
IN THE SUPREME COURT FOR THE STATE OF MONTANA

No. DA 24-0514

IN THE MATTER OF:

D.L.L. AND J.T.L.,

Youths In Need Of Care.

ANDERS BRIEF

On Appeal from Montana's Eighth Judicial District Court,
Cascade County, The Honorable David J. Grubich Presiding

APPEARANCES:

ATTORNEYS FOR FATHER AND
APPELLANT:

GREGORY D. BIRDSONG
Birdsong Law Office
P.O. Box 4051
Santa Fe, NM 87502

ATTORNEYS FOR PLAINTIFF AND
APPELLANT:

Austin Miles Knudsen
Kathryn Fey Schulz
Montana Attorney General's Office
P.O. Box 201401
Helena, MT 59620-1401

Joshua A. Racki
Cascade County Attorney's Office
121 4th Street North
Suite 2A
Great Falls, MT 59401

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STATEMENT OF THE ISSUE

Whether, pursuant to the criteria set forth in *Anders v. California*, 386 U.S. 738 (1967) and Mont. Code Ann. §46-8-103, counsel for Appellant should be permitted to withdraw from this cause of action.

STATEMENT OF THE CASE

Father And Appellant B.L. appeals the Order, entered August 5, 2024 by Montana's Eighth Judicial District Court, Cascade County, terminating his parental rights to J.T.L. (8 years old) and D.L.L. (5 years old). (Appendix A, DC259)¹ The rights of the child's birth were also terminated. (*Id.*)

Petition for EPS Termination of Parental Rights – September 24, 2021.

The case originated September 24, 2021, when the Cascade County Attorney filed a Petition for Emergency Protective Services (EPS), Termination of Parental Rights and Permanent Legal Custody on behalf of the Department of Health and Human Services (the Department) for the children (DC01). and supported by the Affidavit of CPS Christa Waliezer in which she stated the removal was necessary because of Birth Mother E.C.'s drug use and her allegations B.L. had sexually molested one of the children. (*Id.*) CPS McKay cited a long history of Department involvement with the family, between 2016 and August 2021 including three prior

¹ This appeal encompasses two district court causes of action: DN-21-198 and DN-21-199. Unless otherwise noted, citations to the record from below will refer to DN-21-198.

removals for concerns about substance abuse, neglect, endangerment and incarceration of B.L. (*Id.*) The Department advised the district court the children were not believed to be Native American and the Indian Child Welfare Act (ICWA) did not apply. (*Id.*)²The Department requested immediate termination of parental rights due to aggravated circumstances arising from allegations B.L. sexually abused one of the children. (*Id.*) The district court granted EPS and set a show cause hearing. (DC04)

Show Cause Hearing – November 3, 2021. November 3, 2021 the district court held the show cause hearing. (DC017) B.L. stipulated to adjudication of the children as Youths in Need of Care (YINC), but denied there was probable cause for termination of his parental rights. (*Id.*, 11/3/2021 Hrg. Tr. 6:10, et seq.) The district court adjudicated J.T.L. and D.L.L. as YINC and awarded the Department TLC, and Temporary Investigative Authority (TIA), entering the order November 5, 2021. (DC017, DC020)

B.L.’s First Motion for Dismissal and Placement – November 8, 2021. November 8, 2021 B.L. filed a Motion for Placement Hearing requesting that, since E.C.’s allegations against him had been proven false, the children be returned to his care. (DC022) January 14, 2022, the district court held a hearing on B.L.’s

² The children were subsequently accepted for enrollment in the Little Shell Chippewa Indian Tribe of Montana, and ICWA standards were put in place. (DC041)

motion. Despite expressing concerns about B.L.'s drug use, CPS McKay testified he had cooperated with testing and that hair tests, UA's and drug patches beginning September 2021 had consistently tested negative. (1/4/2022 Hrg. Tr. 11:14, et seq.)

While the district court made no findings of drug use by B.L., it noted concerns regarding E.C.'s drug use, the condition of the home, the volatile relationship between the parents and – most importantly – the parents' history with the Department.

This is the fourth time the children have been removed. They were removed multiple times, the last one ending last year and then restarting again last year with this -- with the removal that's before the Court today, this matter.... And so... when there's... a repeated history of problems with the family, safety concerns with the family that are still continuing. E.C.'s problem with chemical dependency continues.... That's really what we have to base some of our decisions on.
(1/4/2022 Hrg. Tr. 86:10-89:25)

The district court denied B.L.'s motion for placement and subsequently entered its order, citing CPS McKay's testimony that there were "some remaining concerns about the Birth Father's chemical dependency, Birth Father's lack of protective capacity, condition of the home, ongoing relationship issues with the Birth Parents and the extensive history of the parties.... The Court finds the evidence supports Father currently lacks the protective capacity to ensure the children are provided a safe, drug free environment in which to live." (DC028,

DC029)

Petition for YINC and TLC (ICWA) – March 7, 2022. March 7, 2022 – after learning the children had been accepted for enrollment in the Little Shell Tribe of Chippewa Indians, The Department filed a petition for adjudication of the children as YINC and Temporary Legal Custody (TLC) in which ICWA applicability was acknowledged. (DC040, DC041). In her supporting affidavit, CPS McKay stated B.L. expressed his belief he did nothing wrong and should have his children back. (*Id.*) CPS McKay describes B.L. as unwilling to participate in couples counseling and unable to prevent E.C. from coming to the family home without a restraining order. (*Id.*) According to CPS McKay, the family support team provider, “reported birth father struggling with follow through and boundaries. Birth father continues to report ongoing relations with birth mother and is not following through with weekly goals that are set. Family provider reported birth father shared his struggle with depression and suicidal struggles.” (*Id.*) B.L. was also alleged to have refused to sign a release of information for the Department because, “his mental health is none of their business.” (*Id.*) CPS McKay reported B.L. “was INSISTANT” (sic) on attending E.C.’s team meeting, during which he “became irate and “stated he does not have to tell me when he started working with care providers and would not be signing any releases.... Birth father’s physical presentation was also very concerning, with uncontrollable facial

movements in his chair....” (*Id.* emphasis in the original)

B.L.’s Motion for Dismissal – May 4, 2022. May 4, 2022 the district court began adjudication. (DC059) B.L. objected to adjudication and moved for dismissal of the case and full custody to B.L. (*Id.*) The court continued the adjudication to allow the parties time to brief B.L.’s motion. (*Id.*)³ June 1, 2022 B.L. filed his brief in support his motion to dismiss in which he argued the circumstances that “would constitute good cause for believing that the children’s safety could not be assured” were no longer present. (DC066) B.L. stated that, from the beginning of the case, he had tested negative for illegal substances, “just as he had for many months before the previous case was dismissed.... The Department’s concerns about child sexual abuse have been resolved to not exist.” (*Id.*)

June 29, 2022 the Department filed a brief in opposition to dismissal in which it argued such action was “premature at this time. (DC073) Conceding that B.L. had “made some improvements in his protective capacities (sic)” the Department maintained “there are several areas that are of grave concern.... The children’s safety can not (sic) be assured with Father....” (*Id.*) July 1, 2022 the Department filed a supplemental brief in which CPS McKay provided details on

³ The record from below does not contain a transcript of this hearing.

the alleged confrontation and notes on a June 28, 2022 meeting with B.L. in which she asserted:

There continues to be concerns with B.L.'s relationship with E.C. B.L. has previously reported he could not keep E.C. away due to the lease and being married. B.L. and E.C. have since divorced and E.C. is no longer on the lease. B.L. now states that he will continue to be around E.C. and when she becomes belligerent, he will call the police.... We cannot safely implement an in-home safety plan due to lack of cooperation and absolute disregard to follow through....

B.L. also showed at E.C.'s visit yesterday and when asked to leave he became confrontational stating this is a public place, I can stay if I want.

(DC075, emphasis in original)

The district court concluded the adjudication hearing until July 22, 2022.

(DC077) When the hearing resumed, B.L. entered into evidence letters of recommendation from LCSW Lori Pike, Probation and Parole Officer Kaloni Heggen and LAC Ted Szudera, all of whom vouched for B.L.'s sobriety and diligence in engaging in treatment, testing and counseling. (DC081, DC082, DC083) Ms. Pike concluded her letter by stating, "This provider validates B.L.'s obvious need for a divorce and agrees that he is a motivated, sober and safe parent that should be considered as primary placement for his children." (DC082) Mr. Szudera summarized by asserting, "I fully advocate this veteran has his children return to his care, full custody as soon as possible. He demonstrates care, concern, affection, desire to provide for his children as a positive role model. He does so in a consistent regular basis." (DC083)

Upon questioning by B.L., CPS McKay acknowledged the legitimacy and importance of the recommendations from Ms. Pike, Officer Heggen and Mr. Szudera, conceding they showed B.L. had completed some treatment, complied with supervision and engaged in counselling. (7/22/2022 Hrg. Tr. 10:12, et seq.)

On re-direct examination, CPS McKay agreed with counsel's assertion that, B.L., "is argumentative and confrontational when you've gone to have discussions with him.... And he justifies all of the behavior that you try to correct.... And he's not cooperative when you try to get him to change things.... We are not able to make progress with trying to implement a safety plan – or even an in-home safety plan – when we have those behaviors.... If Birth Father was able to have boundaries, appropriate boundaries with unsafe individuals, and was cooperative, and was not so aggressive... I mean, these are conversations that we could be having moving forward." (*Id.* 26:12-27:10)

ICWA expert Anna Fisher testified that B.L.'s argumentative behavior would not be an acceptable cultural practice of the Little Shell Tribe, and that returning the children to his care would "likely result in serious emotional, or physical damage to the children." (7/22/2022 Hrg. Tr. 32:19-33:6)

In his testimony, B.L. admitted to being frustrated with the Department and argued it imposed arbitrary and unjustified requirements upon him. (7/22/2022 Hrg. Tr. 49:18, et seq.) Specifically, B.L. disagreed with requiring him to break all

contact with the children's aunt, uncle and niece around whom allegations of sexual abuse had arisen in the past. (*Id.*) "I do not -- I do not see it being a safety issue if I'm supervising or if I'm there. I'm not putting my kids in harm's way." (*Id.* 50:8-16) B.L. testified he believed himself capable of making appropriate decisions to keep the children safe when unsafe circumstances arise, "But the Department says that is the wrong answer...." (*Id.* 51:6-14)

After hearing argument, the district court acknowledged B.L.'s progress and the recommendations of B.L.'s treating professionals but noted B.L.'s "staunch opposition to some of the conditions that the Department placed on you and the children," admonishing him "You're unwilling to accept the safety measures that the Department wants put in place, and that regard, it appears, that it's your way or the highway. And even though you've testified here that you would cooperate, the Court would go by your past conduct because that's all we have, and that's not the case.... I think that had you engaged and cooperated with the Department better and sooner, the Court's findings might be different here.... [Protective] measures can only be implemented if you're willing to do it and, at this point, you're not." (7/22/2022 Hrg. Tr. 80:20-83:22) The Court denied B.L.'s placement motion and adjudicated the children YINC under the clear and convincing standard required by ICWA. (*Id.* 85:2-9; 88:12-15, DC081)

Disposition Hearing and Treatment Plan – August 10, 2022. August 10,

2022 the district court held a dispositional hearing. (DC085) After disagreement and discussion, the parties agreed to an amended treatment plan which was approved by the court. (*Id.*) The treatment plan specifically addresses five areas of treatment:

1. Parenting: B.L. will complete approved parenting classes; Regularly attend visits; Maintain contact with the children; Follow recommendations of the children's treating professionals and visitation supervisors, Provide appropriate supervision; Not allow any person around the children who is violent or under the influence of alcohol or illicit drugs; demonstrate he can provide food, clothing and other necessities;
2. Substance Use: As he has completed CD treatment and followed recommendations, B.L. will seek help if he struggles with sobriety; Follow all recommendations of treating professionals; Not use or possess alcohol or illicit drugs (drugs); Not expose the children to alcohol, drugs or drug paraphernalia; Cooperate with and submit to drug testing upon request; Contact the Department if he misses a test; Develop and follow an approved relapse prevention and safety plan;
3. Mental Health: B.L. will seek help if he struggles with mental health issues; Participate in approved counseling and therapy; Follow recommendations; Learn how his behavior impacts the children and how to modify his behavior to meet the children's needs;
4. Housing: B.L. will get and maintain a home with adequate space, heat, power and water to meet the children's needs; Keep the home sanitary and safe; Not allow anyone in the home who is using alcohol or illicit drugs; Not allow anyone to reside in the home except with approval of the Department; Allow no individuals with criminal convictions for drugs, violence or sexual offense into the home;
5. Communication/Cooperation/Releases: B.L. will maintain consistent communication with CPS McKay to discuss the needs of the children and his progress on completing tasks of his Treatment Plan; Notify the Department of any problems he encounters completing his Treatment Plan; Sign all necessary releases to enable the Department to communicate with all professionals whom B.L. is involved;

(DC087)

Petition to Extend TLC – January 31, 2023. In her affidavit in support of the Department’s Petition to Extend TLC, CPS McKay reported B.L. had not completed his treatment plan but was working on all tasks in the plan. (DC107)

B.L.’s Completion of Treatment Plan Tasks. On May 31, 2023 B.L. filed three motions, with supporting documentation, to request district court enter a finding that he had completed treatment plan tasks related to chemical dependency (DC127-129), parenting (DC120-124) and mental health (DC125-126). Neither the Department nor the district court acknowledged or responded to the motions. August 8, 2023 B.L. filed a notice of issue for each of the three motions. (DC136-138) The Department neither acknowledged nor responded to the filing.

Permanency Plan for Termination of Parental Rights. August 29, 2023 the Department filed a proposed permanency plan. (DC140) In the supporting affidavit, CPS McKay, reports that the proposed permanency plan is adoption, and proposed to “file for TPR for both parents....” B.L. filed his notice of objection August 31, 2023, disputing that termination of parental rights was in the children’s best interests. (DC141) September 8, 2023 the district court heard argument on the motion. (DC142) The court, for the first time, invited argument on B.L.’s contention that he had completed the CD, Mental Health and Parenting tasks in his treatment plan. (9/8/2023 Hrg. Tr. 5:13) Department counsel, acknowledged B.L.

had completed “some things of the treatment plan,” but contended that, “even if he has completed certain sections of his treatment plan, that does not guarantee reunification, and at this point the Department does plan to proceed with filing a Petition for Termination of Parental Rights.... Ms. McKay will testify to the specific parts of the treatment plan of where he’s failing to apply those skills.” (*Id.* 5:16-6:13)

Upon inquiry by the court, the GAL expressed concerns about “responsiveness in parenting. Justifications in decision-making concerning the children and concerning who can be around the children by B.L. Concerns about the lack of forward progress and... change in terms of readiness and practical resolution and complete buy-in of the treatment plans. So, while there have been steps and efforts made by the parents... it didn’t always show up when I was observing visits, or when we were in family engagement meeting when those skill really needed to be demonstrated.” (8/8/2023 Hrg. Tr. 24:16-27:6)

The district court approved the proposed permanency plan and asked if the Department wished to formally respond to B.L.’s motion regarding his treatment plan. (9/8/2023 Hrg. Tr. 32:12-22) Department counsel told the court “the evidence will be the same at the termination hearing... what he should have learned is not being applied in day-to-day life, and so regardless if the Court were to find that he had completed them, we would still be presenting the same evidence that he’s not

applying the skills that he should've learned to his parenting and other aspects of his life.” (*Id.* 34:4-13) September 20, 2023 the court filed the written order.

(DC143)

Petition for Termination of B.L.’s Parental Rights – October 2, 2023.

CPS McKay swore an affidavit in support of the Department’s Petition for Termination of Parental Rights. CPS McKay asserted B.L. had failed to successfully complete his treatment plan and addressed four tasks specifically. CPS McKay alleged:

1. Parenting: B.L. “struggles to follow recommendations of professionals... show he can meet the physical and emotional needs of his children... demonstrate his ability to consistently and safely meet the emotional, physical, and medical needs of his children... ensure the safety, security, stability and well-being of himself and his children.”
2. Substance Use: B.L. “has some concerning drug results throughout this case” including – in July of 2023 – a torn drug patch, an abnormal/negative test for methamphetamine and a missed UA. “Father’s behaviors during this time were explosive and aggressive, with youth reporting they are fearful and scared of Father.”
3. Mental Health: B.L. struggles “...with how his behavior impacts his children and how to modify his behavior as recommended... to demonstrate his ability to manage his own and his children’s mental health needs in a healthy and successful manner... to demonstrate insight into his mental functioning and identify changes he is making towards stability... to demonstrate, during his meetings with CFS, his comprehension of any recommendations made by his mental health professionals.
4. Housing: B.L. “struggles not to allow anyone into the whom who may pose a risk to his children. The condition of Father’s home has not been consistently safe and appropriate for his children to reside.”

(DC147)

CPS McKay supported her allegations by referring to ongoing discussions with B.L. about disclosures of “several sexual assaults within the family” – some during times when B.L. was a caretaker – “that Father denies and ‘cannot remember.’” (DC147) CPS McKay alleges that, despite attempts to explain to B.L. “the trauma and risk he puts his children in when maintaining contact with offender,” B.L. “continues to argue with the provider and refuses to engage in any classes, training, or education on how to support his children that are victims as well as protecting them from further assaults. Father continues to state, he has ‘rights’ and will maintain contact no matter what.... Father has put his ‘rights’ before his learning how to protect his children.” (*Id.*)

CPS McKay concluded that, despite having received extensive services from 2016 forward:

Birth parents are exposing children to chronic abuse and neglect. Birth parents repeatedly failed to meet children’s physical, developmental, and emotional needs, as well as established a harmful pattern that has long-term negative consequences regarding the children’s safety and wellbeing by the ongoing drug use; previous selling drugs in the home; not addressing children’s sexual abuse trauma; and the repeated removals and placement history.
(DC147)

GAL Report – December 4, 2023. After noting that J.T.L. had spent more than 70% of his life in foster care and D.L.L. had spent more than 90% of his life in foster care, the GAL reported that, despite extensive counseling and treatment,

B.L. had recently relapsed and was not currently participating in CD treatment. (DC175) “His communication with support professionals is inconsistent and, at times, aggressive and concerning. At times he justifies choices which appear to hamper his protective capacity.” (*Id.*) The GAL’s assessment was that:

Both biological parents demonstrate a lack of sustained and consistent forward progress, limited-to-absent practical ability to house the boys in a physically and emotionally safe environment, and waxing and waning buy-in and engagement to treatment recommendations. They have been provided a significant amount of support services throughout the case. It is in the best interest of J.T.L. and D.L.L. that permanency be the priority at this point. Further lengthening of the case would be deleterious for both boys.

(DC175)

Affidavit of CPS McKay – February 6, 2024. In her affidavit in support of the Department’s Motion for Extension of TLC, CPS McKay addressed B.L.’s compliance with his treatment plan:

Parenting: “Father is not working on following the recommendations of all professionals working with his children. Currently, father has not attended a supervised visit since December 27, 2023.

1. Substance Use: “Father has relapsed and disclosed actively using methamphetamine and fentanyl. Father has had several CD evaluations scheduled but has not followed through with the appointments. Father has stated he needs inpatient treatment.”
2. Mental Health: “Father is not engaged and not working on demonstrating his ability to manage his own, and his children’s mental health needs in a healthy and successful manner. Father is not able to demonstrate his protective capacities and not following through with boundaries. Father has not demonstrated his ability to identify safe and unsafe individuals

for him and for his children to be around.”

3. Housing: B.L. “There are allegations that Father has drugs in/out of his home. It is also reported he has large traffic of individuals in/out of his home. Father has not demonstrated how to follow through with boundaries and not allow the use of drugs, alcohol, or the misuse of prescription drugs on his property or around his children.”

(DC204)

CPS McKay attached e-mail communications with B.L. in support of her allegations. (*Id.* DC205)

Termination Hearing – July 12, 2024 & July 19, 2024. Judge David J. Grubich presided over the Termination Hearing. B.L. was present. (DC255)

Licensed Clinical Professional Counselor (LCPC) and Licensed Addiction Counselor (LAC) Lloyal Kennedy-Klein testified regarding services provided to B.L. dating back to 2015. (7/12/2024 Hrg. Tr. 31:17, et seq.) Ms. Kennedy-Klein said she had resumed treating B.L. in December 2022 and had last seen him November 2023. (*Id.*) According to Ms. Kennedy-Klein, she and B.L. were meeting weekly or bi-weekly to work “on skills to change your thoughts so that your moods are decelerated, you’re not so anxious, so angry.” (*Id.* 36:4-16) Ms. Kennedy-Klein stated B.L. attended appointments regularly and made “some progress” until November 2023 when “He just stopped coming. I think he had a relapse....” (*Id.* 36:17-37:4) When B.L. stopped coming to appointment, Ms. Kennedy-Klein discharged him from treatment. (*Id.* 37:5-17) B.L. never reached out to Ms. Kennedy-Klein, and she did not receive any requests to transfer his

treatment records to another provider. (*Id.* 38:9-22)

CPS Christa McKay testified regarding her involvement in the case. (7/12/2024 Hrg. Tr. 80:8, et seq.) CPS McKay said she had been the family caseworker since October 2020. (*Id.* 81:1-19) CPS McKay said she had established communication protocols with both parents that included weekly contact – in person or by telephone – and e-mail updates for B.L. as well as follow-up e-mails summarizing her impressions “of what was said by whom, identify next goals or appointments.... (*Id.* 83:22-85:13) According to CPS McKay, e-mail correspondence was copied to B.L.’s attorney and his treatment team to ensure “that everybody was on the same page. There was open communication and there was not miscommunication or misunderstanding.” (*Id.* 85:15-19, 86:15-21)

CPS McKay testified B.L. and E.C. were a couple at the beginning of the case, divorced during the case, but “they wanted to co-parent and maintain that relationship. And then, as of December 2023, they have shared that they are now back together....” (7/12/2024 Hrg. Tr. 87:19-88:10) According to CPS McKay, the parents had recently shared “that they are living on the streets with no camper, no car, no residence.” (*Id.* 89:2-6) CPS McKay said she had offered to make herself available to discuss housing alternatives, but neither parent had taken advantage of the offer.” (*Id.* 88:7-20) CPS McKay stated beginning December 2023, B.L. started communicating to her that he was struggling with use of

Methamphetamine and fentanyl and – though he had not completed a new CD evaluation – he needed to enter inpatient treatment. (*Id.* 90:15-91:23) CPS McKay testified she made herself available to meet with the parents and their providers to effectuate inpatient treatment, but B.L. did not sign necessary releases, without which CPS McKay could not successfully support him in his treatment efforts. (*Id.* 92:10-18, 96:7-22, 98:21-99:5)

CPS McKay testified that, the issues that led to previous Department involvements were substantially similar. (7/12/2024 Hrg. Tr. 100:7-14) CPS McKay specified that the issues of concern were, “Substance use, inappropriate people in and out of the home, the children being exposed to these drugs, potentially inappropriate people being in the home, and conditions of the home at times as well.” (*Id.* 100:15-25)

CPS McKay stated that B.L. did not successfully complete the parenting component of his treatment plan. (7/12/2024 Hrg. Tr. 130:20-133:11) B.L.’s visitation opportunities became more limited in late 2023 when he became unwilling to follow Department protocols to protect the health and well-being of the children including consistency of visits, engaging with providers and attending all visits sober and on time. (*Id.* 130:9-131:9) When CPS McKay told the parents they needed to engage with the Department and participate in drug-testing for 30 days consistently before visitation could resume:

... during the initial conversation, there was not resistance with that. They were open to it. They did request a referral for a drug patch bar through CMS, so we did make the referral two different times in 2024, per their request. They did not follow through with that. They did wish to go to inpatient treatment, but again, not being able to support them and follow through with that in roughly May of this year. (7/12/2024 Hrg. Tr. 131:13-132:4)

CPS McKay contended that B.L. was unlikely to successfully address parenting concerns in a reasonable time due to his failure to address unique parenting concerns including setting appropriate boundaries and keeping the children away from inappropriate people. (7/12/2024 Hrg. Tr.132:7-133:10)

CPS McKay stated B.L. failed to complete the substance use element of his treatment plan. (7/12/2024 Hrg. Tr. 133:11, et seq.) Both parents made statements to CPS McKay about their struggles with substance use, but they were not willing to do testing and – despite completing an intensive treatment program through Veteran’s Treatment Court and having access to wraparound services – B.L. stopped seeking treatment in November 2023. (*Id.* 133:11-135:21) When CPS McKay asked him about it, B.L. “shared he was struggling with his sobriety and had wanted to go to inpatient treatment.” (*Id.* 135:22-136:3) B.L. completed a “partial CD evaluation” but CPS McKay knew of no further appointments or completions. (*Id.* 136:4-19) CPS McKay testified that, in her opinion, B.L. would not complete the CD element of his treatment plan in the near future. (*Id.* 137:2-7) CPS McKay said, in her weekly communications, she told B.L. she was available

to help him meet his treatment goals, and she offered to be a resource to coordinate with providers and support him getting into inpatient treatment. (*Id.* 137:8-20)

CPS McKay testified that B.L. had not completed the mental health element of his treatment plan. (7/12/2024 Hrg. Tr. 137:21-139:9) According to CPS McKay, her attempts to support B.L. in reengaging with a mental health provider after he stopped seeing Ms. Kennedy-Klein were fruitless, even with offers for help and support from staff at the Veteran's Center. (*Id.* 137:25-138:24) CPS McKay stated that, in her opinion, she had not seen the stability that would show B.L. could meet his own needs and the needs of his children and was not likely to do so in the near future. (*Id.* 139:1-9)

CPS McKay testified that B.L. had told her he was working to fix up a camper to live in, and she saw a camper during a visit to the last home address. (7/12/2024 Hrg. Tr. 139:1-19) CPS McKay's continued attempts to communicate with B.L. by phone or e-mail, but she had not been successful in connecting with him. (*Id.* 140:7-2) The only information CPS McKay had was from E.C., who told her the previous week that they were living on the streets. (*Id.* 14-1-6) CPS McKay testified that the Department could provide resources to help B.L. with housing, and that the Department needed to see that parents are willing to provide a safe and appropriate home for their children and allow the Department and providers into the home. (*Id.* 141:2-142:1) Finally, CPS McKay testified that, even with

appropriate housing, B.L.'s ability to maintain stability – to provide appropriate boundaries, regulate his emotions and be a safe individual, identify safe and appropriate people to be around the children – raised important concerns that would still need to be addressed. (*Id.* 142-22-143:18)

CPS McKay detailed how the Department became aware J.T.L. and DTL were Indian children subject to the requirements of ICWA, and the Department's efforts to comply with those requirements. (7/12/2024 Hrg. Tr. 145:19, et seq.) CPS McKay said that, given the long involvement of the Department, the children needed permanency and stability in their lives, that the parents' had not made adequate progress on their treatment plans and were experiencing crises in their own lives and that it was not in the best interest of the children to "wait around for the situation to improve." (*Id.* 148:1-150:11)

On cross-examination, CPS McKay testified that the Department recommended termination and adoption instead of guardianship because, "The concern with the guardianship is that any time they can file to dissolve the guardianship, and then we would be right back involved. The boys need permanency, and a guardianship does not provide permanency for the boys." (7/12/2024 Hrg. Tr. 230:7-25) When challenged that, the stringent requirements for terminating a guardianship would provide permanency, CPS McKay responded that, "But there is the potential of them filing. The parents both have established

that they can maneuver the court system and make many filings through various avenues, so all's it would take is a piece of paper filing with the Court, and then we're involved again." (*Id.* 231:1-11) When pressed for examples of the parents maneuvering the court system, CPS McKay cited B.L.'s decision to file a parenting plan which "could not be heard because of the DN case.... He felt he needed his children home, and E.C. was the problem. So, if he filed a parenting plan, that gave him control of the children and E.C., then that would remove the Department.... I don't know his motive. I've not asked him. But, in conversation, he was not doing it in the best interest of the children. But he is able to navigate the court system and was able to get the affidavits, fill them all out and file it with the courts." (*Id.* 243:1-244:6)

ICWA Expert Iris Kill Eagle testified regarding the case. (7/12/2024 Hrg. Tr. 283:9, et seq.) When asked if the Department made active efforts to attempt to reunify the children with the parents, Ms. Kill Eagle responded, "From what I have heard, there was attempts made, yes." (*Id.*) When asked if these efforts were successful, Ms. Kill Eagle equivocated, "They... yes and no." (*Id.*) Asked to clarify whether, in her opinion, continued custody of the children with the parents would likely result in serious emotional or physical damage to the children, Ms. Kill Eagle conceded, "At this time, yes.... From the fact they are still struggling with their addictions. And, not only that, they don't have a stable home right now

for them and the children.” (*Id.*) On cross-examination, Ms. Kill Eagle testified that, in the Little Shell culture, “Family is very important. Not only the immediate family, but also the extended family.” (*Id.*) Ms. Eagle agreed that guardianship would help “preserve the idea that these children could be reunited with their parents when, and if, their parents are able to maintain a healthy and safe environment for the children.... And, in most cases, there’s also hope that there could be some type of reunification with their family – with their biological family.” (*Id.*) Ms. Eagle expressed the opinion that maintaining hope for a connection with the children’s family was in the children’s best interest “from a cultural perspective” but noted that, “it’s a very complicated situation and answer.” (*Id.*)

After concluding testimony from E.C.’s treating professionals and hearing argument. Ms. French, the children’s attorney noted that D.L.L. was not old enough to “fully appreciate” the case but that

JTL, on the other hand, is, in my view, an extraordinarily mature, articulate, and intelligent eight-year-old. And there’s no question what his position would be on this motion to terminate. He would want me to oppose it – or this petition, excuse me – because, and I will say, I have actually taken forensic interview training during some prior job I had, but I’m really careful about not leading these kids. So, when he told me very seriously that he wanted to get back with his parents eventually, I thought, “Really? Where does an eight-year-old come up with that word?”

But he came up with it on his own. It is certainly what he wants, and I think that to the extent that guardianship would be an option here, it is

probably something that I would support, whereas I do not support termination.

(7/12/2024 Hrg. Tr. 311:10-312:8)

Asked for her opinion, CASA/GAL Sargent expressed concerns:

[T]he parents aren't stable, consistent or sober. They're unhoused.... Is there any gap in services. Is there anything that's not being offered to these children or these parents? There never was a gap that I saw that was something that wasn't being addressed.... the best progress of the parents was in 2023. I was able to observe some of the visits that were unsupervised, and even at that time, Your Honor, while there was progress being made, I did not observe emotional readiness or parenting skills that would have made me comfortable with reunification.

(7/12/2024 Hrg. Tr. 321:21-313:12)

Ms. Sargent agreed that J.T.L. was bright and articulate, but “He is also extraordinarily aware of the struggles his parents have had. He demonstrates parentification with his brother.... He has really strong peer relationships... as well as his relationship with his foster siblings.... I think it's developmentally normal for any child to want to reengage with their parents – regardless of their behaviors, choices. That's a really powerful relationship.” (7/12/2024 Hrg. Tr. 313:18, et seq.)

Ms. Sargent concluded, “My position has not changed since my court report was filed. J.T.L. and D.L.L. deserve permanency.... I think it's in the best interest for the boys to terminate rights.” (*Id.* 315:11-15)

The district court took the petition under advisement and held the proceedings in abeyance until July 19, 2024. (DC256)

Oral Pronouncements of the District Court – July 19, 2024. When the district court resumed proceedings, it reviewed the evidence and arguments and entered oral findings.⁴ (7/19/2024 Hrg. Tr. 6:3, et seq.) The court held the children had been adjudicated YINC on July 22, 2022 and treatment plans for both parents were approved. (*Id.*) The court held neither parent had successfully completed an appropriate, court-approved treatment plan, and the conduct rendering them unfit is unlikely to change within a reasonable time. (*Id.*)

The court then considered specifics of the case, beginning with the rebuttable presumption that, if the children have been in custody for 15 of the most recent 22 months, termination of parental rights is in their best interests, noting that, “This is the fourth removal of children for this family.... J.T.L. is about 8 years, and 2 months old.... He’s been removed from his parents’ home four times... almost six years of his life.... D.L.L. is five and a half years old. Been removed three times in the course of his short life. Over five years of his life has been spent, non-consecutive, in the Department’s custody. So, a very small portion of his life has actually been spent in the custody of his parents.” (7/19/2024 Hrg. Tr. 7:10-9:9) The court noted the children had been removed multiple times for similar reasons. (*Id.*, 9:10)

⁴ The record from below contains no minute entry for the hearing on July 19, 2024.

The district court reviewed E.C.'s treatment plan, detailing the reasons for removal, the requirements of the plan and found she had not completed the tasks required of her. (7/19/2024 Hrg. Tr. 9:16, et seq.) The court observed that B.L. had not completed the parenting task of his treatment plan because, "throughout the case, he's demonstrated resistance. I think that improved at times... and it's unfortunate because right at the point where we're seeing some progress from both parents, then we see another downhill slide." (*Id.* 21:9-22) Noting that B.L. had not attended supervised visitations since December 2023, the court concluded "he's not demonstrated his ability to consistently and safely meet the emotional and physical needs of the children." (*Id.* 21:23-22:2) The court found that, when B.L. was complying with supervision, his parenting opportunities increase and supervision was relaxed, "giving the parents a little more freedom in those visits until it wasn't safe to do it any longer." (*Id.* 23:4-13) The visits were ultimately discontinued when the parents began cancelling visits because "they didn't want the kids to see them when they were using." (*Id.* 23:16-21)

The court next found B.L. had not completed the mental health task of his treatment plan. (7/19/2024 Hrg. Tr. 24:3, et seq.) "He wasn't signing releases. The Department wasn't really able to monitor his mental health.... He attended treatment in this matter at the beginning but made slow progress and then stopped coming in November of '23. And we heard [from his therapist] that was related to

his relapse. She ultimately just discharged B.L. when he stopped coming....” (*Id.*)

The court recalled testimony that B.L. still needed treatment, that there were people trying to help him get treatment, “but he did not complete what he needed to do to get into the program....” (*Id.*)

The district court recounted testimony of concerns about B.L.’s protective capacity relating to the relative who was abusive toward E.C. (RC) and concluded, “BL has, I think throughout this case, demonstrated a resistance to being told who he’ll be associating with.... RC is currently in custody relating to abuse – sexual abuse of [another family member] and, with all this knowledge, B.L. was still resistant to accepting any direction on what his contact – or what the family’s contact – with RC would be.” (7/19/2024 Hrg. Tr. 25:7-26:6)

The district court considered B.L.’s compliance with the Chemical Dependency element of his treatment plan, concluding he did not complete it. (7/12/2024 Hrg. Tr. 26:10, et seq.) The court noted that, if B.L. doesn’t provide releases, the Department can’t monitor his treatment and the court “can’t be convinced that you’re doing what you need to do.... So, I can’t find that you have maintained your sobriety. I don’t think that you have, and I don’t find that you have.” (*Id.*) The court noted that the record clearly demonstrated B.L. did not have safe and stable housing and lacked protective capacity. “[T]he court can’t find that you’ll make a good decision when anybody who you want to come in – whether or

not they pose a danger – that you’d be able to put up any roadblocks to prevent it.”

(*Id.*) So saying, the district court found both parents failed their treatment plans.

(*Id.* 28:10)

The district court next considered whether the conduct or condition rendering the parents unfit is likely to change within a reasonable time, noting that the court couldn’t predict the future but can only “go on what’s happened in the past.” (7/19/2024 Hrg. Tr. 28:12, et seq.) The court noted that mental health, chemical dependency and drug use “have all been consistent reasons why the Department has been involved with the parent and despite four removal actions... those reasons have remained.... The parents have not demonstrated... that they’re able to sustain their mental health treatment... or... sobriety.... The fact this has arisen four times for the same reasons demonstrates that this is not sustainable.... Given the history... the sheer amount of time these children have been... under the protective custody of the Department, I think the past demonstrates that there is not much hope that the future will look a lot different. So, the Court does find that continuing the parent-child relationship is likely to result in continued neglect... and... that the conduct and the condition of the parents that rendered you unfit or unable to give the child adequate parental care is unlikely to change within a reasonable time.” (*Id.*29:22-30:3)

The district court next considered the question of guardianship. (7/19/2024

30:15, et seq.) The court conceded that Justice Gustafson – in *In re A.B.*, 2020 MT 64 – made good points regarding the misconceptions about guardianship, but noted differences between that case and the one at bar. (*Id.*) The court noted that in *In re A.B.* the child was in kinship placement with the grandmother, so there was a realistic possibility of a co-parenting relationship if the mother gained sobriety. (*Id.*) More importantly, the court found, the mother in *In re A.B.* testified and requested a guardianship whereas, “In this case, I haven’t had any clear consent on the record from either parent that says, ‘Yes. I will agree to a guardianship’ other than a statement from their attorney.” (*Id.*) The court noted that, in this case, “There’s been a kind of demonstration – not only of this resistance to the whole process by both parents – but also hostility toward the foster family.” (*Id.*)

The district court found the Department made active efforts to reunite the parents with the children as required by ICWA. (7/19/2024 Hrg. Tr. 33:18, et seq.) The court reviewed the testimony of the ICWA expert and the extensive record of communication and services offered by CPS McKay and the Department as well as CPS McKay’s efforts to work with the Tribe to seek an ICWA-compliant placement for the children and identify cultural activities. (*Id.*) Noting some hesitancy in ICWA expert Iris Kill Eagle’s testimony, the court found she did agree that the Department had made active efforts. (*Id.*)

The district court concluded, “Based on my review of the case and my

review of that case I discussed, I don't find that guardianship is in the best interests of the children. I find that their best interest is served by termination. I find that beyond a reasonable doubt. (7/19/2024 Hrg. Tr. 36:13-18)

Order Terminating Parental Rights – August 5, 2024. In the Order entered August 5, 2024 the district court recounted extensive relevant evidence presented in the case and entered Findings of Fact consistent with its oral pronouncement from the bench on July 19, 2024. (App. A, DC259) The Court found the evidence showed, beyond a reasonable doubt, that the parents did not successfully complete their treatment plans, that the conduct or condition rendering them unfit and unable parent the children was unlikely to change within a reasonable amount of time, that continuation of the parent-child relationship would likely result in an ongoing risk of abuse or neglect to the children and that continued custody of the children by the birth parents would likely result in serious emotional or physical damage to the children, as set forth in 25 U.S.C. §1912(3) and supported by the testimony of a Qualified Expert Witness. (*Id.*)

STANDARDS OF REVIEW

A parent's due process rights to the custody of their children requires "fundamentally fair procedures at all stages of termination proceedings." *In re R.K.*, 2023 MT 161, ¶23, 413 Mont. 184, 534 P.3d 659 (citing *In re K.B.*, 2019 MT 73, ¶11, 395 Mont. 213, 437 P.3d 1042). Whether a person has been denied his or

her right to due process is a question of constitutional law. *Id.* at ¶9 The Montana Supreme Court’s review of questions of constitutional law is plenary. *In re A.S.*, 2004 MT 62, ¶9, 320 Mont. 268, 87 P.3d 408 (citing *Schmill v. Liberty Northwest Ins. Corp.*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290)

“[P]arents have a due process right to effective assistance of counsel in termination proceedings.” *In re E.Y.R.*, 2019 MT 189, ¶22, 396 Mont. 515, 446 P.3d 1117 (citing *In re A.S.*, 2004 MT 62, ¶20, 320 Mont. 268, 87 P.3d 408). Whether assistance was effective requires review of counsel’s training, experience, and advocacy. *Id.* IAC requires reversal only if the parent suffered prejudice. *Id.* (citing *In re B.M.*, 2010 MT 114, ¶22, 356 Mont. 327, 233 P.3d 338 (citations omitted)). Effectiveness is determined by evaluating the non-exclusive factors of training and experience and advocacy. *In re A.S.*, ¶26. Effective advocacy requires counsel to investigate the case, research and understand the law, meet with the client, and assiduously advocate for the client. *In re A.S.*, ¶28.

Beyond due process concerns, the Montana Supreme Court reviews a district court’s decision to terminate parental rights for an abuse of discretion. *In re K.A.*, 2016 MT 27, ¶19, 382 Mont. 165, 365 P.3d 478. An abuse of discretion can arise from clear error in the district court’s findings of fact, mistake of law or an evidentiary ruling entered arbitrarily or without employment of conscientious judgment, or exceeding the bounds of reason, resulting in substantial injustice. *In*

re I.M., 2018 MT 61, ¶13, 391 Mont. 42, 414 P.3d 797 (citing *In re O.A.W.*, 2007 MT 13, ¶32, 335 Mont. 304, 153 P.3d 6).

Upon appeal of a district court’s findings of fact, conclusions of law, and order terminating a parent’s parental rights, the Montana Supreme Court does not substitute its judgment as to the strength of the evidence for that of the district court. *In re A.N.W.*, 2006 MT 42, ¶29, 331 Mont. 208, 130 P.3d 619. Rather, the Court reviews findings of fact to determine if they are clearly erroneous, conclusions of law for correctness, and the evidence found by the district court to determine whether, on the whole, a preponderance of the evidence is definite, clear, and convincing. *In re B.J.J.*, 2019 MT 129, ¶10, 396 Mont. 108, 443 P.3d 488.

ARGUMENT

1. Counsel for B.L. should be permitted to withdraw from this cause in accordance with *Anders v. California* and Mont. Code Ann. §46-8-103.

The Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution guarantee every defendant the right to a fair trial and due process of law, including fair representation. 386 U.S. 738, 742 (1967). When appellant’s counsel “finds his case to be wholly frivolous” he should, after conscientious examination of the case, advise the court and request permission to withdraw. *Id.* at 744

To ensure protection of appellant's rights, counsel's request to withdraw must be accompanied by a brief that references anything in the record that might arguably support an appeal (an *Anders* brief). *Id.* A copy of the brief should be provided to the appellant and the appellant must be afforded the time to respond to counsel's motion and brief. *Id.*

The State of Montana has codified the requirements of *Anders v. California* in Mont. Code Ann. §46-8-103(2). If, after reviewing the entire record and researching the applicable law, counsel concludes that an appeal would be frivolous or wholly without merit, counsel must file a motion with the Montana Supreme Court requesting permission to withdraw. *Id.* A memorandum discussing any issues that arguably support an appeal must accompany the motion to withdraw. *Id.* The memorandum must include a summary of the procedural history of the case and any jurisdictional problems with the appeal, along with appropriate citations to the record and the law bearing on each issue. *Id.*

An *Anders* brief meets the requirements of both *Anders v. California* and Mont. Code Ann. §46-8-103(2). The brief is intended to assist the appellate court in determining that counsel has conducted the required detailed review of the case and that the appeal is so frivolous that counsel's motion to withdraw should be granted. *Penson v. Ohio*, 488 U.S. 75, 81–82 (1988). The requirements of an *Anders* brief are not meant to force counsel to argue against appellant. *Anders*, 386

U.S. at 745.

Pursuant to Mont. Code Ann. § 46-8-103(2), counsel for Appellant reluctantly advises the Court that, after conducting diligent review of the record and the relevant law, counsel has not found any non-frivolous issues appropriate for appeal in this matter. While counsel has great sympathy for the Appellant, he can find no meritorious grounds for appeal. In accordance with the requirements of *Anders* and Mont. Code Ann. §46-8-103(2), counsel provides this memorandum (*Anders* Brief) discussing any issues that arguably support an appeal, a summary of the procedural history of the case and any jurisdictional problems with the appeal, and appropriate citations to the record and the law bearing on each issue. *Id.*

2. The record may arguably support B.L.’s assertion that the district court erred when it terminated His parental rights.

The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence that the child is an adjudicated youth in need of care, 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 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); *In re D.B. and D.B.*, 2007 MT 246, ¶20, 339 Mont. 240, 168 P.3d 691.

An order terminating an individual’s right to parent his children must be

supported by clear and convincing evidence that the statutory criteria for termination have been met. *In re A.T. and J.T.*, 2003 MT 154, ¶10, 316 Mont. 255, 70 P.3d 1247. Clear and convincing evidence is:

simply a requirement that a preponderance of the evidence be definite, clear, and convincing, or that a particular issue must be established by a preponderance of the evidence or by a clear preponderance of proof. This requirement does not call for unanswerable or conclusive evidence. The quality of proof, to be clear and convincing, is somewhere between the rule in ordinary civil cases and the requirement of criminal procedure—that is, it must be more than a mere preponderance but not beyond a reasonable doubt.

In re C.M.C., 2009 MT 153, ¶23, 350 Mont. 391, 208 P.3d 809.

If it is determined a child is an Indian child, the Indian Child Welfare Act (ICWA) imposes heightened federal standards for the removal of the child from his or her family. *In re L.D.*, 2018 MT 60, ¶12, 391 Mont. 33, 414 P.3d 768. (referencing 25 U.S.C. §§1902, 1911, and 1912(d)—(f) regarding congressional policy, tribal jurisdiction, and requirements for active remedial efforts, qualified expert testimony, and proof beyond a reasonable doubt). Under ICWA, termination of parental rights “must be supported by evidence beyond a reasonable doubt.” *In re K.L.N.*, 2021 MT 56, ¶34, 403 Mont. 342, 482 P.3d 650 (referencing *In re L.A.G.*, 2018 MT 255, ¶22, 393 Mont. 146, 429 P.3d 629; 25 U.S.C. 1912(f); Mont. Code Ann. §41-3-422(5)(b)). Unlike the requirement for reasonable efforts under state law, ICWA requires the district court to make a specific finding “that

active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” *Id.* (citing 25 U.S.C. §1912(d) (emphasis in original)). In addition, the district court must determine the continued custody of the child by the parent is “likely to result in serious emotional or physical damage to the child.” *Id.* (citing 25 U.S.C. §1912(f)). This determination must be supported by evidence beyond a reasonable doubt, including the testimony of an ICWA Qualified Expert Witness (QEW). *Id.* (citing 25 U.S.C. §1912(f)).

Once the criteria for termination of parental rights are met, the decision whether or not to terminate those rights is within the court’s discretion.

a. B.L. may assert there was insufficient evidence to support adjudication of the children as Youths in Need of Care.

The court may make an adjudication on a Petition for Emergency Protective Services and Temporary Legal Custody if the court determines by a preponderance of the evidence the child is a youth in need of care. Mont. Code Ann. §41-3-437(2). Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based. *Id.* “Youth in need of care” means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned. Mont. Code Ann. §41-3-102(34).

“Child abuse or neglect” means actual physical or psychological harm to a child and substantial risk of physical or psychological harm to a child, which includes acts or omissions of a person responsible for the child’s welfare or exposing a child to the criminal distribution of dangerous drugs. Mont. Code Ann. §41-3-102(7). “Physical or psychological harm to a child” includes the harm that occurs whenever the parent fails to supply the child with adequate health care, though financially able to do so or offered financial or other reasonable means to do so. Mont. Code Ann. §41-3-102(21)(a)(iv). “Physical neglect” includes failure to provide basic necessities, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk. Mont. Code Ann. §41-3-102(20). “Abandoned” means leaving the child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future. Mont. Code Ann. §41-3-102(1).

In this case, B.L. may arguably assert the children were not subject to abuse, neglect or abandonment as set forth in the statute. The children were initially removed from the home primarily because of unfounded allegations of sexual abuse. B.L. may argue that, once those allegations were disproven, the Department should have immediately returned the children to his care.

b. B.L. may assert the district court erred when it terminated B.L.’s

parental rights instead of putting a guardianship in place

Mont. Code Ann. §41-3-444 provides that A district court may appoint a guardian for a child if: 1) the Department has given its written consent; 2) the child has been adjudicated a YINC; 3) the Department made reasonable efforts to reunite the parent and child, further efforts to reunite would be unproductive, and reunification would not be in the child's best interests; 4) the child has lived with the guardian in a family setting; 5) it is in the child's best interest to remain with the guardian; and 6) If the child is an Indian child, the child's Tribe was notified of the proceedings.

In this case, B.L. may argue – as has birth mother E.C. – that the district court should have given greater weight to the recommendation of guardianship by the child's attorney and QEW Iris Kill Eagle's favorable testimony regarding Native American cultural preferences for guardianship. B.L. may argue that, after acknowledging the misinformation under which the Department operated – and despite the fact neither he nor B.L. personally requested guardianship or testified in support of it – the court should have pressed the Department to justify its failure to recommend or approve of a guardianship.

3. BL may arguably assert she received ineffective assistance of counsel.

The Due Process Clause of the Montana Constitution, Article II, Section 17, provides that a parent involved in the termination of her parental rights is entitled

to effective assistance of counsel. *In re A.S.*, ¶¶ 12, 20. In *In re A.S.*, this Court held the effectiveness of counsel in dependent neglect cases “should be evaluated by the following non-exclusive factors:

1. Training and experience. Specifically, whether counsel has experience and training in representing parents in matters and proceedings under the [DN statutes] and whether counsel has a verifiably competent understanding of the statutory and case law involving the [DN statutes].
2. Advocacy. ...whether counsel has adequately investigated the case; whether counsel has timely and sufficiently met with the parent and has researched the applicable law; whether counsel has prepared for the termination hearing by interviewing the State’s witnesses and by discovering and reviewing documentary evidence that might be introduced; and whether counsel has demonstrated that he or she possesses trial skills, including making appropriate objections, producing evidence and calling and cross-examining witnesses and experts.”

Id. ¶ 26.

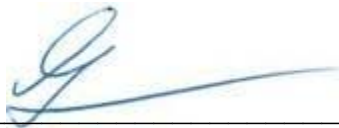
Additionally, a parent may not sustain an ineffective assistance of counsel claim when the parent cannot demonstrate prejudice because of the ineffective assistance. *In re C.M.C.*, 2009 MT 153, ¶ 30, 350 Mont. 391, 208 P.3d 809. The factors denoted above are to be considered nonexclusive benchmark criteria for evaluating assistance of counsel in termination proceedings. *In re T.N.S.*, 2015 MT 117, ¶30, 379 Mont. 60, 347 P.3d 1263 (citing *In re A.S.*, ¶27.).

In this case, B.L. may assert that the district court denied him effective assistance of counsel when it repeatedly refused to allow his attorney to withdraw despite clear client/attorney conflict and breakdown in communication.

CONCLUSION

After thorough review of the entire record and researching applicable statutes, case law, and rules, counsel has determined that B.L.'s appeal presents no non-frivolous issues and is, therefore, wholly without merit. Counsel respectfully requests the court grant the motion to withdraw on direct appeal.

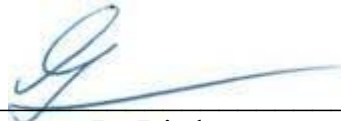
Respectfully submitted this January 26, 2025.



Gregory D. Birdsong
Birdsong Law Office
P.O. Box 4051
Santa Fe, NM 87502
406-529-6988
birdsonglaw@gmail.com

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 not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.



Gregory D. Birdsong

CERTIFICATE OF SERVICE

I, Gregory Dee Birdsong, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 01-26-2025:

Kathryn Fey Schulz (Govt Attorney)
215 North Sanders
P.O. Box 201401
Helena MT 59620-1401
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

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: State of Montana
Service Method: eService

Tammy Ann Hinderman (Attorney)
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena MT 59620
Representing: E. F. C-L., B. L.
Service Method: eService

Abby Shea (Attorney)
401 Washington St
Missoula MT 59802
Representing: E. F. C-L.
Service Method: eService

B. L.
c/o 1610 19th Avenue South

Great Falls MT 59405
Service Method: Conventional

Electronically Signed By: Gregory Dee Birdsong
Dated: 01-26-2025