IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0388

IN THE MATTER OF:

M.S.-L.,

A Youth In Need of Care.

BRIEF OF APPELLEE

On Appeal from the Montana Second Judicial District Court,
Silver Bow County, The Honorable Robert Whelan, Presiding

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STATEMENT OF THE CASE

In the fall of 2021, M.S-L. was born addicted to dangerous drugs. (Doc. 2.) The Department of Public Health and Human Services, Child and Family Services Division (DPHHS), removed M.S-L. from B.S. (Mother) and M.L. (Father) and placed her in foster care based on the parents' addiction to drugs and Father's criminal history. (*Id*.) Neither parent appeared for the show cause hearing and, following testimony, the court adjudicated M.S-L. as a youth in need of care and granted temporary legal custody (TLC) to DPHHS. (2/8/22 Tr.; Doc. 23.) DPHHS prepared treatment plans for the parents, which were not approved until June 2022 because the parents opposed some of the language in the plans. (3/16/22 Tr.; 6/1/22 Tr.; 6/22/22 Tr.; Docs. 28-29, 41-42.)

Father, who was on parole at the time M.S-L. was removed, violated the conditions of his parole and also committed a new drug-related felony in the fall of 2022. (1/11/23 Tr.) In April 2023, DPHHS petitioned for termination of parental rights (TPR) based on the parents' failure to successfully complete their treatment

plans. (Docs. 65-67.) After several continuances, the TPR hearing was held on May 13, 2024. (Docs. 71-72, 87-88, 91, 96, 103, 106-107, 113, 115; 5/13/24 Tr. (Hr'g).) Father appeared through video conferencing from the Montana State Prison, but did not testify. (*Id*.) The district court granted the TPR petition on May 31, 2024. (Docs. 124-125.)

STATEMENT OF THE FACTS

DPHHS first intervened with Father in 2010, when the agency received a report of Father and his girlfriend drinking and engaging in domestic violence around a newborn baby. (Doc. 2.) A year later, Father's son was born positive for methamphetamine and DPHHS again intervened. (*Id*.) For the next year DPHHS worked with Father through a court-ordered treatment plan. (*Id*.) Father continued to use dangerous drugs and engage in criminal activity and failed to maintain consistent contact with his children. (*Id*.) Father entered inpatient treatment at the Montana Chemical Dependency Center but left early against medical advice. (*Id*.) Ultimately, Father's rights to his two children were terminated. (*Id*.; 2/8/22 Tr.)

Father was convicted of robbery and failing to register as a violent offender. (Docs. 2, 67.) After being paroled, Father was placed at a prerelease center, but when he assaulted another probationer, he was sent to START. (*Id*.) Father was released from START in the summer of 2021 and returned to Butte. (*Id*.) Other

than testing positive for alcohol in August, Father complied with his conditions of parole until the fall of 2021 when M.S-L. was born. (*Id*.)

In late October 2021, when Mother was admitted to the hospital due to methadone withdrawals, she went into labor. (2/8/22 Tr.; Doc. 2.) M.S-L. was born positive for methadone, hydromorphone, norburphrophine, morphine, amphetamines, and methamphetamines. (*Id*.) DPHHS received a report of concern given M.S-L. was suffering from significant withdrawals and Mother was not engaging with the baby. (*Id*.) Veronica Hahm, a Child Protection Specialist (CPS), spoke to hospital personnel who reported that Mother was not caring for M.S-L. while Father reportedly helped with feeding M.S-L. more than Mother. (*Id*.)

Hahm met with Mother and Father. (2/8/22 Tr. at 11-21; Doc. 2.) Both parents denied that either had used dangerous drugs or done anything wrong. (*Id*.) Father reported he was on probation but refused to submit to a UA. (*Id*.) Father's probation officer (PO) told Hahm that Father's last UA was in August 2021. (*Id*.)

Given Father's criminal history and continued concerns with the parents' drug addictions, DPHHS prepared an affidavit in support of a petition for

emergency protective services (EPS), adjudication, and TLC.[1] (2/8/22 Tr.; Doc. 2.) The district court issued an order granting EPS and setting a show cause hearing for December 1, 2021. (Doc. 3.)

The show cause hearing was continued a week because Father contracted strep throat. (Doc. 9, 12/1/21 Tr.) On December 8, 2021, Father filed another motion to continue requested the court set the matter for a contested hearing. (Doc. 11.) The matter was reset to December 30, 2021. (Doc. 12.) Father filed a third motion to continue the show cause hearing on December 27, 2021, and the matter was set for January 18, 2022. (Docs. 15-16.) For reasons not set forth in the record, Father needed replacement counsel assigned, so the matter was again continued. (*Id*.; 1/18/22 Tr.)

M.S-L. recovered from her drug withdrawals and began gaining weight. (2/8/22 Tr. at 19-21.) Hahm had asked the parents for names of family members who could care for M.S-L., but neither could think of anyone. (*Id*. at 16-17.) Hahm conducted searches for family members on CAPS and Seneca and sent letters asking if they would like to be a placement option for M.S-L. (*Id*.) Hahm

[1]Initially, it was believed M.S-L. may be an Indian Child through Mother's association with the Little Shell Tribe, so the Indian Child Welfare Act (ICWA) was followed for the first year. (Docs. 1-2, 23, 36.) However, on September 14, 2022, DPHHS received notification from the Little Shell Tribe that M.S-L. did not meet the definition of an Indian Child. (Doc. 53.) On October 12, 2022, the court issued an order of judicial determination that ICWA did not apply. (Doc. 54.)

also asked the family who had adopted Father's two older children, but they were not able to be a placement. (*Id*.) The parents were having visitations with M.S-L. at DPHHS's office and then through 4-C's. (*Id*.)

Neither parent appeared for the February 8, 2022 show cause hearing. (2/8/22 Tr.) Father's counsel reported she had met with him the day before and believed he planned to attend the hearing. (*Id*.) Right before the hearing, counsel called Father, but it went right to voice mail and his mailbox. (*Id*.) The court noted both parents were voluntarily absent. (*Id*.)

Hahm testified about the basis for DPHHS's intervention, and the Qualified Expert Witness testified that M.S-L. would be "at great risk" if she was returned to her parents' care. (2/8/22 Tr.) M.S-L.'s guardian ad litem (GAL) supported the court adjudicating M.S-L. as a youth in need of care based on very significant CD issues and lacking parental care and Father's "extensive criminal activity." (*Id*.; Doc. 14.) The court granted DPHHS's petition and, based on the parents' CD history, referred the case to Family Drug Court. (Tr. at 22-25; Doc. 23.) The court set a treatment plan hearing for March 16, 2022, and encouraged the parents' attorneys to talk to them about the benefits of Family Drug Court. (*Id*.; Doc. 25.) Father and Mother were terminated from the visitation program at 4-C's and CPS Christina Crosby (Crosby) arranged for their visits to occur twice a week at DPHHS. (Doc. 45.)

The parents and their counsel appeared for the March 16, 2022 hearing and acknowledged they had received proposed treatment plans from DPHHS. (3/16/22 Tr.) However, the attorneys had not discussed the plans with their clients, so they asked to continue the matter. (*Id*.) The court continued the hearing and reminded the parents to reach out to their attorneys. (*Id*.) Mother's counsel filed a motion to continue the March 30, 2022 treatment plan hearing for a month because of a personal emergency. (Doc. 28.) The court continued the hearing to May 4, 2022. (Doc. 29.)

New counsel was appointed for Mother on April 25, 2022. (Doc. 31.) On April 27, 2022, counsel for DPHHS filed a motion to continue the May 4 hearing because he was undergoing a surgical procedure. (Doc. 32.) The court reset the treatment plan hearing to June 1, 2022. (Doc. 33.)

On May 3, 2022, the parents filed a joint notice, alleging DPHHS had not followed statutory deadlines and was not providing active efforts. (Doc. 35.) The parents faulted DPHHS for not making referrals for mental health or CD evaluations until the recent Family Engagement Meeting and for not offering more than one visit a week. (*Id*.) Parents also filed a joint motion asserting that M.S-L. was not in an ICWA-preferred home and requested an order placing M.S-L. with her paternal aunt, K.G. (Aunt), in Kalispell. (Doc. 36.) Parents noted that the

court had not determined whether good cause existed to depart from the ICWA placement preferences and argued DPHHS had not established good cause. (*Id*.)

At the treatment plan hearing, Father's counsel explained she had reviewed the treatment plan with Father and they had proposed some language changes, but was not sure if they had been accepted. (6/1/22 Tr.) Mother's counsel represented the same process had occurred with Mother's proposed treatment plan and that they also proposed new language regarding the facts surrounding M.S-L.'s removal. (*Id*.) The district court continued the hearing to June 22nd and encouraged the parties to work out the treatment plans' language and discuss the proposed placement change. (*Id*.) The court noted that the parties should discuss how visitations would take place if M.S-L. was moved to Kalispell. (*Id*.) DPHHS met with the parents and thoroughly discussed the difficulty with providing visits if M.S-L. was placed with Aunt, but the parents still wanted their daughter to be placed with Aunt. (Hr'g at 9-10.)

In June 2022, Father tested positive for methamphetamine through drug testing required by his parole conditions. (Doc. 45.) Father admitted he used methamphetamine, but when Crosby attempted to talk with him about relapse prevention, Father refused to discuss it with her. (*Id*.)

The day before the treatment plan hearing, Mother and Father filed motions to adopt their versions of the treatment plans.[2] (Docs. 38-39.) At the hearing, the court explained it would issue an order approving the plans for the parents after it reviewed the proposed plans. (6/22/22 Tr.) The court also ordered DPHHS to transition M.S-L. into Aunt's care over the next two weeks. (*Id*.) DPHHS tried to create ways the parents could have more visitation time and initially offered two back-to-back visits and Crosby encouraged phone and video calls, which Aunt was providing. (Hr'g at 10-11; Doc. 45.)

On June 28, 2022, the court issued orders approving the treatment plans. (Docs. 41-42.) Father's plan identified the following conduct/conditions that resulted in DPHHS intervention: Father's limited parenting skills; Father's history of untreated substance abuse that made it difficult for him to safely parent or meet the physical and emotional needs of his children; Father's history of unstable/unsafe housing; and Father's criminal behaviors that resulted in incarceration and making him unable and unavailable to parent. (*Id*.)

To address those issues, Father was instructed to complete several tasks. (Doc. 42.) For instance, Father was directed to keep in regular contact with Crosby, consistently attend visits with M.S-L., and maintain a safe/stable home.

[2]Although Father's motion references an attached Exhibit A (proposed plan), the exhibit does not appear in the record on appeal.

(*Id*.) Father was also directed to complete CD and mental health evaluations, submit to drug testing, and sign releases of information so Crosby could receive and review his evaluations and make additional referrals if necessary. (*Id*.) Father was to also comply with his parole conditions and remain law abiding and demonstrate that he understood how his criminal conduct had impacted his children and his ability to meet their needs. (*Id*.)

Neither parent followed through with obtaining the CD and mental health evaluations. (Doc. 45.) When Crosby tried to talk to Father about why he did not attend the evaluations and to offer alternatives, Father replied, "No. We don't want your help and will do it ourselves because you obviously have connections and are just trying to set us up." (*Id*. at 5.) Father continued to refuse to submit to UA testing and would not sign releases of information, because he did not trust Crosby. (*Id*.) Father finally participated in a CD evaluation at the end of August 2022, but he did not sign a release for that evaluation until September 27, 2022. (Doc. 51.) Father did not provide that evaluation to DPHHS as directed. (Hr'g.)

A hearing on DPHHS's petition to extend TLC was held on September 28, 2022. (Docs. 44-45; 9/28/22 Tr.) Both parents appeared by Zoom and stipulated to the court extending TLC. (*Id*.; Doc. 55.)

In her January 2023 report, the GAL explained she was very concerned that the parents have not taken the steps necessary to remedy that severe substance

use/chemical dependency, lack of prenatal care and [Father's] criminal activity circumstances which have not allowed the parents to provide a safe home for [M.S-L.]." (Doc. 59.)

The court conducted a status hearing on January 11, 2023. (1/11/23 Tr.) Neither parent appeared. (*Id*.) Crosby advised the court that the parents had contact with law enforcement in Kalispell when they caused a disturbance at Father's mother's house. (*Id*.) Aunt no longer supervised the visits because the parents had created a significant conflict with Aunt, so Crosby secured visitation supervision through DPHHS in Kalispell. (*Id*.) Crosby reported that the parents had attended about half of their visits and had not seen M.S-L. for a month and a half. (*Id*.; Hr'g at 10.)

Crosby advised that the parents had completed one parenting education course and, in December 2022, they had finally begun to check in and communicate with her. (*Id*.) Crosby had made new referrals for CD and mental health evaluations to SMART and told the court she was not aware of any barriers to the parents accessing CD and mental health services through SMART. (*Id*.)

However, since that time, Father was arrested because he had failed to report to his parole officer (PO) and had been charged with possession of dangerous drugs with intent to distribute. (1/11/23 Tr.) Father's PO told Crosby that Father's

parole would likely be revoked and he would not be released anytime soon. (*Id*.) Crosby had not had contact with Father since his arrest. (5/24/23 Tr. at 7.)

On January 18, 2023, the court granted DPHHS's motion to extended TLC until a petition to extend TLC could be filed and scheduled for hearing. (Docs. 61-62.) On April 11, 2023, DPHHS filed TPR petitions based on each parents' failure to successfully complete his/her treatment plan. (Docs. 65-67.) As of the filing of these petitions, M.S-L. had been in foster care for 17 months. (*Id*.) Father was served the TPR petition and notice of hearing at the Silver Bow County Detention Center on April 18, 2023. (Doc. 70.1.)

Mother filed a notice to the court on April 14, 2023, wherein she faulted the court and DPHHS for improperly extending TLC in January and failing to conduct a permanency plan hearing. (Doc. 70.) Mother also moved to continue the May 10, 2023 TPR hearing. (Doc. 71.) The court continued the hearing to June 8, 2023. (Doc. 72.)

DPHHS filed a motion for a permanency plan hearing on April 25, 2023, which the court considered at a hearing on May 24, 2023. (5/24/23 Tr.; Docs. 74-75.) The court approved the permanency plan of reunification with the secondary plan of adoption. (*Id*.; Doc. 100.)

On June 6, 2023, Father filed a motion to vacate the TPR hearing. (Doc. 87.) Father asserted that the parties were planning to resolve the case through

guardianship. (*Id*.) The court vacated the TPR hearing and set a status hearing for July 12, 2023. (Doc. 88.)

However, at the status hearing, DPHHS Regional Administrator Jennifer Hoerauf testified that after talking to Aunt, who was not comfortable with a guardianship, DPHHS wanted to proceed to TPR. (7/12/23 Tr.) The court set a TPR hearing for September 26, 2023, but on September 25, 2023, the court vacated the hearing and continued it without date. (Docs. 91, 96.)

On January 11, 2024, the court ordered the office of public defender to appoint counsel for M.S-L., and Austin Wallis entered her appearance five days later. (Docs. 98, 102.) On February 28, 2024, the court set the TPR hearing for March 18, 2024, but that date was continued to April 11, 2024, upon Mother's motion. (Docs. 103, 106-107.) That hearing was continued because MSP would not have video equipment available for him to appear on that date. (Docs. 113, 115.)

Father appeared by video for the May 13, 2024 TPR hearing, but Mother did not. (Hr'g.) Crosby was no longer with DPHHS so Hoerauf, Crosby's supervisor, testified. (*Id*.) Hoerauf testified that Crosby set up standing treatment team meetings (in person and through Zoom), but the parents did not consistently attend those meetings and stopped communicating with her by early 2023. (*Id*.) The parents last saw M.S-L. in December 2022 and, but for an occasional message

through Facebook (in which they attacked the family caring for M.S-L.), neither parent had tried to communicate with M.S-L. or inquire about her well-being. (*Id*.)

While Mother and Father claimed to have obtained a mental health evaluation, they did not sign necessary releases or provide the evaluations to DPHHS. (Hr'g.) Nor did the parents follow through with obtaining mental health or CD evaluations through SMART when Crosby made new referrals at the end of 2022. (*Id*.) Neither Mother nor Father addressed their significant substance abuse issues and, while they eventually agreed to be on the drug patch, they failed to follow through and never demonstrated sobriety. (*Id*.)

Hoerauf testified that Father had been arrested twice for parole violations due to testing positive for methamphetamine and later for being in possession of a large quantity of methamphetamine found in his home. (Hr'g.) Father's PO had confirmed that Father was actively using methamphetamine. (*Id*.) During a parole search of the home, officers discovered a large quantity of methamphetamine and Father was charged with possession of dangerous drugs with the intent to distribute. (*Id*.) Hoerauf testified that since Father was incarcerated in early 2023, DPHHS had not visited him or offered to bring M.S-L. to visit him in jail or at the prison. (*Id*. at 26-29.)

At the conclusion of testimony, Mother's counsel raised objections concerning missed statutory deadlines (*e.g.*, treatment plan approval and the

January 2023 TLC extension). (Hr'g at 45-46.) Mother also argued that DPHHS had failed to make reasonable efforts that called into question Mother's ability to change. (*Id*.) Father's counsel joined Mother's objections, argued DPHHS had not made reasonable efforts, and asserted there had been no judicial determination that efforts were not required. (*Id*. at 47-18.) Father acknowledged that he was incarcerated, but asserted that did not relieve DPHHS from making reasonable efforts. (*Id*.)

DPHHS asserted it had met its burden and established both parents failed to complete their treatment plan. (Hr'g at 49-50.) DPHHS argued that the parents' failure to engage in the offered services was the reason for their failed treatment plans, not any lacking efforts to provide resources and services. (*Id*.) M.S-L.'s GAL asked the court to take judicial notice of Father's criminal proceeding which involved chemicals and drugs being found in the parents' home. (*Id*. at 50-51.)[3] Both M.S-L.'s attorney and GAL supported the court terminating the parents' rights. (*Id*.; Doc. 105.) The court took the matter under advisement. (Hr'g.)

[3]On August 17, 2023, Father was sentenced in First Judicial District Court, Cause No. DC-23-008, for criminal possession of dangerous drugs with intent to distribute, to the Department of Corrections for a period of ten years, with some unspecified period suspended. https://offendersearch.mt.gov/conweb. It is not clear if this sentence was ordered to run consecutively or concurrently to the sentence for which Father had his parole revoked.

The court issued orders granting the TPR petitions on May 31, 2024. (Docs. 124-125.)[4] In its findings of fact, after citing Mont. Code Ann. § 41-3-609(1)(f), the court found that Father had failed to successfully complete his treatment plan. (Doc. 125 at 2-3.) The court referenced Crosby's affidavit as establishing why it was no longer in M.S-L.'s best interests to continue to work with Father and that continuation of the parent-child relationship between Father and M.S-L. would likely result in continued abuse and neglect. (*Id*.) The court found that Father had "taken no steps to change or address the safety concerns" identified by DPHHS and noted it was giving primary consideration of M.S-L.'s mental, emotional, and physical needs. (*Id*.)

In its conclusions of law, the court concluded that the conduct/condition rendering Father unfit, unable, or unwilling to give M.S-L. adequate parental care was unlikely to change in a reasonable time. (Doc. 125 at 3-4.) However, the court also referenced legal theories that DPHHS had not asserted in its TPR petition or at the TPR hearing. (*Id*. (citing Mont. Code Ann. §§ 41-3-423(2)(e) and -601(1)(d) (prior involuntary termination of parental rights); and -609(4)(a) (parent is not entitled to a treatment plan if one of the criteria at 609(1)(a) through (1)(e) are met)).

[4]The court issued an amended TPR order for Mother because the wrong name had been listed on the last page. (Doc. 128.)

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 A.B.*, 2020 MT 64, ¶ 23, 399 Mont. 219, 460 P.3d 405 (citation 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.

Whether a district court violated a parent's right to due process in a termination proceeding is a question of constitutional law subject to plenary review. *In re C.B.*, 2019 MT 294, ¶ 13, 398 Mont. 176, 454 P.3d 1195.

SUMMARY OF THE ARGUMENT

Father was not denied due process. It was clear throughout the TPR proceedings that DPHHS was seeking an order terminating Father's parental rights for his failure to successfully complete his treatment plan, not a prior involuntary termination of his parental rights. Father is correct that the district court's written TPR order referenced two inapplicable TPR theories, but those references were not supported by any accompanying findings and were clerical errors. Moreover, Father cannot establish how inclusion of two inapplicable statutes in the TPR order prejudiced him. Father was not denied fundamentally fair procedures as he was represented by counsel throughout the proceedings, was given notice of all proceedings, and had the opportunity to respond to DPHHS's request to terminate his parental rights.

Substantial, credible evidence supported the district court's findings that Father failed to successfully complete his treatment plan despite the appropriate

services and referrals made by DPHHS to assist him and the fact he was not incarcerated for the first year of DPHHS's intervention. When DPHHS drafted Father's treatment plan, there was no reason to tailor the tasks in anticipation of Father being incarcerated. Nothing in the record suggests Father's ability to engage in the offered services were hampered by anything other than his disinterest in achieving sobriety and remaining law abiding. The record is undisputed that Father failed to successfully complete any goal of his treatment plan.

Substantial, credible evidence supported the district court's determination that the condition/conduct rendering Father unfit to safely parent was unlikely to change in a reasonable period of time. In making this determination, the court correctly looked to Father's untreated substance abuse and current status as an inmate at MSP. Father did not present any evidence to the district court to establish that had different or additional services been offered before he was incarcerated or while he was incarcerated, he would have actually engaged in those services. Nor did Father present any evidence establishing that had DPHHS facilitated visits with him and M.S-L. while he was in jail or at prison he would have demonstrated he could change in a reasonable period of time.

The record further establishes that DPHHS provided reasonable efforts and that Father has not demonstrated that DPHHS's alleged insufficient efforts frustrated his ability to demonstrate the conduct/condition rendering him unfit/unwilling to

parent could change in a reasonable period of time. Father's access to services was never impeded by DPHHS's actions. DPHHS acted in good faith in trying to assist Father to overcome the issues that brought M.S-L. into protective care and provided reasonable efforts to facilitate reunification. Father's parental rights were not terminated because of any missing or inadequate efforts by DPHHS. Father's rights were terminated because he failed to successfully complete his plan, which left his substance abuse issues untreated while he continued his criminal thinking and behaviors that ultimately led to his long-term incarceration.

Finally, Father has not established how the alleged insufficient findings in the court's written TPR order constitutes reversible error. Under the unique facts of this case, including Father's long-term incarceration and undisputed record establishing he failed to engage in offered services prior to his incarceration, the doctrine of implied findings is applicable here. The lack of details in the court's order does not nullify the clear and convincing evidence that DPHHS met its burden under Mont. Code Ann. § 41-3-609(1)(f). The best interests of M.S-L. should be protected despite errors that have no impact on the ultimate result.

Alternatively, should this Court find the district court's order infirm, the proper remedy would be to remand this matter to the district court with instructions to issue an amended TPR order addressing in more detail the required and applicable statutory criteria.

ARGUMENT

I. Father was afforded fundamentally fair procedures when the district court granted DPHHS's TPR petition under Mont. Code Ann. § 41-3-609(1)(f).

Father argues that the district court violated his due process rights to notice and opportunity by terminating his rights pursuant to Mont Code Ann. § 41-3-609(1)(d). (Opening Brief (Br.) at 13-16.) The record refutes Father's claim that he was denied fundamentally fair procedures. Moreover, the record demonstrates that the court's erroneous statutory reference was a clerical error that did not invalidate the court's orders.

A parent's right to the care and custody of a child is a fundamental liberty interest, which must be protected by fundamentally fair procedures. *C.B.*, ¶ 18 (in TPR proceedings, "guiding due process principle requires that the parent not be placed at an unfair disadvantage"). "Due process is not a fixed concept but a flexible doctrine which must be tailored to each situation to meet the needs and protect the interests of the parties involved." *Id.* Fundamentally fair proceedings are composed of two key factors: notice and opportunity to be heard. *Id.* "[T]o establish a claim for violation of due process, [the parent] must demonstrate how the outcome would have been different had the alleged due process violation not occurred." *Id.*

In its TPR petition and at the TPR hearing, DPHHS relied upon subsection Mont. Code Ann. § 41-3-609(1)(f) (failed treatment plan) as its legal theory to terminate both parents' rights. However, in its conclusions of law, the court erroneously included a reference to Mont Code Ann. §§ 41-3-423(2)(e) and 609(1)(d) (prior involuntary TPR)- and Mont. Code Ann. § 41-3-609(4)(a) (no treatment plan required if criteria at § 41-3-423(2)(e) met). This clerical mistake does not constitute reversible error.

The TPR transcript clearly establishes that DPHHS, the parents' counsel, the GAL, M.S-L.'s counsel, and the district court understood the theory of TPR was a failed treatment plan and not a prior involuntary termination proceeding. During the TPR hearing, DPHHS presented evidence to support its theory of TPR under Mont. Code Ann. § 41-3-609(1)(f) and offered no evidence or argument that it was relying on a prior order involuntarily terminating Father's parental rights. The parents' closing remarks also reflect that the TPR theory at issue was failed treatment plans.

Notably, following Father's closing remarks questioning whether his treatment plan had been approved, the district court reviewed the procedural history and reminded counsel that the plans had been approved. Then, in its written TPR orders, the court reiterated DPHHS's failed treatment plan legal theory under Mont. Code Ann. § 41-3-609(1)(f) in its findings of fact and in its

conclusions of law, the court stated that Father's conduct was unlikely to change within a reasonable period of time using the statutory language from Mont. Code Ann. §§ 41-3-609(1)(f)(ii) and (2).

Inclusion of the two inapplicable TPR provisions—that were neither pled by DPHHS nor argued at the TPR hearing—constitute a clerical or scrivener's error that did not infringe on Father's due process rights.

There is little doubt that the district court did not intend to terminate Father's rights based on an alleged prior involuntary termination and that the reference to the erroneous provisions was not substantive, but rather a scrivener's or clerical error. Such an error constitutes a "minor mistake or inadvertence and not from judicial reasoning or determination; esp. a drafter's or typist's technical error that can be rectified without serious doubt about the correct reading." *In re Marriage of Schaub*, 2024 MT 229, ¶ 24 n.6, 418 Mont. 297, 557 P.3d 924 (citing Black's Law Dictionary (11th ed. 2019).

The district court terminated Father's parental rights under the theory DPHHS presented in its petition at the TPR hearing. Father cannot demonstrate that if the erroneous statutory references were not included in the court's TPR order, the outcome would be any different. *In re B.J.J.*, 2019 MT 129, ¶ 13, 396 Mont. 108, 443 P.3d 488 (to establish due process violation, parent must establish outcome would have been different had the error not occurred).

Furthermore, Father was afforded fundamentally fair procedures to defend against that theory of TPR.

At all times during these proceedings, Father was represented by counsel and was never denied notice or an opportunity to respond to DPHHS's petitions. Father received notice that DPHHS sought to terminate his parental rights for a failed treatment plan. The TPR hearing was continued to ensure Father could attend the proceedings through video conference from MSP.

Father declined the opportunity to present evidence on his behalf at the TPR hearing, but cross-examined Hoerauf and offered closing remarks challenging whether timelines were met, if DPHHS met its obligation to make reasonable efforts, and if the court had approved his treatment plan. During its closing remarks, DPHHS reiterated that it was seeking TPR based on the parents' failure to successfully complete their treatment plans. DPHHS did not seek to amend its TPR theory to include a prior termination of Father's parental rights. Nor did the court terminate Father's rights pursuant to that theory.

There is no question that Father was afforded fundamentally fair procedures. *C.B.*, ¶ 18; *In re A.P.*, 2007 MT 297, ¶ 22, 340 Mont. 39, 172 P.3d 105 (fundamentally fair process provided when parent participated in a hearing on the merits while represented by counsel).

Father's secondary due process claim is essentially an attack on the sufficiency of the court's findings. (Br. at 16-20.) Father's argument is misplaced. The sufficiency of a court's findings does not implicate the fundamental fairness of a proceeding, which concerns notice and opportunity to be heard *before* the court issues its order.

The resulting TPR order issued by a court is reviewed for abuse of discretion and "will not be disturbed on appeal unless 'there is 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 M.V.R.*, 2016 MT 309, ¶ 22, 385 Mont. 448, 384 P.3d 1058 (citing *In re A.S.*, 2016 MT 156, ¶ 11, 384 Mont. 41, 373 P.3d 848). Father has not established that the district court abused its discretion when it concluded that DPHHS had established the statutory criteria at Mont. Code Ann. § 41-3-609(1)(f)(i) by clear and convincing evidence. *R.K.*, ¶ 21; *D.F.*, ¶ 22.

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

While parents possess fundamental liberty interests in their right to maintain custody of their child, those rights are constrained by the child's constitutional rights to be free from abuse and neglect. The balance is struck in the laws governing termination of parental rights, which include a statutory mandate that

primary consideration must be given to the needs of the child. Mont. Code Ann. § 41-3-609(3); *In re X.B.*, 2015 MT 153, ¶ 21, 392 Mont. 15, 420 P.3d 538.

When considering termination of a parent's rights, "[t]he paramount concern is the health and safety of the child, and the district court must give 'primary consideration to the physical, mental and emotional conditions and needs of the child.'" *In re E.Z.C.*, 2013 MT 123, ¶ 22, 370 Mont. 116, 300 P.3d 1174 (citation omitted). "[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 (citation omitted).

The district court terminated Father's parental rights pursuant to Mont. Code Ann. § 41-3-609(1)(f). To terminate a parent's rights under that provision, the following criteria must be established:

> [T]he child is an adjudicated youth in need of care and both of the following exist: (i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

Mont. Code Ann. § 41-3-609(1)(f).

If the child at issue is not an Indian child, DPHHS must prove the TPR statutory criteria by clear and convincing evidence. Mont. Code Ann.

§§ 41-3-422(5)(a)(iv), -609(1). This Court has defined clear and convincing evidence in the context of parental rights cases as:

> simply a requirement that a preponderance of the evidence be definite, clear, and convincing, or that a particular issue must be clearly established by a preponderance of the evidence or by a clear preponderance of proof.

D.B., ¶ 29 (internal citations omitted).

A. Substantial, credible evidence supported the court's finding that Father failed to successfully complete his treatment plan.

It is undisputed that Father did not complete his treatment plan and that his plan was unsuccessful. A parent successfully completes a plan when he effectuates the purposes for which the plan had been designed. *In re L.H.*, 2007 MT 70, ¶ 19, 336 Mont. 405, 154 P.3d 622; Mont. Code Ann. § 41-3-609(1)(f)(i).

Father argues that the district court erred to the extent it found Father failed to complete his treatment plan because he was incarcerated and faults DPHHS for not revising his plan upon his incarceration. (Br. at 20-22.) The record undermines Father's claim.

DPHHS drafted treatment plans for the parents after the adjudicatory hearing in February 2022. Father was on parole at the time and not in custody. DPHHS did not need to tailor his plan in anticipation of him being incarcerated.

While the plans were still pending approval, DPHHS was offering supervised visitations and directed the parents to where to obtain mental health and CD

evaluations. Father was not incarcerated and nothing prevented him from attending visits or beginning the evaluation process. However, Father did not attend all the visits and refused to follow through with the evaluations because he accused Crosby of trying to set him up. Father also continued using methamphetamine and would not work with Crosby when she attempted to discuss his plan for relapse prevention.

DPHHS sent the proposed plans to the parents and their counsel, who acknowledged receiving them as of mid-March 2022. It does not appear Father opposed the recommended tasks and goals that addressed the conduct/condition rendering him unable to safely parent. Rather, Father took issue only with the language DPHHS used to describe the reason for its intervention. Resolution of this dispute delayed approval of the plans, but did not alter the fact DPHHS was offering services or the fact Father was subject to conditions of parole which included abstinence from drug use.

However, despite the court approving his treatment plan in June 2022 and him being subject to parole conditions, Father failed to submit to UA testing, regularly attend visits, obtain either a CD or mental health evaluation, or maintain contact with Crosby. From June 2022 until his parole was revoked and he was charged with planning to distribute methamphetamine, Father faced no barriers that prevented him from working on the tasks set forth in his plan.

Father failed to avail himself of the opportunities and services he needed to complete his treatment plan. "[A] parent has an obligation to avail herself of services arranged or referred by [DPHHS] and engage with [DPHHS] to successfully complete her treatment plan." *In re R.J.F.*, 2019 MT 113, ¶ 38, 395 Mont. 454, 443 P.3d 387 (citations omitted).

Father's own actions hampered his ability to complete his treatment plan. As repeatedly held by this Court, complete compliance by the parents with a treatment plan is required; partial or even substantial compliance is insufficient under Mont. Code Ann. § 41-3-609(1)(f)(i). *X.B.*, ¶ 28. Contrary to Father's arguments on appeal, DPHHS's lack of contact with him *after* his parole was revoked and he was incarcerated on new felony drug charges did not cause Father to fail his treatment plan. (Br. at 20-21.) But for Father's decision to engage in criminal conduct, he would have had access to service providers and programs to help him achieve the goals of his treatment plan. The record also refutes Father's claim that he was "actively" engaged with his treatment plan prior to his incarceration. (Br. at 21.)

While Crosby testified in January 2023 that Father and Mother had better communications as of late, Father had continued using methamphetamine and was found in possession of a large quantity of methamphetamine. Father's continued criminal behaviors resulted in him being incarcerated for violating his parole and

he was charged with felony possession of dangerous drugs with intent to distribute. Father's argument that DPHHS should have revised his treatment plan to account for his incarceration is not compelling given that Father was not incarcerated for about a year and chose not to engage in services and then returned to criminal behaviors that resulted in his long-term incarceration for parole violations and a new felony.

There was sufficient, credible evidence to support the court's finding that Father failed to complete his treatment plan. *X.B.*, ¶ 28. There was also sufficient evidence to establish Father's treatment plan had not been successful. A parent successfully completes a plan when he or she effectuates the purposes for which the plan had been designed. *In re I.B.*, 2011 MT 82, 360 Mont. 132, 255 P.3d 56 (citing Mont. Code Ann. § 41-3-609(1)(f)(i)).

Finally, Father's argument that the court inappropriately found that a treatment plan was not required based on his incarceration misstates the court's order. (Br. at 21.) In its conclusions of law that found no treatment plan was required, the district court cited to Mont. Code Ann. § 41-3-609(4)*(a)*, not (4)(c). Nor did the court improperly state that Father was unable to complete his plan *because* he was incarcerated. *See In re A.L.P.*, 2020 MT 87, ¶ 23, 399 Mont. 504, 461 P.3d 136 (court cannot find plan failed based solely on parent's incarceration when DPHHS proposed treatment plan knowing parent was incarcerated).

The district court did not misapprehend the evidence concerning Father's failure to fully comply with his treatment plan or the fact the plan was unsuccessful. Nor did its conclusions leave a definite and firm conviction that a mistake has been committed. A district court's decision is presumed correct and "will not be disturbed on appeal unless there is a mistake of law or a finding of fact not supported by substantial evidence that would amount to a clear abuse of discretion." *A.B.*, ¶ 23.

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

When "determining whether the conduct or condition of a parent is unlikely to change within a reasonable time [as required under Mont. Code Ann. § 41-3-609(1)(f)(ii)], 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) (emphasis added). The district court found both of these factors were met. (Doc. 125 at 3.)

"'Conduct or condition' means circumstances or reasons causing the treatment plan to be unsuccessful." *In re M.T.*, 2020 MT 262, ¶ 32 n.6, 401 Mont. 518, 474 P.3d 820 (citing *J.B.*, ¶ 22). *See also*, Mont. Code Ann. § 41-3-102(34) (2023) (A treatment plan is a court order that specifies the actions a parent must

take to resolve the conditions that resulted in the need for protective services for the child.). The inquiry is not "whether a parent has made progress or would make some progress in the future." *A.B.*, ¶ 27. 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." *Id.* 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." *Id*.

Finally, "[t]he success of the remedial services and rehabilitative programs concomitantly depends on the parents' ability and willingness to develop the necessary skills to provide their child with a safe living environment." *I.B.*, ¶ 41. A parent's failure to complete a treatment plan is not necessarily the result of an inappropriate plan or lack of efforts from service providers; it is often the result of a parent's failure to address the problems the treatment plan was designed to overcome. *In re M.M.*, 271 Mont. 52, 60, 894 P.2d 298, 303 (1995).

The district court's determination that the conduct/condition rendering Father unfit to parent was unlikely to change in a reasonable period of time was supported by substantial evidence. The record is undisputed that instead of making positive steps towards addressing the goals of his treatment plan, Father continued

abusing methamphetamine and engaged in criminal behaviors that caused him to be unavailable to parent M.S-L. In its findings, the court explained it gave "primary consideration to the physical, mental, and emotional conditions and needs of the child." (Doc. 125 at 3.) *See* Mont. Code Ann. § 41-3-609(3).

In its conclusions of law, the court referenced Father's CD issues relative to his conduct/condition not changing in a reasonable period of time.[5] *See* Mont. Code Ann. § 41-6-609(2)(c). Although not explicitly noted in the findings, it is undisputed that Father had been incarcerated for more than a year, which is another relevant factor when evaluating the likelihood of a parent's conduct/condition changing in a reasonable period of time. *See* Mont. Code Ann. § 41-6-609(2)(d).

It is abundantly clear from the record that Father failed to remotely resolve the conduct/conditions that resulted in DPHHS intervention identified in his treatment plan. Father did not improve his limited parenting skills. Father continued to resist CD treatment and instead kept using dangerous drugs. Father did not comply with the conditions of parole and failed to remain law abiding, causing him to once again become unavailable to parent because he was incarcerated.

[5]The court also referenced Father's emotional/mental health in its conclusions of law. (Doc. 125 at 4.) The State acknowledges that there was no evidence in the record indicating Father suffered from a mental/emotional illness that made his ability to change in a reasonable period of time unlikely.

The district court did not misapprehend the substantial evidence that established the conduct/condition rendering Father unable/unwilling to parent was not going to change in a reasonable period of time. *R.K.*, ¶ 21. Reviewing the record in a light most favorable to the prevailing party, Father has not met his burden to establish the district court's conclusion of law was incorrect. *J.B.*, ¶ 10; *D.F.*, ¶ 22.

C. Alleged inadequate reunification efforts did not impede Father's ability to demonstrate improvements in his ability to parent M.S-L.

Pursuant to Mont. Code Ann. § 41-3-423, in most DN cases DPHHS must provide reasonable efforts to preserve and reunify the family, which includes developing and implementing a treatment plan "reasonably designed to address the parent's treatment and other needs precluding the parent from safely parenting." *In re R.L.*, 2019 MT 267, ¶ 22, 397 Mont. 507, 452 P.3d 890. "What constitutes reasonable efforts is not static or determined in a vacuum, but rather is dependent on the factual circumstances of each case—the totality of the circumstances—including a parent's apathy and/or disregard for the Department's attempts to engage and assist the parent." *R.L.*, ¶ 22; *In re A.G.*, 2016 MT 203, ¶ 20, 384 Mont. 361, 378 P.3d 1177 ("Reasonable efforts must be reasonable under the circumstances."). When reviewing DPHHS's efforts to reunite a family, "[t]he court must evaluate each case individually and that analysis is highly

fact-dependent," however, DPHHS "is not required to make 'herculean efforts.'" *M.V.R.*, ¶ 26. *See also*, *R.L.*, ¶ 20; *K.L.*, ¶ 41.

Father faults the district court for not providing a detailed account of DPHHS's efforts in its TPR order. (Br. at 18-20.) However, this Court has consistently held that whether reasonable efforts were made "is not, itself, a required finding for termination" and "not appealable on its own." *In re C.M.G.*, 2020 MT 15, ¶ 13 n.3, 398 Mont. 369, 456 P.3d 1017 (citing *In re C.M.*, 2019 MT 227, ¶ 22, 397 Mont. 275, 449 P.3d 806).

Rather, this Court has held that consideration of DPHHS's efforts is relevant at TPR only to the extent the alleged lack of efforts may have influenced the likelihood a parent may change in a reasonable period of time. *C.M.*, ¶¶ 16, 22 (evaluation of efforts may be important in certain cases as a "predicate for finding" that a parent's conduct/condition is unlikely to change in a reasonable period of time); *C.M.G.*, ¶ 14 (reasonable efforts may be addressed as part of an appeal from the requisite statutory findings). As this Court explained, while the capacity for a parent to change may be impacted by DPHHS's efforts, in other circumstances, "a parent's unlikelihood of change may well be unaffected" by allegedly lacking efforts. *C.M.*, ¶ 22. Thus, to "call into question" the court's findings under Mont. Code Ann. § 41-3-609(1)(f)(ii) relative to the quality of DPHHS's efforts, the

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

The only "evidence" the court heard about DPHHS's alleged lacking evidence was through cross-examination of Hoerauf. Father did not testify about how he could have demonstrated the capacity to change had DPHHS offered additional services or made referrals for CD and mental health evaluations prior to May 2022. Nor did Father present any evidence that he had unforeseen barriers or problems that prevented him from participating in services before his parole was revoked. *See In re K.A.*, 2016 MT 27, ¶ 26, 382 Mont. 165, 365 P.3d 478.

The obligation to engage in efforts to reunify is not borne only by DPHHS. It is the parents' abilities and efforts to learn skills and follow recommendations that determines the success of the offered services. *See I.B.*, ¶ 41. "[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." *R.L.*, ¶ 20 (citations omitted). "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." *In re A.M.G.*, 2022 MT 175, ¶ 28, 410 Mont. 25, 517 P.3d 149.

Father's complaints about DPHHS's efforts are undermined by his decisions and actions that led to his long-term confinement. *A.M.G.*, ¶ 28 (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). Father is correct that neither Crosby nor Hoerauf visited him at the jail after his parole was revoked and new charges were filed against him. However, Father has not established how their lack of contact rendered him incapable of demonstrating the conditions and his conduct were likely to change. *See* C.M., ¶ 22 ("parent's unlikelihood of change may well be unaffected" by allegedly lacking efforts).

Viewing the evidence in the light most favorable to DPHHS, Father has not demonstrated that the district court "acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice" when it concluded that DPHHS had met its burden and that termination of Father's parental rights was in M.S-L.'s best interests. *R.K.*, ¶ 21.

III. Alleged insufficiency of the court's written order does not constitute reversible error.

"Since 'a natural parent's right to care and custody of a child is a fundamental liberty interest,' a district court 'must adequately address each applicable statutory requirement' before terminating an individual's parental rights." *B.J.J.*, ¶ 21 (citations omitted).

Father is correct that the court's findings of fact lack details on how Father failed to complete his plan. (Br. at 17-18.) However, as established above, the record clearly shows that Father failed to complete his plan and that the conduct/conditions rendering him unfit/unable to parent were unlikely to change in a reasonable period of time.

Under the specific facts of this case, particularly Father's inmate status for the 18 months leading up to the TPR hearing, the doctrine of implied findings is appropriate to apply here. "This doctrine holds that where 'findings are general in terms, any findings not specifically made, but necessary to the determination, are deemed to have been implied, if supported by the evidence.'" *J.B.*, ¶ 25 (citation omitted). *See also In re D.A.D.*, 2021 MT 2, ¶ 17, 402 Mont. 399, 478 P.3d 809; *A.S.*, ¶ 21.

The facts and statutory provisions at issue here are not akin to those presented in *In re L.A.G.*, 2018 MT 255, ¶ 25, 393 Mont. 146, 429 P.3d 629, where this Court declined to apply the doctrine of implied findings. In *L.A.G.*, the court's TPR order that involved Indian Children, only mirrored the language of Mont. Code Ann. § 413-609(1)(f)- and completely omitted any reference to the required statutory requirements under ICWA. Here, M.S-L. was not an Indian Child and the court's order mirrored the required statutory language for TPR under the theory of a failed treatment plan.

Any lack of findings in the court's TPR order does not alter the record that establishes by clear and convincing evidence that Father failed to complete his treatment plan and the conduct/conditions rendering him unfit/unable to parent were unlikely to change. And, as this Court has repeatedly stated, children's best interests should be protected despite procedural errors that have no impact on the ultimate result. *A.L.P.*, ¶ 27.

Nonetheless, should this Court find the court's orders insufficient, in light of the evidence presented and the fact Father remains incarcerated, rather than reverse the court's TPR order, the appropriate remedy would be to issue an order remanding for additional findings. *See In re H.T.*, 2015 MT 41, ¶ 43, 378 Mont. 206, 343 P.3d 159 (remanded for application of correct standard of proof under ICWA); *In re B.J.T.H.*, 2013 MT 366, 373 Mont. 85, 314 P.3d 911 (remanded for further findings regarding issue of mother's relinquishment counseling); *In re D.B.*, 2007 MT 246, ¶ 41, 339 Mont. 240, 168 P.3d 691 (remanded to trial court to apply proper statutory standards and provide specific factual findings as required by statute); and *In re R.B.*, 217 Mont. 99, 703 P.2d 846 (1985) (Court remanded case for additional findings of fact and conclusions in light of the specific requirements regarding issue of abandonment and/or appropriateness of treatment plan).

Remanding, rather than reversing, this matter furthers the guiding principle in DN matters: "the district court is bound to give primary consideration to the physical, mental, and emotional conditions and needs of the [child], consequently, the best interests of the [child] are of paramount concern in a parental rights termination proceeding and take precedence over the parental rights." *In re K.J.B.*, 2007 MT 216, ¶ 29, 339 Mont. 28, 168 P.3d 629; Mont. Code Ann. § 41-3-101(7).

As of the TPR hearing, M.S-L. had been in foster care for 30 months (since she was 8 days old). While the Dependent Neglect provisions "ensure that parents receive fundamentally fair process in termination proceedings, 'the child's health and safety are of paramount concern'[,] [and] the district court's foremost priority is the best interests of the child." *In re X.M.*, 2018 MT 264, ¶ 21, 393 Mont. 210, 429 P.3d 920 (citing Mont. Code Ann. § 41-3-101(7)); *K.L.*, ¶ 15 (The children's best interests "are of paramount concern in a parental rights termination proceeding and take precedence over the parental rights."); *A.B.*, ¶ 38 ("A child's need for a permanent, stable, and loving home supersedes a parent's right to parent the child.").

As this Court has consistently recognized, children are not supposed to suffer while waiting for a parent to become the stable caregiver they need. *See, e.g.*, *In re I.K.*, 2018 MT 270, ¶ 12, 393 Mont. 264, 430 P.3d 86 ("Children need not be left to twist in the wind when their parents fail to give priority to their

stability and permanency."); *In re A.S.*, 2004 MT 62, ¶ 17, 320 Mont. 268, 87 P.3d. 408 ("While parents dawdle, the clock ticks for children until it is unreasonable to wait any longer."); *In re L.S.*, 2003 MT 12, ¶ 15, 314 Mont. 42, 63 P.3d 497 ("Children cannot always afford to wait for their parents to be able to parent.").

CONCLUSION

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

Alternatively, this Court should remand this matter to the district court with instructions to issue an amended order with more detailed findings terminating Father's parental rights under Mont Code Ann. § 41-3-609(1)(f).

Respectfully submitted this 29th day of November, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,212 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

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