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FILED

06/09/2026

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 26-0099

FILED

JUN 09 2026

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE MATTER OF:

H.T., S.T. & D.L.,

ORDER

Youths in Need of Care.

Appellant H.T., Father of the youths subject to these dependent-neglect matters, moves this Court to remand this case to the Second Judicial District Court, Butte-Silver Bow County, so the District Court may conduct an evidentiary hearing regarding H.T.'s allegation that his counsel provided ineffective assistance. The State has responded in opposition to H.T.'s motion.

H.T. explains the basis of his request for remand as follows:

H.T. is arguing on appeal that his counsel was ineffective for failing to call certain witnesses and to present certain evidence on his behalf at his termination hearing. His counsel was also ineffective in failing to object to hearsay offered regarding his children's counselor's opinion that family reunification should not be tried, and in failing to subpoena and cross-examine those witnesses.

Unfortunately, the most compelling evidence that his counsel was ineffective is not in the record on appeal because his counsel was too ineffective to introduce it in the district court proceedings.

H.T. represents his counsel has communicated with Flathead Family Treatment Court Coordinator Tamara Eads, who would have provided significant testimony favorable to H.T. if H.T.'s trial counsel had called her as a witness. H.T. argues remand and an evidentiary hearing would allow him to develop the record regarding ineffective assistance because he would offer evidence his counsel should have presented at his termination

hearing, and he would call and cross-examine the State's witnesses whose hearsay the State relied upon in the termination hearing. H.T. attaches as an exhibit to his motion a two-page document dated May 16, 2026, that indicates it is written by Eads and describes her perspective regarding H.T.'s case, including testimony she would have provided at the termination hearing if she had been given the opportunity.

Responding in opposition to H.T.'s motion, the State relies on *In re C.M.C.*, 2009 MT 153, 350 Mont. 391, 208 P.3d 809. In that case, a birthmother argued she received ineffective assistance from attorneys who represented her in a dependent-neglect case. *In re C.M.C.*, ¶ 31. Relevant to our consideration of the present motion, C.M.C.'s birthmother argued in part that the attorney who represented her at the termination hearing was ineffective for failing to call the birthmother's counselor as a witness, alleging her counselor could have countered the testimony of the State's witnesses. *In re C.M.C.*, ¶ 36. To support her argument, the birthmother appended an affidavit from the counselor as an exhibit to her appellate brief. *In re C.M.C.*, ¶ 36. We rejected the affidavit as insufficient to make a threshold showing the birthmother had been denied effective assistance of counsel, explaining:

[The counselor's] affidavit, attached to the mother's brief on appeal, is an out-of-record document essentially stating [the counselor's] disagreement with the District Court's decision to terminate parental rights. The averments and opinions in the affidavit are not part of the District Court record. They have not been subject to cross-examination or evidentiary objections. . . . Parties on appeal are bound by the record and may not present additional matters in briefs or appendices.

In re C.M.C., ¶ 37 (citations omitted). In a concurring opinion, Justice Rice acknowledged the dilemma an appellant faces in supporting an ineffective assistance claim in a dependent-neglect case where the alleged ineffectiveness concerns the failure to submit certain evidence into the record below. *In re C.M.C.*, ¶¶ 40-44 (Rice, J., concurring). Justice Rice suggests "a remand for a limited evidentiary hearing" as a possible remedy, with the caveat, however, that the appellant must first demonstrate counsel's alleged errors prejudiced them. *In re C.M.C.*, ¶ 44 (Rice, J., concurring).

In this case, the State argues H.T.'s offer of proof "is not remotely comparable" to the counselor's affidavit at issue in *In re C.M.C.* and is inadequate to comprise the basis of the relief H.T. requests. The State points out H.T.'s exhibit is not an affidavit but is a letter that is not signed or printed on letterhead. Its contents are vague, neither naming the people Eads allegedly spoke with regarding H.T.'s case nor explaining when those conversations occurred. The State argues H.T.'s request for remand for the purpose of an evidentiary hearing is not compelling because H.T. has not offered sufficient proof his counsel's alleged ineffectiveness prejudiced him.

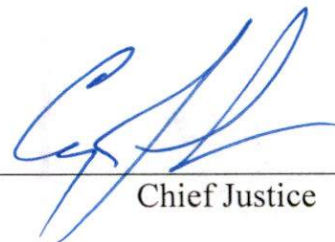
H.T. does not discuss *In re C.M.C.*, but relies on *In re J.B.*, 295 P.3d 603 (Ok. Civ. App. 2013), arguing other states have addressed the problem of inadequate records for parents to sustain ineffective assistance claims in dependent-neglect cases by remanding matters to lower courts for evidentiary hearing. However, in *In re J.B.*, the appellate parent submitted three affidavits containing information concerning "statements of potential witnesses whom [the appellate parent's] trial counsel never interviewed or called on." *In re J.B.*, ¶ 8.

We agree with the State that H.T.'s offer of proof, in the form of an unsigned letter, is insufficient to convince us to remand the matter to the District Court for an evidentiary hearing.

IT IS THEREFORE ORDERED that remand is DENIED. Appellate briefing shall proceed in accordance with the Montana Rules of Appellate Procedure.

The Clerk is directed to provide copies of this Order to all counsel of record.

Dated this 1st day of June, 2026.



Chief Justice



James Jeremiah Green

James M. Green

James Rice

Justices