

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0027

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IN THE MATTER OF:

B.B.-R. and K.B.,

Youths in Need of Care.

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**BRIEF OF APPELLEE**

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

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## **STATEMENT OF THE ISSUE**

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

## **STATEMENT OF THE CASE**

Following removal of B.B.-R. (aged 9) and his younger sister, K.B. (aged 6) from A.C.'s (Mother's) care based on concerns of neglect and physical abuse, the Montana Department of Health and Human Services (Department) petitioned for emergency protective services and temporary investigative authority on February 16, 2021. (Doc. 1.)<sup>1</sup> Paternity testing established that J.G. (Father) was K.B.'s biological father in May 2021. (DN-21-05 Doc. 23, Aff. at 2.)<sup>2</sup>

Mother stipulated to the Department's requested relief at the show cause hearing, and the district court approved a treatment plan for Mother on June 8, 2021. (3/09/21 Tr. at 7; Doc. 29.)

On November 18, 2021, Mother informed the Court Appointed Special Advocate (CASA/GAL), Brenna Noland (Noland), that she was moving into K.B.'s Father's residence in Stanley, North Dakota. (DN-21-05 Doc. 35 at 4-5.) On

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<sup>1</sup> Unless otherwise stated, citations to the record will be from District Court Cause No. DN-21-04. Citations to the companion file, DN-21-05, will reference that file number.

<sup>2</sup> A.R., B.B.-R.'s named father, did not appeal the district court order terminating his parental rights. (Doc. 146 at 17; 8/22/24 Tr. at 239.)

May 27, 2022, the Department placed B.R.B. and K.B. with Mother and Father (Parents) in Stanley, North Dakota, for a trial home visit. (11/15/22 Tr. at 4.) On August 4, 2022, Father reported to CASA/GAL Noland that his concerns with B.B.-R.'s behavior included: "vandalism; taking/running off and being defiant; dry humping the dogs and making them hump him; lifting up [K.B.'s] skirt to see her underwear; putting a knife to [Father's] son's TV; and terrorizing the neighbors." (Doc. 52 at 3.)

On September 15, 2022, Mother voluntarily returned B.B.-R. to his kinship placement in Montana. (Doc. 59, Aff. at 2; *see also* 9/27/22 Tr. at 6, 10.) Joanne Hynes (Hynes), B.B.-R.'s therapist, was recommending a therapeutic group home placement for B.B.-R., which the Department was actively attempting to accomplish.<sup>3</sup> (9/27/22 Tr. at 7.)

On November 15, 2022, Intermountain Group Home (Intermountain), which was located in Helena, accepted B.B.-R. for placement. (Doc. 64 at 2.) As a result, the children's kinship caretakers, T.C. and A.E., moved from Glendive to Lincoln so they could be close to B.B.-R. (Doc. 146 at 10; Doc. 64 at 2.)

Based upon alarming behavior at school and disclosures by K.B. that she was not safe, the Department removed K.B. from the trial home visit on April 21,

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<sup>3</sup> Hynes, a licensed clinical social worker (LCSW), had been a child and family therapist for about 15 years. (8/21/24 Tr. at 94.) She had worked extensively with the family and had known K.B. since she was born. (*Id.* at 120.)

2023. (4/21/23 Tr. at 9, 17.) At this time, K.B. was “dysregulated in all areas of her life,” and was having to take care of her personal hygiene at school. (*Id.* at 11.)

Over the next year, Mother and Father continued to make insufficient or no progress on the components of their respective treatment plans and the Department eventually petitioned to terminate Parents’ rights on June 7, 2024. (Doc. 111; DN-21-05 Doc. 117.) On August 21, 2024, the district court conducted a hearing on the petition.<sup>4</sup> On September 27, 2024, the district court terminated Mother’s parental rights. (Doc. 146; DN-21-05 Doc. 153.) This Court granted Mother’s request to file an out-of-time appeal on January 22, 2025.

## **STATEMENT OF THE FACTS**

### **I. Pretermination hearing**

Throughout January and February 2021, the Department received reports concerning Mother’s ability to parent B.B.-R. and his younger sister, K.B. (Doc. 1, Aff. at 4.) This included the children smelling like urine, having ongoing head lice, physical abuse occurring in the home, excessive discipline, being exposed to

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<sup>4</sup> Because the petition had not been personally served on K.B.’s Father, his attorney objected to the proceeding on August 21, 2024. (8/21/24 Tr. at 6-7.) As Father was present in court, the district court had him personally served (*id.* at 10), and his portion of the termination hearing eventually took place on September 4, 2024 (9/04/24 Tr. at 5). Mother’s attorney was present for Father’s portion of the hearing. (*Id.*)

domestic violence, being left with inappropriate caregivers, having access to medications, drug use occurring in the home with the children present, and other concerns. (*Id.*) The Department removed the children from Mother on February 10, 2021, and placed them with Mother's ex-husband, T.C.<sup>5</sup> (Doc. 23, Aff. at 2.)

On May 17, 2021, the State petitioned the district court to adjudicate B.B.-R. and K.B. as youths in need of care and grant the Department temporary legal custody (TLC). (Doc. 23.) Mother stipulated to the relief requested in the petition. (6/01/21 Tr. at 7.) On June 8, 2021, the district court approved Mother's treatment plan. (Doc. 29.) The treatment plan was appropriate, and Mother does not contend otherwise.

On November 18, 2021, Mother informed CASA/GAL Noland that she intended to move into Father's residence in Stanley, North Dakota, on November 20-21, 2021. (DN-21-05 Doc. 35 at 4-5.) On November 30, 2021, Mother stipulated to another extension of TLC. (Doc. 25.)

On April 12, 2022, the State filed another petition to extend TLC. (Doc. 42.) The attached affidavit from Child Protection Specialist (CPS) Laura Moser (Moser) summarized Mother's progress on the various components of her treatment plan. (*Id.*, Aff. at 2-3.) Moser documented that the "visitation plan is to

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<sup>5</sup> T.C. is the father of two of K.B.'s and B.B.-R.'s maternal half-siblings. (8/21/24 Tr. at 174-75.)

continue to increase the length of the visitation, with a plan of transitioning the children into [Mother's] home in North Dakota at the end of the school year.” (*Id.*, Aff. at 2.) Moser concluded, “[a]dditional time is necessary for Mother to complete her court-ordered treatment plan. (*Id.*, Aff. at 3.) Mother agreed to the extension of TLC, and to “continue work on the treatment plan.” (5/03/22 Tr. at 4-5.)

On May 27, 2022, B.B.-R. and K.B. were placed with Parents in Stanley, North Dakota, for a trial home visit. (8/16/22 Tr. at 5.) Moser testified that for the next few months “[K.B. was] doing well in the home; [B.B.-R.] seem[ed] to be struggling of late with behaviors, as far as oppositional defiance, boundary issues, some touching issues that were recently disclosed, and some aggressiveness.” (*Id.* at 6.)

Moser summarized that the children had “gotten into services in North Dakota for the medical appointments, which referred them for psychiatric services and support services for counseling.” (*Id.* at 5.) The Department had referred the family for “intensive in-home services,” and had arranged for Youth Dynamics, Inc. (YDI) to provide interim services, which “seemed to help the family.” (*Id.* at 6.) Because YDI could not bill North Dakota Medicaid, the Department agreed to pay for YDI’s services. (*Id.* at 6-7.)

The district court expressed concern for B.B.-R.:

Like, I’m half—close—tempted, and I want to hear from Ms. Williams about ordering placement somewhere else. A kid

putting a belt around his neck, humping the dog, alleged touching issues. Clearly this is more than just some concerns. This kid is—in the pervious testimony, it was that when he was placed with [T.C.] he was thriving. And now—there was never, ever brought to the [c]ourt’s attention any of the concerns prior to the placement where he is now.

(*Id.* at 8-9.)

By September 2022, Father had been convicted of menacing<sup>6</sup> and had an ongoing criminal mischief case in North Dakota. (DN-21-05 Docs. 54 at 3, 68 at 17-18.) Father’s arrest occurred when both children were residing in his home and Mother did not disclose the arrest to the Department. (*Id.*)

On September 13, 2022, Mother informed CASA/GAL Noland that B.B.-R. had been lighting toilet paper on fire in their bathroom. (Doc. 56 at 5.) Mother shared that Father wanted B.B.-R., who was 11 at the time, “out of the house that night.” (*Id.*) Moser informed Noland that she had warned Father she would contact the police if he physically harmed B.B.-R. (*Id.*)

In November 2022, the district court explained that the case had not been dismissed because issues remained unresolved and there were new “reports of child abuse or neglect” in North Dakota, including that K.B. had run out of necessary medication. (11/15/22 Tr. at 14-15.) As had been noted by CASA/GAL

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<sup>6</sup> “A person is guilty of a class A misdemeanor if he knowingly places or attempts to place another human being in fear by menacing him with imminent serious bodily injury.” N.D. Cent. Code § 12.1-17-05 (2023).

Noland, “If [K.B.] has not taken her medication her moods/behaviors are to the extreme and she is unsafe to be around.” (DN-21-05 Doc. 62 at 4.)

By February 2023, K.B. was “acting out towards other staff and students.” (2/14/23 Tr. at 10.) On two occasions, K.B. became so angry that she yelled and hit her head against a wall. (DN-21-05 Doc. 68 at 4.) K.B. had spit, hit, kicked, and bitten school staff. (*Id.* at 4, 6-7.) Staff decided to “self-contain[] [K.B.] in a . . . one-to-one classroom.” (2/14/23 Tr. at 10.) Further, K.B.’s school was recommending that she be placed in a partial hospitalization program or into a group or residential home. (*Id.*)

K.B. reported that “she was going to kill herself,” and that she was running away from Father’s residence. (DN-21-05 Doc. 68 at 4, 6-7.) K.B. claimed that Father had told her “that no one at school wants her there.” (*Id.* at 7.) K.B. stated that Father “does drugs, and . . . beats her.” (*Id.*) K.B. told her principal that she was “terrified she will be beaten or physically harmed by [Father]” and that she was “scared to go home.” (*Id.*)

Throughout April 2023, K.B.’s behaviors continued to escalate. K.B. told her teacher “she was going to kill the teacher,” swore at the teacher, and told the teacher if she did not “shut up” the teacher would die. (*Id.* at 10-11.) K.B. had also “knocked on the door of a school staff member over the weekend asking for food, expressing that she was scared, was home alone and that she was hungry.”

(DN-21-05 Doc. 78 at 3.) K.B.'s hair was observed to be "very matted" when she showed up at the staff member's home. (*Id.*)

K.B. reported that Parents had asked her "to bring them beers and cigarettes," and threatened to have CPS remove K.B. "if she does not do what is asked of her." (*Id.*) K.B. explained that Father is "drunk every night" and "becomes an 'asshole' to [K.B.]." (*Id.*) K.B. alleged that Father made her "stand in the corner all night, while he gets to go to bed." (*Id.*) CASA/GAL Noland expressed concern that Father was allowing individuals with criminal histories to be around K.B. and overall doubt about Father's ability to "ensure the safety, security, stability and well-being of himself and [K.B.]." (DN-21-05 Doc. 68 at 20.)

On April 21, 2023, Moser informed the district court that she was traveling to North Dakota to remove K.B. from Parents' care. (4/21/23 Tr. at 5-6.) The district court authorized the removal and found that K.B.'s placement "in the home will continue to cause emotional and psychological harm to the child, and the child is in danger of physical harm as well." (*Id.* at 17.) The district court ordered that Parents each complete a parenting assessment and a psychological evaluation. (*Id.* at 17-19.)

On June 20, 2023, Moser testified that Mother was "superficially compliant" with her treatment plan. (6/20/23 Tr. at 13.) Moser stated that Mother had gone off her medication, and expressed concern about the consistency of Mother's

visitation. (*Id.* at 13-14.) Asked if Mother needed additional time to complete her treatment plan, Moser responded “yes,” and elaborated:

[Mother] needs to follow through with her ongoing tasks of mental health. She needs to have safe and stable housing. She needs to be in compliance with her visitation and parenting. She needs to address her own mental health issues and be supportive, emotionally, for her children and following through consistently.

(*Id.* at 14.)

The children’s attorney, Judy Williams (Williams), had the following exchange with Moser:

Q. . . . So, in this—realistically, we’re looking for [Mother] and [Father] to step up, engage meaningfully with the tasks on their treatment plans so that the children are able to return home. Is that right?

A. Yes.

Q. And at this point, are we even close?

A. I would say we’re not close.

(*Id.* at 27.)

By August 8, 2023, Mother had completed her court-ordered evaluation with Dr. Brenda Roche (Dr. Roche). (8/08/23 Tr. at 6.) Mother claimed to be “back on her medication,” but had not signed updated releases for her mental health providers in North Dakota (*id.*), nor had she provided proof of income (*id.* at 10). At a family engagement meeting, Mother and Father had committed to monthly in-person visits with B.B.-R. and K.B. on the first weekend of each month. (*Id.* at 8.)

At this time, Father was not doing “any sort of mental health counseling.” (*Id.* at 11.) Father alleged that he had repeatedly left voicemails with Dr. Roche’s office, but she would not respond.<sup>7</sup> (*Id.* at 12.) Williams e-mailed Dr. Roche during the hearing and scheduled an evaluation for him for November 21 and 22, 2023. (*Id.* at 15, 20.)

The district court then addressed Parents directly, stating:

So, from the beginning of this case, one of the things in the treatment plan had been providing information about the legal means to support the kids. And neither of you have done that yet. And I guess I’m just wondering what the holdup is. If there’s a reason why you haven’t provided your income verification regarding the children.

(*Id.* at 17.)

Mother responded that she didn’t understand the question. (*Id.* at 18.) Father interjected that, “since we are self-employed, [Mother] is part of the business. And we don’t have, we don’t have a normal payroll schedule. We do a, an owner draw as needed from the business.” (*Id.*)

CASA/GAL Noland informed the district court that the family therapist, Hynes, had discontinued services with Parents because they would not show up for appointments, nor would they let her know that they weren’t showing up. (*Id.* at 24.) CASA/GAL Noland observed that the kinship placement, T.C. and A.E., acted

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<sup>7</sup> Dr. Roche would later testify that the only record she had of being contacted by Father was once, via e-mail, on August 19, 2024. (8/21/24 Tr. at 88.)

consistently with concern for the best interests of the children, whereas Mother and Father seemed to view the children as assets. (*Id.* at 24-25.) CASA/GAL Noland concluded:

And I recognize that [Mother and Father] have been working on these tasks over the past month, that are in the best interests of the children. And I hope that they continue their, their making these—facing these parenting responsibilities. And continuing to meaningfully engage with them in person. But in my opinion, it’s—the efforts are artificial and two years overdue.

Permanency is needed for [B.B.-R.] and [K.B.], so they can start to develop a capacity for physical and mental growth. In a consistent and safe environment. Which [has] consistently been offered by [T.C.] and [A.E.], in their home, and with their siblings.

(*Id.* at 26.)

On February 6, 2024, Mother agreed to an extension of TLC to comply with her treatment plan. (2/06/24 Tr. at 6.) The district court noted that this was the sixth extension of TLC, it had been over two years since it ordered Mother’s treatment plan, and concluded, “we’ve got to figure out what we’re doing for permanency for these kids.” (*Id.* at 8.) The district court found “the mom, [Mother] has—needs additional time to work on treatment plan tasks which include visitation, mental health, parenting, housing and income, contact with the department.” (*Id.* at 8.)

Williams pointed out that “it’s been almost three years since the Department got involved, and because of the children’s need for permanency,” she was now

advocating for the termination of Mother's parental rights and for an opportunity for T.C. and A.E. to adopt the children. (*Id.* at 12.)

At the March 19, 2024 status hearing, the State informed the district court that it intended to file a petition for termination of parental rights. (3/19/24 Tr. at 4-5.) CASA/GAL Noland agreed this was in the best interests of the children, and added:

[Mother and Father] have pushed back on and have been resistant and have given excuses to many of the requirements and recommendations and parental responsibilities given by this [c]ourt and the professionals who treat these children. And they've been given chance after chance after chance to prove that they can make responsible choices, to prove that they care deeply for, and prioritize, [B.B.-R.'s] and [K.B.'s], you know, present, past, and future well-being and lived experiences.

They've wasted many opportunities to prove that, without consideration to the consequences. They continue to make choices and live their lives almost uninfluenced and—the way that they choose to live. And that, to me, is a, a risky, if not even dangerous, place to raise children with such high needs like [B.B.-R.] and [K.B.].

(*Id.* at 7.)

The State filed petitions for the termination of Mother's parental rights on June 7, 2024. (Doc. 111; DN-21-05 Doc. 117.) The petitions documented that B.B.-R. had been in foster care for 15 of the most recent 22 months, and K.B. had been in foster care for 14 of the most recent 22 months. (Doc. 111 at ¶ 8; DN-21-05 Doc. 117 at ¶ 8.)

## II. Termination hearing

Dr. Roche, a practicing psychologist since 2003, had been trained in conducting parent-child interaction assessments, and had done “a lot of work with child abuse and neglect cases.” (8/21/24 Tr. at 18.) She had also been doing neuropsychological evaluations, “mainly with pediatrics,” since she began practicing. (*Id.*)

Dr. Roche met with Mother, B.B.-R., and K.B., in May 2023. (*Id.* at 19.) Dr. Roche conducted a neuro-psych evaluation of B.B.-R. after seeing him on November 21 and 22, 2023. (*Id.* at 20.) She diagnosed B.B.-R. with Attention Deficit Hyperactivity Disorder (ADHD) and a mood disorder. (*Id.* at 28.) Further, she determined that B.B.-R. was suffering from Disruptive Mood Dysregulation Disorder (DMDD), chronic Post-traumatic Stress Disorder (PTSD), and anxiety. (*Id.* at 36.)

Dr. Roche stated that DMDD is a “very irritable, argumentative kind of mood disruption” that could happen very quickly, “even throughout a day,” that could make him a difficult child to parent. (*Id.* at 36-37.) Dr. Roche added that combined with his traumatic childhood and his ADHD, “that’s a trifecta of, . . . a kid that is very difficult to parent.” (*Id.* at 37.)

Dr. Roche testified that B.B.-R.,

. . . needs permanency, because he’s never really had permanency his whole life. And you know, he was 12 at the time I did

this evaluation. The only way that all of those things can be addressed that he has, is if he can get permanency. Kids cannot fully address their trauma until they have a safe, permanent home that they know they're going to be in. That they're not going to be sent away from that. That they can be stable in. And adoption, I believe, for him at his age is what he needs. Not a guardianship. Guardianship isn't as permanent. Adoption is.

*(Id. at 39.)*

Dr. Roche opined that B.B.-R. would not begin to “get better” until he received permanency in his placement. *(Id.)* Furthermore, Dr. Roche believed that B.B.-R. had the intelligence and capability to have a “normal functioning life” if he obtained permanency with respect to his placement. *(Id. at 40.)*

K.B.'s upbringing was different from B.B.-R.'s because Mother was always physically present with K.B. *(Id. at 42-43.)* Dr. Roche diagnosed K.B. with chronic PTSD, anxiety disorder, ADHD, DMDD, and also a “sensory processing disorder.” *(Id. at 44.)* Dr. Roche explained why her evaluation of K.B. did not recommend adoption by her foster family:

In that, it was because at that point I still had hope that [K.B.] and her birth parents, you know, could potentially rebuild and repair those relationships. If those recommendations would have been followed, and they would have been doing the in-person [visits], and they would have been doing all of the things on their treatment plans, there was still hope for [K.B.] to actually be reunified with her birth parents. I felt at that point.

*(Id. at 50.)* Based upon her updated knowledge of the facts, however, Dr. Roche recommended “permanency with adoption.” *(Id.)*

Dr. Roche testified that Mother had suffered a traumatic childhood, having been abandoned by her mother and having a father who was “in and out of incarceration.” (*Id.* at 52-53.) Mother had a history of using marijuana and methamphetamine. (*Id.* at 54.) Mother had been diagnosed as bipolar with ADHD, PTSD, and anxiety. (*Id.* at 55.)

During her evaluation, Mother struggled to come up with five words to describe either B.B.-R. or K.B. and had difficulty citing examples to corroborate her adjectives. (*Id.* at 55-56.) This demonstrated Mother’s “disrupt[ive] attachment” to the children. (*Id.* at 56-57.) Dr. Roche stated that Mother’s not having consistent in-person visits had further strained that attachment. (*Id.* at 58.)

Dr. Roche obtained valid results on the child abuse potential inventory evaluation, despite indications that Mother had been “faking” some of the answers. (*Id.* at 63-64.) Even with answers meant to place her in the best light, Mother’s results showed an “elevated” risk of child abuse. (*Id.* at 64.)

Test results regarding Mother’s executive function showed that she “struggles to manage her [own] life.” (*Id.* at 66.) Dr. Roche described her observations of Mother with the children, stating, “it’s very disruptive. That there’s lack of attachment. Lack of emotional attachment as well. There’s really not all that much bond between the kids and her, or her and the kids.” (*Id.* at 67-68.)

Dr. Roche testified that Mother “loves her children the best she can love,” and that the children also loved Mother. (*Id.* at 68.)

Based upon her evaluations, Dr. Roche made several recommendations for Mother to assist with reunification. These included weekly individual therapy, anger management, a chemical dependency evaluation, and an acknowledgement by Mother of her actions that caused the removal of the children. (*Id.* at 69-70.)

Dr. Roche further recommended that to reunify with her children, Mother needed to:

continue to work on being more connected with her kids and have a better understanding of them. Prioritize in-person visitation with both of her children at least weekly; however, preferably more often than that. She should be engaged in both of her children’s therapy and in contact with their therapists at least weekly. Attending parenting class to provide her more information on those areas she was low on knowledge on. And that given that there was all of those red flags, it was in my opinion—at that point—that she was still not, at that point, able to safely parent her children.

(*Id.* at 70.)

If none of her recommendations were met, Dr. Roche did not expect Mother to be able to safely reunify with K.B. and B.B.-R. (*Id.* at 71.) Furthermore, the children’s need for permanency at trial was greater than it has been at the time of Dr. Roche’s evaluation. As Dr. Roche succinctly put it, “[B.B.-R. and K.B.] need permanency today.” (*Id.*)

Asked if she felt Mother should be given more time to try to comply with her recommendations, Dr. Roche responded “no,” and explained:

Because the kids deserve permanency. She’s been given time. She chose not to take opportunities to have it, so why should the kids’ permanency and safety and well-being be put on hold because of choices [Mother] continued to make? And there would be no—what’s—there’s no guarantee that she’s going to do anything different again. She’s chosen not to do it for the last year. She had the opportunity.

(*Id.* at 86.)

Hynes had been working with Mother, B.B.-R., and K.B. “off and on for many years.” (*Id.* at 96.) She first encountered B.B.-R. when he was brought to her by his grandmother.<sup>8</sup> (*Id.*) The grandmother brought B.B.-R. to Hynes because:

He was having a lot of behavioral problems both at home and in preschool-setting. Behavioral problems meaning, he was having big temper tantrums, he was running away, he was—like, he would break and destroy toys. Um, he could get really aggressive. He was very defiant at that time. He didn’t want to listen to anybody. So, that was kind of the basis. And it was, if I’m not mistaken, it was recommended for [grandmother] to bring him to see a therapist by the preschool staff.

(*Id.* at 97.)

Hynes became involved with the family again in February 2021. (*Id.* at 102.) Hynes estimated she had been working with B.B.-R. for nine or ten years, (*id.* at 103), and had done at least seven mental health assessments on him (*id.* at 104-05).

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<sup>8</sup> It was later clarified that “grandmother” was Mother’s grandmother, and B.B.-R.’s great grandmother. (*Id.* at 100.)

Hynes diagnosed B.B.-R. with DMDD, PTSD with anxiety, and ADHD. (*Id.* at 105.)

Hynes played a role in B.B.-R.'s placement at Intermountain because he was struggling after Mother returned him to Montana. (*Id.* at 109.) The Department initially placed B.B.-R. with T.C., who was residing in Glendive. (*Id.* at 109-10.) Hynes noted that during this time, B.B.-R. had high emotions, was very dysregulated, and “was scared of everything.” (*Id.* at 110.)

During this time frame, B.B.-R. had stolen from Hynes' office, defecated in her office urinal, and smeared it all over the walls and toilet. (*Id.*) He was constantly stealing, to the point where the school had him escorted by an adult at all times. (*Id.* at 110-11.)

Hynes attempted to do parenting work with Mother and Father, but “none of those were successful.” (*Id.* at 115.) Hynes opined that B.B.-R. was at an “inflection point” in his life, and it was important that he had skilled and committed parents. (*Id.* at 119.)

Hynes had known K.B. since she was born and she began working with her as a therapist when she was in preschool as she presented with a lot of the same behavioral issues as B.B.-R. (*Id.* at 120.) Hynes diagnosed K.B. with reactive detachment disorder, as well as PTSD, DMDD, and ADHD with anxiety. (*Id.*)

Hynes had been opposed to the Department placing B.B.-R. and K.B. in North Dakota for the trial home visit as both children were “very dysregulated at that time.” (*Id.* at 125.) Hynes explained,

So, [K.B.] was finally starting—at the end of that school year—to finally start to regulate with help from the school staff. She was finally starting to learn to trust the adults that were working with her. She was just starting to, like, get to a point where we could really start doing work with her. And so, I really felt that the move was going to set her back in that. And because of my previous experiences with [Mother], I did not feel that [Mother] could provide the support for her—for [K.B.], behaviorally and emotionally, at that time. And the same with [B.B.-R.]. I did not feel that she could meet their, their behavioral and emotional needs.

(*Id.* at 126.)

When she returned to Montana after the trial home visit, K.B. “was in a lot worse condition” and “was almost like a feral child, honestly, when she came back.” (*Id.* at 127.) K.B. would escalate, scream incoherently, and did not want to brush her hair, which “looked like a rat’s nest.” (*Id.*) Furthermore, when the children were first returned from North Dakota, and were living with T.C. in Glendive, Mother did not visit the children even once. (*Id.* at 140.)

Asked to rank the children’s need for permanency on a scale from 1 to 10, Hynes responded that it was an “11.” (*Id.* at 142.) She added, “[w]e are—at this point in time—causing more harm by dragging it out and not giving them a solid answer and not giving them a permanent placement. Because that is one of their biggest stresses.” (*Id.* at 142-43.)

Hynes described her sessions with Mother and Father in 2023 as “very contentious and not healthy.” (*Id.* at 149.) The visits “always” ended with Mother getting upset and ending the Zoom calls early. (*Id.*) Hynes was not able to make any progress with Mother and/or Father regarding either coparenting or parenting support. (*Id.* at 155.)

Notably, during the time that K.B. spent with Parents from May 2022 through April 21, 2023, K.B. had not gained a single pound, which was consistent with malnourishment. (*Id.* at 157.) Hynes testified that when a therapist sees the “feral” behaviors that K.B. exhibited, they suspect both physical and emotional neglect, and that the kids are not having their needs met at home. (*Id.* at 158-59.)

Hynes did not believe that Mother understood the impact of what her children had experienced for the past three and a half years. (*Id.* at 162.) She had attempted to have those conversations with Mother, but “[i]t’s always somebody else’s fault.” (*Id.*)

When asked what Mother could have been doing “over these past three and a half years” to reunify with her children, Hynes responded that Mother needed to “[a]ccept responsibility for her piece in the issues and not just blame everybody else.” (*Id.* at 162-63.) Hynes noted that “[Mother] was never able to do that.” (*Id.*) Additionally, Mother needed to work on “her own mental health work,” to work on

her own trauma, and needed to be “very, very consistent with a trained therapist.”

*(Id.)*

Hynes concluded her response by stating:

She needed to do the reunification work with her kids, she needed to be consistent and show up as much as she could, and not make excuses. I mean, the, the Department I feel went above and beyond at times to try and work with [Mother] and [Father] to get them over here—by getting them hotel rooms, by paying for their gas, and even those trips were, you know, not always successful. So, th—those are the pieces that I think were presented to [Mother] and given to [Mother], and were not—she, she didn’t take advantage of those.

*(Id.)*

Hynes later testified that any time Parents disagreed with her, they became “verbally aggressive.” (9/04/24 Tr. at 11.) Of the four sessions with Hynes that Parents actually attended, two ended early because Parents were angry. (*Id.* at 13.)

In every interaction Hynes had with Parents, they exhibited “raised voices, defensive behaviors, defensive attitudes, and kind of refusal to accept their piece of it, or to accept the kid’s perspective of what was going on in their home.” (*Id.* at 21.) Parents blamed Hynes for their inconsistent attendance at the court-ordered therapy sessions. (*Id.* at 23.)

Mother testified that she had been diagnosed with bipolar disorder, PTSD, and ADHD. (8/21/24 Tr. at 183.) Nevertheless, Mother admitted, she took a “pretty big break” from her medications because she “didn’t like taking pills.” (*Id.*) She

had restarted taking her medications “for the sake of [her] kids.” (*Id.* at 184.)

Mother reported that she had not used methamphetamine since 2014. (*Id.* at 185.)

Mother had a medical marijuana card in North Dakota. (*Id.* at 186.) She claimed that she smoked it at night and smoked “one bowl” when she did. (*Id.*) She would ingest marijuana after her children went to bed. (*Id.*) When asked if she had ever exposed her children to secondhand smoke or her own intoxication, she responded, “I’m sure I have.” (*Id.*)

Even though Dr. Roche warned that this could make it difficult for her to reunify with her children, Mother continued to use marijuana because it helped with her anxiety and anger. (*Id.* at 198.) When asked if she had a plan to deal with her children if they were returned, Mother responded that she would “start doing [her] counseling again and doing all the, the—try to do more parenting classes,” and she would see what she could find “online” to help her parent. (*Id.* at 199.)

When asked why she moved to North Dakota, Mother responded,

Because I felt like it’d be better for me. To get away from all the drama that I was going through, and all—people putting me down. And it’s like, I would say one small little thing to somebody about something, and they would flip it around and make a huge story of something that never even happened.

(*Id.* at 200.)

Mother admitted to not maintaining regular contact with Moser because sometimes she got “angry.” (*Id.* at 203.) When asked how long she thought she

needed to complete with her treatment plan, Mother responded, “I want to say *at least six more months.*” (*Id.* (emphasis added).)

Williams had the following exchange with Mother:

Q. . . . Can you tell me why you haven’t stayed with doing the counseling over the past three and a half years?

A. I felt like it wasn’t working, and I didn’t need it.

Q. Well, did you understand that the treatment plan was ordered by the Court in order to have the children live with you again?

A. Yes.

(*Id.* at 208.)

When asked why she had not complied with the court-ordered therapy sessions with Hynes, Mother responded:

Because I would get angry at the things she said to me. And I wasn’t accepting the fact that I have anger issues and some of the trauma that my kids have gone through is partially my fault. I, I can’t accept it to do my—save myself, but apparently I just did. I said it in front of everybody in this courtroom.

(*Id.* at 210.)

Mother claimed that she did not attend scheduled visits due to “broken down vehicles.” (*Id.* at 208.) Williams asked, “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?” Mother responded, “It was enough, but it was hard for us to get anywhere and go see them

from November [2023] till July [2024], 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.” (*Id.* at 209.)

When asked what more the Department could have done to help her with the tasks on her treatment plan, Mother replied, “I guess, kind of explained it a little better for me, or to me, on exactly what I needed to do.” (*Id.* at 210.)

Moser, who had been with the Department for over 25 years, and had been involved in this case since February 10, 2021, prepared Mother's treatment plans, which were identical for B.B.-R. and K.B. (8/22/24 Tr. at 235-36, 238-39.) When asked how the Department helped Mother try to reunify with the children, Moser responded, “we have provided visitation. We have provided mental health services, gotten her an assessment, assisted her in trying to follow through with those recommendations. Assisted her in trying to have stable housing, given her transportation.” (*Id.* at 239-40.)

Moser described how the children's kinship placement was chosen:

[Mother] actually helped choose that initially. She's—was the one that suggested that because her two younger children were with their birthfather, [T.C.]. And that way her siblings could be together. And that was a hard choice for [Mother] that day, it really was. But she was trying to think about what was best for all of her children. And being separated from her plus separated from siblings, she didn't want that day. So, that's how we came to that conclusion. And [T.C.] was willing and worked with the Department to get a kinship license.

(*Id.* at 243.)

When asked if the Interstate Compact on the Placement of Children (ICPC) denial from North Dakota was the only reason that K.B. was removed from Parents' home, Moser responded, "no," and explained that K.B. was removed based on her escalating behavior at school, multiple reports of neglect, and concerns about what had been described to her by North Dakota law enforcement. (*Id.* at 249.)

Moser testified that Mother had failed to follow through with the recommendations of her mental health assessment and failed to show that she could implement the skills taught in her parenting class(es). (*Id.* at 251-52.) Mother had missed scheduled visits with the children and had not maintained consistent contact with Moser. (*Id.* at 253.)

When asked if she had attempted to engage with Mother to get her to be more consistent with her visits, Moser responded:

I have literally begged [Mother] at every check-in that she's had with me to please visit. My supervisor has begged her to do that. We have offered hundreds and hundreds of, like, thousands of dollars' worth of gas vouchers and hotel rooms. We have arranged with her family members to—transportation when they said they couldn't get there because of the car being broken down. We've even arranged family members that have been willing to drive to North Dakota and get them to bring them here. And then, get—loan them a vehicle after that. So, we, we've had her sign releases, so we could talk to her father to help coordinate that. So, we've, we've tried everything we can think of.

(*Id.* at 253-54.)

Moser later clarified the Department's efforts to engage Parents with visitation, explaining that the Department had discussed the barriers with Parents in

an effort to solve the problem. (9/04/24 Tr. at 125.) They could not fly Parents back to Montana, as they did not possess a credit card that would be needed to obtain a rental car for transportation to and from the airports, and the Department could not pay for rental vehicles. (*Id.*) They discussed whether Parents could ride the bus and whether they had relatives who could assist. (*Id.* at 125-26.) Moser had personally driven to Wolf Point to hand-deliver vouchers to Parents after they alleged that they had not received the vouchers Moser had sent in the mail. (*Id.* at 126.)

The Department ruled out having staff drive Parents to visits after Father had threatened Moser over the phone. (*Id.* at 127.)

Whenever the Department would propose a solution to Parents' transportation problems so that they could attend visitation, the solutions were "typically shot down by [Father]." (*Id.* at 122.) For example, when the Department found a relative who was willing to provide a vehicle for Parents to use, Father declined, saying that the vehicle was "too small" and that he would be "too uncomfortable" during the ride. (*Id.*)

Notably, K.B.'s behavior improved when Parents did not have in-person visits with her from November 2023 through July 2024. (*Id.* at 132.) After Parents attended visits in July and August 2024, K.B. "immediately" regressed. (*Id.*) K.B. began "struggling at school with behaviors and acting out in a way [the Department had not] seen in a long time for her." (*Id.* at 133.)

The district court terminated Mother's parental rights on September 27, 2024. (Doc. 146; DN-21-05 Doc. 153.)

### **SUMMARY OF THE ARGUMENT**

The record supports that the Department made reasonable efforts to reunify Mother with B.B.-R. and K.B., but that those efforts were ultimately unsuccessful. After Mother chose to move to Stanley, North Dakota, the Department had arranged for services through YDI and agreed to pay for those services because YDI could not bill North Dakota Medicaid. With those services in place, the Department placed K.B. and B.B.-R. with Mother on a trial home visit, which ultimately ended based on B.B.-R.'s and K.B.'s escalating and alarming behaviors. After the trial home visit ended, the Department continued to refer K.B., B.B.-R., and Mother to services aimed at helping Mother successfully reunify with her children, including arranging to help Mother be able to consistently visit the children. Despite the numerous efforts provided, Mother was unable to timely appreciate what would be required of her to safely parent her children.

The record demonstrates that no amount of time would help Mother be able to safely parent her children. Substantial evidence accumulated from 2021 through August 2024 supported that Mother was unable to meet the mental, emotional, or physical needs of B.B.-R. and/or K.B. The district court correctly determined that

the conduct and condition rendering Mother unfit was unlikely to change in a reasonable time. Accordingly, the district court did not abuse its discretion when it terminated Mother's parental rights.

### **STANDARD OF REVIEW**

This Court reviews a district court's decision to terminate a person's parental rights for an abuse of discretion. *In re R.K.*, 2023 MT 161, ¶ 21, 413 Mont. 184, 534 P.3d 659. "A court abuses its discretion if it terminates parental rights based on clearly erroneous findings of fact, erroneous conclusions of law, or otherwise acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice." *Id.* (citation omitted).

This Court reviews the factual findings of the district court to determine if they are clearly erroneous and reviews conclusions of law to determine if they are correct. *In re J.B.*, 2016 MT 68, ¶¶ 9-10, 383 Mont. 165, 365 P.3d 715 (citations omitted). "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." *J.B.*, ¶ 10 (citation omitted).

## ARGUMENT

### **The district court did not abuse its discretion when it terminated Mother's parental rights.**

In a non-ICWA case, to terminate a parent's rights, the district court must find that clear and convincing evidence establishes: (1) the child was adjudicated as a youth in need of care; (2) the parent has not successfully completed an appropriate treatment plan approved by the district court; and (3) the parent's conduct or condition "rendering them unfit is unlikely to change within a reasonable time." Mont. Code Ann. § 41-3-609(1)(f)(i)-(ii).

On appeal, Mother contends that the Department did not provide reasonable efforts to reunify the family and the district court erred when it found that Mother's conduct or condition rendering her unfit was unlikely to change in a reasonable amount of time. Accordingly, Mother has waived review of the district court's remaining conclusions of law. *See* M. R. App. P. 12(3); *State v. Myran*, 2012 MT 252, ¶ 19, 366 Mont. 532, 289 P.3d 118.

### **Substantial credible evidence supported the district court's findings that the conduct or condition rendering Mother unfit was unlikely to change in a reasonable amount of time.**

Montana Code Annotated § 41-3-609(1)(f)(ii) requires a district court to find that a parent's conduct or condition rendering them unfit to parent is unlikely to change within a reasonable amount of time. As part of that determination, the district court must find that "continuation of the parent-child legal relationship will

likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care.” Mont. Code Ann. § 41-3-609(2). When making this determination, the district court must give primary consideration to the “physical, mental, and emotional conditions and needs of the child.” Mont. Code Ann. § 41-3-609(3). In addition, the district court shall consider the non-exhaustive list of factors codified at Mont. Code Ann. § 41-3-609(2).

The inquiry is not “whether a parent has made progress or would make some progress in the future.” *In re A.B.*, 2020 MT 64, ¶ 27, 399 Mont. 219, 460 P.3d 405. Rather, the district court must answer “whether the parent is likely to make enough progress within a reasonable time to overcome the circumstances rendering [the parent] unfit to parent.” *Id.* In answering this question, the district court remains “required to assess the past and present conduct of the parent. [District courts] do not have a crystal ball to look into to make this determination, so it must, to some extent, be based on a person’s past conduct.” *Id.*

Here, Mother’s conduct before and during the Department’s involvement supported the district court’s finding that Mother’s conduct or condition rendering her unfit to parent was unlikely to change in a reasonable amount of time. The Department began receiving reports on Mother’s ability to safely parent her children throughout January and February 2021. The reported concerns included

the children having chronically poor hygiene, being left with inappropriate caregivers, witnessing domestic violence and drug use, and physical abuse occurring in the home. Although Mother ended her relationship with her then-paramour and left Glendive to move in with Father in North Dakota, Mother definitively proved that she was not able to safely parent the children once they were in her care.

Notably, the Department placed the children with Mother on a trial home visit and, during that time, B.B.-R. exhibited concerning behaviors that ultimately led to Mother voluntarily ending B.B.-R.'s trial home visit and returning him to Montana.

While initially left in the home, it became clear that K.B. was struggling in school. K.B. was disruptive in class, expressing that Father had told her no one wanted her, stating that she was going to kill herself, and informing school staff that she was afraid to go home. On at least one occasion, K.B. arrived at a school staff member's home over a weekend with her hair matted, complaining that she was hungry, and stating that she had been left home alone. Indeed, K.B. exhibited signs of malnourishment as she had not gained a single pound in the 11 months she was in Mother's home.

After the trial home visit ended, despite the Department's efforts, Mother's sessions with Hynes were unproductive. Mother would become defensive, often ending sessions early, which resulted in Hynes being unable to make progress in

helping Mother understand how to safely parent her children. Mother did not consistently visit the children following their removal, nor did Mother engage with her children's therapy sessions.

Accordingly, the district court did not err when it found that Mother's ability to provide adequate parental care for B.B.-R. was unlikely to change in a reasonable amount of time due to the following:

[Mother] has demonstrated over the course of the last three years that she cannot follow through with her own mental health therapy; she has not been consistent with visitation despite the Department's efforts to subsidize the costs of travel; [Mother] has failed to establish a connection with the child and does not understand the child's needs; [Mother] had demonstrated her disengagement with the children when she is overwhelmed; [Mother] admittedly lacks connection with [B.B.R.] having not raised him during his very tender years; [Mother's] incapability to consistently engage with [B.B.-R.] and his therapy; [Mother's] inability to recognize that her own actions that contributed to the removal of the child from her home on two separate occasions; and [Mother's] inability to be the proactive parent who facilitates [B.B.-R.] living in a stable home and developing in to a well-functioning person. Simply put, [Mother] cannot show up consistently and lacks the ability to follow through with her tasks.

(Doc. 146 at 18-19.)

The district court likewise did not err when it made a virtually identical finding regarding Mother's ability to parent K.B., with two additional findings that: "[Mother] is inconsistent with getting [K.B.] to her appointments and therapy which the child desperately needs," and "[Mother] is unable to provide emotional support to [K.B.]. (DN-21-05 Doc. 153 at 21.)

Nevertheless, Mother argues on appeal that the Department failed to make reasonable efforts to ensure that she could safely parent B.B.-R. and K.B. in a reasonable amount of time.

Montana Code Annotated § 41-3-609 does not require a district court to find that the Department provided reasonable efforts in order to terminate a parent's rights. *See In re K.L.N.*, 2021 MT 56, ¶ 18, 403 Mont. 342, 482 P.3d 650. This Court has consistently held that whether reasonable efforts were made "is not a separate requirement for termination." *In re R.J.F.*, 2019 MT 113, ¶ 26, 395 Mont. 454, 443 P.3d 387. Rather, this Court has held that consideration of the Department's efforts is relevant at termination only to the extent the alleged lack of efforts may have influenced determination of the likelihood a parent might change in a reasonable period of time. *In re C.M.*, 2019 MT 227, ¶¶ 16, 22, 397 Mont. 275, 449 P.3d 806. As this Court explained, while the capacity for a parent to change may be impacted by the Department's efforts, in other circumstances, "a parent's unlikelihood of change may well be unaffected" by allegedly lacking efforts. *Id.*

This Court will fault the Department if the Department's failure to provide reasonable efforts contributes to a parent's lack of progress on their court-ordered treatment plan. *Id.* However, the Department's obligation to provide reasonable efforts does not equate to an obligation to provide herculean efforts. *R.J.F.*, ¶ 37. Parents remain required to "avail [themselves] of services arranged or referred by

the Department and engage with the Department to successfully complete [their] treatment plan.” *Id.* ¶ 38.

Mother specifically argues that the Department failed to make reasonable efforts when it did not arrange services for several weeks after the children were placed on a trial home visit with Mother, did not timely request an ICPC, and failed to place the children closer to Mother after the trial home visit ended. (Appellant’s Br. at 20-28.)

However, the Department had services in place when the children were placed on a trial home visit through YDI, which the Department had agreed to pay for. (*See, e.g.*, 8/16/22 Tr. at 5-7.) Furthermore, it was not North Dakota’s denial of the ICPC home study that resulted in the failure of the trial home visit, but rather the extremely concerning behavior of the children and the obvious signs of neglect they demonstrated while in Mother’s care.

After Mother voluntarily returned B.B.-R. to Montana, and the Department removed K.B., the Department continued to attempt to provide services and arranged for her parenting assessment with Dr. Roche. The Department attempted to help Mother with visiting her children, who were living with a kinship placement that Mother had helped choose, but Mother did not avail herself of those services. As Moser testified:

I have literally begged [Mother] at every check-in that she’s had with me to please visit. My supervisor has begged her to do that. We

have offered hundreds and hundreds of, like, thousands of dollars' worth of gas vouchers and hotel rooms. We have arranged with her family members to—transportation when they said they couldn't get there because of the car being broke down. We've even arranged family members that have been willing to drive to North Dakota and get them to bring them here. And then, get—loan them a vehicle after that. So, we, we've had her sign releases, so we could talk to her father to help coordinate that. *So, we've, we've tried everything we could think of.*

(8/22/24 Tr. at 253-54 (emphasis added).)

Even if this Court determines that the Department made deficient efforts at the beginning of the trial home visit by not timely requesting an ICPC, and by placing the children with T.C., that does not undermine that the Department made reasonable efforts aimed at reunifying the children with Mother. Evaluation of the reasonableness of the Department's efforts "is not static or determined in a vacuum, but rather is dependent on the factual circumstances of each case—the totally of the circumstances—including a parent's apathy and/or disregard for the Department's attempts to engage and assist the parent." *In re C.M.G.*, 2020 MT 15, ¶ 17, 398 Mont. 369, 456 P.3d 1017 (citing *In re R.L.*, 2019 MT 267, ¶ 22, 397 Mont. 507, 452 P.3d 890) (emphasis in original).

Mother's attempts to compare her case to that of the mother in *In re R.J.F.* are unavailing. (See Appellant's Br. at 25.) In *R.J.F.*, the child was removed after the mother tested positive for methamphetamine at the child's birth. *R.J.F.* ¶ 3. The mother there had been in Billings "temporarily" and then returned to North Dakota,

“where she resided, owned a residence, and had employment.” *Id.* The mother brought a motion for a change of venue to North Dakota, while the infant had been placed “in a non-kinship, foster placement with no ties to any family members, nearly 300 miles away from mother.”<sup>9</sup> *Id.* ¶ 5. The mother moved to Billings to “fight [her] case and get clean.” *Id.* ¶ 11. Furthermore, in *R.J.F.*, the Department filed a petition for termination of parental rights “only eleven months after [the petition] and only five months after [m]other’s treatment plan was put in place.” *Id.* ¶ 12.

By contrast, Mother here was a Montana resident and had lived in Glendive for several years by the time the children were removed from her care. Mother chose to move into Father’s residence in North Dakota about five months after her treatment plan had been approved because she was “miserable” in Glendive.

(8/21/24 Tr. at 201.)

Unlike the situation in *R.J.F.*, Mother helped choose the children’s kinship placement with T.C. so B.B.-R. and K.B. could be with their siblings. Importantly, Mother was given *more than three years* and numerous opportunities to comply with her treatment plan.

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<sup>9</sup> The mother in *R.J.F.* had identified two family members she desired to be considered as placements. *In re R.J.F.*, ¶ 9.

Ultimately, Mother has not established that the Department's alleged lack of efforts prevented her from timely and successfully completing her treatment plan. Mother does not allege that the district court erred when it concluded that she had not successfully completed her treatment plan. Simply put, the record supports that it was not a lack of effort or good faith by the Department that caused Mother to fail her treatment plan. Rather, it was Mother's apathy and disregard for the Department's attempts to engage her in completing her treatment plan that caused her to fail.

Based on the history of the case, which includes years of court proceedings and testimony adduced at the termination hearing that the district court logically found credible, the district court did not abuse its discretion when it terminated Mother's parental rights to her children.

### **CONCLUSION**

This Court should affirm the district court's order terminating Mother's parental rights.

Respectfully submitted this 9th day of June, 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 9,091 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

*/s/ Thad Tudor*  
\_\_\_\_\_  
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