IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0415

IN THE MATTER OF:

P.P.,

A Youth in Need of Care.

BRIEF OF APPELLEE

On Appeal from the Montana First Judicial District Court,
Lewis and Clark County, The Honorable Kathy Seeley, Presiding

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GUARDIAN AD LITEM

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1. Whether the district court violated Father's right to due process when it took judicial notice of Mother's criminal proceeding during the termination hearing.

2. Whether the district court abused its discretion when it terminated Father's parental rights after finding that the Department need not make reasonable efforts.

STATEMENT OF THE CASE

On September 29, 2021, four-month-old P.P. was life flighted in critical condition to Logan Medical Center (Logan Health) in Kalispell from St. Peter's Hospital (St. Pete's) in Helena. (April 20, 21, 24, 26, 28, 2023 Tr. (Tr.) at 34-35, 803; Doc. 216.) P.P.'s medical team ultimately concluded that P.P.'s extensive injuries were a result of non-accidental trauma. (*Id*. at 810.) The Montana Department of Public Health and Human Services, Child and Family Services Division (DPHHS) intervened and petitioned for emergency protective services and temporary investigative authority (TIA). (Doc. 1.)

K.P. (Mother) and T.P. (Father) stipulated to TIA on November 3, 2021, and the district court set an adjudicatory hearing for January 2022. (Doc. 11.) Mother was charged with felony aggravated assault for the injuries suffered by P.P.

(DC Doc. 4.)[1] Prior to the continued adjudicatory hearing, DPHHS petitioned for adjudication of P.P. as a youth in need of care, determination that reasonable efforts were not required, and termination of parental rights (Termination Petition). (Docs. 62, 79, 85, 91-92, 124-25.)

The parties stipulated that the termination hearing should be continued until after Mother's trial. (Doc. 125.) Mother was convicted in December 2022 of felony assault on a minor and was sentenced to the Montana State Prison for a term of 20 years in April 2023. (DC Doc. 319.)

The district court conducted a five-day termination hearing in April 2023. On July 7, 2023, the district court entered its order granting DPHHS's Termination Petition. (Doc. 216.)

STATEMENT OF THE FACTS

I. Facts related to P.P.'s removal

Full of excitement, Mother and Father (jointly, Parents) welcomed P.P., a healthy baby girl, into the world on May 28, 2021. (Doc. 85 at 11; Tr. at 299, 307, 831-32.) Father, a then-canine supervisor for the Montana Highway Patrol (MHP),

[1] At the termination hearing, the district court took judicial notice of Mother's ancillary criminal case, *State v. Proctor*, First Judicial District Court Cause No. CDC 2022-30, which this Court has supplemented to the instant record on appeal.

and Mother, a then-Assistant Attorney General employed with the Medicaid Fraud Unit, took leave to care for P.P. following her birth. (Doc. 85 at 12; Tr. at 298, 301, 319.)

By the time she turned one month old, Father had noticed an abrasion on her nose and noticeable redness in her right eye. (Tr. at 407-08, 410; State's Ex. 44.) After seeing the abrasion, Parents discussed whether P.P. was "rubbing her face" on the blankets during tummy time. (Tr. at 408-09.)

On July 3, 2021, Father was carrying P.P., who was buckled in her car seat, in one hand and his thermos in the other hand when he tripped going from the house into the garage. (*Id*. at 320-21.) As he was falling, Father tried to grab the car seat and "end[ed] up kind of trapping her leg against the soft foam cover piece" and the car seat ended up "hitting the concrete." (*Id*. at 321.) Although P.P. initially cried following the incident, P.P. stopped and did not cry more as Father checked her over. (*Id*. at 322.)

Nonetheless, out of an abundance of caution, Parents took P.P. to the emergency room the following day to make sure that P.P. was not injured. (*Id*. at 322-23.) Based on the x-ray results of P.P.'s leg involved in the incident, the doctor decided to have an x-ray conducted on P.P.'s other leg. (*Id*. at 324, 567.) No obvious fractures, however, were noted on P.P.'s x-rays. (*Id*.)

At P.P.'s two-month checkup on July 28, 2021, Parents inquired with Dr. Loomis about a red spot on P.P.'s right eye but did not mention any other injuries. (*Id*. at 914-15.) By that time, the spot was only a few millimeters and given the information provided, Dr. Loomis was not concerned. (*Id*. at 914-16.)

In early August, Mother sent Father a picture of P.P. that showed she had bruising on her right cheek. (Tr. at 413; State's Ex. 49.) P.P. started attending daycare on August 16. (Tr. at 152, 316.) After Father dropped P.P. off on the morning of August 20, 2021, the daycare noted that P.P. had a bruise on her upper forehead and jawline. (Tr. at 416; State's Ex. 51, 107.)

In late August, Father laterally transferred to being a MHP field supervisor based in Great Falls. (Tr. at 304-05.) Because Father had to be located within an hour of his base, Father moved to the Choteau property, which Parents had purchased in July 2021. (*Id*. at 302, 304-05.) The Choteau property, however, "was not really ready for a full time family of three." (*Id*. at 302-03.) And Mother's request to work remotely full time was still pending with the Attorney General's Office. (*Id*. at 302.) Until the entire family could reside together in Choteau, Parents listed their house located on Bootlegger Dr. in Helena (Bootlegger residence) and entered into a lease for an apartment in Helena, where Mother and P.P. would primarily reside. (*Id*.)

The family traveled from Helena to Miles City and Plevna for Labor Day weekend. (Tr. at 336-37; Father's Ex. D.) During that weekend, Father noticed that P.P. had a bruise on her forehead. (Tr. at 339; State's Ex. 55.) P.P. also had a bruise on her right cheek. (State's Ex. 55.) And, on September 7, 2021, the daycare noted that P.P. arrived with bruises on both cheekbones and on her forehead. (State's Ex. 108.)

After being in Choteau or Great Falls since September 6, Father returned to Helena for only the evening of September 11. (Tr. at 341; Father's Ex. D.) Father was next in Helena from September 18 to 23 to care for P.P. because she was sick, and Mother was traveling for work on September 23. (Tr. at 342-43, 426-27.) After Mother was delayed from returning from Kalispell on September 23, Father became frustrated because he needed to return to Choteau that evening. (*Id*. at 427.)

When Father left P.P., he did not notice any bruises on P.P. (*Id*. at 346-47.) On September 24, 2021, P.P. had a bruise on her forehead, which Father noticed on September 25, when P.P., Mother, and maternal grandfather moved items from Helena to the Choteau property. (Tr. at 347, 428; State's Ex. 61.) Father also noticed "dark" or maybe "dried blood" underneath her eye. (Tr. at 428; State's Ex. 61.) After speaking with Mother, Father's "hypothesis" was that the bruising happened while P.P. "was playing with a toy during tummy time." (Tr. at 433.)

Father returned to Helena the morning of September 28, 2021. (Father's Ex. D.) That same day, the daycare noted that P.P. was starting to roll a little more onto her belly and was crying more than normal. (Mother's Ex. BB.) The daycare had also observed that P.P.'s black eye, that was noted the day before, and which Mother had explained was likely caused by P.P. hitting herself with a toy, remained. (State's Ex. 111; Mother's Ex. BB.) Father picked P.P. up from daycare on September 28, 2021. (Tr. at 28.) Although P.P. "normally cries and is fussy" when she is buckled into her car seat, she was not fussy that evening. (*Id*.)

The daycare became concerned after Mother's explanation for P.P.'s black eye because the daycare providers did not believe that was "developmentally appropriate" for P.P. to be able to injure herself in the manner Mother described. (Tr. at 234.) Accordingly, on September 28, daycare staff met to discuss the pattern of P.P. being absent from daycare and then returning with documented injuries. (*Id*. at 236, 670.) The daycare decided that the daycare owner would report the staff's concerns to DPHHS the next day. (*Id*. at 236.)

Parents continued to pack up their belongings at the Bootlegger residence while P.P. was either in her car seat or lying on the living room floor. (*Id*. at 356-57.) P.P. drank her normal bottle amount of 100 to 125 mL at 6 p.m. (*Id*. at 359-60.) Father returned P.P. to the living room before Father met with his supervisor outside the Bootlegger residence for 15 to 25 minutes. (*Id*. at 361-62.)

Although Father reportedly did not hear P.P. cry, Father's supervisor did. (*Id*. at 363.) When Father returned inside the house, P.P. was sleeping in her car seat. (*Id*. at 364.)

While Mother continued to pack, Father took P.P. to the apartment to sleep that night. (*Id*. at 365.) P.P did not eat her normal bottle amount at 10 p.m., consuming only 25 mL. (*Id*. at 366-67.) After Mother arrived at the house, she helped Father find the Owlet monitor, and placed it on P.P. (*Id*. at 367-68.) At some point during the night, P.P.'s Owlet monitor indicated that her heart rate dropped into the 70s. (*Id*. at 30.) P.P.'s heart rate is normally above 100. (*See* State's Exs. 4-22.)

When Parents went to wake P.P. up around 6 a.m., on September 29, P.P. was not responsive. (*Id*. at 29, 374, 450.) P.P. slightly opened her eyes but was not able to keep them open. (*Id*. at 374.) Father rubbed P.P.'s body, but that did not rouse her. (*Id*. at 375.) Nor did Father talking loud enough for P.P. to hear. (*Id*. at 450.) P.P. did not fuss like normal when Father changed her diaper. (*Id*. at 57.) P.P. did not want to eat. (*Id*.)

Despite being five minutes away from St. Pete's and Father being a trained first responder, Parents decided to call the pediatrician, who reportedly stated that if P.P. had a fever, they should take her to the emergency room. (*Id*. at 57, 454, 379-80.) Because Parents could not locate a thermometer, they decided to take P.P.

to the emergency room. (*Id*. at 57.) After buckling her into her car seat, Father noticed "a rhythmical jerking" of one of P.P.'s hands. (*Id*. at 377.)

P.P. was admitted into the St. Pete's emergency room shortly after 7 a.m. (*Id*. at 27.) Dr. Andy Coil, an emergency room physician, examined P.P. (*Id*.) Dr. Coil's immediate thought upon seeing P.P. was that it did not take a doctor to realize that P.P. was dying. (*Id*. at 47.)

During his initial exam of P.P., Dr. Coil noted a bruise on her eye and on her forehead. (*Id*. at 27-28.) When he asked Parents about the bruising, Parents explained that P.P. was "starting to do tummy time and she may have hit her head on the floor or she was playing with toys and she dropped a toy on her face." (*Id*. at 30-31.) Dr. Coil has never seen a four-month-old being able to hold a toy up and then drop it on their face with enough force to cause bruising. (*Id*. at 31.)

There were no reports of P.P. having a fever, diarrhea, or vomiting. (*Id*. at 29-30.) P.P.'s blood work was good. (*Id*. at 34.) Yet, P.P. was not responding like a normal four-month-old infant should. (*Id*. at 27.) She "was breathing, but she was not conscious." (*Id*. at 39.) Dr. Coil observed that P.P.'s anterior fontanelle, an infant's "soft spot," was "tense" and "firm." (*Id*. at 31.) Dr. Coil was concerned for "bleeding, or swelling, or edema of some kind." (*Id*.) P.P.'s "jerking of one of her arms [was] consistent with a seizure." (*Id*. at 33.)

A CT scan showed that P.P. "had a large hypoxic anoxic brain injury, meaning her brain did not get oxygen to sustain life for a certain amount of time and her brain was dying." (*Id*. at 34.) P.P. became hypoxic and had to be intubated. (*Id*. at 35.) During P.P.'s treatment, Father, multiple times, wanted "to make sure that [Dr. Coil] knew that [Father] was gone the past few weeks," which Dr. Coil found strange. (*Id*. at 36.)

Dr. Timothy Stidham, a pediatric intensivist at Logan Health, coordinated with Dr. Coil to transfer P.P. so that Logan Health's pediatric neurology team could help manage P.P.'s life-threatening brain injury. (*Id*. at 34, 801-02.) The initial report to Dr. Stidham was that they had "a four month old child who was having seizures with concern for a possible sort of SIDS type of . . . picture or near SIDS and had a very concerning CT as well as a very concerning neurological exam." (*Id*. at 802.) In preparation for transfer, P.P. was placed on a "Versed drip, which is a continuous infusion of a medication to help control her seizures." (*Id*. at 804.)

Father left St. Pete's to pack bags for Mother and P.P. before they were flown to Kalispell. (*Id*. at 380-81.) Although P.P. left St. Peter's in "extremely critical" condition, she "had a fairly safe and stable transport process" with no significant deteriorations. (*Id*. at 35, 804.) Father drove to Kalispell later that day

after arranging to sign the closing paperwork for the Bootlegger residence. (*Id*. at 381.)

As Dr. Stidham transitioned P.P. off the Versed medication to medication at Logan Health, P.P.'s seizure activity increased quickly, making treating her seizures Dr. Stidham's priority. (*Id*. at 805.) During Dr. Stidham's head-to-toe exam of P.P., he observed that P.P.'s pupils reacted sluggishly. (*Id*. at 805-06.) Dr. Stidham, like Dr. Coil, also noted that her "soft spot was quite tense and ful[ly] consistent with high pressure in the brain," she had a "healing bruise on her right frontal scalp," and a smaller, older bruise below her right eye. (*Id*.)

Mother explained to Dr. Stidham that P.P. had hit herself in the face with a toy a couple of weeks prior. (*Id*. at 806-07.) Dr. Stidham found Mother's explanation to be "fairly implausible," especially "in the context of [P.P.'s] other injuries." (*Id*. at 807.)

After P.P.'s chest x-ray, the radiologist "called with concerns for at least one and possibly two healing rib fractures on the right side." (*Id*. at 805, 808.) P.P. also had a CT, skeletal survey, and a MRI completed within her first 24 hours at Logan Health. (*Id*. at 808.) The MRI of P.P.'s brain "showed significant, extensive injury with hypoxic ischemic injury to the brain and some degree of subdural hemorrhage" and a "cerebellar laceration." (*Id*. at 808-09.) The MRI of the spine "showed significant ligamentous injury." (*Id*. at 809.) The skeletal survey "showed

bilateral healing rib fractures including the right, 5th, 9th, 10th, 11th posterior right ribs, and 9th, 10th, and 11th posterior left ribs." (*Id*. at 809-10.) All the rib fractures were "in healing phase." (*Id*.) P.P. also had a healing fracture of the distal fifth metatarsal. (*Id*. at 826.) P.P. had retinal hemorrhages. (*Id*. at 810.)

Within the first 24 hours of her care at Logan Health, it became "abundantly clear" that P.P.'s "extensive traumatic injuries," were "conclusively consistent with non-accidental trauma or child abuse." (*Id*. at 810.)[2] None of P.P.'s other providers disagreed with Dr. Stidham's diagnosis. (*Id*. at 815.)[3]

Doctors at Logan Health repeatedly told Parents that they did not think that P.P.'s injuries were "survivable." (*Id*. at 383.) Given the severity of P.P.'s injuries, Dr. Stidham "encourage[ed] palliative care to be part of the team to help be supportive for families in making decisions." (*Id*. at 828.)

After Dr. Stidham talked with Parents about how P.P. had "fairly clearly experienced non-accidental trauma and that it was quite significant," Father "threw up" in the bathroom. (*Id*. at 822.) Jennifer Blodgett, the Child and Family Services Regional Manager for Region 6, responded to Logan Health to interview Parents. (*Id*. at 56, 58.) Father appeared "shocked by what was happening" and was "pretty

[2] Dr. Coil and Dr. Loomis both agreed that P.P.'s injuries were caused by non-accidental trauma. (Tr. at 36, 917.)

[3] P.P. was being cared for by at least three pediatric intensivists, four or five pediatric hospitalists, one pediatric trauma surgeon, a pediatric neurosurgeon, and a pediatric neurosurgical nurse practitioner. (Tr. at 815.)

tearful." (*Id*. at 57.) In comparison, Mother "was pretty closed off," "agreed it was stressful" but "said that she was fine." (*Id*. at 58.) She did not cry and appeared "flat," choosing to only question Blodgett about the process. (*Id*. at 58-59.)

Blodgett returned to Logan Health on October 1, 2021, to conduct additional interviews of Parents. (*Id*. at 61-62.) Father expressed that "he felt guilty for how much [Mother] had to do as far as . . . moving and the caretaking of [P.P.] while [Father] was in Choteau." (*Id*. at 70.) Mother continued with her "it is what it is" mentality and that she was "fine." (*Id*. at 70.)

Blodgett inquired with Parents about P.P.'s bruises. (*Id*.) Parents volunteered that P.P. "had absolutely had bruising on her face prior to [September 29]." (*Id*. at 70.) Specifically, Parents explained that P.P. once had a bruise on her forehead that they speculated was from "lift[ing] her head and fall[ing] on a fist or toy." (*Id*. at 71-72.) Parents further explained that P.P. "flails a lot" and that she could have hit herself in the head with a toy in her hand to cause the bruise. (Tr. at 72-73.) Despite Blodgett having never seen a four-month-old injure themselves hard enough to cause bruising, Parents believed that P.P. was strong enough to give herself a bruise. (*Id*.) Following the interview with Parents, Blodgett attempted to follow up individually with Parents that same day. (*Id*. at 73.) Father agreed, but Mother refused. (*Id*.)

While P.P. remained at Logan Health, P.P.'s "subdurals became larger and she needed to drain to relieve that pressure." (*Id*. at 812.) On October 11, 2021, P.P.'s medical team started to conduct "spontaneous breathing trials" to determine if P.P. would be able to breathe on her own. (*Id*. at 813.) Dr. Stidham extubated P.P. on October 12. (*Id*.)

DPHHS ultimately removed P.P. on October 15. (*Id*. at 73, 140.) P.P. was discharged on October 31, 2023, and placed with her maternal grandparents in Plevna. (*Id*. at 387, 533, 812.) Parents relocated to Plevna, residing on maternal grandparents' property, but in a different residence, to be close to P.P. (*Id*. at 387-88.)

II. Pre-termination proceedings

In its order granting DPHHS emergency protective services of P.P., the district court appointed a CASA representative to act as P.P.'s GAL. (Doc. 3 at 4-5.) On November 10, 2021, Loretta Miller was assigned as CASA/GAL for P.P., along with Michele Tillotson, a courtesy CASA/GAL. (Docs. 9-10.)

Following DPHHS filing its Termination Petition, the district court set a pre-adjudication/termination conference for April 13, 2022. (Docs. 85, 88.) At the pre-adjudication/termination conference hearing, the district court denied Father's request to appoint counsel to represent P.P. because of her age and set a

termination hearing for June 27, 2022. (Doc. 124.) On June 8, 2022, DPHHS moved, unopposed, to continue the termination hearing until after Mother's criminal trial. (Doc. 135.) At the July 6, 2022 status hearing, the parties, again, stated that all stipulate to continuing the termination hearing until after Mother's criminal trial. (Doc. 139.)

On October 20, 2022, the executive director of CASA moved the district court to issue an order removing CASA/GAL Miller from the case as the CASA program believed that the case "has extended beyond the ability of a citizen volunteer to effectively advocate for the best interest of the above-named youth." (Doc. 141.) None of the parties objected. (*Id*.) The CASA director also requested that the district court *consider* appointing an attorney to represent P.P. in lieu of a CASA/GAL. (*Id*. (emphasis added).) The district court issued its order removing CASA/GAL Miller from the case on November 9, 2022. (Doc. 143.)

Parents both moved separately to continue the termination hearing. (Docs. 159, 161.) DPHHS opposed both motions. (*Id*.) At a hearing held on January 18, 2023, the district court granted Parents' respective motions to continue, resetting the termination hearing to start on April 20, 2023. (Doc. 175.)

On March 15, 2023, Father moved to have the district court appoint counsel for P.P. (Doc. 192.) DPHHS objected to Father's motion. (*Id*.)

III. Termination hearing

By the termination hearing, Parents decided it would be best for P.P. to reside with paternal grandparents in Oregon to receive care from better medical providers. (Tr. at 388-89.) Mother had moved to a camper trailer on paternal grandparents' property, and Father had been traveling to see P.P. two weekends each month. (*Id*. at 390.) Just as DPHHS did when Parents relocated to Plevna, DPHHS consented to Parents residing near P.P., and having unlimited contact with, P.P., so long as all contact was supervised. (*Id*. at 727, 735.) Father, on his own, had completed parenting classes. (*Id*. at 395-99.) Father also was attending individual therapy, in which he was working on parenting skills. (*Id*. at 394-95, 883.)

At the start of the termination hearing, the district court addressed the motion to appoint counsel for P.P. (*Id*. at 10-11.) After Father's attorney confirmed to the district court that no notice of submittal on the motion was filed, the district court exclaimed that it was "a little bit late in the game to be appointing an attorney for the child when we are at the termination hearing." (*Id*. at 11.) Father's counsel then reminded the district court of the statutory requirement that the child has an attorney or GAL. (*Id*.)

DPHHS acknowledged that it was aware of the statutory mandate, but that the situation proved different in that a CASA/GAL had been appointed for the first

year of the case but had rescinded its own involvement. (Tr. at 11-12.) DPHHS then stated that, in past cases, a youth was not represented by a GAL or an attorney due to shortages in the district, and that in cases such as P.P.'s, the State "presume[s] that the child wants to be with their parents." (Tr. at 12.)

Father's counsel responded that she had a "remedy or solution for the court to consider" to avoid continuing the termination proceedings, proposing that Sarah Corbally be appointed to represent P.P. (Tr. at 14.) Because Mother had paid Corbally to be a consultant and to testify at Mother's sentencing hearing, the district court immediately interjected, "No, she's a witness. She's not going to be an attorney." (Tr. at 14-15.)

Mother enjoined Father's motion for the district court to appoint Corbally to represent P.P. (Tr. at 17.) Mother explained that they expected Corbally to testify to the same thing Corbally was paid to testify to at Mother's sentencing hearing. (*Id*.) In response, the district court continued to express appropriate concern of Corbally's appointment, explaining that:

> She's been hired. Let's face it, she's getting money from mother. I am troubled, very troubled here. First of all, there was a motion or some sort of notice about here not being a GAL. Nobody objected. I did not sign an order on that because I waited to see if there was going to be anything filed from any of the parties. Nobody did. Then I find you did file on March 15th and then a supplemental on April 6th that looks—April 19th, 6th, somewhere in here your notice about she needs to have someone represent her. I see no notice of submittal.

> I don't know you all think you're going to get a reaction to things. This feels like you kind of just left it laying there so we could come in today and try to deal with this. I am not pleased by that, and now I'm guess I'm in a position of allowing somebody to be the attorney for the child's interest who has already weighed in as a witness for mom.

(Tr. at 18.) DPHHS did not object to Corbally being appointed so long as Corbally was not called as a witness. (Tr. at 19.)

Later, Mother's counsel moved the district court to take judicial notice of Mother's sentencing hearing for purposes of the termination hearing. (Tr. at 195.) Father's counsel objected to the district court taking judicial notice of the entire criminal proceeding, arguing that it would be unfair to Father, but did not object to the district court taking judicial notice of only Mother's sentencing hearing. (*Id*.) The district court then explained that it was not sure how it "would partition off the sentencing part and say that's okay to use but not the whole case." (*Id*.) After Father's counsel explained that Father's immunity afforded to him for the criminal trial also extended to the dependent neglect action, the district court took judicial notice of Mother's criminal proceeding, except for Father's testimony. (*Id*. at 195-96.)

After hearing from 22 witnesses, including Father, over the course of 5 days, the district court issued its order terminating Parents' respective rights on July 7, 2023. (Doc. 216.) The district court found that clear and convincing evidence supported that Mother had "physically abused [P.P.] over a period of months," but

that Father was not "directly involved" in P.P.'s physical abuse. (Doc. 216 at 14.) The district court, however, found that clear and convincing evidence supported that Parents "were or should have been aware that [P.P.] was injured on multiple occasions," but Parents chose not to take any action to address P.P.'s noticeable injuries. (Doc. 216 at 14.) The district court also found that clear and convincing evidence established that Parents "failed to obtain immediate care" for P.P. when they found her unresponsive around 6 a.m., on September 29, which was especially troublesome for Father, who is a trained first responder. (Doc. 216 at 14-15.) Accordingly, the district court concluded that the evidence supported that Parents submitted P.P. to aggravating circumstances, warranting the district court relieving DPHHS of its obligation to make reasonable efforts to reunify P.P. and Parents and terminating Parents' respective rights. (Doc. 216 at 18-21.)

Although P.P.'s prognosis is better than what was anticipated when she was hospitalized at Logan Health, P.P. remains vulnerable. P.P. is legally blind. (Tr. at 629.) P.P. is now able to pull and hold herself up with the assistance of an object. (Tr. at 628.) P.P. attends occupational therapy, speech therapy, visual therapy, and physical therapy. (Tr. at 904.) She is only two years old.

SUMMARY OF THE ARGUMENT

The district court did not violate Father's due process right when it took judicial notice of Mother's ancillary criminal proceeding. Notably, Father only points to two findings where the district court referenced evidence presented in the criminal case in the district court's termination order. First, the district court found that an ophthalmologist had diagnosed P.P. with *bilateral 360-degree* retinal hemorrhages. Second, the district court found that every treating medical professional who testified at the termination hearing and at *Mother's trial* opined that P.P.'s injuries were the result of non-accidental trauma. Evidence was presented that an ophthalmologist had found *retinal hemorrhages* in P.P.'s eyes. Furthermore, three medical professionals who had treated and reviewed P.P.'s medical records did testify *at the termination hearing* that P.P.'s injuries were caused by non-accidental trauma. Even if Father could establish that the inclusion of the extent of P.P.'s retinal hemorrhages and that similar evidence being presented at the termination hearing as at Mother's criminal trial were improper, he cannot establish that he was prejudiced.

Substantial, credible evidence established that P.P. exhibited various injuries throughout the first four months of her life, which Father had observed either in person or through pictures. P.P. was primarily in Mother's care during that time. Despite P.P.'s noticeable bruising at an immobile age, Father did not take any

action and continued to leave P.P. unsupervised in the care of Mother. Within hours of being left alone in Mother's care for at least 15 to 25 minutes on the night of September 28, P.P. started to behave abnormally. First, P.P. did not consume close to her normal amount of milk for her second evening feeding. Next, P.P.'s heart rate dropped into the 70s, well below her normal rate. By 6 a.m. on September 29, P.P. was not responsive. After waiting an hour, Parents took P.P. to the emergency room, where she ultimately had to be life-flighted to Logan Health in critical condition. Doctors diagnosed P.P. with multiple healing rib fractures, retinal hemorrhages, a broken toe, cerebellar laceration, and a subdural hemorrhage. P.P.'s treating physicians all agreed that P.P.'s injuries were caused by non-accidental trauma. Accordingly, Father was not prejudiced by the inclusion of the information contained in the challenged findings.

Moreover, Father was present at the termination hearing, which he received notice of, and where he was represented by counsel who conducted cross-examination of the three medical professionals, and he had the opportunity to acquire the record from Mother's criminal case. Father, therefore, cannot establish that his due process rights were violated.

Father's no reasonable efforts claim is also unavailing. First, this Court should decline to review Father's claim because Father did not object or otherwise request that the district court order DPHHS to make reasonable efforts pending a

decision on DPHHS's Termination Petition. Nor does Father request that this Court invoke plain error review. Nevertheless, the statutes and this Court's jurisprudence support that DPHHS had no obligation to make reunification efforts pending the district court's decision on the Termination Petition, which was filed early in the case. And, ultimately, the district court did not abuse its discretion when it found that the Department did not need to make reasonable efforts because clear and convincing evidence established that Father had submitted P.P. to aggravated circumstances, a finding that Father does not challenge on appeal.

Finally, the district court did not abuse its discretion when it found that termination of Father's parental rights served P.P.'s best interests. P.P.'s extensive injuries, which were caused by non-accidental trauma, have resulted in her being permanently disabled and vulnerable. Despite that, based on his testimony, it was unclear whether Father fully understood the extent of P.P.'s injuries and the continued need for her to have a safe caregiver who would act protectively.

STANDARDS OF REVIEW

This Court's review of whether a parent was denied his right to due process is plenary. *In re C.B.*, 2019 MT 294, ¶ 13, 398 Mont. 176, 454 P.3d 1195.

This Court reviews for abuse of discretion a district court's decision to terminate a person's parental rights. *In re Z.N.-M.*, 2023 MT 202, ¶ 10, 413 Mont.

502, 538 P.3d 21. The district court abuses its discretion when it acts "arbitrarily, without conscientious judgment, or in an unreasonable fashion that results in substantial injustice." *Id*.

This Court reviews the district court's factual findings to determine if they are clearly erroneous. *Id*. 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. *Id*. This Court reviews for correctness the district court's conclusions of law. *C.B.*, ¶ 13.

ARGUMENT

I. Father's right to due process was not violated when the district court took judicial notice of Mother's ancillary criminal proceeding.

Father contends the district court violated his due process rights when it took judicial notice of Mother's criminal proceeding, over Father's objection, depriving Father of the right to cross examine the State's evidence presented at Mother's trial. (Br. at 36.)

The right to the care and custody of a child is a fundamental liberty interest, so "[f]undamental fairness and due process require that a parent not be placed at an unfair disadvantage during the termination proceedings." *In re A.N.W.*, 2006 MT

42, ¶ 34, 331 Mont. 208, 130 P.3d 619. The "[k]ey components of a fair proceeding are notice and an opportunity to be heard." *C.J.*, 2010 MT 179, ¶ 27, 357 Mont. 219, 237 P.3d 1282. "[T]he process that is due in any given case varies according to the factual circumstances of the case and the nature of the interests involved." *In re D.B.J.*, 2012 MT 220, ¶ 27, 366 Mont. 320, 286 P.3d 1201. Due process "is a flexible concept which must be tailored to each situation in such a way that it meets the needs and protects the interests of the various parties involved." *In re B.P.*, 2001 MT 219, ¶ 31, 306 Mont. 430, 35 P.3d 291 (internal quotations and citations omitted). "For a parent to establish a claim for violation of due process, he or she must demonstrate how the outcome would have been different had the alleged due process violation not occurred." *C.B.*, ¶ 18.

Rule 201 of the Montana Rules of Evidence authorizes district courts to take judicial notice of a fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonable questioned." Mont. R. Evid. 201(b). Criminal convictions are not subject to reasonable dispute. *See In re S.T.*, 2008 MT 19, ¶ 18, 341 Mont. 176, 176 P.3d 1054.

In civil proceedings, such as dependent neglect actions, "facts judicially noticed are accepted as conclusive." *S.T.*, ¶ 17 (citing Mont. R. Evid. 201(g)). By

taking judicial notice of "facts not subject to reasonable dispute," the district court "dispenses with the need for formal proof of facts," which "saves time and money." *S.T.*, ¶ 17. In other words, judicial notice avoids "wast[ing] time litigating about undeniable matters." *In re Marriage of Carter-Scanlon*, 2014 MT 97, ¶ 17, 374 Mont. 434, 322 P.3d 1033 (citing Edward J. Imwinkelried, *Courtroom Criminal Evidence* vol. 2, § 3002, 30-2 (5th ed., Bender 2011)).

Father contends that the district court could not ascertain which testimony was not subject to reasonable dispute from the criminal proceeding because Mother and the State presented conflicting evidence regarding P.P.'s medical conditions. (Br. at 39.) However, Father points to only two of the district court's findings in its order terminating Father's parental rights where the district court referenced evidence not testified to at the termination hearing. First, the district court found that "[a]n ophthalmologist examined [P.P.'s] eyes and found bilateral 360-degree retinal hemorrhages." (*Id*.) Second, the district court concluded that "[e]very **treating** professional who testified in this case *and the criminal case* opined that [P.P.'s] injuries were the result of non-accidental trauma." (*Id*. at 40 (emphasis in original).) Neither of these findings, however, violated Father's right to due process.

Although Father is correct that there was no testimony presented at the termination hearing that "an ophthalmologist examined [P.P.'s] eyes and found

bilateral 360-degree retinal hemorrhages," there was still testimony establishing that P.P. suffered from retinal hemorrhages. Dr. Stidham testified that he had consulted with an ophthalmologist, who informed Dr. Stidham of the retinal hemorrhages, which he included when he diagnosed P.P.'s injuries as caused by non-accidental trauma. (Tr. at 810-11.) Furthermore, the district court's inclusion of "bilateral 360-degree" retinal hemorrhages did not put in dispute that P.P. had documented retinal hemorrhages. Nor did Father, at the termination hearing, dispute that P.P. had suffered retinal hemorrhages. In fact, although he had the ability, Father did not cross-examine Dr. Stidham regarding P.P.'s retinal hemorrhages at all. (*See* Tr. at 817-27.)

Moreover, the inclusion of the extent of P.P.'s retinal hemorrhages did not change that P.P. also suffered from healing rib fractures, a toe fracture, cervical damage, subdural hemorrhages, and severe brain damage. Nor did the inclusion of a specific description of P.P.'s retinal hemorrhages prevent Father from effectively contesting DPHHS's Termination Petition which alleged not that Father caused each injury, but that he failed to intervene and protect P.P. from a consistent series of injuries that went "from having one bruise to being blind." (Tr. at 639.) The district court taking notice of the evidence presented at Mother's criminal trial did not prevent Father from countering the Department's belief that Father was aware or should have been aware that P.P. was being abused because of her ongoing

bruising at an immobile age. The Department also asserted that Father was neglectful in not seeking urgent medical care for P.P. when he found her non-responsive. Accordingly, even if this Court finds that the inclusion of the phrase "bilateral 360 degree" violated Father's due process rights, Father cannot establish that he was prejudiced.

Nor was Father prejudiced by the district court's inclusion of "and the criminal case" when discussing that all treating professionals agreed that P.P.'s injuries were a result of non-accidental trauma. At the termination hearing, Dr. Coil, the physician who first treated P.P. at St. Pete's emergency room, agreed with Dr. Stidham's conclusion that P.P. had suffered from non-accidental trauma. Dr. Loomis, P.P.'s pediatrician, testified that Dr. Stidham's diagnosis was "very clear-cut." (Tr. at 917.) Dr. Stidham also testified that, even though in past cases doctors have disagreed with his diagnosis, there was no disagreement between him and P.P.'s various medical providers that P.P. had suffered from non-accidental trauma.[4] Again, Father had the opportunity to, and did, conduct cross examination of Dr. Coil, Dr. Loomis, and Dr. Stidham. And, again, the district court's inclusion of "and the criminal case" did not alter the overwhelming evidence *presented at*

[4] Along with other medical professionals, Dr. Stidham, Dr. Coil, and Dr. Loomis also testified at Mother's criminal trial. (CDC 2022-30, 12/5/22-12/9/22 and 12/12/22-12/15/22 Tr. at 5-9.)

the termination hearing that supported that P.P. had suffered from non-accidental trauma. Father cannot establish that he was prejudiced.

Finally, despite his contention otherwise, Father was not "placed at an unfair disadvantage" when the district court took judicial notice of Mother's "lengthy criminal proceedings." (Br. at 40.) In support of his argument, Father asserts that the prosecutor in Mother's criminal trial, Mary Barry, was also co-counsel in the termination proceeding, thereby speculating she had access to more information than his counsel. Father, however, had the ability to obtain the record from Mother's criminal proceedings, including the trial transcript. Father failing to do so does not render the termination proceeding unfair. *See In re K.C.H.*, 2003 MT 125, ¶¶ 14-16, 316 Mont. 13, 68 P.3d 788.

Even if the district court erroneously took judicial notice of Mother's criminal proceeding, sufficient evidence presented at the termination hearing supported the district court terminating Father's parental rights.[5]

Father observed P.P.'s abrasion on her nose and redness in her right eye. Despite P.P. being only one month old, Parents believed that the injury was caused by P.P. rubbing her face on blankets during tummy time. Father did not mention the abrasion when a month later, Parents inquired about the remaining redness in

[5] Notably, Father does not directly challenge any of the district court's findings of fact other than the two cited above.

her eye, which at that point was only a few millimeters in size. In August, Father saw bruising on P.P.'s cheek in a picture texted to him by Mother. Father did not report it or seek medical attention. On August 20, 2021, the daycare noted that P.P. arrived with a bruise on her upper forehead and jawline. Father had dropped her off that morning. Father did not report it or seek medical attention.

In late August, Father transitioned to living at the Choteau property, being in Helena during the month of September for only approximately 11 days. (*See* Father's Ex. D.) Over Labor Day weekend, Father noticed P.P. had a bruise on her forehead. Father did not take any action to ensure P.P.'s safety. The Tuesday following Labor Day, the daycare noted that P.P. had bruises on both cheekbones and on her forehead.

When Father left P.P. in the care of Mother on September 23, he did not notice any bruises on P.P. Two days later, when Father saw P.P. in Choteau, he saw that P.P. had a bruise on her forehead and a dark spot underneath her eye. After speaking with Mother, Father hypothesized that P.P. must have bruised herself playing with a toy during tummy time. Dr. Coil, Dr. Stidham, and the daycare staff were all concerned about the explanation for P.P.'s black eye, finding that explanation to be implausible given that P.P. was only four months old.

Even with all these noted repeated and escalating injuries, Father continued to leave P.P. in Mother's care. On the evening of September 28, Parents were

packing various portions of the house and P.P. was left alone with Mother for at least 15 to 25 minutes while Father was outside talking with his MHP supervisor. Father returned to the house and found P.P. sleeping in her car seat. Father took P.P. to the apartment to sleep that night. P.P. consumed only 25 mL of her bottle, which was far less than her usual amount.

At some point, P.P.'s heart rate dropped into the 70s, well below her normal heart rate. By 6 a.m., Father was unable to wake P.P. She did not wake when he changed her diaper, tried to feed her, rubbed her body, or spoke loudly enough for her to hear. Despite Father being a trained first responder and their living only five minutes from St. Pete's emergency room, Parents called the pediatrician. Eventually, a little over an hour later, Parents took P.P. to the emergency room. When Father placed P.P. in her car seat, he noticed that P.P.'s hand was jerking, and it was only at that point Father realized that it was not good. (Tr. at 377.)

When Dr. Coil first saw P.P., it was clear she was in peril. CT scans confirmed that P.P.'s brain was dying from not receiving enough oxygen. She was life-flighted to Logan Health, where it was discovered that P.P. had healing rib fractures, a toe fracture, retinal hemorrhages, cervical damage, subdural hemorrhages, and severe brain damage. It was unclear whether she would survive.

Despite CASA Miller's and family members' beliefs otherwise, none of P.P.'s medical providers disputed that the only mechanism that supported P.P.'s

injuries was non-accidental trauma. Furthermore, P.P. has not suffered another injury while out of Parents' care and with her interactions with Parents supervised.

These compelling and largely undisputed facts were presented at the termination hearing, during which Father had the opportunity to cross-examine witnesses and present evidence on his own behalf. Other than two nonconsequential examples of facts from Mother's criminal trial that appear in the district court's final order, Father has failed to identify any evidence that indicates he was put at an unfair advantage during the termination hearing. *See A.N.W.*, ¶ 34. Father was afforded notice and an opportunity to be heard throughout these proceedings and he has not "demonstrate[d] how the outcome would have been different" had the district court not taken judicial notice of Mother's criminal proceeding. *C.B.*, ¶ 18.

II. The district court did not abuse its discretion when it concluded that the Department did not need to make reasonable efforts towards reunification and terminated Father's parental rights after it found that Father had subjected P.P. to aggravated circumstances.

Notably, Father has not alleged or argued that the district court's findings of fact were clearly erroneous. As established above, the district court's findings of fact were more than sufficient to support the court's order terminating Father's parental rights under Mont. Code Ann. §§ 41-3-423(2) and -609(1)(d).

Instead, it appears Father is challenging the district court's legal authority under, and its application of, Mont. Code Ann. §§ 41-3-423(2) and -609(1)(d). On appeal, Father asserts that the court "erred in finding that the Department need not engage in reunification or preservation efforts and, *at the same time*, terminating his parental rights. (Br. at 41 (emphasis added).) Father further asserts that "[a]n absurd result would occur if [Mont. Code Ann. § 41-3-423] was read to allow the Department to proceed without good faith reasonable efforts contrary to the statute without a court concluding that it may do so." (Br. at 45-46.) However, Father did not object or otherwise raise this claim before the district court. Father has therefore waived appellate review of this claim. *See C.B.*, ¶ 14. Additionally, Father does not rely upon plain error review for this Court to nonetheless reach his argument.

Even if this Court determines that Father's claim is appropriate for appellate review, Mont. Code Ann. § 41-3-423 and this Court's jurisprudence undermine Father's argument on appeal.

Typically, before DPHHS requests termination of parental rights, DPHHS "must engage in reasonable efforts to reunify the family." *In re C.S.*, 2020 MT 127, ¶ 16, 400 Mont. 115, 464 P.3d 66. The notion of reasonable efforts is derived from Montana's policy "to protect children whose health and welfare may be threatened by those persons responsible for their care . . . in a manner that preserves the

family environment, *if possible*." *In re C.J.*, ¶ 23 (emphasis added). DPHHS makes "reasonable efforts" when DPHHS "*in good faith* develop[s] and implement[s] voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit" and assists, in good faith, "parents in completing voluntary services agreements and treatment plans." Mont. Code Ann. § 41-3-423(1)(b)(i) (emphasis added).

The health and safety of children, however, are always of paramount concern when making decisions about preserving or reunifying families. *C.J.*, ¶ 23; Mont. Code Ann. § 41-3-423(1)(c). To that end, Mont. Code Ann, § 41-3-609(1)(d) authorizes the district court to terminate parental rights, in a non-ICWA case, without DPHHS providing reasonable efforts so long as the district court finds clear and convincing evidence supports "that the parent has subjected a child to the aggravated circumstances" listed at Mont. Code Ann. § 41-3-423(2).

First, Father's argument that DPHHS should have provided reasonable efforts pending the district court's decision on DPHHS's Termination Petition would have required DPHHS to violate Mont. Code Ann. § 41-3-423(1)(b)(i)'s mandate that DPHHS act "in good faith" when implementing reasonable efforts. To force DPHHS to implement services and treatment plans if it has no intent to reunify the family after petitioning for no reasonable efforts pursuant to Mont. Code Ann. § 41-3-423(2) would require DPHHS to act in bad faith.

Moreover, the Legislature has specified that DPHHS may request to not make reunification efforts in its first petition, which would make forcing DPHHS to make efforts pending the determination counterintuitive.

Second, the argument advanced by Father has been rejected by this Court. *See C.B.*, ¶ 29; *In re J.W.*, 2013 MT 201, 371 Mont. 98, 307 P.3d 274. In *C.B.*, the mother argued it was a violation of due process for DPHHS to not provide reasonable efforts prior to the court making a determination that reunification services were not required. *C.B.*, ¶ 17. In affirming the district court's termination order based on its determination of "no reasonable efforts," this Court explained that Mont. Code Ann. § 41-3-423(2) and (4) "does not provide a timeline for a hearing" or order determining that reasonable efforts were not required. *C.B.*, ¶ 29. Just as the mother in *C.B.*, Father cites to DPHHS's statutory obligation to offer reunification services as support that a judicial determination must be entered prior to DPHHS being absolved from its obligation. (Br. at 45-46.)

Additionally, this Court affirmed application of the "no reasonable efforts" statutes in *C.J.* In *C.J.*, the parent challenged the district court's "failure to conduct an earlier 'reasonable efforts' hearing" when her parental rights were ultimately terminated pursuant to Mont. Code Ann. §§ 41-3-609(1)(d) and -423(2), (3). *C.J.*, ¶ 22. This Court concluded that the parents' due process rights were not violated when four and one-half months passed between DPHHS's petition for exemption

from the reasonable efforts' requirement and the hearing on the petition. *C.J.,* ¶¶ 25-28.

Here, DPHHS did provide reasonable efforts to prevent the removal of P.P. Before the removal, DPHHS interviewed the daycare provider, discussed P.P.'s diagnosis with her medical providers, and interviewed Parents before concluding, over two weeks later, that evidence supported that Parents had abused or neglected P.P. (Doc. 1; Tr. at 49-51, 73, 140, 173-74, 179.) Based on P.P.'s needs, DPHHS did not prevent Parents from relocating to where P.P. was placed. Nor did DPHHS prevent Parents from accessing P.P. Instead, DPHHS appropriately allowed Parents unlimited contact with P.P. so long as the contact was supervised.

However, within months of P.P.'s removal, DPHHS, in its discretion, elected to petition for no reasonable efforts and termination of Parents' rights based on the severity of P.P.'s injuries that left her in a permanent disabled and vulnerable state. At that time, which was before P.P. was adjudicated as a youth in need of care and temporary legal custody was granted, there was no legal requirement to impose a treatment plan. *See* Mont. Code Ann. § 41-3-443(7).[6]

[6] Father asserts that he had asked DPHHS for a treatment plan, and that the GAL also recommended, in her reports, that Father have a treatment plan. (Br. at 44.) However, nothing in the record supports that *Father* filed a motion, or otherwise requested, that the *district court* order DPHHS to provide him a treatment plan. Accordingly, Father has waived appellate review of whether he should have had a treatment plan. *See C.B.*, ¶ 14.

And, after P.P. was adjudicated and while the Termination Petition was pending, DPHHS would have been acting in bad faith if it implemented services aimed at reunifying P.P. with Parents.

Nor would any efforts made have been legally relevant to the district court's decision based on the petition filed. DPHHS's theory of termination did not require the district court to make a finding that Father did not successfully complete his treatment plan and that Father's conduct or condition was unlikely to change in a reasonable time. That being said, the district court, in its findings, noted Father had completed parenting classes and attended ongoing individual therapy. The district court also heard directly from Father's therapist about the various goals she was helping Father with, which included increasing coping strategies, understanding his relationships with others, and parenting skills. (Tr. at 882-83.)

The district court, in its discretion, weighed that evidence with the evidence of Father's neglect that resulted in P.P. suffering serious bodily injuries. "In non-jury trials, witness credibility and the weight to be given to witness testimony is squarely within the province of the district court." *In re C.M.*, 2019 MT 227, ¶ 21, 397 Mont. 275, 449 P.3d 806. When reviewing a district court's findings, this Court does not consider whether the evidence could support a different finding, nor does it substitute its judgment for that of the factfinder regarding the weight given to the evidence. *A.N.W.*, ¶ 28. Evidence of Father availing himself of tasks that

could have been on a treatment plan simply did not negate the clear and convincing evidence that supported that Father was aware of P.P.'s various injuries, failed to take protective action, and ultimately delayed medical care to P.P. when she was non-responsive on September 29.

Father has not established that the district court erred by not conducting a separate hearing, prior to the termination hearing, to consider DPHHS's request to not provide reasonable efforts. Nor has Father established that the district court's conclusions of law—that he subjected a child to aggravating circumstances—were erroneous. *See C.B.*, ¶ 14.

III. The district court did not abuse its discretion when it found that termination of Father's parental rights served P.P.'s best interests.

Father contends that the district court did not adequately take into consideration the child's best interests when it terminated Father's parental rights. (Br. at 48-49.) As part of his argument, Father asserts that, by not appointing a GAL to represent P.P. for six months after CASA rescinded its involvement, the district court deprived "itself of the eyes and ears necessary to conduct an investigation." (*Id*. at 49.) The record undermines Father's argument.

First, during the six-month period when P.P. did not have an assigned GAL, there was no active litigation requiring input from the GAL. The only issues

presented during that time were motions to dismiss and a motion to disqualify the prosecutor. Father has not established how input from a GAL would have altered the district court's denial of each of those motions. (*See* Docs. 145, 170.) And, before CASA rescinded its involvement, and after Corbally was appointed as P.P.'s GAL at the termination hearing, it was continually clear that the GALs believed termination was not in P.P.'s best interests. The six-month lapse did not impact Corbally's position and the district court, in its discretion, gave CASA/GAL Miller's and Corbally's testimony the appropriate weight. *C.M.*, ¶ 21; *A.N.W.*, ¶ 28.

Second, the district court correctly found that termination was in P.P.'s best interests. Although P.P. survived her injuries, P.P. is permanently disabled. P.P. is legally blind. P.P., at the age of 2, is now able to hold herself up to a standing position with the support of objects. P.P. attends speech, visual, physical, and occupational therapy. Given P.P.'s disability status, P.P. will remain vulnerable for the remainder of her life.

Despite P.P.'s extensive injuries leaving her disable and vulnerable, the evidence presented at the termination hearing, at a minimum, cast serious doubts as to whether Father understood that P.P., who now has special needs, continues to require a safe caregiver who will protect her. At the hearing, in response to the

question of whether Father would protect P.P. if he *felt* like Mother was a threat, Father stated:

> Well, honestly I'll protect [P.P.], right. I mean, that's first and foremost. I'm not—my understanding is that there is also *a court ordered restriction on her access to [P.P.]* I've enforced the law for the last 17 and a half years of my life, and I don't intend to stop doing that side of things, right, and just ignoring those things. But yeah, I will—[P.P.'s] safety will be paramount.

(Tr. at 401 (emphasis added).) P.P.'s various injuries occurred during Father's 17 and a half years of enforcing the law. Yet, Father did not take any protective action for P.P. Nor did Father report the injuries, despite Father, a MHP trooper, being a mandatory reporter. (Tr. at 478.) Instead, Father either ignored, believed Mother's explanations, or hypothesized that P.P., at only a few months old, was able to give herself repeated, noticeable bruises.

And, when asked what Father would do now if he saw bruises on P.P.'s face, Father stated: "Well, I mean, I *think* I would treat it differently. I *think* I would go and get her checked." (Tr. at 478 (emphasis added).) Upon being asked, "You think or you will," Father changed his answer to that he "would go get it checked." (Tr. at 478.) And, when questioned by the district court about whether he had "learned from this case that [he] need[ed] to be aware and responsive to injury in the child," Father answered affirmatively, before confirming that his attitude about that has changed. (Tr. at 476-77.)

The district court accordingly did not err when it concluded that "[t]he physical, mental, and emotional conditions of [P.P.] include the physical need for a safe caregiver to meet her every need, including her basic needs." (Doc. 216 at 16.) Nor did the district court err when it ultimately concluded that it "must give primary consideration to the physical and mental conditions and needs of this vulnerable child who is, and likely permanently will be, entirely dependent on a safe caregiver." (*Id*. at 20.)

Because substantial, credible evidence supported that Father's neglect had resulted in P.P.'s serious bodily injuries, which have rendered her permanently disabled, the district court did not err when it terminated Father's rights and found that it was in P.P.'s best interests to do so.

CONCLUSION

This Court should affirm the district court's order terminating Father's parental rights.

Respectfully submitted this 26th day of December, 2023.

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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 9,268 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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