

SUPREME COURT OF MONTANA

In re K.M., Jr.

2003 MT 57N (Mont. 2003) · No. No. 02-554 · Decided March 27, 2003

SUMMARY

The Montana Supreme Court reviewed an appeal from an order finding K.M., Jr. to be a Youth in Need of Care and granting the State temporary legal custody. The court held that the district court properly denied the father’s motion for a continuance because the petition and attached affidavit provided adequate notice of the alleged emotional abuse and exposure to unreasonable risk. The court affirmed the district court’s order.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice James C. Nelson; James C. Nelson; Jim Regnier; Patricia Cotter; W. William Leaphart; Jim Rice
JURISDICTION	Montana
DECIDED	March 27, 2003
DOCKET	No. 02-554
DISPOSITION	affirmed
PROCEDURAL POSTURE	K.M., Sr. appealed the District Court's order adjudicating K.M., Jr. a Youth in Need of Care and granting the State temporary legal custody. The appeal challenged the denial of a motion for continuance based on alleged lack of notice.
STANDARD OF REVIEW	The denial of a motion for continuance is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Nonprecedential; expressly designated not citable as precedent.
PARTIES	K.M., Sr. v. State of Montana, Department of Health and Human Services

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by denying K.M., Sr.'s motion for a continuance based on alleged lack of notice of the grounds for the State's temporary-custody case.

HOLDINGS

1. The petition and the incorporated affidavit adequately stated the basis for the State's petition, including emotional abuse and exposure to unreasonable risk, and therefore provided proper notice.
2. The District Court did not abuse its discretion in denying K.M., Sr.'s motion for continuance and allowing the State's testimony regarding K.M., Jr.'s emotional abuse and exposure to unreasonable risk.

KEY QUOTATIONS

“Section 41-3-422(2), MCA, requires a petition to “be accompanied by an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition.”” (¶ 16)

“Because the District Court did not abuse its discretion when it denied K.M., Sr.'s motion for continuance, we affirm.” (¶ 19)

FACTUAL BACKGROUND

K.M., Jr. was nine years old when his father, K.M., Sr., disappeared with two other children despite a no-contact order and failed to attend several appointments concerning the child's education and support. The child was removed from the care of K.M., Sr.'s parents after investigators found that K.M., Jr. appeared to lack adequate food and clean drinking water and had other indicators of neglect. The State sought temporary legal custody and presented testimony concerning emotional abuse and exposure to unreasonable risk.

PROCEDURAL HISTORY

The Eighth Judicial District Court, Cascade County, granted the State's petition for emergency protective services, adjudication as a Youth in Need of Care, and temporary legal custody. During the hearing, the court denied K.M., Sr.'s motion for a continuance and admitted testimony concerning alleged neglect and emotional abuse. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re R.F., 2001 MT 199, ¶ 21, 306 Mont. 270, ¶ 21, 32 P.3d 1257, ¶ 21