

SUPREME COURT OF MONTANA

In re E.M.S.

363 Mont. 68 (2011) · Decided December 6, 2011

SUMMARY

The Montana Supreme Court affirmed the termination of a mother's parental rights based on abandonment. The court held that the mother willfully surrendered physical custody of her children for more than six months and failed to manifest an intent to resume custody.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Morris; Baker; Cotter; Morris; Rice; Wheat
JURISDICTION	Montana
DECIDED	December 6, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the Third Judicial District Court's order terminating her parental rights.
STANDARD OF REVIEW	Termination of parental rights is reviewed for abuse of discretion. The district court's factual findings concerning the statutory criteria are reviewed for clear error, and the State must prove the statutory grounds by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion
PARTIES	B.S. (Mother) v. Department of Public Health and Human Services

TOPICS

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

PRACTICE AREAS

family law termination of parental rights appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by terminating Mother's parental rights on the ground that she had abandoned her children.

2. Whether a parent who previously possessed physical custody and voluntarily transferred it may be found to have willfully surrendered custody under Montana's abandonment statute.

HOLDINGS

1. A parent who previously possessed physical custody may willfully surrender custody by voluntarily transferring it to another person, even though the parent does not possess custody at the time of the termination proceeding.
2. The District Court did not abuse its discretion in finding that Mother abandoned the children because she willfully surrendered custody for more than six months and failed to manifest a clear intent to resume custody.

KEY QUOTATIONS

“A district court abuses its discretion when it “acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice.”” (363 Mont. at 70, ¶ 10)

FACTUAL BACKGROUND

Mother initially had custody of her two children after divorcing Father. In 2006, after the Department sought to terminate her parental rights, Mother agreed to transfer physical custody to Father, and the Department ceased its termination efforts. Mother had no contact with the children after December 2008, provided no financial support for approximately four years, and made no clear manifestation of an intent to resume custody. The District Court terminated her parental rights after finding that she had willfully surrendered custody for more than six months and abandoned the children.

PROCEDURAL HISTORY

After the Department removed the children from Mother in 2005, Mother stipulated in 2006 to transferring custody to Father, and the District Court approved the stipulation. Following later removals and unsuccessful termination proceedings involving Father, the Department served Mother with a termination petition. The District Court found that Mother had abandoned the children and terminated her parental rights; the Supreme Court of Montana affirmed.

DISPOSITION

affirmed

CASES CITED

- In re R.M.T., 2011 MT 164, ¶¶ 26-27, 361 Mont. 159, 256 P.3d 935
- In re T.C., 2001 MT 264, ¶ 29, 307 Mont. 244, 37 P.3d 70