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COUNSEL FOR APPELLEE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0585

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IN THE MATTER OF:

M.L.O.-L.,

A Youth in Need of Care.

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**STATE’S OPPOSED MOTION TO DISMISS INTERVENOR’S APPEAL**

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The Attorney General’s Office, on behalf of the Department of Public Health and Human Services (DPHHS), respectfully moves this Court to dismiss the appeal filed by W.R., the above-named youth’s maternal grandmother and intervenor (Intervenor), because the order from which Intervenor appeals is not an appealable order.

Intervenor opposes this motion. The above-named youth, M.L.O.-L., does not oppose this motion.

### **FACTUAL AND PROCEDURAL BACKGROUND**

DPHHS removed M.L.O.-L. (born in 2018) and her two siblings, I.O.-L. (born in 2009) and J.O.-L. (born in 2015), from T.L., their mother (Mother), in February 2023, and was granted temporary legal custody.<sup>1</sup> (Docs. 1, 105.)

All three children were initially placed with Intervenor. (Docs. 70, 129.) I.O.-L. immediately ran away and was placed into a group home. (*Id.*) In March 2023, Intervenor requested that DPHHS place the younger siblings elsewhere. (*Id.*) The children were ultimately placed together with J.D., a licensed foster parent. (*Id.*) Although the children were no longer in her care, Intervenor was granted Intervenor status in July 2023. (Docs. 34-35, 39, 42.)

In February 2024, J.O.-L. had to be placed at Shodair Children's Hospital because of severe behavioral issues, including physical aggression towards M.L.O.-L. (Docs. 70, 129.) When he was discharged, J.O.-L. could not return to J.D.'s care because of the dangers he still posed to M.L.O.-L., so he was placed with Intervenor (where he remains). (*Id.*)

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<sup>1</sup>The children's fathers were either unknown and/or uninvolved and their respective rights were ultimately terminated.

In May 2024, the court approved DPHHS’s permanency plans for M.L.O.-L. and J.O.-L.; the primary plans were reunification and the contingency plans were adoption with their current placements. (Doc. 70 (2024 PPO).)

Mother was unable to successfully complete her treatment plan and the court terminated the parents’ rights and granted permanent legal custody (PLC) to DPHHS on November 18, 2024.<sup>2</sup> (Doc. 105.) In its order, the court confirmed its 2024 PPO for M.L.O.-L. (adoption with J.D.) as in her best interests and directed DPHHS to effectuate that plan. (*Id.* at 35.)

On November 25, 2024, Intervenor filed a motion to place M.L.O.-L. with her, citing Mont. Code Ann. §§ 41-3-440, -450, -451. (Doc. 108.) DPHHS and M.L.O.-L. opposed the motion. (Docs. 111-112.) Over DPHHS’s objection, and despite the fact DPHHS had PLC, the court conducted a hearing on Intervenor’s motion, citing the need to allow Intervenor the opportunity to question M.L.O.-L.’s counselors regarding M.L.O.-L.’s wish to remain with J.D. (Docs. 119, 123; 1/29/25 Tr.) On February 28, 2025, the court denied Intervenor’s motion and “decline[d] to hold any further placement hearings absent a change in circumstance.” (Doc. 129 at 6.)

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<sup>2</sup>Mother’s appeal was dismissed on August 12, 2025, after this Court reviewed the record following appellate counsel’s motion filed pursuant to *Anders v. California*, 386 U.S. 738 (1967). See *In re J.O.-L. and M.L.O.-L.*, Case No. DA 24-0729.

In March 2025, DPHHS submitted its permanency plan report for consideration at the April 22, 2025 permanency plan hearing (PPH). (Docs. 131-132.) Intervenor did not file a written objection or motion for placement asserting a change in circumstances. (Case Register.) Nevertheless, Intervenor orally objected to the plan and asked for a contested hearing. (4/22/25 Tr.; Doc. 152.) Over DPHHS's objection, the court continued the PPH to June 12, 2025, to provide Intervenor with the opportunity to present evidence of changed circumstances. (*Id.*) Intervenor did not present any such evidence at the June 12, 2025 hearing. (*Id.* at 5.)

On July 16, 2025, the court approved M.L.O.-L.'s permanency plan. (Doc. 152.) Although the court captioned its order as also "denying Intervenor's request for placement," no placement motion had been before the court. (*Id.* at 5.) The court did "not disturb its previous findings and order" that denied Intervenor's November 2024 placement motion and incorporated the findings and conclusions from its February 28, 2025 order that denied that motion. (*Id.* at 2.)

On August 13, 2025, Intervenor appealed the July 16, 2025 order.

### **ARGUMENT**

"A party may appeal from a final judgment in an action or special proceeding and from those final orders specified in sections (2), (3), and (4) of this rule."

M. R. App. P. 6(1) (Rule 6(1)). “In civil cases, an *aggrieved party* may appeal from [specifically enumerated decisions], provided that the order is the court’s *final* decision on the referenced matter.” *See* M. R. App. P. 6(3) (emphasis added) (Rule 6(3)).

The court’s July 16, 2025 order was issued following a hearing on DPHHS’s motion to approve M.L.O.-L.’s permanency plan. No other motions or petitions were before the court for the June 2025 PPH. The list of appealable civil case orders does not include orders approving permanency plans. Rule 6(3).

This makes sense because orders following PPHs do not impact the rights or interests of the parents or children in a Dependent Neglect case. *See In re D.A.*, 2008 MT 247, ¶ 37, 344 Mont. 513, 189 P.3d 631. Rather, PPHs are mandated annual hearings to make sure that children in the custody of DPHHS “do not languish in foster care or fall through the proverbial administrative crack.” *In re J.W.*, 2013 MT 201, ¶ 34, 371 Mont. 98, 307 P.3d 274; Mont. Code Ann. § 41-3-445. Permanency plan orders do not conclusively determine any rights or interests of the parents, child, or DPHHS. Moreover, and relevant here, such orders have no impact whatsoever upon an intervenor. As such, Intervenor is not an “aggrieved party” as required under Rule 6(3). *See also In re R.N.*, 2024 MT 115, ¶ 17, 416 Mont. 462, 549 P.3d 452 (“intervention [does] not confer any fundamental or parental rights”).

Finally, and most significantly, permanency plan orders are not final orders as required under Rules 6(1) and 6(3). “A final judgment conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding[.]” M. R. App. P. 4(1)(a); *In re D.A.*, 2003 MT 109, ¶ 13, 315 Mont. 340, 68 P.3d 735 (appealable order is “one which constitutes a final determination of the rights of the parties; any judgment, order or decree leaving matters undetermined is interlocutory in nature and not a final judgment for purposes of appeal”). Orders following PPHs are issued annually. They do not settle claims or controversies in a Dependent Neglect action.

Here, the final, appealable order was the court’s order terminating the parents’ rights and granting PLC to DPHHS. Relative to Intervenor, even assuming she had legal custodial interest, the only order that addressed Intervenor’s “claim” was the February 25, 2025 order denying her placement motion. And, even if that order was appealable, Intervenor did not appeal it within 30 days or seek leave to file an out-of-time appeal. *See* M. R. App. P. 4(5)(a)(i), 4(6).

Finally, it is questionable what, if any, relief this Court can even provide Intervenor. This Court has already affirmed the district court’s order that granted DPHHS PLC. “Under such circumstances,” a district court would not entertain challenges to the appropriateness of a placement. *In re B.W.*, 2016 MT 340, ¶ 15,

386 Mont. 33, 386 P.3d 595 (Court considered intervenor’s appeal from placement order because DPHHS conceded PLC was conditioned on placement).

Application of this Court’s Rules of Appellate Procedure in this matter, aptly supports this Court’s recognition that “custody of children should be quickly fixed” and “subject[ing] a child to protracted custodial litigation” is harmful to a child’s best interests. *D.A.*, ¶ 16 (citations omitted).

### **CONCLUSION**

This Court should dismiss Intervenor’s appeal.

Respectfully submitted this 7th day of October, 2025.

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By: /s/ Katie Schulz  
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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16 of the Montana Rules of Appellate Procedure, I certify that this motion 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 1,235 words, excluding caption, signature blocks, certificate of compliance, certificate of service, and any exhibits.

/s/ Katie Schulz  
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## CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 10-07-2025:

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