

SUPREME COURT OF THE STATE OF MONTANA

In re A.R.

791 S.E.2d 284 (Supreme Court of the State of Montana 2016) · No. No. 02-410 · Decided December 27, 2002

SUMMARY

The Montana Supreme Court reviewed an appeal from an order granting the State temporary legal custody of two youths alleged to be in need of care. The court held that the mother waived her objection to the delayed show cause hearing but remanded for specific findings regarding which allegations were proven and whether the youths were abused or neglected.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	W. William Leaphart; Karla M. Gray; Patricia Cotter; James C. Nelson; Terry N. Triewelier; Jim Regnier; Jim Rice
JURISDICTION	Montana
DECIDED	December 27, 2002
DOCKET	No. 02-410
DISPOSITION	remanded
PROCEDURAL POSTURE	Julie appealed from a district court dispositional order granting the State temporary legal custody of her twin children for up to 180 days. She challenged the timeliness of the show-cause hearing and the adequacy of the district court's findings supporting the determination that the children were youths in need of care.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Julie, natural mother of A.R. and I.R. v. State of Montana

TOPICS

family law procedure

appellate procedure

appellate jurisdiction

due process

parental rights

PRACTICE AREAS

family law

juvenile law

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether Julie waived her objection to the statutory requirement that a show-cause hearing be held within ten days of the filing of the child-abuse-and-neglect petition.
2. Whether the district court was required to make specific written findings identifying which allegations of the petition were proved or admitted.
3. Whether an express finding that the children were abused or neglected was a jurisdictional prerequisite to awarding the State temporary legal custody.

HOLDINGS

1. Julie waived her objection to the statutory ten-day hearing requirement by acquiescing in the resetting of the hearing after the original judge recused himself and agreeing that February 1, 2002, was the earliest available hearing date.
2. The district court's nonspecific findings did not satisfy Montana Code Annotated § 41-3-437(7), which requires written findings identifying which allegations of the petition were proved or admitted.
3. An express finding that the children were abused or neglected was a jurisdictional prerequisite to the district court's authority to award the State custody, and the district court's failure to make that finding required remand.

KEY QUOTATIONS

“We will not put a district court in error for an action to which the appealing party acquiesced or actively participated. . . . Acquiescence in error takes away the right of objecting to it.” (¶ 6)

“A finding of abuse or neglect is therefore a jurisdictional prerequisite for a court to order the transfer of custody” (¶ 10)

FACTUAL BACKGROUND

The State alleged that Julie had psychologically abused or neglected A.R. and I.R. through physical punishment and verbal and mental abuse, inadequate sustenance, inadequate care when one child was ill, inadequate sleeping arrangements, and inadequate supervision. The district court granted the State temporary legal custody of the twins for no more than 180 days and determined that they were youths in need of care. The district court's orders did not specifically identify which allegations had been proved or admitted or expressly find that the children were abused or neglected.

PROCEDURAL HISTORY

The State filed a petition for adjudication of A.R. and I.R. as youths in need of care on December 7, 2001. After the assigned judge recused himself at the scheduled December 21 hearing, the parties agreed to a substitute judge and a hearing date of February 1, 2002. The district court denied Julie's motion to dismiss based on the delayed hearing, adjudicated the children youths in need of care, and entered a May 14, 2002, dispositional order granting the State temporary legal custody. The Montana Supreme Court affirmed in part and remanded for specific findings.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The district court must enter specific written findings identifying which allegations of the petition were proved or admitted and making the required jurisdictional finding that A.R. and I.R. were abused or neglected.

CASES CITED

- In re B.P., 2000 MT 39, ¶ 19, 298 Mont. 287, 995 P.2d 982
- State v. LaDue, 2001 MT 47, ¶ 23, 304 Mont. 288, 20 P.3d 775
- In re Custody of M.W., 2001 MT 78, ¶ 46, 305 Mont. 80, 23 P.3d 206
- In re J.B., 278 Mont. 160, 164, 923 P.2d 1096, 1099 (1996)