IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0585

IN THE MATTER OF:

M.L.O.-L.,

A Youth in Need of Care.

OPENING BRIEF OF APPELLANT

On Appeal From the Montana Fourth Judicial District Court, Missoula County
Before the Honorable Jason Marks

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3. Did the District Court err by applying a "changed circumstances" standard that appears nowhere in the permanency statute rather than conducting the independent statutory inquiry required by Mont. Code Ann. § 41-3-445?

4. Did the District Court clearly err in finding that the Department made reasonable efforts to effectuate and finalize the permanency plan?

STATEMENT OF THE CASE

This case involves the permanent placement of MLO-L, a youth in need of care. The central dispute concerns whether the District Court properly approved the child's adoption by a non-relative foster caregiver rather than her maternal grandmother, who sought placement as a fit and willing relative under Montana's kinship placement statutes.

MLO-L entered protective custody in early 2023 and was initially placed with her maternal grandmother, W.R. In June 2023, the Department moved MLO-L to foster care with J.D., where she has remained. Following termination of parental rights in October 2024, W.R. intervened and moved for a placement

hearing, requesting that MLO-L be placed with family in accordance with statutory preferences.

The District Court conducted a limited evidentiary hearing on January 29, 2025, hearing testimony only from the child's two therapists. Based on their testimony about potential emotional impacts of a placement change, the District Court denied W.R.'s placement motion on February 28, 2025, and stated it would not reconsider placement absent changed circumstances.

The District Court subsequently held a combined permanency and placement hearing on June 12, 2025. At that hearing, W.R. presented testimony from multiple witnesses, including the Department's own Recruitment, Retention, and Training Bureau Chief, who identified significant gaps in the Department's efforts to maintain family connections for MLO-L. The Department presented no witnesses in its case in chief, relying instead on cross-examination and limited rebuttal testimony.

On July 16, 2025, the District Court entered its Order Approving Permanency Plan, approving the Department's plan for adoption by the foster caregiver and denying W.R.'s request for placement. The District Court incorporated its February 28 order and denied W.R.'s request because she failed to demonstrate a change in circumstances. The District Court made this determination without citing or applying Montana's kinship placement statutes, without making

the findings required by Mont. Code Ann. § 41-3-445, and despite uncontroverted evidence that the Department had failed to facilitate family contact for months during the critical permanency planning period.

W.R. timely appealed from the July 16, 2025, *Order Approving Permanency Plan*.

STATEMENT OF THE FACTS

MLO-L entered protective custody in early 2023 at five years old. The Department initially recognized the importance of family placement and placed her with her maternal grandmother, W.R., who had been a consistent presence in the child's life since birth. However, on June 29, 2023, the Department moved both MLO-L and her older sibling, JO-L, from W.R.'s care to a foster home with J.D. MLO-L has remained with J.D. continuously since that date. (*Order Approving Permanency Plan*, ¶ 3.)

The sibling relationship between MLO-L and JO-L proved complex and troubled. While both children initially resided together in J.D.'s home, JO-L began exhibiting severe aggression toward his younger sister. The District Court found that his behaviors escalated in late 2023 and culminated in February 2024 when he choked MLO-L and had to be removed from the home and admitted to Shodair Children's Hospital. Following his discharge from Shodair, the Department placed him with W.R., where he has remained. (*Order Approving Permanency Plan*, ¶ 3.)

In October 2024, the District Court terminated the parental rights of MLO-L.'s mother after a contested hearing. (*Order Approving Permanency Plan*, ¶ 2.) Following termination, W.R. remained the only family member seeking adoptive placement. By that time, she had successfully parented MLO-L's sibling, obtained licensure as a therapeutic foster caregiver, and consistently stated her willingness and desire to adopt MLO-L. On November 25, 2024, W.R. moved for a placement hearing and requested that MLO-L be removed from J.D.'s home and placed with family. The District Court granted the request for a hearing but first addressed whether it should conduct an age-appropriate consultation with the Youth. (*Order Approving Permanency Plan*, ¶¶ 6, 8.)

In January 2025, the District Court initially scheduled an in-person consultation with MLO-L but retreated from this plan after receiving letters from the child's therapists warning that direct questioning could harm her. (*Order Denying Motion for Placement*, Feb. 28, 2025.) Rather than hear from the child herself, the District Court convened a limited evidentiary hearing on January 29, 2025, where only MLO-L's two therapists testified.

Both Cyndi McNeil and Thad Widmer predicted that removing MLO-L from J.D.'s care would cause emotional regression and psychological distress and testified to those concerns to a reasonable degree of professional certainty. They did not meaningfully address whether therapeutic supports could mitigate the risks

of transition or whether long-term placement with family might ultimately benefit the child. (1/29/25 Tr. at 807-12, 839-57.) Based on this testimony, the District Court denied W.R.'s placement motion and declared it would not reconsider placement absent changed circumstances. (*Order Denying Motion for Placement*, Feb. 28, 2025.)

Despite that ruling, the District Court set W.R.'s November 2024 request for a full evidentiary hearing for June 12, 2025, to be held in conjunction with the permanency hearing. When the hearing convened, the Department declined to present any witnesses in its case in chief and indicated it would instead proceed through cross-examination and rebuttal, effectively resting on the existing placement while asking the District Court to approve its permanency plan. (6/12/25 Tr. at 902-03.)

W.R. presented several witnesses, beginning with Dylan Claxton, the therapist who worked with JO-L and facilitated sibling therapy sessions between the children. Claxton testified that sibling visits had gradually improved but that the most recent session proved emotionally overwhelming for MLO-L, who became distressed and needed to end the session early. (6/12/25 Tr. at 904-12.) Claxton maintained her earlier assessment that placing both children with the same caregiver could trigger JO-L's behavioral issues and that some risk of physical aggression toward MLO-L persisted, even as she acknowledged that continued

therapeutic intervention could help address these challenges over time. (6/12/25 Tr. at 908-10.)

Courtney Callaghan, the Department's Recruitment, Retention, and Training Bureau Chief, provided particularly significant testimony. Assigned to review the case after W.R. contacted the Governor's Office, Callaghan's review revealed substantial gaps in the Department's maintenance of family connections. She identified a complete absence of sibling therapy from August through December 2024, ongoing scheduling problems that prevented consistent family contact, and the Department's failure to fully implement her recommendations for neutral settings that could have facilitated contact between W.R. and the child. (6/12/25 Tr. at 913-17, 919-23.) Callaghan acknowledged that the Department could have done more to preserve family relationships, particularly during the critical months when permanency decisions were being made.[1] (6/12/25 Tr. at 919-23.)

Expert witness Lorinne Burke testified about best practices for managing high-conflict sibling relationships. She explained that structured therapeutic environments with a single professional in charge and limited adult involvement typically yield the best outcomes, and she opined that sibling contact can often be

[1] On October 15, 2025, Callaghan reported that MLO-L's therapist no longer believed sibling contact required a therapeutic setting and that W.R. should contact J.D. to arrange unmediated sibling visits. While no such visits have occurred, the progress is notable. However, J.D. subsequently expressed a desire that MLO-L "take a break" from sibling sessions, suggesting that, notwithstanding the progress, sustained efforts to maintain and strengthen the sibling relationship have not been implemented.

maintained safely even when there has been past aggression. Burke's testimony was limited by her lack of direct involvement with MLO-L and her reliance on partial records provided by counsel rather than the complete case file. (6/12/25 Tr. at 940-45.)

W.R. concluded with her own testimony about her consistent presence in both children's lives and her persistent efforts to maintain family connections despite institutional obstacles. She recounted waiting for scheduled phone calls that were never facilitated, submitting repeated requests for increased sibling therapy that went unaddressed, and continuing to advocate for family contact even when met with bureaucratic resistance. (6/12/25 Tr. at 951-61.) Her testimony reflected not only her commitment to MLO-L but also her successful track record caring for JO-L under challenging circumstances. (6/12/25 Tr. at 951-61.)

The Department's rebuttal consisted solely of testimony from CPS worker Jessica Sorenson. Sorenson conceded that no sibling therapy occurred during the five-month period from August through December 2024, precisely when permanency planning should have intensified efforts to support family connections, and she acknowledged that "everyone brought barriers" to contact. (6/12/25 Tr. at 982-83.) While Sorenson cited the case's complexity and the children's therapeutic needs as explanations for these failures, she did not identify any reason those challenges prevented even basic phone contact between MLO-L

and her grandmother. Despite these shortcomings, Sorenson maintained that adoption by J.D. remained in MLO-L's best interests. (6/12/25 Tr. at 979-83.)

The District Court issued its Permanency Order on July 16, 2025, approving adoption by J.D. and denying W.R.'s request for family placement. Rather than conducting the independent permanency analysis required by statute, the District Court incorporated its February 28, 2025, placement order and concluded that, absent changed circumstances, its prior determination would stand. (*Order Approving Permanency Plan*, ¶¶ 8–10.) The District Court found that MLO-L's behaviors had demonstrated a desire to remain with J.D., even though it declined to consult with the child directly about her preferences. Finally, it determined that the Department made reasonable efforts to effectuate and finalize the permanency plan despite uncontroverted testimony documenting months of missed therapy, failed phone calls, and unimplemented recommendations for family contact. (*Order Approving Permanency Plan*, ¶¶ 19–22.)

From that Order, W.R. now appeals.

SUMMARY OF THE ARGUMENT

This appeal challenges the District Court's fundamental failure to apply Montana's statutory framework when approving MLO-L's adoptive placement with a non-relative foster caregiver over her maternal grandmother. The errors

pervading the permanency determination require reversal on multiple independent grounds.

Montana law mandates that children be placed for adoption with extended family members unless the court makes an explicit finding of good cause under Mont. Code Ann. § 41-3-451. The District Court approved adoption by a non-relative without citing either Mont. Code Ann. § 41-3-450 or § 41-3-451, without applying the statutory criteria, and without making any finding that fell within the five exclusive circumstances that constitute good cause. MLO-L's grandmother was not merely available but was a licensed therapeutic caregiver successfully parenting the child's sibling who consistently sought placement throughout the proceedings. The District Court's reliance on therapist testimony about potential transition difficulties cannot substitute for the statutory analysis the statutory scheme requires. District Courts may not bypass kinship placement based on generalized concerns about emotional disruption when none of the narrow statutory exceptions apply.

Additionally, the permanency order fails to satisfy Mont. Code Ann. § 41-3-445's explicit requirements for written findings. The District Court never addressed whether compelling reasons existed to deny adoption by a fit and willing relative, as § 41-3-445(6)(e)(ii) demands. The District Court's conclusory statement that it would not disturb its previous findings cannot replace the specific

determinations the permanency statute requires. Where the District Court did make findings, particularly regarding the Department's reasonable efforts, those findings are directly contradicted by testimony from the Department's own witnesses about months of missed therapy and abandoned contact arrangements.

Moreover, the District Court improperly applied a changed circumstances standard that appears nowhere in the permanency statute. By treating the permanency hearing as merely a review of its prior placement order rather than the independent statutory inquiry § 41-3-445 requires, the District Court failed to conduct the fresh assessment of the child's situation that permanency demands. This error was particularly prejudicial because it caused the District Court to bypass the statutory preference for relative adoption, effectively requiring the grandmother to show changed circumstances to obtain placement rather than requiring the Department to demonstrate compelling reasons to deny it.

Finally, the evidence definitively establishes that the Department failed to make reasonable efforts to effectuate permanency with a relative. The Department's own witnesses admitted to a complete cessation of sibling therapy during the five critical months between August and December 2024, precisely when permanency was being determined. The Department abandoned phone contact arrangements after one or two attempts, created what its own reviewer characterized as persistent gaps in services, and allowed family bonds to

deteriorate through bureaucratic indifference. When the Department's personnel acknowledge that everyone brought barriers to contact and identify systemic failures throughout the case, the District Court's finding of intensive, ongoing efforts cannot stand.

These errors are not harmless or technical. They reflect a systematic departure from the statutory scheme the Legislature created to protect children's connections to their families and ensure that kinship bonds are preserved whenever safely possible. The District Court's approval of adoption without the required statutory analysis, without adequate findings, under the wrong legal standard, and based on clearly erroneous factual determinations requires reversal and remand for proper application of Montana law.

STANDARD OF REVIEW

Whether a district court complied with the statutory requirements presents a question of law that this Court reviews for correctness. *In re J.H.*, 2016 MT 35, ¶ 13, 382 Mont. 214, 367 P.3d 339 (citing *In re H.T.,* 2015 MT 41, ¶ 10, 378 Mont. 206, 343 P.3d 159). "This Court will not disturb a district court's decision on appeal unless 'there is a mistake of law or a finding of fact not supported by substantial evidence that would amount to a clear abuse of discretion.'" *Matter of A.B.*, 2020 MT 64, ¶ 23, 399 Mont. 219, 460 P.3d 405 (quoting *In re D.B.*, 2012 MT 231, ¶ 17, 366 Mont. 392, 288 P.3d 160).

An abuse of discretion occurs when the District Court acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice. *In re D.B. & D.B.*, 2007 MT 246, ¶ 16, 339 Mont. 240, 168 P.3d 691. A District court has abused its Discretion if its findings of fact are clearly erroneous or its conclusions of law are incorrect. *In re D.B. & D.B.*, ¶ 16. "A factual finding is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence, or if review of the record convinces the Court a mistake was made." *In re J.B*., 2016 MT 68, ¶ 10, 383 Mont. 48, 368 P.3d 715.

ARGUMENT

I. THE DISTRICT COURT FAILED TO MAKE THE REQUISITE FINDING OF GOOD CAUSE PRIOR TO DEPARTING FROM THE STATUTORY KINSHIP PLACEMENT OF MLO-L.

Montana law creates a clear and mandatory framework governing adoptive placement of children in state custody. "[I]n any adoptive placement of a child, preference must be given" first to "a member of the child's extended family, including fictive kin," unless the court makes a proper determination under Mont. Code Ann. § 41-3-451 that "good cause exists to not follow the placement preferences." Mont. Code Ann. § 41-3-450(2). These statutes operate together: kin placement is the default and a court may only bypass it upon explicit, on-the-record findings satisfying § 41-3-451's narrow exceptions.

Sections 41-3-450 and 41-3-451 were enacted in 2023 as part of a comprehensive revision to Montana's placement statutes. The language of the statutes is direct and outlines the sequence a court must follow when a relative is available for adoption. The analysis therefore begins with the statutory preference for kinship placement and proceeds to the limited circumstances in which a District Court may depart from that preference. Applying the statutes as written does not require the development of additional case law or interpretive gloss. The placement determination here simply required the District Court to work within that structure, identify whether an enumerated exception applied, and make the findings the statutes contemplate.

Instead, the District Court approved adoption by a non-relative foster parent without referencing §§ 41-3-450 or 41-3-451, without applying the statutory criteria, and without making any express finding of good cause. The statutory framework leaves no room for implied or assumed findings. Because the required analysis did not occur, the District Court's placement determination rested on a legally insufficient foundation and must be reversed.

A. The District Court's Order Approving Adoption by a Non-Relative Contains no Finding of "Good Cause" under § 41-3-451.

In its July 16, 2025, Permanency Order, the District Court approved MLO-L's permanent placement and adoption by her foster caregiver and "denie[d] [W.R.'s] request to remove [MLO-L] from her current placement" while

incorporating its prior February 28, 2025, order in full. (*Order*, ¶¶ 8–10.) Nowhere in the Permanency Order does the court cite § 41-3-450, identify or apply § 41-3-451, use the words good cause; discuss the statutory adoptive placement preferences, or evaluate whether kin placement by a "fit and willing relative" was appropriate.

Montana law requires a District Court to begin any adoptive placement analysis with the statutory preference for a fit and willing relative. Section 41-3-450 establishes that extended family members are the first placement preference, and § 41-3-451 authorizes departure from that preference only upon a specific determination that good cause exists. Those statutes operate together and require a District Court to identify the statutory preference, evaluate whether a suitable relative is available, and then make an on-the-record finding of good cause if the court elects not to follow the preference.

The orders in this case contain no such analysis. In approving adoption by a non-relative foster caregiver, the district court did not cite § 41-3-450, did not identify § 41-3-451, and did not articulate any statutory basis for concluding that good cause existed to bypass kinship placement. The permanency order simply recites the Department's proposed plan of adoption by the foster caregiver and notes that the District Court "will not disturb its previous findings," while incorporating in full the earlier February 28 order. That order likewise contains no

analysis under the statutory framework. Although it uses the words "found good cause to not follow statutory placement preferences," it does so without identifying any statutory category of good cause or making findings tied to the enumerated criteria. A conclusory reference to "good cause" cannot satisfy the requirements of § 41-3-451, which demands a specific, reasoned determination based on one of the limited statutory circumstances. Put another way, declaring that good cause exists is not equivalent to engaging in the analysis.

The omission matters. The statutory preference for kinship placement is not merely aspirational, but a mandatory directive that embodies the Legislature's determination that children should remain with family whenever safely possible. A District Court may override that preference only when one of the limited circumstances in § 41-3-451 is affirmatively found to apply. Without that finding, the District Court lacks authority to approve adoption by a non-relative. Nothing in the District Court's February or July orders explains why the statutory preference did not control here, and nothing in the record supplies the missing determination. The permanency order therefore rests on a legally insufficient foundation.

The District Court's failure to identify or apply the governing statutory standard requires reversal.

B. The Record Contains No Evidence Supporting Any of the Five Statutory Exceptions to the Placement Preferences.

The District Court made no finding that good cause existed to depart from the placement preferences mandated by § 41-3-450. Specifically, § 41-3-451 establishes five exclusive circumstances that constitute good cause for not following placement preferences. The statute requires that one or more of these specific circumstances be present before a court may deviate from the statutory preferences. Here, the District Court made no finding under any of the five enumerated grounds, and none is supported by the record.

The first ground allows departure when a child's parent or legal guardian requests a placement outside the statutory preference order. Mont. Code Ann. § 41-3-451(1)(a). Nothing in the record indicates that MLO-L's Mother ever requested placement with anyone other than W.R., an option she consistently supported throughout the proceedings. The District Court did not identify any request falling within subsection (1)(a), and the record contains none.

The second ground applies when a child "of sufficient age and capacity to understand" requests a placement outside the statutory preference order. Mont. Code Ann. § 41-3-451(1)(b). Although MLO-L was approximately seven years old at the time of the permanency hearing, nothing in the record suggests she possessed the developmental maturity to comprehend, evaluate, or meaningfully request a placement contrary to the statutory kinship preference. To the contrary,

the District Court expressly declined to conduct an in-person consultation after receiving letters from her therapists warning that questioning her about placement could be harmful. The District Court later inferred her supposed wishes from her behavior, but subsection (1)(b) requires an express and informed request by a child who is developmentally capable of making one. The District Court made no finding that MLO-L had such capacity, nor did it find that she made any express request regarding her adoptive placement.

The third ground permits deviation if a sibling attachment may be maintained only through a particular placement. Mont. Code Ann. § 41-3-451(1)(c). This provision is inapplicable here. JO-L was removed from J.D.'s home and placed with W.R., not the foster caregiver. Any sibling attachment could have been maintained through placement with W.R. or through ongoing therapeutic contact. No witness testified that adoption by the foster caregiver was the only means of maintaining the sibling relationship. The District Court made no finding supporting this subsection.

The fourth ground involves extraordinary physical, mental, or emotional needs requiring specialized treatment services that are "unavailable in the community where families meeting the placement preferences live." Mont. Code Ann. § 41-3-451(1)(d). The District Court identified no treatment unavailable to W.R. Both prospective placements were near one another, where the same

therapists and services were equally accessible. Although the District Court heard testimony concerning the potential effects of a placement change, no witness testified that MLO-L required any service that W.R. could not access or provide. The District Court made no finding that extraordinary needs required deviation from the statutory preference.

The fifth ground applies when no suitable placement meeting the statutory preferences is available after a diligent search. Mont. Code Ann. § 41-3-451(1)(e). But here, a suitable preferred placement was not merely available, but willing and eager. W.R. actively intervened, was licensed as a therapeutic caregiver, had successfully parented the child's sibling, and consistently sought placement of MLO-L with her. The Department acknowledged W.R. as a viable kinship placement, and the District Court made no finding that she was unsuitable or that a diligent search revealed no appropriate family placement. Subsection (1)(e) therefore cannot justify departure.

Without a finding that any of the five exclusive statutory grounds applied, the District Court lacked authority to approve placement outside the statutory preferences. A generalized belief that adoption by the foster caregiver served MLO-L's best interests cannot substitute for the Legislature's explicit requirements. The Legislature has already determined that adoption by extended family best serves a child's interests unless one of the narrow exceptions in § 41-3-

451 applies. Because the District Court identified none, its failure to comply with the statute constitutes reversible error.

C. The District Court's Reliance on Therapist Testimony About Psychological Harm Does Not Constitute "Good Cause."

The testimony offered at the January 29 hearing formed the principal basis for the District Court's February placement order and its July permanency order. The therapists expressed concern that a move from the foster home could cause MLO-L emotional disruption or short-term regression. (*Order*, ¶ 8; 1/29/25 Tr. at 807-12, 839-57.) Even taken at face value, these opinions do not satisfy the statutory definition of good cause. The exclusive circumstances under which a District Court may depart from the mandated kinship preference are defined by § 41-3-451; the testimony here does not qualify.

Neither parent nor the child requested non-relative placement under § 451(1)(a) or (1)(b). The District Court made no finding that placement with the foster caregiver was necessary to preserve a sibling attachment under § 451(1)(c). The record contains no indication that MLO-L has extraordinary physical, mental, or emotional needs that render only the foster home capable of meeting them under § 451(1)(d). Nor did the court determine that no suitable kin placement was available after a diligent search under § 451(1)(e). The Department acknowledged that W.R. was a licensed therapeutic caregiver, that she had successfully parented

the child's sibling, and that she had consistently affirmed her willingness to be MLO-L's adoptive placement. (6/12/25 Tr. at 951–61; *Order*, ¶ 13.)

Despite this statutory framework, the District Court relied almost entirely on predictions that a transition could be stressful or destabilizing. Those concerns may be relevant to the child's broader therapeutic picture, but they do not justify abandoning the statutory requirements. The statute does not authorize departure from kinship placement based on the general emotional difficulty of a move. *See* Mont. Code Ann. § 41-3-451. Instead, it requires a finding that aligns with one of the defined grounds for good cause, and § 41-3-451(2) confirms that non-statutory considerations cannot substitute for the Legislature's chosen criteria. The Legislature could have permitted courts to override kin placement when a child has bonded with a foster parent or when the anticipated transition may require clinical support. It did not.

This point is reinforced when considering the statutory structure as a whole. For example, § 41-3-451(1)(d) recognizes that extraordinary therapeutic needs may justify non-kin placement, but only when those needs cannot be met by a fit and willing relative. The District Court made no finding that W.R. was incapable of meeting MLO-L's needs. To the contrary, she is a licensed therapeutic caregiver who has demonstrated her ability to manage JO-L's significant needs and who repeatedly expressed her desire and readiness to do the same for MLO-L.

The statutory scheme presumes kinship placement unless the District Court identifies one of the narrow statutory exceptions. By relying on clinical caution and general bonding considerations, the District Court inverted that hierarchy and relied on factors that the Legislature explicitly declined to adopt. District Courts must apply statutory criteria rigorously and may not bypass those requirements in favor of generalized concerns about transition or attachment, as § 41-3-451 itself makes clear.

The same reasoning applies to § 451(1)(e), which requires the District Court to base any finding of unavailability on a diligent search that conforms to the prevailing social and cultural standards of the community in which the child's family resides. The record reveals no such search and no engagement with community standards. Instead, the District Court accepted professional concerns about transition and stability without the statutory analysis the law requires.

Because the therapist testimony fits none of the statutory exceptions and because the District Court made no valid finding of good cause under § 41-3-451, its permanency determination should be reversed and remanded.

II. THE DISTRICT COURT'S FINDINGS ARE INADEQUATE AS A MATTER OF LAW.

Mont. Code Ann. § 41-3-445(6) governs permanency determinations and identifies the findings a District Court must make before approving a placement. Pursuant to the statute, the District Court "shall … make written findings on:"

> (a) whether the child has been asked about the desired permanency outcome;
> (b) whether the permanency plan is in the best interests of the child;
> (c) whether the department has made reasonable efforts to effectuate the permanency plan for the individual child;
> (d) whether the department has made reasonable efforts to finalize the plan;
> (e) whether there are compelling reasons why it is not in the best interest of the individual child to:
> (i) return to the child's home; or
> (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and
> (f) other necessary steps that the department is required to take to effectuate the terms of the plan.

Mont. Code Ann. § 41-3-445.

Unfortunately, the District Court's Order fails to address the required findings, instead relying on vague conclusions. The Order does not state whether MLO-L was asked about the desired permanency outcome under § 445(6)(a). It did not evaluate whether adoption by a relative was in her best interests or whether compelling reasons existed to forgo adoption with a fit and willing relative under § 445(6)(e)(ii). Instead, it simply approves the Department's proposed plan of adoption by the foster caregiver and concludes, in a single sentence, that the court "will not disturb its previous findings." That sentence does not satisfy § 445(6) which requires specific findings based on current circumstances.

The omission is especially significant with respect to § 445(6)(e)(ii), which requires the District Court to address whether compelling reasons exist to conclude

that adoption by a fit and willing relative is not in the child's best interests. W.R. was a licensed therapeutic caregiver, was successfully parenting MLO-L's sibling, and consistently stated her willingness to adopt this child. The July 16 order does not acknowledge any of those facts and does not even recognize that a relative affirmatively sought adoption. Without identifying the relative's availability, the court could not meaningfully evaluate whether compelling reasons existed to decline relative adoption, and its silence on that point leaves a statutory requirement unmet.

Even where the District Court purported to make findings, those findings are contradicted by the record. It found that the Department made reasonable efforts to effectuate and finalize the permanency plan, as required by § 445(6)(c) and 445(6)(d). Yet the witnesses testified to significant failures in those efforts. Ms. Callaghan, the Department's Recruitment, Retention, and Training Bureau Chief, acknowledged gaps in sibling therapy and contact, scheduling issues, and inconsistent Department follow-through. CPS Sorenson confirmed that sibling therapy stopped entirely from August to December 2024 and admitted that "everyone brought barriers" to contact. The District Court's findings approving reasonable efforts and documenting "extensive efforts" are directly contradicted by testimony from the Department's own witnesses about these substantial lapses.

The Order also heavily relies on the February 28 placement decision, incorporating it wholesale and concluding that no "changed circumstances" justify a different result. But § 41-3-445 does not authorize reliance on a changed-circumstances standard, nor does it permit a District Court to incorporate earlier findings in lieu of the findings required at permanency. In fact, the statute does not mention a standard that even resembles a change in circumstance. The July Order involved an independent proceeding with distinct obligations. The question is not whether circumstances changed since a prior placement order but whether the statutory findings governing permanency can be made. The July 16 order does not reflect that analysis.

Because the findings required by § 41-3-445(6) are absent, the permanency order does not satisfy the statute. A District Court's failure to make the statutorily required findings renders the order inadequate as a matter of law and requires reversal.

III. THE DISTRICT COURT APPLIED THE INCORRECT LEGAL FRAMEWORK BY CONDITIONING PERMANENCY ON "CHANGED CIRCUMSTANCES."

The District Court approached the permanency hearing as though it were a continuation of the earlier placement dispute rather than a new and independent statutory inquiry governed by § 41-3-445. Throughout its July 16 order, the court emphasized the absence of "changed circumstances," concluding that it would "not

disturb its previous findings" because no new facts had been presented. (*Order*, ¶ 10.) That standard appears nowhere in § 41-3-445 and is incompatible with the obligations the statute imposes at permanency.

Permanency proceedings serve a distinct statutory purpose from placement determinations. While placement decisions under § 41-3-440 address where a child resides during proceedings, permanency determinations under § 41-3-445 establish the child's permanent legal status and trigger specific federal and state requirements for achieving that permanency. The Montana Supreme Court has recognized that permanency hearings exist to prevent children from languishing in foster care and to ensure their permanent placement is resolved expeditiously. *In re J.W.*, 2013 MT 201, ¶ 34, 371 Mont. 98, 307 P.3d 274 (citing *In re A.R.*, 2004 MT 22, ¶ 21, 319 Mont. 340, 83 P.3d 1287). The statute's mandatory timelines, required findings, and specific permanency options all reflect the Legislature's intent that permanency be a decisive milestone, not merely a review of prior placement decisions.

Section 41-3-445 requires the District Court to conduct a fresh assessment of the child's situation at the time of permanency. At the permanency hearing, the court "shall approve a specific permanency plan" and "make written findings" on a series of required considerations. Mont. Code Ann. § 41-3-445(6). These findings are not optional or conditional. The statute's use of shall creates mandatory duties

that the District Court cannot avoid by reference to prior proceedings. The required findings include whether the permanency plan is in the child's best interests, whether the Department has made reasonable efforts to effectuate and finalize the plan, and whether compelling reasons exist why the child should not be placed for adoption with a fit and willing relative. Mont. Code Ann. § 41-3-445(6)(b)–(e)(ii).

Critically, nothing in § 41-3-445 suggests that permanency turns on whether circumstances have changed since a prior placement determination. The absence of any changed-circumstances language in the permanency statute stands in contrast to other provisions where the Legislature has expressly required such showings. For example, § 41-3-615(7)(e) requires "other material changes in circumstances" before parental rights may be reinstated, and the general modification statutes in Title 40 that condition amendments of parenting plans and support orders on proof of changed circumstances. *See* Mont. Code Ann. §§ 40-4-219(1), 40-4-208(2)(b)(i).

Importantly, § 41-3-335 does not authorize the District Court to collapse permanency into an earlier placement ruling, nor does it allow it to incorporate a prior order in lieu of making the requisite findings. Specifically, § 41-3-445(6)(c) requires findings about whether the Department "has made reasonable efforts to effectuate the permanency plan" which necessitates looking at efforts since the permanency plan was established, not whether circumstances changed since a

placement order. Similarly, § 41-3-445(6)(e) asks whether compelling reasons exist at the time of permanency to deviate from statutory preferences, not whether anything has changed since a prior ruling.

The June 12 transcript confirms that the District Court applied an incorrect legal standard. At one point, it stated it was "unclear how the history of the case impacts the decision about permanency moving forward," signaling a belief that the issue was whether its prior order should be disturbed rather than applying the statutory scheme anew.

This error was particularly prejudicial here. By treating permanency as a changed-circumstances review, the District Court never addressed whether compelling reasons existed under § 41-3-445(6)(e)(ii) to reject adoption by a fit and willing relative. W.R., the intervenor grandmother, a licensed therapeutic caregiver successfully parenting MLO-L's sibling, actively sought adoption throughout these proceedings. Yet, by applying the changed-circumstances framework, the District Court failed to conduct the statutorily mandated analysis when a relative seeks adoption.

This approach effectively grandfathered in its placement decision without applying the permanency statute's requirements or hierarchy. In circumstances like this, the District Court must make specific and written findings explaining why it is not in the child's best interest to be placed with a relative. Mont. Code. Ann. § 41-

3-445(6)(e)(ii). This statutory preference reflects the policy that family placements generally serve children's long-term interests by maintaining family connections and cultural identity. When the District instead asked whether circumstances had changed since its placement order, it inverted the statutory scheme.

Rather than requiring compelling reasons to deny familial adoption, the District Court effectively required W.R. to show changed circumstances to disturb the existing placement. This reversal of the statutory burden is not harmless procedural error. It fundamentally altered the permanency determination by eliminating the relative-placement preference that the Legislature embedded in the statute. The court never asked whether compelling reasons existed to deny W.R.'s adoption petition because its changed-circumstances framework assumed the placement question had already been resolved. But placement and permanency are distinct determinations, and the statutory preference for relatives applies with particular force at permanency when the child's legal status is being permanently established.

Because the District Court conditioned the permanency determination on the absence of changed circumstances, it did not undertake the analysis that § 41-3-445 requires. A permanency order issued under the wrong legal standard cannot stand. The matter must be remanded for the District Court to apply the correct statutory framework and make the findings § 41-3-445 requires based on the circumstances

at permanency, not on whether those circumstances differ from a prior placement determination.

IV. THE DISTRICT COURT'S FINDINGS THAT THE DEPARTMENT MADE "REASONABLE EFFORTS" ARE CLEARLY ERRONEOUS.

The District Court's conclusion that the Department made reasonable efforts cannot withstand scrutiny when the record is examined in light of the statutory framework and governing precedent. Whether the Department has met its obligation to make reasonable efforts is a fact-driven determination, and the Supreme Court has repeatedly emphasized that each case must be assessed on its own facts. *In re J.H.*, ¶ 17 (citing *In re K.L.,* 2014 MT 28, ¶ 41, 373 Mont. 421, 318 P.3d 691). While the Legislature has not defined the term, this Court has explained that the statute "clearly the statute does not require herculean efforts." *In re K.L.*, ¶ 41.

Instead, the inquiry centers on whether the Department acted in good faith, bearing in mind that the child's health and safety remain paramount. Mont. Code Ann. § 41-3-423(1)(c). "[T]he 'reasonable efforts' inquiry is relevant to abuse and neglect proceedings, in preventing the removal of a child or in working towards reunification of a family separated by the state." *In re D.B.*, ¶ 25. Reasonable efforts under § 41-3-423 require more than passive oversight; the Department must conduct a comprehensive assessment of the family's circumstances, identify appropriate services, actively assist in overcoming barriers, involve extended

family, take steps to maintain sibling ties, support regular contact, monitor progress, and consider alternative means to meet family needs when optimal services are unavailable.

Following a permanency hearing, a District Court must make written findings as to whether the Department made reasonable efforts to effectuate and finalize the permanency plan and "document the intensive, ongoing, and unsuccessful efforts made by the department to return the child to the child's home or to secure a permanent placement of the child with a relative, legal guardian, or adoptive parent." Mont. Code Ann. §§ 41-3-445(6)(c), (d), -445(10). These requirements reflect federal mandates under the Adoption and Safe Families Act and ensure that family connections are not severed without genuine attempts at preservation. In its July 16 Order, the District Court found that CFS had made reasonable efforts and that the permanency report and April 22 hearing documented "intensive, ongoing, and unsuccessful efforts" to return the child home or to secure a permanent placement with a relative or adoptive parent. (*Order*, ¶¶ 21–22.) However, those findings are contradicted by the Department's own witnesses and cannot withstand scrutiny.

The evidence concerning sibling contact and grandparent involvement shows systematic failures at precisely the time when permanency and adoptive placement were being determined. CPS worker Jessica Sorenson acknowledged

that there was a complete cessation of sibling therapy from August 2024 through December 2024, a five-month gap during the critical post-termination period. (6/12/25 Tr. at 904-09, 982-83.) When pressed about this lapse, Sorenson admitted that "everyone brought barriers" to contact, a remarkable concession that the Department itself contributed to the breakdown in sibling relationships. This gap occurred after parental rights had been terminated and while the question of permanency and adoptive placement was squarely before the District Court. The timing could not have been worse. At the very moment when the children's permanent legal status was being determined, when maintaining family bonds was most critical, the Department allowed those bonds to atrophy through inaction.

The Department's own witness exposed these failures. Courtney Callaghan, the Recruitment, Retention, and Training Bureau Chief, was brought in specifically to review the case after W.R. contacted the Governor's Office. Her testimony should have vindicated the Department's efforts. Instead, it revealed systemic problems. After reviewing the entire file, Callaghan identified multiple "gaps" in the Department's work, including missed holidays, persistent scheduling problems, and delays in implementing recommended contact. (6/12/25 Tr. at 913-23, 919-22.) She testified that sibling contact and grandparent contact needed to be prioritized, that a consistent schedule for sibling sessions should have been established, and that the Department should have explored neutral settings so

MLO-L and W.R. could interact without the child feeling caught between placements. These were not minor oversights but fundamental failures in basic case management.

Most tellingly, Callaghan described developing a plan for monitored Zoom or three-way phone calls between W.R. and the child to maintain the grandmother-grandchild relationship while respecting placement boundaries. This reasonable accommodation would have cost nothing and required minimal effort. Yet only one or two such calls occurred before they were discontinued without explanation. (6/12/25 Tr. at 9190-22.) The Department cannot claim intensive efforts when it abandons a simple phone call arrangement after one or two attempts.

W.R.'s testimony paints an even starker picture. She explained that, as of June 2025, MLO-L had participated in only a handful of sibling therapy sessions that entire year despite her repeated requests for more consistent therapeutic contact and family work. (6/12/25 Tr. at 955-61.) She described the heartbreak of waiting at scheduled times for phone calls that never came, of being told that contact would not occur absent further steps beyond her control, of watching the Department's promises evaporate into excuses. This is not the testimony of an uncooperative relative but of a grandmother fighting against bureaucratic indifference to maintain her family bonds.

The District Court attempted to salvage the reasonable efforts finding by citing Callaghan's statement that her review showed no violation of CFS policy and that the file reflected "extensive efforts" to contact up to fifteen kin or fictive kin early in the case. (*Order*, ¶ 17.) But this misses the point entirely. The reasonable efforts inquiry is not whether the Department violated its own internal policies or made phone calls two years ago. The question is whether the Department made intensive, ongoing efforts to secure permanent placement with a relative through the permanency stage. Checking boxes on a relative search form at case inception does not excuse the Department from its continuing obligation to support the relative who actually stepped forward, obtained licensing, and sought to adopt the child.

This Court has recognized that the Department's reasonable-efforts obligation is not limited to the beginning of a case. Section 41-3-423(1)(a), provides that "the department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state," and this Court has held that the statute "plainly contemplates that the department will make reasonable efforts to reunify families throughout the proceeding." *Matter of C.M.G.*, 2020 MT 15, ¶ 14, 398 Mont. 369, 456 P.3d 1017.

Although *C.M.G.* arose in the context of termination, its articulation of the reasonable-efforts obligation is grounded in the same statutory provision that informs §§ 41-3-445(6) and (10). The obligation is "ongoing," requiring sustained effort rather than sporadic attempts followed by long periods of inaction. Reasonable efforts must be particularly robust when, as here, a relative has demonstrated commitment by becoming licensed, successfully parenting a sibling, and consistently advocating for placement. The Department cannot claim it made intensive efforts to secure relative placement while simultaneously allowing months to pass without sibling contact, abandoning phone call arrangements after minimal attempts, and creating what its own witness characterized as "gaps" in basic services.

In *Matter of R.K.*, this Court again emphasized that the overarching structure of the dependency statutes places reunification and family preservation at the forefront. The Court noted that "the first goal of the Department, the court, CASAs, and guardian ad litems is to seek reunification before suggesting termination" and cautioned that early focus on adoption can "undermine[] the purpose of the dependency statutes." *Matter of R.K.*, 2023 MT 161, ¶ 31, 413 Mont. 184, 534 P.3d 659.

While reasonable efforts are "highly fact dependent" and the Department is not required to make "herculean efforts," the totality of circumstances here falls far

short of even ordinary good-faith efforts. *See C.M.G.*, ¶ 17. The District Court's finding that the Department made "intensive, ongoing, and unsuccessful efforts" to secure permanent placement with a relative is more than unsupported; it is contradicted by the Department's own evidence. When Department employees admit that "everyone brought barriers" to contact and identify "gaps" throughout the case, when months pass without sibling therapy during the permanency phase, and when simple phone call arrangements are abandoned after one or two attempts, no reasonable factfinder could conclude that intensive, ongoing efforts were made. These findings are clearly erroneous and provide an independent ground for reversing the permanency order.

CONCLUSION

For the foregoing reasons, Appellant W.R. respectfully requests that this Court reverse the District Court's *Order Approving Permanency Plan* and remand this matter with instructions to conduct a new permanency hearing that complies with Montana's statutory requirements. Specifically, by applying the placement preferences mandated in § 41-3-450, making the requisite finding of good cause under § 41-3-451, issuing the written findings required by § 41-3-445(6), and evaluating the Department's reasonable efforts based on the actual evidence presented rather than conclusory determinations. All of which should be done

based on the circumstances existing at the time of the permanency hearing without application of an uncodified changed circumstances standard.

DATED: November 17, 2025.

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CERTIFICATE OF COMPLIANCE

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

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