
IN THE SUPREME COURT FOR THE STATE OF MONTANA

No. DA 24-0594

IN THE MATTER OF:

P.M.W.W.,

A Youth In Need Of Care.

ANDERS BRIEF

On Appeal from Montana's Eleventh Judicial District Court,
Flathead County, The Honorable Amy Eddy Presiding

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STATEMENT OF THE ISSUE

Whether, pursuant to the criteria set forth in *Anders v. California*, 386 U.S. 738 (1967) and Mont. Code Ann. §46-8-103, counsel for Appellant should be permitted to withdraw from this cause of action.

STATEMENT OF THE CASE

Mother and Appellant M.R. appeals the Order, entered September 12, 2024 by the Montana's Eleventh Judicial District Court, Flathead County, terminating her parental rights to P.M.W.W. (9 years old). (Appendix A) The rights of the child's birth father were also terminated. (*Id.*)

Procedural History

The case originated November 2, 2021, when the Flathead County Attorney's Office filed a Petition for Emergency Protective Services (EPS), Adjudication of Child as Youth in Need of Care (YINC), and Temporary Legal Custody (TLC) on behalf of the Department of Health and Human Services (the Department) for P.M.W.W., age 6 years old. (DC001) and supported by the Affidavit of CPS Lorna Oden. (*Id.*) The Department advised the district court the Department had no reason to believe the child was Native American or that Indian Child Welfare Act (ICWA) applied. (*Id.*) The district court granted EPS and set a show cause hearing. (DC003)

December 3, 2021 the district court held a contested show cause hearing and

a bifurcated disposition hearing. (DC024) After hearing testimony and argument, the district court adjudicated P.M.W.W. as YINC, awarded the Department TLC and set a treatment plan hearing. (*Id.*, DC032)

December 15, 2021 the Department filed a motion to approve M.S.R.'s unsigned treatment plan. (DC027) The district court heard testimony and argument and – after reviewing the treatment plan with M.S.R. – approved an amended, unsigned, treatment plan, entering its written order on (*Id.*, DC028, DC031).

The district court entered orders extending TLC on July 15, 2022, December 20, 2022 and July 17, 2023. (DC076, DC091, DC129) November 24, 2023, January 11, 2024 and April 19, 2024 the Department petitioned for termination of M.S.R.'s parental rights and permanent legal custody. (DC146, DC163, DC255)¹ The district court held the termination hearing July 15, 2024, July 16, 2024, July 17, 2024, July 18, 2024 and July 22, 2024. (DC324, DC326, DC327, DC329, DC330) After hearing testimony and argument, the district court articulated its findings and ordered termination of the M.S.R.'s parental rights to P.M.W.W. (DC330)² September 12, 2024 the district court entered its Findings of Fact, Conclusions of Law and Order Terminating Parental Rights and Granting

¹ The Department filed two amended petitions.

² Birth father's parental rights were also terminated.

Permanent Legal Custody. (DC333, Appendix A) October 7, 2024 M.S.R. filed a notice of appeal to the Montana Supreme Court. (DC336)

Facts of the Case

Affidavit of CPS Lorna Ogden – November 2, 2021. CPS Ogden swore a “Condensed Affidavit” in support of the Department’s Petition for EPS, YINC and TLC. (DC001) CPS Ogden attested P.M.W.W. was removed as a result of a confidential report that M.S.R. had been arrested. (*Id.*) Law enforcement advised CPS Ogden M.S.R. was “intoxicated and combative with her roommate” in the presence of the child and was arrested and charged with assault and disorderly conduct. (*Id.*) CPS Ogden was advised of ten law enforcement responses to the home in “the last few months,” three of which were for similar incidents. (*Id.*) CPS Ogden alleged “multiple previous reports on M.S.R. starting in October 2019” and including multiple incidents in which M.S.R. became unavailable to parent because she was taken into custody after failing to control her behavior. (*Id.*)

EPS Hearing – November 3, 2021. M.S.R. contested EPS. (DC009) CPS Administrator Jennifer Blodgett testified in conformity with CPS Ogden’s affidavit, detailed Department history with M.S.R., and described recent attempts to communicate with M.S.R. as “challenging.” (11/3/2021 Hrg. Tr. 7:1, et seq.)

She has been pretty argumentative... she records everything, which is fine, but she’s very much – combative would be the word that I would use.... Yesterday she... was pretty aggressive with my

staff and had two of my social service technicians in tears. I talked to her twice yesterday. The second time, I had to terminate the phone call due to her screaming and cursing at me without allowing me to speak.

(11/3/2021 Hrg. Tr. 10:25-11:14)

After hearing testimony and argument, the district court granted EPS.

(DC009)

Show Cause and Disposition Hearings – December 3, 2021. Licensed Social Worker Candidate (SWLC) Kimbra Bauerschaper testified regarding a mental health evaluation of M.S.R. conducted November 15, 2021.³ (12/3/2021 Hrg. Tr. 7:5, et seq.) Ms. Bauerschaper said M.S.R. was diagnosed with PTSD and borderline personality disorder. (*Id.*) M.S.R. interrupted testimony repeatedly and was admonished by the district court that she would not be allowed to disrupt the proceedings, and she would be given an opportunity to testify.⁴ (*Id.*) Cautioning she could not speak to future behavior, Ms. Bauerschaper testified borderline personality disorder was indicated by M.S.R.'s history of challenges with maintaining stable relationships, mood instability, angry outbursts, impulsiveness and self-damaging behaviors. (*Id.*) Ms. Bauerschaper recommended M.S.R. participate in dialectical behavior therapy (DBT) with a certified professional as

³ Entered into the record as Exhibit 1 (DC025)

⁴ M.S.R. was admonished repeatedly throughout the case for interrupting testimony and speaking out in court. M.S.R. eventually began leaving the courtroom when she was unable to control her behavior.

the “strongest evidence-based practice to treat her borderline personality disorder.”
(*Id.*)

Licensed Addiction Counselor Sonya Van Bommel testified regarding a substance abuse evaluation of M.S.R. conducted in mid-November 2021.⁵ (12/3/2021 Hrg. Tr. 17:22, et seq.) Ms. Van Bommel testified that Level 1 outpatient treatment was recommended based on M.S.R.’s family history of problems when using alcohol, lack of other coping skills, possible interactions with several medications, unwillingness to associate any problems with alcohol use and lack of a support system. (*Id.*)

Visitation Supervisor Amber Gannon testified regarding her services. (12/3/2021 Hrg. Tr. 29:21, et seq.) Ms. Gannon stated that M.S.R. attended visitation consistently but noted “a few instances where she’s come in pretty volatile and heated – combative....” (*Id.*) Ms. Gannon testified that while, at times, M.S.R. was able to read P.M.W.W.’s clues and engage with the child, there were times she did not, citing an instance where P.M.W.W. asked M.S.R. to read him a book and she refused saying “she did not want to be there. She wanted to be with him, but she did not want to be in the setting....” (*Id.*)

CPS Stephanie Moran testified M.S.R. had revoked her information releases,

⁵ Entered into the record as Exhibit 2. (DC025)

so CPS Moran had not been able to review the mental health or chemical dependency evaluation before the hearing. (12/3/2021 Hrg. Tr. 37:18, et seq.) CPS Moran said M.S.R. had not engaged in recommended mental health treatment, CD treatment or alcohol testing and M.S.R. stated “she would be trying to find an independent provider... and get new evaluations.” (*Id.*) CPS Moran expressed concerns about P.M.W.W.’s safety in M.S.R.’s care, due to M.S.R.’s “impulse control and the erratic behavior.” (*Id.*) M.S.R. was reportedly in communication with the Department up to 25 times a day by telephone, text, e-mail and in person. (*Id.*) M.S.R. sent multiple texts to the Department in mid-November disputing court-ordered visitation restrictions and accusing the Department of being child abductors.⁶ M.S.R. refused offers for the Department to assist her with transportation, responding “she would decide who she would want to ride with, and it wasn’t up to us.” (*Id.*) CPS Moran read into the record several hostile, demeaning, accusatory and threatening texts from M.S.R. (*Id.* 47:18-54:9) CPS Moran reported M.S.R.’s was unable to control her behavior during visitation and on one occasion “P.M.W.W. asked her two times to color a picture with him, and she denied that. He asked her three times to read a story to him. She also denied that....” (*Id.* 54:14-56:14)

⁶ Entered into the record as Exhibits 3-9. (DC025)

CPS Moran subsequently⁷ testified that TLC was appropriate because:

[M.S.R.'s] lack of impulse control, erratic behavior continues to place P.M.W.W. at unreasonable risk of harm. She continues to have illegal involvement with law enforcement that leaves her child without a caretaker when she's been arrested on several occasions. During visitation she's erratic, she's not able to maintain for long periods of time.

(12/3/2021 Hrg. Tr. 112: 2, et seq.)

M.S.R. testified in opposition to EPS. (12/3/2021 Hrg. Tr. 74:16, et seq.)

M.S.R. maintained, "They don't have consistent policies and procedures....

Because he was never left unattended. He was never neglected. He was never left without somebody caring for him. He stayed in his bed, went to sleep that night, woke up the next morning, was taken to school by my roommate.... I tried to pick him up from school that afternoon, and they told me I couldn't." (*Id.*) M.S.R.

contended supervised visits were currently taking place in a "five by nine room" that was "so filthy and disgusting that I've gotten an infection in my face...." (*Id.*)

M.S.R. disputed the diagnoses and DBT treatment recommendations saying that she was going to counseling and "doing my best to work through those matters."

(*Id.*) M.S.R. asserted that her mental health problems were attributable to the recent deaths of her father and grandfather but, "I don't think that justifies her diagnosis of borderline personality disorder. I have seen psychiatrists and

⁷ The district court bifurcated the hearing into separate show cause and disposition portions. (DC024)

therapists my entire life, and none of them would agree with her diagnosis.” (*Id.*)

Treatment Plan – December 20, 2021. The treatment plan hearing was held December 2021. (DC028) After patiently and meticulously reviewing the treatment plan with M.S.R., consulting with CPS, and entering handwritten amendments, the district court adopted the treatment plan without objection.⁸ (12/20/2021 Hrg. Tr. 12:11, et seq., DC028, DC029) M.S.R.’s treatment plan identifies five areas of concern and specifically addresses tasks in each area:

1. Basic Parenting Skills. “Out of control behaviors and lack of impulse control continue to place... P.M.W.W. at unreasonable risk of harm... [and] make it difficult for her to meet the basic needs of her child and/or understand her child’s needs, and she is placing her own needs and emotions before her child’s.” M.S.R. shall:
 - a. Attend supervised and unsupervised visits; maintain telephone contact with P.M.W.W.;
 - b. Follow recommendations of therapists, visitation supervisors and treatment and service providers; Show she can meet the child’s physical and emotional needs; Cooperate with in-home services;
 - c. Not expose the child to alcohol, drugs, paraphernalia, or violence, or allow any person around the child who is under the influence of alcohol or drugs; Demonstrate she can provide food, clothing and other necessities;
 - d. Ensure the child attends medical, dental and therapy appointments;
2. Substance Use. “M.S.R.’s untreated alcohol abuse makes it hard for her to parent her child safely.... M.S.R.’s erratic behavior... may be caused by drug or alcohol abuse....” M.S.R. shall:
 - a. Obtain a new CD evaluation per her request; provide releases to Department;

⁸ M.S.R. did not sign the treatment plan.

- b. Follow recommendations of approved mental health evaluator and treatment providers; Demonstrate understanding of how her substance use impacts her child; Provide information releases to the Department;
 - c. Not use or possess alcohol or drugs not prescribed to her; Notify CPS of any medications prescribed to her; Not expose her child to drug or alcohol use;
 - d. Cooperate and submit to random testing upon request by the Department, her CD counselor, or any other treating professional;
 - e. Develop a relapse prevention and safety plan to address keeping her child safe if she or others in her home relapse;
3. Mental Health. “M.S.R.’s untreated mental health conditions make it hard for her to parent her child safely.... M.S.R. ... was diagnosed with PTSD and Borderline Personality disorder.... The recommendations of these diagnoses is (sic) continued therapy and... Dialectical Behavior Therapy incorporating weekly on-on one and group DBT therapy sessions.” M.S.R. shall:
- a. Obtain a new psychological evaluation per her request and follow all recommendations of her treating professionals; provide releases to Department;
 - b. Enroll in, attend and participate in individual therapy and follow all recommendations; Learn how her behavior impacts her child and how to modify her behavior to meet the child’s physical and emotional needs;
 - c. Attend, participate in and complete anger management classes; Follow all recommendations; Learn how domestic violence and loud, disorderly behavior negatively impact her child;
4. Housing. “M.S.R. has a challenging time getting and keeping safe and stable housing....” M.S.R. shall:
- a. Maintain a safe, sanitary home with adequate space, heat, electricity and running water to meet the needs of her child; Not allow anyone in the home who uses drugs or alcohol; Not expose the child to anyone using drugs or alcohol;
 - b. Not allow anyone to live in the home without Department approval; Inform the Department if anyone in the home is violent, destroys property or otherwise poses a safety risk to the child;

- c. Keep the Department informed of the whereabouts of the child, when in her care; Inform the Department of any change of address prior to moving; Inform the Department of the identity of any person staying in the home;
5. Criminal Behavior. “M.S.R.’s criminal behavior resulting in incarceration creates an inability and unavailability to parent...” M.S.R. shall:
 - a. Inform the Department of any criminal charges, arrest warrants, fines, community service obligation or sentencing orders arising from existing charges against her; Inform the Department if any relative, roommate or housemate is listed on a sexual or violent offender registry;
 - b. Provide the Department with the name and contact information for any probation or parole officer assigned to her; Comply with requirements of any criminal proceeding, conditions of any sentence, pretrial supervision, probation, parole, or pre-release;
 - c. Report any contacts with law enforcement within 3 days and not commit further crimes;
 - d. Comply with any no-contact order entered against her;
6. Communication/Cooperation/Releases. M.S.R. shall:
 - a. Maintain consistent contact with the Department through her CPS by a weekly scheduled phone call or through TEAMS for virtual visits to discuss the child’s needs and her progress on completing her treatment plan; Notify the Department of any problems she encounters in completing her treatment plan;
 - b. Sign all necessary releases for medical, mental health and criminal justice records and documents related to her treatment plan and enable all professionals involved in the case to communicate;

(DC029)

Case Progression. January 21, 2022 M.S.R. requested the district court, pursuant to the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, require the Department to make accommodations for her PTSD and “seizure disorder.” (DC033) M.S.R. alleged she was prevented from

“actively completing her treatment plan because the State has not made accommodations for her inability to travel” causing her to miss several parenting opportunities and to fail to comply with her treatment plan’s drug and alcohol testing requirements. (*Id.*)

February 4, 2022 the Department filed its response, supported by the affidavits of CPS Jodi Christensen⁹ and CPS Corrina Howard¹⁰, in which it asserted that:

[M.S.R.’s] request for reasonable accommodations has been wildly inconsistent throughout... this case.... [A]t various times she has expressed.... That she is fully capable of safely driving herself and her son, that she is unable to drive in the dark due to her seizure disorder, and that she is unable to safely drive at all. She has expressed that she has access to transportations from others and that she does not have access to transportation from others... only three days apart.... Regardless, the Department has tried to offer reasonable accommodations to her – it has offered virtual visitation, it has offered transportation for M.S.R. to and from visitation through Bear Logic, it has offered alcohol monitoring through the SCRAM or remote breath unit so M.S.R. could test at home, it has tried to set up all of M.S.R.’s evaluations and treatment at one facility, Gateway, to prevent multiple appointments across town – all of these accommodations have been rejected by M.S.R. She now demands visitation at her home and transportation to and from every appointment recommended in her treatment plan be provided by the Department – and unfortunately, these requested accommodations cannot be made as a result of M.S.R.’s behavior.

(DC038, DC039)

⁹ DC039, 98 pages.

¹⁰ DC040, 24 pages.

The Department asserted that, from the outset of the case, M.S.R. had made communication difficult, sending “hundreds of email and text messages to workers across CFS, most of which have included threats, name-calling and demeaning and derogatory language.” (Id.) M.S.R. had to be escorted out of the Department because of her behavior and sent text messages to family members “expressing her intent to kill the individuals at the Department” involved in her case, refused further direct communication with the Department, and engaged in hostile, aggressive conduct toward the foster placement that led to suspension of telephone visitation. (DC038, DC039) The Department contended that, due to M.S.R.’s inability to control her behavior, her threats to the safety of Department workers and her inconsistent assertions and demands, it would be impractical, unsafe, unreasonable and beyond the requirements of the ADA to accommodate her changing requests. (DC038)

CPS Christensen, in a supplemental affidavit, with eighty pages of supporting documents, reported that, on January 26, 2022 she was contacted by a concerned individual¹¹ who forwarded two text messages from M.S.R. (DC039, p6-7, et seq.) One text included a photograph with a picture of P.M.W.W. next to a holstered pistol and the message, “Friday at 1:30 is the hearing to decide if

¹¹ Subsequently identified as one of M.S.R.’s adult children.

P.M.W.W. spends the rest of his youth in a foster home. If he isn't able to see me or come home, I will take out the social workers guns blazing. I have nothing left to lose." (Id. p93) The second text warns that, if things "don't go right" at the upcoming hearing, "I may not be alive afterwards because I'm to the point where I'm gonna kill a motherfucker for interfering and taking my child.... i'm (sic) prepared to die for it I will kill every motherfucker in that fucking department that took him from me if I don't get him back" (Id., P94) CPS Christenson advised that, virtual visitation was halted January 28, 2022 "when M.S.R. was arrested on a warrant for felony intimidation." (DC039)

February 14, 2022 the court granted the Department's motion to continue further action on M.S.R.'s motion to compel ADA compliance to allow all counsel to review documentation and "attempt to resolve the issues without further court intervention."¹² (DC044, DC045) M.S.R. was incarcerated on the felony intimidation charges until February 25, 2022. (DC064, Aff. CPS Corina Howard)

March 18, 2022 the court approved a new visitation agreement. (DC051)
April 15, 2022 the court was advised that virtual visitation was occurring and releases had been signed by M.S.R. allowing the Department to "collect records concerning Birth Mother's mental health, criminal matters, Child and Family

¹² The record reflects that no further action was taken on M.S.R.'s motion for compliance with ADA requirements.

Services proceedings and medical issues.” (DC057, 5/20/2022 Hrg. Tr. 5:15, et seq.) The court was advised the Department was awaiting ICPC requests for M.S.R.’s cousin¹³ who lived out of state.¹⁴ (Id.) Pursuant to an order in the criminal matter,¹⁵ M.S.R. was prohibited contact with Department personnel. After hearing discussion and argument, the court ordered resumption of in-person parenting time with one in-person visit and one virtual visit per week. (Id.) Around April 20, 2022 M.S.R. was returned to custody for violating conditions of her release. (DC064, Aff. CPS Howard.)

May 20, 2022 the district court was advised that M.S.R. had been released from custody and the Department was preparing to increase in person visitation.¹⁶ (DC061, 5/20/2022 Hrg. Tr. 5:15, et seq.) M.S.R. was reported to be engaging in counseling, mental health and alcohol testing and that visitation was going well. (Id. DC064, see also Aff. CPS Howard)

June 10, 2022 the district court was advised M.S.R. was having two in-person parenting visits per week, which were going well. (DC066, 6/10/2022 Hrg. Tr. 5:22, 13:1) Department counsel advised the court that M.S.R.’s cousin T.Z.

¹³ Previously identified by M.S.R. as a preferred foster placement.

¹⁴ The cousin, T.Z., lived in Georgia. (6/10/2022 Hrg. Tr. 8:13, DC081)

¹⁵ Flathead County District Court DC22-031C.

¹⁶ M.S.R. was released May 12, 2022. (DC064, Aff. CPS Howard)

would be in Montana later in the month and planned to spend time with P.M.W.W. (Id.) Counsel expressed concern that the Department still needed releases “for a variety of things” including P.M.W.W.’s dental records. (Id.) Counsel also advised the court P.M.W.W.’s foster placement was “apparently breaking down” and the child might need a new placement “quicker than anybody really wanted or anticipated.” (Id.) The court instructed counsel to get M.S.R. to sign all of the releases. (Id.)

June 23, 2022 P.M.W.W. was placed with new foster parents. (DC071) June 30, 2022 – after hearing from CPS Howard and therapeutic visitation provider Pam Liccardi – the district court held that, absent a specific safety concern, it expected “semi-supervised” parental visitation to begin. (DC075, 6/30/2022 Hrg. Tr. 18:3-20:4, 46:23-47:14) The court cautioned M.S.R. that her behavior in the community “is impactful. It’s a reflection on you. It’s a reflection on your emotional stability and ability to care for P.M.W.W.” (Id. 18:12-22)

August 8, 2022 the district court was advised cousin T.Z. had completed all of the ICPC paperwork, so they were just waiting for a response from Georgia. (8/5/2022 Hrg. Tr. 24:7-13) The court – though commending the Department’s continuing efforts to provide treatment and reunification services to M.S.R. – expressed concern of a possible conflict given the intimidation charges against M.S.R. in which Department staff would be called as witnesses. (Id. 24:25, et seq.)

The court indicated an expectation that – despite the inconvenience – the case would be staffed by someone outside the region. (Id.)

August 23, 2022 the case was transferred to Missoula CPS Charlee Thompson. (DC084) September 28, 2022 CASA Ray Mariscal reported “P.M.W.W. and M.S.R. have had frequent home visits. I have no concerns regarding visitation and would like to see overnight visits begin as soon as possible.” (Id.)

October 28, 2022 the district court was advised M.S.R.’s criminal trial had been continued and she had progressed to four overnight parental visits per week. (DC086, 10/28/2022 Hrg. Tr. 5:12, et seq.) The GAL related recent reports from P.M.W.W.’s school and foster parents that the child had begun demonstrating, “tantrums and kicking and spitting and being disrespectful but – most importantly – he is providing animal abuse to the foster parents’ animals.” (Id. 9:6, et seq.) After being admonished for interrupting the proceeding, M.S.R. eventually left the courtroom and did not return. (DC086)

November 28, 2022 P.M.W.W. was placed with M.S.R. on a trial basis. (DC087) December 15, 2022 CASA Mariscal reported the child and mother “have a strong bond and love each other very much. M.S.R. has been able to maintain a vehicle and housing. The home is safe and appropriate.” (DC087) CASA Mariscal reported P.M.W.W.’s behavior had improved since being placed with M.S.R. that

maternal cousin T.Z. had become a licensed foster placement and an ICPC had been approved by the state of Georgia. (Id.) CASA Mariscal expressed concern that M.S.R. continued to engage in “aggressive behaviors with school staff and professionals involved in her case” and would no longer allow T.Z. to have contact with P.M.W.W. (Id.)

December 16, 2022 CPS Charlee Thompson swore an affidavit in which she reported M.S.R. completed a psychological/neuropsychological evaluation November 2, 2022 after which Dr. Terry Reed recommended “a comprehensive Dialectical Behavior Therapy (DBT) intensive outpatient program or [treatment] through a therapist trained in DBT who incorporates instruction and skill-building into therapy sessions....” (DC088) December 20, 2022 Department counsel reported P.M.W.W. had been returned to M.S.R.’s care about two weeks earlier (DC090, 12/20/2022 Hrg. Tr. 6:10-15), Counsel reported difficulty finding a provider to undertake the recommended DBT therapy because, “Folks are either unavailable due to their client load and unwilling to take on a new client.” (Id.)

January 30, 2022 CPS Thompson attested the Department’s priority permanency option was reunification but that cousin T.Z. requested consideration as a placement and permanency option if reunification failed. (DC094) February 13, 2023 CASA Mariscal recommended a parent-child assessment and that P.M.W.W. have a full psychological assessment to address his aggressive anger

behavior changes and “help manage his emotional/mental wellbeing.” (DC100) CASA Mariscal further recommended continuing the trial home visit with consideration of T.Z. for placement if M.S.R. was unable to complete her treatment plan. (Id.) February 16, 2023 M.S.R. signed a home safety plan. (DC101)

April 1, 2023 M.S.R. was stopped for a broken taillight and cited for expired registration, possession of marijuana or paraphernalia and driving without a valid license. (DC104) M.S.R. was arrested on a bench warrant issued in Wisconsin and detained at the Missoula County Detention Center for return to Wisconsin. (Id.) CPS Thompson learned of the arrest by chance, upon looking at the “Missoula Mugs” website that posts Missoula arrest photos. (Id.) CPS Thompson began searching for P.M.W.W., calling MCDC, M.S.R.’s boyfriend, another friend, the Missoula County Sheriff’s Office, and the MHP – where she learned M.S.R. told someone she had dropped the child off at Little Griz Day Care the day before. (Id.)

CPS Thompson took custody of P.M.W.W. and advised cousin T.Z. of the situation. (DC104) T.Z. agreed to be a placement option for P.M.W.W., flew to Missoula April 4, 2023 and returned to Georgia with P.M.W.W. the next day. (Id.) CPS Thompson went to MCDC and advised M.S.R. the child would be placed with T.Z. (Id.) According to CPS Thompson, the child did not cry or seem surprised, but asked her, “What’s the plan now?” (Id.) P.M.W.W. spoke with T.Z. on the telephone and he “seemed accepting of the plan.” (Id.) April 27, 2023 the

Department filed a status report indicating P.M.W.W. had a therapist in Georgia, was attending school, and was reported to be adjusting well to the placement. (DC105) M.S.R. was reported to be in Wisconsin – but not in custody – after extradition and to be facing four pending criminal cases for felony bail-jumping.¹⁷ (Id.)

On May 12, 2023 CPS Thompson filed a harassment complaint after M.S.R. “engaged in a multi-day, continuous aggressive text and email campaign, sending an overwhelming amount of concerning messages to CPS despite being told by CPS and her own court-appointed attorney to stop sending messages. M.S.R.’s messages were voluminous, offensive, aggressive and borderline threatening in nature.”¹⁸ (DC110, Aff. CPS Thompson, p7) May 25, 2023 CPS Thompson reported M.S.R. had returned to Missoula “sometime before May 1, 2023,”¹⁹ and that P.M.W.W. – in kinship placement with T.Z. in Georgia – had declined to have contact with M.S.R. (DC110) CPS Thompson reported, “Overall, M.S.R. has not been able to demonstrate that her basic parenting skills have improved. She continues to engage in explosive, erratic behavior and displays significant

¹⁷ Attached as Exhibit B.

¹⁸ May 26, 2023, June 8, 2023 and June 12, 2023 CPS Thompson swore affidavits relating the concern with 194 pages of text and email correspondence attached. (DC114, DC116, DC121)

¹⁹ M.S.R. was subsequently reported to have returned to Missoula around April 21, 2023. (5/26/2023 Hrg. Tr. 5:10)

difficulty regulating her own emotions and behavior and P.M.W.W. continues to be resistant to wanting to visit his mother at times. She continues to leave P.M.W.W. in precarious situations and even after several months... demonstrating some stability, cannot maintain stability and continues to display out-of-control behaviors that impact P.M.W.W.'s safety and stability and demonstrate that she continues to have difficulty understanding P.M.W.W.'s needs and consistently meeting his needs.” (Id.)

June 15 2023 CASA Mariscal filed a report in which he recounted M.S.R.'s behavioral history with both P.M.W.W. and Department staff. (DC124) CPS Mariscal said, “M.S.R. is not behaving in a manner that allows P.M.W.W. to feel secure, protected or safe.... Her out-of-control behaviors have been observed by P.M.W.W. (Id.) The case was subsequently reassigned to CPS Cindy (sic) Hunter in Polson. (10/6/2023 Hrg. Tr. 17:1-5)

August 24, 2023 the Department reported P.M.W.W. was doing well in his placement and in school, was engaged in extra-curricular activities and was involved in family and individual therapy. (DC133) The Department documented virtual visitation commencing June 12, 2023.²⁰ (Id.) M.S.R. was reported to have begun DBT therapy but was refusing to sign releases of information “for numerous

²⁰ Attached as Exhibit 2.

other providers and entities.” (Id.)

October 5, 2023 the Department reported that, despite recommendations from providers Kimbra Bueschaper, Tyson Roe and Dr. Terry Reed – and despite prior assertions she was beginning DBT therapy – M.S.R. had not, to the Department’s knowledge, “initiated DBT therapy with any provider....” (DC136) M.S.R. was also reported to have refused to follow medication management recommendations and had tested positive for alcohol use. (Id.) Virtual visitation with P.M.W.W. was scheduled for one hour per week, and M.S.R. ”sometimes cries at visits, speaks negatively about foster resource placement, struggles with prioritizing P.M.W.W.’s needs” and – despite having no approved visitation plan – asked the child if he would like to go to “Wisconsin or Utah” for Christmas and see “his siblings and her boyfriend.” (Id.) M.S.R. was reported to be disruptive at treatment team meetings resulting in unproductive meetings. (Id.)

October 6, 2023 the district court told counsel,²¹ “I’m not going to stand for any criticism from your client moving forward that she’s not getting Treatment Team meetings because she’s choosing to participate in a different way....” (10/6/2023 Hrg. Tr. 17:7-20) The court further admonished M.S.R., “You don’t make promises for things that may or may not happen in the future. You don’t

²¹ M.S.R. was present.

make plans with your children for things that may or may not happen in the future. You do not speak disparagingly to the child of a child's caretakers." (Id. 18:4-13)

November 3, 2023 the Department filed a visitation report and discharge from services with Youth Connections due to M.S.R.'s confrontational and uncooperative behavior. (DC141)

November 14, 2023 the Department reported M.S.R. had still not begun the recommended DBT, had terminated services with her medication manager, had terminated individual therapy and had not provided ROI's for any new service providers. (DC142) When Youth Connections canceled visitations services, the Department undertook supervision. (Id.) On two subsequent virtual visits, the contact was muted to redirect M.S.R. due to inappropriate statements to the child. (Id.) M.S.R. disconnected from both visits and did not attend the next two visits. (Id.) The Department reported receiving "hundreds of emails in the last two months to members of the case team and others. Sometimes over a dozen a day." (Id.) November 16, 2023

November 17, 2023 the district court filed a letter from the kinship placement describing P.M.W.W.'s adjustment to his life in Georgia in glowing terms, with friends, activities and good schoolwork, though the child still had difficulty interacting with adults and continued to have night terrors. (DC144) The placement parents expressed hope and support for reunification and ended by

saying, “We will always be available for P.M.W.W. no matter what the outcome.... Despite everything he has been through, he is such an amazing 8-year-old boy. We hope that he is allowed to continue being a child and enjoying life.” (Id.) At a status hearing the same day, Department counsel reported that, despite the Department’s repeated efforts, M.S.R. refused to participate in DBT therapy and had terminated services with her individual therapy providers. (11/17/2023 Hrg. Tr., et seq.) Counsel told the court “There has been really no movement or change in... the conduct and behavior that we saw at the beginning of the case to now. And it’s been a struggle... to work with her.” (Id.) Counsel also reported M.S.R. had been discharged from her latest visitation program, stating, “This is a pattern in this case. She’s been discharged from essentially all visitation providers that the Department has tried to connect her with, based on, essentially, conduct and behavior issues that they are having.” (Id. 9:7, et seq.)

M.S.R.’s attorney asked the court to recall that M.S.R. had demonstrated she could safely parent P.M.W.W. the previous year prior to her arrest and extradition to Wisconsin. (Id.) Counsel argued M.S.R.’s behavior was excusable “because her son is in the home of prospective pre-adoptive parents” and recommended reunification services be resumed with the provider who had previously been able to work with M.S.R. (Id.) Counsel asserted her belief that CPS Hunter had never called M.S.R. or been to her home, arguing, “I think it’s just a farce to even call

this a reunification case, if the social worker who is currently working the case has never spoken directly with my client on the phone. We have made attempts for treatment team meetings, family engagement meetings, Zoom meetings, you name it. And they're just not happening with the frequency that, I think, we need to see.” (Id.)

The district court stated it was not faulting M.S.R. for not having engaged in CBT therapy noting, “that’s a lack of provider issue and a lack of funding and reimbursement to providers for people on Medicaid that has driven that.” (Id. 18:2, et seq.) Counsel for the Department disagreed, advising the court CPS Thompson had provided “an extensive list of providers when she was the worker prior to the harassment charge bumping her off the case.... This information was provided to M.S.R. and her counsel.... She didn’t engage any of them.” (Id.) Counsel also asserted that M.S.R.’s current CPS had advised M.S.R. and her attorney the Department would pay for the service regardless of Medicaid payment, concluding “The lack of DBT providers hasn’t been the issue for a long time. There are providers in Missoula, the Department made efforts to connect her with those, and those efforts were not successful, but not because of the Department.” (Id.)

Affidavit for termination of M.S.R.’s parental rights – November 24, 2023. CPS Syndee Hunter swore a lengthy affidavit in support of the Department’s Petition for Termination of M.S.R.’s Parental Rights and Permanent Legal

Custody.²² (DC146) CPS Hunter provided a detailed history of the case and extensively addressed the treatment plan as follows:

1. Parenting.²³ M.S.R. was not successful in meeting the parenting requirements of her treatment plan. M.S.R. had some success regulating her emotions during parenting time in the therapeutically supervised environment at Oxytocin. Her conduct, including “explosive behaviors” “lack of ability to read and respond to her son’s cues” “insulting, angry and threatening” emails, “loud, aggressive and elevated behavior” “threatening language” “derogatory remarks, accusations, demands... name-calling and threats” “ongoing out-of-control and impulsive conduct including aggressive, antagonistic and threatening behavior” made parenting supervision fail at CFS Kalispell, Bear Logic, Family Concepts, Youth Connections and CFS Missoula. (DC146, *Aff.* CPS Hunter, p20, et seq.)
2. Mental Health.²⁴ M.S.R. was not successful in meeting the mental health requirements of her treatment plan. M.S.R. did not follow the treatment recommendations of SWLC Kimbra Bueschaper, LCPC Clay David Ross, PCLC Tyson Ross, Dr. Terry Reed, or DNP, ARPN Shannon Scully including specific recommendations that she participate in individual and group DBT therapy. (*Id.* pp10-20)

M.S.R. continued to use cannabis and sometimes discontinued use of aripiprazole because “she did not notice any benefit” against Dr. Mary Ann Evans’s recommendation that she abstain from using cannabis and take antipsychotic medication (aripiprazole) to help regulate her behavior. (*Id.* p11).
3. Criminal Behavior.²⁵ M.S.R.’s treatment plan was unsuccessful in resolving her pattern of engaging in criminal conduct, and she has been arrested and incarcerated on numerous occasions during this case. (*Id.* p32, et seq.) Ten civil and criminal actions were instituted against M.S.R.

²² Forty-nine pages. (DC146, *Aff.* CPS Hunter)

²³ CPS Hunter’s recitation of M.S.R.’s parenting treatment is exhaustive and should be reviewed in full.

²⁴ CPS Hunter’s recitation of M.S.R.’s mental health treatment is exhaustive and should be reviewed in full.

²⁵ CPS Hunter’s recitation of M.S.R.’s criminal conduct is exhaustive and should be reviewed in full.

between January 2022 and May 12, 2023. (*Id.*)

4. Chemical Dependency. M.S.R. appears to have successfully addressed her substance abuse disorder, but “she has missed substance tests many times throughout this case.” (*Id.* p38)

Housing. M.S.R. has maintained an address in Missoula for many months, and it appears she has successfully addressed her housing stability. (*Id.* p39)

(DC146, *Aff. CPS Syndee Hunter*)

CPS Hunter asserted that M.S.R.

engaged in a pattern of resisting therapeutic and professional interventions... refusing to follow recommendations of providers... and resisting and escalating upon redirection from professionals working on her mental health and parenting skills” creating “a barrier to successfully working with service professionals on her treatment plan tasks to improving her mental health functioning and parenting skills.... She frequently refused to participate in meetings, accept assistance designed to connect her with services and successful complete services, sign releases of information to allow CFS to determine what services she was engaging in and whether she completed, and to allow her care to be coordinated and for her providers to collaborate to the best extent possible. And, when releases of information she had previously signed would expire, she would refuse to sign a new release.

(DC146, *Aff. CPS Hunter*, p27, et seq.)

CPS Hunter concluded:

Throughout this case, M.S.R. consistently engaged in the type of combative, erratic, escalated, and/or out-of-control conduct that resulted in the need for protective services in communications and interactions with CPS, causing her to be trespassed from CFS’ Kalispell office; parenting professionals supervising her parenting time; staff at P.M.W.W.’s elementary school, causing her to be trespassed from the school; staff employed at hotels at which she stayed and banks she visited, causing her to be trespassed from several hotels and a Missoula bank with law enforcement assistance; CASA representatives; and at court hearings in this

matter, resulting in her either leaving the court hearing or being removed from the courtroom. M.S.R.'s treatment plan was unsuccessful because she has been unable to demonstrate any long-term, sustained personal stability.
(DC146, *Aff.* CPS Hunter)

Second affidavit for termination of M.S.R.'s parental rights – January 11, 2024. CPS Hunter's affidavit in support of the Department's Amended Petition for Permanent Legal Custody and Termination of Parental Rights is a more concise rendering of the allegations made in her first affidavit. (DC163, *Aff.* CPS Hunter, DC146, *Aff.* CPS Hunter) Though it lacks the detailed specificity of its predecessor – the second affidavit makes the same allegations and offers the same conclusions.
(*Id.*)

Visitation Hearing – February 6, 2024. January 12, 2024 M.S.R. filed a Motion for a hearing on visitation, arguing that visitation in the foster home within hearing of the placement parents “has proven difficult for all parties” and “places the child in a detrimental position. (DC166) In response, the Department recounted M.S.R.'s difficult visitation history, cited recommendations of P.M.W.W.'s therapists and argued that – with P.M.W.W.'s safety and well-being at the forefront – “the intended outcomes of visitation in this matter have not been met because although M.S.R. has had many opportunities to learn new parenting skills, practice new skills, and demonstrate safe parenting skills, she has not. In addition, the parent and child relationship has not been repaired and strengthened as a result

of the visitation, despite many efforts to provide parent coaching and re-direction.” (DC168) The Department subsequently filed affidavits from P.M.W.W.’s therapists, Tracy McConaghie and Angela Saravia detailing the child’s emotional challenges, how they were being impacted by therapy, his foster placement and M.S.R., and making visitation recommendations.²⁶ (DC181, DC182)

February 6, 2024, after reviewing the affidavits, taking testimony from Oxytocin clinical director, LCPC Pamela Liccardi and hearing argument, the district court declined to take any action to change the parenting arrangement, holding “When we get to termination, the question is going to be – and I’m sure that this is what’s going to be argued – whether the Department has made reasonable efforts to reunify the family over the course of the case, taking into consideration the statutory factors. But Michelle has a role to play in that. And, if she doesn’t provide information about current treatment, then we can’t coordinate those services.” (2/6/2024 Hrg. Tr. 54:4-16)

Third affidavit for termination of M.S.R.’s parental rights – January 11, 2024. CPS Hunter’s affidavit in support of the Department’s Second Amended Petition for Permanent Legal Custody and Termination of Parental Rights updates the allegations made in her first affidavit and second affidavit. (DC255, *Aff.* CPS

²⁶ Due to space constraints, the affidavits cannot be reviewed here, but they are significant to understanding the child’s needs and relationships.

Hunter, DC163, *Aff.* CPS Hunter, DC146, *Aff.* CPS Hunter) The third affidavit reported M.S.R. had tested positive for alcohol use on April 5, 2024 and had been arrested and incarcerated for Felony Probation Violation, Misdemeanor Disorderly Conduct, Misdemeanor Criminal Trespass and Misdemeanor Obstructing a Police Officer filed April 8, 2024. (*Id.*)

Termination Hearing – July 15, 16, 17, 18 and 22, 2024. Judge Amy Eddy presided over the five-day Termination Hearing. (DC324, DC326, DC327, DC329, DC330) The State offered testimony “from more than 37” live witnesses and presented thirty-four exhibits including hearing transcripts, reports from law enforcement, probation and detention centers, e-mails and texts, and affidavits and reports by numerous providers and caregivers who did not appear at the hearing. (7/22/2024 Hrg. Tr. 9:18, et seq., DC331) Among the witnesses who testified:

David Clay Ross testified regarding his psychological evaluation of M.S.R. and her failure to comply with and complete treatment with him. (7/15/24 AM Hrg. Tr. 7:7, et seq.)²⁷

Nurse practitioner Shannon Scally testified to her efforts to prescribe medications to address M.S.R.’s anxiety and behavioral difficulties. M.S.R.

²⁷ Morning hearing sessions are denoted “AM” and afternoon sessions are denoted “PM.”

reported side effects, so the treatment was unsuccessful. (7/15/2024 PM Hrg. Tr. 3:9, et seq.)

Dr. Sarah Horne, M.D. testified regarding M.S.R.'s inappropriate behavior during appointments, including showing videos of the P.M.W.W. having night terrors in front of the child. (7/15/2024 PM Hrg. Tr. 27:6:et seq.)

Dr. Timothy Donovan, M.D. testified regarding M.S.R.'s ER visit after a visit to Las Vegas, and substance abuse concerns he observed. (7/15/2024 PM Hrg. Tr. 59:6, et seq.)

Dr. Robert Munjal, M.D. testified regarding his treatment and diagnosis of M.S.R. at the inpatient unit at the Providence psychiatric unit in Missoula in March 2024, when she was hospitalized there. (7/15/2024 PM Hrg. Tr. 67:22, et seq.)

Police Officer John Fusaro testified regarding his arrest of M.S.R. July 28, 2021, her uncontrolled behavior in the presence of P.M.W.W. and introduced video showing M.S.R.'s behavior and the P.M.W.W.'s traumatic response. (7/16/2024 AM Hrg. Tr. 3:6, et seq.)

AWARE Community Treatment care coordinator Brett Edwards testified about his work with M.S.R. from December 7, 2023 to June 18, 2024. (7/16/2024 AM Hrg. Tr. 18:4, et seq.) Mr. Edwards assisted M.S.R. in arranging transportation and housing, arranging appointments with treatment providers. (*Id.*) Mr. Edwards

testified that he assisted M.S.R. in reaching two DBT individual therapy sessions commencing March 6, 2024, but she did not attend DBT group sessions. (*Id.*) Mr. Edwards testified regarding interactions he observed between M.S.R. and others, including four mental health providers each of whom discontinued services due to M.S.R.'s behavior. (*Id.*)

Oxytocin clinical director, LAC and LCPC Pam Laccardi testified regarding her work with M.S.R. from 2022 thru 2024. (7/16/2024 PM Hrg. Tr. 3:9, et seq.) Ms. Laccardi testified M.S.R. did not complete her anger management treatment at Oxytocin and was discharged after her case worker said he could no longer work with her. (*Id.*)

Yellowstone Boys and Girls Ranch Child Welfare Prevention and Support Services Supervisor Berni McDonald testified regarding problems she observed during M.S.R.'s supervised visitation starting in December 2021, virtual visitation from March 2022 to June 2022 and face-to-face visitation at Bear Logic. (7/16/2024 PM Hrg. Tr. 20:22, et seq.) Ms. McDonald discussed concerns with M.S.R.'s interaction with P.M.W.W. in 2021 and the effect of her inability to regulate her behavior on the child. (*Id.*) Ms. McDonald described M.S.R.'s demand that other families not be on site during her visitation and that M.S.R.'s response to told that was not possible was "angry, screaming.... She just could not stop it..." (*Id.*) Ms. McDonald said that, though services were terminated, M.S.R.

subsequently engaged in virtual visitation with Oxytocin and was referred to Bear Logic for face-to-face visitation because of Ms. McDonald's concerns with M.S.R.'s ongoing behavior and decision that a more therapeutic service was needed. (*Id.*)

Youth Connections visitation monitor Carol Searl conducted Zoom visitation between M.S.R. and P.M.W.W. from September 2023 to October 2023. (7/16/2024 PM Hrg. Tr. 62:1, et seq.) Ms. Searl testified that visits were terminated on October 2023 because M.S.R. called them a charade and decided to end them.

M.S.R.'s former roommate Amanda Rogers testified regarding M.S.R.'s excessive use of alcohol and belligerent and violent behavior in October 2023. (7/17/2024 Hrg. Tr. AM 2:16, et seq.)

Missoula Police Officers Randy Talksabout, Andy Flor and Paul Mandilian and Missoula Detention Officer Nicole Lee-Rye testified regarding disorderly conduct, trespass and assault encounters and with M.S.R. in Missoula and M.S.R.'s uncontrolled behavior when being detained and while in detention. (7/16/2024 PM Hrg. Tr. 100:19, et seq., 7/17/2024 AM Hrg. Tr. 6:25, et seq., *Id.* 23:1, et seq., *Id.* 37:19, et seq.)

Kalispell CPS worker Corina Howard testified in conformance with her affidavits regarding her involvement with M.S.R.'s case in 2022 until M.S.R.'s

threats to herself and other CPS workers ended her involvement. (7/17/2024 AM 50:12, et seq.)

Kalispell school principal Merisa Murray, Kalispell school counselor Lauren Jensen and Kalispell school teacher Anne Cronk testified regarding concerns they had with M.S.R.'s behavior and 6-year-old P.M.W.W.'s well-being in the 2020-2021 school year when he was in M.S.R.'s care. (7/17/2024 AM Hrg. Tr. 92:9, et seq., 7/17/2024 PM Hrg. Tr. 75:1, et seq., *Id.* Hrg Tr. 61:20, et seq.)

Kalispell school teacher Ashley Cheesman testified that P.M.W.W.'s behavior worsened in the 2022-2023 school year when he was returned to M.S.R.'s care. (7/17/2024 PM Hrg. Tr. 84:10, et seq.)

Missoula CPS Supervisor Charlee Thompson testified in conformance with her affidavits regarding her involvement with M.S.R.'s case in 2022 and 2023 until the case was reassigned after M.S.R. engaged in angry, "nasty and ugly" behavior after M.S.R. returned to Montana on probation from Wisconsin. (7/17/2024 PM 98:14-126:1, 7/18/2024 AM 30:10, et seq.)

P.M.W.W.'s kinship placement T.Z. testified regarding problems with M.S.R.'s behavior during virtual visitation starting in April 2023. (7/18/2024 Hrg. Tr. 2:13, et seq.)

Montana Social Service Technician Katrina Knudson testified regarding

problems with virtual visitation – which was ended in January, 2024 due to M.S.R.’s inappropriate behavior during visits and abusive treatment toward Ms. Knudson. (7/18/2024 Hrg. Tr. 22:13, et seq.)

Polson CPS Supervisor Syndee Hunter, testified in conformity with her affidavits regarding her involvement in the case starting September 2023. (7/18/2024 Hrg. Tr. 33:21, et seq.) CPS Hunter concluded M.S.R. had not successfully completed any of the tasks in her treatment plan and detailed the reasons for her conclusion. (*Id.*) CPS Hunter said M.S.R. repeatedly revoked or refused to renew releases of information and did not engage with multiple DBT providers to whom the Department had referred her and that M.S.R.’s volatile and disruptive behavior made it impossible to conduct treatment team meetings. (*Id.*) CPS Supervisor Hunter addressed each component of M.S.R.’s treatment plan in detail, asserting she had failed to successfully complete any of them. (*Id.*)

M.S.R. called no witnesses, and did not testify. (7/24/2024 Hrg. Tr. 4:15)

After concluding testimony, the district court heard argument. M.S.R.’s attorney argued the State had not made reasonable efforts because “no meaningful visitation” had been conducted since the second removal of the child in April 2024. (7/24/2024 Hrg. Tr. 7:6-14)

Judge Eddy ruled from the bench that it had been established by

clear and convincing evidence that M.S.R. had failed to complete an appropriate and timely treatment plan despite being “meticulously” advised by the court at numerous hearings, that M.S.R.’s conduct and condition was unlikely to change within a reasonable amount of time, and that continuation of the parent/child relationship would likely result in continued abuse or neglect. (*Id.* 11:12, et seq.)

Findings of the District Court. On September 12, 2024, the court issued its order terminating M.S.R.’s parental rights. (DC333, Appendix A) The 45-page Order extensively recounted relevant evidence and made thirty-three pages of Findings of Fact, most significantly:

1. M.S.R. failed her treatment plan. M.S.R. did not comply with the parenting tasks and goals in the plan. She was referred to multiple different visitation supervisors but was discharged from almost every provider to whom she was referred because she could not control her behavior. M.S.R. frequently disconnected from virtual visitation when re-directed and became angry in front of P.M.W.W.
2. M.S.R. did not comply with the substance use disorder tasks and continued to use marijuana and alcohol after completing treatment. M.S.R. refused to engage in testing after relapse and was charged with criminal possession of dangerous drugs.
3. M.S.R. did not complete required mental health tasks and engaged in a pattern of terminating services with mental health providers after a short

- time. M.S.R.'s impulsive, dysregulated behavior throughout the case led to her arrest and incarceration.
4. M.S.R. did not meet her task of obtaining and keeping stable housing due to instability and incarceration.
 5. M.S.R. did not comply with the goals associated with refraining from committing further crimes and was arrested and incarcerated throughout the case.
 6. The conduct or condition rendering M.S.R. unfit, unable, or unwilling to give P.M.W.W. adequate parental care – including “emotional illness, mental illness or mental deficiency... history of violent behavior [and] excessive use of liquor or narcotics affecting the parent’s ability to care and provide for the child,” among other factors – rendered her unlikely to be able to meet P.M.W.W.’s physical and emotional needs within a reasonable time.
 7. The conduct or conditions rendering M.S.R. unable or unwilling to safely parent P.M.W.W. was unlikely to change in a reasonable time because they are “long-standing, persistent and unresolved.... [M.S.R.’s] unfitness to parent is unlikely to change based on her complicated constellation of mental illness diagnoses coupled with her persistent inability or unwillingness to engage in meaningful and consistent mental health therapy.”
 8. The Department made reasonable efforts to avoid protective placement and to make it possible to safely return the child to M.S.R.’s care which were unsuccessful due to M.S.R.’s inability or unwillingness to accept and engage in treatment recommendations.

(Appendix A, p26, et seq.)

STANDARDS OF REVIEW

A parent’s due process rights to the custody of their children requires “fundamentally fair procedures at all stages of termination proceedings.” *In re R.K.*, 2023 MT 161, ¶23, 413 Mont. 184, 534 P.3d 659 (citing *In re K.B.*, 2019 MT 73, ¶11, 395 Mont. 213, 437 P.3d 1042). Whether a person has been denied his or her right to due process is a question of constitutional law. *Id.* at ¶9 The Montana Supreme Court’s review of questions of constitutional law is plenary. *In re A.S.*, 2004 MT 62, ¶9, 320 Mont. 268, 87 P.3d 408 (citing *Schmill v. Liberty Northwest Ins. Corp.*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290)

Beyond due process concerns, the Montana Supreme Court reviews a district court’s decision to terminate parental rights for an abuse of discretion. *In re K.A.*, ¶19. An abuse of discretion can arise from clear errors in the district court’s findings of fact, mistake of law or an evidentiary ruling entered arbitrarily or without employment of conscientious judgment, or exceeding the bounds of reason, resulting in substantial injustice. *In re I.M.*, 2018 MT 61, ¶13, 391 Mont. 42, 414 P.3d 797 (citing *In re O.A.W.*, 2007 MT 13, ¶32, 335 Mont. 304, 153 P.3d 6).

Upon appeal of a district court’s findings of fact, conclusions of law, and order terminating a parent’s parental rights, the Montana Supreme Court does not

substitute its judgment as to the strength of the evidence for that of the district court. *In re A.N.W.*, 2006 MT 42, ¶29, 331 Mont. 208, 130 P.3d 619. Rather, the Court reviews findings of fact to determine if they are clearly erroneous, conclusions of law for correctness, and the evidence found by the district court to determine whether, on the whole, a preponderance of the evidence is definite, clear, and convincing. *In re B.J.J.*, 2019 MT 129, ¶10, 396 Mont. 108, 443 P.3d 488.

ARGUMENT

1. Counsel for M.R. should be permitted to withdraw from this cause in accordance with *Anders v. California* and Mont. Code Ann. §46-8-103.

The Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution guarantee every defendant the right to a fair trial and due process of law, including fair representation. 386 U.S. 738, 742 (1967). When appellant’s counsel “finds his case to be wholly frivolous” he should, after conscientious examination of the case, advise the court and request permission to withdraw. *Id.* at 744

To ensure protection of appellant’s rights, counsel’s request to withdraw must be accompanied by a brief that references anything in the record that might arguably support an appeal (an *Anders* brief). *Id.* A copy of the brief should be provided to the appellant and the appellant must be afforded the time to respond to

counsel's motion and brief. *Id.*

The State of Montana has codified the requirements of *Anders v. California* in Mont. Code Ann. §46-8-103(2). If, after reviewing the entire record and researching the applicable law, counsel concludes that an appeal would be frivolous or wholly without merit, counsel must file a motion with the Montana Supreme Court requesting permission to withdraw. *Id.* A memorandum discussing any issues that arguably support an appeal must accompany the motion to withdraw. *Id.* The memorandum must include a summary of the procedural history of the case and any jurisdictional problems with the appeal, along with appropriate citations to the record and the law bearing on each issue. *Id.*

An *Anders* brief meets the requirements of both *Anders v. California* and Mont. Code Ann. §46-8-103(2). The brief is intended to assist the appellate court in determining that counsel has conducted the required detailed review of the case and that the appeal is so frivolous that counsel's motion to withdraw should be granted. *Penson v. Ohio*, 488 U.S. 75, 81–82 (1988). The requirements of an *Anders* brief are not meant to force counsel to argue against appellant. *Anders*, 386 U.S. at 745.

Pursuant to Mont. Code Ann. §46-8-103(2), counsel for Appellant reluctantly advises the Court that, after conducting diligent review of the record and the relevant law, counsel has not found any non-frivolous issues appropriate

for appeal in this matter. While counsel has great sympathy for the Appellant, he can find no meritorious grounds for appeal. In accordance with the requirements of *Anders* and Mont. Code Ann. §46-8-103(2), counsel provides this memorandum (Anders Brief) discussing issues that arguably support an appeal, a summary of the procedural history of the case and any jurisdictional problems with the appeal, and appropriate citations to the record and the law bearing on each issue. *Id.*

2. The record may arguably support M.R.'s assertion the district court erred when it terminated her parental rights.

The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence that the child is an adjudicated youth in need of care, an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful, and the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time. Mont. Code Ann. §41-3-609(1)(f); *In re D.B. and D.B.*, 2007 MT 246, ¶20, 339 Mont. 240, 168 P.3d 691.

An order terminating an individual's right to parent his children must be supported by clear and convincing evidence that the statutory criteria for termination have been met. *In re A.T. and J.T.*, 2003 MT 154, ¶10, 316 Mont. 255, 70 P.3d 1247. Clear and convincing evidence is:

simply a requirement that a preponderance of the evidence be definite, clear, and convincing, or that a particular issue must be

established by a preponderance of the evidence or by a clear preponderance of proof. This requirement does not call for unanswerable or conclusive evidence. The quality of proof, to be clear and convincing, is somewhere between the rule in ordinary civil cases and the requirement of criminal procedure—that is, it must be more than a mere preponderance but not beyond a reasonable doubt.

In re C.M.C., 2009 MT 153, ¶23, 350 Mont. 391, 208 P.3d 809.

Once the criteria for termination of parental rights are met, the decision whether or not to terminate those rights is within the court’s discretion. In this case, M.S.R. may argue the evidence presented at her termination hearing did not constitute clear and convincing evidence she was unfit to safely parent P.M.W.W. and that the conduct or condition rendering her unfit to parent the child would not change in a reasonable time.

a. M.S.R. may assert her treatment plan did not conform with the requirements of the Americans with Disabilities Act (ADA).

This has Court held that, in dependent neglect cases, “the ADA requirements to provide reasonable accommodations are consistent with—and generally subsumed within—the requirements of Title 41, chapter 3, MCA, to provide reasonable efforts and to develop an appropriate treatment plan.” *In re K.L.N.*, 2021 MT 56, ¶25, 403 Mont. 342, 482 P.3d 650 (citing *In re D.B.*, 2007 MT 246, 339 Mont. 240, 168 P.3d 691). “Treatment plans must be customized to meet the needs of disabled parents and, where a parent suffers from a disability, [the Department] has a special duty to assist him or her in prioritizing and scheduling

tasks.” (*Id.*, quoting *In re D.B.*)

This Court has also determined that, “The Department must make reasonable efforts to reunite parents with their children, not herculean efforts.” *In re R.L.*, 2019 MT 267, ¶20, 397 Mont. 507, 452 P.3d 890 (citing *In re R.L.*, 2019 MT 267, ¶20, 397 Mont. 507, 452 P.3d 890; *In re A.G.*, 2016 MT 203, 384 Mont. 361, 378 P.3d 1177) The parent in a dependent neglect case “has an obligation to avail herself of services arranged or referred by the Department and engage with the Department to successfully complete her treatment plan.” *Id.* (citations omitted)

In this case, M.R. may arguably she was frustrated in her efforts to seek DBT therapy by the lack of availability in Kalispell and the Department failed to take reasonable efforts to expedite such care before she moved to Missoula.

b. M.S.R. may assert the district court erred excluded her from the termination hearing and required her to observe via Zoom.

Both Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution guarantee every parent due process in all proceedings that lead to termination of his or her parental rights. The plain error review doctrine may be applied by the Court “where failing to review the claimed error may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process” *In re B.H.*, 2018 MT 282, ¶14,

393 Mont. 352, 430 P.3d 1006 (citations omitted).

In this case, M.S.R. was repeatedly absent from the courtroom during the hearing on termination of her parental rights so that she could regain her composure before reentering the courtroom. The district court determined M.S.R.'s coming and going was disruptive to the proceedings and instructed that, if she left the courtroom, she would be allowed to observe the proceedings from another room via Zoom but would not be allowed to return until the court resumed proceedings the following afternoon or morning. While M.S.R. did not object to this proviso, she may argue the court's denial of her choice to enter or exit the hearing when necessary deprived her of her due process right to be present at the proceedings, was fundamentally unfair and constituted plain error.

CONCLUSION

After thorough review of the entire record and researching applicable statutes, case law, and rules, counsel has determined that M.S.R.'s appeal presents no non-frivolous issues and is, therefore, wholly without merit. Counsel respectfully requests the court grant the motion to withdraw on direct appeal.

Respectfully submitted this June 26, 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 not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.



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