MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 22-80
Docket No. Aro-22-40

IN RE CHILD OF NIKITA L.

Submitted on Briefs September 21, 2022
Decided September 29, 2022

Panel: STANFILL, C.J., and MEAD, JABAR, HORTON, and LAWRENCE, JJ.

MEMORANDUM OF DECISION

Nikita L. appeals from a jeopardy order as to her child entered by the District Court (Houlton, *Langner, J.*) on the petition of the Department of Health and Human Services.[1] Contrary to the mother's contentions, the court acted within its discretion when it reserved ruling on her motion for judgment as a matter of law until the conclusion of the third day of the jeopardy hearing. *See* M.R. Civ. P. 50(d); *Guardianship of Hughes*, 1998 ME 186, ¶ 6, 715 A.2d 919; *Guardianship of Kean R. IV*, 2010 ME 84, ¶ 6, 2 A.3d 340; *see also In re Child of Brooke B.*, 2020 ME 20, ¶ 4, 224 A.3d 1236 (stating that "[e]ven in cases where fundamental rights are at issue, trial courts have broad discretion to control the order and timing of the presentation of evidence"); M.R. Evid. 611(a).

Nor did the court err in denying the mother's motion because, viewing the record in the light most favorable to the Department, a reasonable view of the evidence sustains a determination that the Department met its dual burden of proof under the Indian Child Welfare Act and under Maine state law.

[1] The court determined that the child is a member of or eligible for membership with the Houlton Band of Maliseet Indians, and that the Indian Child Welfare Act, 25 U.S.C.S. §§ 1901-1963 (LEXIS through Pub. L. No. 117-177), thus applies. The court granted the Houlton Band of Maliseet Indians' motion to intervene, *see* 25 U.S.C.S. § 1911(c), and the Houlton Band of Maliseet Indians adopted the Department of Health and Human Services' brief.

See Owen v. Healy, 2006 ME 57, ¶ 11, 896 A.2d 965; *In re Children of Danielle H.*, 2019 ME 134, ¶¶ 2-3, 215 A.3d 217; *Hughes*, 1998 ME 186, ¶ 21, 715 A.2d 919.

Finally, the court did not clearly err in determining, by clear and convincing evidence, *see Danielle H.*, 2019 ME 134, ¶ 8, 215 A.3d 217, that (1) the child's health and welfare were in jeopardy, *see* 22 M.R.S. §§ 4002(6), 4035(2) (2022); (2) the mother cannot currently provide the child "with an environment that will protect [the child] from serious emotional or physical harm," *see* 25 U.S.C.S. § 1912(e) (LEXIS through Pub. L. No. 117-177); and (3) the Department made "active remedial efforts to reunify and rehabilitate" the family after the child's removal, *see* 25 U.S.C.S. § 1912(d) (LEXIS through Pub. L. No. 117-177). Competent evidence supports the court's findings. *See In re Denice F.*, 658 A.2d 1070, 1072-73 (Me. 1995); *In re Child of Radience K.*, 2019 ME 73, ¶¶ 22, 25-32, 208 A.3d 380.

The entry is:

Judgment affirmed.

John W. Tebbetts, Esq., Tebbetts Law Office, LLC, Presque Isle, for appellant mother

Aaron M. Frey, Attorney General, and Hunter C. Umphrey, Asst. Atty. Gen., Office of the Attorney General, Augusts, for appellee Department of Health and Human Services

Erik T. Crocker, Esq., Farrell, Rosenblatt & Russell, Bangor, for appellee Houlton Band of Maliseet Indians

Houlton District Court docket number PC-2021-17
FOR CLERK REFERENCE ONLY