

SUPREME COURT OF THE STATE OF MONTANA

In re the Marriage of Cheryle A. Cook, a/k/a Smith, Gladden, and
Curtis A. Smith

2002 MT 40N (Supreme Court of the State of Montana 2002) · No. No. 99-565 · Decided March 5, 2002

SUMMARY

The Montana Supreme Court affirmed the Thirteenth Judicial District Court’s order amending the final parenting plan for the parties’ minor children. The court declined to reach the merits because the pro se appellant failed to support her arguments with legal authority and did not establish that the District Court abused its discretion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Karla M. Gray, Chief Justice
JURISDICTION	Montana
DECIDED	March 5, 2002
DOCKET	No. 99-565
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Thirteenth Judicial District Court amending the final parenting plan and awarding custody of the parties' minor children to Curtis Smith.
STANDARD OF REVIEW	A district court's decision is presumed correct, and the appellant bears the burden of establishing error. The court characterized the challenged parenting-plan decision as subject to abuse-of-discretion review but did not reach the merits.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Cheryle A. Cook, a/k/a Smith, Gladden v. Curtis A. Smith

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by entering findings of fact, conclusions of law, and an order amending the final parenting plan.

HOLDINGS

1. The court did not reach the merits of the alleged abuse of discretion because Cheryle failed to comply with appellate briefing requirements and failed to support her argument with legal authority; the judgment was therefore affirmed.

KEY QUOTATIONS

“It is not this Court's obligation to locate authorities or formulate arguments for a party in support of positions taken on appeal.” (¶ 9)

FACTUAL BACKGROUND

Cheryle Cook and Curtis Smith divorced in 1994 and had three minor children. After the Montana Department of Public Health and Human Services received numerous reports alleging neglect and physical and sexual abuse, the Department removed the children from Cheryle's home and placed them with a relative in foster care. Curtis sought to amend the final parenting plan, received interim custody, and ultimately obtained a revised final parenting plan after a district court hearing.

PROCEDURAL HISTORY

The parties' marriage was dissolved in 1994, with Cheryle Cook granted sole care, custody, and control of the three minor children and Curtis Smith granted visitation. After the Montana Department of Public Health and Human Services received reports of neglect and abuse and removed the children from Cheryle's home, Curtis moved to amend the final parenting plan. The District Court granted Curtis interim custody, later adopted his proposed final parenting plan after a hearing, and entered findings of fact, conclusions of law, and an order on August 5, 1999. The Montana Supreme Court affirmed without reaching the merits because Cheryle failed to support her appellate arguments with legal authority.

DISPOSITION

affirmed

CASES CITED

- In re M.J.W., 1998 MT 142, ¶ 18, 289 Mont. 232, 961 P.2d 105
- In re B.P., 2001 MT 219, ¶ 41, 306 Mont. 430, 35 P.3d 291

OPINION

PER CURIAM.

NO. 99-565 IN THE SUPREME COURT OF THE STATE OF MONTANA 2002 MT 40N IN RE THE MARRIAGE OF CHERYLE A. COOK, a/k/a SMITH, GLADDEN, Petitioner and Appellant, and CURTIS A. SMITH, Respondent and Respondent. APPEAL FROM: District Court of the Thirteenth Judicial District, In and for the County of Yellowstone, The Honorable Susan P. Watters, Judge presiding. COUNSEL OF RECORD: For Appellant: Cheryle A. Cook-Carlson, Pro Se, Billings, Montana For Respondent: Christopher P. Thimsen, Attorney at Law, Billings, Montana Submitted on Briefs: January 3 1,2002 Decided: March 5,2002 Filed: 1 Chicf Justice Karla M. Gray delivcrd thc Opinion of the Court.

111 Pursuant to Section I, Paragraph 3(c), Montana Slipreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

72 Cheryle A. Cook-Carlson (Cheryle), appearing pro se, appeals from the entry by the Thirteenth Judicial District Court, Yellowstone County, of Findings of Fact, Conclusions of Law and Order amending the Final Parenting Plan concerning Christopher, C.J. and Cory Smith, the minor children of herself and Curtis Smith (Curtis).

We affirm. 73 The sole issue on appeal is whether the District Court abused its discretion in issuing Findings of Fact, Conclusions of Law and Order amending the Final Parenting Plan. 74 For reasons which will be stated below, we do not resolve the issue presented on its merits. BACKGROUND 75 Pursuant to a Decree of Dissolution, Cheryle and Curtis' marriage was dissolved on October 3, 1994.

Cheryle and Curtis are the parents of three minor children: Christopher, C.J. and Cory Smith. At the time of the parties' divorce, Chet-yle was granted sole care, custody and control of the three minor children and Curtis was ganted visitation. 2 I 10 1 Between August of 1994 and August of 1008, thc Montana Dcpartmcnt of Publ~c Hcalth and Human Sewiccs (Department) received numerous reports alleging the Smith children had been neglected and physically and sexually abused.

The Department removed the children from Cheryle's home in late August of 1998, and placed them in foster care with a relative. 77 In September of 1998, Curtis filed a Motion to Amend the Final Parenting Plan, and an affidavit in support of his motion alleging the children had been neglected and abused while in Cheryle's custody.

In January of 1999, Curtis filed a Motion for an Interim Parenting Plan and the District Court granted him custody of the children in March of 1999, pending the outcome of his motion to amend the final parentingplan.

The District Court held a hearing, at which both parties were present, on Curtis' motion to amend the final parenting plan in July of 1999. The District Court issued its Findings of Fact, Conclusions of Law and Order on August 5, 1999, adopting the proposed final parenting plan submitted by Curtis. Cheryle appeals. DISCUSSION 78 Cheryle's issue on appeal is difficult to discern from her brief, which does not comply with the briefing requirements contained in the Montana Rules of Appellate Procedure.

Only through close scrutiny of Cheryle's brief and supporting documentation are we able to ascertain the issue upon which she is seeking review. 79 Most importantly, Cheryle does not support her arguments with citations to legal authority as required by Rule 23(a)(4), M.R.App.P. While we are willing to make 3 4 accommodations for parties appearing pro se, just as we are willing to relax technical requirements that do not go to the fundamental bases of such parties' appeals, a district court's decision is presumed correct and an appellant bears the burden of establishing error by that court.

Matter of M.J. W., MT 14 2, 18, 289 Mont. 232, 18, 96 1 P.2d 105, T f 1998 18 (citations omitted). It is not this Court's obligation to locate authorities or formulate arguments for a party in support of positions taken on appeal.

In re B.P., 1 MT 2 19, f 200 41, 306 Mont. 430, f 4 1, 3 5 P.3d 291, f 41 (citation omitted). Cheryle fails to advance any legal authority under which the District Court abused its discretion in entering Findings of Fact, Conclusions of Law and Order amending the final parenting plan.

Accordingly, Cheryle fails to meet her burden in this regard. 710 Affirmed. We concur: Justices