IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0696

IN THE MATTER OF D.A., L.A., and F.A.,

Youths in Need of Care.

# REDACTED BRIEF OF APPELLANT

On Appeal from the Montana Second Judicial District Court,
Silver Bow County, the Honorable Robert Whelan, Presiding

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Appellant respectfully submits this Reply to Appellee's Response.

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN ADMITTING CHILD HEARSAY EVIDENCE AT THE TERMINATION HEARING, DEPRIVING FATHER OF HIS RIGHT TO FUNDAMENTALLY FAIR PROCEDURES.

#### A. The child hearsay evidence should not have been admitted because the State failed to provide appropriate notice.

In its *Response*, the State argues that Father was provided with sufficient notice that its witnesses would be offering child hearsay allegations of sexual abuse at the termination hearing. *Response* at 19. According to the State, the allegations were contained in multiple Department filings with the court beginning in October 2020 and appeared in the Department's affidavit supporting termination. The State also argues that the defense attorneys had an opportunity to respond during the second day of hearings. But this opportunity only occurred after the district court had already made its ruling admitting the testimony without any constraints.

##### 1. Law regarding notice of child hearsay evidence.

The State is required to provide advance notice of its intent to introduce child hearsay allegations in a legal proceeding. This rule

appears in Montana Rule of Evidence 804(b)(5), *State v. J.C.E.*, 235 Mont. 264, 767 P.2d 309 (1988) and Montana's child hearsay statute, §46-16-220. In *O.A.W.*, this Court used the three-step test from *J.C.E.* to analyze the issue of child hearsay in dependency and neglect proceedings, even as it acknowledged the differences between criminal cases and child welfare cases. *In re O.A.W.*, 2007 MT 13, ¶¶39-44, 355 Mont. 304, 153 P.3d 6.

While "notice" is not defined in these sources, several cases involving child hearsay offer examples of what could serve as appropriate notice. For example, in *O.A.W.*, in which this Court upheld the district court's determination that the State had provided sufficient notice, "CFS filed a motion to have the District Court determine the admissibility of hearsay on October 10, 2003, a full 18 days prior to the adjudicatory hearing. The motion listed the hearsay at issue, including statements by the children to social workers, Dr. Miller and Dr. Ruggiero." *O.A.W.*, ¶ 44.

Montana criminal cases also demonstrate what qualifies as appropriate notice of intent to introduce child hearsay. *See, e.g., State v. Spencer*, 2007 MT 245, 339 Mont. 227,169 P.3d 384 (hearing in advance

of trial and court issues 11-page order regarding indicia of reliability); *State v. Tome*, 2021 MT 229,405 Mont. 292, 495 P.3d 54 (State submits brief in support of hearsay; hearing held prior to introduction of hearsay; competency hearing in which court interviews child).

### 2. Here, the State failed to provide adequate notice, thereby depriving the parents of fundamentally fair procedures.

Here, the prosecutor did none of the things other prosecutors have done to provide acceptable notice. He did not file a motion in advance of the termination proceeding, identifying the specific hearsay statements he wished to introduce. He did not file any exhibits in advance of the hearing, instead referring to "all termination affidavits" in his notice of exhibit. Most damningly, this prosecutor refused to allow the defense to interview its witnesses, Ms. Brown and Ms. Browning, in advance of the termination proceeding. D.C. Doc. 118, Response and Objection to State's Motion to Quash, at 2, and Ex. A, July 28, 2022 email from Katie Green to Mark Vucurovich, requesting contact information and the opportunity to interview the State's witnesses. The State's *Response* does not contest this point.

While it is true that the Petition for Termination referred to the allegation that "the children continue to make disclosures of inappropriate touching," and listed dates, it did not disclose the specific statements, the context of the statements (including leading questions), the reporters of the statements (which had been attributed solely to "centralized intake" in affidavits), nor did it disclose any recordings or therapists' notes about the statements. The State did not disclose its potential theories of admissibility, nor its intent to ask its witnesses whether or not they found the children's statements to be credible.

The State's *Response* also overlooks the fact that Father's counsel had several boxes of discovery from the three-year case, making it impossible to prepare to challenge specific child hearsay statements without advance notice. It overlooks the fact that the parents had been informed that the disclosures were "unsubstantiated" and never informed that they were "substantiated." *Opening Brief*, App. B. Just because the defense is aware that the allegations exist, does not mean that the defense has been alerted to the need to prepare to challenge specific statements, their context, and their reporters.

Instead of providing fair notice, the prosecutor here conducted "trial by ambush." In permitting him to do so, the district court deprived the Father of the "fundamentally fair procedures" to which he was entitled under the Due Process Clauses of the United States Constitution and Montana Constitution Article II, section 17.

Moreover, the Department's failure to follow DPHHS regulation A.R.M. 37.47.610—requiring that CPS investigate sexual abuse allegations and reach a determination—created the problem of lack of notice in this case. Throughout the case, the Department reported the continuing disclosures in affidavits, but initially informed the parents that they had been determined to be unsubstantiated. Then the Department failed to investigate or reach any determination about subsequent disclosures (regarding the same alleged incidents which occurred prior to removal from the home). Neither of the parents' treatment plans addressed the issue of the sexual abuse disclosures, yet the termination hearing was focused primarily on those disclosures. The real violation of due process rights and the right to "fundamentally fair procedures" occurred here because the Department failed to address the

disclosures when they were raised throughout the case, but then made them the centerpiece of the termination proceeding.

The Department also failed to provide fair notice when it did not notify the parents and their counsel about the identity of the reporters of the disclosures, referring to them only as "reports from centralized intake." Since the foster mother was the source of some of the allegations, the failure to inform defense counsel and the district court of her history of making sexual abuse allegations in legal proceedings (including against her ex-husband and a Butte middle school teacher), is another aspect of the failure to provide fundamentally fair proceedings.[1] If the State wishes to introduce child hearsay sexual abuse allegations, at a minimum, the reporters of the hearsay should be disclosed to the parents and their counsel.

[redacted]

### B. The child hearsay allegations were not admissible under Rules 702-703, Rule 803(4), or Rule 804(b)(5).

The State argues in its *Response* that the child hearsay was admissible, but that the district court did not rely on Rule 804(b)(5) in admitting the hearsay evidence. *Response* at 19. (Thus the State appears to concede Rule 804(b)(5) as a theory of admissibility). According to the State, the district court admitted the statements because they were made to the children's therapists and thus they were admissible under Rules 702-703 and 803(4). *Response* 17-26. The State raises the Rule 702-703 theory of admissibility for the first time on appeal.

#### 1. The child hearsay was not admissible under Rules 702-703 for expert testimony.

The State argues that Montana Rule of Evidence 703 serves as a hearsay exception. Rule 703 provides:

> The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Under the State's view, as long as the witness relaying the child hearsay has been designated as an "expert," the hearsay is admissible. If this were true, in all prosecutions of sex crimes, the prosecutors need only call any mental health counselor and ask him or her about a child's disclosures. Under this reading, Montana's child hearsay statute, MCA § 46-16-220, would serve no purpose. Nearly every case involving child hearsay allegations of sexual abuse involves a mental health professional reporting the disclosures.

The State's brief overlooks this Court's rule that Rule 703 does not permit an expert to serve as a conduit for otherwise inadmissible hearsay. *In re C.K.*, 2017 MT 69, ¶¶21-22, 387 Mont. 127, 391 P.3d 735, citing *Weber v. BNSF Rwy. Cy.*, 2011 MT 223, ¶ 38, 362 Mont. 53,261 P.3d 984 (expert may not simply transmit inadmissible hearsay) and *Reese v. Stanton*, 2015 MT 293, ¶¶ 22-24, 381 Mont. 241, 358 P.3d 208; *see also, e.g., United States v. Kantengwa,* 781 F.3d 545, 561 (1st Cir. 2015) (applying Fed. R. Evid. 703); *James v. Ruiz,* 440 N.J. Super. 45, 111 A.3d 123, 135 (N.J. Super. Cit. app. Div. 2015) (applying N.J. R. Evid. 703); *State v. Lundstrom*, 161 Ariz. 141, 776 P.2d 1067, 1074 (Ariz. 1989) (applying Ariz. R. Evid. 703). At a minimum, any hearsay

from an expert does not constitute proof of the matter asserted, and is subject to a Rule 403 analysis. *C.K.,* ¶22.

Moreover, the expert is not permitted to repeat the inadmissible hearsay during her testimony. *State v. Bailey*, 2004 MT 87, ¶ 27, 320 Mont. 501, 87 P.3d 1032.

The other major problem with the State's argument that the child hearsay was admissible under Rules 702-703 is that this Court has outlined stringent requirements for witnesses who testify as experts on child sexual abuse, and none of the State's witnesses met these requirements.

In *Scheffelman*, this Court explained:

> [T]he critical factors relating to qualification as an expert include (1) extensive firsthand experience with sexually abused and non-sexually abused children; (2) thorough and up to date knowledge of the professional literature on child sexual abuse; and (3) objectivity and neutrality about individual cases as are required of other experts. Meyers, Expert Testimony in Child Sexual Abuse Litigation, 68 Nebraska Law Rev. 1, 12 (1989). If these factors cannot be shown, the individual witness should not be allowed to testify as an expert on child sexual abuse. *See* Meyers, 68 Nebraska Law Rev. at 12.

*State v. Scheffelman*, 250 Mont. 334, 342, 820 P.2d 1293, 1298 (1991).

Here, neither Ms. Brown nor Ms. Browning testified that she possessed any of these specialized qualifications for being a child abuse expert. (8/29/22 Tr. at 6-8, 31-32) (hereinafter "Tr."). Both were mental health therapists with master's degrees and no particular expertise in child sexual abuse. Neither claimed to have studied child abuse research. Ms. Browning worked exclusively with the foster family and was not objective and neutral. CPS worker Kara Richardson also testified extensively regarding child hearsay allegations, and was not qualified as an expert.

None of these witnesses was qualified to testify on the issue of whether or not the children had been sexually abused. Child hearsay should not have been admitted through their testimony as part of their "expert" opinion because they did not meet the *Scheffelman* criteria.

Both mental health counselor witnesses appeared ignorant of the extensive research on the difficult issue of whether or not children's traumatized behaviors conclusively demonstrates that children had been sexually abused, or whether or not it could indicate other sources of trauma, such as removal from the home of their natural parents. *See, e.g.,* Mary Ellen Reilly, "Note: Expert Testimony on Sexually Abused

Child Syndrome In a Child Protective Proceeding: More Hurtful Than Helpful," 3 *Cardozo Pub. L. Pol'y & Ethics J.* 419, 441 (2005).

The two State's witnesses also testified improperly and invaded the fact finder's province when they testified that the hearsay conclusively identified the biological parents as the perpetrators of the alleged sexual abuse. Tr. at 45, 50, 74, 76, 91. This Court has explained that sexual abuse experts may not testify as to the perpetrators of the sexual abuse, because that is an issue for the finder of fact. *J.C.E.*, 235 Mont. at 269-70.

They also testified improperly when they repeated the inadmissible hearsay statements to the fact finder. Tr. at 36, 50. *Cf. Bailey*, ¶ 27. These statements were offered to prove the truth of the matter asserted (e.g., Father sexually abused the children). No Rule 403 analysis was conducted by the district court as described in *In re C.K.*, ¶ 22 (Rule 403 is the "critical safeguard.")

Moreover, both Ms. Brown and Ms. Browning overstepped their roles as experts when they testified that they believed that the children's hearsay statements were credible. Tr. at 28, 57, 62. This Court has reversed cases in which experts testify that they believe that

sexual abuse allegations are credible. *State v. Byrne*, 2021 MT 238, 405 Mont. 352, 495 P.3d 440.

**2. The child hearsay was not admissible under Rule 803(4), the medical diagnosis hearsay exception.**

The State also argues that the child hearsay sexual abuse allegations were admissible under the exception for medical diagnosis – Rule 803(4). *Response* at 23. The district court's comments at the time of overruling the hearsay objection suggest that this was in fact the rule the district court and the prosecutor were relying on. Tr. at 37.

But this Court has already held that the medical diagnosis hearsay exception should be limited to medical doctors, as the State acknowledges. *Response* at 23. This Court rejected the use of Rule 803(4) exception in cases involving child hearsay offered by mental health therapists.

The State argues that this Court extended the exception for medical diagnosis hearsay in *State v. Arlington*, 265 Mont. 127, 875 P.2d 307 (1994). But *Arlington* involved testimony from EMTs regarding statements made by an adult who had been assaulted by the defendant. This Court explained in *Arlington* that the facts of that case did not have the reliability issues that are present in child sexual abuse

cases. *Arlington,* 265 Mont. at 143, citing *State v. J.C.E.*, 235 Mont. at 271, and *State v. Harris*, 247 Mont. 405, 808 P.2d 453 (1991). But those reliability issues are present in this dependency and neglect case. *Arlington* does not support the admissibility of child hearsay in this DN case. Instead, it reaffirms that the hearsay exception 803(4) for medical diagnosis should not be extended to allow child hearsay from mental health therapists in child sex abuse cases.

### C. The admission of the child hearsay at the termination proceeding was not harmless error.

The State argues that the district court's decision to allow admission of child hearsay sexual abuse allegations at the termination hearing was harmless error. *Response* 26-27. The State reasons that because Father failed some aspects of the treatment plan, he was not entitled to fundamentally fair procedures.

The State has not met its burden of proving that the evidentiary decisions were harmless. *State v. Mercier*, 2021 MT 12, ¶ 31, 403 Mont. 34, 479 P.3d 967. The child hearsay allegations and the experts' testimony based on the hearsay made up a substantial part of the district court's termination order. App. A.

Numerous appellate courts have found that admission of child hearsay allegations in dependency and neglect matters was reversible error. *See, e.g.*, *In Interest of Brunken*, 139 Ill App. 3d 232 (1985); *J.Q. v. Ind. Dep't of Child Servs.*, 836 N.E. 2d 961 (2005); *Petcu v. Dept of Health and Social Services*, 135 Wn.2d 208 (1998); *In re Ty. B.*, 878 A.2d 1255 (2005); *In re Jeffrey S.*, L-96-178, 1998 Ohio App. LEXIS 6034, 1998 WL 879652 (Ohio Ct. App. Dec. 18, 1998).

Admission of child hearsay in this case was not harmless error because it deprived Father and Mother of a fundamentally fair procedures to which they are entitled by the U.S. and Montana Constitutions.

## II. THE DISTRICT COURT ABUSED ITS DISCRETION IN DETERMINING THAT THE STATE MET ITS BURDEN OF PROVING, BY CLEAR AND CONVINCING EVIDENCE, THE STATUTORY CRITERIA FOR TERMINATION.

In Father's opening brief, undersigned counsel argued that the district court erred by determining that the State had met its burden of proving sexual abuse allegations by clear and convincing evidence. In its *Response*, the State does not try to argue that the prosecutor proved, with clear and convincing evidence, that the sexual abuse allegations were true. Instead, the State points out that this Court should be

determining whether or not the district court abused its discretion in finding that the State proved the statutory criteria for termination by clear and convincing evidence. *Response* 30-36.

The *Response* is correct in stating that the State must offer clear and convincing evidence that: (1) the child was adjudicated a youth in need of care; (2) an appropriate treatment plan approved by the court was complied with by the parent or was not successful; and the conduct or condition of the parents rendering them unfit was unlikely to change within a reasonable time. Mont. Code Ann. § 41-3-609(1)(f)(i)-(ii).

However, these findings regarding statutory criteria must be based on factual evidence. "A factual finding is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence, or if review of the record convinces the Court a mistake was made." *In re J.B.*, 2016 MT 68, ¶ 10, 383 Mont. 48, 368 P.3d 715.

What the prosecutor and the Department argued at the termination hearing was that Father failed his treatment plan because sexual abuse disclosures had been made. They also argued that he failed the treatment plan, and that his condition was unlikely to change, because

the children exhibited traumatized behavior that was caused by his alleged sexual abuse.

In order to accept the State's claim that Father had failed to provide a safe home, failed to implement good parenting techniques, and that his condition was unlikely to change, the district court had to rely on and accept as true the State's claim that Father sexually abused his children.

The State argues that the district court never made, and did not have to make, a finding that the sexual abuse allegations were true; only that the allegations were reported. *Response* at 31. According to the State, therefore, the mere existence of the disclosures—even if they had not been proven to be true—constitutes clear and convincing evidence that Father failed to provide a safe home for his children, failed the visitation component of his treatment plan, and failed the mental health component of his plan. This argument shrugs off the State's burden of proof in termination proceedings and shifts the burden to Father to prove the disclosures were not true. *Cf. In re D.B.*, 2007 MT 246, ¶ 24, 339 Mont. 240, 168 P.3d 691 (State has burden of proof at termination proceedings).

The district court should have required the State either to prove the sexual abuse allegations were true, or should have found that the unproven and uncorroborated disclosures on their own did not constitute clear and convincing evidence of failure of each of these components of the treatment plan.

The district court's finding that the State proved by clear and convincing evidence that Father failed to complete the visitation services portion of the treatment plan, and the mental health portion, relied on accepting the sexual abuse allegations as true. It also relied on accepting the State's witnesses' allegations that the children's emotional turmoil was caused by Father's alleged sexual abuse. This was an abuse of discretion because the State did not present clear and convincing evidence that the sexual abuse allegations were true.

As explained in the opening brief, the State's evidence was not clear and convincing. It consisted of child hearsay statements without indicia of reliability. The hearsay was not corroborated by other witnesses.

Moreover, the hearsay was relayed by reporters who did not meet Montana's requirements for expert witnesses on child abuse. The

district court overruled Father's objection requesting best evidence. Unlike the court in *O.A.W.*, the court did not review any forensic videos, any therapist's notes and did not review the context of the statements. In fact, no forensic videos were offered by the State. The record is silent as to whether or not any forensic videos contained disclosures.[2]

The court did not analyze the competency of the child declarants and the possibility that their disclosures were tainted by intentional or unintentional coaching. The court did not review any transcripts or contemporaneous therapist notes on the hearsay statements.

The court did not analyze the potential bias of the reporters. The court did not ask for, and did not receive, any information about the reporters of the "25 disclosures" of sexual abuse.

The court also erred in relying on, and accepting as true, the testimony of the two mental health counselors because they were not qualified as experts in child abuse. The "experts" claimed, even though

[2] Appellant's Opening Brief was incorrect in stating that the second and third forensic interviews contained disclosures. (Br. at 34). This was based on the misleading testimony of CPS Richardson (Tr. at 86). But both the State's and Mother's briefs are correct in stating that the record is silent as to whether the children actually made disclosures in the second or third forensic, recorded interviews. (*Response* at 13, Mother's brief at 26, 39).

they had not met the required qualifications for expert testimony on child abuse, that certain traumatized behaviors of the children indicated that they had been sexually abused by Father. These two unqualified witnesses, and the court, overlooked research demonstrating that experts cannot agree on what child behaviors constitute evidence of sexual abuse. As one law review article explains:

> Members of the mental health community cannot even come to a consensus regarding the typical characteristics of sexually abused children. The symptoms that these experts attribute to sexually abused children are oftentimes inconsistent and contradictory. Mary Anne Mason's study of over 122 appellate court decisions involving expert testimony on child sexual abuse revealed sharp contradictions. For instance, while a significant number of experts within the study testified that delayed reporting, retraction, and conflicting and inconsistent accounts are characteristics of sexually abused children, others testified to the exact opposite.

Reilly, *supra*, at 441; *See also* Tara Urs, "Can the Child Welfare System Protect Children Without Believing What They Say?" 38 N.Y.U. Rev. L. & Soc. Change 305, 337 (2014), noting that "the literature shows that therapists demonstrate interviewer bias in that they 'rarely test alternatives, and fall prey to illusory correlations and confirmatory biases.' "

The district court erred in relying on the opinions of the State's witnesses in its termination order, because they were not qualified as experts in child abuse.

## III. THE DEPARTMENT FAILED TO MAKE REASONABLE EFFORTS TO REUNIFY THE FAMILY.

### A. Father preserved his objection to the Department's lack of reasonable efforts to arrange visitation.

The State argues that Father did not preserve his objection to the Department's lack of reasonable effort in arranging appropriate visitation. *Response* 37-39.

The State points out, correctly, that it was actually Mother's counsel, not Father's, who raised the issue of inadequate visitation early in the case, in October 2019, at the first hearing. *Response* at 38. But the State does not offer any authority to support its claim that the father's counsel must also object at the same time. Both parents attended visitation sessions together, for the most part, throughout the case. Mother's counsel's objection should be considered sufficient for both parents.

In any case, the letter written by the parents' counselor, Jeffrey Watson, in April 2021, to the Department, and filed with the district

court in July, 2021, requested family reunification therapy for both Father and Mother. This letter served as an objection to a lack of reasonable efforts by the Department to reunify both parents with their children. D.C. Doc. 49.

The State also makes much of the fact that Father officially joined only the motion objecting the G.A.L's request to deny all visitation, and did not join Mother's Motion to Find Lack of Reasonable Efforts. *Response* at 38. Again, the State offers no rationale for why Father should have to separately object to lack of reasonable efforts. Moreover, the motion regarding the G.A.L also raises an objection to the G.A.L's proposal that the Department deny visitation to both parents. D.C. Doc. 75.

This Court should find that Father objected to the Department's lack of reasonable efforts in arranging visitation.

### B. The Department failed to make reasonable efforts when it restricted visitation to hour-long visits once a week for three years.

The *Response* argues that the Department did make reasonable efforts to reunify the family. *Response* 39-42. The *Response* does not address the problem that the natural parents were limited to brief

weekly visits throughout the Department's involvement, in contravention of this Court's guidance on appropriate visitation for infants and toddlers.

Instead, the *Response* claims that Father was not entitled to appropriate visitation because of the sexual abuse disclosures and because Father's sexual abuse traumatized the children. *Response* at 41. The *Response* also refers to the child hearsay allegations that D.A. and L.A. claimed that Father hit D.A. during an overnight stay, and that D.A. had a bruise after the overnight stay. *Response* at 42.

As explained above, those allegations were not investigated by the Department and no determination was made as to whether or not they were substantiated. The Department failed to follow state regulations for investigating sexual abuse allegations and instead denied the parents appropriate visitation. In taking this approach, the Department failed in its duty to make a good faith effort to reunify the family.

The State's brief also argues that the Department was correct in denying visitation to the parents because of the assertions of the mental health witnesses (who were not appropriately qualified as child abuse experts) that the children's trauma was caused by Father's sexual

abuse and that visitation was harmful to them. The State does not address the problem of denial of appropriate visitation that began immediately after removal of the children, before the sexual abuse disclosures had been made, and even during the period when the plan was for reunification.

This Court should find that the Department failed to provide reasonable efforts to reunify the family when it denied appropriate visitation based on sexual abuse allegations that it failed to investigate, despite its duty to do so under Montana regulations.

### C. In failing to comply with state regulations regarding investigation of sexual abuse allegations, the Department failed to develop an appropriate treatment plan and thus failed to provide reasonable efforts and fundamentally fair procedures.

The State also argues that Father failed to preserve his objection to the Department's failure to investigate the sexual abuse allegations. *Response* at 42. The State suggests that Father should have been requesting an investigation. But the Department had already given Father a letter informing him that the allegations had been unsubstantiated. *Opening Brief*, App. B. Father does not have a duty to require the Department to investigate allegations against him or to

object that his treatment plan does not address sexual abuse that he denies.

"The law places the burden on the State—not the parent—to prove that the treatment plan is appropriate by clear and convincing evidence." *In re D.B.,* ¶ 33. "Further, the State has a duty to act in good faith in developing and executing a treatment plan to preserve the parent-child relationship and the family unit. The State's burden to ensure appropriateness and duty to act in good faith does not end once the court has approved a treatment plan." *Id.*

Here, instead of following state regulations, the Department continuously restricted the parents' visitation for three years, building up a case for termination, without giving the parents a chance to address the allegations. In failing to adhere to state regulations to conduct investigations of sexual abuse allegations (A.R.M. 37.47.610), the Department failed in its duty to act in "good faith" with the parents and develop an appropriate treatment plan.

Then the Department shifted course at the end of the case, and made the sexual abuse allegations the centerpiece of the termination proceedings. After not addressing the allegations throughout the case,

the Department turned to the hearsay disclosures when it was necessary to "win" at the termination proceeding. Even the allegations that the Department had previously stated were unsubstantiated, were used by CPS worker Kara Richardson as a basis for terminating their parental rights. Tr. at 61. These unfair tactics deprived the parents of fundamentally fair procedures to which they were entitled under the U.S. and Montana Constitutions.

## CONCLUSION

For all of the above reasons, the order terminating Father's parental rights should be reversed, and the case remanded for further proceedings.

Respectfully submitted this 19th day of May, 2023.

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By: /s/ Laura Reed
Laura Reed

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook 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 less than 5000 words, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Laura Reed
Laura Reed