IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0566

IN THE MATTER OF:
M.F.,

A Youth in Need of Care.

APPELLANT'S OPENING BRIEF

On appeal from the Montana
First Judicial District Court,
County of Lewis and Clark,
The Honorable Christopher D. Abbott, Presiding

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STATEMENT OF ISSUES

1. Whether the District Court erred in holding that the Department made reasonable efforts to reunify the Child with her Mother.
2. Whether the District Court erred in finding that guardianship was not in the Child's best interests.

STATEMENT OF CASE

The Montana Department of Public Health and Human Services, Child and Family Services Division, brought this action for physical neglect of minor child M.F., then age 7, pursuant to 41-3-422(1), M.C.A., seeking emergency protective services, adjudication, and temporary legal custody on October 11, 2023.

The child was adjudicated a youth in need of care by stipulation of her parents and the Department on January 11, 2024, and the Court granted the Department temporary legal custody for six months. On February 22, 2024, the district court ordered treatment plans for both parents.

On December 13, 2024, the Department petitioned to terminate both parents' parental rights for failure to successfully complete their court-ordered treatment plans pursuant to 41-3-609(1), M.C.A. At the conclusion of the two-day termination hearing on June 18, 2025, the district court scheduled an in chambers interview of the child and requested proposed Findings and Conclusions from counsel. The district court issued its order on July 23, 2025, terminating the parental rights of both parents. Mother appeals.

FACTS

A. Facts Establishing that the Department Failed to Prove that It Made Reasonable Efforts to Reunify Mother and Child in Compliance with 41-3-423(1), M.C.A.

1. The only testimony at the termination hearing regarding the Department's required reasonable efforts to reunify child M.F. with Mother L.R.H. was as follows:

> **Department's counsel, Deputy Lewis and Clark County Attorney Christine Zadra:**
>
> Can you describe what reasonable and active efforts the Department has made to reunify mother with [child]?
>
> **Witness Brittany Carr, CPSS Supervisor:**
>
> Immediately after [child's] removal we established weekly visits initially twice a week for two hours each. That did eventually drop down due to [child] missing so much school. So we set up phone calls, Zoom visits with [child]. On separate occasions I would set up links for video visits.
>
> I provided [Mother] gas vouchers because she indicated that that was a barrier.
>
> We had a lot of discussions about stable housing options.
>
> We had a lot of discussions on individuals she's continuing to surround herself with. We had concerns related to that and her need for better support moving forward.
>
> I referred her to several agencies, Helena Valley Addiction, engage with Montana Counseling Services and various other individual providers for [Mother] outside of those things. I assisted in referrals to other agencies.
>
> I have had extensive conversations with providers trying to elaborate on the best way to support [Mother] to engage in treatment services.

> We held family engagements, permanency planning and treatment meetings.
>
> I submitted an interstate compact to Nevada for Destiny per [Mother's] request that covered quite a bit.

Transcript, Termination Hearing Day 1, June 13, 2025, p. 105, l. 17 to p. 106, l. 14.

2. There is no Conclusion of Law regarding reasonable efforts in the termination Order. The only Finding of Fact relating to the Department's statutory duty to make reasonable efforts to reunify Mother and Child was Finding of Fact No. 98:

> 98. The Department has undertaken active and reasonable efforts to reunify [child] with her birth family. This includes, but is not limited to, the following efforts:
>
> a. The Department has maintained regular contact with [Mother]. Carr regularly spoke with [Mother]. Kramer had less contact with [Mother], but still maintained communication by text message.
>
> b. *[Efforts relating to visitation with Father]*.
>
> c. The Department has provided regular supervised visits between [child] and [Mother] and attempted to conduct those visits in the least restrictive setting whenever possible.
>
> d. The Department has facilitated chemical dependency evaluations, chemical dependency treatment, and mental health treatment for [Mother]. The Department has been willing to pay for urinalysis testing, and the Department has offered [Mother] gas vouchers to assist her in attending meetings and testing.

e. The Department explored kinship placements for [child]. The Department conducted searches for possible family members. The Department also attempted to explore an interstate compact placement with Destiny Carranza while she lived in Nevada. Destiny, however, did not respond to communications from the local child protective services workers.

f. The Department has held family engagement meetings and developed treatment plans for both parents.

Document 158, Termination Order, Finding of Fact No. 98, pp 23, l. 3, to p. 24, l 7.

3. This is not an ICWA case. Document 54, Order re ICWA Applicability.

4. This case was filed on October 11, 2023. Document 1, Petition for EPS, Adjudication, and TLC.

B. Facts Establishing that Department and District Court Improperly Rejected Guardianship as a Permanency Option Relying on Myths and Misconceptions.

5. CPSS Brittany Carr had a discussion with the Child before the termination hearing about the differences between guardianship and adoption and testified that she was not sure if the Child would understand the difference. Transcript, Termination Hearing Day 1, June 13, 2025, p. 143, l. 20 to p. 146, l.8, p. 147 l. 5-9.

6. The Department's counsel conceded that the Child could not discern the difference between a guardianship and adoption. Transcript, Termination Hearing Day 2, June 18, 2025, p. 88, l. 21-22.

7. The Department decided against guardianship as a permanency option because it believed that guardianship would subject the Child to her Mother's

persistent struggles with sobriety, unsafe people, and criminal activity and that a guardianship might be a less certain permanency. Transcript, Termination Hearing Day 2, June 18, 2025, p. 88, l. 9-24.

8. While CPSS Brittany Carr conceded that a guardianship is a permanent option and is not commonly overturned by parents, she also testified that the uncertainty of a guardianship would be detrimental to the Child and that a guardianship can be overturned and that would not be in the Child's best interests. Transcript, Termination Hearing Day 1, June 13, 2025, p. 143, l. 20 to p. 146, l.8.

9. CPSS Carr also testified that some of the guardianship decision-making has to do with funding purposes. *Id.* at p. 144, l. 6-7.

10. CPSS Carr testified that guardianships are typical when children are placed in a kinship placement. Transcript, Termination Hearing Day 1, June 13, 2025, p. 144, l. 2-4.

11. CPSS Carr identified a potential kinship placement with the Child's adult sister, D.C., a single mother with a young child who lived out of state. In Spring and late summer, 2024, the Department made ICPC referrals but it they were not completed. Transcript, Termination Hearing Day 1, June 13, 2025, p. 129, l. 16-23.

12. Once adult sister D.C. returned to Helena, Montana, the Department did not perform a background check on D.C. or otherwise act to place the Child there, though they "thought about" and "there was talk about" placing the Child with her

adult sister. CPSS Carr claimed the placement was not pursued because Mother intended to move in with her adult daughter, and did so in the month before the termination hearing. Transcript, Termination Hearing Day 1, June 13, 2025, p. 131, l. 20 to p. 132, l. 15., p. 141, l. 1-10.

13. The CASA Guardian at Litem also recommended termination because a guardianship could result in Mother getting custody again, though she would be against termination if the foster mother intended to cut all contact between Mother and Child. Transcript, Termination Hearing Day 2, June 18, 2025, p. 82, l. 13 to p. 83, l.21.

STANDARD OF REVIEW

This Court reviews a district court's decision to terminate parental rights for an abuse of discretion. *In re A.L.P.*, 2020 MT 87, par. 12, 399 Mont. 504, 510, 461 P.3d 136, 140.

A court errs and abuses its discretion if it terminates parental rights based on clearly erroneous findings of fact, erroneous conclusions of law, or otherwise acts arbitrarily, without sound employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re D.L.L.*, 2025 MT 98, 421 Mont. 522, 568 P.3d 552.

Findings of Fact are clearly erroneous if not supported by substantial evidence, the court misapprehended the effect of the evidence, or this Court is firmly convinced a mistake was made. *Id., citing In re D.H.*, 2001 MT 200, 306 Mont. 278, 33 P.3d 616.

This Court reviews a district court's legal conclusions and determinations for correctness; i.e. whether the district court erred. *In re J.S.L.*, 2021 MT 47, 403 Mont. 326, 333, 481 P.3d 833, 840; *Gullett v. Van Dyke Const. Co*., 2005 MT 105, 327 Mont. 30, 33, 111 P.3d 220, 222.

SUMMARY OF ARGUMENT

1. 41-3-423(1), M.C.A., requires that the Department in good faith make reasonable efforts to reunify families that have been separated by the state, and defines ten different, specific reasonable efforts. Termination cannot be granted unless the district court finds that each of these reasonable efforts has been made.

Here, the district court did not make specific findings that the Department made any of the mandatory enumerated efforts nor that the Department acted in good faith. There was insufficient evidence presented at the termination hearing to warrant such a reasonable efforts finding. The reasonable efforts evidence consisted of just twenty-three lines – less than one page of the 309 page hearing transcript. Neither the evidence nor the termination order referred to 41-3-423, M.C.A. This failure is reversible error.

2. Although the district court considered guardianship as a permanency option, its consideration was not thoughtful; instead it relied on disproven myths and misconceptions about guardianship at odds with truth, justice, and Montana legislative policy. This failure is reversible error.

ARGUMENT

1. Legal Standards for Termination of Parental Rights:

A petition for termination of parental rights may be filed in a child abuse and neglect action brought under 41-3-422(1), M.C.A. in which:

1. a child is an adjudicated youth in need of care;

2. the district court approved an appropriate treatment plan;

3. the treatment plan:

a. has not been complied with by the parent, or

b. has not been successful;

4. the conduct or condition of the parent is unlikely to change within a reasonable time;

5. and either:

a. the continuation of the parent-child legal relationship will likely result in continued abuse or neglect; or

b. that the conduct or condition of the parent renders her unfit, unable, or unwilling to give the child adequate parental care;

c. considering, while giving primary consideration to the physical, mental, and emotional needs of the child:

2(a). a parent's mental illness of such a nature or duration as to render her unlikely to care for the child's needs within a reasonable time;

2(b). a history of violent behavior by the parent;

> 2(c). excessive dangerous drug or alcohol use affecting the parent's ability to care and provide for the child;
>
> 2(d). the parent's long-term confinement; and
>
> any other factors the Court finds relevant.

41-3-609(1)(f),-(2), -(3), M.C.A.

To aid the Department in determining when a reasonable amount of time for treatment plan completion has passed and termination is in the child's best interest, 41-3-604(1), M.C.A. provides that termination is *presumed to be in the child's best interest* and *a termination petition must be filed,* where the child has been in non-kinship foster care for 15 of the most recent 22 months, unless there are compelling reasons not to file such a petition. A petition to terminate should not be filed nor granted when the Department has not provided the services considered necessary to return the child to the home. *Id.* Those services include the reasonable efforts required by 41-3-423(1), M.C.A.

The Department must prove by clear and convincing evidence that the statutory criteria for termination have been met. *Id.* For these cases, clear and convincing evidence is the requirement that a preponderance of the evidence be definite, clear, and convincing. *In re S.W.,* 2025 MT 178, 423 Mont. 350, 573 P.3d 781.

The decision to terminate parental rights is never required, even if the statutory criteria are met. 41-3-609(1), M.C.A. ("*The court* ***may*** *order a*

termination . . . .”).

2. <u>The Sweeping Montana Legislative Changes to Montana’s Child Abuse and Neglect Act in 2023 Reflect a Significant Policy Shift.</u>

The Montana Legislature’s sweeping 2023 enactments amending, replacing, and supplementing Montana’s Child Abuse and Neglect Act demonstrate a clear shift toward favoring parental rights, disfavoring termination, and imposing heightened duties on the Department, both in the express language of the amendments to Montana’s child welfare statutes and in the spirit of the policies guiding them. This Court should apply this new, fresh lens to its jurisprudential review of such cases within its reasonable efforts and guardianship as permanency statutory analysis.

These legislative changes include requiring an expert assessment to establish psychological abuse or neglect sufficient for removal of the child (41-3-102(25)(a), M.C.A.); adopting very early procedures for mediation and removal review (41-3-307 and 41-3-306, M.C.A.); concretely and clearly defining mandatory reasonable efforts (41-3-423(b), M.C.A.); adopting a state ICWA (41-3-1301 et seq., M.C.A.), limiting continuances to exigent circumstances and good cause (41-3-434, M.C.A. (*while defining good cause to include “when a parent is progressing with recommended treatment or other services included in a court-approved treatment plan and would benefit from a reasonable amount of additional time to compete the*

identified tasks to achieve reunification with the child"); and adopting a mechanism for reinstatement of parental rights (41-3-615, M.C.A.).

These legislative changes took effect just before this case began, on July 1, 2023, and October 1, 2023. The district court here showed an early awareness of these changes, conducting an EPS hearing on October 19, 2023 pursuant to 41-3-306, M.C.A. (Document 12, Minute Entry, 10-19-23), denying a motion to continue the show cause hearing pursuant to 41-3-434, M.C.A., (Document 14, Order Denying Motion to Continue, 10-24-23); and addressing the active efforts required under MICWA at the time of granting an extension of temporary legal custody pursuant to 41-3-1319(1), M.C.A. (just before the nonapplicability of ICWA was conclusively established to this child)(Document 49, Order Extending TLC and Approving Permanency Plan 7-2-24).

The theory of purposive amendment holds that Legislatures intend amendments to have a real, substantial effect, not be meaningless. This Court has long applied this theory:

> We must presume in construing these statutes that the Legislature intended to make some change in existing law by passing it. *Cantwell v. Geiger,* 228 Mont. 330, 333–34, 742 P.2d 468, 470 (1987). MSSA's interpretation of § 87–1–204, MCA, would render these later-enacted statutes idle acts.
>
> We must presume that the Legislature would not pass useless or meaningless legislation. *Oster v. Valley County,* 2006 MT 180, ¶ 17, 333 Mont. 76, ¶ 17, 140 P.3d 1079, ¶ 17.

Montana Sports Shooting Ass'n, Inc. v. State, Montana Dep't of Fish, Wildlife, & Parks, 2008 MT 190, 15, 344 Mont. 1, 5, 185 P.3d 1003, 1006. In construing an amended statute, the intention of the legislature is to be pursued if possible. 1-2-102, M.C.A. Statutes should be construed in favor of natural rights. 1-2-104, M.C.A.

Consistent with the Legislature's intent and Montana rules of statutory construction, Mother respectfully submits that this Court's precedent from a time where "reasonable efforts" were a subjective standard to be determined on a case-by-case basis is not appropriately relevant to post-2023 Department responsibilities, which are objectively and specifically defined. *See, e.g., In re K.L.*, 2014 MT 28, 373 Mont. 421, 318 P.3d 691 *(41-3-423 "does not define the term ['reasonable efforts'] and indeed it would be impossible to do so").*

Mother further respectfully submits that this Court's precedent on guardianship has evolved in the last five years, and that further evolution favoring guardianship over termination is consistent with both statutory language and the Legislature's clear policy shift.

3. <u>The Department Failed to Make the Reasonable Efforts Required by 41-3-423, M.C.A., and The District Court Failed to Make Any Reasonable Efforts Findings.</u>

The Department must make reasonable efforts to reunify families that have been separated by the State, 41-3-423, M.C.A. However, neither the district court

nor the Department applied the new 2023 statutorily mandated reasonable basis efforts to the Department's handling of the case nor the termination proceedings.

Before the 2023 amendment to 41-3-423, M.C.A., the statute defined reasonable efforts broadly and somewhat minimalistically as developing and implementing treatment plans designed to preserve the parent-child relationship and the family unit and assisting parents in good faith in completing the treatment plan.

In 2023, the Montana Legislature adopted the detailed and specific definition of active efforts under ICWA (and the simultaneously enacted Montana ICWA) as the definition of reasonable efforts under Montana non-ICWA dependent and neglect cases and made the defined efforts mandatory:

> The term "reasonable efforts" requires the Department to, in good faith:
>
> (i) *conduct a comprehensive assessment of the circumstances of the family, with a focus on safe reunification as the most desirable goal. The assessment must be provided to the parents and to counsel for the parents.*
>
> (ii) identify appropriate services and *help the parents overcome barriers, including actively assisting the parents in obtaining appropriate services*;
>
> (iii) with parental consent, *identify and invite the extended family to participate in providing support and services to the family and to participate in family team meetings, permanency planning, and resolution of placement issues*;
>
> (iv) conduct or cause to be conducted a diligent search for the child's extended family members and *contact and consult with extended family members to provide family structure and support for the child and the parents;*

(v) *offer and employ all available and culturally appropriate family preservation strategies* and facilitate the use of remedial and rehabilitative services;

(vi) take steps to keep siblings together whenever possible;

(vii) support regular visits with parents in the most natural setting possible, as well as *trial home visits with the child during any period of removal,* consistent with the need to ensure the health, safety, and welfare of the child;

(viii) *identify community resources, including* housing, *financial*, transportation, mental health, substance abuse, and peer support services, and actively assist the parents or, when appropriate, the child's family in utilizing and accessing the resources;

(ix) monitor progress and participation in services; and

(x) *consider alternative ways to address the needs of the parents and, when appropriate, the family* if the optimum services do not exist or are not available.

Id., as amended in 2023.

The Department provided no evidence at the Termination hearing that it complied with the reasonable efforts requirements italicized above. The short list of reasonable efforts testified to by CPS Carr - providing consistent visitation, consistently meeting with Mother, making referrals to treatment providers, having discussions regarding case issues, and having permanency and family engagement meetings – cannot be construed as meeting all the detailed and specific statutory requirements of 41-3-423(1)(b), M.C.A. In the absence of such evidence, the Department has failed to meet its burden of establishing good faith reasonable efforts by clear and convincing evidence, and the Termination Order must be reversed.

The district court compounded this problem by failing to make the complete and detailed reasonable efforts factual findings and legal conclusions necessary to show compliance with the specific mandates of 41-3-423, M.C.A. The district court should have recognized that the underlying evidentiary basis for such findings had not been made and denied the termination petition.

Compliance with the specific provisions of 41-3-423(1)(b), M.C.A., as amended in 2023, is mandatory and requires good faith by the Department. Historically, this Court has held that a reasonable efforts finding is a predicate consideration regarding the requisite finding of fact under 41-3-609(1)(f)(ii) that the conduct or condition rendering a parent unfit, unwilling, or unable to parent is unlikely to change within a reasonable time. *In re R.J.F.*, 2019 MT 113, 395 Mont. 454, 443 P.3d 387. Further, the 41-3-609(1)(f)(i), M.C.A. criteria for termination that "an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful" implicitly includes the requirement that the Department fulfill its statutory duty to make good faith reasonable efforts toward the successful completion of that plan.

Because a natural parent's right to care and custody of a child is a fundamental liberty interest, a district court must adequately address each applicable statutory requirement before terminating an individual's parental rights. *In re R.J.F.,* 2019 MT 113, 395 Mont. 454, 443 P.3d 387; *In re A.T.,* 2003 MT 142, 316 Mont. 255, 70 P.3d

1247. Termination is not appropriate where the Department has failed to make the statutorily required reasonable efforts. *In re K.L.,* 2014 MT 28, 373 Mont. 421, 318 P.3d 691, *Baker, J., dissenting.* It would be an unjust policy indeed for a government to terminate the fundamental constitutional right of an individual to parent where the government itself has abdicated its mandatory good faith duty to assist that citizen in preserving that right. Further, as this Court's jurisprudence establishes, such findings are necessary to the issue of whether a parent's conduct is likely to change within a reasonable time.

Since the Department failed to provide reasonable efforts, the termination order should be reversed, and this case should be remanded to give the Department the opportunity to do so, including placement with adult sister D.C., evaluation of Mother's current level of treatment completion and sobriety, identifying any needed services, and instituting a trial home visit, if safely possible. This Court should further rule that Termination Orders must be supported by specific findings that the provisions of 41-3-423(1)(b), M.C.A. have or have not been complied with.

4. The District Court Erred in Not Finding That Guardianship was the Preferred Permanency Option and in Not Denying the Petition for Termination.

The primary permanency options in a civil child abuse and neglect case brought under Title 41, Chapter 3, 41-3-101 et seq., M.C.A. in order of preference,

are reunification, guardianship, and termination. 41-3-101(1)(b); 41-3-444; and 41-3-602 et seq., M.C.A.

A natural parent's right to the care and custody of her child is a constitutionally protected fundamental liberty interest that must be protected by fundamentally fair proceedings. *In re C.M.C.*, 2009 MT 153, 350 Mont. 391, 208 P.3d 809; *In re A.J.C.*, 2018 MT 234, 393 Mont. 9, 427 P.3d 59. A child has a concomitant constitutionally protected fundamental liberty interest to be in the care and custody of their natural parent, and a right to a safe and healthy childhood in a permanent placement. 41-3-101(e), -(f), M.C.A.

The primary purpose of Montana's child abuse and neglect statutes is to ensure children who are abused or neglected are protected and made safe. 41-3-101(1)(a), M.C.A. The Department's primary directive is to achieve this purpose in a family environment and preserve the unity and the welfare of the family whenever possible. 41-3-101(1)(b), M.C.A.

Successful and safe reunification with the parent satisfies every right and goal of the child abuse and neglect statutes. If reunification can't be achieved, guardianship without termination of parental rights best balances the conflicting goals and rights of the parties. *See, e.g., In re D.L.L.*, 2025 MT 98, 421 Mont. 522, 568 P.3d 552 *(Gustafson, J., concurring,)*; *In re A.B.,* 2020 MT 64, 399 Mont. 219, 460 P.3d 405 *Gustafson, J., concurring, joined by Justices Sandefur and McKinnon)*.

Where a guardianship cannot keep the child safe, then a termination of parental rights may be the only alternative.

In 2013, this Court held that a district court was not required to consider other options before terminating parental rights if the statutory criteria are met. *In re T.S.*, 2013 MT 274, 372 Mont. 79, 310 P.3d 538. However, practical, precedential, and legislative actions in the past half-decade have made it clear that the *T.S.* ruling cannot and should not continue to apply.

As noted above, the department and the district courts cannot rely on past precedent inconsistent with Montana's fundamental and clear legislative policy and statutory shift. *In re T.S.* no longer reflects the legislative policy mandate. Guardianship should be compared to termination when determining the child's best interests.

As Justice Gustafson noted, the Department has demonstrated a persistent hostility toward or diminishment of guardianship as a permanency option in these cases, including taking the positions that guardianships do not provide permanency; that they are easy to dissolve, that they keep the child less safe than termination and adoption, and that they lead to higher reentry rates by the child into the child welfare system. Justice Gustafson has correctly labeled these positions as myths and misconceptions, citing significant research. *See, e.g., In re D.L.L.*, 2025 MT 98, 421 Mont. 522, 568 P.3d 552 *(Gustafson, J., concurring,)*; *In re A.B.,* 2020 MT 64, 399

Mont. 219, 460 P.3d 405 *Gustafson, J., concurring, joined by Justices Sandefur and McKinnon)*.

> [I]t is counterproductive to terminate a parent's rights when such does not increase the overall safety or stability of the child and is not in the best interests of the child's family.

In re D.L.L., 2025 MT 98, 421 Mont. 522, 568 P.3d 552 *(Gustafson, J., concurring).*

Astonishingly, the myths and misconceptions at odds with objective research that Justice Gustafson debunked five years ago are the same arguments advanced by the Department and the CASA guardian ad litem against guardianship in this case last summer. Facts 7-9, 13, above.

Unlike the district court in *In re A.B.*, 2020 MT 64, 460 P.3d 405, 399 P.3d 219, the district court did not "thoughtfully consider" guardianship as well as termination in deciding that termination and adoption were in the Child's best interests. In the end, the district court did consider guardianship but quickly denied it, finding that a guardianship would not satisfy the Child's need for permanency, an inexplicable finding given the uncontested testimony and argument that the Child did not understand the difference between guardianship and adoption. Document 158, Termination Order, Finding of Fact No. 101, p. 25, l. 4-12.

It is similarly problematic that placement of the Child with her sister would have likely led to a guardianship permanency, but once adult sister D.C. arrived in Montana, the Department abandoned any efforts at placement.

The district court compounded its errors by applying the presumption that termination was in the children's best interests under 41-3-604(1), M.C.A. Document 158, Termination Order, Conclusion of Law 5, p.1026, l. 10-12. The district court ignored that statute's clear exception to the presumption (and required filing of a petition for termination) where "the department has not provided the services considered necessary for the safe return of the child to the child's home." 41-3-604(1)(b), M.C.A. Thus, in addition to the necessity of reasonable efforts findings under 41-3-609, M.C.A., Departmental reliance at termination on the statutory presumption set forth in 41-3-604, M.C.A. requires findings that the Department has made reasonable efforts in good faith as defined by statute. Thus, the District Court's conclusion of law that the presumption applies and informed the children's best interest determination was error.

Accordingly, the district court's termination order should be reversed and remanded for consideration of guardianship and reunification as permanency options.

CONCLUSION

In 2023, the Montana legislature, unsatisfied with the previous reasonable efforts statute, passed an amended statute significantly redefining the meaning of reasonable efforts by listing ten specific tasks and areas of effort that the Department was required to make in the process of working to reunify a family.

Now that cases that were largely governed by the new statute are being appealed, we are seeing that neither the Department nor the district courts have incorporated the new statutory requirements into their case process and reasonable efforts analysis. This Court must not allow this. The Legislature does not pass useless or meaningless legislation, and it intended for the Department adhere to the new requirements of 41-3-423, M.C.A. In this case, and others, the Department is in dereliction of its duty as an agency to follow this new statutory directive. And the district courts are in dereliction of their duty to apply the applicable law to the Department's efforts to reunify families.

Similarly, the Department's and district courts' reliance on debunked myths and misconceptions works a fundamentally unfair infringement on parents' rights in these cases, and this is evident in the instant case.

Dated this 24 day of December, 2025.

s/Allen P. Lanning
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Attorney for L.R.H.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Brief is proportionately spaced, has a 14-point typeface, and consists of 4673 words.

s/Allen P. Lanning
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CERTIFICATE OF SERVICE

I, Allen Page Lanning, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-06-2026:

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