

MONTANA SUPREME COURT

In re B.S.

350 Mont. 132, 2009 MT 113 · Decided April 7, 2009

SUMMARY

The Montana Supreme Court affirmed the termination of a mother's parental rights to her two children. The court held that the mother's long-term incarceration, incomplete treatment plan, mental-health conditions, and inability to provide adequate care supported termination under Montana law. The court also rejected challenges to the children's adjudication as youths in need of care, alleged due process violations, and the argument that termination violated Montana public policy.

CASE DETAILS

COURT	Montana Supreme Court
WRITING FOR THE COURT	Chief Justice McGrath; Justice Leaphart; Justice Morris; Justice Cotter; Justice Nelson
JURISDICTION	Montana
DECIDED	April 7, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from the Eighth Judicial District Court's judgment terminating her parental rights to B.S. and G.S.
STANDARD OF REVIEW	The decision to terminate parental rights is reviewed for abuse of discretion. Underlying factual findings are reviewed for clear error, and conclusions of law are reviewed for correctness. The party seeking termination must prove the statutory grounds by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Mother of B.S. and G.S. v. Montana Department of Public Health and Human Services

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court erred by failing to recite expressly that the termination findings were based on clear and convincing evidence.
2. Whether the finding that the mother's incarceration rendered her unfit, was long-term, and was unlikely to change within a reasonable time was clearly erroneous.
3. Whether the District Court abused its discretion by terminating parental rights rather than ordering a long-term guardianship, foster placement, or other custodial alternative.
4. Whether the District Court had authority to adjudicate the children as youth in need of care at the show-cause hearing when DPHHS had sought temporary investigative authority rather than a youth-in-need-of-care adjudication.
5. Whether the youth-in-need-of-care adjudication was supported by a preponderance of the evidence.
6. Whether the youth-in-need-of-care adjudication violated the mother's due-process rights because she lacked notice, or resulted from ineffective assistance of trial counsel.
7. Whether termination of the mother's parental rights violated Montana's public policy favoring family unity and preservation of the family.

HOLDINGS

1. The District Court did not err by failing to recite the clear-and-convincing-evidence standard in its findings because Montana law requires proof by clear and convincing evidence but does not require the court to recite that standard.
2. The District Court's finding that the mother's incarceration rendered her unfit, constituted long-term confinement, and was unlikely to change within a reasonable time was supported by substantial evidence and was not clearly erroneous.
3. The mother failed to demonstrate an abuse of discretion because she identified no authority requiring the District Court to order a long-term guardianship, foster placement, or other alternative instead of termination.
4. The District Court possessed statutory authority to adjudicate the children as youth in need of care at the show-cause hearing, even though DPHHS had sought temporary investigative authority rather than that adjudication.
5. The youth-in-need-of-care adjudication was supported by a preponderance of the evidence.
6. The adjudication did not violate the mother's due-process rights because her citations to appear expressly required her to show cause why the children should not be declared youth in need of care.
7. Termination did not violate Montana public policy because preservation of the family was impossible during the mother's imprisonment and, afterward, would not be conducive to the children's health, safety, or best interests.

KEY QUOTATIONS

“We review the court’s findings to determine whether they are clearly erroneous, and we review the court’s conclusions of law to determine whether they are correct.” (136)

“Unfortunately, here, the record establishes that preservation of the unity of B.S. and G.S.’s family of origin is impossible while the mother serves her prison sentence and, after that time, would not be conducive to the health, safety and best interests of the children.” (140)

FACTUAL BACKGROUND

The mother voluntarily placed B.S. and G.S. in DPHHS custody while living in a domestic-violence shelter, citing concerns about the children's severe behavioral problems and her own risk of abusing them. The record included extensive domestic violence, the mother's unaddressed mental-health and anger issues, the children's unstable placements, and G.S.'s serious behavioral needs. The mother was later sentenced to 24 months in federal prison and was unable to complete substantial portions of her treatment plan, provide a safe home, obtain prescribed treatment, or complete parenting and anger-control programs. Expert testimony indicated that she would require at least a year of psychotherapy and stabilization after release before she might be able to parent.

PROCEDURAL HISTORY

The mother voluntarily placed the children in the custody of DPHHS. The District Court granted temporary investigative authority, adjudicated the children as youth in need of care, approved treatment plans, and later terminated the mother's parental rights after finding that she had not completed the treatment plan, was incarcerated for a long term, remained unable to provide adequate parental care, and was unlikely to become fit within a reasonable time. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re D.B., 2007 MT 246, ¶ 16, 339 Mont. 240, 168 P.3d 691
- In re D.B., 2007 MT 246, ¶ 18, 339 Mont. 240, 168 P.3d 691
- In re B.S. and G.S. I, 2009 MT 98, 350 Mont. 86, 206 P.3d 565
- In re M.P., 2008 MT 39, ¶ 30, 341 Mont. 333, 177 P.3d 495
- In re A.S., 2006 MT 281, ¶ 30, 334 Mont. 280, 146 P.3d 778

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