
IN THE SUPREME FOR THE MONTANA

No. DA 18-0611

IN THE MATTER OF:

S.Y.,

A Youth In Need Of Care.

APPELLANT'S OPENING BRIEF

On Appeal from Montana's Fourth Judicial District,
Missoula County, The Honorable Karen S. Townsend Presiding

APPEARANCES:

ATTORNEYS FOR DEFENDANT AND
APPELLANT:

GREGORY D. BIRDSONG
Birdsong Law Office, PC
P.O. Box 5899
Missoula, MT 59806

ATTORNEYS FOR PLAINTIFF AND
APPELLEE:

Timothy C. Fox
Tammy Plubell
Montana Attorney General's Office
P.O. Box 201401
Helena, MT 59620-1401

Kirsten Pabst
Missoula County Attorney's Office
200 West Broadway
Missoula, MT 59801

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STATEMENT OF THE ISSUES

1. Whether the Montana putative father registry statutes deprived K.P. of Equal Protection and Due Process of Law.

2. Whether the Montana putative father statutes, as implemented by the Department of Health and Human Services (the Department) violate the K.P.'s due process rights.

STATEMENT OF THE CASE

Father and Appellant, K.P., appeals the Order, entered September 25, 2018 by the Fourth Judicial District Court, Missoula County, terminating his parental rights to S.Y. (5 years old). (Appendix A) The rights of the child's birth mother, K.Y. and the child's presumptive father, A.Y., were subsequently terminated as well. (DC117, DC125)

Procedural History

The case originated February 24, 2015, when the Missoula County Attorney filed a Petition for Emergency Protective Services (EPS), Adjudication as Youth In Need of Care (YINC), and Temporary Legal Custody (TLC) on behalf of the Department of Health and Human Services (the Department). (DC001) The Department alleged S.Y. was, or was in danger of being, abused or neglected within the meaning of Mont. Code Ann. §41-3-102. (*Id.*) The Petition was

supported by the Affidavit of Child Protection Specialist (CPS) Marc Elich.
(DC001, Attachment)

The district court granted the Department's Petition and set a show cause hearing for March 10, 2015. (DC003) The court appointed a Court Appointed Special Advocate Volunteer (CASA Volunteer) for the child, S.Y., and appointed counsel for the biological mother, K.Y. and the presumptive father, A.Y. through the Office of the State Public Defender (the OPD)¹ (*Id.*) On the district court's order, an Intervention Conference before the Standing Master preceded the show cause hearing. (DC006, DC007)

The district court held the show cause hearing on March 10, 2015. (DC008) The birth mother, K.Y., stipulated to CLC and adjudication of S.Y. as YINC. (*Id.*) K.Y. also stipulated to a treatment plan, which was submitted and approved by the court. (*Id.*, DC009) The district court was advised the putative father, A.Y., was incarcerated and that the court would need to order the OPD to provide counsel. (DC008)² The court set a show cause hearing regarding A.Y. for April 7, 2015 and a status conference regarding K.Y. for June 2, 2015. (*Id.*)

¹ At the time, A.Y. was presumed to be the biological father of S.Y. It was subsequently determined K.P. was, in fact the child's biological father.

² The OPD had been advised that A.Y. was deceased and had, therefore, not provided counsel for him pursuant to the court's previous order. A.Y. was subsequently determined to have been incarcerated, not deceased.

A.Y.'s show cause hearing was continued to May 5, 2015. (DC013, DC015)

The court was advised, through counsel, that A.Y. stipulated to adjudication and TLC, and was in the process of reviewing a proposed treatment plan. (DC015)

September 5, 2017, at a status conference, the State advised the district court that both A.Y. and K.Y. had recently stated that A.Y. was not the natural father of S.Y. and asked K.Y. – who was present at the hearing – to identify S.Y.'s biological father. (DC052, 9/4/2017 Hrg. Tr. 105:2-14) K.Y. said she could not “pinpoint who it was” and that, “there were several guys in my life at that time.” (9/4/2017 Hrg. Tr. 105:15-21) Counsel for A.Y. advised he would not object to a paternity test, and the State said it would work on notifying putative fathers. (DC052) September 6, 2017 the court ordered A.Y. to take a paternity test.

October 25, 2017 the State filed a paternity test that established A.Y. was not the biological father of S.Y. (DC060) February 27, 2018 the district court was advised that both K.Y. and A.Y. stated they knew the identity of S.Y.'s biological father. (DC069)

March 23, 2018 the State filed a Petition for Termination of Mother's and Father's Parental Rights in which it asked the district court to terminate the parental rights of “K.Y., A.Y., K.P., ‘Jimmy,’ ‘Dave,’ ‘Chris,’ and any and all putative fathers of S.Y.” (DC072) The State advises the district court that, “The mother informed the parties that there are multiple putative fathers of the Youth:

K.P., Jimmy, Dave, Chris, and another unidentified man who she did not have a name for. CFS is in the process of attempting to make contact with putative fathers and establish paternity.” (*Id.*, p13) The Petition asserted that the district court, “may terminate the parent-child legal relationship between the Youth and any and all putative fathers, including K.P., Jimmy, Dave, and Chris, for abandonment.” (*Id.*, p12)

April 12, 2018 the State requested the district court appoint counsel for K.P. (DC076) The State asserts that K.Y., “identified K.P. as being a possible father of the youth nearly three years into the case and at a time when CFS was preparing to file a petition for termination of parental rights.” (*Id.*) The court entered an order appointing counsel for K.P. and setting a hearing for the termination of “any and all putative fathers’ parental rights, including K.P.” for May 14, 2018. (DC077)

April 27, 2018 upon motion by the State, the district court vacated the termination hearing to allow time to get the results from a paternity test K.P. had submitted and set the hearing as a status hearing. (DC080, DC081) At the May 14, 2018 status hearing, K.P. advised the court the paternity test had established he was the biological father of S.Y. (DC082) The court set a status conference for June 19, 2018. (*Id.*)

May 25, 2018, upon the State’s motion, the court ordered an intervention conference prior to the June 19, 2018 status hearing. (*Id.*) K.P. was present at the

intervention conference, at which he asserted his desire to establish a relationship with S.Y. (DC088) At the June 19, 2018 status hearing, the court set a termination hearing for K.P.'s parental rights to S.Y. for August 27, 2018 and a termination hearing regarding K.Y. and A.Y. for September 10, 2018. (DC086) July 2, 2018 the district court granted the unopposed motion of the maternal grandparents, G.E. and J.E. to intervene as parties in the matter. (DC090) July 10, 2018 the State filed the paternity test establishing K.P. as the biological father of S.Y. (DC093)

At the conclusion of the August 27, 2018 termination hearing, the district court directed counsel to file briefs by September 5, 2018. (DC098) The maternal grandparents and counsel for the child filed briefs supporting termination of K.P.'s parental rights. (DC101, DC102) K.P. did not file a brief. September 25, 2018 the district court entered its order terminating K.P.'s parental rights to S.Y. supported by findings of fact and conclusions of law. (DC104) The court entered a final judgment on September 28, 2018. (DC104.1) K.P.'s Notice of Appeal was filed October 26, 2018. (DC112.1)

Facts of the Case

Status Hearing – September 5, 2017. At the September 5, 2017 hearing the question of S.Y.'s paternity was raised for the first time. (9/5/2017 Hrg. Tr.) The State told district court,

[I]t's my understanding A.Y. recently told CFS that he is not the biological father of S.Y. now that we are two plus years into the case. And I believe Rebecca asked the mom about that today and she also said that he's not the father. No one has ever mentioned that before and that's typically a question that we ask at the beginning of cases.
(9/5/2017 Hrg. Tr. 105:3-9)

K.Y. was present at the hearing and, the following exchange took place between her and counsel for the State:

MS. HENKEL:And I would also ask the mother here today if she can give us other possible fathers of S.Y.

MOTHER: I'm not 100 percent sure, I was up in Great Falls. I can't pinpoint who it was.

MS. HENKEL: Do you have any ideas at all beyond A.Y.?

MOTHER: I have been with -- when I was in Great Falls there were -- I did my own thing and there were several guys in my life at that time.

MS. HENKEL: Can you name who the several guys were?

MOTHER: I remember there was a Dave, a Kyle and a Chris. And I can't remember the other ones.

MS. HENKEL: Do you have any last names?

MOTHER: I don't remember them.

MS. HENKEL: Any contact information or like work info for any of them?

MOTHER: No, I lost contact with them when I left Great Falls.

MS. HENKEL: Is it possible that A.Y. is the father?

MOTHER: No, he wasn't present.

Hearing on Extension of TLC – February 27, 2018. At the February 27, 2018 hearing on the State's fourth motion to extend TLC, the State reported a belief that K.Y. and A.Y. knew the identity of S.Y.'s biological father. (2/27/2018 Hrg. Tr. 127:24-128:9) When questioned, K.Y. was slightly more forthcoming than before, regarding who might be S.Y.'s biological father:

MS. HENKEL:Could we have that name today, please?

MOTHER: I know of a few guys that I was with up in Great Falls.

I don't know like the specific one. It was like three.

MS. HENKEL: Can you give me the three names.

MOTHER: I know Kyle. I know a guy named Jimmy and I can't remember the last one.

MS. HENKEL: Do you know the last names of Kyle and Jimmy?

MOTHER: Kyle is Kyle Preston. And Jimmy, I don't. He never told me what his last name was.

MS. HENKEL: And you believe they are in Great Falls?

MOTHER: Yes.

MS. HENKEL: Do you have any contact information for any of them?

MOTHER: No, I have not contacted them ever since I moved to Missoula.

MS. HENKEL: Okay. Any idea where they live or work?

MOTHER: No.

(2/27/2018 Hrg. Tr. 129:10-130:6)

Status Hearing – March 13, 2018. The State and counsel for the child made the following report to the district court at the March 13, 2018 status hearing:

MS. ALTHAUSER: Your Honor, I'll mention I talked with the grandmother where S.Y. is placed and she was confident in one of the names that K.Y. gave last week. Now of course it's slipped my mind, as I need to say it but --

MS. HENKEL: K.P.?

MS. ALTHAUSER: Yeah.

MS. HENKEL: That's the only full name we have.

MS. ALTHAUSER: And then he was a pretty dangerous person, and so I think it would be important to try and find him specifically in a safe manner so that he could be specifically -- his rights terminated.³

(3/13/2018 Hrg. Tr. 134:19-135:18)6)

³ This was a false statement. Evidence would eventually make it clear that K.P. was not a dangerous or violent person.

Status Hearing – May 14, 2018. K.P. was present, and represented by counsel, at the May 14, 2018 status hearing. (DC082) K.P.’s attorney advised the district court that a paternity test had proven K.P. was the biological father of S.Y. (5/14/2018 Hrg. Tr. 138:9-11) S.Y.’s attorney told the court they were having difficulty determining if, when, and to what extent K.Y. and her family established contact with K.P. regarding his paternity of S.Y. (*Id.* 141:12-25)

Termination Hearing – August 27, 2018. K.P. was present for the Termination Hearing. (8/27/2018 Hearing Tr. 5:16)

Biological Father, K.P. K.P. was called as the first witness for the State. (*Id.* 158:2) K.P. testified he became romantically involved with K.Y. in 2012, that K.Y. was married to A.Y. – who was in “prison or jail,” and that K.Y. and her son lived with K.P. during the time of the relationship. (*Id.* 159:9-160:8) K.P. said that, at the time he started seeing K.Y. she was dating another one of the men identified by K.Y. as a putative father of S.Y. (*Id.* 181:24-182:2) K.P. said the relationship lasted less than nine months, and ended in April 2013. (*Id.* 160:9-19) K.P. testified he met K.Y.’s parents twice during the relationship. (*Id.* 160:24-162) K.P. testified he did not know where K.Y.’s parents lived, and that K.Y. never discussed her parents with him. (*Id.* 162:9-163:5)

K.P. testified he found out K.Y. was pregnant shortly after the relationship began. (8/27/2018 Hrg. Tr. 164:4-14) K.P. said that he accompanied K.Y. to get a

blood test and, when the results indicated she was pregnant, “I went straight to my mother and told her about it.” (*Id.* 164:4-24) K.P. testified he was “excited to be a father. Excited to give my mom her first grandkid.” (*Id.* 185:8-10) K.P. said he attended as many of K.Y.’s prenatal examination as his work allowed. (*Id.* 164:25-165:2) K.P. estimated he had gone to five or six appointments including her first two ultrasounds. (*Id.* 185:16-185:12) K.P. said he took both sonograms to his mother as soon as he got them and, when he saw the second sonogram he “went straight to my mom, excited to show her the picture of her granddaughter’s first picture of her face.” (*Id.* 187:12-188:4)

K.P. denied knowledge of K.Y.’s prior substance abuse issues, and said he didn’t see signs of it during the relationship. (*Id.* 165:5-14) K.P. said he and K.Y. started arguing because he wanted her to divorce A.Y., and that he didn’t remember exactly how he found out she was leaving. (*Id.* 165:21-25) K.P. testified he was at work when someone “called or something.” (*Id.* 166:2-5) K.P. said he went home to find K.Y. “packing her stuff up and leaving.” (*Id.* 166:5-7) “And she said she had to get to Missoula because something was seriously wrong with her father. He was sick and dying.” (*Id.* 166:8-10)

K.P. testified that, a month or two later, he found out from a mutual friend or acquaintance that K.Y. didn’t go to Missoula and that S.Y. had been born.

(8/27/2018 Hrg. Tr. 167:1-11) “She was staying in Great Falls, which at the time I didn’t know.” (*Id.*) K.P. said that, when he found out S.Y. was born:

I had went down to the CFS (Child and Family Services) office and tried making a report to try and find her. They said to go to the police station to make a report. I went to the police station and they did not make a report because "your girlfriend dumped you." We don't need to make a report.
(*Id.* 167:21-25, see also *Id.* at 190:20-191:2)

K.P. testified he tried to call K.Y. and to contact her through K.Y.’s friends and through Facebook:

The first -- when I sent her a friend request she sent a message asking me why and I mentioned we had a daughter together and for at least two weeks after that, sent a message here and there to try and communicate with her. She never responded back.
(8/27/2018 Hrg. Tr. 168:13-18, 190:15-16, App. B-002, Pet. Exh. 1)

K.P. testified that, K.Y. did not respond to his messages and that, after about 2 weeks, he stopped trying to contact her. (*Id.* 170:2-22) When asked if he offered to provide financial support for S.Y., K.P. responded, “No. I just wanted to at least get to meet her, find out if she's even mine, because prior to that she had said it wasn't mine.” (*Id.* 170:23-171:3) K.P. testified that, despite K.Y.’s denial, he had believed S.Y. was his child at that time. (*Id.* 171:7-8) K.P. said he occasionally checked K.Y.’s Facebook profile but, “but there was never any evidence of S.Y. in any of that.” (*Id.* 172:2-5)

K.P. testified that he did not talk to an attorney or go to the Cascade County Self Help Law Center. (8/27/2018 Hrg. Tr. 172:6-12) When asked if he had called the Child Support Enforcement Division, K.P. said, “ I thought when I went down to the CFS office that's what I was doing, rather than making a phone call I was there in person.” (*Id.* 172:14-16) When asked if he registered with the putative father registry, K.P. responded, “I didn’t know that existed until this case started.” (*Id.* 172:20-22) K.P. testified that neither the police nor CFS told him about the putative father registry and that, if had known about it, he would have registered. (*Id.* 191:3-9) K.P. said that – after trying to contact K.Y. by phone, through friends, going to the police and CFS – he didn’t pursue other efforts to contact K.Y. because he didn’t know anything else he could do and, “I believed if I continued to bother her it would be known as harassment.” (*Id.* 191:10-13, 173:3-6)

K.P. testified that he was completely ignorant of the agencies and procedures for asserting his parental rights. (8/17/17 Hrg. Tr. 230:8 et seq.) When asked if he had taken steps to establish a parenting plan, K.P. responded, “I did not know how to go about that. From my understanding, parenting plans are like court ordered from a judge. When we look some up online it was this judge for this case and this was the parenting plan and when we looked into it further, it seemed like we had to have a judge issue a parenting plan in the first place. That you don't just apply for one.” (*Id.* 230:10-16) K.P. said he didn’t know about the family law self help

center, observing, “Seems like they could have told me about that in the CFS office when I went there in Great Falls. I think maybe they could have gave me some information that might have helped.” (*Id.* 230:21-24)

K.P. testified that K.P. told him at one point that he wasn’t S.Y.’s biological father. (8/27/2018 191:14-16) K.P. said he didn’t think K.P. was “cheating on me at the time,” but “there was question about it.” (*Id.* 191:17-21) As time passed, K.P. said he didn’t continue to believe S.Y. was his child, “I think it would be more like hoping at that point....I started to believe she wasn’t mine towards the end.”

K.P. testified he had been employed for the past five years and owned his own home, and he would have been able to provide financial support for S.Y. if he had been involved with her. (8/27/2018 Hrg Tr. 174:4-12) K.P. testified that he did not know of any way he could have provided financial support for S.Y. (DC205:9-12) K.P. said did not know where S.Y. was but, had he been certain she was his child and known of a way to financially support her during the five years since her birth, he would have done so, “Definitely.” (*Id.* 15-18) K.P. testified that, before K.Y. left and broke all contact with him, he had planned to financially support S.Y. (*Id.* 206:19-21) K.P. said, “I thought we were going to be a family. I didn’t expect it to go the way it did.”

K.P. testified that, when he had the opportunity to provide for S.Y., he had done so. (8/27/2018 Hrg. Tr. 242:6 et seq.) During the time K.Y. lived with him, K.P. said he had provided a stable home, and financial support for K.Y. and her son. (*Id.*)

When asked by counsel for the maternal grandparents why he did not financially support S.Y. after K.Y. took her away, K.P. explained his quandary, “I did not have a daughter to that point. It was no proof that she was mine. I was told she was not mine. And A.Y.'s name was on the birth certificate, making it his daughter and I had no choice in the matter.” (8/27/2018 Hrg. Tr. 228:25-229:5) K.P. agreed he had not sought legal counsel, saying, “I didn't know where to go or what to do.” (*Id.* 229:6-8)

K.P. said he did not feel it was in S.Y.'s best interest for him to aggressively seek K.Y. and pursue a parental relationship against the resistance of K.Y. (*Id.* 227:19-24) A.Y. and disagreed with counsel's characterization of his testimony as, “not having a relationship was a tradeoff for not causing conflict,” noting the possible criminal liability of doing so: “I figured if I continued to try and harass and stalk and find my daughter, I would be facing charges. And then today I wouldn't be sitting here on this case. I would be having another case.” (*Id.* 227:25-228:5) In response to questioning about his responsibility to have taken further steps, K.P. asked, “What steps would I have taken? Like I said, I had no

knowledge of what I could do. Other than harass somebody to try and see my daughter, which is against the law.” (*Id.* 231:21-232:1)

K.P. testified he had extensive family in Great Falls, including a twin brother, a sister, two aunts and his parents, who lived, “right around the corner from me on the same block.” (*Id.* 179:7-14) K.P. testified that

K.P. testified that, he contacted CFS as soon as he got served and found out he was on the list of putative fathers of S.Y. (8/27/2018 Hrg. Tr. 194:14-195:4) He “got scheduled for a DNA test as soon as possible.” (*Id.*) K.P. said that, upon finding out he might be S.Y.’s father, he was “[r]eally excited, nervous, scared. Mostly excited about being a father but of course there was some fears.” (*Id.* 195:11-12) K.P. said that when he found out he was S.Y.’s father he felt, “Happy, excited, crying. I don't know. Like a kid on Christmas. Can't wait to open the Christmas present, just really excited.” (*Id.* 196:3-7)

K.P. detailed how, upon verifying S.Y. was his biological daughter, he immediately became involved in her life to the extent he was allowed, taking every opportunity to visit her in person and established frequent telephone contact with her. (8/28/2018 Hrg. Tr. 196:8-204:21, 206:24-205:25) K.P. entered numerous exhibits into evidence showing himself with A.Y. and described how they demonstrated that he and the child had quickly formed a close bond. (*Id.*) K.P. said

he tried to establish Skype contact with S.Y. but, “that seemed to have fallen through” due to K.S.’s work schedule. (*Id.* 200:19-201:3)

K.P. testified he enrolled in parenting classes, bought clothes, prepared a bedroom for S.Y. and taken other steps to become a part of S.Y.’s life. (8/27/2018 Hrg. Tr. 208:1-211:22) K.P. said he would “gladly” work a treatment plan with CFS, he realized that becoming more active in S.Y.’s life was “going to be a process.” (*Id.* 209:22-25, 211:1-3) K.P. said he would support S.Y.’s relationships with her three half-brothers, two of whom live in Great Falls, and with the maternal grandparents. (*Id.* 211:12-24)

Birth Mother, K.Y. K.Y. testified she moved in with K.P. after she lost her apartment. (8/27/2018 Hrt. Tr. 259:22-24) By and large K.Y.’s testimony regarding their relationship was in agreement with K.P.’s testimony. K.Y. testified she left K.P. when she was about seven and a half to eight months pregnant. (*Id.* 261:18-21) She admitted lying to K.P. about her reason for leaving and where she was going:

I -- the day before I had gone over to my friend Christina's house, and I sat there trying to think of a way to leave without really hurting him very badly. And it was the next day that I told him that I was coming down to Missoula to be with my parents.
(8/27/2018 Hrg. Tr. 263:11-15)

K.Y. testified she stayed with her sister-in-law in Great Falls and with a friend from the time she left K.P. until “a few days after S.Y. was born” when she

moved to Missoula. (*Id.* 244:16-245:4) K.Y. testified that both K.P. and his mother tried contacting her by phone and over Facebook but, “I just -- I did not respond to it, mainly because I was afraid that my daughter would have been taken away from me if they knew where I lived.” (*Id.* 265:2-5) K.Y. testified she did not identify her residence on Facebook until about a year after she moved to Missoula. (*Id.* 246 8-14) K.Y. confirmed K.P.’s attempts to contact her on Facebook, but said, to her knowledge, he had not made further attempts to contact her since August 2013. When asked if she supported K.P.’s developing relationship with S.Y., K.Y. responded, “A hundred percent, yes.”

K.Y. testified that she did not know who contacted K.P. when S.Y. was born. (8/27/2018 Hrg. Tr. 285:15-17) K.Y. said she didn’t contact K.P. or tell him when S.Y. was born, and that she put A.Y.’s name on the birth certificate as S.Y.’s father. (*Id.* 285:20-21) K.Y. testified that, when CFS began the pending DN case, she perpetuated the fiction that A.Y. was S.Y.’s father. (*Id.* 286:19-25) K.Y. said that S.Y.’s paternity was first revealed by A.Y. four years after the case began because, “ ...I stopped having contact with him. And he got mad and he retaliated by saying that he was not S.Y.’s father. (*Id.* 287:10-12)

K.Y. admitted that, when CFS asked her about S.Y.’s biological father, she lied to them. K.Y. conceded to having told CFS she didn’t know who the father was, then she told them there were many possible fathers, and she denied knowing

the full names of the putative fathers or how to contact them but continued to be evasive and vague in her testimony. (8/27/2018 Hrg. Tr. 287:18-288:24) When asked if she “made sure K.P. didn’t have the opportunity to know S.Y. for many, many, many years,” K.Y. responded, “Exactly, yes.” (*Id.* 289:3-6)

CSED Representative, Patrick Quinn. CSED Representative Patrick Quinn testified that, if a person was unaware of the website, the only way to find out about paternity services would be to get the materials from the CSED office. (*Id.* 279:21:-25) Mr. Quinn said it was possible someone could come to a CSED office and not be provided with the relevant information. (*Id.* 280:1-2) When asked if, “In fact, many people have no idea or have never heard of this almost mythical thing called the punitive father registry,” Mr. Quinn equivocated, “That would be speculation on my part.” (*Id.* 280:4-7)

Paternal Grandmother, C.P. S.Y.’s paternal grandmother, C.P. corroborated K.P.’s testimony regarding the circumstances surrounding K.Y.’s relationship with K.P. and her success in preventing K.P. from establishing a parental relationship with S.Y. (8/27/2018 Hrg. Tr. 300:18, et seq.) C.P. also discussed K.P.’s efforts to contact K.Y. after S.Y. was born. (*Id.* 306:9 et seq.) C.P. expressed her belief that K.Y. would not be able to raise S.Y. on her own and would identify K.P. as the father to CPS when she needed help. (*Id.* 306:13-16) C.P. testified she told K.P.:

I said, don't worry, she is not capable of raising Samantha on her own. She's going to seek help. When she does she will say Kyle most likely is the father. We will do a paternity test at that point and we will be raising Samantha at that point. I just did not think it was going to take five years.
(8/27/2018 Hrg. Tr. 306:16-21)

C.P. testified that, when K.P. told her of his attempts to get help from CFS she told him, again, that K.Y. would seek help and CFS would then come to him.
(*Id.* 306:22-307:4)

When there was no contact from K.Y., C.P. testified that, eventually:

I told myself it must not be K.P.'s daughter because I was sure that if it would have been K.P.'s daughter, K.Y. would have attempted to reach K.P. So I assumed it was not K.P.'s daughter and that K.Y. was -- whoever S.Y.'s father was was in contact with her. Because they made no efforts to contact us.
(8/27/2018 Hrg. Tr. 311:14-19)

C.P. testified she did not consult an attorney because:

I would assume -- I assume that if a couple of people have a child if that woman had sex with other men, they're not going to go -- every man that she had sex with couldn't actually come up and say, I think you have my child, let's do a test. I didn't think that would be -- I just didn't think it would happen.
(8/27/2018 Hrg. Tr. 313:2-7)

Maternal Grandmother, J.E. S.Y.'s maternal grandmother, J.E. testified that, when K.Y. told her she was pregnant, J.E. asked K.Y. who the father was.
(8/27/2018 Hrg. Tr. 322:23-323:4) J.E. testified, "I asked her and she told me she thought it was K.P. When I questioned her further, she did have doubts." (*Id.*

323:2-5) J.E. testified that K.Y. and S.Y. moved to Missoula five or six days after S.Y. was born. (*Id.* 323:17-20) J.E. testified that K.P. did not reach out to her or her husband after S.Y.'s birth. (*Id.* 324:3-6) J.E. also testified that, despite having been to his house, neither she nor her husband reached out to K.P. (*Id.* 334:17-23) J.E. said that, at the time of their previous interaction, she and her husband did not trust K.P. "We did not feel he was making appropriate choices at that time." (*Id.* 341:6-8) J.E. conceded that she knew, when the pending DN proceedings began, that A.Y. could not have been S.Y.'s biological father, but did not inform CFS. (*Id.* 334:24-335:9)

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Child Protection Specialist, Rebecca Wemple. CPS Wemple testified regarding her involvement in the case. (8/27/2018 Hrg. Tr. 350:6, et seq.) CPS Wemple testified that CFS operated under the belief that A.Y. was S.Y.'s biological father until the end of August 2017, when A.Y. denied paternity. (*Id.* 352:19-353:1) CPS Wemple testified it wasn't until "either the very end of February...or the beginning of March 2018" that CFS was given K.P.'s name as a putative father. (*Id.* 353:2-8) CPS Wemple testified CFS was not given any contact information, and eventually found K.P. after locating K.P.'s father. (*Id.* 353:9-15) K.P.'s was confirmed to be S.Y.'s biological father on May 7, 2018. (*Id.* 353:20-22) CPS Wemple expressed the opinion that K.P.'s failure to establish his paternity,

seek legal counsel, go to the self-help law center, contacts CSED, or make prolonged efforts to search for K.A. or her parents constituted abandonment. (*Id.* 354:24-355:17)

Upon cross-examination, CPS Wemple testified that, if K.Y. or J.E. had “been honest and told CFS A.Y. was not S.Y.’s father when she was removed in February 2015” CFS would have offered K.P. a treatment plan with the goal of reunification. (8/27/2018 Hrg. Tr. 367:5-11) CPS Wemple described the plan as follows:

Just the basic parenting skills. So, we would probably ask parenting classes. K.P. has told me that he has no chemical dependency issues, so that would not be a task. We would probably have some type of mental health services if we found that those were required. Making sure he had stable housing that would be suitable for a child.
(*Id.* 367:14-19)

CPS Wemple testified that, initially, both A.Y. nor K.Y. denied knowing who S.Y.’s biological father was, then said it could be any of several different people. (8/27/2018 Hrg. Tr. 369:2-6) CPS Wemple said K.Y. first claimed she didn’t know the names of the possible fathers, then claimed she didn’t know the last names or how to contact any of them. (*Id.* 369:7-15)

Order on CFS’s Amended Petition to Terminate Parental Rights of K.P., Biological Father – October 25, 2018

October 25, 2018 the district court entered its Findings of Fact, Conclusions of Law, and Order terminating K.P.’s parental rights to S.Y. (App. A) The court

made the following pertinent Findings of Fact in support of its decision to terminate K.P.'s parental rights:

1. K.Y. was married to A.Y. at the time of S.Y.'s birth and his name appears on S.Y.'s birth certificate.
2. At the time of S.Y.'s conception, K.Y. was living with K.P. as A.Y. was incarcerated. Alex continued to live with them. K.P. and K.Y. were not married to each other at the time of S.Y.'s birth.
3. K.P. went with K.Y. for her pregnancy test and during the next few months attended several of the pre-natal appointments. He was excited about being a father. He shared sonogram pictures with his mother, C.P.
4. K.P. did not contribute to S.Y.'s birth costs.
5. K.P. learned of S.Y.'s birth from friends. Exactly when he learned of her birth is unknown as no evidence of this matter was presented at the hearing. He also learned that K.Y. had said that he was not S.Y.'s father.
6. K.P. made a few attempts in August 2013 to contact K.Y. after learning of S.Y.'s birth through Facebook messages and telephone calls, but got no response from K.Y. After August 23, 2013, he made no further attempts to make contact with K.Y. or S.Y.
7. K.P.'s mother, C.P. made similar attempts to reach K.Y. by phone and got no responses during the same time frame and abandoned these efforts in August 2013.
8. K.P. made one visit to CFS in Great Falls in an attempt to get in contact with S.Y. CFS sent him to the Great Falls police department who provided no assistance. He did not return to either the Great Falls police department or CFS with additional requests to help him locate K.Y. or S.Y.
9. K.P. did not seek out K.Y.'s parents whom he had met when K.P. and K.Y. lived in Great Falls when JE came to his house.
10. K.P. did not file any paperwork with the Putative Father's Registry seeking to establish paternity.

11. K.P. did not seek legal assistance through Montana Legal Services, or other pro-bono attorneys in an attempt to establish paternity or make contact with K.Y. and/or S.Y.
12. K.P. did not visit the Self-Help Law Center in Great Falls for assistance in establishing paternity.
13. K.P. has provided no financial support for S.Y.
14. K.P. had the financial ability to provide financial support for S.Y. as he was employed during these five years of her life.
15. At the time of initial removal, CFS assumed that A.Y. was the birth father of S.Y. During the first four years of action on S.Y.'s case, neither K.Y. or A.Y. indicated to CFS or the Court or their attorneys that A.Y. was not the biological father of S.Y.
16. In late August 2017, A.Y. informed CFS that he did not believe that he was the biological father of S.Y. Until that time, no one at CFS believed that the paternity of S.Y. was in question.
17. In September 5, 2017, following a status hearing, the Court issued an Order for paternity testing of A.Y.
18. At that same hearing, inquiry was made of K.Y. in an effort to determine who the biological father of S.Y. might be. Initially K.Y. indicated that she did not know. Later, she identified three men by first name only but claimed not to know last names of these men or any means of contacting them. One of the first names she provided was K.P.'s first name.
19. On October 25, 2017, CFS filed a Notice that revealed that paternity testing established that A.Y. was not the biological father of S.Y.
20. At status hearing on February 27, 2018, A.Y. stated he knew the name of the biological father of S.Y. but refused to tell. At that same hearing K.Y. again indicated that there were three possible fathers for S.Y., one of whom was K.P. who lived in Great Falls, Montana, but she did not know how to contact him.
21. CFS located K.P. in Great Falls after a search and arranged for paternity testing.
22. On March 23, 2018, CFS filed a Petition for Termination of Mother's (K.Y.'s) and Father's (A.Y.'s) Parental rights and Grant

- of Permanent Legal Custody to CFS with the Right to Consent to Adoption.
23. On April 4, 2018 K.P. was personally served with the Petition to Terminate Parental Rights as well as the Minutes of Ruling from the February 27, 2018 hearing. Counsel was appointed to represent him.
 24. CFS received the results of K.P.'s paternity test in May, 2018 and that test confirmed that K.P. was the biological father of S.Y.
 25. K.P. made his first appearance in this case with his counsel on May 14, 2018. At that hearing, the Court was advised that the paternity test results had established that K.P. was the biological father of S.Y.
 26. K.P. has met none of S.Y.'s basic needs since her birth.
 27. Although K.P. is S.Y.'s biological father, he must be considered a putative father as defined in Mont. Code Ann. 41-3-609(1)(c) because he was not married to the mother at the time of her birth, he did not contribute to her support, and to date has not established a substantial relationship with the child. Additionally, he did not establish paternity prior to the filing of a Petition for termination of parental rights to the child for purposes of adoption.
 28. Although K.Y. did not cooperate in K.P.'s minimal attempts at contact after S.Y.'s birth, K.Y. did not move with S.Y. to another state in an effort to conceal S.Y., but rather moved from Great Falls, Montana, to Missoula, Montana to live with her parents, JE and GE. K.P. had knowledge of JE and GE when they lived in Great Falls, and further was told by K.Y. when she moved out of his residence prior to S.Y.'s birth that she was going to move Missoula to assist her father, GE, who was seriously ill at the time.
 29. Montana maintains a Putative Father's Registry where a man who believes that he is the Father of a child can register. Such a registry is searched by CFS at least when Petitions for Termination of Parental Rights are initiated. In this case, that registry was searched and K.P. has not registered. K.P. admits that he did not register with the Putative Father's Registry asserting he did not know about it.
 30. The Child Support Enforcement Division assists men who believe that they are the father of a child. The Division will open a case

and search for the child in order to facilitate paternity testing. CSED also has prepared pamphlets explaining how to establish paternity after the birth of a child. K.P. did not ask CSED to assist him in establishing paternity for S.Y.

31. This Court finds that K.P. has abandoned S.Y. within the meaning of Mont. Code. Ann. §41-3-102.

(App. A, pp2-16)

The district court granted the Department's petition for termination of K.P.'s parental rights to S.Y. (*Id.*, p23)

STANDARDS OF REVIEW

Whether a parent has been denied his or her right to due process is a question of constitutional law. The Court's review of such questions is plenary. *In re A.S.*, 2004 MT 62, ¶9, 320 Mont. 26, 87 P.3d 408.

"[A] natural parent's right to the care and custody of a child is a fundamental liberty interest." *In re A.T.*, 2003 MT 154, ¶10, 316 Mont. 255, 70 P.3d 1247.

Where the State interferes in a parent's fundamental right to the care and custody of his or her child, strict construction of the relevant statutes and strict scrutiny of the governmental interference is required. *Polasek v. Omura*, 2006 MT 103, ¶10, 332 Mont. 157, 136 P.3d 519. In *Wadsworth v. State*, (1996) 275 Mont. 287, 911 P.2d 1165, 1174, the Court held:

The most stringent standard, strict scrutiny, is imposed when the action complained of interferes with the exercise of a fundamental right.... Strict scrutiny of a legislative act requires the government to show a compelling state interest for its action.... When the

government intrudes upon a fundamental right, any compelling state interest for doing so must be closely tailored to effectuate only that compelling state interest.

In a parenting matter, a district court's findings of fact are reviewed for clear error and its conclusions of law are reviewed for correctness. *In re K.J.B.*, 2007 MT 216, ¶23, 339 Mont. 28, 168 P.3d 629. "A finding of fact is clearly erroneous if it is not supported by substantial evidence; if the district court misapprehended the effect of the evidence; or if, after reviewing the record, this Court is left with a definite and firm conviction that the district court made a mistake." *In re T.Z.*, 2000 MT 205, ¶10, 300 Mont. 522, 6 P.3d 960.

An order terminating an individual's right to parent his child must be supported by clear and convincing evidence that all statutory criteria for termination have been met. *In re A.T and J.T.*, 2003 MT 154, ¶10, 316 Mont. 255, 70 P.3d 1247. Clear and convincing evidence is "simply a requirement that a preponderance of the evidence be definite, clear, and convincing, or that a particular issue must be established by a preponderance of the evidence or by a clear preponderance of proof. *In re C.M.C.*, 2009 MT 153, ¶23, 350 Mont. 391, 208 P.3d 809.

SUMMARY OF THE ARGUMENT

Montana's putative father statutes are overly broad and fail to make provisions for cases where a biological father has not been advised he has fathered

child or, as in this case, has been falsely told that the child is not his. Father and Appellant, K.P., was unreasonably denied his fundamental liberty interest in parenting his biological daughter S.Y. in violation of Montana's Due Process Clause and the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the U.S. Constitution.

S.Y.'s biological mother, K.Y., lied to K.P., lied to the Department and, lied to the district court regarding the identity of S.Y.'s biological father. Fearing, K.P. would assert his parental rights, K.Y. lied to him, telling him she had to go home to tend her sick father. K.Y. did not tell K.P. when or where S.Y. was born. K.Y. told K.P. the child was not his, then refused to acknowledge K.P.'s efforts to establish contact. K.Y. falsely asserted, on S.Y.'s birth certificate, that her incarcerated husband was the child's natural father. K.Y. lied through nearly four years of a dependent neglect case involving S.Y.

When he discovered S.Y. had been born, K.P. tried to contact S.Y. via social media. She did not respond and did not put contact information on her profile page. When K.P. went to the Department to seek help in asserting his parental rights, he was told to go to the Police Department and make a report. When K.P. went to the Police Department, he was told that they wouldn't make a report because, "your girlfriend dumped you."

When, five years later, and four years into the DN case, K.Y. finally identified K.P. as a “possible” biological father to S.Y., K.P. took a paternity test immediately after being notified. Once his paternity was established, K.P. immediately did everything he could to begin building a parental relationship with S.Y. Two months after confirming K.P. was S.Y.’s father, the Department filed a motion to terminate his parental rights. Two months after that, the district court terminated K.P.’s parental rights, leaving K.P. to ask, “What could I do?”

The birth mother lied to K.P. and made it impossible for him to see the child without risking criminal charges for stalking. CFS failed to direct K.P. to the putative father registry or provide him the parental rights information they are directed by statute to make available. The district court applied the putative father statute literally, and terminated K.P.’s parental rights to S.Y. The result was not fair, and improperly denied K.P. his fundamental liberty interest in parenting his child.

ARGUMENT

1. The Montana Putative Father Registry statutes deprived K.P. of Equal Protection and Due Process of Law.

“No person shall be deprived of life, liberty, or property without due process of law.” Mont. Const. Art II, . “ . . .nor shall any State deprive any person of life, liberty, or property, without due process of law...” U.S. Const. Amend. 14.

Constitutional protection of a father's fundamental right to parent his child exists "when he has a substantial relationship with his child and has embraced the opportunity to be a father."⁴ The Supreme Court "has not specifically addressed what constitutes embracing fatherhood, leaving open the issue of how a father can do so if he does not even know about his child's birth." *Id.*

a. Current statutes placing the burden of establishing a prospective paternal relationship on the father are overbroad and fatally inflexible, violating the due process rights of prospective fathers who either don't know they have children or have been falsely led to believe they do not have children.

In the wake of controversial cases involving the rights of biological father in the 1990's,⁵ a national discourse led many states, including Montana, to create

⁴ Margaret Ryznar, Two to Tango, One in Limbo: A Comparative Analysis of Fathers' Rights in Infant Adoptions, 47 DUQ. L. REV. 89, 94 (Winter 2009) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972); *Quilloin v. Walcott*, 434 U.S. 246 (1978); *Caban v. Mohammed*, 441 U.S. 380 (1979); *Lehr v. Robertson*, 463 U.S. 248 (1983)).

⁵ See, eg. *In re B.G.C.*, 496 N.W.2d 239 (Iowa 1992) (Adoption reversed when biological mother changed her mind and asserted the wrong man had been identified as the father), *O'Connell v. Kirchner*, 513 U.S. 1 138 (1995) (Four-year-old "Baby Richard" was taken away from adoptive parents he had lived with his entire life and given to biological father who did had been told the child was dead).

laws to avoid the disruption of adoptive relationships by absent fathers.⁶ Laws were enacted to place the burden on the fathers to assert their paternal rights as early as possible and, in the absence of that assertion, to provide for termination of those paternal rights.

State legislatures across the country established “putative father”⁷ registries, and enacted statutes to “provide for the waiver of legal rights of fathers who fail to record their interest in custody within a relatively short period of time following the birth of the child.”⁸ This legislative intent is set forth in Mont. Code Ann. §42-2-203(1), which provides:

The purpose of the putative father registry is to provide notice of termination of parental rights to a putative father who asserts a parental interest in a child so that the putative father may appear in a proceeding and have an opportunity to establish that the putative father's inchoate rights in the child have vested because a substantial relationship with the child has been established....

The legislative purpose set forth in Mont. Code Ann. §42-2-203(1) violates a natural father’s due process rights under the Montana and U.S. constitutions when

⁶ David D. Meyer, Family Ties: Solving the Constitutional Dilemma of the Faultless Father, 41 Ariz. L. Rev. 753, 756 (Fall 1999).

⁷ “Putative father” means a man who has had sexual relations with a woman to whom he is not married and is therefore presumed to know the woman may be pregnant as a result of such relations. Protecting Rights of Unknowing Dads and Fostering Access to Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. §440(8) (2006), quoted in Lauren Standlee, *In re N.L.B. v. Lentz*: The Missouri Supreme Court Unwarranted Extension of a Putative Father's Constitutional Protections, 72 L Mo. L. Rev. 1437 (Fall 2007). See also Mont. Code Ann. §42-2-201.

⁸ Meyer, *supra* note 5, at 756-757.

the parental rights of a father are terminated even though the birth father has no certain knowledge of the pregnancy or of the birth, or has been falsely led to believe he is not the natural father of the child.

Equal treatment under the law of an unmarried father was at the heart of *Stanley v. Illinois*, 405 U.S. 645 (1972), where the U.S. Supreme Court held that a conclusive presumption that an unmarried father was unfit violated his due process rights under the Fourteenth Amendment.

The rights to conceive and to raise one's children have been deemed essential, basic civil rights of man, and rights far more precious . . . than property rights.... It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.
405 U.S. at 651

Mont. Code Ann. §42-1-108 imposes on a “putative” birth father, “primary responsibility to protect the father’s rights.” 42-1-108 provides that potential parental rights are protected only when the father has demonstrated “timely commitment to fatherhood.” Demonstration of that commitment requires the father to provide financial support; to establish and maintain a “substantial father-child relationship;” and to enter his prospective parental claim on the putative father registry. There is no conceivable nexus between a parental relationship and the putative father registry. Accordingly, the requirement is a blatant denial of due process.

Putative father registries place an unreasonable burden upon fathers, such as K.P., who lack certain knowledge of the pregnancy. It is unreasonable to expect putative fathers to register after every sexual encounter. It is even more unreasonable is to expect them to “‘track’ the ‘condition’ of the women with whom they had sex.”⁹ The absurdity of Montana's putative father registry is exacerbated by the requirement to register no more than seventy-two hours after the child is born. Mont. Code Ann. §42-2-206. In order for a prospective father to diligently fulfill this requirement, he would have to stalk the expectant mother which, as K.P. pointed out during his testimony, would lead to another kind of case.¹⁰

b. The overbroad approach to paternal rights is not in the best interest of the children of unmarried parents and denies those children due process and equal protection under the law.

In *Clark v. Jeter*, 486 U.S. 456 (1988), the U.S. Supreme Court struck down a Pennsylvania law placing a 6-year statute of limitations on establishing paternity for child support for “illegitimate” children on equal protection grounds:

A statutory classification must be substantially related to in important government objective. Consequently, we have invalidated classifications that burden illegitimate children for the sake of punishing the illicit relations of their parents, because “visiting this condemnation on the head of an infant is illogical and unjust.”

⁹Jeffrey A. Pames, Systematically Screwing Dads: Out of Control Paternity Schemes, 54 Wayne L. Rev. 641, 648 (2008).

¹⁰Pames, 658.

486 U.S. at 461.

The *Clark* Court recognized the inherent error in differentiating between the rights of children to receive financial support based on whether their parents were married. It treats two classes of children differently and violates the “illegitimate” child’s right to equal protection under the law.

The putative father registry establishes a scheme where, over time, thousands of children will never even know their fathers, much less be entitled to seek support from them. The statutes explicitly deprive children with unmarried parents of resources and relationships that are actively protected for children whose parents are married. The statutes provide no recourse for the children to seek those resources and relationships or to contest their termination. The children are denied equal protection, and they are denied due process.

While the statutes were purportedly enacted for the legitimate purpose of preventing disruptive intervention in adoptions, they are a cudgel being used to swat a fly. The goal of parental stability can be better achieved by proactive measures, such as incentivized identification of putative fathers,¹¹ than by proscriptive measures that presumptively terminate parental rights.

¹¹ It has been proposed that, in order to qualify for public-funded programs such as Headstart, vaccination, or public assistance, the birthmother be required to identify a child’s biological father or swear an affidavit denying knowledge of the father’s identity.

The putative father statutes deny thousands of children any opportunity to establish a parental bond with their fathers that are routinely enjoyed by other children. The statutes deny thousands of children any opportunity to enjoy the financial support provided by the fathers of other children. They deny these children equal protection under the law.

The putative father registry violates the child's fundamental right to know his or her father. The burden on the state and the child's mother to identify and notify a child's biological father before adoption, is offset by the benefit of avoiding the harm caused by forever depriving a child of knowledge of his or her biological father. The burden placed upon the mother and the State lasts only a few months. The burden placed on a child denied an opportunity to know his or her father will last a lifetime.

c. As a matter of public policy, any administrative benefit from the putative father registry is more than offset by the societal costs of its implementation.

Putative father registries leave thousands of responsible, caring and willing fathers out of the picture. It is estimated that “about a million and a half children are born in the United States each year to unwed mothers. About a million of these children have fathers recognized under law around the time of birth.”¹² This means

¹²Pamess, 652-53.

there are “about one-half million non-marital children [who] have a mother, but no father, under the law at the time of birth.”¹³ If even one in ten of these prospective fathers is responsible and would be willing to raise his child, more than 50,000 children a year are deprived of a relationship with their biological fathers.

“[T]his disparity in parentage designation occurs even though state governments repeatedly pronounce they usually want both a father and a mother under law for all children born of consensual adult sex.”¹⁴ While adoption is a wonderful option and should be encouraged and facilitated, public policy requires that children be given the opportunity to establish relationships with their natural fathers as well.

2. The putative father statute, as implemented by the Department of Health and Human Services (the Department) violates the K.P.’s due process rights.

a. The putative father statute is obscure, and the general public is unaware of its existence, its purpose, or its requirements.

The general public is largely unaware of the putative father registry. When asked, in testimony if that were the case, CSED representative Patrick Quinn replied, “That would be speculation on my part.” Mr. Quinn was being disingenuous. The obscurity of the registry is readily illustrated in the transcript of

¹³Id. at 654.

¹⁴Id. at 653.

the termination hearing, where the court reporter repeatedly reported the term as the punitive father registry. The irony was almost certainly unintentional. The obscurity of the putative father registry can readily be proven by inference. Mont. Code Ann. §42-2-214 provides that:

- (1) provides the Department shall:
 - (a) prescribe a registration form for the information that a putative father submits under 42-2-205; and
 - (b) make the registration forms available through:
 - (i) the department;
 - (ii) each clerk of a district court; and
 - (iii) each local health department.
- (2) A notice provided by the department that informs the public about the purpose and operation of the registry must be posted in a conspicuous place by each:
 - (a) clerk of a district court;
 - (b) driver's examination station of the motor vehicle division of the department of justice;
 - (c) local health department; and
 - (d) county clerk and recorder.

The required “notices” are, to all intents and purposes, nonexistent – and are certainly not to found in “conspicuous places.” Appellant’s counsel has had occasion to visit courthouses, county clerks, clerks and reporters and DMV’s all over the State of Montana and cannot recall having seen a single notice regarding “the purpose and operation of the [putative father] registry.” This can be easily verified by entering any of the above facilities. The required notice will rarely, if ever, be posted in conspicuous places.

K.P. was also criticized for not seeking information about the registry on the DPHHS website. The website is not a statutorily mandated notice location. Even so, the requisite information is not readily found on the website. The DPHHS website¹⁵ does not have information about the registry on the homepage, on the adoption page, or on the child support page. Information about the putative father registry is buried in the “Vital Statistics” page of the website, hardly a “conspicuous place.”

b. If the Department had performed its statutory duties regarding the putative father registry, K.P. would have been entered onto the registry.

It was undisputed that K.P. sought assistance at the Department (CFS) as soon as he found out K.Y. had given birth. He was told to file a report with the police. If the Department had performed its statutory duties to provide conspicuous notice of the putative father registry, K.P. could have complied with the statute.

K.P. was repeatedly asked whether he went to CSED. A key argument in favor of termination was that he did not do so. Mont. Code Ann. §42-2-205 does not require prospective fathers to go to CSED. It provides that registration must be available through the Department. K.P. did exactly what the statute contemplated he should do. If the Department had been prepared to provide him with the

¹⁵ <https://dphhs.mt.gov>

information at CFS, as mandated by statute, K.P. would have been entered onto the registry.

To add insult to injury, the person who assisted K.P. at the CFS office either did not know about the putative father registry or failed to give K.P. the handbook and registration form – both of which statute directs the Department to make available at the office K.P. entered. By failing to provide K.P. with the proper information, in the proper place when he properly requested it, the Department failed to meet its statutory duty and deprived K.P. of his right to due process.

CONCLUSION

As written, Montana's Putative Father Statutes violate the due process rights of unmarried natural fathers and violate the due process rights and equal protection rights of children of unmarried natural fathers. As implemented by the Department of Health and Human Services, Montana's Putative Father Statutes violate the due process rights of unmarried natural fathers.

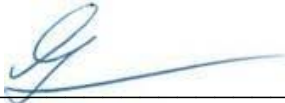
Respectfully submitted this May 13, 2019.



Gregory D. Birdsong
Birdsong Law Office, PC
P.O. Box 5899
Missoula, MT 59806
406-543-2608
gdb@birdsonglawoffice.com

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

A handwritten signature in blue ink, appearing to read 'Gregory D. Birdsong', is positioned above a horizontal line.

Gregory D. Birdsong

CERTIFICATE OF SERVICE

I, Gregory Dee Birdsong, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-13-2019:

Chad M. Wright (Attorney)
P.O. Box 200147
Helena MT 59620-0147
Representing: K. E. P.
Service Method: eService

Kirsten H. Pabst (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Kathryn Fey Schulz (Prosecutor)
215 North Sanders
P.O. Box 201401
Helena MT 59620-1401
Representing: State of Montana
Service Method: eService

Electronically Signed By: Gregory Dee Birdsong
Dated: 05-13-2019