ORIGINAL

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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 26-0351

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 26-0351

FILED
JUN 02 2026
Bowen Greenwood
Clerk of Supreme Court
State of Montana

S. M.,

Petitioner,

v.

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY, THE HONORABLE FRANK J. JOSEPH, presiding,

Respondent.

ORDER

S.M., Mother in Cause No. DN-25-49, in the Second Judicial District Court, Butte-Silver Bow County, has filed a Petition for a Writ of Supervisory Control. Mother asserts the Hon. Frank Joseph, District Court Judge, has denied a timely show cause hearing and failed to ensure compliance with the Indian Child Welfare Act ("ICWA") and Montana Indian Child Welfare Act ("MICWA") in the matter below. Upon receipt of the Petition, the Court ordered a response from the Department of Public Health and Human Services and invited a response from the District Court. These responses have not yet been received.

In the Petition, Mother also filed a Motion for Emergency Stay of Proceedings. Upon receipt of a petition for a writ of supervisory control, "The supreme court may order a stay of further proceedings in the other court, pending the supreme court's disposition of the petition." M. R. App. P. 14(7)(c). Mother seeks dismissal of the matter in District Court so she can reunite with A.M., but a stay of proceedings may be counter-productive to that end if it prevents dismissal or progress toward reunification. Conversely, a stay will preserve Mother's relationship with A.M. if it halts any efforts by the Department or the District Court toward termination of Mother's parental rights.

We examined a similar issue in *State ex rel. C.M.J. v. Dist. Ct.*, 179 Mont. 32, 35, 585 P.2d 1312, 1314 (1978), when C.M.J. filed a petition for writ of supervisory control and sought an order staying adoption proceedings, pending the outcome of her appeal terminating her parental rights of J.L.B. While we denied the writ of supervisory control on the grounds that direct appeal was the correct procedural route for that case, we granted the motion to stay adoptive proceedings pending the appeal's outcome. We found C.M.J.'s appeal "would be ineffectual if the child J.L.B. were adopted during the pendency of the proceedings." *State ex rel. C.M.J.*, 179 Mont. at 35, 585 P.2d at 1314.

Here, Mother asserts the District Court is proceeding under a mistake of law because it has failed to hold timely contested hearings, considered evidence outside of the record, and failed to follow the requirements of ICWA and MICWA. We have not determined whether to issue the Writ of Supervisory Control, but if the Department or District Court meanwhile moved to terminate Mother's parental rights, establish a guardianship, or otherwise permanently separate A.M. from Mother, this proceeding "would be ineffectual." *State ex rel. C.M.J.*, 179 Mont. at 35, 585 P.2d at 1314. Therefore,

IT IS HEREBY ORDERED the District Court shall STAY any proceedings in this matter which threaten to permanently separate A.M. from Mother, including termination of parental rights or guardianship, until the Court issues its decision on the pending writ.

IT IS FURTHER ORDERED this Order does not prevent the Department or District Court from facilitating visitation between Mother and A.M., taking steps toward reunification with A.M., engaging in voluntary services and support with Mother, or notification of eligible Indian Tribes.

DATED this 2nd day of June, 2026.

Chief Justice

Justices