

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0352

IN THE MATTER OF:

M.N., M.N.,

YOUTHS IN NEED OF CARE.

BRIEF OF APPELLEE

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Amy Eddy, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
KATIE F. SCHULZ
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
kschulz@mt.gov

TRAVIS R. AHNER
Flathead County Attorney
KATIE HANDLEY
Deputy County Attorney
820 South Main Street
Kalispell, MT 59901

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

SHANNON HATHAWAY
Hathaway Law Group
401 Washington Street
Missoula, MT 59802

ATTORNEY FOR DEFENDANT
AND APPELLANT

CAMISHA SAWTELLE
Sawtelle Law Firm, PLLC
P.O. Box 5117
Whitefish, MT 59937

ATTORNEY FOR YOUTHS

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STATEMENT OF THE ISSUE

Whether the district court abused its discretion when it terminated Mother's parental rights.

STATEMENT OF THE CASE

B.N. (Mother) is the biological mother to M.G. (born in 2010) and fraternal twins, M.M.N. and M.D.N. (born in 2018). (Docs. 1, 127.)¹ After receiving three successive reports of concern for the children, the Department of Public Health and Human Services, Child and Family Services Division (DPHHS), placed the children in foster care on May 18, 2021. (*Id.*)

Following the June 11, 2021 contested hearing, the court adjudicated the twins as youths in need of care and granted temporary legal custody (TLC) to DPHHS. (6/11/21 Tr.; Doc. 25.) The court dismissed M.G.'s case and placed her with her biological father, L.G.² (*Id.*) The court approved a treatment plan for Mother and extended TLC three times to give Mother more time to work on her treatment plan. (Doc. 127.) The court also conducted seven status hearings, three of which Mother failed to attend. (*Id.*)

¹Unless otherwise noted, citations to the district court record will be from *In re M.M.N.*, Cause No. DN-21-016(A).

²Paternity testing established L.G. was not the twins' father. (Doc. 28.) The twins' Unknown Birth Father's rights were terminated. (Doc. 127.)

Mother was unable to successfully complete her plan and DPHHS petitioned to terminate her parental rights (TPR) in June 2023. (Doc. 66.) The TPR hearing was continued several times without objection. (Doc. 127.) Mother appeared for the two-day TPR hearing in January 2024, but did not testify or present any evidence. (1/29/24 Tr. and 1/30/24 Tr. (hereinafter Hr'g); *Id.*) The district court terminated Mother's parental rights at the conclusion of the hearing and issued written TPR orders on May 8, 2024. (Doc. 127.)

STATEMENT OF THE FACTS

Mother and L.G. have a history of DPHHS intervention, beginning when M.G. was a toddler. (Doc. 1.) In the spring of 2019, DPHHS again intervened because of Mother's and L.G.'s drug use and implemented a two-month out-of-home protection plan. (*Id.*; Docs. 60, 66.) During that intervention, Mother tested positive for methamphetamine twice and consistently tested positive for marijuana. (*Id.*) Mother obtained a mental health evaluation through Sunburst that diagnosed her with major depressive disorder, generalized anxiety, and Post Traumatic Stress Disorder (PTSD) and recommended she attend therapy to help her develop skills for emotional regulation, relationships, and conflict resolution. (*Id.*) Mother was also referred to a case manager and medication management. (*Id.*) The children returned home at the end of April 2019. (*Id.*)

In December 2020, DPHHS received a report alleging Mother and L.G. were using methamphetamine around M.G. and the twins. (Doc. 1; 6/11/21 Tr. at 39-83.) During her investigation, child protection specialist (CPS) Brianna King observed that the home was filled with garbage and animal feces and the children were very dirty. (*Id.*) When King asked to take a photo of a scratch on M.M.N.'s face, Mother and L.G. made her leave. (*Id.*) Mother and L.G. refused to take a drug test and, although Mother agreed to meet with King separately, she did not follow through. (*Id.*) King left multiple messages, stopped by the residence, and wrote to Mother, but her efforts to make contact were unsuccessful. (*Id.*)

In March 2021, DPHHS received a report alleging Mother and her boyfriend, J.O., were using methamphetamine in the home and exposing the children to violence. (Doc. 1; 6/11/21 Tr. at 39-83.) The report also alleged the home was extremely dirty and unhealthy (*e.g.*, mold, dirty laundry, animal feces, garbage). (*Id.*) King learned M.G. had missed a significant amount of school and a welfare check had been requested. (*Id.*) King went to the home and discovered the filthy and unsanitary condition of the home had not improved and there were harmful items accessible to the children (*e.g.*, rotten food, broken glass, nails). The twins were covered in old food and dirt. (*Id.*) Mother slammed the door in King's face and refused further contact. (*Id.*) When King checked back three weeks later,

there was no improvement to the property or condition of the home which still emanated a foul odor. (*Id.*)

On May 18, 2021, sheriff deputies conducted a welfare check when they received a call that the twins were outside without appropriate clothing or shoes and no parental supervision. (Doc. 1; 6/11/21 Tr. at 39-83.) It took 20 minutes of knocking for Mother to finally answer the door and the neighbors reported she appeared intoxicated. (*Id.*) M.M.N. was wearing a full diaper that appeared to be days old, and she had scratches on her face. (*Id.*) Mother gave the deputies inconsistent information about the location of M.G. (*Id.*) When King later spoke to M.G., she said that her mother did not want her to go to school because she was afraid the police or DPHHS would be contacted. (*Id.*)

Mother initially hid the children behind her, but eventually permitted King and the deputies to enter the residence. (Doc. 1; 6/11/21 Tr. at 39-83.) The home smelled strongly of animal feces, urine, and rotten food. (*Id.*) The multiple animals were malnourished. (*Id.*) King observed Mother roughly handle M.M.N. when putting pants on her. (*Id.*) J.O. was discovered hiding in Mother's bedroom under a pile of clothes. (*Id.*)

King determined Mother's lack of awareness of the children's needs was significant and not an isolated event. (Doc. 1; 6/11/21 Tr. at 39-83.) Given Mother's inability to meet the children's basic needs and the wholly unsanitary and

unhealthy condition of the home, King placed the children in out-of-home placements. (*Id.*) When King informed Mother of her decision, Mother started screaming and holding on to the children which upset the children. (*Id.*) Mother told M.G. to “give them hell.” (*Id.* at 57.)

At Mother’s supervised visit two days later, Mother refused to discuss the parameters of the visit and screamed profanities at the CPSs. (Doc. 1; 5/29/01 Tr.; 6/11/21 Tr. at 58-83.) Mother signed up for drug testing through Compliance Monitoring and tested positive for methamphetamine, amphetamine, and THC on May 20, 2021. (Tr. at 13-14, 19-29.) Mother tested positive for THC a week later and then stopped submitted to testing. (*Id.*)

Mother and L.G. stipulated to emergency protective services. (5/29/21 Tr.) At the contested adjudication hearing, two witnesses testified about the parents’ drug testing and King testified about her investigations and decision to remove the children. (6/11/21 Tr.) Neither Mother nor L.G. testified. (*Id.*) The district court adjudicated the twins as youths in need of care and granted TLC to DPHHS, but concluded that M.G. could be returned to L.G.’s care and dismissed her case. (Tr. at 87-88; Doc. 25.)

DPHHS referred Mother to Gateway and Oxytocin for a chemical dependency (CD) evaluation and Sunburst for a mental health evaluation. (6/11/21 Tr.) Mother tested positive for THC on June 16, 2021, and again stopped testing.

(7/9/21 Tr.) Mother declined DPHHS's offer to refer the cases to Family Treatment Court. (Hr'g at 265.)

DPHHS implemented visitation for Mother and the twins three days a week and provided Mother with a phone. (6/18/21 Tr.; Hr'g.) Marinella Steccone, a visitation specialist with DPHHS, supervised the visit on May 28, 2021, during which she had to intervene when Mother blamed M.G. for the children being removed. (Hr'g at 53-69; Ex. 6.) Mother resisted Steccone's attempt to redirect her and became emotionally dysregulated which upset the twins. (*Id.*) Several visits in June were difficult with Mother exhibiting the same problematic behaviors and being unable to regulate her emotions. (*Id.*) At the June 15 visit, visitation specialist Mikayla Polston observed Mother hit M.M.N. with a blanket when she was frustrated about changing her diaper and was verbally aggressive towards the children. (Hr'g at 73-75; Ex. 7.)

The court approved Mother's treatment plan as amended on June 18, 2021. (6/18/21 Tr.; Docs. 21, 24.) During that hearing, the court stated Mother could complete her CD evaluation at either approved facility, but emphasized that wherever she gets her evaluations, Mother must follow the recommendations. (*Id.*) The court also explained that Mother could obtain domestic violence (DV) counseling through the Abbie Shelter. (*Id.*)

Kim Bailey, LCPC, began counseling with the children using play therapy. (Docs. 32, 66; Hr'g 245-46.) The twins were hypervigilant, cautious, reluctant to ask for assistance, and exhibited low frustration tolerance. (*Id.*) Both M.M.N. and M.D.N. were diagnosed with PTSD. (*Id.*) The twins also had significant tooth decay, requiring several teeth to be pulled and molars capped. (*Id.*)

In June 2021, Mother missed ten drug tests and of the five tests she did take, she was positive for THC in all of them. (Doc. 32; Hr'g at 22-34.) Victor Hansen, LAC, completed a CD evaluation with Mother at Oxytocin on June 15, 2021. (Hr'g at 10-22; Ex. 1.) Mother was diagnosed with Moderate Methamphetamine Use Disorder and Moderate Cannabis Use Disorder. (*Id.*) Hansen noted that Mother minimized the severity of her substance abuse problem and the negative impact it had on her and her children and lacked coping skills to prevent relapses. (*Id.*) Hansen explained that while Mother stated she would do whatever was necessary to get her children back, her actions did not support her claim. (*Id.*)

Hansen recommended Mother complete Level 2.1, intensive out-patient treatment (minimum of nine hours of service per week) and comply with drug testing. (Hr'g at 10-22; Ex. 1.) Mother's relapse potential was very high, and she understood that should she resume using drugs, the recommended treatment would be a higher level of care. (*Id.*) Mother was invited to begin outpatient treatment at Oxytocin, but she advised the facility she was seeking treatment elsewhere. (*Id.*)

Mother tested positive for methamphetamine and THC on June 30, 2021. (Hr'g at 22-34.)

Mother began visitations through Bear Logic three days a week for three hours. (Hr'g at 34-53; Exs. 3-5.) Bernie McDonald, the visitation supervisor, explained that Mother's July 8 visit had to be stopped because Mother could not be redirected and was belligerent towards the staff. (*Id.*) Mother was frustrated with M.M.N. when trying to change her diaper and when she was told to use the changing table, Mother became so upset she was asked to leave the room to calm down. (*Id.*) When she returned, Mother attempted to video the visit and when she was told that was not allowed, Mother escalated to swearing and yelling at the staff, so the visit was halted. (*Id.*) Based on Mother's inability to regulate her emotions or listen to redirection, Bear Logic discharged Mother from their services. (*Id.*)

The visits returned to DPHHS and Steccone arranged for them to take place at the park as often as possible and also arranged for visits at the twins' maternal grandmother's (Grandmother's) home. (Hr'g at 60-69; Ex. 6.) The visits went well and moved towards semi-supervised time. (*Id.*) In the summer, Mother lived in a tent on Grandmother's property or in her mobile home that had been moved to Condon (54 miles from Kalispell). (7/9/21 Tr.; *Id.*)

Mother enrolled in CD group and individual counseling through Alpenglow but stopped attending CD treatment and submitting to drug testing when she relocated to Condon. (8/20/21 Tr.; Doc. 66.) In July and September, DPHHS referred Mother to Oxytocin for CD treatment, but Mother did not follow through. (Doc. 66; Hr'g.) Although she stopped attending CD treatments, Mother still came to Kalispell for her scheduled visits in the summer which were supervised by Family Concepts. (*Id.*)

Mother did not appear for the October 4th visit and did not confirm the October 6th visit. (Hr'g at 61-69; Ex. 6.) The October 19th visit at Grandmother's did not take place because Mother did not wake up when Polston knocked on the door.³ (Hr'g at 75-78; Ex. 7.) Polston had transported the children to Grandmother's and when they had to leave without seeing Mother, M.D.N. was unconsolable and M.M.N. was stoic with a flat affect. (*Id.*)

Mother completed a mental health evaluation in October 2021 at Sunburst. (Docs. 32, 66.) Mother's diagnosis mirrored that of her 2019 evaluation (*e.g.* generalized anxiety disorder and PTSD). (*Id.*) The evaluator recommended Mother participate in Cognitive Behavioral Therapy and Solution Oriented Therapy. (*Id.*)

³Polston had changed jobs from DPHHS to Family Concepts.

As of the November 2021 Family Engagement Meeting (FEM), Mother had returned to live at Grandmother's. (Doc. 32.) During the FEM, Polston described a recent visit that ended in M.D.N. cowering and visibly shaking when Mother yelled at Polston. (*Id.*) Mother left the FEM meeting by hanging up. (*Id.*) Polston documented additional concerns with Mother's behaviors at the November 16-30 and December 1, 2021 visits noting that Mother: fell asleep; swore at M.M.N. when she had an accident and called her names; told the children that "monsters took them" despite repeated redirection to stop; and screamed at the children when she was frustrated with them. (Hr'g at 78-129; Ex. 7.) Mother also argued with Polston when she provided her with the visitation calendar and was so fixated on her anger she failed to interact with the children. (*Id.*)

At the December 2, 2021 visit, Mother did not bring any snacks or diapers and was on the phone with someone at the beginning of the visit. (Hr'g at 85-129, 192-98; Exs. 8, 95.) Mother ended the call by slamming the phone down and calling the person an offensive name. (*Id.*) When the children said they were hungry, Mother blamed DPHHS for not letting her go to their kitchen. (*Id.*) Mother yelled at M.D.N. to stop whining and crying and aggressively shoved him into a chair when he was upset about not being able to watch a movie on the phone. (*Id.*) When attempts to redirect Mother were made, she lashed out at the

CPSs and Polston with offensive language. (*Id.*) Visits were suspended because of Mother's inability to regulate her emotions and aggressive actions. (*Id.*)

Mother completed new CD and mental health evaluations at Sunburst in late December 2021. (Doc. 66.) Marleena Julius, LAC, reiterated Mother's prior mental health diagnoses (PTSD, generalized anxiety, major depressive disorder) and amended her substance abuse diagnoses to severe cannabis and stimulant use disorders. (*Id.*) Julius recommended outpatient treatment (8 hours per week of various therapies). (*Id.*)

Jennifer Berkland took over supervising the visits through Family Concepts. (Hr'g at 129-66; Exs. 40-58.) Specific strengths and concerns were identified for Mother and provided to her in writing. (*Id.*; Doc. 43.) The resulting tasks and goals specified expectations of Mother that would be reviewed before and after each visit to provide parenting skill building. (*Id.*)

Mother did not contest the first extension of TLC. (1/28/22 Tr.; Doc. 37.) Mother reported she was staying with Grandmother again and had completed online courses covering domestic violence, anger, and parenting. (*Id.*) CPS Corina Howard reported that Mother had been doing better and had progressed to semi-supervised visits. (*Id.*; Hr'g at 133.) Mother began CD counseling with Julius on January 26th and completed the Family Concepts parenting course. (*Id.*; Doc. 43.) Howard explained Mother was not complying with drug testing and

offered to have Mother do a drug patch or hair test instead of UA tests to accommodate Mother's anxiety. (*Id.*; Hr'g at 238-39.) Mother declined to take advantage of those options and continued to be noncompliant with drug testing. (Doc. 43; Hr'g.)

Mother was under the influence at the February 3, 2022 visit, so the visit had to be fully supervised to maintain the safety of the children. (Hr'g at 133-66; Ex. 60; Docs. 43, 66.) Mother admitted using marijuana because she was having a frustrating morning, but did not believe it would affect her ability to parent. (*Id.*) The next day, Mother tested positive for methamphetamine, amphetamine, and THC. (*Id.*; 3/18/22 Tr.) Over the next several weeks, Mother's visits remained semi-supervised. (*Id.*; Hr'g at 135-66; Exs. 61-85.) At the February 16th visit, Mother spanked M.M.N. out of frustration, but accepted coaching from Berkland and ended the visit positively. (*Id.*) At the prior visit, Mother had expressed frustration with the visits not moving to her home, and Berkland explained that could not occur until Mother was meeting her treatment plan goals, which included demonstrating sobriety through drug testing. (*Id.*) After Mother struggled with regulating her emotions or accepting feedback at the February 18th visit, the visits were again reduced. (*Id.*)

The visitation specialists conferred with Julius and Nicole Hutcherson, LCPC, and based on Mother's documented mental health cycles which adversely

impact the children, they recommended Mother participate in Trauma Focused Cognitive Behavioral Therapy. (Hr'g at 94-129, 199-202.) Mother also had a case manager at Family Concepts to assist her with finding housing and employment. (Doc. 41; Hr'g at 200-02.)

Although Mother was attending CD counseling with Julius, she continued to use methamphetamine and marijuana and was not consistently drug testing. (3/18/22 Tr.) Mother had slowly progressed back to semi-supervised visits, but at the April 6th visit, Mother projected her inability to regulate her emotions on the children and was physically and verbally aggressive towards them. (*Id.*; Hr'g at 95-129, 142-66; Exs. 17-18.) Mother again refused to meet with Polston after the visit and the visits were cut back again. (*Id.*)

In April 2022, Mother began seeing Hutcherson for specific trauma focused therapy to help her regulate her emotions and support her during visits if she became dysregulated. (Docs. 43, 66.) However, Mother stopped attending CD group sessions and had missed several individual appointments with Julius. (*Id.*) Mother continued to behave inappropriately at visits, and they were suspended. (*Id.*) Prior to reinstating visits, Howard and Family Concepts developed an outline of visitation progression and a check list to review before and after each visit to help Mother improve her parenting with clear and measurable goals. (Hr'g at 103-05; Exs. 19-20, 28.)

Polston referred Mother to a case manager at Sunburst to help her with food stamps. (Hr’g at 103-29; Exs. 21-37.) Mother’s visits in May went relatively well and were going to be increased as of the May 24th treatment team meeting. (*Id.*) At that meeting, Polston and Howard reviewed the outline specifying what was expected of Mother and how she could continue improving. (*Id.*)

Mother stopped attending CD treatment with Julius in May 2022. (Doc. 66.) Mother sometimes reported being homeless while other times she said she was staying with Grandmother. (*Id.*) But, as of June 2022, Mother had moved back to Condon. (*Id.*; Doc. 43.) DPHHS and Family Concepts suggested other housing options for Mother in the local community, but she refused to consider them. (*Id.*; Hr’g at 99-100; Ex. 14.)

In an email to Mother in late June 2022, Howard offered to make referrals to different CD or mental health providers for Mother. (Ex. 98; Hr’g at 229-32.)⁴ In her July 11, 2022 email, Howard asked Mother if she was still seeing Hutcherson and Julius and reminded Mother she needed to complete her treatment plan which also included consistent drug testing. (Doc. 99.)

Family Concepts discharged Mother from their services due to her continued inappropriate behaviors that traumatized the children and her refusal to respect

⁴Mother had stopped communicating directly with Howard because she “triggered” Mother, but later Mother agreed Howard could communicate with her through email. (Doc. 32; 3/18/22 Tr.)

their decision that M.G. could not attend the visits. (7/15/22 Tr.; Hr’g at 110-29, 148-66; Exs. 38-39.) Mother was discharged from services at Sunburst on June 21, 2022, for similar reasons. (Doc. 48.) Mother had attended only four appointments with Hutcherson. (Doc. 66.) DPHHS arranged for Yellowstone Boys and Girls Ranch (YBGR) to supervise the visits. (*Id.*; Hr’g at 314-50; Exs. 107-127.)

Mother did not contest the second extension of TLC. (7/15/22 Tr.; Doc. 47.) Mother reported she had started a job at a convalescent home in Kalispell and complained about not seeing her children for several weeks because of the new YBGR scheduling. (*Id.*; Hr’g at 318-20; Exs. 99, 107-127.) The court set a status hearing to ensure visits got on track. (*Id.*)

The YBGR intake process was finally completed on July 20, 2022. (Hr’g at 319-50; Exs. 107-123.) The process had been delayed by Mother’s failure to return phone calls and her extreme emotional outburst during the first meeting. (*Id.*) The first visit took place on July 26, 2022, and Tiffany Borland reported the visit went very well. (*Id.*) Per Howard’s request, Borland implemented a check-out procedure after the visits to document Mother’s progress and provide her with written suggestions. (*Id.*) Mother was not amenable to this process and became argumentative with Borland. (*Id.*) Mother was belligerent and used offensive language when Borland cancelled a visit because Mother had not

confirmed as directed. (*Id.*) YBGR suspended Mother's visit after she continued to be disrespectful and inappropriate with the staff. (*Id.*)

At the status hearing, DPHHS reported that a treatment team meeting was scheduled to try to prevent Mother from being discharged from YBGR. (8/26/22 Tr.) Mother had stopped attending mental health or CD counseling and was still not complying with drug testing. (*Id.*) Additionally, the children had regressed emotionally and with potty training. (*Id.*) After Borland's testimony about Mother's concerning behaviors, the court cautioned Mother that she was burning bridges with agencies that provided the services she and the children needed. (*Id.*) The court further advised Mother to be more positive in her interactions with the children and to adhere to the visitation rules and codes of conduct. (*Id.*) Mother had again moved away from Kalispell and was reportedly living in Coram (25 miles away) at this time. (*Id.*)

Borland conducted a team meeting with Mother on September 14th to develop a plan to reinstate visits. (Hr'g at 335-50; Exs. 124-127.) Mother agreed to the specific parameters the team established and the YBGR code of conduct. (*Id.*) However, two days later, Mother was late to the visit and when she was supposed to leave, she stopped and cried outside the window where she had told the children to watch for her. (*Id.*) Upon seeing Mother, the children also cried and were unable to control their emotions. (*Id.*) Soon after, Mother greatly limited

her interactions with Borland and then stopped communications altogether by telling Borland she would only communicate with her through her counsel. (*Id.*) YBGR discharged Mother from their services. (*Id.*)

The September 30, 2022 status hearing was continued because Mother was ill. (9/30/22 Tr.) Mother did not appear for the continued hearing. (10/21/22 Tr.) DPHHS reported that Mother had been discharged from every visitation service available in the area for the same issues. (*Id.*) Howard further reported that Mother had stopped engaging in her treatment plan tasks and explained that she had emailed Mother to try and get her re-engaged. (*Id.*; Ex. 100.) Howard had encouraged Mother not to see her treatment plan as jumping through hoops, but instead see it as helping her become a safe, secure, and stable parent for the twins. (*Id.*) Howard had not heard back from Mother. (*Id.*) The court declined to set the matter for another status hearing given Mother's lack of attendance and communication. (*Id.*)

Jasmine Elias, a DPHHS visitation specialist, began supervising virtual visits in December 2022. (Hr'g at 166-79, 205-09; Ex. 86.) Elias reviewed the expectation agreement for appropriate behaviors and actions with Mother, but Mother delayed signing an updated visitation expectation form. (*Id.*) After a few virtual visits had gone well, Mother transitioned to in-person visits that Carissa Emett supervised. (*Id.*, Hr'g at 351-401; Ex. 87.)

DPHHS petitioned for a third extension of TLC. (Doc. 55.) Mother had yet to reengage in her treatment plan tasks and goals. (*Id.*) Mother stipulated to the court extending TLC. (2/10/23 Tr.; Doc. 63.) During a recent in-person visit, Mother still had difficulty regulating her emotions and had to be redirected when she repeatedly told the children they were moving to Texas. (Hr'g at 355-402; Exs. 87.) During the March 10th visit, Mother did not interact much with the children and at the end of the visit was emotional, which caused the children to dysregulate. (*Id.*)

Mother did not attend the April 7, 2023 status hearing. (4/7/23 Tr.) Howard explained they were looking to refer the case to Family Treatment Court to give Mother additional support. (*Id.*) Howard had referred Mother to Many Rivers for an updated CD evaluation for Treatment Court, but Mother had not followed through yet. (*Id.*) Mother had cycled back to her pattern during visits of not being able to regulate her emotions at visits and made inappropriate statements to the children. (*Id.*) Howard reported that after she addressed those issues with Mother through email, Mother had been doing better. (*Id.*)

The court ordered Mother to complete the CD evaluation within a month so her application to Family Treatment Court could be considered. (4/7/23 Tr.) DPHHS referred Mother to Oxytocin for a CD evaluation in April 2023, but Mother again failed to follow through. (Doc. 65; Hr'g at 18.) Mother was not

accepted into Family Treatment Court because she did not complete the necessary evaluations. (Doc. 75.) Mother did not attend the May 12th visit which was scheduled to take place in the community. (Hr'g at 365-402; Ex. 87.)

The children completed a clinical assessment through YBGR and treatment plans were developed for them. (Doc. 75.) The twins were participating in therapy with Tabitha May through Cedar Creek Integrative Health. (*Id.*) The CASA reported that the children had been in the same foster home for a year and were thriving. (*Id.*)

Mother did not respond to efforts to schedule a visit in early June 2023. (Ex. 86.) On June 9, 2023, DPHHS petitioned for TPR. (Doc. 66.) At that time, Mother's current address was unknown. (*Id.*) DPHHS finally heard back from Mother via text, but she only confirmed her June 12, 2023 visit. (Hr'g at 170-79; Ex. 86.) Mother was appropriate during the visit, but complained to Elias about Howard and accused Emmett of treating her as an inconvenience. (*Id.*) Elias transported Mother to the Samaritan House and Mother told the twins they could come visit her when she got her own room. (*Id.*) Elias also supervised the visit the following week, which went fine. (*Id.*)

The TPR hearing was set for June 30, 2023. (Doc. 67.) Without objection, the hearing was continued three times: once because more time was needed to

present evidence; once to facilitate witness availability; and a third time because Mother could not be located for personal service. (Docs. 68-71, 73-74, 76, 78.)

The children started kindergarten in August and were doing well until Mother missed visits with no notice and M.M.N. regressed with her potty training and acted out at school. (Doc. 75; Hr'g at 370-402; Ex. 87.) After Mother missed the September 1st visit, Emmett required Mother to arrive 15 minutes early to avoid having the children be let down when she did not attend the visit. (*Id.*) Mother attended the September 6th visit, but had to be redirected when she whispered to the children that she was working on a house where they would have their own room. (*Id.*) Mother also refused to participate in debriefing. (*Id.*)

Based on Mother's escalating and improper behaviors and refusal to accept redirection or parent education, along with the cascading negative impact on the children's ability to regulate their emotions, DPHHS stepped back visits to weekly virtual visits. (Hr'g at 402-28.) At this time, Jodi Black-Fucci became the CPS for this family because Howard was on medical leave. (*Id.*)

Once there had been a series of successful virtual visits and M.M.N.'s regressive behaviors lessened, in-person visits were reinstated with the requirement that Mother arrive 15 minutes early. (Hr'g at 375-428; Exs. 87, 101-105.) Mother arrived 20 minutes late to the November 6th visit, so it had been cancelled. (*Id.*) Mother met with Emmett and Black-Fucci and they arranged for the visit to occur

the next day. (*Id.*) Mother arrived on time the next day, but she did not engage with the children and slept during the visit. (*Id.*) Emmett asked Mother if there was anything different that she could do to support her and Mother replied, “No. I am done here.” (Hr’g at 378.)

DPHHS decided to reduce Mother’s visit because of the negative impact on the children when she failed to confirm or show to subsequent visits. (Hr’g at 380-402; Ex. 87.) Emmett offered to arrange visits through Cedar Creek or try YBGR again, but Mother declined. (*Id.*) Mother had in-person visits on November 16, 2023, and December 21 and 29, 2023. (*Id.*) Mother had a virtual visit on November 21 and December 7, but missed the offered virtual visits for November 30, 2023, January 11 and 18, 2024. (*Id.*) According to Emmett, Mother’s ability to successfully participate in virtual visits was due to her attorney attending the visits. (*Id.*)

The State had to file motions to continue the October 16-17 and November 20-21, 2023 TPR hearings because Howard was on medical leave. (Docs. 82-83, 91-92.) Mother’s counsel was unable to state her client’s position on the first motion, but agreed with the last motion to continue. (*Id.*) The court reset the TPR hearing for January 29-30, 2024. (*Id.*) For those hearing dates, DPHHS

served Mother by publication because her exact address remained unknown.

(Docs. 85, 87, 93-94, 99, 101, 124.)⁵

Mother submitted two letters of support to the district court and appeared with counsel for the TPR hearing. (Hr'g; Docs. 120, 122.) DPHHS presented several witnesses. (*Id.*)

Jeremy Tsdchida, from Compliance Monitoring, testified that in the past two-and one-half years, Mother had submitted to testing only seven times, with the last test being in February 2022. (Hr'g at 24-34.) Tsdchida explained that DPHHS had to make multiple referrals for Mother because she was repeatedly discharged due to her failure to call in or test when required. (*Id.*) The seven times Mother submitted to a drug test, all came back positive for THC (5/20/21; 5/27/21; 6/14/21; 6/15/21; 6/16/21; 2/4/22). (Hr'g at 210-19; Exs. 88-94.) Two of the tests (5/20/21 and 2/4/22) were also positive for methamphetamine/amphetamine. (*Id.*)

Polston described her interactions with Mother during supervised visits. (Hr'g at 69-129; Exs. 9-39.) According to Polston, there were times when Mother was able to control her emotions and remain focused on the children's needs, but those periods were fleeting. (*Id.*) When Mother was unable to regulate her

⁵In May and June 2023, Mother was in Coram, camping, or staying with friends. (Hr'g at 389.) As of November 2023, Mother advised Black-Fucci she was living in Rexford (74 miles from Kalispell), but she would not provide an address. (Hr'g at 392, 414.)

emotions and became aggressive (verbally and physically) with the children and service providers, she could not be redirected, and continued to escalate. (*Id.*)

Polston explained that Mother's emotional dysregulation prevented her from safely parenting the twins because she could not acknowledge their needs and cues, and her behaviors created an environment where the children could not maintain their emotions. (*Id.*)

Berklund offered similar observations about Mother's inability to maintain periods of appropriate behaviors and added Mother struggled with attending the pre and post visit consultations when specific parenting skill training was addressed. (Hr'g at 129-66; Exs. 40-85.) Borland testified about her interactions with Mother when YBGR supervised the visits. (Hr'g at 314-50; Exs. 107-127.) Like the other witnesses, Borland explained the consistent concern was Mother's lack of emotional stability during visits. (*Id.*) Mother also exhibited aggressive and threatening behaviors towards the staff. (*Id.*) Testimony from Steccone, Elias, and Emmett mirrored that of Polston, Berklund, and Borland. (Hr'g.)

Black-Fucci explained how and why the visits changed during the fall of 2023. (Hr'g at 402-28; Ex. 101.) Black-Fucci described how Mother had not successfully completed her treatment plan, as well as her opinion that Mother's failure to address her mental health issues demonstrated she was not able to improve her parenting capacity to regulate her own emotions or acknowledge or

attend to the children's needs. (*Id.*) Black-Fucci further noted that Mother had not addressed her substance abuse issues and had not demonstrated the ability to provide a safe and stable home for the children. (*Id.*) Black-Fucci agreed that she had not made any referrals for Mother in Lincoln County where Mother was currently living, but had noted Mother refused to give her an address. (Hr'g at 414, 421-22.)

Jodi Christensen, Howard's supervisor, testified because Howard was still on medical leave. (Hr'g at 179-209, 221-313.) Christensen reviewed the history of the case and the reason for DPHHS intervention in May 2021. (*Id.*) Christensen noted that while Mother engaged in some services for brief periods of time,

as a whole as soon as we saw that there was some success [Mother] would say usually that she was kind of done jumping through hoops, that she should have her kids back, and that kind of started to cause kind of the dysregulation that seemed to kind of prevent her from seeing her kids. That kind of was a cycle that kept going throughout the case.

(*Id.* at 186-87.)

After Mother's counsel stated that Mother did not intend to testify, the court explained that after the foster mother made her statement, Mother could change her mind and explain her perspective about what had occurred during the pendency of this case. (Hr'g at 426-28.) Mother did not testify or present any evidence. (*Id.*)

During closing comments, Mother's counsel argued that DPHHS had failed to provide reasonable efforts other than providing visits and communicating with

Mother. (Hr’g at 436-40.) Mother accused DPHHS of giving up and suggested the CPSs should have “refreshed” the referrals for treatment after filing for TPR. (*Id.*) The children’s counsel supported TPR being granted and argued reasonable efforts had been made, but Mother had failed to utilize the services or offered support. (*Id.*)

The court granted the TPR petition. (Hr’g at 441-49; Doc. 127.) The district court explained its ruling was based upon all the hearings (multiple status hearings, TLC extensions, and TPR), as well as review of the record that included all CPS affidavits and CASA Reports. (*Id.*)

When orally pronouncing its ruling, the district court referenced Mont. Code Ann. §§ 41-3-604, -609(1)(f), (2), and (3). (Hr’g at 441-44.) Citing Mont. Code Ann. § 41-3-423, the court additionally found DPHHS had made “good faith effort[s] to develop the Treatment Plan and assist the Birth Mother in completing the Treatment Plan.” (*Id.* at 445-46.) In making this determination the court referenced the evidence presented at the hearing as well as the periodic reviews and multiple court hearings where specific attention was directed at ensuring Mother was receiving services and support. (*Id.* at 446-48.)

STANDARD OF REVIEW

This Court reviews a district court's decision to terminate a person's parental rights for an abuse of discretion. *In re R.K.*, 2023 MT 161, ¶ 21, 413 Mont. 184, 534 P.3d 659. This Court will not disturb a district court's order terminating a parent's rights absent "a mistake of law or a finding of fact not supported by substantial evidence that would amount to a clear abuse of discretion." *In re D.B.*, 2012 MT 231, ¶ 17, 366 Mont. 392, 288 P.3d 160 (internal quotation omitted). "A court abuses its discretion if it terminates parental rights based on clearly erroneous findings of fact or conclusions of law, or otherwise acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice." *R.K.*, ¶ 21 (citation omitted).

An appellant bears the burden of establishing error by the district court; therefore, it is the appellant's burden on appeal to establish that the district court's factual findings are clearly erroneous, and its conclusions of law are incorrect. *In re D.F.*, 2007 MT 147, ¶ 22, 337 Mont. 461, 161 P.3d 825 (citation omitted). This Court reviews "the evidence in the light most favorable to the prevailing party when determining whether substantial credible evidence supports the district court's findings." *In re J.B.*, 2016 MT 68, ¶ 10, 383 Mont. 48, 368 P.3d 715 (citation omitted). A factual finding is clearly erroneous if it is not supported by

substantial evidence, if the court misapprehended the effect of the evidence, or if review of the record convinces this Court a mistake was made. *R.K.*, ¶ 21.

SUMMARY OF THE ARGUMENT

Substantial, credible evidence supported the district court's findings that Mother failed to successfully complete her treatment plan despite the appropriate services and referrals made by DPHHS to assist Mother. The district court correctly applied the statutory criteria when it found that the condition/conduct rendering Mother unfit to safely parent the twins was unlikely to change in a reasonable period of time.

In making this determination, the court correctly acknowledged the children's health/safety as paramount when it looked to Mother's history of substance abuse and mental health issues as well as her past conduct. The court properly noted Mother's apathy towards participating in CD or mental health treatments, demonstrating sobriety, or accepting feedback from visitation specialists.

Mother did not present any evidence to the district court to establish that had different or additional services been offered, she would have actually engaged in those services. Nor did Mother present any evidence establishing that had DPHHS continued to remind Mother that referrals had been made to various service providers she would have demonstrated she could change in a reasonable period of

time. The record establishes that Mother was given repeated opportunities to demonstrate she could safely parent, but was unable to do so on a consistent basis.

Mother's parental rights were not terminated because of any missing or inadequate efforts by DPHHS. Mother's rights were terminated because she failed to successfully complete her plan which left her substance abuse and mental health issues untreated. Mother chose not to submit to drug testing to demonstrate sobriety and also rebuffed multiple visitation service specialists' attempts to improve Mother's parenting capacity.

All of these factors clearly demonstrated Mother lacked the ability to change in a reasonable period of time; especially when considering the twin's own emotional and mental health needs, which included their need for a stable, consistent, and safe primary care giver.

ARGUMENT

I. The district court did not abuse its discretion when it terminated Mother's parental rights.

A. Mother waived review that the criteria at Mont. Code Ann. § 41-3-609(1)(f)(i) were established by clear and convincing evidence.

At the conclusion of the TPR hearing, the court concluded that the elements from Mont. Code Ann. § 41-3-609(1)(f) had been established by clear and convincing evidence. (Hr'g at 441-44; Doc. 127.) The court found Mother had not

successfully completed her treatment plan or demonstrated her ability to safely and appropriately parent the children, noting that multiple service providers had “document[ed] exhaustively a pattern of essentially continuous dysregulation with the Birth Mother that was detrimentally impacting the children despite their love for one another.” (Hr’g at 443.) Contrary to Mother’s argument (Opening Brief (Br.) at 33-34), the court’s findings, which included witnesses’ descriptions of Mother’s repeated difficulties during visits, were appropriate as clearly supporting its conclusion that Mother failed to successfully complete that related goal from her treatment plan.

The court did not fault Mother for not seeking CD treatment through Oxytocin, but found Mother “failed to reengage[] in [CD] services despite numerous referrals over time” and also failed to consistently submit to UA testing despite efforts made to accommodate her concerns. (Hr’g at 443.) The court noted there was no evidence that Mother followed through with recommended mental health treatment or DV counseling or that she ever established a safe/stable home or a source of income. (*Id.*)

Mother has not challenged the court’s findings of fact and conclusions of law that: Mother failed to successfully comply with her treatment plan; her treatment plan was appropriate; or the children were adjudicated as youths in need of care. *See* Mont. Code Ann. § 41-3-609(1)(f)(i). Mother has therefore waived

appellate review of these specific conclusions of law. *See* M. R. App. P. 12(3); *State v. Sattler*, 1998 MT 57, ¶ 47, 288 Mont. 79, 956 P.2d 54.

B. Substantial, credible evidence supported the court’s findings that the conduct or condition rendering Mother unfit was unlikely to change in a reasonable period of time.

When “determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care.”

Mont. Code Ann. § 41-3-609(2). When making this determination, district courts are directed to consider the several non-exhaustive factors including:

- (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time; [and] (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent’s ability to care and provide for the child[.]

Id. When considering those factors, “the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.” Mont. Code Ann. § 41-3-609(3).

The district court followed these statutes. (Hr'g at 445-48; Doc. 127.) The court explicitly considered the required factors while also giving particular weight to the physical, mental, and emotion needs of the children. (*Id.*)

In the written TPR order, the court found that Mother had “not attended any treatment at all for her substance use disorder or drug tested at all in the last year and a half” and had also failed to engage in any mental health services. (Doc. 127 at 10.) The court observed that Mother’s lack of engagement was “problematic because [Mother’s] behaviors, which prevented her from working productively with the Department and essentially all professionals involved in her case, never resolved or made any progress. Some of these explosive tendencies can be seen in her correspondence with the Department, and emails were entered as Exhibits 95 to 103.” *Id.* The court explained that it had

considered [Mother’s] fundamental rights to parent; however, her untreated chemical dependency issues, her untreated mental health issues, and her inability to safely and appropriately remain regulated and parent her children, despite years of services being provided and offered, show an inability to safely and appropriately parent her children. Because the treatment plan has been unsuccessful despite extensive interventions, termination of her parental rights is appropriate and in the children’s best interests.

Id.

In addition to referencing the proper statutes in making these findings and conclusions, the district court correctly relied upon Mother’s behaviors since

the children were removed in May 2021, particularly during supervised visits.

(Doc. 127.)

Clear and convincing evidence undisputedly established that the concerning behaviors Mother exhibited during her first visit with the children in May 2021, were consistently repeated over the next two and a half years. Mother's inappropriate conduct at visits undeniably harmed the children's emotional and mental well-being. Yet, despite implementation of individual therapy and parenting redirection/coaching by multiple service providers using various techniques in different settings, Mother failed to appreciate how her behaviors impacted the twins or demonstrate a willingness or capacity to change. As this Court has clarified,

The phrase, "*the conduct or condition*" (emphasis added), indicates that § 41-3-609(1)(f)(ii), MCA, is referring to a prior finding of a conduct or condition that has rendered the parent unfit. Given the statute does not expressly require the district court to make such a finding, the meaning of the statute is that the condition rendering the parent unfit is the condition(s) or reason(s) in § 41-3-609(1)(f)(i), MCA, that caused the treatment plan to be unsuccessful.

J.B., ¶ 22 (citation omitted) (emphasis in original).

The district court correctly relied upon Mother's past conduct, as well as the children's needs and well-being, to conclude Mother's conduct would not change in a reasonable period of time. *See In re J.C., Jr.*, 2003 MT 369, ¶ 11, 319 Mont. 112, 82 P.3d 900. The inquiry is not "whether a parent has made progress or

would make some progress in the future.” *In re A.B.*, 2020 MT 64, ¶ 27, 399 Mont. 219, 460 P.3d 405. Rather, the district court must answer “whether the parent is likely to make enough progress within a reasonable time to overcome the circumstances rendering [the parent] unfit to parent.” *A.B.*, ¶ 27.

In answering this question, the district court remains “required to assess the past and present conduct of the parent. [District courts] do not have a crystal ball to look into to make this determination, so it must, to some extent, be based on a person’s past conduct.” *A.B.*, ¶ 27. To meet its requirement to provide reasonable efforts, DPHHS “must in good faith develop and implement voluntary services plans and treatment plans designed ‘to preserve the parent-child relationship and the family unit.’” *In re R.J.F.*, 2019 MT 113, ¶ 28, 395 Mont. 454, 443 P.3d 387 (citation omitted); *In re B.J.J.*, 2019 MT 129, ¶ 22, 396 Mont. 108, 443 P.3d 488. Additionally, DPHHS must also in good faith, assist a parent in completing his or her voluntary services and treatment plan.” *R.J.F.*, ¶ 28.

However, good faith efforts to reunite parents and their children and is not a one-way street. “[A] parent has an obligation to avail herself of services arranged or referred by the Department and engage with the Department to successfully complete her treatment plan.” *In re R.L.*, 2019 MT 267, ¶ 20, 397 Mont. 507, 452 P.3d 890 (citing *R.J.F.*, ¶ 38; *In re C.B.*, 2014 MT 4, ¶¶ 19, 23, 373 Mont. 204, 316 P.3d 177; *D.F.*, ¶ 29; *In re T.R.*, 2004 MT 388, ¶ 26, 325 Mont. 125, 104 P.3d

439; *In re L.S.*, 2003 MT 12, ¶ 11, 314 Mont. 42, 63 P.3d 497); *B.J.J.*, ¶ 24. As this Court has explained, DPHHS's obligation to make reasonable efforts to reunite families does not require herculean efforts. *R.L.*, ¶ 20 (citing *R.J.F.*, ¶ 38; *In re A.G.*, 2016 MT 203, ¶ 17, 384 Mont. 361, 378 P.3d 1177).

Here, Mother did not meet her reciprocal responsibility to engage in offered treatment opportunities or meaningfully engage in efforts to improve her parenting during supervised visits. *R.L.*, ¶ 20; *R.J.F.*, ¶ 38. DPHHS's efforts were augmented by the district court consciously setting status hearings to hold DPHHS accountable for its obligations to provide services and referrals as well as to hold Mother accountable for making good faith efforts in engaging in those services. Sadly, the court's and CPSs' repeated attempts to encourage Mother to attend recommended treatments or even simply submit to drug testing were hindered by Mother's apathy or active refusal to engage with the CPSs or even the numerous visitation specialists.

The court correctly found that Mother did not exhibit the interest or willingness to address her substance abuse or mental health issues. There was an absence of any evidence to suggest Mother's past conduct demonstrated she was able to change. Notably, despite the court's explicit invitation to give her "perspective" of the proceedings, Mother did not testify at the TPR hearing. Mother presented no evidence to refute the CPSs' opinion that the conduct making

Mother unfit to safely parent was not likely to change in a reasonable period of time. Nor did Mother present any direct evidence to prove that had DPHHS “refreshed” its referrals for mental health and CD services that she would have actually engaged in those services. Or that she would have demonstrated the capacity to change at all, let alone change in a reasonable period of time.

Finally, in addition to finding that Mother failed the CD and mental health component of her treatment plan—the only tasks Mother now asserts DPHHS should have reminded Mother about completing—the court also found Mother failed to demonstrate sobriety through drug testing or secure a safe and stable home. Mother was consistently reminded that the children could not return home unless and until she demonstrated sobriety, yet Mother submitted to only seven drug tests and last tested a year before the TPR hearing. Additionally, it was undisputed that Mother lived in several different locations, often miles away from offered services. Significantly, Mother refused to provide an address for her home in Rexford, did not attend status hearings, and had to be served by publication during the period of time she now complains that DPHHS did not renew its efforts to convince her to engage in services.

The district court’s determination that the conduct/condition rendering Mother unfit to parent was unlikely to change in a reasonable period of time was supported by substantial evidence. It is well-established that when reviewing a

district court's findings this Court does not consider whether the evidence could support a different finding, nor does it substitute its judgment for that of the factfinder regarding the weight given to the evidence. *In re A.K.*, 2015 MT 116, ¶ 31, 379 Mont. 41, 347 P.3d 711. This Court has repeatedly held that it is not in the position to evaluate the evidence for a different outcome. *Tubaugh v. Jackson (In re C.J.)*, 2016 MT 93, ¶ 19, 383 Mont. 197, 369 P.3d 1028.

C. Mother has not established she would have demonstrated the capacity to change had DPHHS provided additional or different efforts.

Whether DPHHS made reasonable efforts is not a required finding under Mont. Code Ann. § 41-6-609(1)(f), but “may be a predicate for finding that the conduct or condition rendering a parent unfit, unwilling, or unable to parent is unlikely to change within a reasonable time.” *R.L.*, ¶ 18; *In re C.K.*, 2022 MT 27, ¶ 40, 407 Mont. 329, 503 P.3d 1104. As this Court has further explained, while a “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 . . . a parent’s unlikelihood of change may well be unaffected by the Department’s efforts.” *In re C.M.*, 2019 MT 227, ¶ 22, 397 Mont. 275, 449 P.3d 806.

Therefore, before the quality of DPHHS’s efforts may be evaluated as “calling into question” the findings required under § 41-3-609(1)(f)(ii), MCA, a

logical connection between the alleged lacking service and how it impaired the parent's ability to change must be identified.

Contrary to Mother's claim, the district court did not misapply the legal standard under Mont. Code Ann. § 41-3-609(1)(f)(ii) by "ignoring" DPHHS's obligation to provide reasonable efforts. (Br. at 33.) First, during its oral pronouncement, the court explicitly found DPHHS had made good faith efforts to provide necessary services. Second, to the extent Mother faults the court for not more clearly addressing DPHHS's alleged lack of efforts as impacting her ability to demonstrate change, Mother has failed to recognize that she did not articulate such an argument to the district court. Rather, Mother simply asserted that other than communicating with Mother and providing visits, DPHHS had given up on her.

Since Mother did not articulate any compelling nexus between the alleged inadequate efforts and her ability to demonstrate the capacity for change, the district court did not specifically address how DPHHS's efforts may, or may not have, impacted its findings relative to Mont. Code Ann. § 41-6-609(1)(f)(ii). "This Court continually has stated that 'we will not fault a district court for failing to address statutory deficiencies that are not brought to its attention during the proceedings because doing so would encourage litigants to withhold objections

rather than raise the issues appropriately in the district court.” *In re H.T.*, 2015 MT 41, ¶ 19, 378 Mont. 206, 343 P.3d 159 (citation omitted).

Even if this Court considers Mother’s appellate argument, the district court correctly determined DPHHS met its obligation under Mont. Code Ann. § 41-3-423(1)(b) (2023) and any alleged infirm or lacking efforts did not impact the likelihood of Mother being able to change in a reasonable period of time. *C.M.*, ¶ 22.

The only “evidence” the court heard about DPHHS’s alleged lacking evidence was through cross-examination of the CPSs. Mother did not testify about how she could have demonstrated the capacity to change had DPHHS “refreshed” referrals for services. Nor did Mother present any evidence that she had unforeseen barriers or problems that prevented her from participating in services.

Nothing in the record supported Mother’s appellate claim that had different/additional efforts been made, she would have successfully addressed her substance abuse history and mental health condition. *In re A.M.G.*, 2022 MT 175, ¶ 28, 410 Mont. 25, 517 P.3d 149 (when viewed in the light most favorable to the prevailing party, record supported conclusion that the parent’s likelihood of change was unaffected by alleged lacking efforts). Rather, the evidence clearly shows that providers from DPHHS, Family Concepts, YBGR, Sunburst, Compliance

Monitoring, and other agencies made good faith efforts to encourage Mother to engage in services, but Mother chose not to participate or ignored their advice.

It is the parents' abilities and efforts to learn skills and follow recommendations that determines the success of the offered services. *See In re I.B.*, 2011 MT 82, ¶ 41, 360 Mont. 132, 255 P.3d 56. Montana Code Annotated § 41-3-609(1)(f) "does not provide that a parent must be given as much time as it takes for successful completion of a plan." *In re J.B.K.*, ¶ 17, 2004 MT 202, 322 Mont. 286, 95 P.3d 699. Mother had sufficient opportunity and time to demonstrate sustained change and desire to address the concerns that lead to the children's removal.

Mother could not even comply with the most rudimentary task on her treatment plan; drug testing. Throughout the multitude of hearings, the court repeatedly encouraged Mother to engage in services and work with the providers. There was also ample evidence of the CPSs and visitation specialists from several different agencies trying to assist Mother in improving her parenting and addressing the reasons the children were removed in May 2021. Yet, despite glimmers and brief periods of time when Mother exhibited appropriate and safe parenting and visits were increased or moved to semi-supervised, Mother was unable to maintain that level of success.

There was no question that Mother understood the goals and tasks of her treatment plan. Nor did Mother ever voice confusion about resources or service providers. Notably, when Emmett asked Mother what she could do to help, Mother replied, “I am done here.” (Hr’g at 378.) The obligation to engage in efforts to reunify is not borne only by DPHHS. *See C.B.*, ¶ 23.

The court’s findings that DPHHS provided appropriate and sufficient efforts were supported by substantial credible evidence, the district court did not misapprehend the effect of the evidence, and nothing in the record suggests a mistake was made. *A.B.*, ¶ 23. Review of the record establishes that DPHHS made even more reunification efforts than those listed in the court’s TPR order. (*See* Docs. 1, 25, 31, 37, 41, 42, 43, 47, 48, 54, 55, 60, 63, 65, 66, 75, 84, 96; 5/25/21 Tr.; 6/11/21 Tr; 6/18/21 Tr.; 7/9/21 Tr.; 8/20/21 Tr.; 1/28/22 Tr.; 3/18/22 Tr.; 7/15/22 Tr.; 8/26/22 Tr.; 10/21/22 Tr.; 2/10/23 Tr.; 4/7/23 Tr.; Hr’g.)

Those efforts included referrals to all the visitation providers in the area, three CD treatment providers, and Sunburst, where Mother received wrap around services for mental health, visits, food stamps, and assistance with finding housing and employment. DPHHS provided gas vouchers and transportation and even amended its Release of Information forms so Mother’s therapist would only relay attendance, not details about their sessions. DPHHS suggested Mother take advantage of Family Treatment Court twice, but Mother declined.

Mother was invited to all the Foster Care Reviews (11/16/21; 5/26/22; 2/23/23; 10/18/23; 11/29/23; 5/17/22; 11/15/22; 5/16/23; 11/21/23) and FEMs, and DPHHS conducted treatment team meetings with service providers to keep Mother from being discharged from services. The CPSs and visitation specialists used multiple forms of communication with Mother (email to Mother and Mother's attorney; texts; phone calls; in office meetings; meet at visits) and provided Mother with written monthly calendars of visits, directions to confirm visits, simplified "to-do" lists; multiple copies of conditions for return of the children; and measurable goal sheets to implement during visits.

The record nullifies Mother's claim that DPHHS did not meet its obligations. "While the Department is required to 'diligently attempt to contact reluctant parents and engage them with services,' it is not required to endlessly pursue an unwilling parent who does not wish to be found with services the parent does not wish to receive." *A.M.G.*, ¶ 28.

The record, including the court's orders, clearly shows the incredible lengths DPHHS and professionals went to assist Mother in achieving and maintaining sobriety and mental health stability. Since 2020, DPHHS and the court supported repeated opportunities for Mother to appreciate the importance of sobriety and following the recommendations for her mental health treatment. Sadly, the significant efforts made to help Mother were unsuccessful. The comprehensive

efforts DPHHS made in this case cannot be undermined or ignored because the efforts were unsuccessful. Mother's unlikelihood of changing was "unaffected by [DPHHS's] efforts." *C.M.*, ¶ 22.

The twins were in foster care for nearly three years, during which time Mother was unable to demonstrate any period of sobriety and only briefly engaged in mental health and CD treatment. The district court correctly applied the presumption at Mont. Code Ann. § 41-3-604 (1) that TPR was in the children's best interests given that the twins had been in foster care for over 30 months. (Hr'g at 441-42; Doc. 127.) A child's need for a permanent, stable, and loving home supersedes a biological parent's right to parent the child. *In re D.A.*, 2008 MT 247, ¶ 21, 344 Mont. 513, 189 P.3d 631. "[T]he best interests of the children are of paramount concern in a parental rights termination proceeding and take precedence over the parental rights." *In re K.L.*, 2014 MT 28, ¶ 15, 373 Mont. 421, 318 P.2d 691.

Reviewing the record in a light most favorable to the prevailing party, Mother has not met her burden to establish the district court's findings of fact were clearly erroneous or its conclusions of law were incorrect. *J.B.*, ¶ 10; *R.K.*, ¶ 21; *D.F.*, ¶ 22.

CONCLUSION

This Court should affirm the district court's orders terminating Mother's parental rights.

Respectfully submitted this 24th day of October, 2024.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: /s/ Katie F. Schulz
KATIE F. SCHULZ
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,702 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ *Katie F. Schulz*
KATIE F. SCHULZ

CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-24-2024:

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

Travis R. Ahner (Govt Attorney)
820 South Main Street
Kalispell MT 59901
Representing: State of Montana
Service Method: eService

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

Shannon Colleen Hathaway (Attorney)
401 Washington Street
Missoula MT 59802
Representing: B. M. N.
Service Method: eService

Camisha Sawtelle
Sawtelle Law Firm, PLLC
P.O. Box 5117
Whitefish MT 59937
Service Method: Conventional

Wendy Marshall
Flathead County CASA
P.O. Box 11195
Kalispell MT 59904
Service Method: Conventional

Electronically signed by Wendi Waterman on behalf of Kathryn Fey Schulz
Dated: 10-24-2024