

SUPREME COURT OF MONTANA

In re M.W.

323 Mont. 433 (2004) · Decided October 26, 2004

SUMMARY

The Montana Supreme Court affirmed the termination of S.W.’s parental rights to her three daughters. The court held that any error in admitting a social worker’s affidavit was waived or harmless because S.W. did not cross-examine the witness about specific hearsay or move to strike portions of the affidavit. The court also upheld the district court’s substantially adopted findings and its conclusion that S.W.’s conduct or condition was unlikely to change within a reasonable time.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Montana                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Justice Cotter; Justice Leaphart; Justice Warner; Justice Rice; Justice Nelson                                                                                                                                                                               |
| JURISDICTION          | Montana                                                                                                                                                                                                                                                      |
| DECIDED               | October 26, 2004                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | S.W. appealed the Montana District Court's order terminating her parental rights to her three daughters and awarding permanent legal custody to the Department.                                                                                              |
| STANDARD OF REVIEW    | Evidentiary rulings are reviewed for abuse of discretion; factual findings are reviewed for clear error; and the legal conclusion that the parent's conduct or condition is unlikely to change within a reasonable time is reviewed de novo for correctness. |
| PRECEDENTIAL VALUE    | Published Montana Supreme Court opinion; precedential                                                                                                                                                                                                        |
| PARTIES               | S.W. v. Montana Department of Public Health and Human Services, Child and Family Services Division                                                                                                                                                           |

TOPICS

- termination of parental rights
- hearsay
- preservation of error
- standard of review
- family law procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by admitting the Department social worker's affidavit over S.W.'s hearsay objection.
2. Whether the District Court erred by adopting the Department's proposed findings of fact and conclusions of law.
3. Whether the District Court erred in finding that S.W.'s conduct or condition rendering her unfit was unlikely to change within a reasonable period of time.

## HOLDINGS

1. Any potential error in admitting the social worker's affidavit was obviated because S.W. did not cross-examine the social worker about the affidavit, identify specific inadmissible hearsay, or move to strike the challenged portions after the District Court invited her to do so.
2. A district court's adoption of a prevailing party's proposed findings of fact and conclusions of law, even virtually verbatim, is not error per se when the findings are comprehensive, pertinent, and supported by the evidence.
3. The District Court properly found that S.W.'s conduct or condition rendering her unfit was unlikely to change within a reasonable time, satisfying § 41-3-609(1)(f)(ii), MCA.

## KEY QUOTATIONS

*"It is a maxim of jurisprudence that acquiescence in error takes away the right of objecting to it."* (323 Mont. at 438)

*"We discourage a district court's adoption, verbatim, of a prevailing party's proposed findings, but such adoption does not constitute error per se."* (323 Mont. at 438-439)

*"These factors alone, however, are insufficient to terminate parental rights and it is mandatory that § 41-3-609(1)(f)(ii) be met as well."* (323 Mont. at 439)

*"The best interest of the child is paramount and takes precedence over parental rights."* (323 Mont. at 441)

## FACTUAL BACKGROUND

The Department became involved with S.W.'s family after receiving repeated reports of neglect, illegal drug use in the home, and the presence of an untreated sex offender living with S.W. and the children. The children were removed from S.W.'s care, adjudicated youths in need of care, and placed under treatment plans requiring a safe and stable home, substance-free living, mental-health improvement, parenting skills, and cooperation with the Department. S.W. failed to comply with the treatment-plan requirements, continued associations that exposed the children to risk, failed to maintain regular visitation and contact, and displayed continuing instability and hostility. The District Court found that her conduct or condition was unlikely to change within a reasonable time and that termination was in the children's best interests.

## PROCEDURAL HISTORY

The Department petitioned for emergency protective services and temporary legal custody in November 2001, and the petition was granted in December 2001. The children were adjudicated youths in need of care in April 2002. After S.W. failed to comply with court-approved treatment plans, the Department petitioned for permanent legal custody and termination of parental rights in February 2003. Following a multi-day hearing, the District Court terminated S.W.'s parental rights on August 13, 2003, and S.W. appealed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Teters, 2004 MT 137, ¶ 17, 321 Mont. 379, 91 P.3d 559
- C.M. v. B.A. (In re A.B.A.M.), 2004 MT 222, ¶ 12, 322 Mont. 406, 96 P.3d 1139
- In re Marriage of Mease, 2004 MT 59, ¶ 15, 320 Mont. 229, 92 P.3d 1148
- In re Marriage of Herrera, 2004 MT 40, ¶ 18, 320 Mont. 71, 85 P.3d 781
- Rossi v. Pawiroredjo, 2004 MT 39, ¶ 13, 320 Mont. 63, 85 P.3d 776
- State v. Gardner, 2003 MT 338, ¶ 44, 318 Mont. 436, 80 P.3d 1262
- State v. LaDue, 2001 MT 47, ¶ 23, 304 Mont. 288, 20 P.3d 775
- In re Marriage of Allison, 269 Mont. 250, 265, 887 P.2d 1217, 1226 (1994)
- In re Marriage of Nikolaisen, 257 Mont. 1, 5, 847 P.2d 287, 289 (1993)
- Investors Security Co. v. Moore, 113 Mont. 400, 127 P.2d 225 (1942)
- Matter of D.S.N., 222 Mont. 312, 722 P.2d 614 (1986)
- In re Custody of T.M., 267 Mont. 75, 79, 881 P.2d 1333, 1336 (1994)
- In re J.C.B., 2004 MT 111, ¶ 12, 321 Mont. 110, 88 P.3d 1280
- State v. Heath, 2004 MT 126, ¶ 52, 321 Mont. 280, 90 P.3d 426