IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0205

IN THE MATTER OF:

L.A.O.-B.,

YOUTH IN NEED OF CARE.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Fourteenth Judicial District, Mussellshell County, the Honorable Randal Spaulding, Presiding.

Appearances:

SHANNON HATHAWAY
Hathaway Law Group
401 Washington Street
Missoula, MT 59802
Phone: (406) 201-9660
shannon@hathaway-lawgroup.com

Attorney for Appellant and Mother, K.O.

AUSTIN KNUDSEN
Montana Attorney General
KATIE SCHULZ
Assistant Attorney General
Appellate Services Bureau
215 N. Sanders
P.O. Box 201401
Helena, MT 59820-1401

ADAM LARSEN
Mussellshell County Attorney
506 Main Street
Roundup, MT 59072

Attorneys for Plaintiff and Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES
CASES

Montana Supreme Court

OTHER AUTHORITIES

Montana Code Annotated

United States Constitution

STATEMENT OF THE ISSUE

I. Whether the Department failed to provide Mother with reasonable efforts to reunify her and the child as is statutorily required and whether, given this lack of efforts, the District Court abused its discretion in finding Mother was unlikely to change in a reasonable time.

II. Whether the District Court abused its discretion and violated Mother's constitutional right to statutorily fair procedures in the case involving her parental rights when it did not follow proper timelines.

STATEMENT OF THE CASE AND FACTS

K.O. (Mother) appeals the Fourteenth Judicial District Court's (District Court) Order terminating her parental rights her daughter, L.A.O.-B. (D.C. Doc. 147) (Attached as *Appendix A*). The Department of Child and Family Services (the Department) filed a Petition for Emergency Protective Services (EPS) and Temporary Investigative Authority (TIA) on December 7, 2021. (D.C. Doc. 1.) The affidavit of Child Protection Specialist (CPS) Christopher Hildebrant alleged physical neglect of L.A.O.-B. by Mother. Specifically, there were concerns about Mother's erratic behavior and drug use. When interviewed by the CPS, Mother admitted to using methamphetamine and stated she had been sober until the suicide of L.A.O.-B.'s father in June, when she relapsed. (D.C. Doc. 1, see *Affidavit*.)

A Show Cause Hearing on this Petition was scheduled for December 27, 2021. (D.C. Doc. 2.) On December 23, 2021 the Department filed a Motion to Continue due to counsel having not yet been assigned to Mother. (D.C. Doc. 9.) The District Court continued the Show Cause Hearing to January 11, 2022. (D.C. Doc. 10.) On January 10, 2022 the Department again filed a Motion to Continue on the basis that Mother had still not been appointed counsel. (D.C. Doc. 11.) The District Court reset the Show Cause again, this time for February 7, 2022. (D.C. Doc. 12.) On January 21, 2022 a Notice of Appearance on Mother's behalf was finally filed. (D.C. Doc. 13.)

Mother was present at the Show Cause Hearing on February 7, 2022. At this hearing, the Department updated it would be amending its Petition from one for TIA to one requesting adjudication of the child as youth in need of care (YINC) and temporary legal custody (TLC) and asked for additional time to file the new Petition. (D.C. Doc. 15.) In response, Mother's attorney requested additional time to talk with Mother about this plan to amend petition to one for TLC. (2/7/22 Hearing Transcr. at 4:15-17.) Additionally, Mother's counsel expressed concern about the length of time the case had been pending without a proper Show Cause Hearing. (2/7/22 Hearing Transcr. at 4:23-5:4.) In response, the Court stated it did not believe it had the authority to deny the Department additional time to amend and file

its Petition and due process required Mother be given time to consult with her counsel about the changes to the Petition. (2/7/24 Hearing Transcr. at 5:22-6:12.) The Court did not discuss Mother's due process rights to be heard in a timely manner or the Department's mandate to follow statutory timeframes.

A full week later, on February 14, 2022, the Department finally filed its Petition for EPS, Adjudication as YINC and TLC (*Amended Petition*). The *Amended Petition* alleged that TLC was necessary because following the child's emergency removal, CFS conducted further investigation and found safety concerns with Mother's parenting. During this time, Mother had been voluntarily providing urinalysis drug tests to the Department and tested positive for methamphetamine and amphetamines on October 21, 2021, November 24, 2021, and December 8, 2021. Mother also submitted a diluted specimen on December 22, 2021. CFS was also made aware of an incident in November where Mother was cleaning a gun, and the child accessed the gun, pulled the trigger and discharged the gun in the home. (D.C. Doc. 17.) The Court set a hearing on the *Amended Petition* for February 22, 2022. (D.C. Doc. 18.)

Mother was not present at this hearing, but her attorney notified the Court of her plan to stipulate to the *Amended Petition*. Mother hoped to have

continued visitation and work with the Department to be reunified with her child. (D.C. Doc. 19, 2/22/22 Hearing Transcr. at 3:16:20.) CPS Hildebrandt provided testimony in support of the *Amended Petition* and noted that Mother had been willing to work with the Department since the inception of the legal case back in December of 2021. (2/22/22 Hearing Transcr. at 10-11.) On February 24, 2022, the District Court issued an Order Adjudicating as YINC and Granting TLC based on Mother's stipulation. (D.C. Doc. 20.)

It was not until June 20, 2022, four months later, that the Department filed its Motion to Approve and Order Mother's Treatment Plan (*Treatment Plan*). (D.C. Doc. 24.) The District Court granted this Motion and approved the *Treatment Plan* on June 21, 2022. (D.C. Doc.25.) Mother's treatment plan required her compliance with the following tasks: taking a parenting class, attending parenting time, following the recommendations of the child's providers, ensuring the child's safety while in her care, and attending the child's appointments. Mother was also required to complete a chemical dependency evaluation and follow any recommendations, remain sober and comply with drug testing, as well as developing a relapse prevention and safety plan. Mother was also asked to complete a mental health evaluation and follow the recommendations, engage in individual therapy, and attend anger management classes. Mother also needed to find safe and stable

housing, and inform the Department of any housemates and changes of address. Mother also needed to secure employment or other source of income. Mother was required to report any contact with law enforcement to the Department and comply with the terms of the Order of Protection in place between she and the child's placement. Lastly, Mother was to remain in weekly contact with her CPS and sign any necessary releases of information. (D.C. Doc. 25, see attached.)

On August 23, 2022, one day after the expiration of TLC, the Department filed a Petition for Extension of TLC (*Extension Petition*), stating Mother needed additional time to complete her *Treatment Plan*. (D.C. Doc. 31.) CPS Michaela Viviano outlined Mother's progress in the supporting affidavit. Mother had not yet completed her parenting class but was signed up to take one. Mother had not yet completed a chemical dependency evaluation. Mother had been testing positive for methamphetamines on her recent drug patches and had not submitted a relapse prevention plan and safety plan to CPS. CPS had also not received records indicating that Mother had completed a mental health evaluation or engaged counseling, although Mother reported that she was seeing a counselor through the Mental Health Center. Mother had not yet enrolled in anger management. (D.C. Doc. 31, see *Affidavit*.) A hearing on the

Extension Petition was not scheduled for October 17, 2022, two months past the expiration of TLC. (D.C. Doc. 32.)

On October 12, 2022, the Department filed a Motion to Continue the hearing on the *Extension Petition* because the CPS was unavailable for the October 17 hearing. (D.C. Doc. 36.) The District Court then continued the hearing to October 31, 2022. (D.C. Doc. 37.) Mother was present at this hearing and stipulated to the extension of TLC without agreeing to all the facts alleged in the affidavit supporting the *Extension Petition*. (10/31/22 Hearing Transcr. at 4-5.) Mother also requested that the Court place L.A.O.-B. back in her care while she continued to work on her treatment plan. (10/31/22 Hearing Transcr. at 7-8.)

CPS Viviano testified that Mother had been on the drug patch and there were recently positives for THC and one for meth. CPS Viviano also had not received have any documentation that Mother had completed chemical dependency evaluation. (10/31/22 Hearing Transcr. at 19:3-18.) However, since she had drafted her supporting affidavit, CPS Viviano had received information that Mother completed a mental health evaluation and was engaged in individual therapy. (10/31/22 Hearing Transcr. at 30:14-24.) Mother was also in the process of completing her parenting classes and the reports to CFS were that she was doing well in both those parenting classes

and her visits with the child. (10/31/22 Hearing Transcr. at 22:17-23:4.) In response, Mother argued that she had tested positive for methamphetamines because she drove with someone who had been using and she had obtained her medical marijuana card recently in order to legally use marijuana. (10/31/22 Hearing Transcr. at 45-46.) Based on Mother's stipulation, the District Court extended TLC for another six months. (D.C. Doc. 40.)

A Motion for Approval of the Permanency Plan was filed by the Department on January 4, 2023. (D.C. Doc. 41.) The proposed permanency plan for L.A.O.-B. was reunification with Mother. (D.C. Doc. 41, see *Affidavit*.) A hearing on the motion was set for January 31, 2023. (D.C. Doc. 42.) Mother was present at this hearing and read a statement to the District Court about her currenting living situation, her work on her treatment plan, her employment situation and her visits with her child. (1/31/23 Hearing Transcr. at 14-17.) CPS Viviano also provided testimony.

CPS Viviano struggled with testifying about various aspects concerning Mother's treatment plan, including her current status in her chemical dependency tasks, mental health tasks, employment and housing. It also appeared CPS Viviano was waiting for Mother to provide her with records, instead of seeking them out herself. (1/31/23 Hearing Transcr. at 22-23, 29:8-13.) Both the Guardian *ad Litem* (GAL) for the child and

Mother's attorney argued that it was well past time for the case to move forward and for unsupervised visitation to begin. Specifically, the GAL noted the case had been going on for 16 months with no discussion about unsupervised time. (1/31/23 Hearing Transcr. at 26-27.) Similarly, Mother's attorney argued that unsupervised visits needed to start right away and in their own proposed permanency plan the Department stated reunification would be possible within six months. But, at the rate the case was moving, that was not likely. (1/31/23 Hearing Transcr. at 34:21-35:13.)

The GAL also expressed frustration at not receiving updates through discovery regarding Mother's progress on her treatment plan or the Department's efforts. In response, the District Court stated its agreement, noting,

> ... at the end of the day this case has gone on perhaps longer than it should have. Presumption that termination is in the best interest of the child has arisen. I gather that the department has concluded that that's not an appropriate request at this time as evidenced by their previous request for continued temporary legal custody approved by the Court, and ultimately their permanency plan which still contemplates reunification with the child. Nonetheless, it is concerning that that amount of time has gone by, and the presumption has arisen with little documentation or evidence submitted to apparently counsel or the Court regarding what's appropriate for the child here.

(1/31/23 Hearing Transcr. at 40:8-22.) The Court also admonished CPS Viviano to be more active in obtaining confirmation about Mother's work on her treatment tasks. (1/31/23 Hearing Transcr. at 43.) The District Court

approved the proposed permanency plan of reunification based on Mother's stipulation. (D.C. Doc. 49.)

Less than five months later, despite the Court's instruction to move toward reunification, the Department filed a Petition for Termination of Parental Rights (*TPR*). The basis for termination of Mother's parental rights was her failure to successfully complete her treatment plan and unlikelihood to change in a reasonable time. Additionally, the Department based its request for termination on the fact that "the child has been in out-of-home foster care under the physical custody of the state since October 4, 2021, therefore, the child has been in foster care for over 15 of the most recent 22 months and the best interests of the child must be presumed to be served by termination of parental rights." (D.C. Doc. 50.)

CPS Viviano's supporting affidavit outlined Mother's lack of progress on her treatment plan and the Department's continued concerns about Mother. CPS Viviano alleged Mother struggled to keep L.A.O.-B. safe during unsupervised visitation and was putting unrealistic expectations on a three-year-old. Mother's attendance in mental health counseling was not consistent and Mother had followed recommendations with regard to her chemical dependency tasks. Mother also did not keep the Department informed of her contact with law enforcement as required by her treatment

plan. She had been given three tickets she did not update CPS on. CPS Viviano's final statement was that "[o]verall, Mother's Treatment Plan was unsuccessful because Mother did not take her treatment plan seriously. She did not follow up with providers and follow recommendations and continues to deny wrongdoings and blame others for her child's removal by the Department." (D.C. Doc. 50, see *Affidavit*.) The District Court set a hearing on the *TPR* for May 23, 2023. (D.C. Doc. 51.)

On May 12, 2023, Mother filed Mother's Petition to Replace Court Appointed Attorney. Mother alleged that her attorney was providing her ineffective assistance of counsel. (D.C. Doc. 64.) In Mother's supporting affidavit she alleged that her attorney did not communicate with her, failed to notify her of court hearings, did not go over her treatment plan with her but encouraged her to sign it anyway and was not calling witness or otherwise advocating for Mother in court hearings as Mother had requested. (D.C. Doc. 64, see *Affidavit*.) Mother also filed a motion to continue the termination hearing to allow the Court to rule on her Petition and for Mother to secure new counsel if necessary. (D.C. Doc. 65.) Mother's attorney had also filed an Unopposed Motion to Continue the Termination Hearing because he was unavailable on the date set for the hearing. (D.C. Doc. 67.) Additionally, Mother's counsel filed his Response to Mother's Petition to

Replace Court Appointed Attorney. In this Response, counsel denied being ineffective and attached numerous email correspondence between his office and Mother. (D.C. Doc. 67.)

The District Court filed Orders regarding these numerous pleadings on May 17, 2024. Firstly, the Court continued the hearing on the *TPR* to July 7, 2023. (D.C. Doc. 48.) The District Court also issued its Order Directing Mother's Counsel to Respond To Allegations in Mother's Affidavit and Order Preserving Counsel From Discipline and/or Claims Of Malpractice. In this Order the District Court found that *Gallagher* hearings were not appropriate in civil proceedings. Instead, the Court used the two-prong effectiveness of counsel test and stated the Court knew of Mother's attorney experience in handling dependency-neglect cases but did not have sufficient evidence regarding the second prong of effective advocacy. Thus, the District Court requested that Mother's attorney divulge confidential information related to this prong, as Mother has waived her right to confidentiality by filing her Petition to obtain new counsel. (D.C. Doc. 69.)

Mother's counsel filed his Second Response to Birth Mother's Petition to Replace Court Appointed Attorney on June 6, 2023. In this Response he provided the Court a timeline of his communications with Mother, as well as additional copies of their email communications. He also

discussed the decisions he had made in his representation of Mother and his attempts to call witnesses she requested be called. (D.C. Doc. 72.) On June 21, 2023, Mother filed, *pro se*, Mother's Motion to Continue the Termination Hearing. She requested the hearing be again continued so she could secure alternate counsel. (D.C. Doc. 76.) The District Court granted this Motion on June 29, 2023, and continued the hearing on the *TPR* to September 5, 2023. (D.C. Doc. 77.)

On the same day, the District Court issued an Order Denying Mother's Petition to Replace Court Appointed Counsel. The Court found that Mother had not provided sufficient evidence that her attorney had not been an effective advocate. Specifically, the Court stated, "[c]onsidering the matter in its totality and in light of the non-exclusive factors identified by the Supreme Court, this Court concludes that [Mother's attorney] is eminently qualified through education, training, and experience to represent the Mother in the instant proceedings. Moreover, based upon the court's observations in open court as well as the documentation supplied, [Mother's attorney] has appropriately investigated the case, timely and sufficiently met with Mother to the extent permitted by Mother, is familiar with the law applicable to the case, appropriately called relevant and appropriate witnesses identified by Mother, appropriately cross-examined witnesses called by the State, and

objected when appropriate." The Court concluded that given this, Mother's attorney's representation had been appropriate and effective. (D.C. Doc. 78.) Mother filed a Motion to Reconsider, but this was denied by the District Court due to her failure to raise any new or relevant information. (D.C. Docs. 79 and 83.)

On August 24, 2023, Mother's counsel filed a Notice to the Court stating he had received letter from Mother claiming L.A.O.-B.'s father was Native American, either Sioux or Crow. Thus, Mother's counsel was requesting this possibility be investigated by the Department to determine if the Indian Child Welfare Act (ICWA) did, in fact, apply to the proceedings. (D.C. Doc. 82.) In response to this Notice the District Court issued an Order Continuing Hearing on CFS's Petition for Termination of Parental Rights and Permanent Legal Custody Pending Notification to Indian Tribes, and reset the hearing to November 14, 2023 to allow the Department time to comply with ICWA. (D.C. Doc. 84.)

On November 2, 2023, Mother filed a Partially Unopposed Motion to Continue Termination Hearing. The basis for this Motion was that Mother's counsel had a medical appointment on that date, as well as a district court criminal jury trial beginning on November 15, 2023. (D.C. Doc. 87.) The Department filed a Response to Mother's Motion to Continue Termination

Hearing the next day, objecting to any further continuance of the hearing. (D.C. Doc. 88.)

The District Court issued its Order Granting Mother's Partially Opposed Motion to Continue Termination Hearing on November 8, 2023. In granting Mother's Motion, the Court acknowledged that the hearing had been outstanding for quite some time, but noted the Court had personal knowledge that counsel's appointment was a of "critical nature" and could not be missed. The Court reset the hearing for November 17, 2023. (D.C. Doc. 94.)

Following this, Mother attempted to continue the hearing two additional times, one on November 15 because the Department was still determining ICWA eligibility and the other on November 16 so Mother could develop an "opposition letter". (D.C. Docs. 104, 114.) The Department filed a Response to the first *Motion* in which it stated it had not received any responses from various Sioux tribes showing that L.A.O.-B. was enrolled or eligible for enrollment in any of them. (D.C. Doc. 105.) The Department later filed these responses with the Court, as well as a Motion for Order Determining Applicability of ICWA. (D.C. Docs. 105 and 115.) The District Court denied both of Mother's Motions and the termination hearing began on November 17, 2023. (D.C. Docs. 106 and 114.)

As the hearing commenced, the Department asked the District Court to make the finding that ICWA did not apply to the proceedings. Based on State's filings and Mother's lack of objection the Court did make that finding. (11/17/23 Hearing Transcr. at 24:19-25.) After this, the Department called its first witness, Garrett Johnson, the family support specialist who supervised visitation between Mother and the child. (11/17/23 Hearing Transcr. at 28:2-3.) Mr. Johnson started supervising visitation on June 16, 2022, and stopped on July 26, 2023. (11/17/23 Hearing Transcr. at 29:13-16.) He discussed his concerns with Mother consistency in attendance and some of Mother's choices, but also spoke positively about Mother's ability to make changes based on feedback he provided her. (11/17/23 Hearing Transcr. at 42-45, 48, 51:8-10.) Additionally, Mother was always prepared for visits, she was empathetic toward L.A.O.-B. and met her needs. She also interacted positively with L.A.O.-B. and was cooperative with Mr. Johnson. (11/17/23 Hearing Transcr. at 67:22-68:25.) Mr. Johnson testified Mother and the child were very bonded and the child was always excited to see Mother and would frequently ask about when she would be able to go home. (11/17/23 Hearing Transcr. at 70:22-71:7.) Mr. Johnson also provided Mother with Nurturing Parenting classes and testified that she showed a lot

of improvement in many areas following her successful completion of these classes. (11/17/23 Transcr. at 49:11-14, 50:12-22.)

Rochelle Beley, licensed counselor who provided counseling services to L.A.O.-B. testified that the child clearly voiced her desire to live with her Mother and stated she loved her Mother very much. (11/17/23 Hearing Transcr. at 76:18-21, 78:24-25.) Sarah Bruner, lead teacher at Central Montana Head Start where L.A.O.-B. attended, testified that she had never had an inappropriate or concerning interaction with Mother, nor had she heard about any concerning interactions. (11/17/23 Hearing Transcr. at 83:25-84:1, 118:17-23.) Theresa Gross, assistant teacher at Head Start, testified to never having heard L.A.O.-B. say anything negative about Mother. (11/17/23 Hearing Transcr. at 130:10-11, 137:13-15.)

Tamara Greeling, licensed professional counselor and licensed addictions counselor, testified to performing a clinical intake assessment on January 30, 2023 of Mother. After this assessment, Ms. Greeling recommended Mother engage in trauma therapy. (11/17/23 Hearing Transcr. at 143:17-19, 145:15-21.) Mother successfully completed eye movement desensitization and reprocessing (EMDR) therapy with Greeling on August 1, 2023 as part of her trauma work. (11/17/23 Hearing Transcr. at 146:12-15.) Ms. Greeling testified to her belief that this EDMR therapy had

successfully reduced Mother's trauma and anxiety responses. (11/17/23 Hearing Transcr. at 149:24-150:3.) Ms. Greeling also recommended Mother seek out a psychiatrist's services, which Mother had done by starting services with Dr. Hurlocker. (11/17/23 Hearing Transcr. at 169-170.) At the conclusion of Ms. Greeling's testimony, the District Court continued the hearing to December 7, 2023 to allow for additional testimony. (D.C. Doc. 133.)

Mother was present again with her counsel on December 7. (12/7/23 Hearing Transcr. at 3:15-16.) The Department called Neil Friedel to testify as to his facility's drug testing of Mother. Mother was his client from July 1, 2022, to February 23, 2023. (12/7/23 Hearing Transcr. at 28:7-10.) The facility provided Mother with 22 patches during this time. (12/7/23 Hearing Transcr. at 28:14-18.) Mother had multiple patches come up positive for methamphetamine, the last of which was on October 4, 2022. (12/7/23 Hearing Transcr. at 29-30.) From October 4, 2022 through February 2023 all of Mother's patches were positive for THC. (12/7/23 Hearing Transcr. at 31:13-18.) Mother was removed from testing in February of 2023 due to failure to comply with the patch removal schedule. (12/7/23 Hearing Transcr. at 31:13-18.) Mother tested again on July 14, 2023, October 24, 2023, and December 6, 2023. The October and December tests were private

one that Mother paid for herself. (12/7/23 Hearing Transcr. at 35:24-36:8.) These tests were negative for all substances. (12/7/23 Hearing Transcr. at 37.) Friedel testified that following the referral for the July 14, 2023 test, the Department never referred Mother for any additional drug testing. (12/7/23 Hearing Transcr. at 41.)

Mother was called by the Department to testify about her treatment plan compliance. Mother noted she had completed a parenting class, a chemical dependency evaluation, a mental health evaluation, was seeing a therapist and psychiatrist for her mental health, as well as participating medication management. (12/7/23 Hearing Transcr. at 70:3-8, 78-79, 118:7-18, 133:9-20.) She had also completed an anger management class, had housing that had been approved by the Department, a legal source of income, car insurance and Medicaid. (12/7/23 Hearing Transcr. at 134-135, 138-139, 139-140.) Mother also testified to some of the difficulty she had experienced in working with the Department.

In response to whether she had completed the task of attending her child's medical and other appointments, Mother testified that she had not because she had never been notified by the Department about these appointments. (12/7/23 Hearing Transcr. at 77-78.) Mother was also asked about her noncompliance with drug testing program, and stated, "I quit the

program because I couldn't afford to get over to Billings. And I volunteered to take urinalysis here because I could make it to Roundup. I asked for gas vouchers for about a year. Since my injury for (*sic*) my ankle in October of 2022 [which prevented Mother from working] I've been asking for gas vouchers because I couldn't afford to get over there." Mother was never provided any gas vouchers. (12/7/23 Hearing Transcr. at 89:17-90:10.)

CPS Michaela Viviano also testified as to Mother's progress on her treatment plan tasks. She agreed that Mother completed a parenting class, that she completed a chemical dependency and a mental health evaluation, that her housing was safe and appropriate, that she had a legal source of income and that Mother was in consistent contact with her. (12/7/23 Hearing Transcr. at 214:1-8, 224:20-225:12 228:17-25, 234:3-16, 236, 240:8-20.) However, she did not believe Mother was successful in her visitation tasks due to her inconsistency, and that while she did a chemical dependency evaluation, she did not follow the recommendation for Level 1 outpatient treatment. (12/7/23 Hearing Transcr. at 214:15-24, 224:20-225:12.) Viviano also testified that Mother was inconsistent in attending individual therapy as recommended by her mental health evaluation. (12/7/23 Hearing Transcr. at 229-230.) Viviano did not believe Mother had fully complied with anger management task either, as the four-hour online course Mother had done

was not typically what the Department was looking for. (12/7/23 Hearing Transcr. at 231-232.) However, it is not clear from Viviano's testimony if she assisted Mother with referrals to providers and classes to help her complete her treatment plan. In response to a question of whether she had provided Mother with necessary "resources and referrals" required to complete her treatment tasks, Viviano replied, "I have told her where she can find the information." (12/7/23 Hearing Transcr. at 245:7-21.) And when asked about the gas vouchers Mother had requested and why they had not been provided to her, Viviano testified that gas vouchers were "not available" in Roundup due to her lack of a "color printer". And that Mother would need to travel to Billings to get gas vouchers. (12/7/23 Hearing Transcr. at 241.)

Viviano was recalled for cross-examination on the third day of the hearing, February 6, 2024, where she testified to a further lack of reasonable efforts on the part of the Department. She stated that after the Partner Family Member Assault charge in March 2022, wherein Mother had to leave grandmother's home, which was the child's placement, Mother went from March to July without having any visitation with L.A.O.-B. (2/6/24 Hearing Transcr. at 54:17-25.) Viviano also testified to that she had not had much contact with Mother in the last couple of months and the Department had not

requested Mother do any drug testing for over a year, despite the fact that Mother's lack of sufficient chemical dependency treatment was a major basis for termination her parental rights. (2/6/24 Hearing Transcr. at 72:2-4, 91:3-10.) In response to the question of why the Department had not provided Mother with additional opportunities to drug test in light of these concerns, Viviano responded, "After we file for termination, um, at that point we are no longer working towards reunification, and therefore -- I would not have the authorization to continue to drug test a parent that we were planning to terminate on." (2/6/24 Hearing Transcr. at 99:13-22.) She then went on to directly contradict this statement by stating she had asked Mother to do a hair follicle test after the last hearing. (2/6/24 Hearing Transcr. at 105.) Viviano blamed the Department's policies for the lack of reasonable efforts regarding drug testing but when asked for a reference to this policy, she was unable to provide that to the Court. (2/6/24 Hearing Transcr. at 110, 112:18-22.)

Mother was recalled as a witness on her own behalf and reported that she continued to see Dr. Hurlocker for medication management, Maurice Pritchard for addictions counseling and that she attended NA meetings weekly and had a sponsor. (2/6/24 Hearing Transcr. at 122-123, 123:23-

124:4.) Following all witness testimony, the District Court took the matter under advisement. (D.C. Doc. 140.)

On March 15, 2024, the District Court issued its Order Terminating Parental Rights and Granting Permanent Legal Custody. (D.C. Doc. 147.) In this Order, the Court found the conduct or condition rendering Mother unfit, unable, or unwilling to give the child adequate parental care was unlikely to change within a reasonable time. And stated, "[t]he Montana Supreme Court has recognized that often the best predictor of future behavior is past behavior. Mother has had approximately two years to address the myriad problems her court approved treatment plan was designed to address. She has not and as evidenced by her continuing behavior, is not likely to do so within a reasonable time." (D.C. Doc. 147, FOF 51.) The District Court also concluded that since the child had been in foster care under the physical custody of the state for at least 15 of the most recent 22 months it was presumed that termination of Mother's parental rights was in the best interests of the child. (D.C. Doc. 147, COL 6.)

Mother filed a timely Notice of Appeal. (D.C. Doc. 151.)

SUMMARY OF THE ARGUMENTS

The District Court violated Mother's fundamental constitutional right to parent her child and abused its discretion when it terminated Mother's

rights without adhering to fundamentally fair procedures as dictated by Due Process and this Court's previous holdings. There were multiple issues with the timeline of this case, specifically the length of time the Department was involved with the family under only an order of EPS without a Show Cause Hearing, and the length of time the case had been ongoing before Mother was offered a treatment plan. These issues resulted in unfair proceedings that denied Mother her right to Due Process.

The Department also did not provide Mother with the statutorily required reasonable efforts to reunify her with her child. It was due to the Department's failure to provide these efforts and comply with its duty under the law that Mother struggled to complete the treatment plan. Even despite this lack of efforts the record shows that Mother was not unlikely to change in a reasonable time and could, in fact, appropriately parent in the future. Therefore, the termination of her parental rights was an abuse of discretion by the District Court and violated Mother's fundamental right to parent.

STANDARD OF REVIEW

The decision to terminate a parent's parental rights is a discretionary determination by the district court. *In re D.B.*, 2007 MT 246, ¶ 16, 339 Mont. 240, 168 P.3d 691. "The court *may* order a termination of the parent-child legal relationship upon a finding established by clear and convincing

evidence" that the statutory criteria are met. Mont. Code Ann. § 41-3-609(1) (2011) (emphasis added).

A district court has abused its discretion if the underlying elements were established by findings of fact that were clearly erroneous or by conclusions of law were incorrect. *In re D.B.*, ¶ 18. Findings of fact are clearly erroneous if they are not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if, after reviewing the record, this Court is left with the definite and firm conviction that a mistake has been made. *In re A.A.*, 2005 MT 119, ¶ 16, 327 Mont. 127, 112 P.3d 993.

ARGUMENTS

I. THE DISTRICT COURT VIOLATED MOTHER'S FUNDAMENTAL CONSITUTIONAL RIGHT TO PARENT HER CHILD AND ABUSED ITS DISCRETION WHEN IT TERMINATED HER PARENTAL RIGHTS AFTER NOT ADHERING TO STATUTORY REQUIREMENTS THAT ENSURE A FUNDAMENTALLY FAIR PROCESS.

A "natural parent's right to care and custody of a child is a fundamental liberty interest which courts must protect with fundamentally fair procedures at all stages of the proceedings for the termination of parental rights." *In re C.J.*, 2010 MT 179, ¶ 26, 357 Mont. 219, 237 P.3d 1282 (citing *In re B.N.Y.*, 2003 MT 241, ¶ 21, 317 Mont. 291, 77 P.3d 189). Because the procedures to terminate an individual's right to parent his child

implicates a fundamental liberty interest, the procedures are protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution which guarantees that those procedures are fundamentally fair. *In re C.J.*, ¶ 26; *In re D.B.*, ¶ 17; U.S. Const. amend. XIV.

A district court may order the termination of the parent-child legal relationship if there is clear and convincing evidence that the child was adjudicated a YINC, the parent failed to comply with an appropriate treatment plan, and the condition or conduct that rendered the parent unfit is unlikely to change within a reasonable time. Mont. Code Ann. § 41-3-609(1)(f). The clear and convincing standard requires that a preponderance of the evidence is definite, clear and convincing. *In re L.M.A.T.*, 2002 MT 163, ¶ 33, 310 Mont. 422, 51 P.3d 504. Clear and convincing evidence does not have to be conclusive and falls between the criminal law rule of beyond a reasonable doubt and the civil law standard of a mere preponderance. *In re L.M.A.T.*, at ¶ 33. The State has the burden of proof to demonstrate by clear and convincing evidence that every requirement of the termination statute has been satisfied. *In re L.M.A.T.*, at ¶ 33.

A. Mother's Right to Due Process and Statutorily Fair Procedures was Violated

This Court stated that strict compliance with termination statutes is an absolute necessity in *In the Matter of R.B.*, 217 Mont. 99, 103, 703 P.2d 846,

848 (1985). The termination of parental rights is a decision of "paramount gravity, and the state must exercise extreme caution in terminating such rights . . . Hence, *strict compliance* by the trial court with the appropriate standards for termination of a parent-child relationship is an absolute necessity..." *In the Matter of R.B.* at 103, 848 (internal citations omitted, emphasis added). Thus, this Court concluded that "the termination in Montana of a natural parent's right to care and custody of a child is a fundamental liberty interest, which must be protected by fundamentally fair procedures." *In the Matter of R.B.* at 104, 848. The necessity for this strict adherence to statutory procedure has been reiterated in this Court's jurisprudence since *In the Matter of R.B.* and remains the standard by which this Court decides whether a parent has been afforded Due Process. *In re B.N.Y.*, ¶ 21; *In re C.J.,* ¶ 26; *In re D.B.*, 2007 MT 246, 339 Mont. 240, 168 P.3d 691. In the present case, Mother was denied her right to Due Process through fundamentally fair procedures due to the District Court's failure to adhere to statutory timelines.

1. Length of Time of EPS before TLC was Granted

Under Mont. Code Ann. § 41-3-427(1)(a) in a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the Department may file a petition for immediate protection and

EPS. Once a petition is filed by the Department "a show cause hearing must be conducted *within 20 days of the filing*". Mont. Code Ann. § 41-3-432(1)(a) (emphasis added).

Here, due to the Office of the State Public Defender's inability to secure counsel for Mother, the Show Cause Hearing was not held until February 7, 2022. The initial *Petition* had been filed on December 7, 2021. That is a period of two months, far exceeding the 20 day statutory requirement. Furthermore, after this two month time period had elapsed, the Department determined it was going to proceed with filing a *Petition for EPS, Adjudication as YINC and TLC* instead of moving forward with the period of TIA it had requested before. Thus, the Show Cause was set out again, so the Department was able to file its new petition.

Mother's counsel expressed concern with another delay given the amount of time the case had already been pending, but the District Court overruled this concern instead believing that Due Process dictated he provide the Department more time to get the petition for TLC filed and for Mother to have time to review the *Amended Petition*. (2/7/22 Hearing Transcr. at 5:22-6:12.) By the time the District Court actually held a Show Cause on the Department's request for adjudication and TLC, Mother had gone for more than two months without the ability to be heard on the

removal of child from her care. Additionally, it is unclear from the record what services Mother may have been provided during this time to help her reunify with her child.

In the order terminating Mother's parental rights, the District Court cited to the length of the case and referenced the presumption found in Mont. Code Ann. § 41-3-422(14)(b) that states, "if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights". (D.C. Doc. 147.) A child's "foster care" status begins at the time of the child's removal, whether or not the Department had TIA or TLC, but the Department does not provide treatment plans to parents until they have TLC of a child. Thus, the length of time the Department had EPS authority without proceeding with the Show Cause Hearing was used against Mother when the District Court terminated her parental rights.

2. Length of Time before the Department Submitted Proposed Treatment Plan for Mother

Montana Code Ann. § 41-3-437 lays out the timeline for an adjudicatory or dispositional hearing and states "[u]pon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing" and "if the child is adjudicated a youth in need of

care, the court shall set a date for a dispositional hearing to be conducted within 20 days."

Here, the child was adjudicated as YINC, and the Department was granted TLC following stipulation on February 24, 2022. (D.C. Doc. 20.) The Department did not file a Motion to Approve a proposed treatment plan for Mother until June 20, 2022, nor did the District Court set a dispositional hearing following the stipulation to adjudication. (D.C. Doc. 24.) The treatment plan for Mother was ordered by the District Court on June 21, 2021, four months later. (D.C. Doc. 25.)

As stated above, the District Court used the length of this case when it made its decision to terminate Mother's parental rights, stating "Mother has had approximately two years to address the myriad of [sic] problems her court approved treatment plan was designed to address." (D.C. Doc. 147.) Mother's right to fundamentally fair procedures was violated by the Department and the District Court's lack of adherence to the timelines set out by the statutory scheme of Title 41.

3. The Combined Effect of the Statutory Deficiencies in Mother's Case Resulted in Substantial Injustice.

This Court has held that, even when a District Court does not follow statute, the error can be considered harmless and not appropriate for reversal.

The main case on this point is *In re J.C.*, 2008 MT 127, 343 Mont. 30, 183 P.3d 22. In that case, the father argued on appeal that the district court had not made a proper adjudication as YINC on the record and that he had not stipulated that his son was a YINC. This was because a YINC adjudication was not required for the Department's TIA petition. This Court found that the district court erred in concluding that the children had been adjudicated YINC as no adjudication had occurred. Nonetheless, this Court found the error was harmless where the father was represented by counsel, stipulated in subsequent proceedings that the child was abused and neglected, and the evidence of abuse and neglect was overwhelming. Moreover, the father neither challenged the evidence of abuse and neglect, argued that he was misled during the subsequent proceedings, nor contended that those proceedings were fundamentally unfair. *In re J.C.*

Both Justices Gray and Nelson wrote dissents from this Opinion, citing their concern about the Department and the District Court's lack of adherence to statutory procedure. Justice Gray agreed that the best interests of the child are "ultimately the paramount consideration in child abuse and neglect cases" but strongly felt "that statutory and jurisprudential rules must be followed in reaching that ultimate stage." *In re J.C.*, Gray, J Dissent at ¶ 57. She concluded from the majority's Opinion that "not a single statutory

requirement need be followed during trial court proceedings involving allegations of child abuse or neglect, that is, any and every statutory requirement can fall to the 'harmless error' axe." This conclusion particularly troubled Justice Gray because "fundamentally fair procedures are constitutionally required" in cases involving termination of parental rights. *In re J.C.*, Gray, J Dissent at ¶ 57.

Justice Nelson expressed similar concerns about the harmless error approach adopted in the majority Opinion, noting it will "encourage sloppy practice and procedures in the termination process" and thereby deny parents the benefits of their constitutional rights. *In re J.C.*, Nelson, J., Dissent at ¶ 73. And the majority Opinion agreed these concerns present in the dissenting Opinions "were well-founded" stating,

> The doctrine of harmless error should be applied in parental termination cases only on the rarest of occasions and with great caution. In the overwhelming majority of cases, failure to strictly comply with the statutory requirements governing termination proceedings will constitute grounds for reversal. *In re J.C.*, ¶ 53.

Given the lack of compliance by the District Court to the strict timelines set out in Title 41, this case represents a situation where the harmless error doctrine is <u>not</u> appropriate. Unlike in *In re J.C.*, this was not simply a failure to put on the record something the parent implicitly complied with by continuing to engage with the proceedings. Here, Mother

was prejudiced by the extensive length of the Department's involvement in this case before attending a hearing, the lack of a formal treatment plan until seven months after the child had been removed, and the Department's failure to provide reasonable efforts.

Mother made her concerns about these issues known by objecting to continuances proposed by the State at the initial Show Cause Hearing. Additionally, Mother preserved on the record, the argument that the Department's failure to provide reasonable efforts were negatively affecting the reunification process during both the permanency plan hearing in January of 2022 and the hearings on the *TPR*. Furthermore, the length of the proceedings in the case was used as evidence against Mother in the final Order which confirms this is not a case of harmless error. By not adhering to the timelines set out in statute, the Department and District Court violated Mother's right to fundamentally fair procedures mandated in cases involving parental rights. Mother suffered actual harm as a result of the District Court's failure to ensure compliance with Title 41.

B. The Department Failed to Provide Mother with the Required Reasonable Efforts to Reunify the Family.

The Department is obligated to provide a parent with reasonable efforts to reunify the parent with the child. Section 41-3-423, MCA; *In re R.J.F.*, 2019 MT 113, ¶ 25, 395 Mont. 454, 443 P.3d 387. The Department

must "make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state." Section 41-3-423(1), MCA. Although a determination of reasonable efforts is not a separate requirement for termination, this Court has held it may be a predicate for determining whether a parent's conduct or condition is likely to change. *In re R.L.*, 2019 MT 267, ¶ 18, 397 Mont. 507, 452 P.3d 890. A district court's "conclusion that a parent is unlikely to change could be called into question if the Department failed to make reasonable efforts to assist the parent." *In re C.M*. 2019 MT 227, ¶ 22, 397 Mont. 275, 449 P.3d 806. Reasonable efforts will differ depending on the particular facts of each family. The child protection specialist assigned to the case must tailor their efforts to each family, with the ultimate goal of reuniting the child and parent. Montana law provides a non-exhaustive list of reasonable efforts including developing voluntary protective services agreements, individual written case plans, provision of services to accomplish a case plan, and periodic review of the plan to ensure timely progress toward reunification. Section 41-3-423(1), MCA.

This Court has held that reasonable efforts "requires the Department to diligently attempt to contact reluctant parents and engage them with services, . . . requires the development and implementation of voluntary

services and/or a treatment plan reasonably designed to address the parent's treatment and other needs precluding the parent from safely parenting, [and] . . . requires more than merely suggesting services to a parent and waiting for the parent to then arrange those services for herself." *In re R.L.*, ¶ 22. When the Department provides a parent with a treatment plan, "[it] must in good faith develop and implement treatment plans designed to preserve the parent-child relationship and the family unit." *In re R.L.*, ¶ 19, (citing *In re R.J.F.*, ¶ 26.)

While the Department is not required to put forth "herculean efforts," it does have a duty to assist parents in completing their treatment plan. *In re R.L.*, ¶ 20, (citing *In re R.J.F.*, ¶ 38.) Treatment plans are a partnering of the Department with the parent and require a "joint effort" between the Department and the parent. *In re R.L.*, ¶ 19; *In re R.J. F.*, ¶ 26; *Matter of J.S. & P.S.*, 269 Mont. at 178-79, 887 P.2d at 724. The Department must continue to monitor treatment plan tasks throughout a case and the good faith requirement "does not end once the court has approved a treatment plan." *In re D.B.*, ¶33. Here, the record is replete with instances where Mother was not provided reasonable efforts to successfully complete her treatment plan.

A major example of this lack of efforts is the length of time it took for the Department to provide Mother with a treatment plan. This is discussed more fully above, but the child was adjudicated a YINC on February 24, 2022, the Department did not file its *Motion* asking the District Court to approve Mother's treatment plan until four months later on June 20, 2023. The treatment plan the Department provides to a parent is the framework for reunification of the family and specifies the basis for how the Department can provide a parent with the mandated reasonable efforts.

The issue of whether the Department had actually been providing Mother with reasonable efforts came before the Court for the first time at the January 31, 2023, permanency plan hearing. At this time, the child had been adjudicated as YINC for not even a year, but the Department had been involved for well over 12 months. L.A.O.-B.'s GAL expressed concern that the case had been ongoing for so long without any move toward unsupervised visitation. Mother's counsel argued that the Department was not being proactive in working towards reunification, despite the fact its own permanency plan gave a timeline of six months for reunification to occur. Both Mother's counsel and the GAL decried the Department's unsatisfactory sharing of information, to which the Court agreed, stating it had not been given enough information about how Mother was doing or what was in the

child's best interest. This was especially concerned to the Court because at the point of this hearing, the presumption outlined in Mont. Code Ann. § 41-3-422(14)(b) had been reached. Additionally, the Department was admonished at this hearing by the District Court for not being preemptive in gathering information about Mother's progress on her treatment plan and simply waiting for the information to make its way to the CPS.

Three months later, the Department filed the *TPR*. At this point, it appears all reunification efforts on the Department's behalf ceased. In her August 7, 2023 Motion, Mother lamented that the Department had stopped making any efforts, including stopping visitation and no longer providing referrals or assistance in completing her treatment plan. (D.C. Doc. 79.) At the hearing on the *TPR*, Viviano herself stated she had not had much contact with Mother in the months since the *TPR* had been filed. The Department had also stopped requesting Mother do any drug testing in July of 2023. When asked about this, CPS Viviano made a vague reference to Department policy that drug testing was no longer required after requesting termination of parental rights but was not able to articulate where to find the policy or the basis for it. CPS Viviano was also vague as to for the reason the Department could not provide Mother with gas vouchers to get to drug testing done in Billings, citing to the lack of a color printer in her office as

the reason. Instead, Viviano testified that if Mother could get herself to Billings, she could get the gas vouchers from the office there (where, presumably there is a color printer). However, the identified barrier for Mother was getting to Billings in the first place.

CPS Viviano was also unable to articulate the ways in which she had helped Mother complete her treatment plan. A specific example of this was Mother's anger management class. CPS Viviano testified that the online course Mother took was insufficient but did not state whether she had helped Mother find an appropriate course. CPS Viviano did not provide any direct testimony regarding which referrals she had made to Mother in support of her completing her treatment plan. Instead, CPS Viviano's testimony about fulfilling her obligation on this front consisted of "I have told her [Mother] where she can find the information." While this Court has made it clear that the Department does not need to engage in "herculean efforts" and the parents must also be participatory in completing their treatment plan, simply telling a parent where to find information for providers who can assist them with evaluations and services is not a *reasonable* effort. Additionally, requiring a parent to complete a certain task, allowing them to complete the task on their own, and then declaring that effort not sufficient (as was the

case with Mother's anger management) does not represent a joint effort by parent and the Department toward reunification.

The record is clear in this case that prior to the Department's filing of the *TPR* the District Court had not been satisfied with the Department's work on this case and that inadequate work did not improve. The Department essentially washed its hands of Mother and its responsibility to work toward reunification of Mother and L.A.O.-B. as soon at the *TPR* was filed. Thus, the Department's actions did not meet the reasonable efforts standard mandated by this Court in *In re R.L.*, which requires proactive engagement with parents and their treatment plan tasks to support family preservation. The Department's passive approach in Mother's case reflects a clear departure from the reasonable efforts standard implemented to preserve the parent-child relationship.

1. The District Court erroneously concluded that Mother would not be able to parent in a reasonable time and failed to realize that this was unfairly based on the Department's failure to provide necessary reunification services.

The Department can easily set a parent up for failure by requiring her to make progress on a treatment plan and then failing to provide her with the necessary services in time to complete the tasks. Because the determination of whether the parent will change in a reasonable time must be based on past conduct, the Department must argue in a *TPR* that since the parent made

little progress on the treatment plan, she is unlikely to change within a reasonable time. In *In re K.L.*, Justice Baker, concurring in part and dissenting in part, found that whether the department engaged in reasonable efforts was relevant to determining whether the parent's conduct was likely to change within a reasonable time. *In re K.L.*, 2014 MT 28, ¶ 45, 373 Mont. 421, 318 P.3d 691.

Even if this Court determines that the Department's failure to provide Mother with reasonable efforts does not require reversal, there is also the issue that Mother presented evidence that the condition rendering her unfit to parent was likely to change in a reasonable time. Every report of Mother's interactions with L.A.O.-B. were positive. Garret Johnston testified as to their positive relationship and Mother's willingness to accept and implement feedback. He also testified as to L.A.O.-B.'s stated desire to return to Mother's care, as did Rochelle Beley. CPS Viviano echoed this testimony as well at the hearing on the *TPR*. (2/6/24 Hearing Transcr. at 75:2-9.) She also stated her belief that continued contact between Mother and L.A.O.-B. was in the child's best interests moving forward. (12/7/23 Hearing Transcr. at 250:17-24.)

Mother had also completed a multitude of tasks on her treatment plan, which, according to the District Court, included, but not limited to: (1)

completing a parenting class with Garret Johnston in January of 2023...; (2) maintained an appropriate residence; (3) attended most of her visits with L.O.B.; (4) engaged in chemical dependency testing through Feb. of 2023, including four additional urine analysis tests during 2023, which did not reveal the presence of illicit substances; (5) obtained multiple chemical dependency evaluations; (6) engaged in a mental health evaluation and treatment with Dr. Greeling; and (7) provided evidence of income through pay stubs evidence she was on worker's compensation from a 2022 injury to the present. (D.C. Doc. 147, FOF 44.) Mother testified about her willingness to do additional drug testing to show the Department she was sober, but the Department was unwilling to provide her the efforts to get this testing done in Billings. Mother was also willing to follow recommendations from providers, as evidenced by Tamara Greeling's testimony. Mother was engaged with NA regularly and had a sponsor, she was working with Dr. Hurlocker on medication management and Maurice Pritchard for counseling.

Mother had proved her stability in maintaining her home, employment and contact with the Department throughout the life of the case. Mother's employer, Jacob Freeman, testified as to Mother's dependability as an employee, as well as the progress he had seen her make within the two years he had known her. (12/7/23 Hearing Transcr. at 283:10-15.) He had no doubt

about her ability to care for her daughter. (12/7/23 Hearing Transcr. at 285:23-286:1.)

Despite the Department's inadequate support, Mother demonstrated initiative in adhering to her treatment plan, making tangible progress, and maintaining a positive relationship with the child. Thus, the District Court did not have evidence of a clear and convincing nature that the conduct or condition rendering Mother unfit to parent was unlikely to change in a reasonable time. Additionally, the District Court failed to consider how the Department's admitted cessation of reunification services contributed to Mother's inability to complete her treatment plan and show her likelihood of change.

CONCLUSION

For these reasons, Mother respectfully requests this Court reverse the Order of the District Court terminating her parental rights and remand for further proceedings.

Respectfully submitted this day of July 1 2024.

By: /s/ Shannon Hathaway
Shannon Hathaway

HATHAWAY LAW GROUP
401 Washington Street
Missoula, MT 59802

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening 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 not more than 10,000 words, excluding certificate of service and certificate of compliance.

/s/ Shannon Hathaway
SHANNON HATHAWAY

APPENDIX

CERTIFICATE OF SERVICE

I, Shannon Colleen Hathaway, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 07-01-2024:

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

Adam M. Larsen (Govt Attorney)
506 Main Street
Roundup MT 59072
Representing: State of Montana
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

Electronically Signed By: Shannon Colleen Hathaway
Dated: 07-01-2024