

MONTANA SUPREME COURT

In re J.D., 2019 MT 63, 395 Mont. 141

437 P.3d 131 (Mont. 2019) · Decided March 19, 2019

SUMMARY

The Montana Supreme Court affirmed the termination of both parents' parental rights to J.D., concluding that the parents had not successfully completed their treatment plans and that the conditions rendering them unfit were unlikely to change within a reasonable time. The court also addressed a CASA's subpoena for the father's therapy records and the CASA's participation in questioning witnesses. The opinion discusses the CASA's statutory role as the child's guardian ad litem and the interaction between that role and therapist-client privilege.

CASE DETAILS

COURT	Montana Supreme Court
WRITING FOR THE COURT	Justice Ingrid Gustafson; Chief Justice Mike McGrath; Justice James Jeremiah Shea; Justice Beth Baker; Justice Jim Rice
JURISDICTION	Montana
DECIDED	March 19, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother and Father appealed from a Montana district court order terminating their parental rights to J.D.
STANDARD OF REVIEW	Termination of parental rights is reviewed for abuse of discretion; factual findings are reviewed for clear error; conclusions of law are reviewed for correctness; evidentiary rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	L.L.-C. (Mother), O.D. (Father)

TOPICS

termination of parental rights parental rights family law procedure privilege appellate procedure

PRACTICE AREAS

family law juvenile dependency evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in terminating Mother's and Father's parental rights.
2. Whether the district court abused its discretion in issuing a subpoena for Father's complete therapy file, including confidential therapy notes.
3. Whether the district court abused its discretion in allowing the CASA, who was not a party, to question witnesses at the termination hearing.

HOLDINGS

1. The district court did not abuse its discretion in terminating the parental rights of Mother and Father because their treatment plans were not completed or successful and the conditions rendering them unfit were unlikely to change within a reasonable time.
2. A CASA or guardian ad litem's statutory access to psychological and other records does not include access to confidential therapy notes protected by Montana's therapist-patient privilege.
3. A district court may permit an attorney CASA to conduct limited questioning necessary to perform the CASA's statutory functions, but the CASA may not exceed that limited role; here, the district court erred by allowing the CASA to cross-examine witnesses in the manner presented.
4. The district court's errors were harmless because the termination decision was supported by the record and did not rely on the privileged therapy materials or the improper CASA questioning.

KEY QUOTATIONS

“This Court holds that a GAL or CASA's access to psychological records pursuant to § 41-3-112(3)(c), MCA, does not include access to confidential therapy notes.” (437 P.3d at 140-41)

“The District Court abused its discretion by issuing a subpoena for privileged communication between Father and his therapist, and by letting CASA Keck cross-examine witnesses, including Father, where J.D. also had appointed counsel.” (437 P.3d at 142)

FACTUAL BACKGROUND

J.D., who had extensive mental-health needs, was placed in state custody after Mother and J.D. were hospitalized for psychiatric care. Mother's trial home visit was unsuccessful, and J.D.'s condition improved in structured placements. Father, who had been absent from J.D.'s life for several years, established contact but did not complete his treatment plan or demonstrate sufficient understanding of J.D.'s therapeutic needs. After more than two years of temporary legal custody and unsuccessful treatment-plan efforts, the district court terminated both parents' rights.

PROCEDURAL HISTORY

The Montana Department of Health and Human Services obtained temporary legal custody of J.D. after Mother and J.D. experienced serious mental-health crises. The district court adjudicated J.D. a youth in need of care, approved treatment plans for both parents, repeatedly extended temporary legal custody, and ultimately terminated both parents' rights after finding that the plans were unsuccessful and that the conditions rendering

the parents unfit were unlikely to change within a reasonable time. The Montana Supreme Court affirmed, while holding that the district court erred in issuing a subpoena for Father's privileged therapy notes and in allowing the CASA to cross-examine witnesses; both errors were harmless.

DISPOSITION

affirmed

CASES CITED

- In re A.S., 2016 MT 156, ¶ 11, 384 Mont. 41, 373 P.3d 848
- In re K.A., 2016 MT 27, ¶ 19, 382 Mont. 165, 365 P.3d 478
- In re M.V.R., 2016 MT 309, ¶ 23, 385 Mont. 448, 384 P.3d 1058
- In re J.B., 2016 MT 68, ¶ 10, 383 Mont. 48, 368 P.3d 715
- In re I.M., 2018 MT 61, ¶ 13, 391 Mont. 42, 414 P.3d 797
- In re D.B., 2007 MT 246, ¶¶ 17, 33, 339 Mont. 240, 168 P.3d 691
- In re X.M., 2018 MT 264, ¶ 18, 393 Mont. 210, 429 P.3d 920
- In re T.S., 2013 MT 274, ¶ 30, 372 Mont. 79, 310 P.3d 538
- In re T.D.H., 2015 MT 244, ¶ 42, 380 Mont. 401, 356 P.3d 457
- In re T.L. and K.L., 2005 MT 256, ¶ 14, 329 Mont. 58, 122 P.3d 453
- In re Custody & Parental Rights of D.A., 2008 MT 247, ¶ 22, 344 Mont. 513, 189 P.3d 631
- In re J.B., 2016 MT 68, ¶ 22, 383 Mont. 48, 368 P.3d 715
- In re L.S., 2003 MT 12, ¶ 15, 314 Mont. 42, 63 P.3d 497
- In re D.F., 2007 MT 147, ¶ 43, 337 Mont. 461, 161 P.3d 825
- In re A.D.B., 2013 MT 167, ¶ 88, 370 Mont. 422, 305 P.3d 739
- In re T.D.H., 2015 MT 244, ¶ 69, 380 Mont. 401, 356 P.3d 457
- In re Wieland, 89 Ohio St. 3d 535, 733 N.E.2d 1127, 1131 (2000)
- In re I.M., 2018 MT 61, ¶ 39, 391 Mont. 42, 414 P.3d 797