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**IN THE MATTER OF M.J.A.D.,**

A Youth in Need of Care.

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**ANDERS BRIEF**

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On Appeal from the Montana Ninth Judicial District Court,  
Pondera County, the Honorable Robert Olson, Presiding

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**APPEARANCES:**

LAURA M. REED  
P.O. Box 17437  
Missoula, MT 59808  
(406) 493-2336  
laurareedlawmt@gmail.com

ATTORNEY FOR MOTHER  
AND APPELLANT

AUSTIN KNUDSEN  
KATHRYN FEY SCHULZ  
Montana Attorney General's Office  
P.O. Box 201401  
Helena, MT 59620-1401

MS. KAREN KANE, ESQ.  
Attorney at Law  
P.O. Box 8989  
335 W Spruce, Ste. 201  
Missoula, MT 59807  
KKane2@mt.gov

ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

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## **STATEMENT OF THE ISSUE**

Whether, pursuant to the criteria set forth in *Anders v. California*, 386 U.S. 738 (1967) and Mont. Code Ann. §46-8-103, counsel for Appellant should be permitted to withdraw from this cause of action.

## **STATEMENT OF THE CASE AND FACTS**


S.F. (Mother) appeals an Order from the Ninth Judicial District Court, Pondera County, entered March 28, 2023, terminating her parental rights to M.J.A.D., her 3-year-old son. (Appendix A).

### **Procedural History**

The Department of Health and Human Services Division (Department) became involved with the 25-year-old Mother and M.J.A.D. when CFS received a report that she and the birth father, M.D., were neglecting M.J.A.D., who was one year old at the time. D.C. Doc. 1.

On April 21, 2021, the Department filed a Petition for Emergency Protective Services, Adjudication of the child as a YINC, and for Temporary Legal Custody. The court issued an order granting the Petition on April 23, 2021. D.C. Doc. 3.

On May 3, 2021, the court conducted a show cause hearing. Mother was present with counsel and stipulated to probable cause, but did not admit to any of the facts in the petition. D.C. Doc. 11. The court entered an order on May 6, 2021, finding probable cause and continuing emergency protective services until the adjudication hearing it had set for June 28, 2021. *Id.*



On July 12, 2021, the court attempted to conduct an adjudication hearing. Father was not present, so the court vacated the hearing and rescheduled it. D.C. Doc. .02.

On July 26, 2021, the court conducted the adjudication hearing and determined that the child was a Youth in Need of Care. D.C. Doc. 18.

On August 23, 2021, the court conducted a treatment plan and disposition hearing. D.C. Doc. 24. CFS was granted Temporary Legal Custody of the child until February 23, 2022. On the same day, the Court approved treatment plans for parents and ordered parents to complete them. D.C. Doc. 23.

The Department petitioned to extend TLC on February 23, 2022. D.C. Doc. 25.

The district court held a hearing on the petition for extension of TLC on March 21 and on March 24, 2022, the court entered an order extending TLC. D.C. Doc. 29.

On June 20, 2022, the court conducted a status hearing. D.C. Doc. .06.

On July 5, 2022, the court conducted a permanency hearing and approved CFS' permanency plan of reunification, or, if that failed, termination of parental rights. D.C. Doc. .07.

On September 21, 2022, CFS filed a petition for termination of Mother's parental rights to M.J.A.D. and for permanent legal custody of M.J.A.D. D.C. Doc. 35.



The court conducted termination hearings on January 9 and January 23, 2023, followed by a special hearing on birth father only on March 6, 2023. D.C. Docs. .08, .09, .10.

On March 28, 2023, the district court entered its order terminating both parents' parental rights. App. A.

### **Facts of the Case**

#### **Placement of Child throughout the Case**

On April 6, 2021, Mother voluntarily agreed to have the child placed with a foster family in Conrad, MT for one month. D.C. Doc. 1. The child remained in non-kinship licensed foster care in Conrad, Montana from April 15, 2021 to July 29, 2021, and then was placed in kinship foster placement with birth mother's cousin, C.G. D.C. Doc. 25.

#### **Affidavit of CPS Nicole Idland – April 19, 2021**

In her affidavit accompanying the initial petition for emergency protective services, CPS Idland stated that the Department had received a "confidential intake" report that the parents were using methamphetamine in the home. D.C. Doc. 1, Aff. at 3. Mother told CPS Idland that she had struggled with addiction in the past and had

recently relapsed when Father returned home from prison. *Id.* The Department previously had been involved with Mother in May of 2018 due to Mother using methamphetamine while caring for the youth's two older, half-siblings. The youths' maternal grandmother subsequently was appointed as the youths' half siblings' legal guardian. *Id.* Big Sky Drug Testing reported that Mother and Father both tested positive for methamphetamine and that the child's hair had tested positive for meth. *Id.* at 4.

#### **Show Cause Hearing – May 3, 2021**

Mother was present with counsel. She stipulated to probable cause but did not admit to any of the facts in the petition. D.C. Doc. 11.

#### **Adjudication Hearing – July 12, 2021**

Mother was present with counsel, but the hearing had to be rescheduled because Father was not present. D.C. Doc. .02.

#### **Adjudication Hearing (Second Setting) – July 26, 2021**

Mother was not present, and her counsel stated that based on her last directive to him, she would stipulate to the child being a youth in need of care. D.C. Doc. .03. The court entered an order adjudicating the child as a Youth In Need of Care on August 5, 2021. D.C. Doc. 18.

## **Disposition and Treatment Plan Hearing – August 23, 2021**

Mother was present with her counsel and signed the treatment plan. She stipulated to a six-month extension of TLC. D.C. Docs. .04, 23.

The court granted the Department TLC until February 23, 2022. D.C. Doc. 24.

Mother's treatment plan required her to address the primary reason for M.J.A.D.'s removal and CFS' intervention, namely, parental use of methamphetamine and exposure of the child to meth. D.C. Doc. 23. Mother agreed to obtain a Chemical Dependency (CD) evaluation, follow the recommendations of her CD evaluator, refrain from use of illicit drugs, and engage in regular and random substance testing to monitor her sobriety. *Id.*

Mother also agreed to perform the following tasks related to parenting: complete parenting classes; attend visitation meetings and inform CPS in advance if she could not make any of them; not use drugs in her child's presence. She was also required to complete a mental health evaluation and attend counseling. *Id.*

She also agreed to comply with court orders in her pending criminal case (child endangerment) and to maintain contact with CPS and sign releases. *Id.*

### **Petition to Extend TLC until August 23, 2022**

The Department filed this request on February 23, 2022 and a hearing was conducted on March 21, 2022. D.C. Docs. 25, .05.


### **Affidavit CPS Jodi Kolwyck – February 23, 2022**

CPS Kolwyck stated that Mother had initially been offered daily parenting time, but because of her inconsistency in showing up, her opportunities were reduced to weekly. Mother had not yet signed up for a parenting class. D.C. Doc. 25, Aff. at 2. Mother had not completed her CD evaluation until November, 2021. *Id.* The evaluation had recommended inpatient treatment, but Mother had refused and insisted on outpatient treatment. Mother had missed many outpatient treatment counseling sessions between April 2021 and November 2021. *Id.* at 3. Mother's drug patch had tested positive for meth many times during this period. *Id.* at 4. Mother had not engaged in the mental health tasks required in the treatment plan. *Id.*

### **First TLC Hearing – March 21, 2022**

Mother was not present. Her attorney stated that he did not know why she was not present, since she had been in court that morning. 3/21/22 Tr. at 5. He also stipulated to the petition to extend TLC, explaining that he had spoken to the mother about it. *Id.* CPS worker Kolwyck testified that Mother had not completed any portion of her treatment plan, was still testing positive for drugs, and needed more time to complete her treatment plan. 3/21/22 Tr. at 8. Mother was visiting her son for one two-hour visit weekly and had been consistent for the previous two months. 3/21/22 Tr. at 10. The CPS workers were waiting for Mother to be accepted to Rimrock or MCDC for treatment. *Id.*

On March 24, 2022, the court entered the order extending TLC to August 23, 2022. D.C. Doc. 29.



### **Status Hearing – June 20, 2022**

Mother was again not present. Counsel for the State Karen Kane informed the court that mother had not shown much improvement. She

had left inpatient treatment at MCDC against medical advice in May, 2022. 6/20/22 Tr. at 5. Ms. Kane stated that CPS was going to refer Mother to the Carol Graham home. *Id.* at 5. Ms. Kane moved the court to set a permanency plan hearing. *Id.* at 7. She mentioned that Mother's cousin, who was taking care of the child, was licensed as a guardian and was also interested in adoption. *Id.* at 6.

**Affidavit CPS Kolwyck in Support of Motion for Permanency Plan – June 21, 2022**

Kolwyck stated that the Department's permanency plan was still reunification. She listed reasonable efforts the Department had made to help the Mother comply with her treatment plan, including providing Mother with gas cards for visitation, counseling, and parenting class appointments. She estimated that an additional three to nine months were needed to achieve the permanency plan. D.C. Doc. 33, Aff. at 2-3.

**Permanency Plan Hearing – July 5, 2022**

Mother was again not present. CPS Kolwyck testified that "we're still gonna work reunification," but that termination was the alternative if reunification failed. 7/5/22 Tr. at 6. She said TLC was in place until September, 2022. *Id.* at 7.

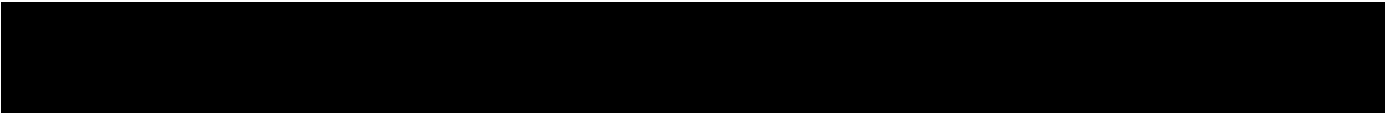
The court issued an order approving the permanency plan on July 25, 2022. D.C. Doc. 34.

**Petition for Termination Filed – September 21, 2022**  
**Affidavit for Termination of Mother’s Parental Rights CPS**  
**Kolwyck – September 8, 2022**

Kolwyck stated that the child had been in out-of-home foster care for 17 months. D.C. Doc. 35, Aff. at 2.

The State sought termination of parental rights because Mother had delayed in completing her initial chemical dependency evaluation, had refused the recommended inpatient treatment, no-showed for multiple drug counseling appointments, dropped out of inpatient treatment at MCDC, and submitted drug patch results that were positive for meth throughout the case, or submitted drug patches that had been tampered with. *Id.* at 3-5.

Mother had been inconsistent in attending daily visitation and her visitation had been reduced to once weekly, and she had not always been consistent with it. *Id.* at 3. Mother had not complied with the mental health evaluation or counseling requirements. *Id.* at 5.



The Pondera County district court issued an Order Revoking Suspended Sentence and Imposing New Sentence in Mother's criminal case (felony child endangerment, based on the same facts as the Petition for Emergency Protective Services), after Mother admitted to violating her probation condition prohibiting use of alcohol or drugs.

1/9/23 Tr. at 67-68. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

She was residing at Passages when the termination hearings began on January 9, 2023.

### **Termination Hearing – January 9, 2023**

At the hearing on January 9, 2023, Ms. Mother's substance abuse counselor, Tonya Carpenter, testified that Mother had no-showed for her evaluation appointments between April and November 2021, and had no-showed or cancelled multiple counseling appointments after she had been evaluated. Despite being recommended for inpatient treatment, in November, 2021, Mother refused to go to inpatient



treatment and attended outpatient treatment sporadically until may 2021. At that time, she went to inpatient treatment at MCDC, but then dropped out against medical advice. 1/9/23 Tr. at 19-33.

The child's kinship foster care provider, C.G., testified regarding M.J.A.D.'s medical condition when she began caring for him and his progress in her care, including surgery for his ear problems. 1/9/23 Tr. at 86-100. Mother's probation officer, Alexa Whalen, testified regarding Mother's probation violations and revocation in the accompanying criminal case. 1/9/23 Tr. at 65-77.

Finally, CPS worker Kolwyck testified regarding Mother's lack of compliance with services and the reasonable efforts the Department had made to help her complete the treatment plan. 1/9/23 Tr. at 104-23

Kolwyck stated that she provided Mother with enough gas card money for a once a week visit, and claimed that she tried to scheduled appointments on the same day of the week.

Q. What kind of efforts did you make to assist her with her, um, transportation issues?

A. Um, we have provided gas to ensure that she could make it.

Q. Um, when you say you provided gas, what—

A. —We were able to approve her, um, for,

um, \$25 a week, sometimes twice a week, if she had court, or if she had her visit, or for a patch swap.

Q. Generally, would you try to schedule her parenting time appointments on the same day as a patch swap?

A. Yes.

1/9/23 Tr. at 112.

On cross-examination, CPS Kolwyck claimed that visitation and drug patch and counseling appointments were scheduled on the same day of the week. 1/9/23 Tr. at 130. She confirmed that Mother could not obtain the gas cards unless she actually got to Shelby first. *Id.* at 129.

### **Termination Hearing—January 23, 2023**

Mother testified regarding her progress in treatment at Passages since January 5, 2023. 1/23/23 Tr. at 10-11. She was receiving mental health counseling, drug counseling, was sober, and was enrolled in an eight-week parenting class. She told the court about her difficulties in reaching her assigned CD counselor, Tonya, during the DN case. She explained that she had left MCDC halfway through against medical advice because she had contracted lice there and the staff was indifferent to the problem. *Id.* at 12. Staff had also given her letters

from the child's father despite her asking them not to allow him to contact her. *Id.*

She discussed her difficulties in obtaining transportation to counseling and drug patch appointments during the case, and the inadequacy of the gas cards that were provided by the Department. She had been instructed she could only use the cards once she arrived in Shelby, but she lived fifteen minutes away in Kevin. 1/23/23 Tr. at 20-21. In addition, the gas cards were only provided for visitation appointments, and no gas cards were provided for CD counseling appointments or other appointments, which were scheduled at times other than the visitation appointments. 1/23/23 Tr. at 21. She did not own a car herself and had to ask her boyfriend or a neighbor to let her use their cars, which were not always reliable. 1/23/23 Tr. at 35.

During her testimony, Mother also denied that her son had been underweight when taken by the Department and stated that she had taken him to the doctor for ear infection problems while he was in her care. 1/23/23 Tr. at 18.

Mother's probation officer, Alexa Whalen, also testified a second time, by phone only, over mother's counsel's objection. 1/23/23 Tr. at 45.

Ms. Whalen testified that Ms. Mother had recently been accepted to the Great Falls pre-release, which would be for about six months after her completion of Passages. She stated that she had recommended pre-release because she had determined that the living situation for Mother with her boyfriend in Keven was not healthy for Ms. Mother. *Id.* at 47. She stated that she believed visitation was possible for residents of the Great Falls pre-release. *Id.* at 50.

**State's Additional Hearing Regarding Birth Father Only – March 6, 2023.**

Mother's counsel filed a motion to be absent from this hearing, along with Mother, because no evidence at the hearing would be relevant to Mother's case. D.C. Doc. 59. At the hearing, the State presented testimony from parole board member Brad Newman regarding Father being returned from pre-release to prison and his May 2024 parole eligibility date. 3/6/22 Tr. at 9, 19.

**Findings of the District Court – March 28, 2023**

In the termination order the district court recounted the relevant evidence and made the following pertinent Findings of Fact in support of its decision to terminate S.F.'s parental rights:

- 1) Mother had failed her treatment plan. Mother has a diagnosed substance use disorder, namely, “Stimulant Use Disorder, Severe” and she failed to engage in recommended treatment to address her substance use disorder. She showed minimal engagement and follow-through with recommendations for treatment; missed the majority of her CD counseling appointments with her licensed addictions counselor, Tonya Carpenter, attending only 9 of 19 scheduled appointments; consistently used methamphetamine throughout the case; and tampered with her patch on multiple occasions. She was provided with information for Level 2.1 intensive outpatient CD treatment at Misfits in Great Falls as well as Rimrock in Billings, which offered telehealth treatment; however, she did not engage or complete treatment. App. A at 7.
- 2) The court determined Mother’s conduct and/or condition rendering her unfit, unable, or unwilling to give the child adequate parental care includes the following factors: Mother’s excessive use of a narcotic or dangerous drug, namely,

methamphetamine, that affects her ability to care and provide for M.J.A.D. App. A at 11.

- 3) The court found that Mother's conduct or condition described above is unlikely to change in a reasonable time because her past conduct reflected an inability or unwillingness to engage in CD treatment designed to assist her with maintaining sobriety, since the inception of this case in April 2021, she has not engaged in CD treatment in any meaningful way despite multiple opportunities to do so and continued to regularly use methamphetamine, a dangerous narcotic, throughout the pendency of this case, and failed to complete the treatment plan tasks and goals surrounding her substance use disorder designed to resolve the conditions that resulted in the need for protective services for M.J.A.D. App. A. at 11-12.
- 4) The court found that CFS made reasonable efforts to avoid protective placement and to make it possible to safely return the child to the child's home, including setting up weekly meetings, referring her for a CD evaluation, treatment, and mental health counseling; assisting with transportation;

referring her to Hi-Lines Help for Abused Spouses for parenting classes; providing her with an application to the Carole Graham Home; contacting her regularly. App. A at 15.

### **STANDARDS OF REVIEW**

The Court reviews a district court's termination of parental rights for an abuse of discretion. *In re T.N.-S.*, 2015 MT 117, ¶16, 379 Mont. 60, 347 P.3d 1263. A district court abuses its discretion when it "acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice." *In re R.M.T.*, 2011 MT 164, ¶26, 361 Mont. 159, 256 P.3d 935. The Court reviews a district court's findings of fact to determine whether they are clearly erroneous and reviews the district court's conclusions of law to determine whether they are correct. *In re D.B.*, 2007 MT 246, ¶18, 339 Mont. 240, 168 P.3d 691.

### **ARGUMENT**

#### **I. COUNSEL FOR S.F. SHOULD BE PERMITTED TO WITHDRAW FROM THIS CAUSE IN ACCORDANCE WITH *ANDERS V. CALIFORNIA* AND MONT. CODE ANN. §46-8-103.**

The Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution guarantee every

defendant the right to a fair trial and due process of law, including fair representation. 386 U.S. at 742 (1967). When appellant's counsel "finds his case to be wholly frivolous" he should, after conscientious examination of the case, advise the court and request permission to withdraw. *Id.* at 744.

To ensure protection of appellant's rights, counsel's request to withdraw must be accompanied by a brief that references anything in the record that might arguably support an appeal (an *Anders* brief). *Id.* A copy of the brief should be provided to the appellant and the appellant must be afforded the time to respond to counsel's motion and brief. *Id.*

The State of Montana has codified the requirements of *Anders v. California* in Mont. Code Ann. §46-8-103(2). If, after reviewing the entire record and researching the applicable law, counsel concludes that an appeal would be frivolous or wholly without merit, counsel must file a motion with the Montana Supreme Court requesting permission to withdraw. *Id.* A memorandum discussing any issues that arguably support an appeal must accompany the motion to withdraw. *Id.* The memorandum must include a summary of the procedural history



of the case and any jurisdictional problems with the appeal, along with appropriate citations to the record and the law bearing on each issue.

*Id.*

An *Anders* brief meets the requirements of both *Anders v. California* and Mont. Code Ann. §46-8-103(2). The brief is intended to assist the appellate court in determining that counsel has conducted the required detailed review of the case and that the appeal is so frivolous that counsel's motion to withdraw should be granted. *Penson v. Ohio*, 488 U.S. 75, 81–82 (1988). The requirements of an *Anders* brief are not meant to force counsel to argue against appellant. *Anders*, 386 U.S. at 745.

Pursuant to Mont. Code Ann. §46-8-103(2), counsel for Appellant reluctantly advises the Court that, after conducting diligent review of the record and the relevant law, counsel has not found any non-frivolous issues appropriate for appeal in this matter. While counsel has great sympathy for the Appellant, she can find no meritorious grounds for appeal. In accordance with the requirements of *Anders* and Mont. Code Ann. §46-8-103(2), counsel provides this memorandum

(Anders Brief) discussing any issues that arguably support an appeal, a summary of the procedural history of the case and any jurisdictional problems with the appeal, and appropriate citations to the record and the law bearing on each issue. *Id.*

## **II. THE RECORD MAY ARGUABLY SUPPORT S.F.'S ASSERTION THAT HER PARENTAL RIGHTS SHOULD NOT HAVE BEEN TERMINATED.**

The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence that the child is an adjudicated youth in need of care, an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful, and the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time. Mont. Code Ann. §41-3-609(1)(f); *In re D.B.*, 2007 MT 246, ¶20, 339 Mont. 240, 168 P.3d 691.

An order terminating an individual's right to parent her children must be supported by clear and convincing evidence that the statutory criteria for termination have been met. *In re A.T. and J.T.*, 2003 MT

154, ¶10, 316 Mont. 255, 70 P.3d 1247. Clear and convincing evidence is:

simply a requirement that a preponderance of the evidence be definite, clear, and convincing, or that a particular issue must be established by a preponderance of the evidence or by a clear preponderance of proof. This requirement does not call for unanswerable or conclusive evidence. The quality of proof, to be clear and convincing, is somewhere between the rule in ordinary civil cases and the requirement of criminal procedure—that is, it must be more than a mere preponderance but not beyond a reasonable doubt.

*In re C.M.C.*, 2009 MT 153, ¶23, 350 Mont. 391, 208 P.3d 809.

Once the criteria for termination of parental rights are met, the decision whether or not to terminate those rights is within the court’s discretion.

**A. Mother may wish to argue that she received ineffective assistance of counsel because her attorney did not ensure her presence at key hearings and did not advocate for her preference for guardianship.**

Mother may wish to argue that she did not receive effective assistance of counsel. Parents have a due process right to effective assistance of counsel in termination proceedings. *In re A.S.*, 2004 MT 62, ¶ 20, 320 Mont. 268, 87 P.3d 408.

Mother was not present at three important hearings throughout the case: the adjudication hearing on July 26, 2021; the status hearing on June 20, 2022, and the permanency plan hearing on July 5, 2022. Mother's counsel offered no explanation for why she was not present. The record is unclear as to whether it was due to lack of notice from her attorney or Mother's avoidance of legal proceedings.

In addition, Mother appeared by Zoom from inpatient treatment at Passages for both termination hearings and had limited opportunity to communicate with her counsel before or during the hearings. *See, e.g.,* 1/9/23 Tr. at 127.

Mother informed undersigned counsel that she attempted to assert her wish for guardianship, rather than termination, at the second hearing, but was told to remain silent by her counsel. 1/23/23 Tr. at 51. Mother's counsel never advocated for her wish that guardianship be considered as a permanency plan, even though such an outcome would have been reasonable since she had agreed to guardianship for her first two children.

However, because Mother and her counsel never raised the guardianship issue at any hearing or in any filing, it is frivolous to

argue on appeal that the court should have considered guardianship. In addition, parents in dependency and neglect matters do not have the right to demonstrate with an additional hearing after direct appeal how their counsel was not acting strategically but was instead ineffective. There is nothing in the record to support Mother's claim that she asked her counsel to raise the issue of guardianship.

**B. Mother may wish to argue that the Department did not make reasonable efforts to reunify her with her child.**

In a dependency-neglect proceeding, the Department must engage in reasonable efforts to reunify the family. Mont. Code Ann. § 41-3-423 (1), (7). Reasonable efforts require that the Department, "in good faith," assist a parent in completing his or her voluntary services and treatment plan." *In re R.J.F.*, 2019 MT 113, ¶28, 395 Mont. 454, 443 P.3d 387 (citing *In re D.B.*, ¶ 33; *In re T.D.H.*, 2015 MT 244, ¶ 42, 380 Mont. 401, 356 P.3d 457, Child and Family Services Policy Manual, § 401-1). Treatment plans between parents and the Department are "intended to be a good-faith, joint effort" between the Department and the parent. *In re J.S. & P.S.*, 269 Mont. 170, 178-79, 887 P.2d 719, 724 (1994). *See also In re A.T.*, 2003 MT 154, ¶ 21, 316 Mont. 255, 70 P.3d 1247. Thus, the Department has a duty to act in good faith regarding

the treatment plan because the overarching goal of reunification stems from a fundamental liberty interest.

**1. Mother may wish to argue that the Department provided inadequate assistance with transportation to the provided services.**

Mother may wish to argue that in failing to provide consistent transportation assistance, the Department was not making reasonable efforts to reunify her with her child. *Cf. R.J.F.*, ¶¶ 5, 8, 35. Mother testified at the termination hearing that she had been given gas cards, but had been told she could not use the gas cards until she arrived in Shelby, despite the fact that she lived in Kevin, fifteen miles outside of Shelby. 1/23/23 Tr. at 20. She testified that her CPS worker told her that she could not use the gas cards for other appointments, such as for drug counseling. *Id.* at 21. Mother also testified that had to rely on others to allow them to use their cars for her to make it to appointments. Providing her with gas cards alone, without reliable access to a vehicle, was insufficient to address her transportation needs. 1/23/23 Tr. at 35; 1/9/23 Tr. at 79.

CPS worker Kolwyck had asserted that CFS made an effort to schedule drug patch and counseling appointments on the same day of

the week as visitation (1/9/23 Tr. at 130). That claim is belied by the record of missed appointments. Mother's visitation appointments were all scheduled on Mondays, according to the kinship foster care provider. 1/23/23 Tr. at 95. But the record of missed drug counseling appointments and patch changes shows that those missed appointments did not occur on Mondays.

Missed drug patch appointments include 6/30/21 (Wednesday); 7/7/21 (Wednesday); 4/15/22 (Friday); 10/5/22 (Wednesday); 12/6/22 (Tuesday). App. A at 8.

Missed counseling appointments include 4/23/21 (Friday); 5/28/21 (Friday); 7/13/21 (Tuesday); 10/6/21 (Wednesday); 2/1/22 (Tuesday); 7/1/22 (Friday). D.C. Doc. 35, Aff. Kolwyck, at 3-4.

Thus, the testimony from CPS Kolwyck that for the most part she arranged appointments to occur on the same day was false. 1/9/23 Tr. at 112, 130. The district court should not have made the finding that CFS tried to schedule most appointments on the same day as the visitation day. App. A. at 15. Notably, CPS worker Kolwyck explained that she provided gas cards for one or possibly two trips per week at most. 1/9/23

Tr. at 112. These transportation arrangements were inadequate to assist Mother in succeeding with her treatment plan.

**2. Mother may wish to argue that the Department delayed too long in arranging appropriate inpatient treatment.**

The record also supports Mother's assertion that the Department did not act in good faith in attempting to reunite her with her child, but rather extended half-hearted assistance in a perfunctory manner. At the termination hearing, no explanation was offered as to why it took over a year to require Mother to attend inpatient treatment at MCDC. While Mother was blamed for not completing her CD evaluation between April and November, 2021, the record shows that CD evaluation appointments were scheduled for her only once a month, that Mother attended two appointments in April and May, but that was insufficient to produce an evaluation, and that the counselor, Tonya Carpenter, cancelled the August appointment. App. A. at 4. The treatment plan was not filed until over four months into the case.

Furthermore, at the termination hearing, no explanation was offered as to why no one helped Mother fill out the application for the



Carol Graham home or sent it to the facility for her. 1/9/23 Tr. at 134-35.

The record arguably demonstrates that the Department acted only half-heartedly and not in good faith in assisting Mother in addressing her substance abuse issues. Mother reports that her CPS worker tried throughout the DN case simply to have her waive her parental rights without a hearing.

However, the district court made findings in its termination order that CPS provided extensive assistance with transportation. App. A. at 15. At the same time, neither Mother nor her counsel presented any thorough evidence that would substantially rebut these findings. Mother and her counsel did not object during the earlier part of the case to inadequate transportation arrangements.

**C. Mother may wish to argue that the district court erred in determining that her condition was unlikely to change within a reasonable time.**

One of the requirements for termination is that the district court must find that the parent's condition rendering her unfit to give the child adequate parental care is unlikely to change within a reasonable

time. MCA § 41-3-609(2). The district court concluded Mother's condition was unlikely to change. App. A. at 11-12.

Mother testified at the termination hearing, however, that she had begun to address her chemical dependency issues at the time of the termination hearing when she was in lockdown treatment at Passages. 1/23/23 Tr. at 14.

Mother would like to submit records from the period March 2023 through August 2023, demonstrating her successful completion of drug treatment at Passages, her successful completion of a parenting class by March, 2023 (prior to the termination order), and her four recent months of sobriety in the Great Falls Pre-Release as of July 26, 2023. Undersigned counsel has been advised that she cannot file these records in conjunction with an *Anders* brief. The State has objected to a motion to supplement the record with these records since they involve events that the district court did not know about at the time of the termination order.

Mother's recent success arguably suggests that the district court erred in determining that her condition was unlikely to change in a reasonable time. It also suggests that had Mother been required to

attend inpatient treatment at an earlier point in the case, she might have been successful with her treatment plan. Arguably, the district court ruled too hastily and should have waited until Mother completed Passages and pre-release.

### **CONCLUSION**

After thorough review of the entire record and researching applicable statutes, case law, and rules, counsel has determined that S.F.'s appeal presents no justiciable, non-frivolous issues and is, therefore, wholly without merit. Counsel respectfully requests the court grant the motion to withdraw on direct appeal.

Respectfully submitted this 7<sup>th</sup> day of August, 2023.

P.O. Box 17437  
Missoula, MT 59808

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

## **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 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 5458, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Laura Reed  
Laura Reed

## **CERTIFICATE OF SERVICE**

I, Laura Reed, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 8-8-2023:

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

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

Austin Miles Knudsen (Govt Attorney)  
215 N. Sanders  
Helena MT 59620  
Representing: State of Montana  
Service Method: eService

Shari M. Lennon (Govt Attorney)  
20 4<sup>th</sup> Ave. Southwest  
Conrad, MT 594425  
Representing: State of Montana  
Service Method: U.S. Mail

S.F.  
1019 15th St N.  
Great Falls, MT 59401  
Service Method: Email delivery and U.S. Mail

## **APPENDIX**

Order Terminating Parental Rights .....	App. A
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## **CERTIFICATE OF SERVICE**

I, Laura Marie Reed, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 08-08-2023:

Austin Miles Knudsen (Govt Attorney)  
215 N. Sanders  
Helena MT 59620  
Representing: State of Montana  
Service Method: eService

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

Shari M. Lennon (Attorney)  
20 4th Ave SW  
Conrad MT 59425  
Representing: State of Montana  
Service Method: Conventional

Electronically Signed By: Laura Marie Reed  
Dated: 08-08-2023