IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0702

IN THE MATTER OF:

B.J.B.,

A Youth in Need of Care.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Rod Souza, Presiding

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

STATEMENT OF THE CASE

In November 2021, the Department of Public Health and Human Services, Child and Family Services Division (the Department) petitioned for Emergency Protective Services (EPS), Adjudication as a Youth in Need of Care (YINC), and Temporary Legal Custody (TLC) as to five-year-old B.J.B. (Doc. 1.) The Department had removed B.J.B. and his three-year-old sister, P.E.W., from K.M.B. (Mother) and P.E.W.'s natural father, S.I.W.[1] (*Id.*) Initially, both children were treated as an Indian child under the Indian Child Welfare Act (ICWA) based on S.I.W.'s tribal affiliation, but when B.J.B.'s father was later identified as G.J.W. (Father), the court determined ICWA did not apply to B.J.B. (Docs. 54-55, 59.)

On January 4, 2022, without objection, the district court adjudicated B.J.B. as a YINC, granted TLC for six months, and set a treatment plan hearing. (1/4/22 Tr.; Docs. 14, 17.) Mother's treatment plan was approved on February 1, 2022. (2/1/22 Tr.; Doc. 20.) The court extended TLC multiple times to give Mother

[1]In accordance with Mother's deconsolidation of the two cases on appeal, the State submits separate response briefs in *In re B.J.B.*, Case No. DA 24-0702, and *In re P.E.W.*, Case No. DA 24-0703.

more time to work on her treatment plan. (10/11/22 Tr.; 5/23/23 Tr.; 8/15/23 Tr.; Docs. 36, 46, 58.)

In late summer 2023, Father was identified as B.J.B.'s natural father and the court approved a treatment plan for him in January 2024. (Docs. 54, 68.) In February 2024, the Department petitioned for termination of Mother's and Father's parental rights. (Docs. 69-70.)

After termination hearings on April 22, June 18, and July 16, 2024, the district court issued an order terminating Mother's parental rights in November 2024. (Doc. 91, attached to Appellant's Br. as App. A.) However, the court denied the petition to terminate Father's rights without prejudice and continued TLC to give Father "an opportunity to complete a treatment plan." (*Id*. at 13, 15, 27-28.)

STATEMENT OF THE FACTS

I. The basis for removal and adjudication

In late 2021, the Department received a report that Mother was using drugs, along with reports of a domestic violence situation between Mother and her girlfriend Stephanie Rivera, witnessed by Mother's children, P.E.W and B.J.B. (Doc. 2 at 5.) At that time, Paternal Grandmother (Grandmother), Mother, Stephanie, P.E.W., B.J.B, and S.I.W. were all living at Grandmother's house in Billings. (*Id*. at 4, 6-7.)

Grandmother reported Mother was struggling to parent, engaged in drug use, had bipolar disorder, and had interpersonal conflicts. (Doc. 2 at 5.) S.I.W. reported that Mother and Stephanie "fight a lot, both verbal and physical." (*Id*. at 6.) During the CPS visit, S.I.W. tested positive for methamphetamine. (*Id*.)

Mother admitted to a Child Protection Specialist (CPS) that she was using "a lot of meth" and had used for a "long time." (Doc. 2. at 6.) She also admitted she was in a "verbal and physically abusive relationship with both [S.I.W.] and Stephanie." (*Id*.) She reported she was bipolar. (*Id*.) She explained she was "struggling with mental health, drug abuse and being able to provide for the children's basic needs." (*Id*.)

At the Show Cause hearing, Mother explained that she didn't "really want to do" the "sober living." (11/23/21 Tr. at 5.) She explained that her kids were "very unawaree that I even do drugs" and they just thought she was sad and "sick in the brain." (*Id*. at 5.) The court responded that the proceedings were about providing "you with some safety and security, but also keep you sober." (*Id*. at 6.)

At the Adjudication Hearing, the Department explained that Mother did not want to go to Family Recovery Court. (1/4/22 Tr. at 3.) The court urged Mother to engage with "one of the family recovery courts," and to complete a chemical dependency evaluation and inpatient drug treatment. (*Id*. at 6-7.) Numerous resources were provided to ensure visitation and to help Mother's progress. (*Id*.)

While Family Recovery Court started in February 2022, within six months, the case was transferred back to district court after Mother failed to comply with treatment court rules. (Docs. 28, 29.)

Without objection, the district court adjudicated both children as YINCs based on physical neglect resulting from "issues of chemical dependency, exposure to domestic violence, housing instability, and lack of stability of [Mother and S.I.W.]." (Doc. 91 at 3.) The court approved Mother's treatment plan which required Mother to: "complete [a chemical dependency] Evaluation . . . and follow all recommendations"; undergo "[r]andom drug/alcohol testing;" "attend ongoing individual counseling;" "[a]ttend visits/parenting time with [B.J.B.] throughout pendency of case;" "complete a domestic violence risk assessment . . . and follow all recommendations;" meet with and immediately provide current contact information to assigned CPS; and "[o]btain and maintain a legal source of income." (Doc. 20 at 3.)

II. Mother's engagement with the treatment plan

At an October 11, 2022 TLC extension hearing, CPS worker Caitlyn Saunders explained that Mother was participating in her treatment plan and was compliant with visitation. (10/11/22 Tr. at 5-6.)

But at the December 6, 2022 status hearing, the Department explained that Mother "is not engaged in CD treatment right now, she left without finishing." (12/6/22 Tr. at 2.)

At a May 23, 2023 hearing, the Department explained that Mother "got on the patch yesterday[,]" and was engaging in family sessions with Trauma Yoga, and was being screened for housing. (5/23/23 at 2-3.) The Department explained that they had investigated placement options for the children and "while our permanency plan does remain reunification, this next six months is really critical for their children." (*Id*. at 3.)

At an August 15, 2023 TLC/Permanency hearing, Mother's counsel explained that Mother was "three weeks sober," but housing was still an issue. Mother understood that the "Department at this time needs to stay involved in order for her to remain sober for a longer period of time," and for housing and placement concerns. (8/15/23 Tr. at 5-6.)

At an October 10, 2023 status hearing, the Department explained that Mother "ha[d] a relapse recently" but resources were being provided at Hannah House, Mother was in "IOP" and was "testing through the patch" and saw her kids "once a week[.]" (10/10/23 Tr. at 2-3.)

At a January 2, 2024 status hearing, the Department explained that Mother "was at Hannah House, but then was asked to leave there[]" due to meth use, and

that Mother was currently staying with friends. (1/2/24 Tr. at 3, 5.) At Hannah House, Mother had snuck Stephanie in to do drugs with her. (Doc. 70 at 18.) CPS Saunders explained the main problem was "just the consistency of sobriety[.]" (1/2/24 Tr. at 4.)

On January 24, 2024, Mother was living in an apartment at Ponderosa Acres. (4/22/24 Tr. at 6; App. 1 at 8.) Stephanie visited Mother's apartment, resulting in Mother being beaten up by Stephanie. (4/22/24 Tr. at 15-16.) Mother nonetheless told the property manager that she loved Stephanie. (*Id*. at 16.) Mother was warned that Stephanie would not be allowed over, but the issue was not resolved, resulting in Mother vacating the apartment. (*Id*. at 16-19.)

After Mother was subsequently kicked out of Rimrock's inpatient treatment unit due to her threats of violence, Mother sporadically contacted CPS on the phone. (6/18/24 Tr. at 50.) When CPS Lindsey Brunner asked Mother about her treatment plan, Mother said she "can get all of the updates in court," and Mother would "only be contacting [CPS] for updates on the kids." (*Id*.)

On May 16, 2024, Mother tested positive for meth. (6/18/24 Tr. at 50.) She had not completed her plan, nor was she meeting conditions for her children's return. (*Id*. at 51.) CPS Brunner explained that Mother did not significantly change or grow in the two years of working with the Department. (*Id*.) There was "no significant change in a positive direction" as to sobriety or mental health. (*Id*.

at 52.) As to her domestic violence relationship with Stephanie, Mother said multiple times she was "done" with her, but "Stephanie always shows back up." (*Id*. at 56.)

III. Termination proceedings

The Department filed a petition and affidavit for termination. (Docs. 69, 70.) The Department's affidavit detailed 42 no-shows for urinalysis, combative behavior with CPS, failure at all Mother's sobriety and treatment placements, several instances of physical violence from Stephanie followed by Mother consistently reuniting with her, and numerous drug relapses. (*Id*. at 3-20.) During the TPR hearing, the CPSs who worked with Mother detailed her failure to complete any task or goal on her treatment plan. (Doc. 91 at 5-9.) CPS Saunders detailed Mother's difficulties with maintaining sobriety and housing and a domestic situation free from domestic violence. (6/18/24 Tr. at 12-14.) She explained that the children have "significant behaviors and some high therapeutic needs" that weren't being met because of Mother's lack of sobriety. (*Id*. at 14-15.)

Mother testified that she cycled between sober living housing and living on the streets over the last couple years. (4/22/24 Tr. at 80-81.) She explained that she "ended up messing it up" each time. (*Id*. at 82.) She explained that she frequently relapsed and "snuck Stephanie in" to her living placements, resulting in

her having to leave housing. (*Id*.) She explained that Stephanie was currently incarcerated due to her violence against her. (*Id*. at 84.) Mother explained that her relationship with Stephanie was problematic and was a significant source of her problems, but it was her fault too for letting Stephanie back into her life over and over. (*Id*. at 106-07.) Mother testified she had recently relapsed around two or three weeks prior to the April 2024 hearing. (*Id*. at 86.)

IV. Facts related to Father

Because of the time to ascertain who B.J.B.'s father was—Father was not formally notified of these proceedings until July 28, 2023, long after the proceedings were instituted. (Doc. 54.) In January 2024, the Department filed a treatment plan for Father. (Doc. 68.)

However, the Department petitioned for termination of both Mother's and Father's parental rights. (Doc. 69.) The only facts related to Father in the termination affidavit were that Father had custody of another child, a two-year-old, and that Father could not take B.J.B. due to his full house, but he "does have a desire to parent." CPS "set up phone calls" between B.J.B. and Father "to start establishing a relationship between them." (Doc. 70 at 7.) Additionally, Mother had explained "she hasn't been truthful" about Father and that Father "has been paying child support" for B.J.B. (*Id*.)

Father contested termination and suggested mediation, which was granted. (2/27/24 Tr. at 3, 7; Doc. 76.) Mediation did not resolve the matter so the court set the termination hearing to begin on April 22, 2024. (Doc. 76.)

In August 2024, the Department alleged that Father had not yet secured housing for B.J.B. (Doc. 85 at 5.) Father lives in Great Falls. (*Id*. at 6.) The Department explained that Father had visited B.J.B. on April 23, 2024, but he had not done a follow up visit. (*Id*.) The Department averred that Father did not seem to "have many parenting skills." (*Id*. at 7.)

Father argued against termination in his proposed findings, explaining that, in addition to B.J.B.'s visit to Great Falls, Father had traveled to Billings "in September 2023, April 2024, and July 2024" and made an additional phone call visit. (Doc. 87 at 3.) And in July 2024, Father told the Department "he now had safe and appropriate housing." (*Id*.) His home was inspected by a social worker in Great Falls. (*Id*.)

At the July 2024 termination hearing, Father testified that his sister had moved out of his residence to help make space for B.J.B. (7/16/24 Tr. at 30-31.) Father had a job. (*Id*. at 33.) At the time of the hearing, Father had just had a visit with B.J.B. and he thought it went well. (*Id*.)

V. The district court's order

The district court terminated Mother's parental rights pursuant to Mont. Code Ann. § 41-3-606(1). (App. A.) The district court observed that B.J.B. had been in the care of the Department for "992 days, or approximately thirty-five percent of his life." (App A at 3.) The court detailed Mother's numerous failures to comply with the treatment plan, along with her persistent drug use and exposing the kids to her abusive paramour Stephanie. (*Id*. at 3-5.) The court detailed the Department's substantial efforts at reunification and its provision of numerous resources to Mother. (*Id*. at 11.) The court held that "clear and convincing evidence" supports the termination of Mother's parental rights because she failed her treatment plan and the conduct or condition making her unfit to parent was unlikely to change due to her failure to maintain sobriety and find safe housing, her keeping Stephanie in her life, and her spotty visitation with B.J.B. (*Id*.)

The court specifically found it was "no longer in [B.J.B.'s] best interests to continue to work towards reunification with [Mother]." (App A. at 12.) The court explained that B.J.B. "has demonstrated some behaviors that are symptomatic of abuse, neglect, and trauma," and his need for stability "is incredibly important." (*Id*.) The court detailed Mother's failure at housing, visitation, and sobriety, and concluded that Mother had failed to show any positive change. (*Id*. at 19-21.) The court detailed Mother's problematic relationship with her abuser Stephanie. (*Id*. at

26-27.) The court explained that "continuation of the parent-child relationship" between mother and B.J.B. would result in "continued abuse and neglect." (*Id*. at 22.) The court noted that Mother "exhibited a pattern of coming into and going out of [B.J.B.'s] and his sister's lives." (*Id*. at 23.)

The court applied the statutory "best interest" presumption against Mother because B.J.B. had been in foster care for "more than 15 of the most recent 22 months." (*Id*. at 22.) The court noted that mother had "approximately two years" to progress on her treatment plan, but failed to do so, and she had disengaged with the Department. (*Id*. at 23-24.) While the court noted that B.J.B. had problems with aggression, with his current foster placement and "through counseling and the stability offered in their home, [B.J.B.'s] behaviors have improved tremendously, and he continues to make friends." (*Id*. at 16.)

On the other hand, the court denied the Department's petition to terminate Father's parental right, without prejudice, and continued TLC so he could work on his treatment plan. (App. A.) The court reasoned that Father had been consistently paying child support and he did not receive a treatment plan "until only 26 days before the Department petitioned to terminate his parental rights." (App A. at 13.) While the Court noted that Father had not yet successfully completed his treatment plan, his "issues with housing had resolved, he has maintained sufficient contact with CPS, and he has maintained suitable employment." (*Id*. at 13-14.) The court

concluded that because of the short time allotted thus far to complete his treatment plan, Father should have an "opportunity to complete" it. (*Id*. at 15.) While the Court agreed with the Department that B.J.B.'s "need for stability" and continued therapy was "incredibly important[,]" there was "no evidence that giving [Father] more time to complete his Treatment plan jeopardizes [B.J.B.'s] health or safety." (*Id*. at 26.)

SUMMARY OF THE ARGUMENT

Mother confusingly argues that her termination was not in B.J.B.'s best interests, and that the district court violated the termination statutes, because Father's rights were not terminated simultaneously. But Mother is incorrect in her assertion that the district court was statutorily required to consider her case and Father's case as an amalgam prior to Mother's termination. Nothing in the TPR statutes precludes the district court from terminating just one parent's rights. As the district court rightly concluded, based on this Court's precedent, Mother and Father's parental rights are separate and distinct matters.

Moreover, Mother's "best interests" argument misses the mark. The district court did not abuse its discretion in terminating Mothers rights but not Father's rights, as the court's order was supported by substantial evidence. Here, the Department's efforts for reunification with Mother began in late 2021, and Mother

never engaged with the resources provided to her or showed progress toward reunification. Mother does not dispute that she failed in complying with her treatment plan. If a parent cannot demonstrate the interest or capacity to meet her child's needs, that parent-child relationship is not in the child's best interests. Here, given the extraordinary length of time the Department tried to get Mother to engage, and Mother's consistent failures, the district court correctly applied the best interest presumption against Mother. Mother demonstrated that—in the course of over two years of working with the Department—she failed to make progress toward reunificaiton with B.J.B. and she persistently struggled with an abusive relationship, drug relapses, and housing and visitation issues. Unfortunately, Mother's conduct or condition was unlikely to change after two years of the Department's substantial efforts to provide her drug treatment, housing options, and visitation.

On the other hand, Father—who lived in Great Falls and was unaware of the proceedings prior to mid-2023—has nothing to do with Mother's noncompliance with her treatment plan. The district court's well-reasoned termination order explained the substantial reasons that Father's rights could not be terminated at that time, primarily because (1) Father was not notified of the proceedings until much later due to the paternity question; (2) Father was taking steps toward reunification; and (3) Father only had a few days between his treatment plan being approved and

the Department requesting termination. The district court reasonably determined that Father simply needed more time to demonstrate that he could make further efforts toward reunification. The district court did not err and this Court should affirm the court's termination order as to Mother.

STANDARD OF REVIEW

This Court reviews for abuse of discretion a district court's decision to terminate a person's parental rights. *In re Z.N.-M.*, 2023 MT 202, ¶ 10, 413 Mont. 502, 538 P.3d 21. The district court abuses its discretion when it acts "arbitrarily, without conscientious judgment, or in an unreasonable fashion that results in substantial injustice." *Id.*

This Court reviews a district court's factual findings to determine if they are clearly erroneous. *Id.* 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 the Court a mistake was made. *Id.*

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, or its conclusions of law are incorrect. *In re D.F.*, 2007 MT 147, ¶ 22, 337 Mont. 461, 161 P.3d 825. 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).

This Court "will not reverse a district court's ruling by reason of an error that 'would have no significant impact upon the result.'" *In re H.T.*, 2015 MT 41, ¶ 10, 378 Mont. 206, 343 P.3d 159. Nor will this court "disturb a district court's decision 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." *Id*. ¶ 10.

ARGUMENT

The district court did not abuse its discretion when it terminated Mother's parental rights pursuant to Mont. Code Ann. § 41-3-609(1)(f).

A court may terminate parental rights to a non-Indian child if clear and convincing evidence establishes: the child was adjudicated a youth in need of care; the court approved an appropriate treatment plan for the parent(s); the parent(s) did not comply with the plan or it was unsuccessful; and the conduct or condition of the parent(s) rendering them unfit is unlikely to change within a reasonable time. Mont. Code Ann. §§ 41-3-609(1)(f), -422(5)(a)(iv).

Mother does not challenge that B.J.B. was adjudicated as a YINC, nor does Mother argue that the treatment plan was inappropriate or that she failed to successfully complete her treatment plan, or that the conduct or conditions making

her unfit to parent were likely to change in a reasonable time. Mother has thus waived appellate review of those conclusions and she may not amend her claim to include such challenges in her reply brief. M. R. App. P. 12(3) ("The reply brief must be confined to new matter raised in the brief of the appellee."); *State v. Sattler*, 1998 MT 57, ¶ 47, 288 Mont. 79, 956 P.2d 54 (legal theories raised for the first time in an appellant's reply brief are outside the scope of such a brief and this Court has repeatedly refused to address them).

Instead, Mother argues that, because Father's parental rights were not terminated simultaneously, the district court failed to "adequately address the potential impact of B.J.B.'s continued relationship with his biological father" as related to the "best-interests determination[]" of Mother. (Appellant's Br. at 19.) Mother argues that Father's proceedings are tied to Mother's proceedings, and the district court should consider "B.J.B.'s best interests[]" as to both parents simultaneously regarding termination. (*Id*. at 18.) Despite Mother's failing at her treatment plan and showing no capacity to improve the conditions rendering her unfit to parent, Mother suggests that because Father's relationship has not been terminated at that time, the best interest determination might be different if "B.J.B.'s relationship with Mother" had been "preserv[ed][.]" (*Id*. at 19.) Mother argues that Mont. Code Ann. § 41-3-609(2)-(3) required the district court to

"explicitly address[]" and examine the relationship with Father "before terminating Mother's parental rights[.]." (*Id*.) Mother concludes that the "Department failed to carry its burden of showing that [B.J.B.] was at risk of continued abuse or neglect." (*Id*. at 21.)

Mother is wrong. Mother points to no statute that includes those concepts as relevant to determining the child's best interests. And nothing in the TPR statutes precludes the district court from terminating just one parent's rights. When the circumstances set forth in Mont. Code Ann. § 41-3-609(1) are established, a district court may terminate a person's parental rights. *In re C.M.*, 2015 MT 292, ¶ 35, 381 Mont. 230, 359 P.3d 1081. As this Court has explained, once "a district court finds the statutory criteria supporting termination, set forth in § 41-3-609(1), MCA, are met, no limitation requires the district court to consider other options prior to terminating parental rights." *In re T.S.*, 2013 MT 274, ¶ 30, 372 Mont. 79, 310 P.3d 538.

The statutory requirements for terminating a person's parental rights focus on each individual parent's acts or omissions. *See* Mont. Code Ann. § 41-3-609(1). Unlike adjudication, which is determined as to the child and not as to each parent, at termination each parent is considered individually. Since Mother's rights were terminated pursuant to subsection (1)(f), the court assessed Mother's acts and omissions relevant to the failed treatment plan criteria as well as

Mother's lack of capacity to improve or change. This TPR criteria is infused with, and driven by, what is in the child's best interests. As this Court recently held, DPHHS's "role is to determine what is best for the child, not what is best for the family." *In re A.B.*, 2020 MT 64, ¶ 37, 399 Mont. 219, 460 P.3d 405.

The district court did not err in relying on this Court's precedent that Mother's and Father's "parental rights are separate and distinct matters." (App. A at 26 (quoting *T.S.*, ¶ 32 and citing *In re R.A.D.*, 231 Mont. 143, 157, 753 P.2d 862, 870 (1988) (affirming termination of dad's parental rights while remanding regarding mom's parental rights)).) As this Court has explained, "The District Court may determine that terminating [Mother's] parental rights is in the Children's best interests without factoring [Father's] situation into its decision." *T.S.*, ¶ 32.

Nor did the district court err in its best interest determination as to Mother. When considering whether a parent's conduct or condition making her unfit is unlikely to change within a reasonable time, a "court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child." Mont. Code Ann. § 41-3-609(3). The focus of this statute is on the parent's capacity to change, relative to the needs of the child.

This Court has repeatedly stated that the guiding principle in determining whether to terminate parental rights is always and foremost the best interest of the child: "the district court is bound to give primary consideration to the physical,

mental, and emotional conditions and needs of the [child,] thus, 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.L.*, 2014 MT 28, ¶ 15, 373 Mont. 421, 318 P.3d 691 (citation omitted). This principle aligns with the policies of Title 41, chapter 3.

The introductory statute for the TPR provisions states: "[t]his part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interests of the child." Mont. Code Ann. § 41-3-602. A child's best interests are defined as "the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child." Mont. Code Ann. § 41-3-102(5). The best interests of the child is not included as a separate statutorily required finding or conclusion of law for termination in Mont. Code Ann. § 41-3-609(1).

Mother further confuses the appropriate legal standards and criteria when she argues that termination of her parental rights was not necessary to effectuate permanency. (Br. at 19-20.) Termination and permanency are two different legal reliefs. Montana Code Annotated § 41-3-609(1) sets forth six specific and distinct theories for terminating a person's parental rights and when any of those factors are established, it will result in termination of parental rights. In contrast,

Mont. Code Ann. § 41-3-445 requires the Department to declare that a plan is in place for children in foster care. "The purpose of [a permanency plan] hearing is to 'assure that children taken into protective custody by the DPHHS do not languish in foster care or fall through the proverbial administrative crack.'" *In re B.N.Y.*, 2006 MT 34, ¶ 31, 331 Mont. 145, 130 P.3d 594. Whether the Department established the necessary facts to support termination of Mother's rights under Mont. Code Ann. § 41-3-609(1)(f) was wholly independent of its obligation to ensure B.J.B. did not languish in foster care.

Montana's Legislature implemented the following rebuttable statutory presumption for children in dependent neglect (DN) proceedings: "[i]f a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights." Mont. Code Ann. § 41-3-604(1); *A.B.*, ¶ 32; *In re X.B.*, 2018 MT 153, ¶ 32, 392 Mont. 15, 420 P.3d 538.[2] When a parent is

[2]Mother inaccurately asserts that there are "limited exceptions" to the best interest presumption in Mont. Code Ann. § 41-3-604(1). The only "exceptions" from that statute concern the Department's obligation to *petition* for termination of parental rights. *See In re C.W.E.*, 2016 MT 2, ¶¶ 14-15, 382 Mont. 65, 364 P.3d 1238; *In re C.W.E.*, 2016 Mont. LEXIS 48 (Mont. Sup. Ct. Feb. 16, 2016) (Order denying petition for rehearing). This Court held that the first sentence in Mont. Code Ann. § 41-3-604(1) (presumption of best interests) stands on its own, while the three factors found at subsections (a) through (c) apply only to DPHHS's mandate to file for termination unless one of the exceptions applies. *C.W.E.*, 2016 Mont. LEXIS 48.

unable to address the conditions/conduct that resulted in the abuse/neglect to their child within 15 months of DPHHS intervention, it is presumed that termination of that parent's rights is in the child's best intererests. Mother did not overcome this presumption.

This Court reviews the testimony and evidence presented to the district court "in the light most favorable to the prevailing party" to determine if the court abused its discretion. *A.B.*, ¶ 40. Here, Mother has not identified any unsupported findings or erroneous conclusions of law made by the district court under Mont. Code Ann. § 41-3-609(1)(f). *See H.T.*, ¶ 10 (Court will not "disturb a district court's decision 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."). Accordingly, Mother's argument fails.

Clear and convicing evidence established Mother failed to successfully address the tasks of her treatment plan that were identified as necessary for her to be able to meet B.J.B.'s needs. Clear and convincing evidence also supported the court's conclusion that Mother's conduct or conditions would not change in a reasonable time. If a parent cannot demonstrate the interest or capacity to meet her child's needs, that parent-child relationship is not in the child's best interests.

As this Court has consistently recognized, when a parent fails to act to correct the reason for DPHHS intervention, it is her child who suffers. *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.*, 2016 MT 156, ¶ 17, 384 Mont. 41, 373 P.3d 848 ("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."); *In re D.A.*, 2008 MT 247, ¶ 21, 344 Mont. 513, 189 P.3d 631 (A child's need for a permanent, stable, and loving home supersedes a parent's right to parent the child.).

In contrast to the overwhelming evidence supporting termination of Mother's parental rights, substantial evidence supported the court's decision to allow Father more time to work on his treatment plan. Termination of Father's parental rights was not appropriate, primarily because (1) Father had not been notified of the proceedings until much later due to the paternity question; (2) Father was taking steps toward reunification; and (3) Father only had a few days between his treatment plan being approved and the Department requesting termination.[3] As the district court reasoned, the best interest presumption would violate Father's right to due process. Mother is incorrect that the district court "ignore[d]" the best interest

[3]Thus, contrary to Mother's appellate arguments, the district court *did* consider Father's conduct at the time of Mother's termination. However, it was only required to do so because the Department had previously moved for termination as to both Mother and Father.

presumption when it did not terminate his parental rights. (Br. at 21.) First, the presumption only applies once one of the theories of termination in Mont. Code Ann. § 41-3-609(1) have been met. *In re D.B.*, 2007 MT 246, ¶¶ 22-23, 339 Mont. 240, 168 P.3d 691. Here, the evidence was insufficient to establish that Father was unable to change his conditions in a reasonable period of time, thus the criteria at subsection (1)(f) has not been met. Additionally, as this Court has explained, application of the best interest presumption is rebuttable. *See In re S.C.L.*, 2019 MT 61, ¶ 14, 395 Mont. 127, 437 P.3d 122. As the district court explained, Father's due process rights dictated that he have more than a month to work on his plan given that he had made efforts to comply.

On the other hand, Mother had since late 2021 to progress in her treatment plan, but instead she continually lost housing and got kicked out of placements, used meth, failed to show up for urinalysis, had visitation issues, and frequently reunited with her abusive paramour Stephanie. It is undisputed that Mother failed her treatment plan and the conduct rendering her unfit was unlikely to change within a reasonable period of time. Thus, the presumption applied because the substantive requirements of Mont. Code Ann. § 41-3-609 have been met. *D.B.*, ¶¶ 22-23. Thus, Mother's argument that the presumption should not have applied to her is not compelling.

Mother 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 termination of Mother's parental rights was in B.J.B's best interests. *See A.B.*, ¶ 23.

CONCLUSION

The district court's order terminating Mother's parental rights as to B.J.B. should be affirmed.

Respectfully submitted this 19th day of March, 2025.

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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 5,480 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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