

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0146

IN THE MATTER OF:

C.M.B.,

A Youth in Need of Care.

BRIEF OF APPELLEE

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable Jason Marks, Presiding

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STATEMENT OF THE ISSUES

1. Whether Appellant Mother has standing to assert alleged violations of Child C.M.B.'s statutory and constitutional rights to counsel. If so, whether C.M.B.'s rights were infringed.

2. Whether the district court abused its discretion when it terminated Mother's parental rights to C.M.B. after considering Mont. Code Ann. § 41-3-609(1)(f).

STATEMENT OF THE CASE

On March 15, 2022, the district court granted a Dependent Neglect (DN) petition filed by the Department of Public Health and Human Services, Child and Family Services (CFS) Division (the Department) for Emergency Protective Services (EPS), Adjudication as a Youth in Need of Care (YINC), and Temporary Legal Custody (TLC) of Mother's children. (*See* Doc. 1, Affidavit at 8.) Mother's children remained in the Department's custody until that petition was dismissed in March 2023.¹ (*Id.*)

Prior to the DN petition's dismissal, on February 22, 2023, the State charged Mother in a separate criminal matter with accountability for robbery, accountability

¹ In this proceeding, the Department requested that the district court take judicial notice of the prior case, DN-22-10, which the court granted. (12/18/24 Tr. at 157.)

for aggravated burglary, accountability for theft, and accountability for unlawful restraint—for crimes occurring in October 2022. (Doc. 6, notice of filing Ravalli County documents, Information, DC-32-23.)² Mother did not inform the Department of her pending criminal matter. (12/18/24 Tr. at 157-58.)

In May 2023, the Department filed a second petition for EPS, adjudication as a YINC, and TLC as to four-year-old C.M.B.³ and her two siblings, which the district court granted. (Docs. 1, 3; 6/6/23 Tr. at 28.)

Shannon Hathaway was immediately assigned as counsel for C.M.B., at the same time Mother and Father were provided with counsel. (Docs. 8, 10, 11.) Hathaway would continue as counsel for C.M.B. throughout the entire proceedings, appearing at every hearing, examining witnesses at the termination hearing, and representing C.M.B.'s position. (6/6/23 Tr. at 16-17; 6/26/23 Tr. at 26; 7/11/23 Tr. at 40; 9/12/23 Tr. at 47-48; 3/5/24 Tr. at 69; 6/25/24 Tr. at 78; 12/18/24 Tr. at 123-27, 150-52, 212-16, 251-52, 297-99.) C.M.B. was also immediately provided with a Court Appointed Special Advocate (CASA), Lauren Pierce. (Doc. 12.)

² The documents related to Mother's criminal case were admitted without objection at the termination hearing. (12/18/24 Tr. at 133; State's Exs. 1-4, available at electronic Exhibits Folder.) The Department kept the district court apprised of developments in the criminal matter throughout these proceedings. (See Docs. 6, 19, 29.)

³ C.M.B. is not an Indian child and ICWA does not apply. (Doc. 1 at 3.)

At a June 26, 2023 Adjudication, Disposition, and Treatment Plan hearing, the district court adjudicated C.M.B. as a YINC, granted TLC for six months, extended EPS, and set a treatment plan hearing for July 11, 2023. (Doc. 20 at 9-10, 12.)

On July 17, 2023, Mother's treatment plan was approved. (Doc. 25.) Mother stipulated to the plan. (6/6/23 Tr. at 35.) Mother was required to complete parenting tasks, substance use tasks, mental health tasks, housing tasks, tasks to address criminal behavior, and general tasks to maintain stability. (Doc. 24.)

On October 2, 2023, C.M.B.'s half-siblings' cases were dismissed as they were transferred to their biological father's custody in Sidney. (*See* Doc. 35 at 2.) Throughout these proceedings, C.M.B.'s father (hereafter "Father") was either in the Nexus methamphetamine treatment center or in a pre-release center. (*See* 7/11/23 Tr. at 39; 3/5/24 Tr. at 66-68.)

On December 11, 2023, the Department petitioned for a 6-month TLC extension, which the court granted after a hearing without objection. (Docs. 31, 33; 12/19/23 Tr. at 60.)

On June 14, 2024, the Department petitioned for a TLC extension until June 25, 2024, requested a permanency hearing, and filed an affidavit in support. (Docs. 37, 39.) The court granted the motion. (Doc. 38.)

On June 21, 2024, the Department petitioned for a TLC extension until September 26, 2024, which the court granted without objection. (Docs. 40, 42 at 2.) The Department filed a permanency plan report with a goal toward reunification or adoption, which the court approved without objection. (Doc. 39, Aff. at 2; Doc. 43.)

Next, Father signed an affidavit waiving and relinquishing all parental rights to C.M.B. and expressing consent for her adoption. (Doc. 48, Aff.) The district court accepted the relinquishment. (9/17/24 Tr. at 87.)

On September 12, 2024, the Department petitioned for termination of Mother's and Father's parental rights. (Doc. 48.) As to Mother, the Department petitioned for termination under Mont. Code Ann. § 41-3-609(1)(f) for Mother's noncompliance with her treatment plan and the conduct or condition of Mother rendering her unfit, unable, or unwilling to give the child adequate parental care being unlikely to change within a reasonable time. (Doc. 48 at 4; *see also* Aff.)

Upon the Department's request for an additional TLC extension, the district court extended all prior orders to December 18, 2024. (9/17/24 Tr. at 93.) On that date, the district court held a termination hearing. (*See* 12/18/24 Tr.)

On January 14, 2025, C.M.B.'s counsel, Hathaway, filed a "Notice of Joining with Child and Family Service's Proposed Findings of Facts and Conclusions of Law." (Doc. 61.)

On January 28, 2025, the district court entered an order terminating Mother's and Father's parental rights. (Doc. 62.)

Mother appeals, attempting to raise an ineffective assistance of counsel (IAC) claim in place of C.M.B. relating to C.M.B.'s counsel, and further arguing that Mont. Code Ann. § 41-3-609(1)(f) was not satisfied, alleging that her conduct or condition was likely to change.

STATEMENT OF THE FACTS

I. The conduct leading to the Department's first petition, the criminal conduct, and the Department's second petition.

Between 2017 and 2023, 20 reports were entered into the Department system on Mother's family for substance use, domestic violence, and mental health issues.⁴ (Doc. 1, Aff. at 4.) Additionally, Mother has a CFS history in California that resulted in her children previously being removed due to her drug use. (*Id.*)

On March 27, 2017, CFS received a report that Mother had been arrested for stabbing Father. The incident was witnessed by the children. (Doc. 1, Aff. at 4.) Mother would later plead guilty to felony assault with a weapon and misdemeanor assault. (*Id.*)

⁴ While the Department's petition contains numerous allegations of neglect and abuse relating to all of Mother's children, the State will primarily focus here on incidents directly related to C.M.B.

On December 20, 2018, CFS received a report that law enforcement was at Mother's home due to Father's allegation that "mother was trying to kill [C.M.B.]" (Doc. 1, Aff at 5.) There were "concerns that Mother was mentally unstable due to her telling neighbors that she has had children removed from her custody because she has tried to suffocate her infants before." (*Id.*) The report was closed for lacking sufficient evidence that Mother had put her children in substantial risk of harm or actual harm. (*Id.*)

On September 6, 2019, CFS received a report of "yelling, screaming, and throwing things when in the presence of the children[]" along with "physical altercations." (Doc. 1, Aff. at 5.) Father was reportedly "using heroin" while watching the kids, and Mother would leave the children in Father's care. (*Id.* at 6.) There were reportedly "loud altercations" between Mother and Father, and Mother had a "black eye" from a fight with Father. (*Id.*) However, the report was closed because Mother reportedly removed Father from the home and would not allow him to return. (*Id.*)

On December 20, 2019, CFS received a report that Mother was "punched repeatedly by [Father] while holding [C.M.B.] in her arms." (Doc. 1, Aff. at 6.) Mother was nonetheless protective of Father, referring to him as being her "rock" and saying that she "loved him." (*Id.*) Father admitted "to the Partner Family Member Assaults" (PFMA) and was thereafter incarcerated. (*Id.*)

Throughout 2021, CFS received reports of Mother being under the influence of substances and having scabs on her face, Mother engaging in behavior such as “cutting herself[,]” Mother being unaware of where her children were, neglect in the home and moldy food on the stove, and Mother being beaten by Father. (Doc. 1, Aff. at 6-8.)

On January 13, 2022, CFS received a report that C.M.B. was found “wandering around the hotel [they were staying at] in the morning.” (Doc. 1, Aff. at 7.) She was brought to her room by hotel staff, but nobody was in the room, nor could Mother be located, so law enforcement was contacted. (*Id.*) C.M.B. was unsupervised for 45 minutes before Mother arrived. (*Id.* at 8.)

Two days later, Mother took “13 Vallum [sic] in an attempt to harm or kill herself, with the children in the home.” (Doc. 1, Aff. at 8.) When she woke up, she was reportedly upset she was still alive and tried to take more pills, but the attempt was rebuffed by her paramour, Jose Mosqueda (Jose). (*Id.*) She called 911, was located in a vehicle, and was taken to the hospital. (*Id.*) The children were left in Jose’s care. (*Id.*)

After this incident, the Department filed its petition for an EPS, YINC, and TLC for Mother’s children, which was granted on March 15, 2022. (Doc. 1, Aff. at 8.)

On September 21, 2022, C.M.B. was reportedly left at home with “Betsy,” an elderly homeless woman, who appeared to “be potentially under the influence of a substance.” (Doc. 1, Aff. at 8.) Mother was observed with a swollen lip and a bruise on her face, which Mother attributed to her “stalker” Jose. (*Id.*)

On September 24, 2022, CFS received a report that “many people” were using meth in Mother’s home and that “Mother uses methamphetamine daily.” (Doc. 1, Aff. at 8.) While it was unknown if Mother used drugs around the children, Mother was reportedly high around her children. (*Id.* at 9.) Jose—a registered sex offender—was also in Mother’s home. (*Id.*)

In October 2022, Mother traveled with another person, Austin Janssen, to an elderly man’s residence in Hamilton. Mother approached the house, knocked on the door, and lingered at the side garage door. (Doc. 6, Motion for Leave to File Information at 2-3.) The homeowner invited Mother in for coffee. (*Id.* at 2.) Meanwhile, Janssen entered through the garage door, went behind the homeowner, and placed a leash around his neck. (*Id.*) Janssen then stole \$1,000 from the victim. (*Id.* at 3.) Mother would later admit that the incident stemmed from when “she had gotten high and [Janssen] asked for a ride to get fentanyl pills.” (*Id.* at 8.) Mother would also admit her motivation for going to the victim’s home was to “talk the victim into voluntarily giving her some money, although she admitted to speaking about a sex-for-money arrangement.” (*Id.* at 8-9.)

On February 22, 2023, Mother was charged with accountability for robbery, accountability for aggravated burglary, accountability for theft, and accountability for unlawful restraint pertaining to the October 2022 incident. (Doc. 6, Information, DC-32-23.) At the time, Department staff were unaware of the criminal charges because Mother had not informed them of the incident. (See 12/18/24 Tr. at 157-58.) The Department's DN petition was dismissed in March 2023, thus ending the Department's custody over Mother's children. (Doc. 1, Aff. at 8.)

Throughout April and May 2023, numerous new allegations of domestic disturbances, physical violence, unsafe interactions and associations, and child neglect were reported. (Doc. 1, Aff. at 9-10.)

On May 10, 2023, at 5:40 a.m., Mother's other daughter called 911. (Doc. 1, Aff. at 3.) Mother was screaming and sounded like she was in pain. (*Id.*) Law enforcement found Mother outside, bleeding from her right eye, apparently from a blunt force blow. (*Id.*) Mother screamed at the officers, was uncooperative with police, and Jose had fled from the scene. (*Id.* at 13.) Mother seemed protective of Jose rather than fearful. (*Id.* at 3.) The officers noted a "strong odor of an alcoholic beverage" emanating from Mother. (*Id.* at 14.) They made entry into the home, but Mother tried to stop them. (*Id.* at 3.) The children were located in the home. (*Id.*) The house was unsanitary. (*Id.*)

The next day, CFS agents spoke with C.M.B., who reported that Mother and Jose “hit each other,” sometimes with an “open hand unless they punch.” (Doc. 1, Aff. at 12.) She demonstrated a punch with her fist. (*Id.*) C.M.B. reported that Jose “broke her mom’s phone yesterday.” (*Id.* at 13.) She said they “do not get along.” (*Id.*)

On May 15, 2023, Jose was cited for a PFMA toward Mother. (Doc. 1, Aff. at 13.)

On May 18, 2023, the Department filed a second petition for EPS, YINC, and TLC for Mother’s children, including four-year-old C.M.B. (Doc. 1.)

II. Mother’s performance in her treatment plan, and her conduct and condition rendering her unfit to parent.

Mother did not appear at the June 2023 show cause hearing. Mother had previously been granted own-recognizance (O/R) release pending her criminal matter, but she was thereafter incarcerated at Ravalli County Detention Facility for providing urinalyses that were positive for THC and methamphetamine and for absconding from supervision. (6/6/23 Tr. at 8, 10; 6/23/23 Tr. at 30; Doc. 19, Notice of Filing Certified Ravalli County District Court Record.)

Mother was released from jail by the time of the adjudicatory hearing later that month. (6/23/23 Tr. at 30.) By July 11, 2023, C.M.B. was in a foster care placement and having visitations with Mother in Missoula. (7/11/23 Tr. at 40, 42.)

In August 2023, Mother entered into a plea agreement in her criminal matter, whereby she agreed to plead guilty to all charges in exchange for the State's recommendation for a ten-year suspended sentence. (Doc. 29, Plea Agreement.) But, shortly thereafter, Mother's pretrial release was revoked again due to several urinalyses in late August where Mother tested positive for drugs, including meth and THC. (Doc. 29, Arrest Warrant; Second Motion to Revoke Bail.)

By September 2023, C.M.B. was in a foster care placement in Stevensville and was doing well. (9/12/23 Tr. at 52; *see* Doc. 31, Aff. at 2, 6.) Mother was incarcerated pending her criminal matter's resolution from September 11 to November 9, 2023, when she was sentenced to a ten-year suspended DOC sentence and then released upon conditions. (Doc. 30; Doc. 31, Aff. at 3.)

By December 2023, CFS had not yet received a chemical dependency (CD) evaluation or a psychological evaluation from Mother. (Doc. 31, Aff at 3.) At a December 19, 2023 TLC extension hearing, Mother reported she "may be taking a backslide" because she was losing her "housing voucher" and would have difficulty staying housed. (12/19/23 Tr. at 60.)

At a March 5, 2024 status hearing, counsel for Mother reported Mother was living out of her car but was attending treatment relating to her criminal case. (3/5/24 Tr. at 68.) Mother was also looking at housing options. (*Id.*) But CFS

Nadine Hoffman reported that Mother was “not super consistent with visitation right now[.]” (*Id.* at 68-69.) Hathaway, counsel for C.M.B., concurred, reporting that C.M.B. was “struggling a little bit with the consistently missed visits with [Mother] and it’s been reflected in sort of the up and down modes that are kind of unusual for [C.M.B.]” (*Id.* at 69.) Hathaway noted that Mother had “made some promises to [C.M.B.] about moving back together soon” that “sent [C.M.B.] spiraling a bit.” (*Id.*) Overall, Hathaway reported, C.M.B. “has had some emotional turmoil that we haven’t seen before.” (*Id.*)

On March 12, 2024, CASA Pierce filed a report explaining that C.M.B. was doing well in her current foster placement but she questioned what role Mother would have in her life because of promises made that did not come to pass or promises that could not be kept. (Doc. 35 at 4.) This was manifested through trust issues and significant mood swings. (*Id.*) Pierce reported that Mother “frequently cancels her visitations” with C.M.B. (*Id.* at 6.) Pierce reported that Mother “frequently missed Treatment Team Meetings” and missed her treatment at a rehab clinic, and that Mother had “suffered an overdose on January 8 of 2024, but declined medical treatment.” (*Id.* at 5-6.) Pierce noted Mother had not made any “progress in any of the steps required of her for consideration of reunification,” nor had Mother attended required progress meetings. (*Id.*)

On June 10, 2024, CASA Pierce reported that Mother was still living out of her vehicle, had stopped participating in Treatment Team meetings, had failed to maintain in-person or phone visitations with C.M.B., and had missed scheduled rehab sessions. (Doc. 36 at 1-2.) C.M.B. referred to her foster parents as “Mom” and “Dad,” and her foster parents loved C.M.B. but were unwilling to be a permanent placement option, so the Department looked toward paternal Grandmother as a possible placement. (*Id.* at 2.)

In the June 2024 Permanency Plan Report, CFS Melissa Pickett noted that visits with Mother were “suspended due to Mother’s inconsistency and the impact it was having on the child.” (Doc. 39, Aff. at 3.) CFS Pickett also reported that “CFS attempted to provide services to Mother, but Mother has disengaged.” (*Id.*) CFS was working on an Interstate Compact on the Placement of Children with paternal grandparents in California. (*Id.*) At this time, Mother had not visited C.M.B. “since March of 2024.” (Doc. 40, Aff. at 2.) Mother had not completed parenting classes. (*Id.* at 3.) Mother “self-disclosed that she was unable to maintain her sobriety for a month and a half” after visits were suspended. (*Id.*) Mother was “not providing regular UA’s” because she “took a break” from Crosswinds rehab treatment. (*Id.*) Mother had not completed substance treatment or a relapse prevention plan. (*Id.*) She had not provided a psychological evaluation to CFS. (*Id.*) Mother reported being “hopeless and discouraged and

accepted that [C.M.B.] would reside with her grandparents in Ventura, California.”

(*Id.*) Mother had no housing and was still living in her vehicle. (*Id.* at 4.)

On May 16, 2024, Mother was the victim of a PFMA. (Doc. 40, Aff. at 4.) A couple weeks later, Mother was arrested for theft. (*Id.*) As of late June 2024, Mother reported “using a few weeks ago” and was recommended treatment at Crosswinds. (*Id.* at 4-5.) C.M.B. was reportedly struggling in school and had a downturn in mood and was withdrawn from peers. (*Id.* at 7.) Her mood would worsen when “visits have been canceled or missed[.]” (*Id.*) The Department worked on a plan to get C.M.B. into therapy. (6/25/24 Tr. at 77.) Paternal grandparents had recently withdrawn as an option for placement as of June 21, 2024. (Doc. 40, Aff at 7.) CFS listed numerous efforts to reunify C.M.B. with safe parents. (*Id.* at 8-11.)

At a June 25, 2024 TLC hearing, C.M.B.’s counsel Hathaway concurred that C.M.B. was “struggling” with Mother’s absence and suggested possible placement with her siblings in Sidney. (6/25/24 Tr. at 78.)

At a July 16, 2024 hearing, the district court noted that Mother was not present because she was “recently in and out of jail[.]” (7/16/24 Tr. at 4.) The Department explained that Mother had “sort of reappeared,” but had then “more or less dropped back off again.” (*Id.* at 9.) The Department explained that Mother was released from custody “on the 11th, so she is no longer in custody for sure.”

(*Id.* at 10.) The parties discussed alternative placement for C.M.B. given paternal grandparents' withdrawal. (*Id.* at 4-5.)

At a September 17, 2024 status hearing, after the State had filed a Termination Petition a few days earlier, Mother's counsel reported that Mother had given up previously but she "wanted to work on reunification again." (9/17/24 Tr. at 83.) Mother's counsel reported that Mother still "struggled with use" but was working with Crosswinds with a hope to get into sober living. (*Id.* at 84.) Counsel reported that Mother was homeless. (*Id.* at 85.) C.M.B. was in a new placement and had started seeing a therapist. (*Id.* at 88.)

In the termination petition, the Department explained that Mother's conduct or condition was unlikely to change because "Mother's emotional illness, mental illness or mental deficiency [is] of a duration or nature as to render Mother unlikely to care for the ongoing physical, mental, and emotional needs of Youth within a reasonable time; Mother [has a] history of inability or unwillingness to protect the child from violent and unsafe people in her home; and Mother's excessive use of intoxicating liquor or of a narcotic or dangerous drug, historically methamphetamine and currently including fentanyl, [] affects Mother's ability to care and provide for the child." (Doc. 48, Pet. at 4.) CFS Pickett noted that C.M.B. had been in out-of-home foster care for "16 of the most recent 22 months" and was currently in foster care with Brent and Natalie Mullet in Bloomfield,

Montana. (Doc. 48, Aff. at 2.) CFS Pickett detailed that Mother had failed to complete a parenting class, engage in parenting time, follow recommendations for services, complete visitation, provide a psychological evaluation, stay sober, have stable housing, maintain contact with CFS, and not engage in criminal behavior. (*Id.* at 4-8.) Mother was also “continuing to test positive for fentanyl.” (*Id.* at 9.) CFS Pickett explained that even though Mother had recently expressed an intent to reengage, “she has continued to miss court hearings and CFS meetings[.]” (*Id.* at 10.)

On September 13, 2024, CASA Pierce reported that Mother had “participated in one Treatment Team Meeting since February and does not maintain in-person visitations or phone contact with [C.M.B.]” (Doc. 49 at 1.) And Mother was apparently “under the influence” in one treatment team meeting and had tested positive for fentanyl several times in August and September 2024. (*Id.* at 1-2.) Mother “disappeared from [C.M.B.’s] life from February to roughly August 2024, which caused significant emotional distress for [C.M.B.]” (*Id.* at 2.) CASA Pierce averred that “[d]ue to Mother’s continued drug use, lack of housing, non-adherence to her court-stipulated treatment plan, and inability to provide a safe, structured, and violence-free home for [C.M.B.], this CASA strongly believes that the Mother is in no way able to meet the conditions for return and reunification, nor should Mother be considered a placement option.” (*Id.* at 2.)

III. The termination proceeding

On December 18, 2024, a termination hearing was held. Joanne Hynes, therapist for C.M.B., had diagnosed her with generalized anxiety disorder and PTSD. (12/18/24 Tr. at 98.) She explained that C.M.B. had nightmares, did not sleep well, was irritable and defiant, struggled to make connections with people, struggled to allow adults to care for her, and had regressed in potty training. (*Id.* at 98-99.) Playtime therapy with dolls was “borderline scary” because C.M.B. would act out with a doll as Mother, saying, “shut the fuck up,” and the Mother doll would disappear for days on end during the play, and the kids would be in charge of the house. (*Id.* at 103.) The play would also involve fighting with kids and lots of physical violence. (*Id.*) This was emblematic of “a lot of neglect” and a lot of “verbal aggression and verbal violence in her home[.]” (*Id.*)

Hynes opined that the lack of contact with Mother “played a huge impact” on C.M.B.’s “emotional well-being.” (12/18/24 Tr. at 104.) C.M.B. worried about her mom, asked if she was safe, and didn’t know where her mom was. (*Id.* at 104-05.) C.M.B. was having extreme emotions, was aggressive with her foster siblings, and was “not doing well right now.” (*Id.* at 106.) Hynes explained that C.M.B. mistrusted Mother because Mother disappears and “doesn’t show up for her.” (*Id.* at 128.) If reunification efforts were started again, given C.M.B.’s PTSD and mistrust issues, Hynes offered that Mother would need “100 percent

consistency[,]” which was doubtful because Hynes had had “zero contact with [Mother].” (*Id.*)

Probation and Parole Officer Patty Wolfe, Mother’s supervising officer in her criminal case, testified about the circumstances leading to her conviction in that matter and Mother’s performance in her suspended sentence. (12/18/24 Tr. at 134.) She explained that Mother’s probation compliance was “not good” and Mother continued to use drugs, had not obtained employment, had missed UAs, and had failed to complete some treatment. (*Id.* at 136.) After Mother’s no shows and testing positive for meth and fentanyl, Officer Wolfe completed a Report of Violation on November 12, 2024. (State’s Ex. 4; 12/18/24 Tr. at 137-38.) At the time of the termination hearing, a petition to revoke Mother’s ten-year suspended sentence was pending, but revocation hearings had not yet occurred. (State’s Ex. 3; 12/18/24 Tr. at 141.)

CFS Pickett identified problems such as mental health, chemical dependency, parenting, criminal behavior, and housing for Mother’s conduct and conditions. (12/18/24 Tr. at 160.) She comprehensively detailed Mother’s substantial failure to address any of these problems or engage in her treatment plan. (*Id.* at 160-80.) CFS Pickett testified that Mother struggled to meet her own needs, and she didn’t know if Mother had the capacity to meet C.M.B.’s needs. (*Id.* at 166.) She noted Mother was unable to maintain sobriety and Mother’s

overall engagement with her treatment plan was “very limited and minimal[,]” likely impacted by Mother’s substance use. (*Id.* at 169, 180.) CFS Pickett testified that Mother’s conduct or condition was unlikely to change within a reasonable time due to her persistent substance use, allowing her children to be with unsafe people, allowing her children to witness domestic violence, and not being able to maintain mental stability. (*Id.* at 182.) She concluded CFS was unable to “actively engage” Mother toward “sustained change.” (*Id.* at 183.)

At this time, C.M.B. was still located with the Mullet family about an hour from Sidney where her half-siblings were residing, and she was able to have some contact with them. (12/18/24 Tr. at 184-86.) CFS Pickett testified that it was not in the best interest for C.M.B. to work on reunification with Mother because Mother had stopped visiting C.M.B., C.M.B. was starting to grieve the loss of her mom and accept the change, and reintroduction with Mother would hinder C.M.B.’s development and emotional capacity. (*Id.* at 188-89.) She explained C.M.B. had been out of Mother’s care for 19 months. (*Id.* at 156.) CFS Pickett stated that C.M.B. needed a family that could provide for her emotional needs and termination was in her best interest. (*Id.* at 189.) She noted that while around the time the Department petitioned for termination, Mother had expressed that she “wanted to reengage,” she “wasn’t really demonstrating through her behaviors that she was actually reengaging.” (*Id.* at 201.)

Mother testified that she struggled with sobriety and would cycle between a “month on” drugs and a “month off[.]” (12/18/24 Tr. 284.) Mother admitted being “on and off” at treatment and that she relapsed on fentanyl. (*Id.* at 285.) Mother acknowledged the “ways that I have traumatized my children, for the way that I have affected them.” (*Id.* at 281.)

IV. C.M.B.’s joining of the Department’s position.

After the termination hearing, C.M.B.’s counsel, Hathaway, filed a “Notice of Joining with Child and Family Service’s Proposed Findings of Facts and Conclusions of Law[.]” explaining the position was

based on numerous factors, including that this is the second legal filing involving the Youth, Mother’s relatively new sobriety and stability, Mother’s lack of engagement (including visitation/contact with the Youth) for the majority of this case and Mother’s criminal behavior and use of dangerous drugs while the Youth was in a trial home visit during the previous legal proceedings. The Youth’s therapist has also recommended that she be given clarity on the future so the Youth may have the opportunity to settle into her permanent placement. The Youth has struggled to process the grief of her Mother’s absence from her life since March of 2024 and will continue to struggle if there is no clear decision made on contact between Youth and the Mother. Additionally, the Youth’s CASA, who has been very involved with this matter, believes that termination of Mother’s parental rights is in [C.M.B.’s] best interests.

(Doc. 61 at 1-2.) Hathaway concluded that “Mother has not demonstrated she is able to maintain sobriety and stability for the long term and in order to prevent the Youth’s future removal from her care and return to the CFS system.” (*Id.* at 2.)

In joining the Department, Hathaway also noted she was doing so under a substituted judgment theory:

Substituted judgment analysis is [a] method of legal representation for clients of diminished capacity (such as young children), guided by the lawyer’s understanding of what the client would request if they were able to verbalize their goals. Attorneys should make firsthand observations of the client, conduct an independent investigation, and seek guidance from collateral sources (family, supports, child development experts, and other professionals) to develop a substituted judgment position. American Bar Association. (2011, August). Resolution: Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. https://americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf.

(Doc. 61 at 1, fn. 1.)

V. The termination order

The district court concluded that Mother’s conduct and conditions of mental health struggles, use of drugs, committing criminal offenses, and “chronic history of being unable or unwilling [to] protect Youth from unsafe people, substance use, and frequent intense domestic violence” prevented Mother from caring for the physical, mental, or emotional needs of C.M.B. (Doc. 62 at 26-27, 39, attached to Appellant’s Br. as App. A.) The district court adjudicated C.M.B. as a YINC and held that Mother had failed to complete her treatment plan. (*Id.* at 34-36.) The court also held that the best interests of C.M.B. supported termination. (*Id.* at 41-42.) Further details are discussed herein.

SUMMARY OF THE ARGUMENT

Mother does not have standing to assert claims on behalf of C.M.B. because this Court disallows one party from asserting the constitutional rights of another party. And it is an express policy of the State of Montana that “a child is entitled to assert the child’s constitutional rights[.]” Mont. Code Ann. § 41-3-101(1)(e). C.M.B. did not appeal, and Mother cannot manufacture an IAC claim relating to C.M.B.’s counsel in C.M.B.’s place.

Even if this Court were to further consider Mother’s argument, Hathaway was a more than capable advocate for C.M.B., and she diligently represented C.M.B.’s best interests throughout the entire proceeding. This is particularly true considering that Mother continued to struggle with new criminal offenses, drug addiction, and mental health issues—all while failing to even attend visitations with C.M.B. C.M.B. had already suffered her own significant mental and emotional health problems and required therapy after Mother cancelled or failed to attend visitations, while Mother unreasonably promised C.M.B. that they would be reunited. Hathaway was acting in full conformity with C.M.B.’s best interests, a paramount inquiry.

But, even assuming for argument’s sake that C.M.B.’s counsel erred by joining the Department’s position prior to the termination order, Mother has not shown that the results of the proceeding would have been any different. Mother

has not shown that her conduct or condition was likely to change in a reasonable time, nor does Mother contest on appeal the district court's adjudication of C.M.B. as a YINC or the court's conclusion that Mother failed to complete her treatment plan. Moreover, in the termination order, the district court never even mentioned, much less credited, C.M.B.'s joinder of the Department's position prior to termination. Rather, the court properly focused on the statutory criteria for termination, which were easily met here. The court relied on the overwhelming evidence showing that Mother's conduct or condition was unlikely to change within a reasonable time. Accordingly, regardless of Mother's improperly pled IAC claim purportedly in place of C.M.B., termination was appropriate here.

Finally, Mother fails to show that the district court's conduct or condition determination was in error. Mother's conduct or conditions—mainly her persistent methamphetamine and fentanyl use in conjunction with her mental and emotional illnesses—rendered her unlikely to change within a reasonable time. And, as the district court concluded, based on clear and convincing evidence, the fact that Mother started expressing willingness to work with the Department around the time of termination did not alleviate her conduct or conditions or make it more likely that she would change within a reasonable time. C.M.B. had been in the Department's custody for 19 months, well past the 15-month best-interest presumption for termination, and Mother had done little to address her mental

health issues and sobriety. As the district court reasonably concluded, “Mother is a long way from demonstrated success at maintaining sobriety and general stability in her life.” (Appellant’s App. A at 38-39.)

STANDARD OF REVIEW

Issues of justiciability, such as standing, are questions of law, for which this Court’s review is *de novo*. *In re T.D.H.*, 2015 MT 244, ¶ 19, 380 Mont. 401, 356 P.3d 457.

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

This Court reviews a district court’s factual findings to determine if they are clearly erroneous. *Id.* A factual finding is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence, or if review of the record convinces the Court a mistake was made. *Id.*

An appellant bears the burden of establishing error by the district court; therefore, it is the appellant’s burden on appeal to establish that the district court’s factual findings are clearly erroneous or its conclusions of law are incorrect.

In re D.F., 2007 MT 147, ¶ 22, 337 Mont. 461, 161 P.3d 825 (citation omitted).

This Court reviews “the evidence in the light most favorable to the prevailing party when determining whether substantial credible evidence supports the district court’s findings.” *In re J.B.*, 2016 MT 68, ¶ 10, 383 Mont. 48, 368 P.3d 715 (citation omitted).

This Court “will not reverse a district court’s ruling by reason of an error that ‘would have no significant impact upon the result.’” *In re H.T.*, 2015 MT 41, ¶ 10, 378 Mont. 206, 343 P.3d 159. Nor will this court “disturb a district court’s decision on appeal unless there is a mistake of law or a finding of fact not supported by substantial evidence that would amount to a clear abuse of discretion.” *Id.*

ARGUMENT

I. Mother does not have standing to raise arguments related to C.M.B.’s attorney. Even if she did, her appellate arguments would fail.

The right to counsel in DN proceedings is rooted in statutes and due process clauses under the federal and state constitutions. *See In re A.S.*, 2004 MT 62, ¶ 12, 320 Mont. 268, 87 P.3d 408; Mont. Code Ann. §§ 41-3-425, -1316; *see also* Mont. Code Ann. § 41-3-101(1)(e) (“a child is entitled to assert the child’s constitutional rights”).

Prior to July 2023, district courts had discretion to order the Office of the Public Defender (OPD) to assign counsel to a youth in need of care. Mont. Code Ann. § 41-3-425(3) (2021). However, if a guardian ad litem (GAL) had not been appointed, Mont. Code Ann. § 41-3-425(2)(b) (2021) mandated that the district court must immediately appoint counsel for the child. In 2023, Montana’s Legislature removed the court’s discretion and mandated courts to appoint counsel to youths in need of care. *See* Mont. Code Ann. § 41-3-425(2)(b) (2023). District courts are also mandated to “appoint a court-appointed special advocate as the guardian ad litem for any child alleged to be abused or neglected,” or, if one is not available, the court may appoint an attorney as a GAL. Mont. Code Ann. § 41-3-112(1).

Here, the district court immediately assigned a CASA and an attorney for C.M.B. at the beginning of the DN proceedings.

A. Mother does not have standing to assert a violation of C.M.B.’s statutory or constitutional right to counsel.

“Standing . . . is a threshold requirement in every case, which [this Court] must address and decide *sua sponte* even if it is not raised by a litigant.”

In re K.H., 2012 MT 175, ¶ 23, 366 Mont. 18, 285 P.3d 474; *In re C.B.D.*, 2017 MT 108, ¶ 7, 387 Mont. 347, 394 P.3d 202. To have standing, a party “must show, at a minimum, a ‘past, present, or threatened’ injury to a property or civil right, and must show that the ‘injury would be alleviated by successfully

maintaining the action.” *C.B.D.*, ¶ 7 (citation omitted). The Montana Constitution precludes a court from resolving “a case brought by a plaintiff who does not show ‘that he has personally been injured or threatened with immediate injury by [an] alleged constitutional or statutory violation.’” *T.D.H.*, ¶ 24 (citation omitted). Indeed, “[A] litigant may assert only his own constitutional rights.” *Id.*

Here, Mother cannot assert alleged violations of another’s constitutional rights. Mother offers no legal support for her conclusory claim that she is allowed to assert legal claims purportedly on C.M.B.’s behalf. Mother’s argument further ignores Montana’s policy that “a child is entitled to assert the child’s constitutional rights.” *See* Mont. Code Ann. § 41-3-101(1)(e) and the principles of client-attorney relationships that make them unique and personal to the client/child. This Court has concluded that children are properly parties to YINC actions, and that a child’s attorney “has standing to appeal on behalf of his clients.” *K.H.*, ¶¶ 21-28. It does not follow that Mother has standing to raise an IAC claim in place of C.M.B.’s right to do so on appeal.

Persuasive authority is instructive here. In *In the Interest of T.N.*, 142 S.W.3d 522, 524 (Tex. App. 2004) (no petition), Mother raised a claim challenging her children’s attorney ad litem’s representation, including an allegation that the children’s counsel did not meet with the children until the termination hearing. The Texas Court of Appeals rejected the argument,

explaining that “A party may not complain of errors which do not injuriously affect her or which only affect the rights of others.” *T.N.*, 142 S.W.3d at 524. The Court concluded that “Mother does not have standing on appeal, nor did she at [termination], to complain about the performance of the children’s attorney on the children’s behalf.” *Id.*

B. Mother’s due process claim was not preserved.

Mother had the same counsel at termination as on appeal, who never objected to C.M.B.’s joining of the Department’s position. Generally, this Court does not consider issues raised for the first time on appeal. *H.T.*, ¶ 14; *In re M.B.*, 2009 MT 97, ¶ 10 n.1, 350 Mont. 76, 204 P.3d 1242 (failure to raise constitutional issues below precludes review of such claims on appeal). To preserve a claim or objection for appeal, “an appellant must first raise that specific claim or objection in the district court.” *In re T.E.*, 2002 MT 195, ¶ 20, 311 Mont. 148, 54 P.3d 38. Mother never objected to C.M.B.’s joining with the Department’s position after the termination hearing, thus her claim is unpreserved. *See In re A.H.*, 2015 MT 75, ¶ 28, 378 Mont. 351, 344 P.3d 403 (Court declined to consider alleged due process violation since trial court not given chance to address it). Moreover, the record demonstrates that Mother had “an equal opportunity to present evidence and scrutinize the State’s evidence” and, thus, was not denied fundamentally fair procedures. *In re M.W.*, 2001 MT 78, ¶ 25, 305 Mont. 80, 23 P.3d 206.

C. Mother’s claim asserting violations of C.M.B.’s right to counsel fails.

Even if this Court proceeded to consider Mother’s IAC claim relating to C.M.B.’s counsel, Mother fails to show Hathaway was ineffective. Mother argues that Hathaway wrongly failed to “advocate for [C.M.B.’s] expressed wishes”⁵ at the termination hearing. Mother claims that Hathaway created a “conflict” and “effectively violated C.M.B.’s right to counsel.” (Appellant’s Br. at 18-19.) Mother asserts that C.M.B.—who was four years old at the time of removal and six years old at the time of termination—did not have diminished capacity and could express her wishes. (*Id.*)

In *K.H.*, this Court rejected a Mother’s argument that the children’s “counsel failed to advocate for the children’s personal interests” as “unpersuasive.” *K.H.*, ¶ 29. Counsel for the children in *K.H.* argued that the children wanted to “be with their mom[]” but counsel advocated for adjudication for YINC based on his duty to advocate for his clients and safety concerns over them being returned to the family. *K.H.*, ¶ 16. This Court relied on *Rolfe* for the proposition that, while an attorney “has a responsibility to pursue the lawful objectives of his client, this duty may be

⁵ Mother’s claim that C.M.B.’s express wishes were violated is apparently based on hearsay statements from C.M.B.’s sister at the termination hearing. (Appellant’s Br. at 15-16; 12/18/24 Tr. at 264.) But the district court acknowledged immediately before the sister’s testimony that it would “not consider any hearsay.” (12/18/24 Tr. at 262.)

affected when ‘a client’s ability to make adequately considered decisions in connection with the representation is impaired . . . because of minority[.]’ *K.H.*, ¶ 29 (citing *In re Marriage of Rolfe*, 216 Mont. 39, 43, 699 P.2d 79, 81 (1985) (in turn quoting Mont Prof. Conduct R. 1.14, 1.2(a).) This Court acknowledged that *Rolfe* was limited to “a custody dispute,” but nonetheless found *Rolfe*’s “analysis [] instructive here[]” [in a YINC proceeding]. This Court further quoted *Rolfe*:

We recognize that in Montana the attorney for the child is not a guardian ad litem. Nevertheless, his role in a custody dispute is to advocate for the child’s best interest, not the child’s wishes. This is a difficult role, particularly when the child’s expressed wishes conflict with the attorney’s determination of his best interests. But, given the immaturity of the client and the pressures that often exist . . . it is the Court’s opinion that the *best interests of the child, the paramount concern in all custody disputes, is best served by modifying that traditional lawyer-client relationship.*

K.H., ¶ 29 (citing *Rolfe*, 216 Mont. at 43, 699 P.2d at 81) (emphasis in *K.H.*) This Court thus held that the children’s attorney “acted within his representative capacity by advocating for their adjudication as youths in need of care despite the children’s expressed desire to return to Mother’s custody.” *Id.* ¶ 31.

Here, C.M.B. had the benefit of an extremely competent counsel in Hathaway’s representation, who diligently and capably represented C.M.B. at every hearing, incorporated information from a variety of sources including the CASA’s opinion, and—as in *K.H.*—considered C.M.B.’s best interests in light of her young age and Mother’s demonstrated neglect. (6/6/23 Tr. at 16-17; 6/26/23

Tr. at 26; 7/11/23 Tr. at 40; 9/12/23 Tr. at 47-48; 3/5/24 Tr. at 69; 6/25/24 Tr. at 78; 12/18/24 Tr. at 123-27, 150-52, 212-16, 251-52, 297-99; (Hathaway's advocacy); Doc. 61 (Hathaway's joining of the Department's position).

Mother nonetheless argues that C.M.B.'s age does not qualify as "diminished capacity." But the Montana Standards of Practice for Attorneys Representing Parents and Children in Dependent Neglect Cases recommend consideration of whether a child has diminished capacity based on "the client's age, education, cognitive abilities, mental health," and other factors. *See* SOP.⁶ And the National Association of Counsel for Children's Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings advise that a diminished capacity analysis include consideration of "cognitive and emotional development, trauma history, [and] expert opinion[.]" NACC Document.⁷ Here, not only was Hathaway considering C.M.B.'s very young age, but she also referred to C.M.B.'s therapist's testimony and the CASA's testimony, which both supported termination. Hathaway considered that Mother had been absent from C.M.B.'s life since March 2024, and that C.M.B. had "struggled to process the grief of her Mother's absence from her life since March of 2024 and will continue to struggle if there is no clear decision made on contact between

⁶ available at 35 <https://courts.mt.gov/external/cip/doc/dnstandards2024.pdf>

⁷ Available at 7-8 [NACC Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings](#)

Youth and the Mother.” (Doc. 61 at 1-2.) And in addition to Mother’s abject failure to complete any of her treatment plan tasks, her ongoing drug addiction, and her obtaining several new criminal charges, Hathaway was concerned because Mother was unreasonably promising C.M.B. that they would be reunited soon and move back together. (3/5/24 Tr. at 69.) Hathaway thus supported C.M.B.’s best interests, the paramount concern here. *See K.H.*, ¶ 29.

Indeed, Hathaway’s consideration and incorporation of C.M.B.’s best interests incorporated the reality of the unfortunate record of Mother’s near-complete failure to address her drug addiction behavior, her committing serious criminal offenses, her failure to attend parenting time, her failure to complete her treatment plan, and her effective abandonment of C.M.B. Far from Mother’s unsupported position that Hathaway was not an effective advocate for C.M.B., Hathaway was an extremely effective advocate given that the record comprehensively showed that six-year-old C.M.B. had extreme difficulty processing that abandonment effectively, was suffering and backsliding in her mental health, and had been diagnosed with PTSD and generalized anxiety, and required therapy. And, as C.M.B.’s therapist explained, she had not yet made progress in being “comfortable talking about her thoughts and feelings without becoming dysregulated” and struggled to communicate with adults and caregivers. (12/18/24 Tr. at 100-01.)

Even assuming Hathaway erred in joining the Department's position, as further explained below, the district court's decision that Mother's "conduct or condition" was unlikely to change is comprehensively supported by the record. And, because Mother did not contest below and does not contest on appeal the district court's adjudication of C.M.B. as a YINC and the court's conclusion that Mother failed to complete her treatment plan, termination was appropriate regardless of C.M.B.'s wishes for placement. *See* Mont. Code Ann. § 41-3-609(1)(f)(i)-(ii).

And, even assuming that C.M.B. would have expressed an alternative opinion for termination, Mother has not shown that C.M.B.'s joining of the Department's position had any effect on the outcome of the proceedings. C.M.B.'s joinder was not discussed at the termination hearing, and C.M.B. joined the Department's position after the hearing. In the district court's subsequent termination order, it did not mention, much less rely upon, C.M.B.'s joining of the Department's position. Instead, the court focused on the statutory criteria for termination, primarily Mother's complete failure to complete her treatment plan or to remedy the numerous conditions that made her unfit to parent. Mother has thus failed to establish how C.M.B. was prejudiced or the outcome would have been any different (*i.e.*, her parental rights would not have been terminated) had Hathaway advocated differently.

If this Court reaches the issue, it should reject Mother's interposed claim, purportedly in place of C.M.B., challenging C.M.B.'s counsel's effectiveness.

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

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

Here, Mother does not otherwise challenge that C.M.B. was adjudicated as a YINC, nor does Mother argue that the treatment plan was inappropriate or that she successfully completed her treatment plan. Mother has thus waived appellate review of those conclusions, and she may not amend her claim to include such challenges in her reply brief. M. R. App. P. 12(3) ("The reply brief must be confined to new matter raised in the brief of the appellee."); *State v. Sattler*, 1998 MT 57, ¶ 47, 288 Mont. 79, 956 P.2d 54 (legal theories raised for the first time in an appellant's reply brief are outside the scope of such a brief and this

Court has repeatedly refused to address them). Thus, the sole issue here is the conflict or condition factor under Mont. Code Ann. § 41-3-609(1)(f)(ii).

To determine that a parent’s conduct or condition is unlikely to change within a reasonable time, “the court must find that the parent’s conduct or condition renders the parent unfit, unable, or unwilling to give the child adequate parental care.” *In re A.B.*, 2020 MT 64, ¶ 27, 399 Mont. 219, 460 P.3d 405. Here, the district court considered the factors of “emotional illness, mental illness, or mental deficien[cy] of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time” and the “excessive use of . . . a narcotic or dangerous drug that affects parent’s ability to care and provide for the child.” (Mont. Code Ann. § 41-3-609(2)(a), (c); Appellant’s App. A at 39.) Specifically, the district court noted: (1) Mother’s persistent use of methamphetamine and fentanyl; Mother’s mental and emotional needs from her mental illnesses such as generalized anxiety disorder, PTSD, major depressive disorder, and borderline personality disorder; (3) Mother’s criminal behaviors resulting in her arrests and unavailability to parent; and (4) Mother’s “chronic history of being unable or unwilling [to] protect Youth from unsafe people, substance use, and frequent intense domestic violence[.]” (Appellant’s App. A at 26-27.)

Mother has not reasonably contested any of these conclusions from the district court on Mother's conduct or conditions, which were supported by the record. However, Mother argues that her conduct or condition was likely to change because she had "made *progress* on her treatment plan." (Appellant's Br. at 40 (emphasis added).) Mother supports her claim by arguing she completed "a parenting class" and "had been accepted into a sober living home." (*Id.*) Mother's argument thus must necessarily refer to her recently expressed willingness to engage in the treatment plan, which did not occur until termination.

To determine that a parent's conduct or condition is unlikely to change within a reasonable time, "the court must find that the parent's conduct or condition renders the parent unfit, unable, or unwilling to give the child adequate parental care." *A.B.*, ¶ 27. The district court does "not have a crystal ball to look into to make th[e] determination" of whether a parent can change his or her conduct in a reasonable amount of time, so its determination "must, to some extent, be based on a person's past conduct." *In re Custody & Parental Rights of D.A.*, 2008 MT 247, ¶ 23, 344 Mont. 513, 189 P.3d 631 (citation omitted). Thus, in addressing this factor, "the question is not merely whether a parent has made progress or would make some progress in the future, but whether the parent is likely to make enough progress within a reasonable time to overcome the circumstances rendering her unfit to parent." *A.B.*, ¶ 27.

Here, the district court considered Mother's past and present conduct, addressed her recent alleged attempts to start completing tasks in the treatment plan near-in-time to termination, and rightly concluded that Mother's conduct or the condition of her drug use and mental health impediments was unlikely to change within a reasonable time. The district court explained:

Here, Mother has a long history of untreated substance use and mental health issues that contributed to the trauma and neglect Youth experienced in her care, including lack of supervision, lack of attention to Youth's basic or emotional needs, exposure to unsafe individuals, exposure to frequent and intense domestic violence, and unavailability to parent due to detention for criminal behaviors or violations of probation conditions. While Youth was in Mother's care, she did not provide her with a safe and stable home. *Youth has been out of Mother's care for a significant amount of time and Mother has not been substantially involved in Youth's life for almost 21 months. Mother's attempt to address her substance use is newfound and Mother is not yet engaged in intensive and targeted mental health therapy to address her own significant trauma.* Mother's history demonstrates that it will be a considerable challenge for Mother to maintain sobriety and stability for herself and to consistently and effectively engage with Youth to rebuild trust and become a safe and reliable parent. *After the passage of 21 months already, the odds that Mother can become the caregiver Youth needs in a reasonable time are very low.* Mother would need to demonstrate her own sobriety and stability and be completely consistent and dependably engaged with Youth for a substantial period of time. Youth's therapist testified that due to Youth's extreme distrust of Mother, Mother would have very little room 'to mess up.' In other words, Mother would need to perform flawlessly and with perfection in all aspects of her treatment plan and reunification efforts, without any excuses for periods or even instances of non-compliance or non-engagement. *It would be devastating to Youth to reinitiate reunification efforts and allow Youth*

to begin to rebuild trust in Mother, if Mother were to again break Youth's trust.

(Appellant's App. A at 39-40) (emphasis added.)

The district court further noted that "Mother entered a 28-day inpatient program 18 months after Youth was removed and one month prior to the Termination Hearing[,]” but explained that “Mother had multiple opportunities in the preceding three years to engage in substance treatment and become able to achieve stability for herself to safely parent Youth.” (Appellant's App. A at 38.) However, the court noted, “Mother did not do so despite being under the risks of incarceration and/or losing her parental rights to Youth.” (*Id.*) The court concluded that “Mother is a long way from demonstrated success at maintaining sobriety and general stability in her life.” (*Id.* at 38-39.)

In yet another section of the termination order, the district court also discussed Mother's historical and recent conduct:

Mother's providers and extensive support system at RCM were pleased at her progress in their 28-day program and are hopeful she will continue in recovery. However, Mother's engagement in treatment came after years of avoiding treatment and her sobriety is extremely new and untested in any community setting or circumstances. Additionally, Mother has not yet taken accountability for her role in Youth's trauma or current circumstances. Mother lays responsibility for Youth's circumstances on others and appears to scoff at Youth's therapist's concerns and recommendations for Youth.

(Appellant's App. A at 37.)

Accordingly, despite Mother’s conclusory allegation that the district court failed to give C.M.B.’s “mental and emotional condition” primary consideration, the district court exhaustively considered both Mother’s deleterious effect on C.M.B. and considered C.M.B.’s best interests. (Appellant’s App. A at 40-42.) The district court considered Mother’s substantial absence and abandonment of C.M.B. during the pendency of the petition. The court noted C.M.B.’s frequent worrying and that “Mother’s recent long absence from Youth’s life had a huge impact on Youth’s well being.” (*Id.* at 11.)

“A child’s need for a permanent placement in a stable, loving home supersedes the right to parent a child.” *D.A.*, ¶ 21. If a child has been in foster care for 15 of the most recent 22 months, termination of parental rights is presumed to be in the best interests of the child. *Id.* (citing Mont. Code Ann. § 41-3-604(1)). “It is not reasonable . . . for the courts to force children to adjust their timelines and subordinate their needs to meet their parents’ timelines.” *In re T.N.-S.*, 2015 MT 117, ¶ 28, 379 Mont. 60, 347 P.3d 1263. The district court properly relied upon this presumption in its order. (Appellant’s App. A at 9.) The district court also considered the fact that “Mother and Youth have had ongoing CFS involvement for almost three years,” since the 2022 petition, and that C.M.B. was now six years old. (*Id.*) The sheer length of time and Mother’s substantial failure at progress

shows that Mother's conduct or condition is unlikely to change within a reasonable time.

CONCLUSION

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

Respectfully submitted this 24th day of June, 2025.

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CERTIFICATE OF COMPLIANCE

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I, Roy Lindsay Brown, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-24-2025:

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