

SUPREME COURT OF MONTANA

In re A.S.

360 Mont. 55 (2011) · Decided April 12, 2011

SUMMARY

The Montana Supreme Court affirmed the termination of a mother's parental rights to two enrolled Northern Cheyenne children. The court held that the mother failed to preserve her challenge to the timing of the Indian Child Welfare Act § 1912(e) hearing and that the district court independently had sufficient grounds to terminate her rights based on unsuccessful treatment plans and conditions unlikely to change within a reasonable time. The court nevertheless urged the Department of Public Health and Human Services to address ICWA requirements early in future proceedings.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Cotter; Justice Baker; Justice Morris; Justice Nelson; Justice Rice
JURISDICTION	Montana
DECIDED	April 12, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Custer County District Court's order terminating her parental rights to A.S. and T.S., arguing that the termination was invalid because the court did not timely conduct the Indian Child Welfare Act section 1912(e) qualified-expert hearing.
STANDARD OF REVIEW	Termination of parental rights is reviewed for abuse of discretion; the Supreme Court reviews factual findings for clear error and conclusions of law for correctness. In an ICWA case, termination is upheld if a reasonable fact-finder could conclude beyond a reasonable doubt that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	S.T. (Mother) v. Montana Department of Public Health and Human Services, Child and Family Services Division

TOPICS

termination of parental rights

indian child welfare act

parental rights

appellate procedure

due process

PRACTICE AREAS

family law

child welfare

Indian Child Welfare Act

QUESTIONS PRESENTED

1. Whether Mother preserved for appellate review her argument that the delayed ICWA section 1912(e) qualified-expert hearing invalidated the children's removal and subsequent termination proceedings.
2. Whether the District Court erred by refusing to reset the foster-care period to the date of the delayed ICWA hearing.
3. Whether the District Court abused its discretion in terminating Mother's parental rights based on her failure to complete treatment plans and the likelihood that her unfitness would not change within a reasonable time.

HOLDINGS

1. Mother failed to preserve for appeal the issue of whether the ICWA section 1912(e) hearing was held too late because she acquiesced in holding the delayed hearing and did not make a timely, specific objection.
2. Mother was not entitled to reset the foster-care period to the date of the January 15, 2010 ICWA hearing because the District Court did not rely on the statutory 15-month foster-care presumption in terminating her parental rights.
3. The District Court did not abuse its discretion in terminating Mother's parental rights where clear and convincing evidence established that the children were adjudicated youths in need of care, Mother failed to comply successfully with appropriate treatment plans, and the conduct or condition rendering her unfit was unlikely to change within a reasonable time.

KEY QUOTATIONS

"We will not put a district court in error for an action in which the appealing party acquiesced or actively participated." (¶31, 360 Mont. at 63-64)

"For the foregoing reasons, we hold the District Court did not abuse its discretion in terminating Mother's parental rights. We therefore affirm the judgment of the District Court." (¶38, 360 Mont. at 65)

FACTUAL BACKGROUND

A.S. and T.S., enrolled members of the Northern Cheyenne Tribe through their father, were removed from Mother's care on December 20, 2007, after Mother was found in an unsafe residence with the children, which lacked heat and electricity and where the children were hungry and inadequately clothed. Mother had longstanding chemical-dependency, mental-health, and parenting problems and repeatedly failed drug tests, treatment-plan requirements, evaluations, and visitation obligations. The Department provided extensive remedial and rehabilitative services, but Mother failed to make meaningful progress. The District Court later

found that the children required continued out-of-home placement, that active efforts had been made, and that Mother's condition rendering her unfit was unlikely to change within a reasonable time.

PROCEDURAL HISTORY

The children were adjudicated youths in need of care and placed in foster care after emergency removal. The proceeding was transferred from Fallon County to Custer County. After multiple treatment plans and continued parental noncompliance, the District Court held a delayed ICWA section 1912(e) hearing, approved termination, and entered an order terminating Mother's parental rights. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re B.M., 2010 MT 114, ¶ 14, 356 Mont. 327, 233 P.3d 338
- In the Matter of A.N., 2005 MT 19, ¶ 19, 325 Mont. 379, 106 P.3d 556
- In re J.C., 2008 MT 127, ¶ 53, 343 Mont. 30, 183 P.3d 22
- State v. Holt, 2011 MT 42, ¶ 17, 359 Mont. 308, 249 P.3d 470
- In re B.N.Y., 2003 MT 241, ¶ 21, 317 Mont. 291, 77 P.3d 189
- In re T.C. and W.C., 2001 MT 264, ¶ 22, 307 Mont. 244, 37 P.3d 70
- In re A.F.-C., 2001 MT 283, ¶ 31, 307 Mont. 358, 37 P.3d 724
- In re T.C., 2008 MT 335, ¶ 16, 346 Mont. 200, 194 P.3d 653