parenting, housing, visitation, and cooperation with DPHHS, failing to achieve its goals. After the District Court terminated her parental rights to A.P.'s sibling K.S., DPHHS sought termination of her rights to A.P., relying on the sibling-termination provisions and evidence that A.H.P.'s circumstances had not materially changed.

PROCEDURAL HISTORY

The District Court previously terminated A.H.P.'s parental rights to A.P.'s sibling, K.S., after A.H.P. failed to comply meaningfully with a court-ordered treatment plan. After A.P. was removed from her father's custody, DPHHS petitioned to terminate A.H.P.'s parental rights to A.P. under Montana Code §§ 41-3-609(1)(d) and 41-3-423(2)(e). The District Court rejected A.H.P.'s objections, terminated her parental rights on May 4, 2007, and A.H.P. appealed.

DISPOSITION

affirmed

CASES CITED

- In re D.B. and D.B., 2007 MT 246, 339 Mont. 240, 168 P.3d 691
- In re A.N.W., 2006 MT 42, 331 Mont. 208, 130 P.3d 619
- In re A.S., 2004 MT 62, 320 Mont. 268, 87 P.3d 408
- Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)
- In re L.N., 2004 SD 126, 689 N.W.2d 893
- State ex rel. Children, Youth v. Amy B., 133 N.M. 136, 61 P.3d 845 (Ct. App. 2002)
- In re Heather C., 751 A.2d 448 (Me. 2000)
- In re C.P., 2001 MT 187, 306 Mont. 238, 32 P.3d 754
- In re K.J.B., 2007 MT 216, 339 Mont. 28, 168 P.3d 629