

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0254

In the Matter of J.S.L. and J.R.L.,
Youths in Need of Care

**APPELLANT'S RESPONSE TO FATHER'S MOTION TO
INTERVENE**

COMES NOW, Laura Reed, Contract Attorney appointed to this case by the Office of the Appellate Defender (OAD) to represent Appellant Mother S.L., and responds to Father's Motion to Intervene.

Mother objects to Father's Motion to Intervene primarily because Father has known of her appeal since April, 2020, but has only filed a motion to intervene five months later. Allowing his intervention will delay her appeal. Father will have to be given time to write a brief, and Mother will need to respond to it.

One of the criteria for considering and permitting motions to intervene is whether or not delays will be created in an appeal. In this abuse and neglect proceeding, time is critical and any delays must have strong justification. Father has been aware of this pending appeal since April, 2020. He was served with a Notice of Substitution of Counsel,

appointing the Appellate Office of the Public Defender, on April 23, 2020. D.C. Doc. 102. He was also served with a Request for Production of Transcripts for Appeal on May 5, 2020. D.C. Doc. 103. Yet he only moved to intervene in late September, 2020.

Rule 24(b), M.R.Civ.P., provides:

Upon *timely application* anyone may be permitted to intervene in an action (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. [Emphasis added.]

This Court should find that Father's motion to intervene is untimely and that it will create unacceptable delay for the Mother. *See In re C.C.L.B.*, 2001 MT 66, 305 MT 22, 22 P.3d 646 (upholding denial of motion to intervene because motion was untimely).

In determining whether or not a motion to intervene is timely, courts look to four factors: (1) the length of time the intervenor knew or should have known of its interest in the case before moving to intervene; (2) the prejudice to the original parties, if intervention is granted, resulting from the intervenor's delay in making its application to intervene; (3) the prejudice to the intervenor if the motion is denied;

and (4) any unusual circumstances mitigating for or against a determination that the application is timely. *C.C.L.B.*, ¶ 24.

Mother also objects to Father's intervention because Father's interests are aligned with those of the Department and the State and Father will therefore be adequately and sufficiently represented by the State's attorney when she responds to Mother's opening brief. Allowing Father to intervene has the effect of providing more time and space to the other side and allows the Mother to be "ganged up on" by Father, the Department and the State.

Moreover, Father does not cite, and Mother's counsel cannot find, any instance of a father intervening in a Mother's appeal in an abuse and neglect proceeding case such as this.

For all of the above reasons, Father's Motion to Intervene should be denied.

Father's request for attorney's fees should be denied because Mother has offered a legally supported objection to his motion, and she is indigent and represented by the Office of the State Public Defender.

Respectfully submitted this 30th day of September, 2020.

P.O. Box 17437
Missoula, MT 59808

By: /s/ Laura Reed
Laura Reed
Attorney for Mother

CERTIFICATE OF SERVICE

I, Laura Marie Reed, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 09-30-2020:

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Electronically Signed By: Laura Marie Reed
Dated: 09-30-2020