



FILED

04/08/2022

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 22-0137

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 22-0137

J.V.,

Petitioner,

v.

MONTANA EIGHTEENTH  
JUDICIAL DISTRICT COURT,  
THE HONORABLE RIENNE H.  
MCELYEA, PRESIDING

Respondent.

FILED

APR 08 2022

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

**RESPONSE OF RESPONDENT EIGHTEENTH JUDICIAL DISTRICT  
COURT, GALLATIN COUNTY, THE HONORABLE RIENNE H.  
MCELYEA, DISTRICT JUDGE**

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Respondent

On March 25, 2022, the Montana Supreme Court issued an Order providing the Eighteenth Judicial District Court and the State of Montana, in Gallatin County Cause No. DN-20-74B, twenty days from March 25, 2022, to file a response to Petitioner's Petition for Writ of Supervisory Control. Respondent files this Response.

Concerning the issue of the Montana Supreme Court's jurisdiction in this matter, Respondent takes no position in regard to Petitioners' assertion that the Petition for Writ of Supervisory Control is appropriate in this case.

Concerning Petitioners' arguments on the particular legal questions and issues anticipated or expected to be raised in the proceeding, Respondent corrects the characterization of Father as the "non-offending" parent. This terminology is not consistent with the procedural history of the case. A Petition was filed by the Montana Department of Public Health and Human Services, Child And Family Services Division (CFS) on October 27, 2020 (Doc 1). The petition included both Mother and Father as alleged offending parents. Paragraph 12e of the Affidavit in Support of Petition for Emergency Protective Services, Adjudication as a Youth in Need of Care, Temporary Legal Custody (Doc 1, Affidavit, page 5) alleges, "father abandoned the child by leaving the child under circumstances that make reasonable the belief that parent does not intend to resume care of the child in the future."

The October 27, 2020 Order for Immediate Protection Appointment of Counsel, Appointment of Guardian Ad Litem and Setting Show Cause Hearing (Doc 2) included both Mother and Father as the offending parents. Mother's case proceeded accordingly. Father was appointed counsel but could not be located. Father was served by publication but did not appear. A hearing was held on July 30, 2021, Father was adjudicated, and Temporary Legal Custody was extended to CFS for a period of six (6) months. CFS declined to request a Treatment Plan for Father as his whereabouts were unknown.

In late summer 2021, Father was located and began to actively engage with CFS.

On September 30, 2021, an Order Amending Order Adjudicating the Child as a Youth in Need of Care and Granting Temporary Legal Custody as to Father J.V. (doc 41) was signed. Despite the title, the Order addressed a therapeutic introduction of Father with J.A. The Order required CFS to evaluate Father as a possible caretaker for J.A. The Order did not include substantive language modifying temporary legal custody.

On November 19, 2021, Father filed a Motion to Rescind Adjudication Regarding Father, or Alternatively, Place Youth with Father and Dismiss Proceeding (doc 52). CFS filed a Petition for Extension of Temporary Legal Custody (doc 59) on January 3, 2022. The January 5, 2022 Order Setting Hearing on Petition for

Extension of Temporary Legal Custody (Doc 60) ordered “that all previous court orders are continued, including the last order granting temporary legal custody, which is hereby extended until an order is issued regarding this petition.” A hearing was held on Temporary Legal Custody on February 11, 2022. A Dispositional hearing was held as to Father on February 24, 2022, where the Court ordered CFS’s proposed Treatment Plan (doc 77). An Order Granting Extension of Temporary Legal Custody until May 4, 2022 (doc 78) was signed on February 28, 2022.

Father contends there are no demonstrable circumstances of imminent safety risks to J.A. Father does not reference the February 11, 2022, testimony of the caseworker, Mother’s position as outlined in Mother’s Response to Father’s Motion (Doc 58), or CASA/Guardian ad litem’s report or statement. In her January 24, 2022, report (Doc 63), CASA\Guardian ad litem, Morgan Stewart, does not support Father’s request to place the child with him. CASA Stuart states,


This CASA does not support the birth father’s request to place and dismiss. J.A. does not feel comfortable with his birth father at this point and the need for time in therapeutic intervention before moving forward with any unsupervised time is crucial. JA’s concerns and discomfort with [father] need to be acknowledged and respected. Furthermore, [father’s] refusal to engage in therapy is of great concern to this CASA. This CASA spoke with [father’s] oldest son and his recollection of abuse, neglect, and abandonment by [father] should not be ignored by the Department. This history indicates, to this CASA, a strong need for [father] to engage in parenting related therapy and counseling before being allowed to parent JA.

(Doc 63, page 2)

Respondent stands by its February 28, 2022, Order Granting Extension of Temporary Legal Custody, its denial of Father's Motion to Rescind Adjudication Regarding Father, or Alternatively, Place Youth with Father and Dismiss Proceeding and its order for Father to engage in a Treatment Plan.

Dated: April 6, 2022.

EIGHTEENTH JUDICIAL DISTRICT COURT,  
GALLATIN COUNTY, THE HONORABLE  
RIENNE H. MCELYEA, DISTRICT JUDGE

By:   
Hon. Rienne H. McElyea  
District Court Judge

## CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11(4)(c) and 14(9)(b) of the Montana Rules of Appellate Procedure, I certify this Response is double spaced (except for point headings, footnotes, and quotes), printed with 14 point, proportionally spaced Times New Roman typeface, and contains 772 words as calculated by Word, excluding any certificate of service and certificate of compliance.

Date: April 6, 2022.



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Hon. Rienne H. McElyea  
District Court Judge

## CERTIFICATE OF SERVICE

I, Judge Rienne H. McElyea, hereby certify that I have served true and accurate copies of the foregoing Response of Respondent Eighteenth Judicial District Court, Gallatin County, the Honorable Rienne H. McElyea, District Judge to the following parties via U.S. Mail, postage prepaid, on April 6, 2022:

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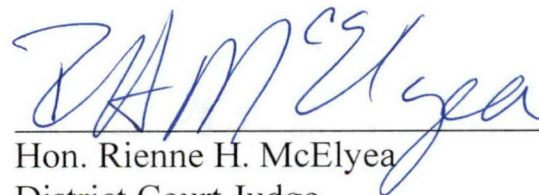
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Hon. Rienne H. McElyea  
District Court Judge