

SUPREME COURT OF MONTANA

In re B.S.

350 Mont. 86 (2009) · Decided March 31, 2009

SUMMARY

The Montana Supreme Court affirmed the termination of a father’s parental rights to two children. The Court held that the district court had authority to adjudicate the children as youths in need of care despite the initial petitions seeking temporary investigative authority and emergency protective services, and that sufficient evidence supported the adjudication and termination. The Court also upheld the denial of a requested continuance for a grandparents-placement hearing and declined to remand for an ineffective-assistance hearing.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice McGrath; Justice Nelson; Justice Leaphart; Justice Cotter; Justice Morris
JURISDICTION	Montana
DECIDED	March 31, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed the Eighth Judicial District Court's judgment terminating his parental rights to B.S. and G.S.
STANDARD OF REVIEW	The grant or denial of a continuance in an abuse and neglect action is reviewed for abuse of discretion. The termination decision is reviewed for abuse of discretion. The sufficiency of the evidence supporting youth-in-need-of-care adjudication and statutory termination criteria is evaluated under the applicable preponderance-of-the-evidence and clear-and-convincing-evidence standards.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion
PARTIES	Father of B.S. and G.S. v. Montana Department of Public Health and Human Services

TOPICS

termination of parental rights

parental rights

family law procedure

statutory interpretation

appellate procedure

PRACTICE AREAS

family law

termination of parental rights

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appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court had authority to adjudicate the children as youths in need of care when the initial petitions sought temporary investigative authority and emergency protective services but did not specifically request that adjudication.
2. Whether the Department of Public Health and Human Services presented sufficient evidence to establish that the children were youths in need of care.
3. Whether the District Court erred in denying the father's request for a continuance and hearing concerning placement with the paternal grandparents.
4. Whether the District Court abused its discretion in terminating the father's parental rights.
5. Whether the case should be remanded for an evidentiary hearing concerning alleged ineffective assistance of appointed counsel.

HOLDINGS

1. The District Court had authority to adjudicate B.S. and G.S. as youths in need of care even though the initial petitions requested temporary investigative authority and emergency protective services rather than expressly requesting a youth-in-need-of-care adjudication.
2. The District Court did not err in finding that the Department presented sufficient evidence to establish by a preponderance of the evidence that the children were youths in need of care.
3. The District Court did not abuse its discretion in denying the father's request for a continuance to hold a hearing concerning placement of the children with their paternal grandparents.
4. The District Court did not abuse its discretion in terminating the father's parental rights.
5. A remand for an evidentiary hearing on the father's ineffective-assistance claims was unnecessary.

KEY QUOTATIONS

“Based on these statutes, we conclude the form of the petition and the relief sought therein did not foreclose the court from making a YINC adjudication when it did.” (350 Mont. 90)

“The best interests of the child take precedence over parental rights, and the need for permanent placement in a loving and stable home supersedes the parents’ interests.” (350 Mont. 93)

FACTUAL BACKGROUND

The children were placed in the custody of the Montana Department of Public Health and Human Services after reports of domestic violence, the mother's inability to care for them, and significant behavioral and

developmental problems involving one child. The father was incarcerated on federal criminal charges and did not comply with the court-approved treatment plan, including requirements to maintain contact with the caseworker and children. After placements with relatives and foster care failed, the children remained in state custody, and the District Court terminated the father's parental rights based on treatment-plan noncompliance and long-term incarceration.

PROCEDURAL HISTORY

The District Court adjudicated the children youths in need of care after a temporary investigative authority hearing, approved a treatment plan, and later terminated the father's parental rights following a termination hearing. The father challenged the court's authority to make the adjudication, the sufficiency of the evidence, the denial of a continuance concerning placement with grandparents, the termination decision, and the need for an evidentiary hearing on ineffective assistance of counsel.

DISPOSITION

affirmed

CASES CITED

- In re D.A., 2008 MT 247, 344 Mont. 513, 189 P.3d 631
- In re T.C., 2001 MT 264, 307 Mont. 244, 37 P.3d 70
- In re M.P.M., 1999 MT 78, 294 Mont. 87, 976 P.2d 988
- In re O.A.W., 2007 MT 13, ¶ 76, 335 Mont. 304, 153 P.3d 6
- In re A.T., 2006 MT 35, ¶ 20, 331 Mont. 155, 130 P.3d 1249
- In re A.S., 2004 MT 62, ¶ 20, 320 Mont. 268, 87 P.3d 408
- In re A.S., 2004 MT 62, ¶ 26, 320 Mont. 268, 87 P.3d 408
- In re K.G.F., 2001 MT 140, 306 Mont. 1, 29 P.3d 485