

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0135

IN THE MATTER OF

A.M.M.R. and M.L.R.M.R.,

Youths in Need of Care.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Donald L. Harris, Presiding

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STATEMENT OF THE ISSUE

Did the district court properly terminate Appellant Mother's parental rights after it correctly concluded that Mother failed to successfully complete her treatment plan, and the conduct or condition rendering her unfit to parent her children was unlikely to change within a reasonable time.

STATEMENT OF THE CASE¹

K.M. is the natural mother and T.R. is the natural father of A.M.M.R. and M.L.R.M.R. (D.C. Doc. 2 at 2.) On March 27, 2019, the Montana Department of Public Health and Human Services, Child and Family Services Division (DPHHS) filed a Petition for Emergency Protective Services, Adjudication as Youth[s] in Need of Care and Temporary Legal Custody. (D.C. Doc. 1.) DPHHS alleged physical neglect of the children due to K.M.'s use of illegal drugs. At the time DPHHS filed the petition, the children were staying with a family member. K.M. was incarcerated for probation violations, including a positive urine test for methamphetamine. (*Id.* at 4-5.) T.R. was incarcerated at the Yellowstone County Detention Facility. (*Id.* at 2.) The district court scheduled a show cause hearing for April 11, 2019, and an adjudicatory hearing for June 6, 2019. (D.C. Doc. 4.) K.M.

¹ All documents that the State references in its Response Brief are from the lower court record in DN 19-107 unless the State notes otherwise.

and T.R. each received an appointed attorney. (D.C. Doc. 6.) The district court also arranged for a court appointed special advocate (CASA). (D.C. Doc. 14.)

After the hearing on April 11, 2019, and based on K.M.'s stipulation, the district court entered an order continuing emergency protective services, and scheduled an adjudicatory/dispositional hearing for June 6, 2019. (D.C. Doc. 15.)

On April 29, 2019, the State provided notice that it had filed its proposed Phase I Treatment Plan for K.M. (Proposed Phase I Treatment Plan attached to D.C. Doc. 13.) The objectives of the Treatment Plan were to assess K.M.'s chemical dependency, assess her mental health, and assess her parenting deficits by her: completing the following: a chemical dependency evaluation and following through with all recommendations, cooperating with random drug and alcohol testing, completing a psychological evaluation and following through with all recommendations, scheduling and attending individual counseling, completing parenting classes, and attending visits with the children. (*Id.*) The district court approved the treatment plan on August 7, 2019. (D.C. Doc. 36.)

At the June 6, 2019 adjudicatory hearing, K.M. did not contest that there was sufficient information for the court to find by a preponderance of the evidence that the children were youths in need of care. (D.C. Doc. 25.) The district court adjudicated the children as youths in need of care. (*Id.*)

On November 23, 2019, K.M. had an extremely serious automobile accident, resulting in the death of one of her children, and leaving A.M.M.R. seriously and permanently injured, (D.C. Doc. 46.) K.M. had been driving without a valid license after consuming alcohol. Neither of K.M.'s children were properly restrained. K.M. was not allowed to have unsupervised contact with her children. (*Id.*) Based upon these circumstances, DPHHS filed a Petition for Determination that Preservation and Reunification Services Need Not Be Provided because K.M. had subjected her children to aggravated circumstances. (D.C. Doc. 45.) K.M.'s blood test following the accident established that K.M. had been drinking alcohol. (D.C. Doc. 46.) On June 3 and 5, 2020, the district court held a hearing on DPHHS's petition. (6/3/2020, 6/5/2020 Transcript of Hearing.)

During the hearing, K.M. admitted that she had recently used methamphetamine, so the Drager test the district court ordered her to complete would come back positive. K.M. did test positive for methamphetamine. (D.C. Doc. 75; 6/3/20 Tr. at 60, 68.) At the conclusion of the hearing, the district court denied DPHHS's petition and ordered DPHHS to provide K.M. with a Phase II Treatment Plan, even though DPHHS had indicated it intended to file a petition to terminate K.M.'s parental rights. (D.C. Doc. 76; 6/5/20 Tr. at 314-22.)

DPHHS filed a notice of filing the Proposed Phase II Treatment Plan for K.M. on June 25, 2020. (D.C. Doc. 84.) The Phase II Treatment Plan required

K.M. to schedule and complete an updated chemical dependency evaluation and follow through with all recommendations, cooperate with random drug/alcohol testing by an approved provider, schedule and complete a psychological evaluation, schedule and attend ongoing individual counseling to address substance abuse and mental health concerns, attend parenting classes with a focus on younger-aged children and children with special needs, attend all scheduled visits with the children, schedule and complete a parent/child interaction assessment, meet with the assigned child protection services worker when requested, and immediately advise the CPS worker and legal counsel of her current address, phone number, and any changes in household members. (Proposed Phase II Treatment Plan attached to D.C. Doc. 84.)

DPHHS also filed a Petition for Permanent Legal Custody and Termination of Parental Rights of K.M. (D.C. doc. 85.) DPHHS alleged that K.M. had failed to successfully complete her treatment plan, the conduct or condition rendering her unfit to parent her children was unlikely to change within a reasonable time, and termination of K.M.'s parental rights was in the children's best interest. (*Id.*) On February 3 and 10, 2021, the district court held a hearing on the termination petition. (2/3/21, 2/10/21 Transcript of Termination Hearing [Tr].)

On February 24, 2021, The district court entered written Findings of Fact, Conclusions of Law, and Order terminating K.M.'s parental rights to both children.

(D.C. Doc. 142; Cause No. DN 19-109, Doc. 108, attached to Appellant’s Br. as an Appendix.) The district court found that the children had continuously been in foster care since March 2019. (*Id.* at 2, ¶ 5.) The district court further found, by clear and convincing evidence, that:

[K.M.] has failed to successfully complete her treatment plan. [K.M.] has failed to comply with drug testing as required by the Department. She has repeatedly failed to show up for drug testing. When [K.M.] has tested, she has been positive for methamphetamine on several tests. [K.M.] has also failed to successfully complete both drug treatment and individual counseling. [K.M.] has failed to maintain regular contact with the CPS workers managing her case. In September 2020, the State filed criminal charges against [K.M.] arising from an automobile accident in which [K.M.] was driving and [A.M.M.R.] suffered severe, permanently disabling injuries and [K.M.’s] five-year-old son [S.B.] was killed.

....

9. The Court heard testimony from several of [K.M.’s] evaluators and counselors: S. Lorinne Burke (parenting assessment), Janna North (grief counseling); Jodi Kristjanson (licensed addiction counselor); Dr. Robert Bakko (forensic psychological and violence risk evaluation); and Dr. Malcolm Horn (licensed addiction counselor). The Court finds that these experts established by clear and convincing evidence: (1) that [K.M.] needs long-term substance use disorder treatment and mental health counseling to successfully manage her methamphetamine addiction and attain long-term sobriety; (2) that [K.M.] is unlikely to engage successfully in the long-term treatment she requires; (3) that [K.M.] cannot safely parent [A.M.M.R./M.L.R.M.R.] at the present time; and (4) that [K.M.’s] inability to maintain sobriety and provide a safe environment for [A.M.M.R./M.L.R.M.R.] is unlikely to change within a reasonable time.

(*Id.* at 2, ¶ 6, 3, ¶ 9.)

Specific to A.M.M.R., the district court found:

[K.M.'s] contact with [A.M.M.R.] had been very sporadic since [A.M.M.R.'s] removal even before the State filed criminal charges in September 2020. [K.M.] failed to establish and maintain consistent parenting time with [A.M.M.R.] as required by her treatment plan.

....

8. [A.M.M.R.] was rendered paralyzed from the waist down in the November 23, 2019 automobile accident and also suffered significant internal injuries. [A.M.M.R.] requires specialized, daily care. [A.M.M.R.'s] foster care placement, her maternal grandmother, has been trained in how to care for [A.M.M.R.] and has been caring for [A.M.M.R.] since the accident. [K.M.] has not received training in how to provide the care [A.M.M.R.] requires.

....

10. The Court finds that, due to her special needs, [A.M.M.R.] needs consistency and a permanent placement as soon as possible to enable her to progress both physically and mentally.

11. Though [K.M.] has recently re-engaged in treatment and counseling for her addiction and mental health issues, the Court must give primary consideration to [A.M.M.R.'s] physical, mental, and emotional needs. The Court finds that it is in [A.M.M.R.'s] best interests to provide her with continuity of care and permanency with her present placement now rather than keep [A.M.M.R.] in limbo when the expert evidence is undisputed that [K.M.] is unlikely to become a fit parent within a reasonable time.

(Appellant's App., DN 19-107 Doc. 142 at 2-4.)

Specific to M.L.R.M.R., the district court found:

6. . . . At the recommendation of [M.L.R.M.R.'s] therapist, Daysi Onstad, visitation between [M.L.R.M.R.] and [K.M.] was

discontinued in September 2020 because of the regression, possible dissociation, physical aggression, stuttering and anxiety he displays after visits with [K.M.]. [K.M.] failed to establish and maintain consistent parenting time with [M.L.R.M.R.] as required by her treatment plan.

....

8. [M.L.R.M.R.] is doing well in his placement with his paternal uncle. This placement enables [M.L.R.M.R.] to spend significant time with his sister [A.M.M.R.] and is in [M.L.R.M.R.'s] best interests.

....

10. The Court finds that, due to his special needs, [M.L.R.M.R.] needs consistency and safety to enable him to progress with his emotional and behavioral issues.

(Appellant's App., DN 19-109 Doc. 108 at 2-3.)

STATEMENT OF THE FACTS

In April 2017, DPHHS removed the children from K.M.'s care because she was using methamphetamine and allowing the children's father, T.R., who was a violent offender and was also using methamphetamine, in the home. Both K.M. and T.R. were arrested for criminal conduct. (6/3/20 Tr. at 16-18, 236.) After K.M. successfully complied with her treatment plan, DPHHS returned the children and dismissed the youth in need of care action. (6/3/20 Tr. 19-20.)²

² During the June 3, 2020 hearing, the district court took judicial notice of the prior youth in need of care actions in DN 17-146, DN 17-147, and DN 17-367.

At the inception of the instant youth in need of care proceeding, K.M. was incarcerated at the Yellowstone County Detention Facility. (D.C. Doc. 83 at 3.) K.M. remained incarcerated there until she was transferred to Passages for drug treatment on May 16, 2019. (*Id.*) K.M. made no contact with her DPHHS case worker, although her case worker sent her letters. (*Id.*) While K.M. was at Passages, she completed a chemical dependency evaluation, but did not provide the evaluation to DPHHS. K.M. also participated in random drug testing, but did not provide the results to DPHHS. (*Id.*)

K.M. was released from Passages on November 18, 2019. Prior to her release, her DPHHS caseworker, Andrew Loken, told K.M. that she needed to get a drug patch. K.M. refused. Between November 18, 2019, and November 23, 2019, K.M. failed to complete random drug testing. On November 1, 2019, and November 12, 2019, Loken met with her to discuss visits with her children and K.M.'s treatment plan tasks. During both meetings, Loken reminded her that she needed to get a drug patch. (D.C. Doc. 87 at 4.)

While K.M. was incarcerated, her children were living with family members. A.M.M.R. resided with her aunt, Bryn, and M.L.R.M.R. resided with his uncle, Mike. K.M.'s other son, S.B., resided with one of his paternal family members. (6/3/20 Tr. at 272.)³ On November 18, 2019, Loken met with K.M. and

³ S.B. tragically died during the youth in need of care action.

her sister Bryn at Bryn's house, where A.M.M.R. was residing. Loken explained that K.M. could visit A.M.M.R. at Bryn's house, but the visits had to be supervised by Bryn at the home. Loken made this visitation requirement very clear. (6/3/20 Tr. at 238-39.) The same requirement applied with the other two children. (*Id.* at 239.)

On November 23, 2019, K.M. and her friend Brandi came up with a plan to take A.M.M.R., S.B., and K.M.'s niece (Bryn's daughter) to the Reef to swim. (6/3/20 Tr. at 26.) K.M. borrowed her sister's car, picked up S.B. from his placement, and took him to Brandi's house. (*Id.* at 27.) At some point, Brandi and K.M. also picked up A.M.M.R. and K.M.'s niece. (*Id.* at 29.)

Bryn explained that on November 23, 2019, she was A.M.M.R.'s foster care placement. (*Id.* at 147.) Prior to November 23, 2019, Bryn had had a meeting with Loken and K.M. during which Loken made it very clear that K.M. could only have supervised visits with A.M.M.R. Bryn allowed A.M.M.R. and her own daughter to go with K.M. and Brandi to the Reef based on her belief that Brandi would be supervising K.M. during the outing. She later learned that Brandi had decided not to go to the Reef. (*Id.* at 149, 155.) Bryn had a car seat for both her daughter and A.M.M.R. (*Id.* at 150.) When Bryn transported A.M.M.R. she always had her in a booster car seat. (*Id.* at 151.)

Without supervision, K.M. had A.M.M.R., S.B., and her niece in her sister's car, and K.M. was driving. K.M.'s niece was in the front with her, and A.M.M.R. and S.B. were in the back seat. K.M.'s niece was in a booster seat, but K.M.'s children were not in any type of child safety restraint. (*Id.* at 30-32.) According to K.M., she happened upon an accident. She stopped, rolled her window down, and asked if everybody was okay. She did not recall anything else until she woke up sometime later and realized something had happened. (*Id.* at 37.)

Officer Cook of the Billings Police Department responded to an automobile accident that occurred on November 23, 2019. (6/3/20 Tr. at 82, 84.) Based upon witness statements, roadway evidence, and vehicle placements, Officer Cook was able to reconstruct what had transpired that resulted in the accident. Initially, there was a rear end collision between a Honda Accord and a Roto-Rooter van on South 32nd Street. The drivers of these two vehicles were trying to get their vehicles situated on the side of the road. At this time, K.M. was headed southbound on South 32nd near the accident when another vehicle rear ended the vehicle K.M. was driving. This vehicle was driving about 31 miles per hour. (*Id.* at 86-87.)

Witnesses at the scene reported that K.M.'s vehicle accelerated, went off the west side of the road onto the shoulder, crossed over a bridge and landed back on the road, crossing over the center line and striking a Yukon that was headed northbound on South 32nd head on. After the rear end collision, K.M.'s vehicle

traveled 511 feet until the head on collision with the Yukon. (6/3/20 Tr. at 87-88.) At impact, the Yukon was only traveling at about two miles per hour. K.M.'s vehicle was traveling around 71 miles an hour in a 35 miles per hour speed zone. (*Id.* at 89-90.)

K.M. was driving a 2010 Acura that was registered to her sister. K.M.'s driver's license was suspended. (*Id.* at 91.) The damage to the vehicle K.M. was driving supported the conclusion that she was traveling at a high speed. (*Id.* at 94.) When Officer Cook talked with K.M., she said she had been rear ended and incapacitated, so she could not remember anything else. (*Id.* at 99.) But, while K.M.'s vehicle was traveling at a high speed, she had to have made several maneuvers before her vehicle returned to the road and hit the Yukon. Officer Cook did not find that K.M.'s claim that she had lost consciousness when the first vehicle rear ended her was consistent with the evidence from the scene. (*Id.* at 133.)

There were no child safety seats in the backseat of the vehicle K.M. was driving. (*Id.* at 95.) S.B. subsequently died from the injuries he sustained. A.M.M.R. sustained life-threatening injuries, and K.M.'s niece sustained serious injuries. (*Id.* at 102.) Officer Cook found an empty six pack of Bud Light in the trunk of the vehicle. (*Id.* at 97.) K.M. refused to consent to a blood draw. (*Id.* at 103.)

Michelle is the children's maternal grandmother, and is one of A.M.M.R.'s caregivers. Michelle went to the hospital after the accident. (6/3/20 Tr. at 166.) Michelle was at the hospital when officers requested K.M. complete a blood draw. K.M. refused, even though Michelle told her to take the test if she had nothing to hide. K.M. told her that she did not want to take the test because she had taken Trazodone and was afraid the officers would charge her with DUI. (*Id.* at 167.) Michelle learned from K.M.'s friend Brandi that K.M. had been drinking prior to the accident. (Tr. at 168-69.)

Michelle flew to Salt Lake City with A.M.M.R. S.B. had to undergo surgery before he could be transported to Salt Lake City. (*Id.* at 168-69.) In Salt Lake City, Michelle learned that A.M.M.R. had a complete spinal cord injury, meaning that there was no chance for her to walk again. She also had a crushed kidney, a hole in her intestine, and a broken arm. (*Id.* at 169.)

S.B. died shortly after he arrived in Salt Lake City. A.M.M.R. was in the hospital in Salt Lake City for 111 days. Michelle and her husband stayed in Salt Lake City with A.M.M.R. the entire time and learned how to care for her. (6/3/20 Tr. at 170-71.) Bryn has also been trained on how to care for A.M.M.R. (*Id.* at 153.)

K.M. stayed in Salt Lake City for the first five days, but she only spent three of those days at the hospital. The other two days, K.M. shopped, slept, and went

out to eat. K.M. later returned to Salt Lake City for another five-day visit. (6/3/20 Tr. at 170-71.) K.M. did not complete training for A.M.M.R.'s care. She was also inappropriate with the medical staff and would not follow directions for A.M.M.R.'s hospital care—to A.M.M.R.'s detriment. (*Id.* at 172.)

Since A.M.M.R. has been released from the hospital, K.M. does not attend her doctor appointments. K.M. does not have a good understanding of the care A.M.M.R. requires each day or what she needs long term. As of June 2020, Michelle did not believe K.M. was in any position to parent her children. Michelle did not believe that the children were the number one thing in K.M.'s life, and that now, more than ever, the children need consistency and stability. (6/3/20 Tr. at 175-77.) Michelle believed that K.M. needed significant mental health and addiction treatment. (*Id.* at 180.) Michelle strongly believed that A.M.M.R. needed stability and needed to know that if her mother made poor choices A.M.M.R. would no longer have to pay the price for those choices. (*Id.* at 189.)

After A.M.M.R. was released from the hospital in Salt Lake City, DPHHS placed her with Michelle. (*Id.* at 154.) Bryn believes that K.M. has had substance abuse issues for most of her adult life. She believes that K.M. will need ongoing treatment to maintain her sobriety. By June of 2020, K.M. was not able to adequately care for her children. (*Id.* at 157.)

Dr. Paczkowski is an attending emergency room physician at St. Vincent Emergency Department in Billings, Montana. (6/3/20 Tr. at 9.) When S.B. arrived in the emergency room on the evening of November 23, 2019, he was on the verge of death. S.B. required an emergency craniotomy to reduce the swelling on his brain before he could be transferred to Salt Lake City Primary Children's Hospital. (*Id.* at 11.) After S.B.'s transfer to Salt Lake City, he died from his injuries. (*Id.* at 12.) Dr. Paczkowski believed that if S.B. had been properly restrained in an appropriate child safety seat, it most likely would have prevented the severity of S.B.'s injuries. (*Id.*)

Dr. Breetz is a pediatrician who has cared for A.M.M.R. since she was around 15 months old. (6/3/20 Tr. at 115-16.) As a result of the car accident, during which K.M. was driving without a valid license, A.M.M.R. suffered extensive abdominal trauma that affected several of her organs. A.M.M.R.'s left kidney was devascularized, so it no longer functions. Although her right kidney was also injured, it is still functional. A.M.M.R. also sustained injuries to her pancreas and her small intestine. Doctors had to remove A.M.M.R.'s damaged spleen. (*Id.* at 117-18.)

A.M.M.R. also sustained a spinal cord injury that resulted in paralysis of the lower portion of her body. As a result, A.M.M.R. does not have control of her bladder and bowel functions. It is unlikely that A.M.M.R. will regain function of

her legs, bladder, or bowel. (6/3/20 Tr. at 118.) A.M.M.R.'s injuries were life threatening. She has undergone several surgeries to repair her serious injuries, and there are more surgeries planned to reconstruct A.M.M.R.'s right kidney and repair her abdominal wall. (*Id.* at 118-19.)

Since A.M.M.R. sustained these life altering injuries, her grandparents have brought her to all her appointments. They have provided A.M.M.R. with good care and kept up with all her medical needs. (6/3/20 Tr. at 117.) K.M. has not attended any of A.M.M.R.'s appointments with Dr. Breetz since the accident, and K.M. has not participated in any training about how to care for A.M.M.R. (*Id.*) A.M.M.R.'s caregivers require specialized training to meet her needs throughout the day, including following specific bowel, bladder, and catheter protocols. (*Id.* at 119.)

Jodi Kristjanson is a licensed addiction counselor. (6/3/20 Tr. at 137.) K.M. has been a client of Kristjanson since 2010, when Adult Probation and Parole referred K.M. to Kristjanson. K.M. completed intensive outpatient treatment in 2014 and again in 2017. (*Id.* at 139.) Kristjanson began seeing K.M. again on November 6, 2019, while K.M. was still in Passages. Passages had referred K.M. for aftercare services. Aftercare generally lasts from 8 to 12 weeks. Kristjanson saw K.M. only twice in November and once in December of 2019. Kristjanson saw K.M. twice in January and twice in April of 2020. K.M. contacted Kristjanson the morning of the June 3, 2020 hearing. (*Id.* at 140-41.) K.M. reported that she "was

not doing well.” (*Id.* at 142.) Between January and April of 2020, Kristjanson reached out to K.M. and tried to get her to reengage. Kristjanson believed that K.M. needed an updated chemical dependency evaluation. (*Id.* at 142-43.) Kristjanson also referred K.M. to Janna North, a mental health counselor. (*Id.* at 146.)

Daysi Onstad is M.L.R.M.R.’s counselor. She continues to work with M.L.R.M.R. on his high levels of anxiety. Although Onstad wanted to have some family therapy sessions between M.L.R.M.R. and K.M., on April 20, 2020, K.M. sent her a text that said:

Hey, at this time I’m going to cancel all of my future meetings with you. I believe it is a conflict of interest to be meeting with you. So thank you. I will be contacting you on updates about [M.L.R.M.R.].

(6/3/20 Tr. at 194.) K.M. requested an update on M.L.R.M.R. on May 19, 2020, and Onstad sent her an email the following day. (*Id.* at 195.) K.M. claimed she never received the email, so Onstad set a time to call her. K.M. spoke with Onstad for less than 10 minutes. Onstad believed that before K.M. could be reunited with M.L.R.M.R., K.M. would have to work consistently and cooperatively with Onstad. (*Id.* at 196-97.)

M.L.R.M.R.’s aunt and uncle who are caring for him actively participate in M.L.R.M.R.’s therapy. They are enthusiastic about improving M.L.R.M.R.’s

wellbeing and have a cooperative, productive relationship with Onstad. (6/3/20 Tr. at 197-98.)

From the time K.M. was released from Passages in November 2019 until June 2020, she was not consistently participating in drug testing. (6/3/20 at 243-45.) K.M. missed visits, did not provide documentation that she was engaged in mental health treatment, and did not provide documentation that she was engaged in chemical dependency treatment. K.M. also changed her phone number without providing Loken her new phone number. (*Id.* at 245-48.)

After the district court denied DPHHS's petition for no reunification services, it warned K.M.:

I'm going to order you to immediately engage in drug testing. I'm going to order that that be through CSI. I do not care if it interferes with your work, you either make those arrangements or you get another job; do you understand?

...

If you do not consistently engage in drug testing, I can tell you that if the State files a petition to terminate, I will not hesitate to terminate your rights if you've not been drug testing.

(6/5/20 Tr. at 324-25.)

At the termination hearing, Greg Pohle explained that he is the owner/operator of Community Solutions, a business that offers drug and alcohol testing in cases where DPHHS is involved. (Tr. at 10-11.) DPHHS made a referral to Community Solutions for K.M. to provide urinalysis testing two to three times

per week. (*Id.* at 12-13.) From June 9, 2020, through September 16, 2020, K.M. should have cooperated with urine testing 45 times, but she only came in to provide a urine sample 10 times. Out of those 10 samples, 2 of the samples tested positive for methamphetamine and amphetamine. On another occasion, K.M. was unable to provide a sample. (Tr. at 13-15.) Between July 3, 2020, and September 16, 2020, when Community Solutions closed its services to K.M., K.M. did not cooperate with any urine test. (*Id.* at 16.)

Karli Morris works for Alternatives, Incorporated, a community corrections agency. She is a case manager in the enhanced transitional supervision services program. She works closely with Adult Probation and Parole to help monitor clients on felony probation. (Tr. at 18-19.) Between January and September 2020, both Adult Probation and Parole and DPHHS referred K.M. to Alternatives, Incorporated, for random urinalysis testing. K.M. was required to provide three random urine samples a week. (Tr. at 20.) K.M. was compliant with the testing from January 2020 until September 2020., and she did not have any positive test results. (Tr. at 21-22.) K.M. stopped cooperating with random urine testing on September 2, 2020, and Alternatives, Incorporated, terminated K.M. from its program. (Tr. at 22.)

Alternatives, Incorporated, reopened services to K.M. on December 3, 2020. From December 3, 2020, through February 3, 2021, K.M. was not compliant with

her drug testing. K.M. missed 20 tests and provided only three urine samples. Of those three urine samples, one tested positive for THC. K.M. last tested with Alternatives, Incorporated, on December 30, 2020. On December 29, 2020, the urinalysis technician believed that K.M. had tampered with her urinalysis testing by trying to provide substitute urine in place of her own. (Tr. at 23-25.)

Sarah Lorinne Burke works for Northwest Counseling Center and provides parent evaluations through Burke/Newell Consulting. DPHHS caseworker Shelby Goodman referred K.M. to Burke/Newell Consulting for a parenting evaluation. (Tr. at 39.) The evaluation ran from September 28 through December 7, 2020. Burke's expectations of a parent throughout the evaluation process are that the parent will: make all appointments, provide a list of collateral witnesses the parent would like the evaluator to speak with, sign all necessary releases, and show up for parenting observations and act appropriately. (Tr. at 46-47.) Burke explained the purpose of the process:

We want to have a longer and more thorough evaluation, so we are not just going to watch you and not see you with your kids, we are not going to just see your kids and not watch them with you, so we want you to have several different chances with your children.

We also want to have a range of collaterals so that we can have people that are on your side. We like to talk to people who have been working with you so that we have a full picture of the functioning of this parent and the functioning of that parent around their children.

(Tr. at 47.)

Burke reached out to K.M. multiple times to engage in this process. K.M. missed her first appointment, stating that something came up with her job. Burke rescheduled that appointment, and K.M. failed to show up for the rescheduled appointment without explanation. K.M. finally came in for her third and fourth appointments. But, Burke explained:

She started off semi willing to participate, made a number of comments about how she wanted us to hear her and not the Department. As soon as we started asking for releases to talk to people, like her therapist, she basically refused, didn't want to talk to us any longer and left early.

(Tr. at 48.)

Burke reached out to K.M., explaining that she would like to finish the assessment process. Burke explained that she had a long waiting list and had moved K.M. up on the list to get the assessment done for her. K.M. still refused to sign any releases. (Tr. at 49.) Despite Burke's effort to carefully explain to K.M. why she needed her to sign releases, K.M. responded:

it's already a termination and I'm not giving you any information. [Burke] was like, okay, so we tried to get information we could but it just kept shutting down, and she got more [flippant], sort of oppositional to anything we were asking and then finally left.

(Tr. at 51.)

Burke still interviewed the children, the children's caregivers, the CASA, the caseworker, and the children's counselors, and prepared a report with the information she had gathered. (Tr. at 52-54.) Burke explained that any time a

parent has a long history of substance abuse, and multiple failed attempts at treatment, she looks for the parent to verbalize some responsibility for the current situation. Burke elaborated:

What we weren't seeing was the responsibility and the humility, the agreement to follow the rules, that tends to portend very negatively for long-term stability.

No stable history of work or housing, multiple incarcerations, inability to stay clean and sober outside of the program, no significant changes in behavior during the past year, avoidance of drug testing, the fact that she felt that the leniency was a grace that she had been shown by the Court, and this was from what I was hearing, not from her, but from family members, that she was telling people, you know, "I don't have to do this", so there was no engagement with treatment, it was just simply I'm going to get further grace and I'm going to be okay.

So as far as what we concluded about her stability is that we didn't feel that she could do it. There wasn't any sign[] of stability going into the report gathering—the data gathering on our report, rather, and we didn't see any signs that she was going to become more stable, that she was showing even the emotional precursors to becoming emotionally, financially, and housing stable enough to be able to take care of children.

(Tr. at 60-61.)

Burke emphatically believed that A.M.M.R. and M.L.R.M.R. need stability especially considering the severe trauma they have endured. (Tr. at 62.) Burke recommended that both children remain permanently in their placements with family members. She also recommended regular contact between A.M.M.R. and M.L.R.M.R. (Tr. at 63-64.) Burke did not believe it was possible for K.M. to safely parent either of these children. Also, Burke feared that both children had been in

limbo for far too long and needed the comfort and security of knowing that their placements with family members were permanent. (Tr. at 67.)

At Burke's request, Dr. Horn evaluated K.M. to provide an impartial opinion on whether any ongoing substance abuse treatment would be beneficial to K.M. Dr. Horn did not know K.M. and did not personally meet her. Rather, she reviewed all of the materials in K.M.'s case. (Tr. at 154-55.) Dr. Horn considered the severity of K.M.'s drug use, whether K.M. had insight, and how motivated she was to change. (Tr. at 157.)

K.M. has struggled with substance abuse since around the age of 13. Because of K.M.'s length of use with very little long-term recovery, Dr. Horn surmised there was probably some damage to her brain's ability to truly heal. (Tr. at 159.) Dr. Horn explained that if K.M. had significant mental health issues, then any substance abuse treatment would not be successful without addressing those mental health issues. (Tr. at 161.)

Dr. Horn noted that K.M. had received the benefit of two long-term substance abuse treatment programs but had still been unable to maintain her sobriety. Dr. Horn elaborated, "unfortunately history is the best indicator of future behavior, particularly when they've had long-term treatment." (Tr. at 162.) If an addicted person lacks insight, that is an impediment to successful treatment

because insight is what drives change. Without insight, there is no reason for a person to change. (Tr. at 164.)

In K.M.'s circumstance, methamphetamine appeared to be her drug of choice. Methamphetamine is one of the most toxic substances on a neurological level because of its impact on the dopamine system. (Tr. at 164-65.) The dopamine system can take months, if not years, to heal. (Tr. at 167.)

K.M. had had a recent opportunity for inpatient treatment and failed to follow through with that opportunity; that led Dr. Horn to conclude that K.M. has a poor prognosis for recovering in the foreseeable future. (Tr. at 167-68.) Based upon Dr. Horn's review of the record in K.M.'s case, she concluded that, even if K.M. were to avail herself of every treatment opportunity, it would take months, if not years, for her to really recover and be stable. (Tr. at 181.) Dr. Horn elaborated about his concerns in K.M.'s case:

I do not see a history of compliance or engagement, I do not see demonstrations of insight, I do not see any indication of internal motivation, and that's very concerning. Without having those things, I think that long-term recovery would be very difficult.

(Tr. at 180.)

Janna North is a licensed therapist in family practice. (Tr. at 85.) K.M. was North's client from January through June 2020. During that period, K.M. was supposed to participate in weekly counseling sessions, but she only participated

five times. K.M. canceled all but one of the missed appointments. North canceled one appointment because she was ill. (Tr. at 86-87.)

K.M. reengaged with North on January 25, 2021. Between then and February 3, 2021, North had two appointments with K.M. (Tr. at 87.) North developed five goals for K.M.: (1) to address/understand her grief and loss; (2) to accept responsibility for change; (3) to correct irrational thinking related to past grief and loss; (4) to deal with uncomfortable feelings resulting from grief and loss; and (5) to decrease her extreme grief and sense of loss. For K.M. to meet these goals, she will have to regularly participate in therapy for at least three to six months. (Tr. at 88.) She has made some progress on increasing her understanding of grief and loss. (*Id.*) K.M. will not be successful in mental health counseling if she ignores her substance abuse issues. (Tr. at 89.) K.M. has never signed a release allowing North to provide information to DPHHS or to any other care providers. North opined that K.M. had not successfully completed individual counseling with her. (Tr. at 91.)

Since June 2020, K.M. has reengaged in substance abuse treatment with licensed addiction counselor Kristjanson. (Tr. at 97.) Between July and December 2020, K.M. did not engage in any group or individual treatment with Kristjanson. (Tr. at 98.) On July 20, 2020, Kristjanson referred K.M. to inpatient treatment at the Montana Chemical Dependency Center (MCDC) because of

K.M.'s continued use of methamphetamine and alcohol. MCDC accepted K.M. for treatment, but K.M. did not go because she had COVID. (Tr. at 99.) Another program, New Day, accepted K.M. for residential treatment, but when New Day attempted to contact K.M. with a bed date, New Day could not locate her. K.M. never started treatment with New Day. (Tr. at 99-100.)

Kristjanson believed that for K.M. to have success with maintaining sobriety she had to deal with her mental health issues. K.M. also needed to comply with urinalysis testing for accountability. Lying is part of the lifestyle of a person who is addicted. Random urine testing is a way to promote recovery by keeping an addict honest. (Tr. at 100-01.) Kristjanson was concerned that K.M. was not cooperating with random testing for either DPHHS or Adult Probation and Parole. (Tr. at 102.) Kristjanson did not know if K.M. was being honest with her about her drug use. K.M. claimed that she had not used methamphetamine for two or three weeks, but Kristjanson had no verification through testing. (*Id.*)

Kristjanson knew that K.M. was staying at the Ignatius House, a sober living facility, but on December 14, 2020, K.M. told her she was no longer living there because "she just couldn't listen to the rules." (Tr. at 103.) This was also concerning to Kristjanson because K.M. needed to be in a residential or sober living setting. (*Id.*)

Kristjanson explained that K.M. understands the importance of consistency in attending all individual and group treatment sessions, but that she had not consistently done so in the last year. (*Id.*) Kristjanson observed that K.M. has a pattern of engaging in treatment when court hearings are approaching, disengaging following the hearings, and reengaging prior to the next court hearing. (Tr. at 104.) Kristjanson thought K.M. needed long-term treatment that might last up to six months. (Tr. at 110.)

Dr. Bakko is a self-employed psychologist who partners with Northwest Counseling Center, Inc. (Tr. at 113.) He performed a psychological evaluation of K.M. His first appointment with K.M. was on November 18, 2020. (Tr. at 114.) K.M. did not appear to understand how her history impacted her ability to parent. (Tr. at 117.) Dr. Bakko elaborated:

Well, a person, particularly in [K.M.'s] case, she's able to formulate an admission to a behavior, like addiction or relapses with the drug and alcohol piece; putting it into more of a context of understanding its impact on herself and other people, like her kids even, that's a different story, her judgment is really questionable there.

(Tr. at 118.) Self-awareness is very challenging for K.M. because when self-awareness feels threatening, she begins to shut down. (Tr. at 120.) K.M.'s intellect is below-average to average, but her insight is poor, so it is a struggle for her to learn from mistakes and incorporate that into her daily life. (Tr. at 125.)

The psychological testing provided insight into K.M.'s personality. She is generally defiant, uncooperative, and hard to get along with. K.M. is self-centered and narcissistic. She has mild suspiciousness and resentment toward others. K.M. denies serious psychological problems. She suffers from some severe psychological issues, but she will not admit them. K.M. displays anti-social behavior and ideas of persecution. She views herself as fine and the rest of the world as screwed up. K.M. has anxiety and fear. Her coping mechanism is to repress her emotions and feelings. K.M. struggles with authority. (Tr. at 126-28.)

K.M. not only lacks insight, but she also is not interested in gaining insight. This, along with impaired cognitive functioning, makes treatment a challenge for her. K.M. needs to participate in psychotherapy with somebody who has experience working with trauma, with lower-functioning people, and with addiction as a co-problem. K.M. needs psychotherapy on a long-term basis. Dr. Bakko has treated people with similar problems and personalities for many, many years. (Tr. at 129.)

K.M. cannot successfully address her substance abuse issue without also addressing her mental health problems through psychotherapy. Dr. Bakko believes that K.M. is at a high risk to physically neglect her children if they are in her care. (Tr. at 131.) Dr. Bakko did not think K.M. could currently safely parent her children. (Tr. at 132.) For K.M. to safely parent her children, she would have to

address her mental health issues through long-term psychotherapy and her addiction through treatment and long-term sobriety. Her mental health and her addiction both impede K.M.'s ability to safely parent her children. There is no quick fix to K.M.'s predicament, and her prognosis is guarded. (Tr. at 133.)

Dr. Bakko explained that “the best predictor of human behavior is past performance.” (Tr. at 134.) Dr. Bakko did not believe there was anything DPHHS could have done that would have made it more likely for K.M. to have successfully completed a treatment plan. K.M. has been “obstructive and evasive and defensive through the whole process.” (Tr. at 144-45.) Regaining custody of her children had not been enough of an external motivator for her to successfully complete her treatment plan. (Tr. at 147.)

K.M.'s probation officer, Terry Boyd explained that K.M. has prior convictions for two instances of criminal possession of dangerous drugs, burglary, and bail jumping. (Tr. at 193.) K.M. is currently serving her probationary sentence on the burglary conviction. (*Id.*) On September 17, 2020, the State also charged K.M. with four counts of criminal endangerment, negligent vehicular assault, negligent vehicular homicide while under the influence, and driving while her license was suspended or revoked. (Tr. at 196.)

On September 23 and November 20, 2020, Boyd filed reports that K.M. had violated the terms of her probationary sentence. The first report was based upon

K.M.'s new felony charges. The second report was based upon K.M.'s use of illegal drugs. (Tr. at 199.) Boyd elaborated that K.M. had tested positive for amphetamine on September 2 and 10, 2020. K.M. tested positive for methamphetamine and amphetamine on November 13, 2020. K.M. had other positive drug tests through December 2020. (Tr. at 200-01.) K.M. was then living at Ignatius House, but she lost her spot due to her positive drug tests. (Tr. at 202-03.) K.M. is not employed. (Tr. at 204.)

Child protection specialist Shelby Goodman assumed responsibility for K.M.'s case when Loken left the unit. (Tr. at 225.) At the time of the termination hearing, Goodman testified that A.M.M.R. and M.L.R.M.R. were the ages of eight and three. (Tr. at 226.) Goodman explained that K.M. had signed the Phase I Treatment Plan and the court had approved it on August 7, 2019. In compliance with the district court's order, DPHHS also prepared and filed a Phase II Treatment Plan with the court. K.M. refused to sign the Phase II Treatment Plan. (Tr. at 227-28.)

Goodman explained that K.M. had not successfully completed substance abuse treatment and maintained sobriety. Even though inpatient treatment was recommended, she never completed inpatient treatment. (Tr. at 229-30.) Also, K.M. had refused to sign releases with Kristjanson, so Goodman had no documentation about K.M. reengaging in treatment. (Tr. at 230.) K.M.'s most

consistent drug treatment occurred when she was in Passages, a lockdown facility. K.M. was placed in Passages through a revocation in one of her criminal cases. (Tr. at 231.) Through the pendency of the youth in need of care cases, K.M. has never been compliant with drug testing requirements. (Tr. at 232.) Also, when she has complied with drug testing, she has repeatedly tested positive for methamphetamine and amphetamine. (Tr. at 233.)

Goodman explained that K.M. sought out Dr. Bakko. DPHHS agreed to pay for Dr. Bakko's services. (Tr. at 238.) K.M. has never provided any documentation that she is actively or consistently engaged in individual therapy. (*Id.*) It has been extremely difficult to maintain contact with K.M. Goodman no longer has telephone contact with K.M. because during their last phone call in September 2020, K.M. was yelling and "beyond inappropriate." (Tr. at 239.) Goodman now communicates with K.M. through email. K.M. has a pattern of only emailing Goodman right before a hearing to indicate she wants to participate in services. But when the hearing is completed, K.M. no longer stays in contact. (Tr. at 240.)

The family members caring for the children are no longer willing to supervise visits between K.M. and the children because K.M. does not consistently visit the children and, when she does visit, her behavior is inappropriate. (Tr. at 241.) In September 2020, Onstad, M.L.R.M.R.'s play therapist, concluded that the visits with K.M. were detrimental to M.L.R.M.R., and recommended that the visits

stop. Goodman observed that following visits with M.L.R.M.R., his stuttering would increase, and he would be very physical with other people. (Tr. at 242-43.) K.M. has not provided Goodman with updated information about her current address or her current phone number. (Tr. at 245.)

Both children need consistency. Their caregivers need to take them to their appointments, get them to school on time, and generally provide a safe home. (*Id.*) A.M.M.R. requires specialized, full-time care. M.L.R.M.R. needs to continue in his day care and will need to attend Head Start. Both children need to continue with their therapy. For A.M.M.R. that includes things like trauma yoga, equine therapy, and water therapy. It is imperative that A.M.M.R. remain in her school because the team at Elder Grove have made many accommodations for her to be successful. Goodman did not believe that K.M. had demonstrated the ability to meet her children's needs. K.M. has not even followed through to gain training on how to meet A.M.M.R.'s daily medical needs. Also, K.M. has no understanding of M.L.R.M.R.'s therapeutic needs. (Tr. at 246.)

Even if K.M. had reengaged in services to address her addiction and her mental health issues, Goodman believed it was unlikely that K.M. could make any significant changes in her life within a reasonable time. Goodman explained that, historically, K.M. would start working on her treatment plan tasks right before a

hearing, but when the hearing was over, K.M. would stop engaging in services.
(Tr. at 249.)

Maria Burton, the CASA, testified that both children are doing well in their placements with family members. (Tr. at 279.)

SUMMARY OF THE ARGUMENT

DPHHS presented overwhelming evidence in this case that the conduct or condition rendering K.M. unfit to parent her children, her drug addiction and serious mental health issues, was unlikely to change within a reasonable time. This case epitomizes the destruction of drug addiction on a family—especially when the drug of choice is methamphetamine. This case shows that a parent’s love for her children cannot ensure her ability to adequately care for them. Sadly, K.M. suffers from a long-term addiction to methamphetamine, combined with serious mental health issues. The record establishes that K.M. lacks insight into her own situation, making it very difficult for her to make meaningful change. The district court gave K.M. the benefit of the doubt. The district court gave K.M. the benefit of time. Unfortunately, K.M. could not take these opportunities and use them to her advantage. K.M.’s children have their own special needs, which K.M. is unable to meet. The children can no longer wait for their mother to sincerely and seriously

engage in treatment because their needs for safety, stability, and security, now outweigh K.M.'s desire for more time.

This Court should affirm the order of the district court terminating K.M.'s parental rights to A.M.M.R. and M.L.R.M.R.

ARGUMENT

I. The standard of review

This Court reviews a district court's decision to terminate a person's parental rights for an abuse of discretion. *In re A.B.*, 2020 MT 64, ¶ 23, 399 Mont. 219, 460 P.3d 405.) "In this context, a court abuses its discretion if it terminates parental rights based on clearly erroneous findings of fact, erroneous conclusions of law, or otherwise 'acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice.'" *In re D.E.*, 2018 MT 196, ¶ 21, 392 Mont. 297, 423 P.3d 586 (citation omitted).

The appellant bears the burden of establishing error by the district court. It is the appellant's burden on appeal to establish that the district court's factual findings are clearly erroneous. *In re D.F.*, 2007 MT 147, ¶ 22, 337 Mont. 461, 161 P.3d 825 (citation omitted). This Court reviews "the evidence in the light most favorable to the prevailing party when determining whether substantial credible evidence supports the district court's findings." *In re J.B.*, 2016 MT 68, ¶ 10,

383 Mont. 48, 368 P.3d 715 (citation omitted). Findings of fact are clearly erroneous if they are not supported by substantial evidence, the court misapprehended the effect of the evidence, or this Court has a definite and firm conviction that the lower court was mistaken. *In re D.E.*, ¶ 21. This Court reviews conclusions of law for correctness. *Id.*

II. The district court properly terminated K.M.’s parental rights to her children.

A. Introduction

A court may terminate parental rights to a non-Indian child if clear and convincing evidence establishes: the child was adjudicated a youth in need of care; the court approved a treatment plan for the parent; the parent did not comply with the plan or it was unsuccessful; and the conduct or condition of the parent rendering her unfit is unlikely to change with a reasonable time. Mont. Code Ann. §§ 41-3-422(5)(a)(iv), -609(1)(f). In parental rights cases, clear and convincing evidence means that a preponderance of the evidence must be definite or that a particular issue must be established by a clear preponderance of proof. *In re D.B.*, 2007 MT 246, ¶ 29, 339 Mont. 240, 168 P.3d 691. The standard “does not call for unanswerable or conclusive evidence.” *In re J.M.W.E.H.*, 1998 MT 18, ¶ 33, 287 Mont. 239, 954 P.2d 26.

K.M. only argues on appeal that there was insufficient evidence for the district court to conclude that the conduct or condition rendering her unfit to parent her children was unlikely to change within a reasonable time.

B. The district court correctly concluded, based upon substantial evidence, that the conduct or condition rendering K.M. unfit to parent her children was unlikely to change within a reasonable time.

Montana Code Annotated § 41-3-609(2) provides:

In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

....

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child[.]

When determining whether a parent's conduct or condition is likely to change, a person's past conduct is appropriate to consider. *In re J.C., Jr.*, 2003 MT 369, ¶ 11, 319 Mont. 112, 82 P.3d 900. This Court has repeatedly explained, "we do not have a crystal ball to look into to make this determination, so it must, to some extent, be based on a person's past conduct." *In re M.T.*, 2002 MT 174, ¶ 34,

310 Mont. 506, 51 P.3d 1141; *J.C., Jr.*, ¶ 11. This may include conduct prior to any work or progress made in a treatment plan. *In re D.F.*, 2007 MT 147, ¶ 44, 337 Mont. 461, 161 P.3d 825. The issue is not merely whether a parent has made progress or would make some progress in the future; the issue is whether the parent is likely to make enough progress, within a reasonable time, to overcome the circumstances rendering the parent unfit. *Id.* ¶ 43. And what constitutes a reasonable time is largely dependent on the child's special needs. This Court has consistently held that the needs of the child are always paramount to the rights of the parent. *Id.*

Here, DPHHS removed the children from K.M.'s care in March 2019. At the termination hearing, almost two years later, K.M. still had not successfully completed her treatment plan. And, only a few days after she was released from Passages, a locked treatment facility, she engaged in reckless conduct that resulted in the death of one of her children and severe, permanent injuries to A.M.M.R.

While K.M. characterizes the car accident as a tragic accident in which she had no accountability, the State has charged her with multiple serious felonies, including vehicular negligent homicide. K.M. omits that she should never have had the children with her the day of the accident without supervision. K.M. omits that she was driving when her license was suspended or revoked. K.M. omits that she had consumed alcohol before driving. K.M. minimizes her decision to not put her

children in child safety restraints. But K.M. uses these circumstances to justify why she simply could not engage in meaningful treatment and make progress on her treatment plan.

K.M. is undoubtedly grieving over the death of her son and the permanent, life changing injuries to her daughter, but the district court gave her consideration for those circumstances when it denied the State's petition for no reunification services. On June 5, 2020, the district court put K.M. on notice that if she missed any more drug testing, it would not hesitate to terminate her parental rights. But even the court's stern warning was not sufficient to motivate K.M. to comply with drug testing consistently and maintain sobriety. And A.M.M.R. will carry the burden of the events of November 23, 2019, for her entire life. Yet, at the time of the termination hearing, K.M. still had not undergone the necessary training to meet A.M.M.R.'s daily medical needs.

Sadly, K.M. has a long-term addiction to methamphetamine and significant mental health issues. The combination, along with K.M.'s lack of insight and her history, caused Dr. Bakko, a professional whom K.M. chose, to conclude that K.M. is unfit to parent her children and that circumstance is unlikely to change for many, many months if not years. Dr. Bakko's testimony is both thorough and supported by the record of this case. Through the pendency of the youth in need of care proceedings, K.M. was never able to consistently maintain sobriety, nor did she

consistently participate in treatment. Rather, K.M. had a history of engaging in services just before a court hearing, and then disengaging when the hearing was over. Even by the time of the termination hearing, K.M. had not learned how to meet A.M.M.R.'s day-to-day medical needs.

DPHHS presented substantial evidence that both of K.M.'s children needed stability and permanency. K.M.'s own mother put it best when she explained that A.M.M.R. needed the peace of mind and security of knowing that she would never again have to pay the price for her mother's poor decision making. M.L.R.M.R., at three years old, suffers from extreme anxiety and needs the security of a permanent, safe, and stable home. The children's family members have stepped up, under tragic circumstances, to meet the needs of these children in the best way possible.

Here, based upon substantial credible evidence, the district court correctly concluded that due to K.M.'s long-term addiction to methamphetamine, combined with her serious mental health issues, K.M. was unlikely to have the ability to adequately and safely parent her children within a reasonable time.

///

CONCLUSION

For the reasons argued above, DPHHS respectfully requests that this Court affirm the order of the district court terminating K.M.'s parental rights to both children.

Respectfully submitted this 1st day of October, 2021.

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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 9,203 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Tammy K Plubell

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CERTIFICATE OF SERVICE

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