

No. DA 25-0027

IN THE MATTER OF B.B.-R. and K.B.,

Youths in Need of Care.

OPENING BRIEF OF APPELLANT

On Appeal from the Montana Seventh Judicial District Court,
Dawson County, the Honorable Olivia Rieger, Presiding

APPEARANCES:

LAURA M. REED
P.O. Box 17437
Missoula, MT 59808
laurareedlawmt@gmail.com

ATTORNEY FOR MOTHER
AND APPELLANT

BRENDA NOLAND
Eastern Montana CASA/GAL
P.O. Box 1234
Miles City, MT 59301

CASA

AUSTIN KNUDSEN
Montana Attorney General
KATHRYN FEY SCHULZ
Assistant Attorney General
Appellate Services Bureau
Montana Attorney General's
Office
P.O. Box 201401
Helena, MT 59620-1401

BRETT IRIGOIN
CODY LENSING
Dawson County Attorney's Office
121 S. Douglas
Glendive, MT 59330

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

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STATEMENT OF THE ISSUES

1. When Mother moved to a home in rural North Dakota, the Department placed the children with her, but failed to arrange services for the family, and failed to request an ICPC for nearly a year. North Dakota CPS repeatedly refused assistance. Did the Department fail to provide reasonable efforts to reunify the family?
2. The children were later placed in a home that was more than ten hours from Mother's, reducing her visitation drastically. Did the Department fail to make reasonable efforts?
3. Mother found a home, employment, did not have substance abuse issues, and stayed in contact with the Department. She had been regularly meeting with a mental health provider for six months when her rights were terminated. She also complied with her treatment plan tasks during a period when she had support from the Department. Did the court err in finding that her conduct or condition was unlikely to change in a reasonable period of time?

STATEMENT OF THE CASE AND FACTS

Mother, A.B., appeals an Order from the Seventh Judicial District Court terminating her parental rights to B.B.-R., who was nine years old at the time of the removal, and K.B., who was five years old. *See* 9/27/24 Order Terminating Parental Rights, hereinafter “App. A.”

On February 16, 2021, the Department petitioned for emergency removal, adjudication of the child as a youth in need of care, and temporary legal custody of the child. D.C. Doc. 1. The petition was based on the following allegations:

Intake reports had been received alleging that the home wasn't clean, there was domestic violence by Mother's then-boyfriend, P.H., adults were cussing at children, there was inappropriate discipline, children had head lice and did not have good hygiene. Other adults lived in the home and were drinking. The Department was concerned about the children at times being in the care of Mother's then-boyfriend, P.H. B.B.-R. stated he was afraid of him. Mother and P.H. were trying to find a better place to live without the other adults. D.C. Doc. 1, 2/21 Moser Aff.

Some of the intake complaints were made by T.C., mother's ex-husband. At the time of the Department's involvement, Mother was going through custodial proceedings with T.C., who was the father of two younger children with her. These two children were not part of this case. T.C. was awarded primary custody of the two younger children.

B.B.-R's father had never been involved in his life, had to be served by publication and did not appear in the case. K.B.'s father was J.G., who lived in North Dakota, and requested that his paternity be proven with testing.

February and March, 2021 – Petition for Emergency Protective Services & EPS Hearing

Mother stipulated to emergency protective services but did not admit to any of the allegations. K.B. and B.B.-R. were placed with their stepfather, T.C. App. A. at 2; D.C. Docs. 1, 3.

June 1, 2021 – Court Adjudicates Children as Youths in Need of Care and Grants Temporary Legal Custody

Mother stipulated to the relief requested without accepting guilt. D.C. Doc. 27. The petition for adjudication alleged that Mother lacked housing, was still involved with P.H. (the inappropriate boyfriend) and was not following through with mental health therapy and medication

management. App. A at 2. The court told Mother that if she wanted to get her children back, it could not happen if she were still involved with P.H. P.H. had been prohibited from being around the children because of his CPS history. 6/1/21 Tr. at 12.

June 8, 2021 – Mother’s Treatment Plan Ordered

Mother was ordered to complete the following tasks: participate in all scheduled visitation; complete parenting class programs; maintain a safe, clean and stable home; maintain contact with the Department; find employment. D.C. Doc. 29.

November 2021– Hearing on Petition to Extend TLC

Mother stipulated to extension of TLC. Mother was attending supervised visitation, working part-time, attending mental health treatment, and contemplating leaving boyfriend P.H. D.C. Doc. 36.

End of 2021 – February 2022 – Mother moves to home of J.G., K.B.’s father, in Stanley, North Dakota

Mother moved from Glendive to Stanley, North Dakota to live with J.G., father of K.B. J.G. had a home and stable employment history. App. A at 4. Mother had difficulty finding services and providers in North Dakota for counseling and for medication management. App. A at 4-5.

May 3, 2022 – Hearing on Petition for Extension of Temporary TLC

The Department reported that visits between Mother, J.G. and the two children were increasing with a plan to transition B.B.-R. and K.B. to North Dakota. App. A at 5. CASA reported B.B.-R's mental health was still concerning. *Id.* K.B. was behaving violently in the placement setting with T.C. *Id.* In May, 2022, the Department placed the children in the home of J.G., K.B's father, in North Dakota, where Mother was now also living. The Department placed the children without an ICPC. App. A at 6.

The district court later noted that the Department was in error by placing the children with an offending parent (Mother) in another state without an ICPC. App. A at 7. The court did not consider J.G. a “non-offending parent,” at least with respect to B.B.-R., because he was not B.B.-R's father. The Department also did not dismiss the case against K.B., which it should have done if it was placing her with J.G. as a non-offending parent.

Stanley, North Dakota is small, rural town of 2000, a one-hour drive from Williston and Minot, respectively, and a three- to four-hour drive from Glendive, Montana, where the CPS services were located.

Summer, 2022 – No services arranged in North Dakota; North Dakota CPS refuses to assist family

At an August 16, 2022 hearing, the district court was concerned that the children had been placed in North Dakota for almost 10 weeks by the time of the hearing and no services had been arranged. CPS did not even begin to request services in North Dakota until two weeks before August 16. App. A. at 7. The referral to the Village in Minot was only made two weeks before the hearing. “It was discovered the day of the hearing that YCM service were not available in Stanley, ND for the family.” *Id.* Only two weeks before the hearing, the Department had asked North Dakota CPS to do basic in-home services and were “waiting on a response from their supervisor if she will allow her staff to start some basic in-home services.” “Per the local CPS staff they are willing to provide this service, but do not always get approval to help families who are not in their foster system.” App. A. at 6-7.

The Department also requested that ND CPS investigate safety of the home but ND CPS was simply “not responding” to their requests. *Id.*

The Department also encountered funding issues with using Montana services in North Dakota. According to CPS Moser, “we have

found out that YCM services are not available in Stanley as was initially thought, so we have explored Youth Dynamics. YDI has recently informed us that they cannot bill to ND Medicaid...now we are exploring trying to get approval from the Department to have the Department pay for YDI to do these services until the Village in Minot can start their services with the family.” App. A at 6. No counseling had been put in place for B.B-R. or K.B. at that time, and the CASA and attorney for the children were expressing concerns about the children’s mental health. *Id.*

Mother reported that as of July 2022 no one was able to provide mental health counseling services for her. App. A at 7. CPS Moser later testified that it was extremely difficult to obtain counseling services for the family while they were in North Dakota.

Q. Okay. So, the- is the hold up the lack of community services being engaged?

A. So, it’s not so much the lack of services being engaged by the parents, it’s the lack of availability of some of them that mental health says they need to have showing that she’s doing it.

...

So, we’re trying to sort that out, so that they are truly getting all of the community services- [A.B.] and [J.G] have never said they won’t do the services that are recommended.

2/14/23 Tr. at 16-17.

K.B. did not have a therapy appointment until the end of September, 2022, five months after being placed in Stanley. App. A. at 7.

September, 2022 – B.B-R. returned voluntarily to Montana by Mother

B.B.-R. had out-of-control behaviors while living with Mother and J.G. Mother and K.B. were finally going to therapy. He was placed with T.C. in Glendive until a group home placement could be found.

November 2022 – Petition to Extend TLC

Earlier in the fall, K.B. was struggling in school and the school requested that she have a psychological assessment. Mother had continued to experience difficulty in obtaining an evaluation and finding a provider. The Department suggested Mother contact Eastern Montana Community Mental Health to set up virtual mental health appointments and the Department would assist with costs if they did not accept her ND Medicaid. Later, however, the Department found out that virtual therapy was not available under this arrangement because

the Montana mental health provider was not licensed in North Dakota. App. A at 10.

The Department asked ND CPS to do a safety assessment of the home, but the “family reports no one has come to do this yet.” App. A at 9. Mother had trouble finding a dentist for K.B. who would accept Medicaid. App. A at 10. Mother continued to struggle with finding consistent providers for her mental health needs in North Dakota for therapy and medication and for a psychological evaluation. App. A at 8. The court extended TLC for a fourth time on November 15, 2022.

February – April, 2023 – K.B. exhibits out of control behavior at school

K.B. was acting out at school. The Department requested for the first time an Interstate Compact Home Study on father’s home, more than nine months after the children were moved to North Dakota. North Dakota CPS was still not cooperating with requests for safety assessments of parent’s home. “When asked why no ICPC was done prior to K.B.’s placement with J.G. and Mother in Stanley, Ms. Moser could not remember who advised that no ICPC is required.” App. A. at 10.

In March, 2023, K.B. continued to be out of control at school. The district court noted that on four occasions, it had been recommended that the Department arrange a psychological evaluation for K.B., but had yet to do so. *Id.* at 12. On April 19, 2023, CASA filed a status report again outlining K.B.'s inability to regulate her behaviors at school. *Id.*

April 21, 2023 – K.B. removed from home of Mother & J.G. in Stanley, ND

K.B.'s removal occurred as soon as North Dakota denied the ICPC request. Other reasons for the removal were Mother's mental health issues; her failure to provide verification of attendance at parenting classes; recent reports to North Dakota CFS with allegations of abuse/ or neglect of K.B. In addition, J.G. had not completed a mental health evaluation, nor a psychological evaluation a parenting program.¹

Summer 2023 – T.C. (stepfather placement) Moves Children to Lincoln, Montana, 10 Hours from Stanley, North Dakota

During this period, Mother and J.G. were required to travel four hours to visit K.B. in Glendive. B.B.-R. was in Intermountain group

¹ Despite the fact that J.G. was a non-offending parent of K.B., he was required to have a treatment plan. He was not appointed an attorney for much of the case.

home in Helena, ten hours away. Sometime before July, 2023, T.C. and his partner, A.E., moved with K.B. and B.B-R. and their siblings to Lincoln, Montana. 9/27/23 Tr. at 9. The reason for the move was that T.C.'s parents lived in Lincoln. Lincoln is a ten- to twelve-hour drive from Stanley, North Dakota.

Mother's ability to visit K.B. and B.B-R.. was drastically reduced. While the children were living in Lincoln, Mother drove from Stanley, ND to Helena only five times between September, 2023 and July, 2024, when the termination hearing was held. 8/21/24 Tr. at 200.

September, 2023 – Motion for Permanency Plan of Guardianship with Stepfather T.C.

The State filed a motion for permanency plan for child and child's sibling – guardianship with kinship placement/ stepfather T.C. The district court approved the permanency plan. D.C. Docs. 91, 93.

December, 2023 – CASA Report & Psychological Evaluation for K.B.

K.B. was evaluated by Dr. Roche in November, 2023. K.B. was asking for longer visits with her Mother. Mother was concerned about lack of support and impact of winter weather on traveling to visit the children. App. A at 16-17.

February 6, 2024 – Hearing on TLC Extension

The State and children’s counsel indicated they would support a petition to terminate parental rights. The district court granted extension of TLC, found that the child could not be returned to Mother’s and J.G.’s home because Mother “must address her own mental health issues before being able to meet the child’s needs” and J.G. must “complete a mental health eval and complete tasks of his treatment plan.” App. A. at 17.

April 24, 2024 – CASA Report

K.B. continued to act out in school one year after beginning living again with placement, her stepfather T.C. She was suspended from school, and was concerned she would be abandoned by her current placement, T.C. K.B. was distressed by virtual visits from Mother rather than in-person visits. App. A at 18.

June, 2024 – Status Hearing & Petition for Termination Filed

The State reported it planned to file petition for termination of parental rights, which it did on June 7, 2024. D.C. Doc. 111.

Summary of Placement of the Children Throughout the Case

In March, 2021, B.B.-R. and K.B. were initially placed with their stepfather, T.C. (Mother's former husband), and their siblings, two younger children of Mother and T.C. (The district court had given primary custody of those children to T.C. T.C. had a new partner, A.E., who was not licensed as a foster care provider.)

After a May 3, 2022, hearing, K.B. and B.B.-R. were placed in the home of Mother and K.B.'s father, J.G., in Stanley, North Dakota. In September, 2022, B.B.-R. was struggling with behavioral issues in Stanley. He was returned to the home of his stepfather, T.C., in Glendive. Mother had asked CPS to take him back after being unable to deal with his behavioral problems while he was living with her and J.G. His therapist, Ms. Hynes, recommended that he be placed in a group home.

From November, 2022 to September, 2023, B.B.-R. stayed at Intermountain group home in Helena. Then he was placed with T.C. and his half-siblings in Lincoln, Montana. 9/27/23 Tr. at 9. K.B. was removed from Mother's care again in April, 2023. She lived in another foster placement for a couple of months, and then moved to

T.C.'s home again with her siblings. She was still living with T.C. at the time of the termination hearing. 8/22/24 Tr. at 18.

T.C. moved to Lincoln, Montana with K.B. and her siblings (Mother's younger children) sometime before July, 2023. 9/27/23 Tr. at 9. As of the filing of this appeal, B.B.-R. was no longer living with T.C. B.B.-R. had reported to CPS that he was afraid of T.C. After her rights had been terminated, Mother did not know where he was located.

August 21-22, 2024 – Termination Hearing Conducted

Dr. Roche, a psychologist, testified about psychological evaluations she had performed on each of the two children. She also informed the court about the parent-child interaction assessment she had conducted to evaluate Mother's parenting. 8/21/24 Tr. at 16-93. Ms. Joanne Hynes, a child and family therapist who had treated Mother and the kids at various times over a period of several years, testified regarding the children's behavioral and mental health difficulties and Mother's failed mental health treatment with her. *Id.* at 94-173.

Mother testified regarding transportation difficulties and difficulties obtaining services in Stanley, North Dakota.

She described the challenges of finding mental health services in Stanley, ND, which was one hour from Minot and one hour from Williston, respectively. *Id.* at 218. She stated that she had been engaging in mental health treatment regularly since the end of 2023. *Id.* at 204. She asked for six more months to work on her treatment plan. *Id.*

Mother also explained that visitation had not been consistent since kids moved to Lincoln because she did not have a working vehicle. *Id.* at 208. She also explained that the Department's arrangements with relatives' vehicles were not helpful because they couldn't even get to the vehicles. *Id.* at 209. One of the vehicles offered, for example, was her father's, and he was located in Glendive, four hours from Stanley, North Dakota.

Q. Okay. When you were told that you needed to visit the kids, and the Department would provide gas vouchers and hotels and all those things, that wasn't enough in order to help you with the visits?

A. It was enough, but it was hard for us to get anywhere and go see them from November till July, when we didn't have a vehicle running. We were borrowing a vehicle, or we were getting rides to and from work, or I - particularly me, I was walking.

Q. Didn't Laura find a relative of yours that said you could use their car?

A. Yeah. But how would we have gotten from Stanley to here, to even get the car, when we didn't have a running vehicle?

Id. at 209.

CPS Moser also testified that it was difficult to provide services to Mother and the family when they were living in Stanley. 8/22/24 Tr. at 20. “There’s a lot of- more limited providers even in the rural areas than there are in Montana. And so, mom was trying to travel to get services to Minot; wasn't able to consistently do that.”

CPS Moser claimed that the Department had provided Mother assistance with transportation. 8/22/24 Tr. at 14.

She explained that Mother was less consistent about visitation when she lived further away from the children. “Well, when she was in Montana, it was once or twice a week. When she moved to North Dakota, she would travel to Glendive when the kids were still in Glendive to do that. She would often cancel in those cases, but it was supposed to be weekly. Then, when she went to Helena, it was supposed to be monthly is what they could- had committed to. And that did not happen consistently.” 8/22/24 Tr. at 15.

September 30, 2024 – Court’s Order Terminating Mother’s Parental Rights

Applying the factors in MCA § 41-3-609, the district court found that clear and convincing evidence established that an appropriate treatment plan had been approved. App. A. at 21-22. The birth mother had not complied with the treatment plan and her ability to provide adequate parental care was unlikely to change in a reasonable amount of time. Specifically, Mother had not followed through with her own mental health therapy; had not been consistent with visitation despite Department’s efforts to subsidize travel costs; she was unable to understand the children’s needs. The court noted that B.B.-R. and K.B. had significant mental health issues and needed permanency.

SUMMARY OF THE ARGUMENTS

The Department admitted that it could not arrange mental health treatment and other services in rural North Dakota. Thus, it failed to provide reasonable efforts to reunify the family. The Department mishandled Mother’s case by failing to understand the laws regarding Interstate Compact and placement in another state. Because of this failure, and the refusal of North Dakota CPS to provide assistance without an ICPC, the children’s homestay with Mother failed.

The district court erred in finding that the conduct and condition rendering Mother unfit to give the children adequate parental care was unlikely to change within a reasonable time. Mother had failed to attend mental health treatment consistently primarily because no treatment was available in rural North Dakota. She had stopped visiting the children regularly because the placement, T.C., moved them ten hours away from her home, with the Department's permission. Mother had complied with many of her treatment plan goals, including finding a stable home, and employment. Given the acknowledged difficulties in arranging treatment and services in North Dakota, Mother should have been permitted additional time to demonstrate she could care for the children.

STANDARD OF REVIEW

The Court reviews a district court's termination of parental rights for an abuse of discretion. *In re T.N.-S.*, 2015 MT 117, ¶16, 379 Mont. 60, 347 P.3d 1263. A district court abuses its discretion when it "acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice." *In re R.M.T.*, 2011 MT 164, ¶26, 361 Mont. 159, 256 P.3d 935. The Court reviews a

district court's findings of fact to determine whether they are clearly erroneous and reviews the district court's conclusions of law to determine whether they are correct. *In re D.B.*, 2007 MT 246, ¶18, 339 Mont. 240, 168 P.3d 691.

ARGUMENT

I. THE DEPARTMENT DID NOT MAKE REASONABLE EFFORTS TO REUNIFY MOTHER WITH HER CHILDREN.

A. The Department is required to assist parents with completing their treatment plans.

In a dependency-neglect proceeding, the Department must engage in reasonable efforts to reunify the family. Mont. Code Ann. § 41-3-423 (1), (7). Reasonable efforts require that the Department, “in good faith,” assist a parent in completing his or her voluntary services and treatment plan.” *In re R.J.F.*, 2019 MT 113, ¶28, 395 Mont. 454, 443 P.3d 387 (citing *In re D.B.*, ¶ 33; *In re T.D.H.*, 2015 MT 244, ¶ 42, 380 Mont. 401, 356 P.3d 457). Treatment plans between parents and the Department are “intended to be a good-faith, joint effort” between the Department and the parent. *In re J.S. & P.S.*, 269 Mont. 170, 178-79, 887 P.2d 719, 724 (1994). *See also In re A.T.*, 2003 MT 154, ¶ 21, 316 Mont. 255, 70 P.3d 1247.

The Department must continue to monitor treatment plan tasks throughout a case and the good faith requirement “does not end once the court has approved a treatment plan.” *In re D.B.*, 2007 MT 246, ¶33, 339 Mont. 240, 168 P.3d 691.

B. The Department failed to provide reasonable efforts to arrange services for the family when the children were placed in North Dakota with Mother.

1. The Department did nothing to arrange any services for the first ten weeks after the children moved to Stanley and failed to arrange adequate services thereafter.

At a hearing in August, 2022, the district court expressed frustration with the Department for not doing much to arrange services during the summer of 2022.

THE COURT: So, June to today, you didn't- YDI had terminated services and then, you just asked today to start them back up. MS. MOSER: I did. And I sent the referral for them right after lunch today. THE COURT: And when did you discover that the services weren't available to the family there in North Dakota? MS. MOSER: That was with Marsha's email this morning. THE COURT: Today.

8/16/22 Tr. at 12.

The court also noted that it was also only two weeks before the hearing that CPS in Stanley was contacted and requested to provide services to the family. App. A at 7.

Mother reported that she had been unable to find any services herself. *Id.* She also reported that North Dakota providers refused to accept her Medicaid and sent her to private providers, who also were not available. When Mother tried to set up virtual services with Montana providers in Glendive, at the suggestion of Montana CPS, she learned that those providers could not treat her because they were not licensed in North Dakota. App. A at 9-10.

2. The Department was unreasonable in delaying in requesting an ICPC with North Dakota CPS, given that ND CPS refused to provide services without one.

The Department failed to provide reasonable efforts when it did not request an ICPC with North Dakota around the time it contemplated placement with Mother in North Dakota. The Department felt it did not need to request one since they were placing the children with K.B.'s "non-offending parent," J.G. The Department seemed to be relying on *In re E.Y.R.*, 2019 MT 189, 396 Mont. 515, 446 P.3d 1117, which cites an exception to the ICPC requirement for a non-offending parent in another state. App. A at 13.

The district court pointed out, however, that B.B.-R. was not the child of J.G., and also that Mother, the offending parent, was living

with J.G. in North Dakota. The district court also later pointed out that if the Department's rationale was that J.G. was a non-offending parent, they should have dismissed the case involving K.B. at the time she was placed with J.G. 2/14/23 Tr. at 31.

Regardless of whether or not an ICPC was legally required, however, in the circumstances it was necessary to request one, given that North Dakota CPS refused to cooperate in assisting the family without one.

The district court repeatedly expressed frustration with the Department for failing to request an ICPC.

THE COURT: Have you discussed or thought of trying to transfer [K.B.'s] case to North Dakota? MS. MOSER: We actually haven't had that discussion, but we c- will have the discussion when we staff. THE COURT: I mean, she's ... MS. MOSER: On the ... THE COURT: ... been there for six months. So. And if the issues are remaining in North Dakota, why wouldn't this be more proper to be in North Dakota. So, maybe that's something...

11/15/22 Tr. at 9.

The Department learned as the case was proceeding that North Dakota CPS was not going to cooperate in providing services to this family, because the children were not part of their foster care system. Without an ICPC, North Dakota CPS felt no obligation to assist the

family and refused to do so. CPS Moser reported to the court that North Dakota refused to provide services to the family: “So, what I’ve been told is that, unless they’re in their foster care system – not in other states, but in theirs – that you don’t get access to the services that you would like you can in Montana.” 8//16/22 Tr. at 6.

3. North Dakota CPS also failed to make reasonable efforts to assist the family.

The district court’s termination order summarized multiple occasions on which North Dakota CPS repeatedly refused to assist Montana CPS with the case. “As of September 16, 2022, the Department had requested North Dakota to investigate the safety of A.B.’s and J.G.’s home due to safety concerns for the children, police going to the home, J.G.’s alleged criminal activity and the children’s behavior. According to Ms. Moser, the North Dakota CPS was simply ‘not responding’ to their requests.” App. A at 7.

The Department requested that ND CPS do a safety assessment of the home, but “family reports no one has come to do this yet.” 10/31/22 Moser Aff. at 2. CPS Moser also testified, “We also are requesting CPS in North Dakota to try to take some more active role than they have in

the past, as a courtesy to us. It's up in the air whether they'll choose to do that or not." 9/27/22 Tr. at 17.

Eventually, after February 14, 2023, North Dakota CPS asked the Department to request an ICPC. The Department submitted it and North Dakota denied it. Soon after that, K.B. was removed from Mother's home in Stanley and taken back to Montana. North Dakota's CPS shares in the blame for the failure to provide reasonable efforts to Mother and her children.

This problematic situation of clients moving to North Dakota because they have housing there, and the difficulty of the Montana Department assisting them once they have moved to North Dakota, has come up in other cases. *See In re R.J.F.*, 2019 MT 113, 395 Mont. 454, 443 P.3d 387; *In re E.Y.R.*, 2019 MT 189, 396 Mont. 515, 446 P.3d 1117; *In re B.H.*, 2020 MT 4, 398 Mont. 275, 456 P.3d 233.

Given these ongoing problems with parents living in North Dakota, the Department should have learned how to implement strategies for providing services efforts to parents in this situation. Such strategies might include coordinating better with North Dakota CPS on ICPC issues and provision of services. Mental health providers

who live near the border of Montana and North Dakota and who work with the Department should be encouraged to obtain dual licenses in both states so that Montana parents may receive services while they live in North Dakota.

Like the Mother in *R.J.F.*, Mother cannot be faulted for moving to North Dakota, where she was offered a home and employment opportunities. *See R.J.F.*, ¶¶3-5. At the beginning of the case, she did not have acceptable housing. She was living with a boyfriend named Paul Hall, whom the children complained they were afraid of. At the end of 2021, she moved to the home of J.G., the father of K.B., in North Dakota. J.G. had a stable income and a home and offered her employment. Mother was able to find other employment as well in North Dakota. But she struggled with finding providers for herself and for the children in Stanley, which has a population of 2000. Stanley is also located more than three hours from Glendive, Montana, where the CPS office handling her case was located.

C. **The Department failed to make reasonable efforts to reunify the family when the children were placed in in a location more than ten hours from Mother's home.**

The Department did not adhere to its own visitation policies when placed the children with T.C. in Glendive, a three- to four-hour drive from Stanley, North Dakota, after the homestay didn't work out. The difficulties with arranging visitation only became worse in the summer of 2023, when T.C. was permitted to move the children to Lincoln, Montana, a ten- to twelve hour drive from Stanley, North Dakota. After that move, Mother's visitation was reduced to monthly visits. She was unable to visit at all during winter months, in part because of bad roads and winter driving conditions, as well as non-working vehicles. This situation was inconsistent with Department policy of placing the children as close as possible to the parent so that visitation can be arranged as conveniently as possible. *See* Child and Family Services Policy Handbook, "Visitation Between Child and Parents," *available at* <https://dphhs.mt.gov/CFSD/cfsdmanual>

Mother was blamed for her inability to drive to Glendive from Stanley. She was also blamed for her inability to drive to the CPS office in Helena, Montana (near Lincoln), despite the fact that she reported to

the Department that she no longer had a running vehicle. The Department could have offered to rent her a car, or pay for plane tickets, but did not do so. Instead, the Department only offered gas vouchers and hotel vouchers, which were useless since Mother did not have a car. The Department claimed that they had tried to make arrangements for Mother to borrow her relatives' cars. But Mother explained that she could not even get to the locations where those cars were available because she had no working vehicle. 8/21/24 Tr. at 209. For example, Mother's father, who lived in Glendive, offered a vehicle, but he was located more than three hours from Stanley.

The Department was unreasonable in allowing T.C. to move ten hours from Mother with the children. The Department deferred to T.C.'s wishes and prioritized his preferences, rather than working to reunify Mother with her children. The district court, the CASA, and children's attorney repeatedly overlooked warning signs that the children were not doing well when placed with T.C. T.C. was awarded primary custody of the two younger children. T.C. was never evaluated for his own past contributions to the ongoing behavioral issues of B.B.-R. and K.B., who had lived with him and Mother prior to the divorce. The court

unfairly blamed Mother for being unable to maintain consistent visitation when the children were moved ten hours from her home.

II. THE DISTRICT COURT ERRED IN DETERMINING THAT MOTHER'S CONDUCT OR CONDITION WAS UNLIKELY TO CHANGE IN A REASONABLE PERIOD OF TIME.

At the time of the termination hearing, Mother asked the court to give her more time to show she could meet the treatment plan goals. 8/21/24 Tr. at 203. She had obtained housing and employment. *Id.* at 189-90. She stated that she had been attending mental health treatment regularly from December 2023 to July, 2024. *Id.* at 202.

The district court faulted Mother for failing to follow through with her own mental health appointments during the case and for failing to arrange counseling for her children when they were in her care in North Dakota. In addition, the court faulted her for being unable to address her children's needs because the children had significant mental health diagnoses. B.B.-R. was diagnosed with disruptive mood dysregulation disorder, post-traumatic stress disorder, anxiety and attention deficit hyperactivity disorder. 8/21/24 Tr. at 105. K.B. was diagnosed with post-traumatic stress disorder, anxiety disorder, and ADHD combined presentation, an disruptive mood dysregulation disorder, sensory

processing disorder. *Id.* at 44. The court did not believe Mother could address these needs. It was unclear, however, whether any permanency foster care placement could address these problems either.

The record suggests, however, that Mother may have been able to succeed, at least with K.B., if she had been given more support from CPS when the children were placed with her in North Dakota. Early in the case, Mother did well enough with services and support provided in Glendive that CPS thought a homestay was worth trying. App. A. at 5-6; Moser Aff. Then, she made it nine months (May 2022 to April 2023) with K.B. living with her before K.B.'s school behaviors, and North Dakota's denial of the ICPC, led to K.B. being removed from her care again in April, 2023. The district court stated at a November 15, 2022, hearing that the case was close to being eligible for dismissal since K.B. had been in mother's home for more than six months. The court cited MCA §41-3-424.

Throughout the case, Mother was generally cooperative in communicating with CPS. She was reliable about visitation when the children were living near her. She completed a mental health evaluation and psychological evaluation and was attending treatment

regularly at the time of the termination hearing. She completed treatment plan tasks when she was living in Glendive near the services arranged by CPS in Montana. Mother did not have substance abuse issues or personality disorder issues that prevented her from cooperating with the Department. Her problem when she was living in Glendive was obtaining housing and getting away from her then-boyfriend, P.H. Mother moved to Stanley because J.G., the father of K.B., offered her a home and a chance to get away from the domestic violence issues she had with P.H. This should have been a case in which the family was reunified.

The court unreasonably blamed Mother for J.G.'s lack of compliance with a treatment plan. But it was unclear why J.G. was required to comply with a treatment plan, since he was a non-offending parent. One reason K.B. was removed from Mother's care for the second time was that her partner, J.G., who was the father of K.B., was not completing tasks in his treatment plan. App. A at 14. But J.G. should not have had to comply with a treatment plan, because he had had no involvement in K.B.'s life at the time the Department became involved.

Both K.B. and B.B.-R. indicated throughout the case that they preferred to live with Mother. 8/21/24 Tr. at 141, 170, 172. The district court should have given more weight to their preferences, given their age.

The wishes of T.C., the placement, were prioritized over those of the children and the Mother. T.C.'s parenting was only minimally scrutinized by CPS, the CASA, and the court. The kinship placement with T.C. was not a success – certainly not for B.B.-R. Earlier in the case, CPS Moser reported that placement with T.C. was not a good option for the boy. He had been smacked in the face while with T.C. 8/16/22 Tr. at 10. The older boy had dropped out of that placement by the time of this appeal and was presumably back in a group home.

In addition, K.B. was continuing to struggle with acting out in school when she was placed with T.C. These struggles were occurring in April, 2024, more than one year after she was removed a second time from Mother's care and after she had been placed with T.C. for months. App. A at 18, citing April 24, 2024 CASA Report.

The district court's order terminating Mother's parental rights did not help these children. It cut them off from a person who loved them,

whom they wanted to live with, without providing them with a better alternative. The termination did not achieve permanency for B.B.-R. and possibly not for K.B. either.

CONCLUSION

For all of the above reasons, Mother respectfully requests this Court reverse the order of the district court terminating her parental rights and remand for further proceedings.

Respectfully submitted this 8th day of May, 2025.

Laura Reed
P.O. Box 17437
Missoula, MT 59808

By: /s/ Laura Reed
Attorney for Mother

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 Century Schoolbook 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 less than 10,000, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Laura Reed
 Laura Reed

APPENDIX

Order Terminating Parental RightsApp. A

CERTIFICATE OF SERVICE

I, Laura Marie Reed, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-09-2025:

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

Brett Irigoien (Govt Attorney)
121 S Douglas Ave.
Glendive MT 59330
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: A. B.
Service Method: eService

Electronically Signed By: Laura Marie Reed
Dated: 05-09-2025