

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. OP _____

T.C.,
Petitioner,

v.

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE
COUNTY, THE HONORABLE MARY JANE KNISELY, PRESIDING JUDGE
Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

Original Proceeding arising from *In the Matter of C.R.C.*, Cause No. DN 24-238,
Montana Eighth Judicial District Court, Yellowstone County, Hon. Mary Jane
Knisely, District Court Judge

Craig Wahl
Wahl Law Firm, PLLC
2722 3rd Ave. North, Ste. 400
Billings, MT 59101
Telephone: 406-586-9714
craig@craigwahlfirm.com

Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
FACTS SUPPORTING JURISDICTION.....	4
ISSUES EXPECTED TO BE RAISED.....	9
STANDARD FOR ACCEPTING JURISDICTION.....	10
SUMMARY ARGUMENT OF MERITS.....	10
CONCLUSION.....	17
CERTIFICATE OF SERVICE.....	18
CERTIFICATE OF COMPLIANCE.....	19
LIST OF EXHIBITS.....	20

TABLE OF AUTHORITIES

State Cases

State ex rel. Long v. Justice Court, Lake County, 2007 MT 3, ¶ 21.

Statutes

Montana Code Ann. §§ 41-3-427(1)(d) and (2)(h) (2023).

Mont. Code Ann. §§ 41-3-422(1)(a)-(1)(b) (2023).

Mont. Code Ann. §§ 41-3-432(1)(a) and (c) (2023).

Mont. Code Ann. §§ 44-5-303(1) and (3) (2023).

Rules

Mont. Rule of App. Pro. Rule 14(3).

FACTS SUPPORTING JURISDICTION

I. SUMMARY.

This Petition seeks Supervisory Control of Montana Thirteenth Judicial District Court, Yellowstone County, Hon. Mary Jane Knisely, concerning the Court's apparent decision to proceed with Temporary Legal Custody proceedings despite an earlier oral pronouncement amending the relief sought by the Montana Department of Public Health and Human Services, Child and Family Services Division (Department) in its Petition for Emergency Protective Services, Adjudication of Child as Youth in Need of Care and Temporary Legal Custody (Petition) from Temporary Legal Custody to Temporary Investigative Authority at the Emergency Protective Services (EMS) Hearing¹.

Father further disputes the Court vacating the Show Cause hearing set for October 3, 2024, and setting an Adjudicatory, Dispositional, and Treatment Plan Hearings without due process to contest Show Cause.

¹ The Department filed its Petition for Emergency Protective Services, Adjudication as a Youth in Need of Care and Temporary Legal Custody on September 23, 2024. Judge Harris presided over the Emergency Protective Service Hearing on September 24, 2024 and amended the relief sought by the Department to Temporary Investigative Authority and ordered the return of the child to Father. The amendment was presumably made under M.C.A. § 41-3-422(1)(b) or M.C.A. § 41-3-427(1)(d) however, Judge Harris did not specify what authority he was using to modify the relief sought in the Petition. Father's attorney also made argument for dismissal of the Petition which is provided for under M.C.A. § 41-3-427(1)(d).

Father also disputes the Court's decision to enter its Order For Criminal Justice Information after only one business day² and without giving Father an opportunity to object to the Department's Motion for Criminal Justice Information. Pursuant to the Order for Criminal Justice Information, the Department was given authority to collect essentially all the parents' confidential criminal justice information regardless of time, offense, allegations or any nexus to the immediate DN case.

Father contends the Court's failure to recognize Judge Harris' oral pronouncement amending the Department's requested relief from Temporary Legal Custody (TLC) to Temporary Investigative Authority (TIA), the Court's failure to allow Father an opportunity to file a response to the Department's Motion for Criminal Justice Information and the Court's decision to proceed to hearing on Adjudication, Disposition and Treatment Plans without conducting a contested Show Cause Hearing is an abuse of discretion and error of law.

The Court's decisions also violate Father's due process rights, right to parent and privacy rights and as such, supervisory control is appropriate to ensure the protection of the parents' rights in this case as well as to enforce Judge Harris' oral pronouncement at the Emergency Protective Services Hearing.

² The Department's Motion for Criminal Justice Information was filed on Friday, October 11, 2024 and the Court issued its order on Tuesday, October 15, 2024. Monday, October 14, 2024 was Columbus Day, a Federal Holiday.

II. BACKGROUND ON RELEVANT ISSUES.

Father was pulled over for a traffic stop on or about August 23, 2024, in Forsyth, Montana by a Highway Patrolman. Father consented to a search of his vehicle when asked by the Patrolman. During the search of the vehicle's center console, the Patrolman discovered pieces of burnt tinfoil with residue from smoking fentanyl. A used syringe was also found in the console. The Patrolman conducted field sobriety tests and determined Father was not under the influence of any substances. Father was not permitted to drive away from the scene of the stop however as he had a suspended drivers' license and expired registration on the vehicle. Father's child that is the subject of the immediate Dependent Neglect proceeding was in his vehicle at the time of the stop. Father and the child were later picked up by Father's friend.

A report was made to the Department three days later, on or about August 26, 2024, which resulted in the immediate case. Father was served with a copy of the Department's Petition and Affidavit in Support of Petition for Emergency Protective Services, Adjudication of Child as a Youth in Need of Care and Temporary Legal Custody (Affidavit) on September 24, 2024. The Court conducted an Emergency Protective Services (EMS) Hearing on September 24, 2024.

At the EMS Hearing, Father's attorney objected to the Department's Petition and EMS being granted and requested the State's Petition be either dismissed or that the relief sought by the Department's Petition be amended from TLC to TIA. Father's attorney argued that the Department's Petition and Affidavit did not allege a sufficient threat of harm to the child to warrant TLC and that the Pleadings failed to establish probable cause for TLC. Father's attorney argued the Department's Petition and Affidavit largely focused on Father's allegedly argumentative nature towards the Department and was void of any significant nexus between Father's alleged drug use and any risk of harm to his child.

Judge Harris denied Father's attorney's request to dismiss the Petition at the EMS Hearing. However Judge Harris agreed the Petition and Affidavit were insufficient for TLC and granted Father's attorney's request to amend the relief sought from TLC to TIA. See *Exhibit A*. A written order amending the Petition was not entered. However, the parties and Judge Knisely acknowledged the amendment to TIA on the record in subsequent hearings including the Status Hearing conducted on October 7, 2024. See *Exhibit B and Exhibit C*.

The Department filed its Motion to Set Adjudicatory, Dispositional, and Treatment Plan Hearings on October 2, 2024. See *Exhibit D*. The Court issued its Order Setting Adjudicatory, Dispositional, and Treatment Plan Hearings one day later on October 3, 2024, without giving the undersigned an opportunity to object

to the Motion or even recognize that Adjudicatory, Dispositional and Treatment Plan hearings were set without even holding a contested Show Cause hearing as was requested by Father's attorney on the record at the EMS Hearing. See *Exhibit E*.

At the October 7, 2024, Status Hearing the Department's counsel requested that the Court reinstate the Petition for Temporary Legal Custody. *Exhibit C*.

Father's attorney objected to the oral motion and requested that if any such request was going to be made that it be made in writing to give Father an opportunity to file an appropriate response and for the matter to be possibly heard if necessary. The Court did not rule on the Department's request but rather advised the parties that Temporary Investigative Authority was continued and concluded the hearing. *Id.*

The Department never filed supplemental pleadings for TLC. As such, the only pleading on file is the original Petition and Affidavit which was amended by Judge Harris at the EMS Hearing on September 24, 2024, from a Petition for TLC to a Petition for TIA. No written request for a contested Show Cause hearing was filed by Father's attorney because a Show Cause hearing was not necessary under Judge Harris' oral order issuing TIA and the Department never filed a supplemental Petition for TLC or a Motion to reinstate the TLC proceedings. Father's counsel did indicate on the record at the EMS Hearing on September 24, 2024 and at the

Status Hearing on October 7, 2024 that Father intended to contest at any future Show Cause Hearing. Father and his attorney proceeded under the valid TIA oral pronouncement since its issuance by Judge Harris on September 24, 2024.

The Department on the other hand has simply elected to ignore Judge Harris' TIA modification. The Department has not filed an updated Petition for Temporary Legal Custody with additional allegations or attempted to alleviate its deficiencies in any way. The Court has now set Adjudication, Disposition and Treatment Plan Hearings even though there is not a valid Petition for TLC on file and no Show Cause hearing was ever held. See *Exhibit F*.

The case is now on day 94 and the original TIA has expired. The only matter currently before the Court is the Adjudication, Disposition and Treatment Plan hearings scheduled for Monday, December 30, 2024, as the original November 18, 2024 setting was continued. Father has not been given due process to contest Show Cause nor has a Show Cause hearing been held. Father also has not been given due process to contest the Court's consideration of Adjudication and Disposition despite this only being a TIA case pursuant to Judge Harris oral pronouncement on September 24, 2024.

ISSUES EXPECTED TO BE RAISED

1. Once the relief sought in a Petition for Temporary Legal Custody is amended to Temporary Investigative Authority may the District Court allow the

Department to proceed with Temporary Legal Custody proceedings even if the ninety day Temporary Investigative Authority period has expired and the Department did not file any documents to reinstate Temporary Legal Custody proceedings?

2. May the District Court allow the Department to proceed to Adjudication, Disposition and Treatment Plan hearings without conducting a Show Cause Hearing?

3. May the District Court issue an order for the release of Confidential Criminal Justice Information in a Dependent Neglect case without giving the parents an opportunity to respond to the Department's Motion?

STANDARD FOR ACCEPTING JURISDICTION

This Court is empowered to exercise supervisory control when “urgency or emergency factors exist, making the normal appeals process inadequate, when the case involves purely legal questions, and when . . . the other court is proceeding under a mistake of law and is causing a gross injustice.” M. R. App. P, 14(3); State ex rel. Long v. Justice Court, Lake County, 2007 MT 3, ¶ 21.

SUMMARY ARGUMENT OF THE MERITS

1. Judge Harris’ Oral Pronouncement of Temporary Investigative Authority Must be Enforced.

At the EMS Hearing on September 24, 2024, Father’s Attorney objected to EMS and requested either the dismissal of the Department’s Petition or modifying

the relief requested to TIA. Judge Harris denied Father's Attorney's request to dismiss but granted his request to modify the relief sought in the Petition from TLC to TIA. See *Exhibit A*.

Montana Code Annotated § 41-3-427 provides in relevant part:

41-3-427. *(Temporary)* Petition for immediate protection and emergency protective services -- evidence and consideration of harm of removal -- order -- service.

...

(1)(d) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. **If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause** or, if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, clear and convincing evidence **to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.**

...

(2) Pursuant to subsection (1), if the court finds probable cause...the court may issue an order for immediate protection of the child. ... If the court finds probable cause ... the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

...

(h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

Montana Code Ann. §§ 41-3-427(1)(d) and (2)(h) (emphasis added) (2023).

Mont. Code Ann. § 41-3-422 provides in relevant part:

41-3-422. (*Temporary*) Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

Mont. Code Ann. §§ 41-3-422(1)(a)-(1)(b) (emphasis added) (2023).

The Department contends Judge Harris lacked the ability to amend the relief it sought in its Petition and as such the Court can proceed with TLC without as much as a Show Cause hearing. The Court has set Adjudication, Disposition and Treat Plan Hearings without giving Father an opportunity to dispute the TLC and without giving any deference to Judge Harris' oral pronouncement amending the relief sought in the Petition from TLC to TIA.

The plain language in Mont. Code Ann. § 41-3-427(1)(d) allows the Court to dismiss a Petition lacking probable cause at EMS. The language in Mont. Code Ann. § 41-3-427(2)(h) allows the Court at EMS to order any other temporary disposition it feels appropriate to serve the best interests of the child. The plain language in Mont. Code Ann. § 41-3-422(1)(b) also provides that the petition may

be modified for different relief at any time within the discretion of the Court.

Section 41-3-422 provides no requirements for modification, only that the petition may be modified for different relief at any time within the discretion of the Court.

Accordingly, Judge Harris could have simply dismissed the Department's Petition at the EMS Hearing. Rather than on outright dismissal of the Department's Petition, Judge Harris elected to modify the relief from TLC to TIA. Following the EMS Hearing the assigned Judge has abused its discretion by permitting the Department to proceed with TLC without requiring the filing of a new Petition or providing Father with any opportunity or due process to dispute the Department's decision to ignore the TIA order. The District Court is proceeding under a mistake of law which will result in a gross injustice and great expense to Father if he is not given due process to dispute the reinstatement of the TLC proceedings and the Department is not required to file supplemental pleadings reinstate the pleadings.

2. The Court Cannot Proceed to Adjudication, Disposition and Treatment Plan Hearings without First Conducting a Show Cause Hearing.

Judge Harris issued his order for a ninety-day TIA on September 24, 2024. The TIA expired on December 23, 2024. The Court never held a Show Cause Hearing within the ninety-day TIA period. Rather, the Department motioned for the Court to set Adjudication, Disposition and Treatment Plan Hearings and the

Court set said hearings for November 18, 2024, then reset the hearings for December 30, 2024. Montana's Show Cause Hearing statute provides:

41-3-432. *(Temporary)* Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

...

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

Mont. Code Ann. §§ 41-3-432(1)(a) and (c) (2023).

At no time has the Court held a Show Cause hearing and allowed Father to object to TLC. Rather the Court jumped straight to Adjudication, Disposition and Treatment Plan Hearings without holding a Show Cause Hearing. Father contends this is an abuse of the Court's discretion, a mistake of law and violates Father's due process rights warranting supervisory control.

3. Granting the Department's Motion for Criminal Justice Information Violated Father's Due Process and Privacy Rights.

The Department filed its Motion for Criminal Justice Information on Friday, October 11, 2024. Monday, October 14, 2024 was Columbus Day, a federal holiday. The Court filed its Order for Criminal Justice Information on Tuesday, October 15, 2024. Father's attorney was given one business day to respond to the Department's Motion. The Motion and Order are concerning in their breadth and

lack of limitations on remoteness or classifications of offenses, allegations or documents. The Order requires the release of essentially all criminal justice information in the possession of law enforcement, the Department of Corrections, and court clerks. The Order goes so far as to require Father to sign releases for “any and all criminal justice information, including, but not limited to information compiled by the federal National Crime Information Center (NCIC).” See *Exhibit E*.

The Department’s boilerplate Motion does not articulate legitimate reason for such a broad request, that the requests are reasonably tailored to lead to the discovery of admissible evidence or facts illustrating a compelling state interest that outweighs the privacy rights of Father. See *Exhibit D*. The Motion also contains no request for Father to sign any releases for the release of confidential criminal justice information, yet the Court’s Order provides such a mandate. *Id.* The Motion also makes no mention of requesting the disclosure of federal or NCIC records, yet the Order provides for a mechanism of the release of these documents as well. *Id.* As such, the Court’s Order is even broader than the extremely broad disclosures sought in the Motion granting the release of records that were not even included in the Motion.

Father is also concerned that the Department’s Motion is so broad as to explicitly request the disclosure of records such as Father’s juvenile records, “jail

visitation records and recordings; records pertaining to behavior in jail, prison or under the Department of Corrections or Montana State Prison...” without any attempt to justify the disclosures.

The Department’s Motion was filed pursuant to Mont. Code Ann. § 44-5-303 which provides in relevant part:

44-5-303 (Effective October 1, 2021) Dissemination of confidential criminal justice information — procedure for dissemination through court.

(1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a chief of a governmental fire agency organized under Title 7, chapter 33, or fire marshal concerning the criminal investigation of a fire.

...

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

...

Mont. Code Ann. §§ 44-5-303(1) and (3) (2023).

Here, the Court’s Order has no limitations on disseminating the information through discovery. Accordingly, any criminal justice information received by the Department will be automatically shared with all parties in the immediate case whether relevant to the immediate proceedings and regardless of how old the

records may be. Father contends this too is a mistake of law warranting supervisory control.

CONCLUSION

Pursuant to the foregoing, Father respectfully requests that this Court exercise supervisory control and direct the District Court to issue a written Order amending the Department's Petition to a Petition for Temporary Investigative Authority. Father further respectfully requests that this Court order that the District Court issue an order Nunc Pro Tunc amending its Order for Criminal Justice Information and directing the Department to not disseminate any confidential criminal justice information without an order from the District Court specifically authorizing the release of any such Criminal Justice Information.

RESPECTFULLY SUBMITTED this 27th day of December, 2024.



Craig Wahl
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of December, 2024, I have filed a true and accurate copy of the foregoing PETITION FOR WRIT OF SUPERVISORY CONTROL with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing PETITION FOR WRIT OF SUPERVISORY CONTROL on the following by the method indicated below:

Via Hand Delivered:

Judge Mary Jane Knisely
Thirteenth Judicial District Court
217 North 27th Street,
Billings, MT 59101

Department of Health and Human Services, Child and Family Services
2525 4th Avenue North, Ste. 309
Billings, MT 59101

Via eService through the Montana Courts E-Filing System and E-mail:

Amanda Tiernan- Attorney for the Department
217 North 27th Street,
Billings, MT 59101

Heidi He Does It- attorney for the Child
PO Box 2008
Red Lodge, MT 59068

Juli Pierce- GAL
301 North 27th Street, Suite 300
Billings, MT 59101

Mykaila Berry- Attorney for Mother
Office of the State Public Defender
207 N. Broadway, Ste. 201
Billings, MT 59101

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced (except that quoted and indented material are single spaced); with left, right, top and bottom margins of one inch each; and that the word count for this Petition as calculated by Microsoft Word is 3,846 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, or any appendix.

DATED this 27th day of December, 2024.



Craig Wahl

LIST OF EXHIBITS

Court Minutes EPS Hearing, September 24, 2024.....	Exhibit A
Order Setting Status Hearing on Temporary Investigative Authority.....	Exhibit B
Court Minutes Status Hearing, October 7, 2027.....	Exhibit C
Motion for Criminal Justice Information.....	Exhibit D
Order for Criminal Justice Information.....	Exhibit E
Order Setting Adjudicatory, Dispositional, and Treatment Plan Hearings..	Exhibit F

CERTIFICATE OF SERVICE

I, Craig Wahl, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 12-27-2024:

Mary Jane Knisely (Respondent)
Thirteenth Judicial District Court
217 North 27th Street
Billings MT 59101
Representing: Self-Represented
Service Method: Conventional

Amanda Tiernan (Govt Attorney)
217 N 27th Street
Billings MT 59101
Service Method: eService
E-mail Address: atiernan@yellowstonecountymt.gov

Heidi He Does It (Attorney)
P.O. Box 2008
Red Lodge MT 59068
Service Method: eService
E-mail Address: heidi@hkadamslaw.com

Juli Marie Pierce (Attorney)
301 N. 27th St., Suite 300
Billings MT 59101
Service Method: eService
E-mail Address: juli@julipierce.com

Mykaila A. Berry (Attorney)
207 N 28TH ST
BILLINGS MT 59101-1951
Service Method: eService
E-mail Address: Mykaila.Berry@mt.gov

Electronically Signed By: Craig Wahl
Dated: 12-27-2024