

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 24-0230

LISA COLE

Appellant,

v.

IN RE THE ESTATE OF M.A.C.

A Deceased Minor

Appellee.

On Appeal from the Montana Eighteenth Judicial District Court

Cause No. DP-20-137C

Hon. John Brown, Presiding

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ISSUES PRESENTED

1. Lisa Cole (“Cole”) failed to present any verified pleadings or evidence disputing the evidence presented by the Personal Representative.
2. Cole’s parental rights could have been terminated without the State initiating a child-welfare action.
3. The District Court did not err when it appointed Sunny Rae Yocom (“Yocom”) as Personal representative.
4. The District Court’s findings of facts were not clearly erroneous.
5. The District Court did not abuse its discretion when admitting evidence.
6. The District Court did not abuse its discretion in denying Cole’s request to appear remotely from her home in Norman, Oklahoma at the May 23, 2023, evidentiary hearing.

STATEMENT OF THE CASE

This is a case about the tragic death of a minor (hereinafter “M.A.C.”), insurance money, and a mother, Cole, trying to cover her abandonment and abuse to inherit through her deceased child in violation of the Montana Probate code.

Due to no probate being filed in this matter, Cole was contacted face-to-face

by the insurer's attorney and Cole declined to become involved in the opening of an Estate. The insurer's attorney contacted the Gallatin County Clerk of Court, who provided him the name of a public administrator, Sunny Rae Yocom, who was thereafter appointed. Yocom determined §§ 72-2-124 and -125, Mont. Code Ann. ("MCA") required she seek guidance from the District Court to disinherit Cole. At the pretrial mandatory mediation, mediator and former Judge Fagg determined Cole mediated in bath fait and reported the same to the District Court. The District Court held a hearing on May 23, 2023 (the "Hearing") and applied §§ 72-2-124 and – 125, MCA fairly.

Based on the egregious facts at issue, the District Court ordered that Cole abandoned and abused the deceased child, is no longer an interested party under the probate code, that Cole is not qualified to act as a fiduciary for the Estate, and was not at the time Yocom was appointed. The sad fact is that three (3) of Cole's other children testified that Cole abandoned M.A.C. in the 6 months preceding M.A.C's death, and abandoned, abused and neglected M.A.C and her brother in the years leading up to the abandonment.

The District Court stated that after the initial hearing either counsel could have requested time to take additional testimony. (*Hearing Transcript*, p. 244). Cole and her counsel never made that request.

Instead, before the District Court issued the final Order on appeal in this case,

Cole and Mr. Froines sued undersigned counsels and the Estate's Personal Representative, Yocom in Montana's 22nd Judicial District Court in Carbon County, Cause No. DV 24-25, for civil conspiracy, among other claims. After the District Court issued its Order appealed here, Cole and her attorney have since dismissed that action without prejudice.

Now they make this appeal.

STATEMENT OF FACTS

1. The decedent, Mykhia Athelia Rae Ann Cole ("M.A.C."), was born on October 10, 2008, and died March 13, 2020, at age 11 years due to a motor vehicle accident which also killed her adult sister and severely injured her brother. The decedent and her brother, also a minor, were residing with their older sister Samara, at the time of her death. (*Findings of Fact [hereinafter "FoF"]*, *Conclusions of Law [hereinafter "CoL"]*, *Order*, p. 1, ¶ 1).
2. At the time of her death, M.A.C. did not reside with any parent and was enrolled in school as an unaccompanied youth. M.A.C.'s father, Edmond Ellis Cole, predeceased M.A.C. on May 20, 2017. *Id.* (p. 1, ¶ 2).
3. An estate was opened for M.A.C. as an informal probate. The Insurer's attorney, Shawn Cosgrove ("Cosgrove"), sought out the decedent's mother, Cole, to serve as the Personal Representative. Cole refused to become involved in this Estate. (*FoF*, *CoL*, *Order* p. 2, ¶ 3).

4. As a result, the Insurer’s attorney spoke with the Gallatin County Clerk of Court and a Public Administrator’s name was provided for a substitute Personal Representative. *Id.* (p. 2, ¶ 4).

5. Sunny Rae Yocom, a professional fiduciary, was appointed as a stand-in Public Administrator Personal Representative (“PR”) on November 23, 2020 in Informal Probate. *Id.* (p. 2, ¶ 5).

6. In December 2021, the PR filed a Petition to preclude Cole from inheriting from M.A.C.’s estate pursuant to 72-2-125 MCA. *Id.* (p. 2, ¶ 6).

7. Mr. Froines appeared as counsel on behalf of Cole and numerous motions have been filed and briefed. Cole has not submitted any verified pleadings. *Id.* (p. 2, ¶ 7).

8. Mediation on this matter took place on March 29, 2023. Cole failed to mediate in good faith. The District Court had the mediation report on file. *Id.* (p. 2, ¶ 8).

9. An evidentiary hearing was held May 23, 2023 on the issues of the Estate’s Petition and Amended Petition to Bar Lisa Cole from Inheriting. Cole was provided the opportunity to present evidence in support of her Motion to Remove the PR, as well as her “Superseding” Motion to Remove the PR. Despite a Subpoena being served upon Cole to appear in person at the hearing, she failed to appear for the hearing. (*FoF, CoL, Order*, p. 2, ¶ 9).

10. The District Court gave both parties the opportunity to request an additional hearing to take further testimony. (*Hearing Transcript*, p. 244).
11. No additional hearing or request for a hearing is in the record.
12. Cole has an extensive history with the Montana Department of Health and Human Services (hereinafter, the “Department”), starting in 2001, including 16 Child Protective Services (“CPS) reports. The Department reports also show Cole financially exploited an elderly person and absconded with \$18,000.00. *Id.* (p. 2, ¶ 10).
13. Cole has a history of drug use in the home, unstable housing, criminal and exploitative behaviors, unsafe relationships, transient lifestyle and a general history of inability to parent. Cole tested positive for amphetamines when she gave birth to M.A.C.’s brother, Mythias. *Id.* (p. 2, ¶ 11).
14. Prior to September 2019, M.A.C. and her mother moved from Hingham to Helena then to Alabama and then to Colorado where they were living in a car before Cole abandoned her children with third parties. *Id.* (p. 3, ¶ 12).
15. Since at least July 2019, Cole failed to provide medical care for M.A.C. and objected to a guardianship that resulted in M.A.C. being unable to receive dental care. This led M.A.C. to suffer painful dental abscesses. *Id.* (p. 3, ¶ 13).
16. Up until August 2019, Cole was verbally and physically abusive to both M.A.C. and Mythias. Cole threw coffee on Mythias. Cole hit Mythias with a baseball

bat while under the influence of methamphetamine. Cole also attempted to hit Mythias with her car while under the influence of muscle relaxers. (*FoF, CoL, Order*, p. 3, ¶ 14).

17. In early September of 2019, due to Cole’s housing instability and medical and mental health instability, M.A.C.’s brother Mythias asked his other sibling, Phoenix Nivens (hereinafter “Pheonix”), to pick he and M.A.C. up from Colorado. Phoenix retrieved Mythias and M.A.C. from Colorado. Thereafter Mythias and M.A.C. began residing with their older sister Samara in Bozeman, MT. *Id.* (p. 3, ¶¶ 15-16).

18. Cole was aware Phoenix was taking the children back to Montana and willfully surrendered them. *Id.* (p. 3, ¶ 17).

19. Cole continued to receive Social Security benefits for M.A.C. and Mythias after they departed Colorado, but failed to apply those funds to M.A.C. or Mythias. *Id.* (p. 3, ¶ 18).

20. M.A.C. and Mythias moved in with their half-sibling Samara Yanny (“Samara”) in Bozeman, MT. Samara became M.A.C.’s physical custodian. In early December 2019, Samara became the Social Security representative payee for M.A.C. *Id.* (p. 3, ¶ 19).

21. In September 2019, M.A.C. started school at Hyalite Elementary in Bozeman, MT. M.A.C. was enrolled as an “unaccompanied youth.” *Id.* (p. 3, ¶ 20).

22. Cole spoke with M.A.C. occasionally on the phone, but never visited her in person. Cole did not provide emotional or financial support to M.A.C. Cole did not manifest to M.A.C. and Samara a firm intention to reestablish custody of M.A.C. Instead, she made tentative plans, but repeatedly failed to follow through. (*FoF, CoL, Order, p. 3-4, ¶ 21*).

23. In late December 2019, Cole reported Samara to the Department and law enforcement. After conducting a thorough investigation, the Department concluded M.A.C. was safe with Samara, and refused to return M.A.C. back to Cole. *Id.* (p. 4, ¶ 22).

24. The Department interviewed M.A.C. during the investigation. M.A.C. stated that she and Mythias believed the only reason Cole wanted her and Mythias back was for their Social Security benefits. M.A.C. called her mom a pill popper. *Id.* (p. 4, ¶ 23).

25. In January 2020, Samara filed a Petition for Guardianship of M.A.C., the decedent, as cause number DG 20-4B in this Eighteenth Judicial District Court. *Id.* (p. 4, ¶ 24).

26. In February 2020, M.A.C. was still lacking dental care because of Cole's refusal to give Samara permission for a Guardianship. *Id.* (p. 4, ¶ 25).

27. On March 6, 2020 Samara moved the Court for leave to serve Cole with the Petition for Guardianship by publication because **she could not be located**. Attached to Samara's motion was her affidavit which stated:

MAC's natural mother is Lisa Cole. Therein after called Lisa. Lisa's birth date is June 11, 1972. I believe that Lisa has no fixed address, that she intermittently resides in Miles City, Montana. Lisa has not had MAC in her care since September 2019. MAC has told Lisa that she does not want to live with her until she shows her that she is stable mentally and financially. Additionally, Lisa has not paid any form of financial support towards the care of MAC since September 2019. . . I have made a diligent inquiry into finding the location of Lisa for the purpose of serving her with papers related to my petition and supporting documents. To date I have been unable to locate her exact whereabouts. A Custer County Sheriff attempted service on Lisa to no avail. Because I am unable to locate Lisa, I feel it is necessary to serve her by publication so that I may proceed with this action in an effort to maintain custody of my half sister in Montana.

(Transcript of 5/23/23 hearing, tty. Of Sierra Yanny, pg.171, ln.15 – pg. 172, ln.13;DG-20-4B; District Court took judicial notice of this case Transcript P. 173, 16-18).) (*FoF, CoL, Order, p. 4-5, ¶ 26*).

28. On March 12, 2020, District Judge McElyea ordered that Cole be served by publication for M.A.C.'s Guardianship. *Id.* (p. 5, ¶ 27).

29. The next day, March 13, 2020, Samara, M.A.C. and Mythias were in an automobile accident. *Id.* (p. 5, ¶ 28).

30. Samara and M.A.C. were killed in the automobile accident. *Id.* (p. 5, ¶ 29).

31. As a result of the automobile accident, M.A.C.'s Estate recovered \$100,000.00 through a wrongful death insurance claim. This \$100,000 settlement is the only asset of M.A.C.'s Estate. *Id.* (p. 5, ¶ 30).

32. During the time M.A.C. resided with Samara, Cole failed to manifest any firm intention to resume care of M.A.C. or Mythias, to Phoenix, Sierra or Samara. (*FoF, CoL, Order*, p. 5, ¶ 31).

STANDARD OF REVIEW

Regarding the District Court's Findings of Fact, "On appeal from a bench trial, [the Supreme Court] review[s] a district court's findings of fact under a clearly erroneous standard of review." *O'Brien v. O'Brien*, 2022 MT 246, ¶ 13, 532 P.3d 831, 834, 411, Mont. 101, 106 (internal citations omitted.) "A finding of fact is clearly erroneous if not supported by substantial evidence, if the district court has misapprehended the effect of evidence, or if a review of the record leaves the Court with the definite and firm conviction that a mistake has been committed. *Id.*

Regarding the District Court's Conclusions of Law, [The Supreme Court] review[s] a district court's conclusions of law de novo to determine if the court's interpretation of the law is correct. *Id.* Regarding the legislative intent of § 72-2-124 and -125, MCA, the Supreme Court must first look to the plain language of the statute. *See* § 1-2-101, MCA and § 1-2-102, MCA, *State v. Incashola*, 1998 MT 184, ¶ 11, 289 Mont. 399, 961 P.2d 745.

Regarding the District Court’s ruling to require Cole’s physical presence at the hearing, and on other evidentiary matters, “[a] district court has broad discretion to determine the admissibility of evidence in accordance with the Montana Rules of Evidence and related statutory and jurisprudential rules.” *State v. Wienke*, 2022 MT 116, ¶15, 511 P.3d 990, 997, 409 Mont. 52, 62, (internal citations omitted).

This Court reviews a district court's evidentiary rulings for an abuse of discretion. *In re I.M.*, 2018 MT 61, 414 P.3d 797, 391 Mont. 42 (Mont. 2018) (citing *In re O.A.W.*, 2007 MT 13, ¶ 32, 335 Mont. 304, 153 P.3d 6.). To reverse a district court's evidentiary ruling for an abuse of discretion, this Court must determine the district court either acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. *Id.*

SUMMARY OF ARGUMENT

The Probate Code is clear: “Unless displaced by the particular provisions of this code, the principles of law and equity supplement....” § 72-1-104, MCA. We are at the intersection of different chapters of the Probate Code, quasi-judicial immunity, Titles 40, 42, and 46, and the Montana Rules of Professional Conduct.

Sections 72-2-124(3) and -125, MCA, control the contours of this case and should be read together. Section -124 is older, originally passed in 1974, and most recently amended in 1999. Section -125 was passed in 2019. Neither are permissive statutes. Section -124(3) states “**Inheritance** from or through a child by either

natural parent or the parent's kindred **is precluded unless** that natural parent has openly treated the child as the parent's and has not refused to support the child." (emphasis added.) There is nothing permissive about preclusion.

Section -125(1)(b) clarifies the standard for this case: "A parent **is barred** from inheriting from or through a child of the parent if: the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent **could have been** terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child."

"Is Barred" is not permissive. Yocom learned facts from M.A.C.'s surviving siblings, and had no choice but to either disinherit Cole without seeking a hearing, or asking the District Court for supervision, guidance, and permission. Yocum chose the latter.

The verified petition seeking permission to disinherit Cole does not state that Cole's rights were terminated, but said rights could have been. If Cole's other siblings did not come rescue M.A.C. and her brother, the state may very well have been forced to intervene. The transcript of this case makes clear and convincing the facts unearthed in our investigation and introduced at trial. The District Court, after a day of hearing testimony from eight (8) witnesses, including three (3) of Cole's children, a Department worker, and three (3) school and counseling officials, has

given Yocum permission to proceed.

The District Court had to find against because Cole had filed no verified pleading in this matter as required by § 72-1-310, MCA. Moreover, “[d]espite a Subpoena being served upon Cole to appear in person at the hearing, she failed to appear for the hearing.” (*FoF, CoL, Order, p. 2, ¶ 9*). Cole presented no witnesses on her behalf at the hearing.

This appeal may be considered frivolous because of the conflicting positions taken by Cole throughout this matter, the waste of her children’s inheritance, and the lack of support for her claims on appeal. *See Federated Mut. Ins. Co. v. Anderson* 1996 277 Mont. 134, 136, 920 P.2d 97, 53 Mont. St. Rep. 618.

ARGUMENT

Issue 1: Cole failed to present any verified pleadings or evidence disputing the evidence presented by the Personal Representative.

Cole did not submit a verified pleading in this matter. (*Fof, Col, Order, p. 2, ¶ 7*). Petitions and responses to petitions must be verified. *Id.* (p. 10, ¶ 22), citing § 72-1-310(1)(b), MCA and § 72-1-310(2)(b), MCA. In Montana, a motion “not made or based on any pleadings, papers, matters or things on file in the cause, nor supported by any affidavit or verified pleading” raises no issues of fact and must be “necessarily denied.” *State ex rel. State Highway Comm'n v. Dist. Court of Fourth Judicial Dist. In and for Mineral County* (1963), 142 Mont. 198, 383 P.2d 481. *See*

also *Franks v. Eleventh Judicial Dist. Court*, 2020 MT 2606, 402 Mont. 429, 477 P.3d 279 (holding “Franks has filed an unverified petition, in contradiction to § 27-26-201, MCA, and he has not presented a clear legal duty for the District Court to act.”).

Cole failed to appear at the hearing, despite a subpoena being served upon Cole to appear in person. (*Fof, Col, Order*, p. 2, ¶ 9). Cole refused to appear and testify or verify her motions. (*Fof, Col, Order*, p. 11, ¶ 31). Cole presented no witnesses. Cole’s appeal must be denied based upon her failure to verify her pleadings or appear as ordered. She has failed to establish standing or any other facts necessary to plead her case. The District Court correctly denied her various motions and this appeal is without merit.

Issue 2: Cole’s parental rights could have been terminated without the State initiating a child-welfare action.

Cole asserts that her parental rights could not have been terminated without State initiation of a child welfare action. (*Appellant Brief* p. 18, ¶ 1). This assertion is legally and factually incorrect. Parental rights can be terminated without State intervention. Termination occurs in adoptions, relinquishments, the child being a result of sexual assault, or a child being assaulted. *See* § 42-2-401, MCA, et. al (adoption); § 40-6-1001, MCA, et. al. (termination based on sexual abuse).

Sections 72-1-124 & -125, MCA, should be read together. These statutes are

the basis of this case and do not require the State to have initiated a child-welfare action for their application. Section 72-2-124(3), MCA states “Inheritance from or through a child by either natural parent or the parent’s kindred **is precluded** unless that natural parent has openly treated the child as the parents and has not refused to support the child.” (Emphasis Added.) The statute is not permissive. Section 72-2-125, MCA clarifies the circumstances of preclusion:

Parent barred from inheriting in certain circumstances.

(1) A parent is barred from inheriting from or through a child of the parent if:

(a) the parent’s parental rights were terminated and the parent-child relationship was not judicially reestablished; **or**

(b) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child’s death the parental rights of the parent **could have been** terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

§ 72-2-125, MCA, (emphasis added). The state could have initiated an action or clear and convincing evidence can be presented in probate of “nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.” *Id.*

Cole argues her parental rights could not have been terminated under 72-1-124 and -125, MCA, based on the testimony of Montana Department of Health and Human Services supervisor, Ms. Hoerauf. Cole cites to Ms. Hoerauf’s statement

“there is no evidence that any agency would ever have filed a petition to terminate Cole’s parental rights and absent such a petition, the District Court had no authority to find that Cole’s parental right could have been terminated.” (*Appellant Brief* p. 14). This is a misrepresentation of the witness’s testimony.

Ms. Hoerauf testified “we would not be able to terminate parental rights of a parent without filing what we call a dependent/neglect action, and in none of these cases did it meet the criteria because we did not investigate the birth mother’s home. So, I feel it really hard to say that it would qualify or not qualify because our assessment was to determine if Samara’s home was safe.” (*Hearing Transcript* p. 80, ¶ 6-14).

Ms. Hoerauf testified that the most recent CPS report involved Cole alleging that M.A.C. was unsafe in her current living situation with Samara. (*Hearing Transcript* p. 80, ¶ 6-14). The Department determined that M.A.C. was safe with her older sister Samara and inquired no further. (*Hearing Transcript* p. 88, ¶ 17-19). Cole’s argument that Ms. Hoerauf’s testimony supports her assertion that her parental rights could not have been terminated misleads the Court.

The fact no State action was pending immediately prior to M.A.C.’s death does not preclude that Cole’s parental rights could have been terminated. Cole’s parental rights could have been terminated immediately prior to M.A.C.’s death. This was proven in District Court by clear and convincing evidence according to the

District Court's discretion to weigh the evidence, which is again before this Court for review. Cole's parental rights could have been terminated based on her abandonment and neglect of M.A.C. (*FoF, CoL, Order, p. 10-11, ¶ 27*). The District Court's Findings of Facts and Conclusions of Law are correct.

Issue 3: The District Court did not err when it appointed Sunny Rae Yocom as Personal representative.

Cole asserts that she was deprived of her constitutional due process rights when the District Court appointed Yocom as Personal Representative. Cole waived those rights when she did not appear for the evidentiary hearing in this matter, and failed to request a subsequent evidentiary hearing offered by the District Court in this matter.

Cole asserts because she was not provided notice of the hearing on the Petition to Appoint Yocom as Personal Representative, that the District Court erred and therefore all of Yocom's actions are void.

The affidavit of Cosgrove, entered at Petitioner's Exhibit 10, offered in lieu of Cosgrove's testimony, shows notices given to Cole. Eventually face-to-face, which revealed Cole's visible intoxication. *See Hearing Transcript p. 242-243*. Excerpts from Exhibit 10 follow:

1 3. From the beginning of my involvement in the matter, my
2 only adult family contact for M.A.C. was her adult sister, Sierra
3 Yanny. Upon information and belief, Sierra cared for and was
4 raising, due to the absence of the mother, Lisa Nivens, (N/K/A)
5 Lisa Cole, both minor aged siblings, M.A.C. and brother Mythias J.
6 Cole (a minor, now an emancipated adult).

7 4. I understood, from my conversations with Sierra about
8 needing to contact her mother, on behalf of my client, related to
9 conveying the insurance proceeds for the benefit of M.A.C's Estate
10 and for Mythias, who was an injured passenger in the subject
11 accident, that Lisa Cole was unavailable and uninvolved in
12 parenting.

13 5. After efforts to obtain any possible contact information
14 for Lisa Cole, Sierra gave me a possible phone number for Lisa
15 Cole, 406-422-8353. I used the number to try to reach Lisa Cole,
16 always to no avail.

17 6. On May 28, 2020, I was given Lisa Cole's mailing address
18 as 41 Grenz Drive, Miles City, Montana. On May 29, 2020, I wrote
19 to Lisa Cole at the suggested address. I introduced myself and
20 explained my role in the subject accident and legal proceedings to
21 occur in the future and the need for her to be aware and involved
22 for the benefit of her deceased minor aged daughter and injured
23 son. (The letter is attached hereto).

24 7. I never received a response from Lisa Cole to my letter.

25 8. On June 1, 2020, I tried to reach Lisa Cole by telephone
26 on at least two occasions. She did not answer. I then drove to
27 Miles City (actually about 12 miles north of Miles City) to see if
28 I could make contact with Lisa Cole.

Affidavit of Shawn P. Cosgrove

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1
2 9. It was mid-day. Lisa Cole was home. She answered the
3 door. To my observation, Ms. Cole appeared either intoxicated with
4 alcohol or drugged. Nevertheless, because I was finally in contact
5 with her, I explained my role in regard to the accident. I
6 explained the need for the appointment of a conservator for Mythias
7 and a personal representative for M.A.C.'s estate. I explained
8 there would need to be the filing of legal documents and
9 participation at hearings. I explained I had written her and
10 repeatedly tried to reach her by phone. I left with her my
11 business card.

12 10. I never heard back from Lisa Cole. I was told she had
13 moved from Miles City and that she was homeless on the east coast.
14 It was clear to me she did not parent her children, nor wanted to
15 be involved in the conservatorship or estate matter.

16 11. So, I contacted Jennifer Brandon, the Clerk of District
17 Court. As the Clerk of District Court, she was the Public
18 Administrator that could be utilized as the conservator and
19 personal representative based on the circumstances as presented in
20 the present matter. She advised that while she was the public
21 administrator, her preference was not for herself to be personally
22 involved, but she gave recommendations for a professional fiduciary
23 that worked basically at her appointment as public administrator to
24 become involved in the matter. She gave me several names of
25 potential professional fiduciaries to act as the public
26 administrator.

27 12. Sunny Rae Yocum, of All In Fiduciary Services, agreed to
28 participate as conservator for then minor aged Mythias and as

Affidavit of Shawn P. Cosgrove

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Notice of a hearing in probate is required in formal probate proceedings. Section 72-3-302, MCA. A formal probate is litigation commenced to determine whether a decedent left a valid will. Section 72-3-302, MCA. In informal probate proceedings the moving party must give notice to those who demand it and to any person has prior or equal priority. Section 72-3-221, MCA. M.A.C. was a minor and did not have a will, thus the initial application for probate and appointment falls under the informal probate rules of Montana.

Cosgrove and Yocom were not required to provide further notice of the hearing to Cole under § 72-3-221, MCA.

Cole argues she had priority to act as Personal Representative. If Cole did have priority, the law only requires the district court to determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment. Section 72-3-507, MCA. As agreed to by Cole, Cosgrove met in person with Cole and informed her of the necessity of opening probate. (*Appellant Opening Brief, p.21*). Cosgrove went beyond the demand of the law and met with Cole in person to discuss the necessity of probate. (*Appellant Opening Brief, p. 21*). Cole refused to request appointment despite probate being required due to the insurance proceeds. She then mediated in bad faith, refused to honor a subpoena, and now appeals this matter to further waste the Court's time and Estate's funds.

Any notice error for the initial appointment is harmless. Cole had notice and opportunity to show up to the evidentiary hearing Cole requested on the matter of her abuses and abandonment, or a subsequent hearing, and she did not take advantage of that opportunity.

An error is harmless if it would have “no significant impact on the result.” *In re J.C.*, 2008 MT 127, 343 Mont. 30, 183 P.3d 22; *In re A.N.*, 2000 MT 35, 298 Mont. 237, 995 P.2d 427 (quoting *Newbauer v. Hinebauch*, 1998 MT 115, ¶ 20, 288 Mont. 482, ¶ 20, 958 P.2d 705, ¶ 20). The rule is well established “that ‘no civil case shall be reversed by reason of error which would have no significant impact upon the result; if there is no showing of substantial injustice, the error is harmless.’” *Id.* Even in criminal cases, “a cause may not be reversed by reason of any error committed by the trial court against the convicted person unless the record shows that the error was prejudicial.” Section 46-20-701, MCA; *See State v. Warnick* (1985), 216 Mont. 102, 699 P.2d 1049.

Cole asserts that if she was given notice of the hearing she would have shown up and objected to the appointment of Personal Representative. (*Appellant Opening Brief*, p. 21). The evidence in the record does not support this contention.

Under the facts in evidence, Cole did not have priority to be appointed as the personal representative. The District Court determined that, as a matter of fact and law, that even if Cole had shown up, she would have been disqualified as unsuitable

pursuant to § 72-3-501(2), MCA. (*FoF, CoL, Order, p. 12, ¶ 32*). Section 72-3-502, MCA governs who has priority when appointing a personal representative. “Custodial parents” are third, public administrators are eighth on the priority list, and creditors of the estate (45 days after the decedent’s death) are ninth. Section, 72-3-502(1)-(9), MCA.

Cole was not the “custodial parent” as Cole did not live with or support M.A.C. at the time of her death. Samara was the “custodial parent” according to the Social Security Administration and M.A.C.’s school, representatives of both testified at the hearing.

Yocom’s verified *Application for Informal Appointment of Personal Representative in Intestacy* states “Applicant is a professional fiduciary acting in place of the Public Administrator.” (*Application, ¶ 8*). The insurance company was a creditor of the Estate as they held an asset of the Estate. More than 45 days had elapsed between M.A.C. passing away and when a Personal Representative was appointed as a public administrator. Even if Cole appeared at the hearing and objected to Personal Representative’s appointment, Cole would not have been appointed as personal representative as she did not have priority to act as such. The District Court did not err when it appointed Yocom as Personal Representative. If any error was committed, it was harmless.

Issue 4: The District Court’s findings of facts were not clearly erroneous.

Cole asserts that the District Court erred in its findings of facts. Cole has failed to show any occasion where the District Court’s findings of fact were clearly erroneous and instead has listed a number of small issues irrelevant to the District Court’s final order.

FoF 9. *“Despite a subpoena being served upon Lisa Cole to appear in person at the hearing, she failed to appear for the hearing.”*

Cole asserts that the District Court Judge’s FoFs is contradicted by the District Court Judge’s statement during the hearing. Cole did not appear in person at the hearing. A subpoena was served upon Cole’s attorney for Cole to appear at the hearing. (*Hearing Transcript p. 238, ¶ 2-5*). The District Court ordered Cole to appear in person for the hearing scheduled for May 23, 2023. (*DC No. 88, Order re: Lisa Cole’s Motion for Witnesses to Appear Remotely*). Cole did not appear at the hearing.

Cole filed a motion for witness’ to appear remotely at the hearing. (*DC No. 81, Lisa Cole’s Motion for Witnesses to Appear Remotely*). Appellant did not specifically request that Cole appear remotely at the hearing. (*DC No. 81, Lisa Cole’s Motion for Witnesses to Appear Remotely*). Personal Representative did not object witnesses appearing remotely. (*DC No. 84, Lisa Cole’s Reply to Personal Representatives’ Response to Lisa Cole’s Motion for Witnesses to Appear*

Remotely). Personal Representative objected to Cole appearing remotely because Cole would need to appear personally so as not to violate Mont. Rules of Evid. Rule 611(e), the right to cross examine. (*DC No. 84, Lisa Cole's Reply to Personal Representatives' Response to Lisa Cole's Motion for Witnesses to Appear Remotely*).

FoF 9 is not clearly erroneous and is supported by credible and admissible evidence.

FoF 13 “*Since at least July 2019, Ms. Cole failed to provide medical care for M.A.C. and objected to a guardianship that resulted in M.A.C. being unable to receive dental care. This led M.A.C. to suffer painful dental abscesses.*”

Cole asserts there was no testimony regarding Cole’s failure to provide medical care for M.A.C. The Personal Representative disagrees. The testimony of Sierra and the CPS reports show that Cole failed to provide medical care for M.A.C. M.A.C. self-reported that she could not see the dentist specifically because Samara did not have guardianship of M.A.C. (*Exhibit 3, Family Functioning Test, p. 6*). Testimony by Sierra, M.A.C.’s sister who was living with M.A.C. and their siblings at the time of M.A.C.’s death, testified to her actual knowledge that M.A.C. could not get dental care because there was no legal guardian around. (*Hearing Transcript p.144, ¶ 25 and p. 125, ¶ 1-6*). The CPS report and direct testimony of an eyewitness shows that M.A.C. could not go to the dentist because her sister did not have guardianship of

M.A.C. or her siblings. *Id.* The CPS report was identified by the custodian of the report and is a report that is regularly kept in the course of business and was made simultaneously with the self-report. M. R. Evid. 803(6), (8).

FoF 13 is not clearly erroneous and is supported by credible and admissible evidence.

FoF 14. “*that up until August of 2019, Ms. Cole was verbally and physically abusive to M.A.C. and Mythias.*”

In candor to the Court, Cole has failed to cite the entire FoF 14 and misstates the language of this FoF. FoF 14 states, in its entirety, “Up until August 2019, Ms. Cole was verbally and physically abusive to both M.A.C. and Mythias. Ms. Cole threw coffee on Mythias. Ms. Cole hit Mythias with a baseball bat while under the influence of methamphetamine. Ms. Cole also attempted to hit Mythias with her car while under the influence of muscle relaxers.”

Evidence of abuse by Cole toward M.A.C. is in the record. (*Hearing Transcript p. 147-161*). Evidence from Mythias, an eyewitness and sibling of M.A.C, with firsthand knowledge is evidence. Mythias testified to the abuse. Cole did not offer any evidence in rebuttal.

FoF 14 is not clearly erroneous and is supported by credible and admissible evidence.

FoF 18 “*Ms. Cole continued to receive Social Security benefits for M.A.C.*

and Mythias after they departed Colorado but failed to apply those funds to M.A.C. or Mythias.”

Cole asserts this is a “false statement.” M.A.C. and Mythias were receiving social security benefits based on the death of their father. (*Hearing Testimony, P. 175, ¶ 2-11*). Cole was receiving the funds on behalf of the children and did not transfer the funds to M.A.C. or Mythias from at least September 2019 until M.A.C. passed away. (*Hearing Exhibit 4*). The Social Security Administration letters asserting that Cole misused M.A.C.’s social security funds were admitted to the record. (*Hearing Transcript p. 179*). The Social Security Administration determined that Cole failed to apply funds to M.A.C. This evidence shows Cole continued to receive social security benefits yet failed to use those funds to support M.A.C. or Mythias. Cole failed to provide any evidence or testimony as to the use of these funds.

FoF 18 is not clearly erroneous and is supported by credible and admissible evidence.

FoF 22. In candor to the Court, Cole has failed to cite the entire FoF 22, which changes the overall impression of this FoF. FoF 22 states, in its entirety, “*In late December 2019, Lisa Cole reported Samara to DPHHS and law enforcement. After conducting a thorough investigation, DPHHS concluded M.A.C. was safe with Samara, and refused to return M.A.C. back to Ms. Cole*”. Cole asserts this is a

misstatement of the evidence in that the evidence does not show the Department refused to return M.A.C. back to Cole.

Personal Representative agrees Exhibit 3 states “*at the time law enforcement did not provide Samara’s current address to Cole.*” The testimony of Ms. Hoerauf shows the Department was aware Cole was looking to have her children returned to her care. (*Hearing Transcript 81, p. 14-15*). The Department refused to forcibly return M.A.C. to Cole despite their knowledge of her wanting her children returned. Samara and law enforcement also refused to forcibly return M.A.C. to Cole. (*Hearing Exhibit 3., p.14, Hearing Transcript. p. 57 7-8*).

FoF 22 is not clearly erroneous and is supported by credible and admissible evidence.

FoF 29. “*Ms. Cole failed to provide shelter to MAC from at least June 2019 until her death in March 2020. Ms. Cole failed to provide education or healthcare to MAC from at least June 2019 until her death in March 2020.*”

Cole asserts this FoF conflicts with the other evidence and findings. Cole states that FoF 20 conflicts with FoF 29. Again in candor to the Court, Cole misstates FoF 20. FoF 20 states, in its entirety, “*In September 2019, M.A.C. started school at Hyalite Elementary in Bozeman, MT. M.A.C. was enrolled as an ‘unaccompanied youth’.*” Cole left out the last sentence of FoF 20.

If Cole had provided education to M.A.C., M.A.C. would not have been registered

as an “unaccompanied youth.” (*Hearing Exhibit 2*). The Superintendent of Bozeman Public Schools, Mike Van Buren testified that M.A.C. qualified to be an unaccompanied youth and could be enrolled by her sibling not a parent. (*Hearing Transcript p. 42, ¶ 3-8; Hearing Exhibit 2*).

Mike Van Buren’s email shows that without the unaccompanied youth designation, Samara could not have enrolled M.A.C. into school: “Our Family-School Services Coordinator qualified M.A.C. as an ‘unaccompanied youth’ which allowed her older sister to register her for school.” (*Hearing Exhibit 2*). This evidence was admitted as Exhibit 2, Cole did not object to its admission and writer of Exhibit 2 and custodian of Exhibit 1 testified to the documents and their contents.

FoF 29 is not clearly erroneous and is supported by credible and admissible evidence.

FoF 30. “*Ms. Cole failed and refused to support MAC.*”

Cole argues no testimony supports that Cole failed and refused to support M.A.C.

Cole failed to provide for M.A.C.’s education and medical needs. (*Hearing Transcript p. 42, ¶ 3-8; Hearing Exhibit 1, 2*). Cole refused to work with Samara to ensure M.A.C. had access to school, medicine, and support which forced Samara to file for guardianship of M.A.C. (*Hearing Transcript p. 66, ¶ 1-10; Hearing Exhibit 3 – DPHHS CPS reports*).

Personal Representative agrees there was no testimony regarding any agreement as to temporary care of M.A.C. as Cole failed to provide any evidence an agreement existed.

FoF 30 is not clearly erroneous and is supported by credible and admissible evidence.

FoF 31. *“During the time MAC resided with Samara, Ms. Cole failed to manifest any firm intention to resume care of MAC or Mythias, to Phoenix, Sierra or Samara.”*

Cole asserts reporting her concerns to CPS and law enforcement was a manifestation or firm intention to resume care of M.A.C. In order for a parent to manifest a firm intention to resume care, that intention must be made to both the child and the individual having physical custody of the child. Section 14-3-102(1)(a)(ii), MCA.

Cole failed to provide any evidence that she spoke with M.A.C. or Samara about resuming care of M.A.C. Cole failed to provide any evidence that she was capable of resuming physical custody, had a plan to resume physical custody, or a stable living situation. It is not sufficient for Cole to state she wanted to resume care, she needed to have a plan and a stable place in which to resume care. The evidence shows that Cole did not have a plan or a stable living situation.

In March 2020, Samara was ordered to provide notice to Cole of her petition

for guardianship of M.A.C. through publication as Cole had no stable living situation. DG-20-4B (*District Court took judicial notice of this case Transcript P. 173, ¶ 16-18*). Samara’s March 6, 2020 affidavit stated “To date I have been unable to locate her exact whereabouts. A Custer County Sheriff attempted service on Lisa to no avail.” (*Hearing Transcript. P. 172, ¶ 6-8*).

The evidence suggests Cole desired the designation of custodian to steal Social Security benefits. (*See FOF, COL, and Order, p.3, ¶¶ 18-19, p.4, ¶ 23., p. 12, ¶ 34*).

FoF 31 is not clearly erroneous and is supported by credible and admissible evidence.

Issue 5: The District Court did not abuse its discretion when admitting evidence.

The District Court correctly admitted evidence. “In a civil case ... which is tried before the court without a jury, there is a presumption that the trial judge has disregarded all inadmissible evidence in reaching his decision.” *In re Moyer* 1977, 173 Mont. 208, 567 P.2d 47. Despite this, Cole asserts that evidence admitted by or relied on by the District Court was hearsay and that evidence was prejudicial to Cole.

Most evidence is prejudicial to one party or the other. “Admissible probative evidence will frequently be prejudicial to the defendant.” *State v. Swenson*, 2008 MT 308, ¶ 25, 346 Mont. 34, 194 P.3d 625. However, the “balancing of probative value

against unfair prejudice is a matter within the discretion of the trial court, and a ruling on the admissibility . . . will not be disturbed on appeal absent an abuse of discretion. *State v. Buslayev*, 2013 MT 88, 369 Mont. 428, 299 P.3d 324 (citing *State v. Devlin*, 251 Mont. 278, 283, 825 P.2d 185, 188 (1991); *State v. Austad*, 197 Mont. 70, 83, 641 P.2d 1373, 1380 (1982)). The District Court properly considered admission of prejudicial evidence and did not abuse its discretion in admitting them.

Cole asserts evidence relied on by the District Court was hearsay. “Even if Exhibit 3 was not hearsay” (*Appellant Opening Brief*, p. 15, p. 23); “District Court relied on the DPHHS reports which are undisputedly hearsay.” *Id.* (p. 25); “The mediator’s report by itself is hearsay” *Id.* (p. 26); “This District Court finding is solely based on hearsay (referring to Ex. 3).” *Id.* (p. 26-27); “These are hearsay statements” (referring to Ex. 3’s interview with Mythias) *Id.* (p. 27); “In addition to being hearsay, there is no testimony that supports this finding.” *Id.* (p. 27) (referring to FoF 25 regarding M.A.C.’s lack of dental care); “The District Court clearly formulated a bias against Cole based on unsubstantiated DPHHS reports dating back 20 years which are hearsay and should never have been relied upon by the Court.” *Id.* (p. 29-30).

Montana Rules of Evidence govern what evidence is admissible and what evidence is not admissible. Hearsay evidence is generally not admissible. M. R. Evid. 801 provides, “hearsay is a statement, other than one made by the declarant

while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” *In re I.M.*, 2018 MT 61, 414 P.3d 797, 391 Mont. 42. “Hearsay is not admissible unless excepted as provided by statute, these rules, or other rules applicable in the courts of this state.” M. R. Evid. 802.

M. R. Evid. 803(6) allows for the admission of evidence if the declarant is unavailable and excludes from hearsay a “report ... made at or near the time of ... opinions ..., if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the ... report ..., all as shown by the testimony of [a] qualified witness” or custodian. *In re I.M.*, 2018 MT 61, 414 P.3d 797, 391 Mont. 42. M. R. Evid. 803(8) allows for the admission of evidence if the declarant is unavailable and excludes from hearsay public records and reports that are “records, reports, statements, or data compilations in any form of a public office or agency setting forth . . . factual findings resulting from an investigation made pursuant to authority granted by law.” *Id.*

Exhibit 3, the Department and CPS reports, were made by individuals at or near the time of its occurrence which includes opinions, is the type of report that is regularly made by the Department and CPS. Ms. Hoerauf testified to the reports as a qualified custodian and witness as she is the regional administrator for Child and Family Services and oversaw the author employees. The District Court admitted evidence contained in Exhibit 3 over Cole’s objection. (*Hearing Transcript p. 77, 6-*

10).

Exhibit 3, the Department and CPS reports, are public records and reports that are factual findings resulting from an investigation pursuant to the authority granted the Child and Family Services to make and create reports.

These reports were admitted after they were authenticated by a Department official who had knowledge of the case. It is not the statements in the documents that influenced the court, but the sheer volume of the reports, the facts of which were verified independently by the Department, Phoenix, Sierra, and Mythias.

Cole cites *Moyer*, arguing that Exhibit 3 was not admissible. However, *Moyer* states that “in a civil case ... which is tried before the court without a jury, there is a presumption that the trial judge has disregarded all inadmissible evidence in reaching his decision.” *In re Moyer* (1977), 173 Mont. 208, 567 P.2d 47. In *Moyer*, the Court noted the mother/appellant had not “rebutted this presumption, nor had she shown that the court had based its decision on this inadmissible evidence.” Here, the District Court disregarded all inadmissible evidence and Cole failed to rebut the presumption that the District Court relied solely on Exhibit 3 when making its decisions.

As to the specific Findings of Fact Cole outlines in her brief, Appellee responds as follows.

Cole asserts that the District Court’s FoF 10 is hearsay. FoF 10 states “*Lisa*

Cole has an extensive history with DPHHS, starting in 2001, including 16 CPS reports that Lisa Cole also financially exploited an elderly person and absconded with \$18,000.”

Testimony of Cole’s children, Mythias and Sierra both show that Cole has an extensive history with the Department and her criminal and exploitative behaviors. (*Hearing Transcript p. 128, ¶ 4-6; p. 148-162*). The District Court did not rely on hearsay evidence to make this FoF.

Cole asserts that the District Court’s FOF 8 and CoL 26 regarding Cole’s participation in mediation is hearsay. FoF 8 states “*Lisa Cole failed to mediate in good faith*” and CoL 26 states “*The Court has the mediation report on file.*” Gallatin County District Court Rule 15 requires each party to participate in the mediation in good faith. *Gallatin County District Court Rules*. The failure of Cole to mediate in good faith was so abhorrent to the mediator he felt the need to notify the District Court of what occurred. It is a rare occurrence. The Mediator did not violate any statute.

Cole asserts that the District Court’s FoF 11 is hearsay. Cole incorrectly quotes FoF 10 in her brief. FoF 11 states “*Lisa Cole has a history of drug use in the home, unstable housing, criminal and exploitative behaviors, unsafe relationships, transient lifestyle and a general history of inability to parent. Lisa Cole tested positive for amphetamines when she gave birth to M.A.C.’s brother, Mythias.*”

Testimony of Cole’s children, Mythias and Sierra both show that Cole has a history of drug use in the home, unstable housing, criminal and exploitative behaviors, unsafe relationships, transient lifestyle and a general history of inability to parent. (*Hearing Transcript* p. 128, ¶ 4-6; p. 148-162). The District Court did not rely on hearsay evidence to make this FoF.

Cole asserts that the District Court’s FoF 23 is hearsay. FoF 23 states “DPHHS interviewed M.A.C. during the investigation. M.A.C. stated that she and Mythias believed the only reason Lisa Cole wanted her and Mythias back was for their Social Security benefits. M.A.C. called her mom a pill popper.” This evidence is not hearsay because it was not used to prove the matter asserted. M. R. Evid. 801 provides, ‘hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *In re I.M.*, 2018 MT 61, 414 P.3d 797, 391 Mont. 42. The evidence was used to show a timeline as to why Cole was suddenly interested in retrieving her children. (*Hearing Transcript* p. 183, ¶ 21-25).

Cole asserts that the District Court’s FoF 25 is hearsay. FoF 25 states “*In February 2020, M.A.C. was still lacking dental care because of Ms. Cole’s refusal to give Samara permission for a Guardianship.*” Cole argues there is no testimony that supports this finding. Cole also seemingly relies on evidence Cole argues is inadmissible. Cole cites to the DPHHS report Exhibit 3 which state, p. 1 states ‘Cole

will give consent to medical care over the phone.’ (*Appellant Brief*, p. 27).

There is eye-witness testimony of M.A.C.’s sibling, Sierra and a guardianship pleading directed at alleviating Cole’s failure to provide consent for M.A.C.’s dental care, shows that M.A.C. was unable to obtain dental care because of Cole’s refusal to be present and provide consent. Cole did not offer any evidence in rebuttal.

M.A.C.’s sister Sierra testified that multiple attempts to make dental appointments were unsuccessful because Samara could not provide the consent the dentist required. (*Hearing Transcript* p. 144, ¶ 25; 145, ¶ 1-6). M.A.C.’s sister Samara (deceased) filed a verified petition for guardianship of M.A.C. stating that she could not get M.A.C. dental care due to Cole. DG-20-4B (District Court took judicial notice of this case. (*Hearing Transcript* P. 173, ¶ 16-18). This evidence was not hearsay. It was correctly admitted and was based on evidence and testimony provided. The District Court did not abuse its discretion when admitting evidence that M.A.C. was unable to obtain dental care and Samara had to file for guardianship due to Cole’s failure to be present and provide consent.

The evidence before the District Court sufficiently conformed with the provisions of M. R. Evid. 803 et al and the court’s admission of the reports were not arbitrary, without conscientious judgment or outside the bounds of reason.

Issue 6: The District Court did not abuse its discretion in denying Lisa Cole’s request to appear remotely from her home in Norman, Oklahoma at the May 23, 2023, evidentiary hearing.

Cole asserts the District Court abused its discretion when denying Cole’s request to appear remotely at the evidentiary hearing. Cole claims that the District Court should have known that Cole could not appear remotely at the hearing because of her affidavit of inability to pay court costs and fees. (*DC No. 15*). Cole asserts the refusal to allow her to testify remotely violated “the fundamental fairness and due process that this Court has held she is entitled to.” (*Appellant Brief*, p. 28); *In re V.F.A.*, 2005 MT 76, ¶ 6, 326 Mont. 383, ¶ 6, 109 P.3d 749, ¶ 6. Cole has cited to a case which has no bearing on Cole’s right to appear remotely. *In re V.F.A.*, 2005 MT 76, ¶ 6, 326 Mont. 383, ¶ 6, 109 P.3d 749, ¶ 6, discusses nothing regarding the ability to appear remotely.

If Cole testified by electronic means rather than in person, then M.A.C.’s Estate would have been denied its right to cross-examine Cole in person. Rule 611(e), M. R. Evid., states: “Confrontation. Except as otherwise provided by constitution, statute, these rules, or other rules applicable to the courts of this state, at the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine.”

Cole has identified no constitutional provision, statute or rule that exempts her

from the discretion provided District Court Judges in Rule 611(e). Nor has Cole identified any exigency that would excuse her absence. Cole says only that “...traveling for the hearing is not possible due to the fact that witnesses do not have the economic resources to be able to attend the hearing in person”. (*DC No. 81; Lisa Cole’s Motion for Witnesses to Appear Remotely*).

It is important for the District Court to evaluate witness credibility, demeanor, identity, as well as ensure the right of confrontation of witnesses. “Mere judicial economy or a generalized assertion, showing, or finding of significant travel burden or logistical expense or inconvenience is generally insufficient alone to constitute an important public policy justification for dispensing with actual face-to-face confrontation.” *State v. Strommen*, 2024 MT 87, 416 Mont. 275, 547 P.3d 1227. The DC did not abuse its discretion.

CONCLUSION

The District Court correctly determined that § 72-2-125(b), MCA, applies under these set of facts. M.A.C. died before reaching 18 years of age and there is clear and convincing evidence that Cole’s parental rights could have been terminated immediately prior to M.A.C.’s death on the basis on nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child. In making its determination the District Court correctly determined that: Cole failed to present any verified pleadings or evidence disputing the evidence presented by the Personal

Representative; that Cole’s parental rights could have been terminated without the State initiating a child-welfare action; that the District Court correctly appointed Sunny Rae Yocom of All in Fiduciary Services, as Personal Representative; that the District Court correctly relied on testimony and evidence which was properly admitted and that the District Court correctly denied Cole’s request to appear remotely at the May 23, 2023, evidentiary hearing.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11, Montana Rules of Appellate Procedure, I certify this Opening Brief is printed with a proportionately spaced Times New Roman text, typeface of 14 points, is double spaced and the word count does not exceed 10,000 words, excluding the Certificate of Service and the Certificate of Compliance. As of the date of filing, the word count for this brief is approximately 8,346 words.

RESPECTFULLY SUBMITTED this 15th day of August, 2024.

SHYNE LAW GROUP, PLLC

By: //s Danielle Shyne

HONOR COIN LAW, PLLC

By: //s Walter Clapp

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2024, a copy of the **APPELLEE'S BRIEF** was served upon counsel of record by the following method(s):

_____ Hand Delivery

_____ U.S. Mail, First Class

_____ Overnight Delivery Service

_____ Fax

___1___ Eservice

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CERTIFICATE OF SERVICE

I, Danielle Marie Shyne, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-16-2024:

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