

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 18-0236

On appeal from the Montana Fourth Judicial District Court

County of Missoula

Cause No. DR-15-27

Honorable Robert L. Deschamps, III, presiding

IN RE THE PARENTING OF:

T.P.D.C.,

A Minor Child.

TAMI DISNEY,

Petitioner and Appellant,

vs.

BRANDON STAAT,

Respondent, Appellee and Cross-Appellant

Appearances:

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STATEMENT OF THE ISSUES

Did the district court err when dismissing Ms. Disney's Petition to Terminate Mr. Staat's parental rights on the basis that she had not established by clear and convincing evidence that the sexual intercourse causing the conception of T.P.D.C. was non-consensual?

STATEMENT OF THE CASE

The parties to this action, Ms. Disney and Mr. Staat have a previously negotiated parenting-plan agreement that was adopted by the trial court on October 5, 2016, and participate in a co-parenting arrangement.

October 1, 2017, Montana law changed to include a private cause of action for the termination or parental rights in instances where a child is conceived by sexual intercourse without consent when the perpetrator of the assault has not been criminally convicted by proof beyond a reasonable doubt. Mont. Code. Ann. § 41-3-801, et seq.

January 21, 2018, Tami Disney filed a petition, pursuant to § 41-3-801, et seq., to terminate Brandon Staat's parental rights to the child, T.P.D.C., on the basis that the sexual intercourse causing T.P.D.C.'s conception was nonconsensual.

March 2, 9, and 28, 2018, the trial court held a hearing on Ms. Disney's Petition for Termination of Parental Rights.

April 7, 2018, the trial court issued a written order denying the petition, on the basis that Ms. Disney had not met her burden of proof of clear and convincing evidence that the sexual intercourse causing the conception of T.P.D.C. had been non-consensual.

STATEMENT OF FACTS

Tami Disney and Brandon Staat have one child together, T.P.D.C., born October 22, 2014.

October 6, 2016, the trial court entered a stipulated parenting plan arrangement for T.P.D.C.

January 21, 2018, Ms. Disney filed a petition to terminate Mr. Staat's parental rights for sexual intercourse without consent causing the conception of T.P.D.C. pursuant to Mont Code Ann. § 41-3-801, et seq.

At the termination hearing, Ms. Disney testified about her relationship with Appellee Staat and the factual background surrounding T.P.D.C.'s conception and birth.

Ms. Disney underwent brain surgery in 2010. Subsequent to the surgery, Ms. Disney became dependent upon the opiates she was prescribed for health conditions associated with the surgery. (Trans. at 23:1) Ms. Disney first became acquainted with Mr. Staat in February 2014 when she met him through the friend of a friend. (Trans. at 32:10) During this time period, Ms. Disney often engaged in binge drinking, and often drank while under the influence of her medication. (Trans. at 24:31, Trans. at 26:24)

On the night of February 19, 2014, Ms. Disney and Mr. Staat arranged to meet at Katie O'Keefe's in Missoula, Montana. (Trans. at 25:9) Lyle Vinson, a friend of Ms. Disney's, was also present that evening. (Trans. at 33:9)

Ms. Disney testified to being under the influence of both opiates and alcohol on February 19, 2014. (Trans. at 26:24). She was under the influence of her medication

1 when she arrived at Katie O’Keefe’s and began drinking large amounts of dark beer upon
2 her arrival. (Trans. at 27:16). Ms. Disney recalled Mr. Staat purchasing her around
3 approximately four Cold smoke beers before her memory became altered due to her
4 intoxication level. (Trans. at 28:4) She also had not eaten much that day, as eating less
5 food caused her medication to be more effective. (Trans. at 29:5)

7 Ms. Disney was unable to clearly remember all the events of the night of February
8 19, 2014, as she was passing in and out of consciousness due to her level of intoxication.
9 (Trans. at 33:19) She recalled speaking with both Mr. Staat and Mr. Vision at Katie
10 O’Keefe’s and that Staat was purchasing alcohol for her to consume (Trans, 28:4). She
11 recalled returning to a state of consciousness while lying on the bathroom floor of Katie
12 O’Keefe’s and being unaware of how she had ended up there. (Trans. at 33:9)

15 Ms. Disney remembered next getting into Staat’s truck with him, but due to her
16 level of intoxication at the time, does not remember what happened next. (Trans. at 34:6)
17 She remembered next coming to awareness while laying naked in Staat’s bed with him on
18 top of her, in the process of having sexual intercourse with her, and stating he was “going
19 to blow.” (Trans. 34:15) Ms. Disney remembered nothing further that happened after this
20 instance until waking up hungover the next morning. (Trans. at 35:2) She then had Mr.
21 Staat drive her to where her car was parked near Katie O’Keefe’s. (Trans at 35:12)

25 Ms. Disney attempted to continue a relationship with Mr. Staat after the events of
26 February 19, 2018. (Trans. at 73:23). She was suffering from addiction and blamed
27 herself Mr. Staat sexually assaulting her on February 19, 2018, and believed at the time
28

1 that establishing a relationship would “fix” the matter. (Trans. at 73:23). Mr Staat had
2 sexual intercourse with Ms. Disney several additional times after February 19, 2018, and
3 during these instances Ms. Disney was incapacitated by alcohol and drugs, and none of
4 the instances of sexual intercourse were consensual. (Trans. at 17:60) After several
5 weeks, Ms. Disney ended her relationship with Mr. Staat as she was ashamed and
6 disgusted by the relationship and believed what Mr. Staat had done to her was wrong.
7 (Trans. at 73:23).
8

10 At the termination hearing, Mr. Staat testified that Ms. Disney did not seem
11 intoxicated to him on the night of February 19, 2014, and that the instance of sexual
12 intercourse was consensual. (Trans. at 244:12).
13

14 In support of his argument that when he had sexual intercourse with Ms. Disney
15 she consented, Mr. Staat offered as an exhibit a book containing what he purported to be
16 print-outs of text message exchanges between himself and Ms. Disney from around the
17 time-frame of February 19, 2014. (Trans. at 21:44). Counsel for Mr. Staat first offered
18 these print-outs during the cross-examination of Ms. Disney, and had Ms. Disney read
19 selected messages from the print-outs. (Trans. at 45:6). Ms. Disney did not have any
20 recollection of sending the text messages and was unable to lay any foundation for them.
21 (Trans. at 45:9)
22
23
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25 When the trial court subsequently took testimony from Mr. Staat, he testified that
26 he created the text messages print-outs by downloading them from his phone by the
27 means of a phone application. (Trans. at 199:16) The print-outs were not original text
28

1 messages between Ms. Disney and Mr. Staat. Mr. Staat testified that the text messages
2 were true accurate representations of the text exchanges between himself and Ms. Disney,
3 and the trial court allowed pages of text messages print-outs selected by Mr. Staat to be
4 offered into evidence, on the basis that Mr. Staat's testimony had laid sufficient
5 foundation for their entry. (Trans. at 198:13, Trans. at 221:1)
6

7 Ms. Disney read selected portions from the text messages during her cross-
8 examination before they had been admitted into evidence. (Trans. at 45:6) She also was
9 required to read aloud for the court record printouts text messages that were never
10 admitted into evidence. (Trans. at 45:6, Trans. At 221:1)
11

12 Tammy Mercer, co-worker to Ms. Disney, testified that she remembered Ms.
13 Disney calling her in February of 2014, upset that she had sexual intercourse with a man
14 she did not know well. (Trans. at 81:24) Ms. Disney informed her she did not remember
15 the details of the sexual encounter due to her level of intoxication and was upset about
16 what had happened. Id.
17

18 Additionally, under the terms of her 2016 stipulated parenting plan Ms. Disney
19 participated in family therapy with Cindy Miller, and Ms. Disney informed Cindy Miller
20 of the circumstances leading to T.P.D.C.'s conception and how she been intoxicated to the
21 point of incapacity at the time. (Trans. at 41:2)
22

23 Ms. Disney began participating in alcoholics anonymous to treat her substance
24 abuse in May of 2015, with Laura Kamura acted as her AA sponsor since that time.
25 (Trans. at 154:4) . At the termination hearing, Ms. Kamura proposed to offer testimony
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1 about Ms. Disney's resentment toward Mr. Staat that she witnessed through Ms. Disney's
2 participation in the AA program. (Trans. at 162:22) Ms. Kamura assisted Ms. Disney
3 with working through step four in the AA program, a step where participants take
4 personal inventory of themselves by working through their resentment, the cause of it,
5 and their role in the situation. Id. Ms. Disney completed a separate step four in
6 September or October of 2015 specifically concerning her resentment towards Mr. Staat.
7 (Trans. 164: 11).

10 The trial court declined to take this testimony, on the grounds the record already
11 contained statements from the child-custody matter that did not include any assertions by
12 Ms. Disney that Mr. Staat had raped her. (Trans. 158:23).

14 Ms. Disney began dating Jesse Caton in May of 2014. (Trans. at 130:6) Mr. Caton
15 testified that he and Ms. Disney confronted Mr. Staat at Butterfly Herbs in Missoula,
16 Montana during Ms. Disney's pregnancy in 2014 and urged him to abandon an effort to
17 obtain a parental interest in T.P.D.C. due to the circumstances surrounding her
18 conception. (Trans 340:2) Mr. Caton told Mr. Staat he had, "practically raped
19 Tami." (Trans. 342:2)

22 April 7th, 2018, the District Court issued a written order denying the Petition to
23 terminate Mr. Staat's parental rights. The District Court held that Ms. Disney had not
24 established by clear and convincing evidence that the sexual intercourse that caused the
25 conception of T.P.D.C. was non-consensual.
26

28 **SUMMARY OF ARGUMENT**

1 The trial court's decision to deny Ms. Disney's petition to terminate Mr. Staat's
2 parental rights was erroneous for the following reasons: 1) the trial court did not apply
3 Montana's definition of consent or incapacity when making its determination that the
4 sexual intercourse in question was non-consensual, 2) the trial court classified the
5 termination petition as a sub-part of the custodial determination matter between the
6 parties, rather than as a separate matter, and relied upon facts for the custodial matter
7 when making its determination, 3) the trial court did not apply Montana's rape shield
8 statute to the termination hearing and allowed evidence of Ms. Disney subsequent sexual
9 conduct with the perpetrator into evidence, and 4) the trial court relied upon Mr. Staat's
10 exhibit of text message print-outs in making its determination, which were allowed into
11 evidence without sufficient foundation to establish their authenticity, in violation of the
12 Montana Rules of Evidence.
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17 **STANDARD OF REVIEW**

18 The appropriate standard of review of the district court's decision to deny Ms.
19 Disney's petition to terminate Mr. Staat's parental rights is de novo.
20

21 The trial court misapplied Montana law it did not follow Montana's definitions of
22 consent and incapacity, as defined by statute. The trial court misapplied Montana law in
23 its decision to allow evidence of Ms. Disney's subsequent sexual conduct with the
24 perpetrator. The interpretation of a statute is a matter of law, and whether the district
25 court interpreted and applied a statute correctly is reviewed de novo. State v. Triplett,
26 2008 MT 360, ¶ 13, 346 Mont. 383, 195 P.3d 819.
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Additionally, the trial court's decision to allow Mr. Staat's text message print-outs was based on an incorrect interpretation of the Montana rules of evidence pertaining to originals and instances when duplicates are admissible in lieu of the original. The trial court's misapplication of matters of law requires de novo review.

ARGUMENT

The trial court's decision to dismiss Ms. Disney's petition for the termination of Mr. Staat's parental rights should be set aside due to: 1) the trial court's failure to apply Montana's definition of consent to sexual intercourse and Montana's definition of incapacity, 2) incorrect classification of the termination matter as part of the custody determination matter between the two parties, 3) the trial court's misapplication of Montana's rape shield statute to the matter, and 4) the trial court's misapplication of the Montana rules of evidence when admitting Mr. Staat's exhibit of text message print-outs into evidence.

I. The trial court failed to apply Montana’s definitions of incapacity and consent to sexual intercourse

The trial court’s Order fails to apply Montana’s definition of consent to sexual intercourse and also fails to take into account that Ms. Disney was incapacitated when Mr. Staat had sexual intercourse with her. Under Montana law, an individual intoxicated to the point of incapacitation cannot consent. “. . .[T]he victim is incapable of consent because the victim is mentally disordered or incapacitated . . .” Mont. Code Ann. § 45-5-501(1)(b)(i). Furthermore Montana law defines mental incapacitation as “a person

1 is rendered temporary incapable of appreciating or controlling the person's own conduct
2 as a result of the influence of an intoxicating substance.” Mont Code. Ann. §
3 45-2-101(41).
4

5 Montana caselaw further states that Mont. Code Ann. § 45-2-101(41) provides that
6 an individual is mentally incapacitated when, due to the influence of an intoxicating
7 substance, she is temporary incapable of appreciating or controlling her conduct. State v.
8 Gould, ¶ 28, 273 Mont. 207, 902 P.2d 535. Mental incapacity, as defined by Mont.
9 Code. Ann. §45-2-101(35), includes voluntary intoxication. Id. The statute by its terms
10 does not differentiate between voluntary intoxication and involuntary intoxication and is
11 not limited to involuntary intoxication. Id.
12
13

14 Additionally, under Montana law, a current or previous dating or social or sexual
15 relationship by itself or the manner of dress of the person involved with the accused in
16 the conduct at issue does not constitute consent. Mont. Code Ann. § 45-5-501(1)(a)(ii).
17

18 Ms. Disney testified she was unable to consent to sexual intercourse due to her
19 level of intoxication as well as testified she was under the influence of alcohol and
20 prescription drugs. She stated she was under the influence of opioids, had not eaten
21 much that day, and that she had consumed large amounts of Cold Smoke beer. She was
22 passing in and out of consciousness and came to a state of awareness while laying in Mr.
23 Staat's bed with him on top of her, having sexual intercourse with her, with no
24 recollection of how she came to be there. (Trans. at 33:19, Trans. at 34:15) She did not
25 remember anything after that until waking up the next morning. Ms. Disney's testimony
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1 established that she was incapacitated when Staat had sexual intercourse without consent
2 with her on February 19, 2014.

3 However, the trial court's order states, "Tami did not testify that her sexual
4 intercourse with Brandon Staat was without her consent. Rather she testified she doesn't
5 remember what proceeded the act of intercourse. Her legal assertion that Brandon
6 perpetrated sexual intercourse without consent is grounded on her contention that she was
7 'blacked out' due to intoxication and so doesn't remember most of the events of the night
8 of February 19, 2014." (Order at 6:24).

9
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11 The trial court's order further states "Tami has presented no evidence to excuse her
12 from the concept that persons who are deliberately intoxicated are responsible for the
13 consequences of her their voluntary acts." (Order at 7:11). The trial court ultimately
14 held, "[t]here is no clear and convincing evidence that the act of sexual intercourse that
15 caused T.P.D.C. to be conceived was without consent as required by Mont. Code Ann. §
16 41-3-801(2)(b). (Order at 8:2)

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18
19 Contrary to the conclusions in the trial court's order, Ms. Disney did not testify that
20 she committed a voluntary act of sexual intercourse with Mr. Staat. She testified that Mr.
21 Staat had sexual intercourse with her while she was incapacitated and that she had
22 difficult remembering everything that directly proceeded and followed the incident.
23
24

25 The trial court's order misapplies Montana law and does not take into account Ms.
26 Disney's incapacitation. Nor does it apply Montana's definition of consent to sexual
27 intercourse.
28

1 **II. The trial court erroneously classification Ms. Disney’s termination petition**
2 **with T.P.D.C.’s custody matter as part of the same action**

3 Ms. Disney petitioned the trial Court to terminate Mr. Staat’s parental rights in
4 accordance with the “Child Abuse and Neglect” provision for termination of parental
5 rights found in Mont. Code Ann. § 41-3-801, et al. A termination proceeding is a separate
6 action with a separate prayer for relief and is distinguished from a parenting plan action.
7 Accordingly, Ms. Disney’s petition for the termination of Staat’s parental rights should
8 have been adjudicated as a separate proceeding.
9

10
11 However, instead of creating a separate cause of action for the termination
12 proceeding, the trial court classified the petition to terminate parental rights as part of the
13 custody determination matter involving T.P.D.C. The court viewed the two matters as
14 subparts of the same matter and relied upon the record in the custody matter when
15 adjudicating the termination petition and making its decision of whether the sexual
16 intercourse that caused the conception of T.P.D.C. was nonconsensual
17

18
19 At the termination hearing, the trial court stated that Ms. Disney, there was nothing
20 in the court file that suggested the conception was the product of a rape and referenced
21 the custody matter, reading directly from the DR-file. (Trans. 158:23). The Court
22 concluded that as there was a history of resentment between the parties, but there were no
23 prior allegations of rape in the custody matter the, the Court would not hear testimony
24 from Laura Kamura that Ms. Disney had informed her her resentment towards Mr. Staat
25 came from him raping her. Id.
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1 The trial court's classification of the two matters as one is inconsistent with the
2 procedure employed for adjudicating another termination petition in accordance with
3 Mont. Code Ann. §41-4-802 et seq. filed in Montana's Fourth Judicial District. In 2018,
4 another termination petition was filed in Montana's Fourth Judicial District, Department
5 4, initially in a DR matter, and the trial court ordered the petition to be withdrawn and re-
6 filed in a separate proceeding. (Exhibit 1: Petitioner's Opposed Motion to: Alter or
7 Amend Judgment, or Grant New Trial and Brief in Support 4:20).
8

9
10 The parties' custody matter involving T.P.D.C. should not have been made part of
11 the record or relied upon by the trial court in making its determination of whether the
12 sexual intercourse causing the conception of T.P.D.C. was consensual. Whether the
13 sexual intercourse that caused the conception of T.P.D.C. was non-consensual is not
14 dependent upon facts found in or the outcome of T.P.D.C.'s custody matter. The custody
15 matter and the termination matter should have been adjudicated as separate proceedings.
16
17

18 **III. The trial court failed to apply Montana's rape shield statute to the**
19 **termination hearing**
20

21 The trial court heard evidence of Ms. Disney subsequent sexual conduct with Mr.
22 Staat and used this evidence in its final determination. Montana's rape shield statutes are
23 explicit that evidence concerning the sexual conduct of the victim is inadmissible. Three
24 exceptions apply, and these exceptions pertain to past sexual conduct.
25

26 "Evidence of the sexual conduct of the victim is inadmissible in prosecutions under
27 this part except evidence of the victim's past sexual conduct with the offender or
28

1 evidence of specific instances of the victim's sexual activity to show the origin of semen,
2 pregnancy, or disease that is at issue in the prosecution." Mont. Code Ann. §
3 45-5-511(2). When a proponent intends to offer evidence of the sexual conduct of the
4 victim, the Court has an affirmative obligation to determine the admissibility of evidence
5 prior to trial. "If the defendant proposes for any purpose to offer evidence described in
6 subsection (2), the trial judge shall order a hearing out of the presence of the jury to
7 determine whether the proposed evidence is admissible under subsection (2)." Mont.
8 Code Ann. § 45-5-511(3). This pre-trial notice ensures fairness of proceedings and
9 eliminate surprise.
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13 The trial court heard evidence of Ms. Disney's subsequent sexual conduct with the
14 perpetrator, and relied upon this evidence in making its determination that the sexual
15 intercourse causing the conception of T.P.D.C. was not non-consensual. The trial court's
16 order states, "Tami and Brandon continued to correspond on the 20th and thereafter
17 continued to date and engaged in sexual intercourse at least one more time." (Order:
18 5:19). The order references subsequent sexual encounter/s between Ms. Disney and Mr.
19 Staat as evidence in support of its determination that the February 19, 2014 sexual
20 intercourse between Ms. Disney and Mr. Staat was consensual. Additionally, this
21 determination is contrary to Ms. Disney's testimony that subsequent sexual encounters
22 between Mr. Staat and herself were also non-consensual.
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26 Were evidence of any subsequent sexual conduct of Ms. Disney to be admissible at
27 the termination hearing, the trial court should have made a determination on the
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1 admissibility of this evidence, prior to trial pursuant to Mont. Code Ann. §45-5-511(3).
2 Accordingly, the trial court should not have admitted evidence of any subsequent sexual
3 conduct of Ms. Disney with Mr. Staat.
4

5 **IV. The trial court erroneously admitted into evidence Mr. Staat's exhibit of**
6 **purported text message print-outs**

7 Mr. Staat's laid insufficient foundation for his exhibit of purported text messages
8 print-outs between himself and Ms. Disney. Furthermore, this exhibit was not the
9 original, nor was it an exact duplicate, and as question as to the authenticity of the
10 original existed, a duplicate should not have been admissible in any case.
11

12
13 The requirement of authentication or identification as a condition precedent to
14 admissibility is satisfied by evidence sufficient to support a finding that the matter in
15 question is what its proponent claims. Rule 901(a), M.R.Evid.
16

17 To prove the content of a writing, recording, or photograph, the original writing,
18 recording, or photograph is required, except as otherwise provided by statute, these rules,
19 or other rules, or other rules applicable in this state. Rule 1002, M.R. Evid. A duplicate,
20 or copy of an entry in the regular course of business as defined in Rule 1001(5), is
21 admissible to the same extent as an original unless: (1) a genuine question is raised as to
22 the authenticity of the original . . ." Rule 1003, M.R. Evid.
23
24

25 The trial court allowed the admission of Mr. Staat's exhibit of selected print-outs of
26 what Mr. Staat purported to be text messages between himself and Ms. Disney. (Trans.
27 at 221:1) These print-outs were not the original text messages. (Trans. at 216:16). The
28

1 originals would have been found on Mr. Staat's and Ms. Disney's phones that were used
2 in the initial communications. Mr. Staat downloaded the text messages off his phone by
3 the means of an application. (Trans. at 199:16). Mr. Staat had the opportunity to alter the
4 text messages prior to the text messages being printed-out and provided to the Court.
5 (Trans. at 201:14).

7 Mr. Staat's text message printouts contained text messages that referenced
8 additional text messages not found in the printouts, suggesting the printouts were
9 incomplete. (Trans. at 216:16). Additionally Mr. Staat's text message printouts
10 contained numerous hand-written annotations.
11

13 As the proponent of the evidence, Mr. Staat held the burden of establishing its
14 authenticity. Ms. Disney testified that she did not recall sending the text messages
15 depicted in proffered exhibit. (Trans. at 45:9) Mr. Staat's exhibit was admitted into
16 evidence solely on Mr. Staat's testimony that the exhibit accurately reflected the original
17 text messages. Insufficient foundation was laid for these text messages print-outs to be
18 admitted into evidence.
19

21 A genuine question exists as to the authenticity of the original in this instance; Ms.
22 Disney did not remember sending any of the text messages. And as a question exists as
23 to whether the text messages ever occurred or what they originally depicted, the originals
24 were required to pursuant to Rule 1003, and duplicates were not admissible in lieu of the
25 original. Additionally, even if Mr. Staat had established his proffered exhibit did reflect
26 the original text messages, the print-outs were not duplicates of the original, as the form
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1 the text messages were depicted in would have been altered and the print-outs appeared
2 to be missing text messages.

3 Despite the inadmissibility of the evidence and it lacks of indica of reliability, the
4 trial court relied upon these exhibits when making its determination on whether Mr.
5 Staat's act of sexual intercourse with Ms. Disney was consensual. (Order at 7:5).
6 Specifically, the trial court's Findings of Fact 17, 18, and 19 reference specific text
7 messages purportedly between Ms. Disney and Mr. Staat wherein Ms. Disney informed
8 Mr. Staat that she wanted to go home with him, that she liked him, and that while "things
9 had gone further within him than she planned last night but she wasn't going to stress
10 about it." (Order at 5:17). The trial court's order next stated, "Tami's contention that she
11 was 'blacked out' due to intoxication is not supported by her own contemporaneous and
12 next day text messages." (Order at 5:24).
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17 Mr. Staat's exhibit of purported text message printouts between himself and Ms.
18 Disney should not have been admitted into evidence or relied upon by the trial court in
19 making its determination, as insufficient foundation was laid pursuant to Rule 901(a) and
20 the exhibit was admitted in violation of Mont. R. Evid. 1002 and 1003.
21


22 **CONCLUSION**

23 First and foremost, the trial court did not apply Montana's definitions of incapacity
24 or consent to sexual intercourse to the facts before it. This misapplication of law
25 warrants reversal. Additionally, the trial court improperly classified Ms. Disney's
26 termination petition as a subpart of T.P.D.C.'s custody determination, erroneously
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1 admitted evidence of Ms. Disney's subsequent sexual conduct with the perpetrator of her
2 assault, and erroneously admitted Mr. Staat's exhibit of text message printouts in
3 violation of the Montana Rules of Evidence.
4

5 Based upon the foregoing arguments, the district court's dismissal of Ms. Disney's
6 petition to terminate Mr. Staat's parental rights should be reversed, or, alternatively,
7 remanded for a new trial.
8

9 DATED this 28th day of December, 2018

10 
11 Kathleen A. Molsberry
12 Lowy Law, PLLC

13 **CERTIFICATE OF SERVICE**

14
15 I certify that on the 28th day of December, 2018, I filed the foregoing with the
16 Clerk of the Montana Supreme Court; and that I have mailed it to the Clerk of the District
17 Court and each attorney of record as follows:
18

19 Andre Gurr, Attorney for Appellee, Brandon-Staat
20 Garden City Law, PLLC
21 1917 S. Higgins Ave.
22 Missoula, Montana 59801

23 and

24 Tami Disney, Appellant

25 
26
27
28

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.



APPENDIX

Petitioner’s Opposed Motion to 1: Alter or Amend Judgment or 2: Grant New Trial
and Brief in Support.....24

Findings of Fact, Conclusions of Law and Order.....33