

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0526

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IN THE MATTER OF:

A.M. & A.M.

Youths in Need of Care.

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***ANDERS BRIEF***

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On Appeal from the Montana Second Judicial District Court, Silver Bow  
County, the Honorable Robert Whelan, 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**

J.M. (Father) appeals the Second Judicial District Court's (District Court) Order terminating his parental rights to his two sons A.M. and A.M. (D.C. Doc. 150.) (Attached as Appendices A & B.) The Department of Public Health and Human Services (Department) filed a Petition for Emergency Protective Services (EPS), Adjudication of Children as Youth's in Need of Care (YINC), and Temporary Legal Custody (TLC) on February 2, 2022. The Petition alleged physical neglect of the children by both parents. A.M. and A.M. were removed from the home on January 28, 2022. (D.C. Docs. 1 & 2.) The removal was based on a Confidential Intake (CI) Report received by the Department on December 29, 2021. The report included concerns that Father did not know how much to feed the children and had expressed he did not want to be on the birth certificate because of his mental health. (Id.)

The Department's Affidavit, written by Child Protection Specialist Supervisor (CPSS) Shaunda Hall, detailed the investigation into the CI report and the family's CFS history. The Petition cited several prior Department involvements with the family dating back to 2016. (Id.) Father's history included a 2016 report of a physical altercation with the mother of his other children, which was closed as unsubstantiated, and a 2018 report involving an altercation with other family members that was closed as substantiated against him. (Id.)

According to the Affidavit, hospital staff had significant concerns about the parents' ability to manage the needs of two premature infants. (Id.) It also alleged that Father did not answer messages from the hospital "because of his mental health," was "short tempered with the staff," and did not want to accept feedback. (Id.) During a phone call with CPSS Hall on January 31, 2022, Father stated he felt "discriminated against and that his disability (ADHD) is not being taken into consideration." (Id.) Father further explained that he "felt scared, anxious, and bullied at the hospital and that is why he communicated in that way." (Id.) Additionally, the Immediate Danger Assessment alleged that Father "did not go to the hospital to learn any of the special needs of the children" and "did not do any of the required training." (Id.)

On February 9, 2022, the EPS hearing took place. (D.C. Doc. 8.)  
Father's counsel stated that Father was not contesting the Department's need to assure the children's safety, but that the family's goal was to "fast-track" the case to establish visitation and a pre-adjudication treatment plan for the swift return of A.M. and A.M. (02/09/22 Hearing Tr. 7:15-19, 9:5-9, 10:3-6.)

Father testified to numerous proactive steps he had taken since the children's removal. These included enrolling in parenting classes, securing a pediatrician in Butte, obtaining Medicaid and Social Security cards for the children, and using a Section 8 housing voucher for stable housing. (02/09/22 Hearing Tr. 17:2-8, 19:16-24, 20:12-18, 21:2-8.) He also identified a potential placement for the children to facilitate more frequent contact. (02/09/22 Hearing Tr. 15:11-16.)

Father testified that he felt the Department was not providing resources, so he made "several phone calls, several meetings, [and] several times going over to the Office of Public Assistance" to activate SNAP benefits. (02/09/22 Hearing Tr. 21:18-23.) Father also testified that when CPSS Hall visited his home, she gave him no corrective tasks and allegedly stated that "in her opinion, I was a great father... and that everything seemed to be going in the right direction." (02/09/22 Hearing Tr. 22:24-23:2.)

The District Court praised Father's and Mother's initiative, stating they had done an "outstanding job" and that he was "very pleased with the fact that the parents have taken the initiative." (02/09/22 Hearing Tr. 57:12-14, 59:10-12.) The District Court ordered the Department to prepare a treatment plan on an expedited basis and to "work as diligently as possible to provide at least two visits a week." (02/09/22 Hearing Tr. 56:1-8, 63:24-25, 64:1.) The District Court concluded the hearing stating that it is "refreshing to find parents who are willing to work with the department." (02/09/22 Hearing Tr. 64:23-25).

At the Adjudication Hearing on February 23, 2022. (D.C. Doc. 9.) Counsel for Mother and Father informed the Court that the parents would not be stipulating to the Petition and requested a Contested Adjudication hearing. (02/23/22 Hearing Tr. 4:10-12, 6:11-12.) Counsel for the parents argued that the most appropriate remedy was Temporary Investigative Authority (TIA) rather than the Temporary Legal Custody (TLC) sought by the Department. (02/23/22 Hearing Tr. 4:23-24, 5:12-14.)

When the District Court inquired about the progress made since the EPS hearing, Father's counsel stated there had been only "one visitation in a month and a half." (02/23/22 Hearing Tr. 7:21.) This was contrary to the District Court's prior request that the Department work diligently to provide

at least two visits per week. (02/09/22 Hearing Tr. 63:24-25, 64:1.) The Court scheduled a status conference for the following week, ordering the Department to be prepared to provide an update on visitation and placement. (02/23/22 Hearing Tr. 8:7-13.)

The Status hearing was held on March 2, 2022. (D.C. Doc. 10.) The Department called CPSS Kara Richardson to testify. (03/02/22 Hearing Tr. 5:7-8.) CPSS Richardson stated that after the children were moved to a foster home in Butte the previous week, visitation had been initiated and was occurring three days a week. (03/02/22 Hearing Tr. 6:5-8, 7:1-5.) On cross-examination, Father's counsel questioned CPSS Richardson about the preliminary treatment plan that the Court had ordered the Department to prepare and disseminate at the EPS hearing three weeks prior.

CPSS Richardson admitted that, although she and the caseworker had developed a treatment plan, they did not provide it to the parents because, “typically... we don’t give them out or make the assumption that the Judge is going to grant adjudication.” (03/02/22 Hearing Tr. 8:21-25.) When Father’s counsel asked CPSS Richardson to share the plan, the State objected, stating, “Your Honor, I would prefer she didn’t answer that... I’ll make the decision whether or not we share the treatment plan at that time.” (03/02/22 Hearing Tr. 10:2-5.) The District Court overruled the State’s

objection and ordered the Department to distribute the treatment plan immediately. (03/02/22 Hearing Tr. 10:9-11.) A Contested Adjudication hearing was set for March 18, 2022. (03/02/22 Hearing Tr. 14:9-10.)

The Contested Adjudication Hearing was held on March 18, 2022. (D.C. Doc. 11.) The Department called CPSS Hall. (03/18/22 Hearing Tr. 5:21.) On cross-examination by Father's counsel, CPSS Hall testified that the basis for concern regarding Father's parenting stemmed from "one occasion specifically" where he reportedly failed to shake a formula bottle properly, resulting in one of the twins not getting fed properly. (03/18/22 Hearing Tr. 14:5-10.) She also testified that before the children's removal, she visited Father's home and found it "satisfactory," and that during their conversation, Father stated he was "open and would comply with an in-home safety plan." (03/18/22 Hearing Tr. 18:3-22.)

CPSS Hall testified that her investigation found no indication of physical abuse, no evidence of domestic violence, and no evidence of current drug use by either parent. (03/18/22 Hearing Tr. 19:1-12.) She further stated that the Department determined the parents could not provide 24-hour care based on a trial period at the hospital that involved only the mother. She stated Father was not present and that, because of restrictive

hospital policy, she was never able to assess the parents as a couple.

(03/18/22 Hearing Tr. 23:5-13, 24:5-9.)

The Department also called the on-going Child Protection Specialist (CPS), Joe Turner. (03/18/22 Hearing Tr. 28:17-18.) CPS Turner testified about concerns regarding Father's visitation, stating that he received reports that Father gets frustrated, is unwilling to accept recommendations, and shows "volatility with the service providers." (03/18/22 Hearing Tr. 32:1-2, 32:17.) He testified that according to a report he received, Father left one of the children unattended on a changing table and walked across the room. (03/18/22 Hearing Tr. 33:3-8.) CPS Turner also testified that Father had self-reported an ADHD diagnosis but was not taking his prescribed medication. (03/18/22 Hearing Tr. 33:16-17, 33:20-34:4.)

Following the testimony, the District Court met with counsel in chambers. (03/18/22 Hearing Tr. 45:10-12.) Afterward, Father's counsel stated that Father agreed to participate in a treatment team meeting to resolve issues with the Department and its service providers. (03/18/22 Hearing Tr. 46:1-5.) The District Court held the hearing in abeyance, ordering the parties to work toward a written stipulation on Adjudication to avoid further adversarial proceedings and to hold a meeting to create a "game plan" to move forward. (03/18/22 Hearing Tr. 47:18-22, 49:6-13.)

Following the March 18, 2022, hearing, the matter was held in abeyance, and no further court proceedings occurred for nearly six months. On September 7, 2022, the State filed a Motion to Set an Adjudication and TLC Hearing. (D.C. Doc. 13.) The District Court granted the State's Motion and scheduled a hearing for September 28, 2022. (D.C. Doc. 14.)

The Adjudication and TLC hearing was held on September 28, 2022. (D.C. Doc. 16.) Father's counsel began by providing the District Court with a detailed procedural history. (09/28/22 Hearing Tr. 5:15-18.) He outlined that at the March 2, 2022, hearing, the District Court had specifically ordered the Department to provide the parents with a proposed treatment plan, but stated that the plan had "never been forthcoming." (09/28/22 Hearing Tr. 6:17-22.) Counsel further recounted that the District Court had ordered the parties to submit proposed stipulations by March 25, and that Father complied by emailing a proposal to the Department on that deadline. (09/28/22 Hearing Tr. 7:2-5.) He then informed the Court that he received "no redline edit on mine or any proposal from the department," and that there was "no response for another three and a half months" until a signed stipulation was returned on August 18, 2022. (09/28/22 Hearing Tr. 7:11-16.) During this period, Father had completed multiple parenting courses, "re-

pped his treatment for ADHD and was back on medication," all of which he did voluntarily. (09/28/22 Hearing Tr. 7:18-24.)

Based on the Department's prolonged inaction, Father's counsel argued that the statutory timelines had been "egregiously overrun" and moved the District Court to reset them, stating, "because there is, apparently, no reasonable efforts truly being engaged in on a statutory basis by the department." (09/28/22 Hearing Tr. 8:15, 9:5-8.) The District Court found the Motion to be a "reasonable request" and granted it, ordering "that the statutory deadlines be reinstated to begin again in this matter" (09/28/22 Hearing Tr. 9:14-16.) The District Court expressed that it was "surprised" and "sorry" about the delay and ordered the Department to provide a treatment plan "immediately." (09/28/22 Hearing Tr. 9:22-24, 10:10-11).

A Status hearing was held on October 12, 2022, for the District Court to hear the parents' decision regarding the mother's Motion to Dismiss, made orally at the previous hearing. (D.C. Doc. 19.) Counsel for Mother stated, "We remain seeking dismissal." (10/12/22 Hearing Tr. 4:19.) Father's counsel informed the District Court that "At this juncture, Your Honor, my client wishes to support mother's position and not undermine them. So, father supports the Motion." (10/12/22 Hearing Tr. 4:22-25, 5:1.) In response

to the parents' unified position, the District Court took the matter under advisement. (10/12/22 Hearing Tr. 5:2-3).

The District Court did not issue a written order on the Motion, and no further proceedings appeared on the record for six months. On April 13, 2023, the Department filed a new Petition for Emergency Protective Services, Adjudication, and TLC. (D.C. Doc. 18.)

The Petition was supported by an Affidavit from the new CPS, Jason Kinsey, which detailed events that occurred while the matter was under advisement. (D.C. Doc. 19.) The Affidavit outlined the accommodations made by the Department for Father, stating the caseworker "would type notes during the meeting and review the notes with Mother and Father before departing their residence as an accommodation to Father." (Id.) The Affidavit stated Father consistently attended his scheduled visitations. (Id.) However, it alleged he was often more focused on "complaining about the Department, numerous employees of the Department, the Butte 4c's, accommodations, violations of his rights, and his PTSD and triggers." (Id.) It also alleged Father was "verbally aggressive" and had "ceased his mental health services." (Id.)

The Affidavit documented a significant conflict between Father and the visitation agency, 4-Cs. It noted that Father's individual parenting time was moved to the Department after he "stated he was afraid of the 4C's visitation person, Sarah Rowe, and that she was abusive towards him." (Id.) Father was ultimately discharged from 4-Cs on February 27, 2023, for being "unwilling to sign the yearly required paperwork." (Id.) The Affidavit also stated that although Father had been in therapy with Janet Turner for his self-reported ADHD, Ms. Turner informed the Department that she was "not qualified to work therapy for adults with ADHD." (D.C. Doc. 40, pg. 14). According to Father's counsel, as a proactive step, Father had completed a Mental Health Evaluation. However, as of March 2, 2023, the Department stated it had not yet received a copy. (Id.)

Finally, the Affidavit raised new safety concerns, alleging that a 4-Cs worker found a "Dab Pen" within reach of the children, which Father referred to as a "medical tool," and that during another visit, the children "got into a pop bottle full of cigarette butts." (Id.)

The Show Cause hearing was held on May 10, 2023. (D.C. Doc. 28.) The Court began by noting that, because the mother was not represented, it would not proceed with Adjudication but instead hear a status report.

(05/10/23 Hearing Tr. 4:15-17, 5:6-9.)

The Department called the new caseworker, Mikala Schumacher, who testified she had taken over the case in March. (05/10/23 Hearing Tr. 7:17.) CPS Schumacher reported that Father was having visits twice a week and that “Both parents seem to be doing well. They’re engaged with their children.” (05/10/23 Hearing Tr. 7:24-25, 8:6-7.) She also stated the Department was referring both parents to Parent-Child Interaction Therapy and would be starting visit coaching with Father. (05/10/23 Hearing Tr. 8:1-4.)

Father’s counsel then stated, “...as the Court knows, this case has languished over procedure.” (05/10/23 Hearing Tr. 9:17-18.) The District Court responded, “And I would agree with that.” (05/10/23 Hearing Tr. 9:19.) The District Court continued, stating, “Obviously, I am very happy to hear that the parents are working well with the department. Obviously, you’re making strides, hopefully, towards that reunification. It sounds like things are going very well at this point.” (05/10/23 Hearing Tr. 9:20-23.) The District Court then stated it would issue an Order for the Office of the Public Defender to immediately appoint new counsel for the mother to resolve the procedural delay. (05/10/23 Hearing Tr. 10:1-3.)

A Status Hearing was held on July 12, 2023. (D.C. Doc. 34.) The Department called CPS Schumacher, who testified that while the parents

attended visitations, the Department had concerns about Father's behavior (07/12/23 Hearing Tr. 7:1-3.) She stated Father becomes "angered and explosive in his emails" after visits, talks down to Mother, and has sent messages stating he is suicidal. (07/12/23 Hearing Tr. 7:5-11.) She testified that due to Father's "erratic and unpredictable behavior," the family home was not calm enough for service providers to enter. (07/12/23 Hearing Tr. 7:18-21.) CPS Schumacher also testified that during a home visit the previous day, a service provider observed a "strong marijuana smell" and found a bag of marijuana in the couch. (07/12/23 Hearing Tr. 8:1-6.) She confirmed that all the parents' cooperation with the Department up to that point had been voluntary, as an Adjudication had never occurred. (07/12/23 Hearing Tr. 10:5-11.)

On cross-examination, CPS Schumacher testified that she had personally observed a visit two weeks prior and that "those visits did seem to go really well. [Father] handled the boys well when they were having fits or when they were fighting with each other." (07/12/23 Hearing Tr. 13:18-21.)

CPS Schumacher testified that the Department had offered Father visit coaching, but he had not yet met with the specialist to begin that service. (07/12/23 Hearing Tr. 7:22-25.) However, she confirmed that Father was

actively engaged in Parent-Child Interaction Therapy with one of the children. (07/12/23 Hearing Tr. 14:15-18, 16:5-7.)

At the conclusion of the testimony, Father's counsel requested a contested hearing, stating, "My client is identified as the quote/unquote problem in this equation. I think this Court needs to hear in an evidentiary hearing a full description of what this quote/unquote problem is that is sufficient to be a safety problem for his children." (07/12/23 Hearing Tr. 22:11-15.)

Another hearing was held on August 28, 2023, where the Court and parties initially debated whether it was a status hearing or a contested adjudication (D.C. Doc. 38.) The District Court noted its understanding that the Department's prior TLC had "lapsed... Probably due to failure to have a hearing in time," and that the Department had re-filed its Petition. (08/28/23 Hearing Tr. 4:21-24.)

Father's counsel corrected the record, stating, "I know of no document in this court file" and "no order from the bench" showing that the Department had ever been awarded TLC in a prior Adjudication. (08/28/23 Hearing Tr. 5:16-19.) He stated that the family had been under EPS "for the better part of two years." (08/28/23 Hearing Tr. 5:19-20.)

Father's counsel then stated his client's position on the re-filed Petition. He explained that while the mother was inclined to stipulate, Father "wishes to contest the adjudication, and if the adjudication is granted, he also joins in a Petition or a Motion for immediate placement of the children back in the home." (08/28/23 Hearing Tr. 6:9-12.) Citing judicial economy, Father's counsel requested that the District Court set a full-day hearing to address both the contested Adjudication and the parents' request for immediate placement, as the evidence for both would largely overlap. (08/28/23 Hearing Tr. 7:6-9, 7:16-21.) The District Court agreed to the request and scheduled a full-day contested hearing for September 25, 2023. (08/28/23 Hearing Tr. 9:22-23, 10:7-9, 10:19-22.)

On September 22, 2023, the District Court issued an Order vacating the September 25 hearing and setting a telephonic scheduling conference in its place. (D.C. Doc. 41.) After several continuances of the scheduling conference, the District Court issued an Order on October 23, 2023, setting the Contested Adjudication hearing for November 13, 2023. (D.C. Doc. 49.)

On November 2, 2023, the State filed a Motion to Continue the November 13 hearing. (D.C. Doc. 51.) The Motion noted that Father objected to any Continuation. (Id.) Over Father's objection, the District Court granted the State's Motion and issued an Order Continuing

Adjudication Hearing, resetting the matter for December 18, 2023. (D.C. Doc. 52.)

The Contested Adjudication hearing finally commenced on December 18, 2023. (D.C. Doc. 59.) The Department called its first witness, CPSS Hall, who had conducted the initial investigation from December 2021 to February 2022. (12/18/23 Hearing Tr. 6:9-14.) CPSS Hall testified that the initial report included concerns about the parents' mental health and their ability to care for premature twins. (12/18/23 Hearing Tr. 7:1-11.) She stated that during the pre-removal investigation, Father was, at times, "very verbally aggressive" and would "yell" at hospital staff when they tried to redirect him. (12/18/23 Hearing Tr. 8:2-3.) CPSS Hall testified that Father was unwilling to sign releases of information for his mental health providers during the time she worked with him. (12/18/23 Hearing Tr. 10:1-6.)

On cross-examination by Father's counsel, CPSS Hall agreed that the essential reason for removal was concern about a "possible failure of these infant children to thrive in their parents' care" and their safety. (12/18/23 Hearing Tr. 35:4-9.) When questioned about the parents' cooperation, CPSS Hall could not recall if the parents had offered to sign releases of information at the February 9, 2022 EPS hearing, but confirmed that at that time, they had already signed up for a 4-Cs program, applied for WIC and

SNAP, and were in the process of securing a Section 8 housing voucher. (12/18/23 Hearing Tr. 36:7-10, 36:15-18, 36:19-25, 37:5-7.) CPSS Hall agreed that these actions were “very affirmative efforts of the parents to cooperate and address the problems... from, essentially, the get-go.” (12/18/23 Hearing Tr. 39:10-13.)

CPSS Hall testified that her opinion on the parents’ inability to apply parenting skills was not based on her own observations. She stated, “I did not observe. I got the reports from the Missoula visitation workers.” (12/18/23 Hearing Tr. 39:24-25.) CPSS Hall also confirmed that her last contact with the case was in February 2022. (12/18/23 Hearing Tr. 41:16-17.)

As the State called its second witness, Father’s counsel interrupted the proceedings on a procedural point of order, noting that despite a Court Order from December 7, 2023, no attorney had appeared for the children. (12/18/23 Hearing Tr. 57:8-9, 57:15-18.) The District Court confirmed this was a statutory requirement, took a short recess, and returned with newly appointed counsel for the children. (12/18/23 Hearing Tr. 58:18, 59:7-9.) Father’s counsel then objected to the hearing continuing. (12/18/23 Hearing Tr. 61:3-4.)

The basis for the objection was that the children’s new attorney could not provide meaningful representation in a hearing that concerned not only Adjudication but also placement. (12/18/23 Hearing Tr. 60:14-15.) Father’s counsel stated that because the case was already “so procedurally fraught,” he could not “acquiesce to any further departures.” (12/18/23 Hearing Tr. 62:6-7.)

The District Court agreed with Father’s Objection. (12/18/23 Hearing Tr. 61:1-11.) The District Court continued the hearing to January 16, 2024. (12/18/23 Hearing Tr. 62:3-4.) On December 27, 2023, new counsel filed a Notice of Assignment for the children, along with a Request for Discovery. (D.C. Doc. 64.) On January 17, 2024, the District Court issued another Order, continuing the hearing again to February 8, 2024. (D.C. Doc. 65.)

On the day of the scheduled contested hearing the parties advised the District Court that they had stipulated to Adjudication. (D.C. Doc. 68.) Based on the parties’ stipulation, the District Court adjudicated the children as Youths in Need of Care and granted TLC to the Department until August 8, 2024. The District Court set a status hearing for March 20, 2024. (Id.)

The Stipulation was filed on February 12, 2024 and included four handwritten addenda negotiated by the parties. These addendums required

that: 1) the parties would stipulate to a "phase 1 treatment plan" lasting three months; 2) the treatment plan would be "negotiated with all parties and align to the conditions of return"; 3) all parties agreed to have a "Status hearing 1x a month"; and 4) the parties would agree "in good faith to treat family as a unit." (Id.)

Following the Stipulation, the Department filed Father's Phase One Treatment Plan on March 21, 2024. (D.C. Doc 73.) The conditions for return of the children required that the home be "calm enough to allow safety service providers in the home" and that at least one parent be willing to cooperate with an in-home safety plan. The Treatment Plan identified two areas of concern: Father's parenting skills and his mental health. (Id.)

The parenting tasks on Father's treatment plan required him to attend visits and follow all recommendations from professionals. The mental health tasks required Father to participate in a psychological evaluation and to enroll in, attend, and successfully participate in individual therapy. The Treatment Plan also included a housing task, requiring Father to "maintain a home... that is sanitary and safe" and "not allow any individual in his home... who uses or possesses drugs." Father and Father's counsel signed the Treatment Plan on March 20, 2024. (Id.)

On May 14, 2024, the Department filed a Motion for Permanency Hearing. The caseworker's supporting Affidavit stated that the proposed permanency plan was reunification. However, the Affidavit alleged that, although Father had attended visits, "no progress has been made," and that he had not met with the visit coach. (D.C. Doc. 78.) It also alleged that although Father had completed a mental health assessment with his therapist, he had not completed the recommended psychological evaluation. The Affidavit further alleged that the home was "not calm enough to allow safety service providers into the home" due to Father's "unpredictable mood and how verbally aggressive he can be." (Id.)

A Status Hearing was held on May 29, 2024 (D.C. Doc. 82.) The Department called CPS Schumacher. (05/29/24 Hearing Tr. 6:23-25.) CPS Schumacher testified that while the parents had been enrolled in Parent-Child Interaction Therapy since June 2023, as of April 29, 2024, a letter from the provider stated that they were still in Phase 1 and had not yet mastered the skills to advance. (05/29/24 Hearing Tr. 7:6-14.) Regarding visit coaching, she testified that the service began with Father on February 5, 2024, but after about three sessions in which he did not use the provided feedback, he sent an email on March 29 stating that visit coaching was "on hold." (05/29/24 Hearing Tr. 7:17-21, 8:13-15.) As a result, she testified, "we

have stopped visit coaching until birth father can learn to communicate and accept feedback." (05/29/24 Hearing Tr. 8:25, 9:1.) She also stated that Father had informed her he would no longer communicate with her outside of their biweekly meetings. (05/29/24 Hearing Tr. 9:10-12.)

On cross-examination, CPS Schumacher confirmed that Father had attended all but one of the scheduled biweekly meetings. (05/29/24 Hearing Tr. 11:12-15.) She clarified that while he was engaged in the biweekly meetings, she would like to have "at least biweekly phone or in person in the office communication with just [Father], as I have that with [Mother]," but that Father allegedly had declined. (05/29/24 Hearing Tr. 12:20-24.)

Father's counsel then asked the caseworker to define what "accepting feedback" would look like so Father could meet the standard (05/29/24 Hearing Tr. 14:1-3). The caseworker testified, "He's never accepted feedback, so I would not be able to tell when he is accepting feedback." (05/29/24 Hearing Tr. 13:22-23.)

At the conclusion of the testimony, Father's counsel requested a hearing to discuss "roadblocks that that is creating for reunification of this family," specifically the children's behavioral changes after extended time in foster care. (05/29/24 Hearing Tr. 18:2-7.) The District Court agreed to

continue the upcoming Permanency hearing to allow these issues to be addressed. (05/29/24 Hearing Tr. 19:8-10, 20:15-18.)

At the June 19, 2024, Permanency Plan hearing, the Department called CPSS Veronica Anderson to testify (06/19/24 Hearing Tr. 5:24.) CPSS Anderson reported that in the “last two weeks, we have made some baby steps towards progress with parents.” (06/19/24 Hearing Tr. 6:16-18.) She also confirmed that the Department’s proposed permanency plan was reunification. (06/19/24 Hearing Tr. 7:19-23.)

The District Court approved the permanency plan of reunification. (06/19/24 Hearing Tr. 12:17-19.) Regarding parents' progress, the Court stated, "Well, it sounds like we're starting to turn a corner. It sounds like things are getting better, as far as the District Court is concerned. And I'm glad to hear that." (06/19/24 Hearing Tr. 12:12-15.) Father's counsel requested the District Court set a treatment plan review hearing to "stay on top of this good progress." (06/19/24 Hearing Tr. 13:5-8.) The District Court granted the request and set a hearing for August 14, 2024. (06/19/24 Hearing Tr. 13:18-19.)

On July 2, 2024, the Department filed a Petition to Extend TLC. (D.C. Doc. 90.) The Department's supporting Affidavit alleged that the extension

was necessary because "Both parents are in partial compliance with the first phase of their treatment plans." The Affidavit alleged Father was not in compliance with all recommendations of service providers, and while he had completed a mental health assessment and was participating in therapy, he had not yet completed a separate psychological evaluation. It also alleged he was "not demonstrating the skills he is learning in therapy." (Id.)

The Affidavit further alleged that while Father had housing, there were "concerns of paraphernalia being found during the last home visit that was accessible to the children" and was in "partial compliance" with maintaining consistent contact with his caseworker. The Affidavit noted it was "explained to him that he needed to be meeting with CPS Schumacher outside of the treatment team meetings," but that communication was not taking place. (Id.)

The hearing on the Department's Petition to Extend TLC was held on July 17, 2024. (D.C. Doc. 93.) Father was present in the courtroom but was not represented by counsel (Id.) The Department called CPSS Veronica Anderson to testify (07/17/24 Hearing Tr. 7:17). She stated that after a "solid two-week period where birth father was less combative," the Department had "started backsliding again," receiving dozens of emails from Father about policy and procedure. (07/17/24 Hearing Tr. 8:14-19.) CPSS Anderson

testified that the Department had stopped joint family visits “due to the parents’ fighting in front of the children to the point that the boys were trying to escape the visitation room.” (07/17/24 Hearing Tr. 8:21-24.) She stated that family visits would not resume until the parents engaged in couples counseling and Father applied for Medicaid to cover the service. (07/17/24 Hearing Tr. 8:25-9:7.) CPSS Anderson also testified that Father made no progress because every time a specialist tried to implement something, “he has an argument of why it’s unnecessary or why he should not be participating in that.” (07/17/24 Hearing Tr. 9:20-24.)

At the conclusion of the testimony, the District Court took the matter under advisement. (07/17/24 Hearing Tr. 11:14.) The District Court asked CPS Turner to reach out to Father's Attorney to give him a status update as to where everything is and ask if he has any objection to the extension of TLC. (07/17/24 Hearing Tr. 11:16-20.) The District Court then ruled, "If I do not have any objection to the extension of TLC by [Father’ Counsel] within the next seven days...I'm going to assume that birth father has...stipulated to the extension.” (07/17/24 Hearing Tr. 11:20-24.)

Following the July 17, 2024, hearing, Father's counsel filed a Motion to Re-Set Father's Hearing. (D.C. Doc. 94.) The basis for the Motion was that counsel "was not issued notice of the proceeding by the Silver Bow

Clerk of District Court as required by state law," which resulted in Father not having the opportunity to cross-examine the Department's witness. The Motion characterized this as a "due process violation" (D.C. Doc. 94.) In the alternative, the Motion requested a contested hearing on the Department's Petition to Extend Temporary Legal Custody. (D.C. Doc. 94.)

At the August 14, 2024, hearing, the District Court first addressed the Motion to Re-Set filed by Father's counsel. (08/14/24 Hearing Tr. 4:1-4.) Father's counsel informed the Court that Father no longer contested the extension of TLC and wished to "remain in lock step with mother in her positions moving forward." (08/14/24 Hearing Tr. 5:5-8.) Based on the stipulations of both parents, the District Court granted the Department's Petition for an extension of Temporary Legal Custody for an additional six months. (08/14/24 Hearing Tr. 5:21-25.) The District Court also ordered the Department to email Phase 2 treatment plans to counsel for both parents that day. (08/14/24 Hearing Tr. 6:18-20.)

On September 3, 2024, a Notice of Reassignment was filed, formally appointing Joy Barber as new counsel for Father. (D.C. Doc. 102.) Shortly thereafter, on September 9, 2024, the Department filed a Petition for Termination of Parental Rights and Permanent Legal Custody. (D.C. Doc. 106.) The Petition sought Termination pursuant to Mont. Code Ann. § 41-3-

609(1)(f), alleging that Father had failed to complete his court-ordered Treatment Plan. (Id.)

The supporting Affidavit by CPS Turner alleged that Father had not demonstrated skills from parenting classes during visits; refused to participate in visit coaching due to his "abusive behavior, language, and refusal to abide by their rules,"; failed to master the first phase of PCIT after 26 sessions; and continued to use marijuana against medical advice, including smoking it during a supervised visit. (D.C.Doc. 108.) The Affidavit also alleged that outside service providers did not feel safe entering Father's home due to his "aggressive behavior, abusive language, and unwillingness to cooperate." It also alleged that drug paraphernalia had been found in the home in a place accessible to the children. (Id.) A hearing on the Petition was set for October 10, 2024. (D.C. Doc. 109.)

On September 10, 2024, Father's new counsel filed a Motion to Vacate the Termination Hearing and Set a Scheduling Conference. (D.C. Doc. 111.) The Court granted the Motion, vacating the October 10, 2024, hearing. Following a Status Hearing on September 25, 2024, the Court set the contested Termination hearing for December 23, 2024. (D.C. Docs. 117 & 118.) On December 13, 2024, Father filed a Motion to Reset the Termination

hearing, the District Court subsequently reset the Termination hearing for January 13, 2025. (D.C. Docs. 120 & 121.)

Day one of the Termination hearing commenced January 13, 2025. (D.C. Doc. 132.) At the outset of the hearing, Father's counsel argued that the Department would not meet its burden of proof due to "unconscionable procedural delays," which included no Adjudication for 25 months and no court-ordered treatment plan until ten months prior to the hearing. (01/13/25 Hearing Tr. 9:20-25.) She also argued that the Department failed to follow the reasonable efforts statute, failed to tailor the treatment plan to Father's disabilities and accommodation needs, and impeded the parents' progress through a lack of consistent communication. (01/13/25 Hearing Tr. 10:1-20.)

The Department's first witness was CPS Turner, who testified that he was the assigned caseworker from August 2023 to the spring of 2024. (01/13/25 Hearing Tr. 12:8, 78:20-22.) He described early treatment team meetings with Father as "a disaster, completely unproductive," "volatile," and "unintelligible." (01/13/25 Hearing Tr. 13:10-16.) He stated that, because of this, he stopped trying to meet with Father. (01/13/25 Hearing Tr. 14:18-22.) CPS Turner testified that Father would not sign releases of information for his mental health providers, and therefore, the Department was unable to verify his alleged disabilities. (01/13/25 Hearing Tr. 16:1-13.)

He also testified that Father was noncompliant with visit coaching, completed some parenting classes but not others, smoked marijuana during a visit, and was "unwilling to follow instructions" from service providers. (01/13/25 Hearing Tr. 69:14-17, 73:21-23.) He testified that Father's conduct was a "huge impediment" to reunification. (01/13/25 Hearing Tr. 26:10.)

On cross-examination, Father's counsel provided evidence of an email chain from November 2024. (01/13/25 Hearing Tr. 81:15-21.) CPS Turner acknowledged his email stated that treatment team meetings had been canceled due to Father's "inability to discuss safety concerns and control his anger." (01/13/25 Hearing Tr. 81:21-23.) CPS Turner also acknowledged that Father's counsel had responded by asking to "reestablish a regular day and time" for meetings with counsel present, but he admitted that the proposed regular meetings were never established. (01/13/25 Hearing Tr. 84:1-2, 84:19-21.) He also admitted it had been roughly four and a half months since the last family engagement meeting. (01/13/25 Hearing Tr. 85:1-4.)

CPS Turner further testified that the Department's visitation policy stated that the "visitation goal should always be to either increase visitation or move to unsupervised visitation when safe to do so" and that CPS "will not reduce or deny visitation based on the parent's noncompliance of their treatment plan." (01/13/25 Hearing Tr. 92:1-11). He testified that Father was

receiving approximately three to four hours of visitation per week. (01/13/25 Hearing Tr. 92:20-22.)

Regarding parenting skill improvement, CPS Turner acknowledged that he did not know whether the PCIT therapist and the visitation supervisor ever consulted with each other to ensure they were on the same page regarding the skills Father was supposed to improve. (01/13/25 Hearing Tr. 99:24-25, 100:1-3.) He had also not made a home visit since taking over the case because Father stated he did not feel safe alone with him. (01/13/25 Hearing Tr. 100:14-23.) CPS Turner acknowledged that Father had completed at least four separate parenting classes. (01/13/25 Hearing Tr. 85:8-11.)

Father's counsel then entered a letter dated August 20, 2024, from the Department's Civil Rights Compliance Officer into the record. (01/13/25 Hearing Tr. 108:12-19.) CPS Turner acknowledged the letter, which memorialized an agreement that Father's accommodations included being able to "take notes or record conversations during visits, meetings, home visits, phone calls, etc." and that Department staff would promptly answer his emails. (Id.) Despite the Department's formal agreement to these specific accommodations, CPS Turner testified that he had not shared them with the service providers. (01/13/25 Hearing Tr. 113:20-22.)

The next witness was Dr. Atarah Sidey, Father's primary care physician. (01/13/25 Hearing Tr. 28:16.) Dr. Sidey testified she wrote a letter that explained that Father "requires increased time and explanations to understand medical decisions or when he is in the midst of conflict," and that he "flusters easily when rushed or pushed." (01/13/25 Hearing Tr. 35:9-24) She testified that providing these accommodations helped her maintain a positive working relationship with Father, even during disagreements. (01/13/25 Hearing Tr. 36:10-21.) On cross-examination, Dr. Sidey stated that she did not send the letter to the Department directly but instead gave it to Father so he could advocate for himself. (01/13/25 Hearing Tr. 40:10-17.)

Melissa Woofter testified as to couples counseling she provided to Father and Mother. (01/13/25 Hearing Tr. 118:20-21.) She stated the parents attended weekly and had made "remarkable progress." (01/13/25 Hearing Tr. 142:12). Ms. Woofter further said, "across the board I have noticed real improvement in just communication with each other..." (01/13/25 Hearing Tr. 140:1-2.) She testified she had not observed any anger issues that would necessitate anger management and that, in her professional opinion, Father's behavior was not aggressive but rather that of a parent advocating for himself and his family. (01/13/25 Hearing Tr. 124:9-11, 142:14-25, 143:1-2.) On cross-examination, she acknowledged that her therapy focused on the

couple's relationship and not specifically on their relationship with the children or the reasons for removal. (01/13/25 Hearing Tr. 127:5-13.)

The Department called Sarah Rowe, who provided visitation services to Father. (01/13/25 Hearing Tr. 146:6-10.) On cross-examination, she confirmed that 4-Cs policy prohibited parents from using cell phones for recording or note-taking during visits. (01/13/25 Hearing Tr. 150:15-25.) She further testified that while 4-Cs would accommodate a documented disability, she was following the State's directive regarding Father, which was "[the State] did not believe that anything needed to be done." (01/13/25 Hearing Tr. 151:17-25.)

The Department then called Ashley Cardin, a Social Service Technician who supervised Father's visits starting in November 2022 after he began having "conflicts at 4-Cs" (01/13/25 Hearing Tr. 177:21-25.) She testified that while Father was "very consistent with attending visits," he struggled to accept feedback and would become "infuriated" when she relayed suggestions from other providers. (01/13/25 Hearing Tr. 178:7-17.) She stated that after Father identified her as a "trigger," she stopped intervening during visits unless there was a safety concern. (01/13/25 Hearing Tr. 179:25, 180:1-4.) She testified that recent visits had become difficult, with the children exhibiting negative behaviors and an

unwillingness to see Father, and that the children would seek comfort from her instead of from Father. (01/13/25 Hearing Tr. 182:1-10, 183:10-16.)

On cross-examination by Father's counsel, Ms. Cardin gave conflicting testimony regarding Father's level of intervention with the children. In one instance, she testified that Father failed to intervene quickly enough to stop one child from hitting the other. (01/13/25 Hearing Tr. 183:1-6.) However, later she acknowledged that in a visit note, she stated her concern was that Father “does hover and it would be good for him to take a step back.” (01/13/25 Hearing Tr. 219:25, 220:1-3.)

The Department's primary witness, CPS Turner, had become ill during the lunch break and was unavailable. (01/13/25 Hearing Tr. 143:10-13.) As other parties still needed to cross-examine Mr. Turner, the District Court continued the remainder of the Termination hearing to February 4, 2025. (01/13/25 Hearing Tr. 244:11.) When the contested termination hearing reconvened, CPS Turner was recalled to the stand to continue his testimony. (02/4/25 Hearing Tr. 244:13, 245:9-10.)

On continued cross-examination by Father’s counsel, CPS Turner revisited the procedural timeline of the case, acknowledging that the initial

removal occurred on January 28, 2022, and Adjudication did not occur until February 8, 2024. (02/4/25 Hearing Tr. 246:24-25, 247:1-25.)

Regarding the court-ordered Treatment Plan, CPS Turner testified that although it was a phased plan, Phase 2 was never offered. He stated the reason was that Father "...did not successfully complete Phase 1 of his treatment plan." (02/4/25 Hearing Tr. 256:15-22.) Counsel then questioned CPS Turner about the plan's failure to incorporate Father's known disabilities. Mr. Turner admitted that Father's Treatment Plan was written before the Department's civil rights coordinator had determined his accommodations, and that he "did not rewrite a treatment plan" to include those accommodations after they were established. (02/4/25 Hearing Tr. 257:5-8.) CPS Turner did, however, state they took Father's accommodations "...into consideration and that's part of the treatment plan." (02/4/25 Hearing Tr. 257:13-18.)

CPS Turner also testified that parenting coaching for Father was discontinued "based on his unwillingness to work with the provider." (02/4/25 Hearing Tr. 251:4-7.) He confirmed that regular meetings between the Department and Father had also been discontinued, due to Father's "uncooperative" behavior during meetings." (02/4/25 Hearing Tr. 252:9-24.)

CPS Turner testified that one of the issues preventing reunification was

Father's "volatile behavior and unwillingness to work with service providers." (02/4/25 Hearing Tr. 255:10-25.)

On redirect examination, CPS Turner testified that Father "gets along with the kids" and there is "no question that he loves his children." (02/4/25 Hearing Tr. 279:16-18). However, he stated his primary concern was Father's "ability to keep them safe." (02/4/25 Hearing Tr. 279:18-19.) When asked if he had seen any improvement in Father's interaction with the kids over the more than three years the case had been ongoing, CPS Turner testified, "I have not." (02/4/25 Hearing Tr. 279:22-25, 280:1-2.)

The Department next called Kim Polich, the assistant director at Butte 4-Cs, who had been involved with the case since February 2022. (02/4/25 Hearing Tr. 284:20-22.) She testified that family visits with Father and Mother stopped after the parents argued in front of the children, which made the children "very upset." (02/4/25 Hearing Tr. 287:7-9.) She stated during subsequent joint visits for holidays, she observed Father's negative behavior toward Mother, which caused the children to seek her out for comfort. (02/4/25 Hearing Tr. 285:16-17, 290:10-12.) Ms. Polich testified that Father's individual visits were moved from 4-Cs to the CPS office in February 2023 after Father became upset about renewing annual paperwork and requested the move. (02/4/25 Hearing Tr. 288:5-17.)

On cross-examination by Father's counsel, Ms. Polich confirmed that her agency had facilitated family visits in the community for special occasions like Halloween and Christmas. (02/4/25 Hearing Tr. 294:18-21.) Regarding Father's requests for accommodations, she testified he had asked to record his visits, which she denied based on agency policy. (02/4/25 Hearing Tr. 295:23-24.) She stated she and another staff member "offered to write down things for him to remember throughout visitation" as an alternative. (02/4/25 Hearing Tr. 295:25, 296:1-2.) Ms. Polich also testified about a meeting regarding drug paraphernalia found in the home, which ended abruptly when Father "became very upset and was in the worker's face... yelling, was talking over everybody, and was unwilling to listen to some of those suggestions." (02/4/25 Hearing Tr. 298:13-23.) This was the event that caused 4-Cs to discontinue home visitation with Father. (Id.)

Father's counsel called Ciana Dale, the Child Welfare Manager for Bozeman and Butte. (02/4/25 Hearing Tr. 314:1-8.) During direct examination, Ms. Dale read from her notes, testifying to numerous positive and appropriate parenting actions by Father during visits. (02/4/25 Hearing Tr. 317:8-16.) She also testified that Father demonstrated "protective behavior towards the boys when he was walking them out." (02/4/25 Hearing Tr. 319:24-25.)

On cross, Ms. Dale was questioned regarding Father's request for accommodations. She confirmed Father sent her an email on January 14, 2025, asking if he could "record using his civil right to protection, record -- video record the workers in our office." (02/4/25 Hearing Tr. 320:5-24.) Ms. Dale's written response, which she read into the record, was, "I will not authorize the recording of anyone in the building." (02/4/25 Hearing Tr. 321:19-22.) Ms. Dale further testified that the Department's civil rights coordinator had also denied Father's request to record, instead recommending that he "can take notes or ask for a copy of the summary notes after all interactions." (02/4/25 Hearing Tr. 322:14-17.)

Father testified on his own behalf. He noted that from his first interaction with the initial caseworker, CPSS Hall, he requested accommodations for his disabilities, including the ability to record conversations and receive communications in writing. (02/4/25 Hearing Tr. 327:6-12.) He testified that a later caseworker, CPS Kinsey, was very accommodating, using timers in meetings and allowing him to review and edit meeting notes for accuracy, but that subsequent workers did not continue doing so. (02/4/25 Hearing Tr. 328:15-25, 335:10-12.)

Father testified that he had historically participated in mental health services and had enrolled in parenting classes even before the Department

recommended them. (02/4/25 Hearing Tr. 329:8-11.) He stated that he attempted to apply skills from a “Safe Space” class by pointing out safety issues in the CPS visitation room, but felt the feedback was not well-received. (02/4/25 Hearing Tr. 356:1-25.)

Father provided explanations for behaviors characterized as uncooperative. He testified that his requests to discuss different parenting articles were not to argue, but to “verify the parenting technique” to ensure it was safe. (02/4/25 Hearing Tr. 330:23-331:1-6.) He explained his decision to smoke marijuana during one visit was an attempt to demonstrate his coping skill for his posttraumatic stress disorder and to prove to the Department that he would not become incapacitated. (02/4/25 Hearing Tr. 331:11-20.) He further explained that his frustration with provider interruptions during visits was due to his ADHD. (02/4/25 Hearing Tr. 338:16-19.)

On cross-examination, Father admitted that he needed help with discipline but felt that it should not interfere with bonding time during visits. (02/4/25 Hearing Tr. 367:15-24.) When asked about signing a release for the couple's counselor, Father testified that he signed a release for the therapist to participate in meetings, but not for the Department to obtain his mental health records. (02/4/25 Hearing Tr. 409:21-25,410:1-14.)

When asked whether he would follow providers' recommendations during visits, Father stated he would, but only if they were provided "in writing" after the visit. (02/4/25 Hearing Tr. 411:23-412:3.) The Court interpreted this as a refusal, stating, "He's denied that he will do it in session. He will take it in writing afterwards. That's how the Court is taking it" (02/4/25 Hearing Tr. 412:8-10.)

At the conclusion of testimony, Father's counsel asserted that the Department had failed to meet its burden of proof for Termination. (02/4/25 Hearing Tr. 447:8-10.) Counsel argued that the "significant procedural delay of two years to adjudication" was "unconscionable" and had "significantly and detrimentally impacted" Father's statutory and due process rights. (02/4/25 Hearing Tr. 448:10-19.) Counsel further argued that the Department failed to provide Father with an appropriate Treatment Plan as required by law for a parent with disabilities. (02/4/25 Hearing Tr. 448:20-25.) Specifically, counsel stated that the Department and its service providers had "repeatedly denied father his request for accommodations and failed to incorporate these into his treatment plan," and noted that a second phase of the Treatment Plan was never offered. (02/4/25 Hearing Tr. 449:9-12.)

Finally, Father's counsel argued that the Department had failed to provide reasonable efforts toward reunification. Counsel stated that the

parents were kept at "a minimum of supervised visitation for the entirety of this case," contrary to best practices for toddlers and "stunting the parents' ability to practice and demonstrate their parenting skills." (02/4/25 Hearing Tr. 450:2-4, 450:22-24.) Based on these failures, Father's counsel requested that the District Court deny the Petition for Termination and instead order a "second phase treatment plan that incorporates the requested accommodations." (02/4/25 Hearing Tr. 451:3-8.) Following the closing arguments from all parties, the District Court took the matter under advisement. (02/4/25 Hearing Tr. 453:8-10.)

On July 2, 2025, nearly five months after the termination hearing concluded, the District Court issued its Findings of Fact, Conclusions of Law and Order Terminating Parental Rights, RE: Birth Father. The Court found that Father had not complied with his Treatment Plan, that the conduct rendering him unfit was unlikely to change within a reasonable time, and that termination of his parental rights was in the children's best interests. (D.C. Doc. 150.) Notice of Entry of Judgment was filed on July 3, 2025, and Father filed a timely Notice of Appeal on July 23, 2025. (D.C. Docs. 152 & 156.)

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## 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. *Penon 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. THE RECORD MAY ARGUABLY SUPPORT FATHER'S ASSERTION THAT HIS DUE PROCESS RIGHTS WERE VIOLATED BY THE UNREASONABLE DELAY IN HOLDING THE ADJUDICATORY HEARING AND THE DISTRICT COURT ERRED WHEN IT TERMINATED HIS PARENTAL RIGHTS.**

The Montana Supreme Court has consistently recognized the paramount importance of parental rights and emphasized the "absolute necessity" of strictly adhering to statutory timelines in termination cases. This principle is firmly established in Montana law, reflecting the gravity of the decision to sever the parent-child bond and the need to ensure fundamentally fair procedures for parents facing this ultimate consequence. *See In re R.B.*, 217 Mont. 99, 103, 703 P.2d 846, 848 (1985); *In re B.N.Y.*, 2003 MT 241, ¶ 21, 317 Mont. 291, 77 P.3d 189; *In re C.J.*, 2010 MT 179, ¶ 26, 357 Mont. 219, 237 P.3d 1282.

A "natural parent's right to care and custody of a child is a fundamental liberty interest..." *In re C.J.*, 2010 MT 179, ¶ 26, 357 Mont. 219, 237 P.3d 1282 (citing *In re B.N.Y.*, 2003 MT 241, ¶ 21, 317 Mont. 291, 77 P.3d 189). Furthermore, Title 41, Chapter 3, Mont. Code Ann., requires specific fact-finding and conclusions of law to make an involuntary appointment of a guardian for a child. These findings of fact and conclusions of law help to "strike the delicate balance between ensuring the safety of children and respecting the fundamental constitutional rights of parents." *In re B.H.*, 2001 MT 288, ¶ 38, 307 Mont. 412, 37 P. 3d 736. When a child cannot be returned to the care and custody upon demand of a parent, that parent's right to the care and custody of their child has been infringed.

In this case, the District Court's disregard for the mandatory 90-day timeline for an Adjudication hearing, as prescribed by § 41-3-437(1), MCA, may constitute a due process violation that unfairly prejudiced Father's ability to defend his parental rights. Father could also argue that the Department failed to provide an appropriate Treatment Plan and reasonable efforts because it repeatedly failed to provide his requested accommodations and never incorporated them into a written plan.

**A. Father May Argue the Delay Irreparably Prejudiced him and Deprived him of a Meaningful Opportunity to Reunify.**

Father could argue that the two-year delay in Adjudication was not a harmless procedural error but instead caused him irreparable prejudice by fundamentally altering the landscape of the case against him. First, the delay in Adjudication meant Father was without a court-ordered Treatment Plan for the vast majority of the case. The record shows that the District Court ordered the Department to provide a plan in March 2022, but that the plan was “never forthcoming.” (08/14/24 Hearing Tr. 6:17-22.) This left Father attempting to address the Department’s shifting concerns without the stability and clarity of the statutory roadmap.

Furthermore, the children were removed as infants and, by the time of the termination hearing, they were over three years old. (02/4/25 Hearing Tr.

279:23.) The procedural delay trapped Father in the earliest and most restrictive phase of the reunification process. For nearly the entire three-year case, Father was limited to a few hours of supervised visitation per week in an office setting. (02/4/25 Hearing Tr. 342:23-25.) This minimal, artificial visitation was insufficient for him to meaningfully practice and demonstrate the complex parenting skills the Department asked of him. Thus, Father could argue that the Department's failure to adhere to statutory timelines created a cycle of stagnation that made reunification practically impossible, thereby violating his fundamental due process right to a meaningful opportunity to reunify with his children.

**B. Father May Argue the Department Failed to Provide an Appropriate, Accommodated Treatment Plan.**

In the case of a disabled parent, an appropriate Treatment Plan must consider the parent's disability and be customized to meet their particular needs. *In re X.M.*, 2018 MT 264, ¶ 19, 393 Mont. 210, 429 P.3d 920. Both federal and state law guarantee Father's right to reasonable accommodations for his disabilities, which include ADHD and PTSD that substantially limit his major life activities of concentrating, thinking, and communicating. *See* 42 U.S.C. § 12102(1); MCA § 41-3-216. Father could argue that the Department failed to provide an appropriate Treatment Plan

and reasonable efforts because it repeatedly failed to provide his requested accommodations and never incorporated them into a written plan.

At the final hearing, CPS Turner admitted that Father's Treatment Plan was written *before* the Department's civil rights coordinator determined his accommodations and that he "did not rewrite a treatment plan" to incorporate them after they were established. (02/4/25 Hearing Tr. 257:5-8.)

Furthermore, the Department and its service providers repeatedly denied Father's primary accommodation requests. Father testified that because of his disabilities with memory and concentration, he needed to record conversations and receive feedback in writing. (02/4/25 Hearing Tr. 327:11-18). However, the record shows these requests were consistently denied. A 4-Cs supervisor testified she denied his request to record visits based on agency policy (02/4/25 Hearing Tr. 295:23-24.) A Department manager also testified that she denied his request to video record workers in the office, and that the civil rights coordinator's official response was that he could "take notes or ask for a copy of the summary notes," not that he could record as he had requested. (02/4/25 Hearing Tr. 321:21-22; 322:14-17.)

Father could argue that this failure to accommodate directly impeded his progress and created conflict. He testified that his frustration and perceived

“aggression” stemmed from providers interrupting his visits and his inability to process verbal feedback without being able to review it later. (02/4/25 Hearing Tr. 338:16-25, 347:1-9.) The Department’s own Affidavit in Support of Termination of Parental Rights cited Father’s “abusive behavior, language, and unwillingness to follow their rules” at 4-Cs as a reason for termination. (D.C. Doc. 106.) Because the Department failed to provide an appropriate, accommodated Treatment Plan and repeatedly denied Father’s requests for accommodation, Father could assert that the Department failed to provide the necessary services for his safe return to the children, thereby failing to meet the statutory criteria for Termination.

### **CONCLUSION**

A thorough examination of the record and research of the applicable law compels 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 24<sup>th</sup> 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**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
TERMINATING PARENTAL RIGHTS AND GRANTING PERMANENT  
LEGAL CUSTODY, RE: BIRTH FATHER.....A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
TERMINATING PARENTAL RIGHTS AND GRANTING PERMANENT  
LEGAL CUSTODY, RE: BIRTH FATHER.....B

## 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 11-26-2025:

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