

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

APPELLANT'S REPLY

On Appeal from the Montana Thirteenth Judicial District,
Yellowstone County, the Honorable Judge Rod Souza, Presiding.

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ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT TERMINATED MOTHER’S PARENTAL RIGHTS.

Mother reasserts her arguments from her Opening Brief. The State mischaracterizes Mother's argument. Mother does not challenge the factual findings regarding her struggles, but rather the District Court's legal conclusion that termination was in B.J.B.'s best interests, given the totality of the circumstances, including his relationship with Father and the practical implications of severing the parent-child relationship.

A. Termination of Mother’s Parental Rights was not in B.J.B.’s Best Interests.

The District Court failed to adequately weigh B.J.B.'s demonstrable bond with Mother and erred when it concluded termination of Mother’s parental rights was in his best interests. The record showed B.J.B. expressed love and affection for Mother, missed her, and enjoyed their consistent phone calls, which were positive and beneficial for him. (4/22/24 Hearing Transcr. 122:24-123:3.) Terminating Mother's rights permanently severed this bond, diminishing B.J.B.'s support network and foreclosing future opportunities for a relationship, particularly with no adoptive placement on the horizon. Termination of Mother’s parental rights was not necessary to

effectuate permanency for B.J.B, since Father's rights were still intact a parenting plan could have accomplished safe and appropriate permanency.

Moreover, the practical implications of the District Court's order exacerbated the harm to B.J.B. If, as the District Court implicitly found, Father was capable of providing a safe and stable home, then terminating Mother's rights achieved nothing beyond severing a valuable familial connection. Should Father's circumstances change, or should Mother achieve lasting stability, the possibility of reunification or even meaningful contact is foreclosed. This irreversible severance permanently forecloses the possibility of reunification should Mother achieve stability, a possibility the District Court implicitly acknowledged by granting Father additional time despite his own challenges. This disparate treatment underscores the Court's inconsistent application of the best interest's standard and its failure to adequately consider the potential for Mother's future role in B.J.B.'s life.

As stated in Mother's Opening Brief, with limited exceptions, termination of parental rights is presumed to be in the child's best interests if a child has been in foster care for 15 of the most recent 22 months. Section 41-3-604(1), Mont. Code Ann. The law "primarily concerns the State's obligation to file a petition to terminate parental rights" and "neither eliminates the substantive requirements of § 41-3-609, Mont. Code Ann.,

nor diminishes the clear and convincing burden of proof on the party seeking termination of parental rights.” In re M.P., 2008 MT 39, ¶ 20 341 Mont. 333, 177 P.3d 495 (citing In re D.B., ¶ 23.) The purpose behind this statute is to provide a child in state custody with permanency and ensure “children not be left to ‘twist in the wind’ when their parents fail to give priority to their stability and permanency.” In re T.S., 2013 MT 274, ¶ 30, 372 Mont. 79, 310 P.3d 538. This Court has interpreted this to mean a “child's need for a permanent placement in a stable, loving home supersedes the right to parent a child” In the Matter of T.N.-S., N.N.-S., E.N.- S., and A.N.-S., Youths in Need of Care. 1263 2015 MT 117, ¶ 26, 379 Mont. 60, 347 P.3d. Here, permanency could be accomplished with placement with Father and a well-crafted parenting plan that allowed Mother to still be in B.J.B.’s life once she gained stability.

While permanency is a critical goal, the 'twist in the wind' doctrine should not be interpreted to require termination in all cases where a child has been in foster care for an extended period. In this case, a less drastic alternative exists maintaining B.J.B.'s placement with Father while providing Mother with the continued opportunity to work towards reunification. This approach could have ensured B.J.B.'s stability while preserving the potential for a valuable parent-child relationship. Mother’s

ongoing struggles with addiction and mental health, while not excusing her non-compliance, provided crucial context. The District Court's decision to grant Father more time, despite his imperfect compliance, highlighted this unequal application. If Father, also struggling deserved additional time to demonstrate progress, so too did Mother, especially considering B.J.B.'s desire for a continued relationship. This disparity suggested the Court held Mother to a different standard, contrary to the fundamental principles of fairness and equal protection.

The State argued that Father's situation was irrelevant to Mother's case. (Appellee's Br. at 16.) However, the District Court's own actions belied this assertion. By allowing Father more time, the court implicitly recognized the importance of family in B.J.B.'s life. This contradicted the State's reliance on *In re A.B.* in which they argued the Department and the court should focus solely on an isolated "child's best interests" outside any family context. *In re A.B.*, 2020 MT 64, 399 Mont. 219, 460 P.3d 40. The District Court's disparate treatment of Mother and Father, preserving one parent-child relationship while severing the other, demonstrated the court did, in fact, factor family preservation into its analysis, albeit inconsistently. This inconsistency reinforces the necessity of a more

thorough assessment of B.J.B.'s best interests, one that acknowledges the value of both parental relationships.

CONCLUSION

For these reasons, and the reasons asserted in her Opening Brief, Mother respectfully reasserts her request that this Court reverse the Order of the District Court terminating her parental rights and remand for further proceedings.

Respectfully submitted this 2nd day of April 2025

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By: /s/Shannon Hathaway
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening 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 5,000 words, excluding certificate of service and certificate of compliance.

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CERTIFICATE OF SERVICE

I, Shannon Colleen Hathaway, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 04-02-2025:

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