

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0339

IN THE MATTER OF:

A.R.T.

Youth in Need of Care.

ANDERS BRIEF

On Appeal from the Montana Eight Judicial District Court, Cascade County,
the Honorable Elizabeth Best, Presiding.

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STATEMENT OF THE ISSUE

Whether counsel for the Appellant should be permitted to withdraw from this cause in accordance with the criteria established in *Anders v. California*, 386 U.S. 738 (1967) and § 46-8-103, MCA.

STATEMENT OF THE FACTS

Appellant Father, D.T. (“Father”), appeals the Order Terminating Parental Rights issued by the Cascade County District Court (“District Court”) on April 10, 2025. (D.C. Doc 182.) The Department of Health and Human Services (“Department”) first became involved with Father’s case October 12, 2021, after the Department received reports concerning Birth Mother and Father’s mental health. The report also detailed alcohol use by Mother and domestic and physical violence perpetrated by Father against the children. At the time the Department initially became involved Father was incarcerated at the Cascade County Detention Center for assault on a minor and the Department was aware of Father’s history of untreated mental health issues. (D.C. Doc 1, 3.) Reports also detailed concern over both parent’s mental health including bipolar and schizophrenia diagnoses. (D.C. Doc 3.) At the time of removal A.T. was thirteen years old and M.T. was nine years old. (D.C. Doc 1.)

On October 27, 2021, Father's counsel filed a Notice Contesting Show Cause to preserve Father's rights, as counsel was unable to contact him. (D.C. Doc. 7.) Father was not present for the initial Show Cause Hearing on November 4, 2021, because he had been transferred to the Montana State Hospital. (D.C. Doc. 14.) At the continued hearing on November 18, 2021, Father stipulated to the Department's Petition. (Id.) The District Court adjudicated the children as Youths in Need of Care (YINC) and granted the Department Temporary Legal Custody (TLC) for six months. (Id.)

The Department filed Father's Proposed Treatment Plan on December 7, 2021. (D.C. Doc. 18.) The plan's objectives were to address Father's parenting skills, mental health issues, and his unstable housing situation. (Id.) Father subsequently filed objections to the plan, specifically disputing the allegation that his mental health impacted his ability to care for the children. (D.C. Doc. 27.) He also objected to the requirements that he take a Department approved parenting class and maintain a home with running water, arguing a safe home could be provided without it and that poverty is not synonymous with abuse or neglect. (Id.)

The appointed Guardian Ad Litem (GAL) report filed on March 14, 2022, and stated that Father was attending visits and the children were happy

to see him. (D.C. Doc. 28.) The GAL recommended more frequent visitation. (Id.) Father was not present at a March 17, 2022, Status hearing. (D.C. Doc. 30.) The Department expressed ongoing concerns about Father's mental health but acknowledged he had obtained an apartment, though it required repairs. (Id.) Father's attorney advised the District Court that Father maintained good contact with her and was seeking employment. (Id.)

Another Status hearing was held on September 1, 2022. (D.C. Doc. 36.) Father was represented by counsel but was not present for the hearing. (09/01/22 Hearing Tr. 3:7-8.) Lauren Erhard, the new Child Protection Specialist (CPS) assigned to the case, provided an update. (09/01/22 Hearing Tr. 3:18-21.)

CPS Erhard reported that M.T. was placed in regular foster care, had started third grade, and was doing well with no major behaviors reported. (09/01/22 Hearing Tr. 4:2-5.) A.T. was in eighth grade and was residing at the Children's Receiving Home. (09/01/22 Hearing Tr. 4:6-8.) The Department was actively looking for a foster placement for A.T., as she could not be placed with her brother due to licensing statutes related to the number of people in the foster home. (09/01/22 Hearing Tr. 4:9-15.) Despite the separate placements, the siblings saw each other regularly; M.T.'s foster

family allowed A.T. to visit on weekends, and she had gone camping with them over the summer. (09/01/22 Hearing Tr. 5:2-7.)

CPS Erhard stated she had not had any contact with Mother or Father but had reached out to set up appointments and was scheduled to meet with Father the following day. (09/01/22 Hearing Tr. 5:8-10.) She reported that both parents were not incarcerated and that she had been told they were living together, though she was unaware of their current residence. (09/01/22 Hearing Tr. 5:13-18.) Father's counsel had nothing to add. (09/01/22 Hearing Tr. 6:3.) The District Court noted that getting the children placed together was the most urgent issue. (09/01/22 Hearing Tr. 6:10-12.)

On November 11, 2022, the Department filed a Petition to Extend TLC. (D.C. Doc 41.) The Department alleged that Father had not received a mental health evaluation or engaged with individual therapy. (Id.) It also stated Father was living in a motel while looking for appropriate housing. (Id.) The Department reported they offered Father a bus pass for appointments and noted its continued inability to engage the parents in services. (Id.)

Father was not present at the December 1, 2022, hearing on the Petition to Extend TLC,. (12/01/22 Hearing Tr. 4:9.) His counsel moved to

continue the hearing, stating Father needed more time to understand the State's request and noted there is still an outstanding objection to his Treatment Plan. (12/01/22 Hearing Tr. 5:17-25.) The District Court continued the matter and ordered that TLC would be maintained pending the next hearing. (12/01/22 Hearing Tr. 7:13-15, 7:19-20.)

The continued hearing on the Department's Motion to Extend TLC was held on January 19, 2023. (D.C. Doc. 47.) Father was personally present with his counsel. (01/19/23 Hearing Tr. 4:9.)

Father's counsel addressed the previously filed objections to his treatment plan. Counsel argued there was a "lack of evidentiary nexus" connecting Father's mental health history to the children's safety at the time of removal. (01/19/23 Hearing Tr. 6:15-18.) The District Court overruled the objection, noting Father's prior absence from a hearing due to being at the Montana State Hospital and finding it was in the children's best interests for him to get mental health treatment. (01/19/23 Hearing Tr. 7:1-2, 7:8-11.) The court also overruled Father's objection to the housing task, though it agreed to leave the language as requiring "safe and appropriate" housing rather than a standard that could be interpreted as requiring more. (01/19/23 Hearing Tr. 8:2, 8:20-21.)

The court sustained Father's objection to the parenting class requirement "right now" but made a strong recommendation that the parties remain open to the idea in the future. (01/19/23 Hearing Tr. 11:4-6.) The Court additionally modified the treatment plan task regarding substance use in the home to prohibit the abuse of alcohol or legal drugs to instead prohibit the use of any illegal drugs, and the use of marijuana in the children's presence. (01/19/23 Hearing Tr. 11:17-18, 12:2-4.) The Court also sustained Father's objection to signing releases for criminal justice information. (01/19/23 Hearing Tr. 12:9.)

Following the District Court's rulings on the objections, Father's counsel stipulated to the extension of TLC without admission to all the facts alleged by the Department. (01/19/23 Hearing Tr. 14:12-13.) The court granted the extension of TLC. (01/19/23 Hearing Tr. 15:18-19.)

The next hearing was a Status held on April 20, 2023. (04/20/23 Hearing Tr. 4:1.) Father was personally present with his counsel. (04/20/23 Hearing Tr. 4:9-10.) CPS Erhard provided an update on the children's status. M.T. was doing very well in his foster placement. (04/20/23 Hearing Tr. 6:2-4, 6:10-11.)

A.T. had been removed from her prior placement due to escalated behaviors, including running away, defiance, and drug use. (04/20/23 Hearing Tr. 5:14-16, 8:3-5.) The night she was transported to a new placement, A.T. ran away, threatened to commit suicide, and was picked up by police. (04/20/23 Hearing Tr. 8:6-12.) She was subsequently placed at Discovery House in Anaconda for approximately 30 days, where she received a clinical assessment. (04/20/23 Hearing Tr. 6:15-16.) A.T. was diagnosed with depression, a mood disorder, and a nicotine addiction. (04/20/23 Hearing Tr. 7:1-2, 6:22.)

The foster placement reported that A.T.'s struggles had started since visits with Father began. (04/20/23 Hearing Tr. 8:15-16.) A.T. expressed a desire to remain with her current placement and achieve permanency through guardianship or adoption. (04/20/23 Hearing Tr. 9:24-10:3.)

Father's counsel reported that Father was engaged with Many Rivers Whole Health, was maintaining his mental health, and attended visitation. (04/20/23 Hearing Tr. 11:7-9.) Counsel requested a treatment team meeting to include Father's providers and the Department to discuss reasonable efforts and family therapy. (04/20/23 Hearing Tr. 11:10-16.) The Court requested that the Department look into family therapy and organize the team meeting. (04/20/23 Hearing Tr. 8:24, 11:21-23.)

On July 14, 2023, the Department filed another Motion to Extend TLC because the parents had not completed their treatment plans. (D.C. Doc. 53.) The Department reported that Father had engaged with his PACT team and started individual therapy, but his attendance could not be confirmed because his provider, Many Rivers Whole Health, did not respond to the Department's request for records. (Id.) Father still had not completed a mental health evaluation. (Id.) He attended weekly visitations but allegedly struggled to fully engage with both children, who according to the Department sometimes chose to end visits early to be with friends. (Id.)

A hearing on the Department's Motion to Extend TLC was held on July 20, 2023. (D.C. Doc. 55.) Father was personally present with counsel. (07/20/23 Hearing Tr. 4:9.) Father's counsel moved to continue the hearing, stating she had not received requested discovery, specifically updated CAPS notes and visit coaching notes. (07/20/23 Hearing Tr. 5:13-14, 5:23-24.) Counsel argued the discovery was necessary to meaningfully discuss the case with her client, as the notes were relevant to allegations about Father's ability to interact with the children during visitation. (07/20/23 Hearing Tr. 5:17-18, 6:2-4.) The State did not oppose the continuance. (07/20/23 Hearing Tr. 7:5.)

The continued hearing on the Department's Motion to Extend TLC was held on August 3, 2023. (D.C. Doc. 57.) Father's counsel again moved for a continuance to subpoena Father's case manager from Many Rivers Whole Health. (08/03/23 Hearing Tr. 5:13-15, 5:18-21.) Due to the impending departure of CPS Erhard, the court decided to take her testimony before continuing remainder of the hearing to a later date. (08/03/23 Hearing Tr. 6:16-17, 6:20-24.)

CPS Erhard testified that Father's treatment plan required mental health treatment and safe and stable housing. (08/03/23 Hearing Tr. 8:5-6.) Father had obtained a safe and appropriate trailer. Regarding his mental health, CPS Erhard testified that Father told her he had not seen a mental health specialist for "quite some time" due to staffing issues at Many Rivers. (08/03/23 Hearing Tr. 8:11-13.) Erhard stated the Department had requested records many times but had not received any documentation confirming or denying Father was actively seeing a therapist. (08/03/23 Hearing Tr. 8:14-16.) She confirmed Father saw a psychiatrist every three months and received a monthly shot for to address his psychiatric issues. (08/03/23 Hearing Tr. 8:17-18.)

CPS Erhard testified that the Department had placed A.T. with Father one week prior to the hearing due to her own escalated behaviors in foster

care, which included running away, drinking alcohol, and using drugs. (08/03/23 Hearing Tr. 9:12-15, 9:19.) The Department's primary safety concern for reunifying M.T. was Father's history of domestic violence, some of which was directed at M.T., and how Father would cope if he began feeling overwhelmed. (08/03/23 Hearing Tr. 11:15-18.)

On cross-examination, CPS Erhard confirmed she attended a family engagement meeting on June 8, 2023, where Father's case manager from Many Rivers stated Father was compliant with treatment and making progress. (08/03/23 Hearing Tr. 15:4-13, 15:23-24.) CPS Erhard testified that despite the meeting, she did not know how well Father was doing with his mental health because she lacked documentation to support it. (08/03/23 Hearing Tr. 17:11-13.) Following the testimony, the Court held the matter in abeyance. (08/03/23 Hearing Tr. 28:9.)

The continued hearing was held on the Department's Motion to Extend TLC on September 21, 2023. (D.C. Doc. 60.) Father's counsel again moved to continue the hearing, stating she had received only one or two pages of discovery since the last hearing and lacked sufficient information to proceed. (09/21/23 Hearing Tr. 5:7-8, 5:11-12, 6:3-6.) Counsel also stated that Father's service providers had refused to speak with her without first

speaking to the CPS, which she found concerning. (09/21/23 Hearing Tr. 5:18-20.)

The new CPS worker, Natalie Ayala, testified about recent issues that had arisen since A.T. was placed with Father. (09/21/23 Hearing Tr. 6:25.) She stated A.T. had expressed many times that she did not want to be in the home, was sad, and wanted to sleep the days away. (09/21/23 Hearing Tr. 8:15-18.) CPS Ayala testified that the water at Father's home had been shut off, and after it was turned back on, the home only had cold water. (09/21/23 Hearing Tr. 9:6-7, 9:13-14.) As a result, A.T. did not shower for two weeks and had to defecate in a bag on multiple occasions. (09/21/23 Hearing Tr. 9:8, 8:22-23.) The court deemed the living conditions "uninhabitable." (09/21/23 Hearing Tr. 9:17.)

CPS Ayala further testified that A.T. had accrued 24 school absences since September and Father did not seem concerned when she spoke to him about it. (09/21/23 Hearing Tr. 11:7, 11:14-15.) When the school called Father regarding the absences, he repeatedly said "Okay" and then hung up without further conversation. (09/21/23 Hearing Tr. 12:24-13:2.) CPS Ayala also testified that Many Rivers Whole Health informed her that Father did not want to participate in therapy. (09/21/23 Hearing Tr. 19:1-2.) Father's counsel argued that the lack of discovery regarding these serious allegations

left her unable to adequately defend her client. (09/21/23 Hearing Tr. 13:25-14:2.) The Guardian ad Litem objected to a continuance. (09/21/23 Hearing Tr. 17:20-21.) The court granted the State's Motion to Extend TLC for up to six months, with the condition that another hearing would be held in 30 days. (09/21/23 Hearing Tr. 20:24-21:1.)

On October 23, 2023, the Department filed a Supplemental Affidavit from CPS Ayala detailing events that occurred after the September 21, 2023, hearing. (D.C. Doc. 62.)

The Affidavit provided details of an alleged incident where A.T. ran away from Father's home. At the time, Father's home still did not have hot water. (Id.) Father informed CPS Ayala that A.T. was with a friend but could not provide a last name or contact information and later stated A.T. mentioned leaving for Billings that night. (Id.) Father stated he did not know who A.T. was traveling with. (Id.) When CPS Ayala contacted A.T., she refused to disclose her location unless CPS promised to place her back with Father, explaining that his home was the only alternative to a group home or facility. (Id.) CPS Ayala agreed and placed A.T. back with Father under an in-home safety plan after A.T. admitted she had been wandering downtown alone. (Id.)

On October 11, 2023, a Family Based Services worker informed CPS Ayala that Father had called her because A.T. could not feel her foot and he was unsure what to do. (Id.) The worker, Mysten Price, transported A.T. and Father to a clinic because Father did not have transportation. (Id.) A.T. was diagnosed with a pinched nerve. (Id.)

The Supplemental Affidavit also noted a Family Engagement Meeting was held on October 12, 2023. (Id.) Father attended with his PACT team leader, Jinger Marsh, who stated she had just started mental health counseling with Father and would be the new point of contact for the Department. (Id.) Ms. Marsh indicated she would also like to start family counseling. The PACT team offered to take over and fix Father's water heater, and Father expressed a desire to take parenting classes. (Id.)

A Status hearing was held on October 26, 2023. (D.C. Doc. 66.) CPS Ayala reported that the Department removed A.T. from Father's care on September 21, 2023, the day after the previous hearing. (10/26/23 Hearing Tr. 5:15-16, 7:1-3.) The removal was due to the issues previously raised regarding missed school and the inhabitability of the home. (10/26/23 Hearing Tr. 5:24-25, 6:7-8, 6:11-13.)

A.T. was placed back in her previous foster placement. (10/26/23 Hearing Tr. 5:16-17.) Shortly thereafter, A.T. was found passed out drunk and high in the bathroom at her new school. (10/26/23 Hearing Tr. 7:23-25.) After the foster parent went to the school to address the situation, A.T. ran away and was officially considered a runaway on October 9, 2023. (10/26/23 Hearing Tr. 8:11-16.) CPS Ayala was able to make contact with A.T. but she would only provide the Department her location if she was placed back with Father. A.T. was placed back in Father's care on October 10, 2023, under a stricter in-home safety plan. (10/26/23 Hearing Tr. 9:3, 9:21-23.) As of the hearing, A.T. had COVID and was not attending school. (10/26/23 Hearing Tr. 10:5, 10:14.)

Another Status hearing was held on December 21, 2023. (D.C. Doc. 71.) The Department filed a permanency plan report three days prior to the hearing, and Father's counsel noted she had not been given enough time to discuss it with her client. (12/21/23 Hearing Tr. 5:17-18.)

CPS Supervisor (CPSS), Kelley Lucotch, provided the status update. (12/21/23 Hearing Tr. 8:10.) CPSS Lucotch reported that A.T. remained in Father's care under a safety plan but continued to have significant behavioral issues. (12/21/23 Hearing Tr. 8:11-13.) A.T. was still mostly absent from school and had been placed on GPS monitoring through juvenile probation

following a physical altercation with a peer. (12/21/23 Hearing Tr. 8:14-19.) CPSS Lucotch also informed the Court that Father was dealing with new health issues, including renal kidney failure that required dialysis multiple times a week and had resulted in a recent hospitalization. (12/21/23 Hearing Tr. 8:24-25, 9:8.)

CPSS Lucotch testified that CPS had discussed a permanency plan with Father and that he had agreed M.T. would remain in his foster home under a permanent guardianship, which was deemed to be in M.T.'s best interest. (12/21/23 Hearing Tr. 10:1-5.) The plan for A.T. was to remain with Father while he addressed his health and she worked to stabilize, after which the Department would move to dismiss her case. (12/21/23 Hearing Tr. 10:6-10.) The supervisor explained this plan was developed due to A.T.'s escalating behaviors (including a recent assault on a peer at the juvenile detention center where A.T. then began punching herself repeatedly in the face) and the impact of her behavior on M.T. who had stabilized in his foster placement. (12/21/23 Hearing Tr. 11:1-8, 11:16-19.) Father's counsel objected to this report, stating she had not been included in these permanency conversations, and her client had not had the benefit of legal advice regarding the alleged agreement. (12/21/23 Hearing Tr. 12:15-20.)

A Permanency Plan hearing was held on January 25, 2024. (01/25/24 Hearing Tr. 4:1, 4:12.) Father was personally present, and the Department moved for its proposed Permanency Plan to be approved. (01/25/24 Hearing Tr. 5:7-8, D.C. Doc. 68.) CPS Ayala informed the court that Father was in end-stage renal disease, which untreated could lead to death. (01/25/24 Hearing Tr. 5:15-19.) She testified that Father had done dialysis for a few weeks but then stopped when he felt better. (01/25/24 Hearing Tr. 6:20-23.) CPS Ayala also reported that Father's home still did not have running hot water, and Father stated he was in the process of moving because of it. (01/25/24 Hearing Tr. 8:14-16, 8:20-23.) She stated that A.T. was not doing well, had 44 school absences, and was a challenge for Father to manage. (01/25/24 Hearing Tr. 6:2-5, 6:9-10.)

Father's counsel stated that Father did not object to reunification for A.T. (01/25/24 Hearing Tr. 7:11-12.) For M.T., the Department's plan was guardianship. (01/25/24 Hearing Tr. 7:12-13, 7:20-22, D.C. Doc. 68.) The District Court approved the Department's Permanency Plan as proposed and advised Father he needed to see his doctors. (01/25/24 Hearing Tr. 10:17-18, 10:20.)

On March 15, 2024, the State filed its third Motion to Extend TLC, supported by an Affidavit from CPS Ayala. (D.C. Doc. 78.) The Affidavit

alleged that on February 26, 2024 Father was hospitalized for six days with pneumonia and left A.T. at home without a caretaker plan. (D.C. Doc. 78 see Aff.) On February 28, 2024, a CPS worker went to Father's home and found A.T. alone with her boyfriend, who was actively smoking marijuana. (Id.) A.T. was briefly placed in a kinship home but left that same night and was reported as a runaway on March 1, 2024. (Id.) Father was released from the hospital on March 3, 2024, and A.T. returned to his home. (Id. at 4.) The Affidavit further alleged that Father continued to struggle to meet A.T.'s basic needs, as she had been unenrolled from school due to non-attendance and Father failed to transport her to medical or counseling appointments. (Id.) The Affidavit also alleged Father's home still lacked hot water and he was not receiving treatment for his end-stage renal disease. (Id.)

A hearing on the Department's Motion to Extend TLC was held on March 21, 2024. Father and A.T. were personally present. (03/21/24 Hearing Tr. 4:9-11.) Father's counsel moved to continue the hearing for two weeks. (03/21/24 Hearing Tr. 5:11-13.) Counsel stated that her client was frustrated with and disagreed with allegations in the Department's recently filed affidavit. (03/21/24 Hearing Tr. 5:14-15.) Specifically, the key factual dispute was the affidavit alluding to the fact that Father "didn't have concerns about where his daughter is or what she's doing." (03/21/24

Hearing Tr. 9:18-20.) The Guardian ad Litem objected to a continuance, arguing the need to extend custody was clear and he would "rather get it done today." (03/21/24 Hearing Tr. 8:3-4, 8:12.) The court, viewing the matter as contested, proceeded with testimony that day. (03/21/24 Hearing Tr. 11:12-14.)

CPS Ayala testified that Father's home still lacked hot water. (03/21/24 Hearing Tr. 18:19.) She testified regarding Father's recent hospitalization, and other instances included in the Affidavit regarding A.T. staying by herself. (03/21/24 Hearing Tr. 20:4-6.) Ms. Ayala alleged that Father did not communicate a plan to her for A.T.'s care while he was in the hospital. (03/21/24 Hearing Tr. 21:5-8, 19:20-22.) The Department then placed A.T. in a temporary kinship placement. (03/21/24 Hearing Tr. 21:15-16.)

Father testified in his own defense. (03/21/24 Hearing Tr. 40:17.) He stated that when he was hospitalized, he attempted to make plans for A.T. by calling two family members. (03/21/24 Hearing Tr. 41:13-15.) Father testified that when those family members did not pick A.T. up from the house, he called CPS Ayala, for assistance. (03/21/24 Hearing Tr. 41:16-19.) Father also testified that while A.T. has run away from other placements, she does not run away from him and always calls him to let him know her

whereabouts. (03/21/24 Hearing Tr. 42:12-16.) Following testimony and argument, the District Court granted the Department's motion and extended TLC for six months. (03/21/24 Hearing Tr. 47:11-12.)

On April 15, 2024, the Department filed a Petition for Termination of Parental Rights, seeking to terminate Father's rights under MCA § 41-3-609(1)(f). (D.C. Doc. 84.) The Petition was supported by an Affidavit from CPS Ayala. The Affidavit alleged that Father had failed to complete his treatment plan and that the conduct rendering him unfit was unlikely to change within a reasonable time. (D.C. Doc. 84 see Aff.) The Department alleged that Father's physical health was in decline, he was not receiving treatment for end-stage renal disease, and his home continued to lack hot water and was unstable as the landlord intended to sell the property. (Id.)

The Affidavit additionally detailed a significant incident that took place on March 22, 2024, when A.T. traveled to Billings without Father's knowledge and was sexually assaulted twice. (Id.) Law enforcement informed Father of the assault and the need for a rape kit exam at the ER; Father did not attend or request to go with A.T. to the hospital. (Id.)

On March 25, 2024, CPS informed Father of the Department's decision to remove A.T. and terminate his parental rights. When asked about

A.T.'s whereabouts over the weekend of the assault, Father had incorrectly stated she was with a maternal aunt. (Id.) The Affidavit noted that CPS had to explain the meaning of termination to Father three times before he eventually stated he did not understand. (Id.)

The Affidavit further alleged Father struggled to consistently attend visits with M.T., and when visits occurred, he was often disengaged, on his phone, and required redirection from the visit supervisor. (Id.) It also alleged Father failed to meet A.T.'s basic needs, noting she was dropped from school in February 2024 due to a lack of attendance and Father failed to reengage her. (Id.)

A Status hearing was held on June 27, 2024. (D.C. Doc. 110.) Father was personally present. (06/27/24 Hearing Tr. 4:9.) The Department reported that the mother was placed at the Montana State Hospital at Warm Springs for the foreseeable future. (06/27/24 Hearing Tr. 5:12-13.)

The Department additionally updated parties that Father had moved from his prior residence into an adult group home placement through Many Rivers Whole Health. (06/27/24 Hearing Tr. 5:16-20.) The reports indicated Father was doing much better there and was attending his weekly dialysis appointments. (06/27/24 Hearing Tr. 5:19, 5:21.) Father's counsel added that

he was engaged in all his services and was actively searching for new housing. (06/27/24 Hearing Tr. 10:11-14.)

The Department reported that after experiencing extremely significant trauma, A.T. was placed at Falcon Ridge, an intensive residential facility in Utah, on May 9, 2024. (06/27/24 Hearing Tr. 7:2-5.) A.T. had struggled with the transition and had multiple incident reports for verbal and physical aggression. (06/27/24 Hearing Tr. 7:6-8.)

M.T. remained in his foster placement and had verbalized that he wanted to stay there. (06/27/24 Hearing Tr. 6:25.) Weekly visits with Father were scheduled, but Father had cancelled two of the last four due to work. (06/27/24 Hearing Tr. 5:22-24.) M.T. cancelled the most recent visit stating he would rather be with friends. (06/27/24 Hearing Tr. 5:25, 6:12-13.)

On September 10, 2024, the Department filed another Motion to Extend TLC, supported by an Affidavit from the new CPS Diane Whitmore. (D.C. Doc. 136.)

The Affidavit alleged that Father was not compliant with his treatment plan. (D.C. Doc. 136 see Aff.) It stated he had been inconsistent with his supervised visits with M.T., missing about half of them due to his ongoing health problems, work, or M.T.'s own refusal to attend. (Id. at 7.) The

Affidavit reiterated the incidents that he had been previously brought up regarding A.T.'s time in Father's care. (Id.)

Regarding Father's health and housing, the Affidavit stated he was living in a transitional facility through Many Rivers Whole Health where the children were not permitted to live. (Id.) He was struggling with end-stage renal disease and, after briefly attending dialysis three times per week as recommended, he stopped the treatment because he believed he felt better without it. (Id.) His counselor informed the Department that she was concerned he was not following medical advice. (Id.) The Affidavit also noted Father continued to make concerning statements, telling his therapist he had a pending lawsuit against the rapper 50 Cent for publishing his music. (Id.)

The Affidavit also provided an update on the children. A.T. was at a psychiatric facility in Utah. (Id.) A.T. was previously in a group home as mentioned in the prior Status hearing; however, her behaviors had escalated to include assaulting staff, requiring physical holds, and running onto a busy road. (Id.) After assaulting a peer, she was taken to the E.R., diagnosed with Acute Schizophrenia-like Disorder, and was reported to be having hallucinations. (Id.) She was involuntarily committed until a bed at an appropriate facility became available. (Id.) M.T. had started 5th grade and

was doing well but had not been regularly attending visits with Father by his own choice. (Id.)

A hearing was held on the State's Motion to Extend TLC on September 19, 2024, where there were no objections and the District Court granted the extension. (D.C. Doc. 139.) On September 25, 2024, the GAL filed a report supporting the Department's Petition to Terminate Parental rights for both parents. (D.C. Doc. 141.)

The hearing on the Termination of Parental Rights was held on September 26, 2024. (D.C. Doc. 142.) At the outset of the hearing, Father's counsel informed the court that Father had made the difficult decision to voluntarily relinquish his parental rights to A.T. (09/26/24 Hearing Tr. 5:4-8.) Counsel specified that the relinquishment was not an admission of unfitness or an inability to care for A.T. but was based on the significance of A.T.'s needs. (09/26/24 Hearing Tr. 5:8-12.) Father's counsel presented a prepared Affidavit of Relinquishment, which was conditioned on the termination or relinquishment of the mother's rights. (09/26/24 Hearing Tr. 5:20-21, 6:10-12.)

On May 9, 2025, after the District Court Terminated his parental rights to M.T., Father filed his Notice of Appeal in A.T.’s case. (D.C. Doc. 165.)

ARGUMENT

I. COUNSEL FOR APPELLANT SHOULD BE PERMITTED TO WITHDRAW FROM THIS CAUSE IN ACCORDANCE WITH *ANDERS V. CALIFORNIA* AND SECTION 46-8-103, MCA.

An appellant is guaranteed the right to fair representation by the Sixth Amendment of the United States Constitution. *Anders v. California*, 386 U.S. 738, 744 (1967); see also Mont. Const. art. II, § 17. When appellant’s counsel “finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw.” *Anders*, 386 U.S. at 744. To ensure protection of this right, counsel seeking to withdraw must accompany his motion to withdraw with a brief that references anything in the record that might arguably support an appeal. *Anders*, 386 U.S. at 744. 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. *Anders*, 386 U.S. at 744.

The State of Montana has codified the requirements of *Anders* at § 46-8-103(2), MCA. If counsel concludes that an appeal would be frivolous or wholly without merit after reviewing the entire record and researching the applicable law, counsel must file a motion with the Montana Supreme Court requesting permission to withdraw. Section 46-8-103(2), MCA. A memorandum discussing any issues that arguably support an appeal must accompany counsel's motion. Section 46-8-103(2), MCA. 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. Section 46-8-103(2), MCA. An *Anders* 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, 8182 (1988). The requirements of an *Anders* brief are not meant to force counsel to argue against his client. *Anders*, 386 U.S. at 745.

After conducting diligent research of the record and applicable law in this matter, counsel has not found any non-frivolous issues appropriate for appeal. Without arguing against his client, counsel for the Appellant is

compelled by his ethical duty of candor before this Court to provide the Court with this brief in accordance with the requirements of *Anders*.

II. Father May Argue That the Relinquishment of His Parental Rights Was Done Under Duress and Should Not Have Been Accepted by the District Court.

In order to be effective, a relinquishment of parental rights must be made “voluntarily and unequivocally.” Mont. Code Ann. § 42-2-412 (2023). Voluntariness can be made ineffective when a parent is coerced into relinquishing his rights or when the parent’s actions are due to pressure from outside sources. Under Mont. Code Ann. §42-2-417, the Court can set aside a parent’s relinquishment of parental rights and consent to adopt if the parent can establish “by clear and convincing evidence, before a decree of adoption is issued, that the consent was obtained by fraud or duress.”

When considering an individual's ability to consent to contract, the Montana Legislature has codified the principle that apparent consent is not real or free when obtained through duress. Mont. Code Ann. § 28-2-401 (2023). This Court has determined that the formation of a binding and legal contract requires “the free and mutual consent of the parties to contract.” *Keil v. Glacier Park*, 188 Mont. 455, 465, 614 P.2d 502, 507. In contracts law, duress consists of,

- (1) unlawful confinement of the person of the party, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
- (2) unlawful detention of the property of any such person; or
- (3) confinement of such person, lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive.

Mont. Code Ann. § 28-2-402 (2023). If any of the situations above exist, an agreement between two parties is rendered unenforceable. This is because the effect of duress is to render free decision-making and voluntariness invalid.

As a legal term outside of the contracts arena, duress has a colloquial definition. Black's Law Dictionary defines duress broadly as "a threat of harm made to compel a person to do something against his or her will or judgment." *Black's Law Dictionary* 230 (Bryan A. Garner ed., 3rd ed., West 1996). The essence of duress is that one feels as though they have no other choice than to act in a prescribed manner.

While there is an argument that a waiver of parental rights, relinquishment of child and consent to adoption is a contract between a biological parent and the Department, the nature of dependency and neglect proceedings do not fit within the traditional definition of duress in the realm

of contracts law. However, when one looks at the broader definition of duress, it has clear applicability to the case at hand. The result is the same as in a contracts case; however, a parent's ability to voluntarily consent to relinquishment is compromised.

With his waiver of parental rights, Father through counsel in open court stated he felt he had no other option but to give up custody of A.T. due to her needs. Father may argue that he would not have agreed to waive his parental rights if the Department had not led him into it or if the Department had done more to support him with A.T.'s behavioral needs.

CONCLUSION

A thorough examination of the record and research of the applicable law seems to compel a conclusion that Appellant Father's appeal has no merit. This Court should grant the undersigned's motion to withdraw as counsel on direct appeal.

Respectfully submitted this 24th day of August 2025.

By: /s/ Abby Shea

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CERTIFICATE OF COMPLIANCE

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

/s/ Abby Shea
ABBY SHEA

APPENDICES

ORDER OF TERMINATION OF PARENTAL RIGHTS PURSUANT TO
AFFIDAVIT OF RELINQUISHMENT OF BIRTH FATHER.....A

CERTIFICATE OF SERVICE

I, Abby Shea, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 08-25-2025:

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