

DA 19-0212

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 294

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IN THE MATTER OF:

C.B.,

A Youth in Need of Care.

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APPEAL FROM: District Court of the Second Judicial District,  
In and For the County of Butte-Silver Bow, Cause No. DN 18-99  
Honorable Robert J. Whelan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jennifer Dwyer, Law Office of Jennifer Dwyer, PLLC,  
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For Appellee:

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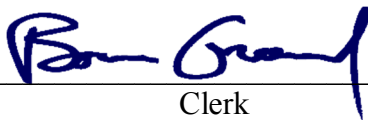
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Submitted on Briefs: November 27, 2019

Decided: December 24, 2019

Filed:

  
Clerk

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Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 R.T. (“Mother”) appeals a March 7, 2019 Second Judicial District Court order terminating her parental rights of child (“C.B.”). We affirm.

¶2 We address the following issues on appeal:

*Issue One: Whether Mother was afforded fundamentally fair procedures comporting with her constitutional due process rights when the District Court terminated her parental rights to C.B.*

*Issue Two: Whether the District Court abused its discretion by terminating Mother’s parental rights following its determination that circumstances surrounding Mother’s prior terminations of her parental rights were relevant to her parenting of C.B.*

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶3 Mother has an extensive history with the Department of Health and Human Services (“Department”), including involuntary termination of four of her other children as a result of severe drug use, inability to provide safe and stable housing, and inability to provide adequate care. In February 2013, Mother’s parental rights were terminated for J.T., R.T., and A.T. due to Mother’s failure to adhere to her treatment plan for chemical dependency issues. Following termination, Mother gave birth to a fourth child, I.T., who was born addicted to drugs. The court ordered that preservation or reunification services did not need to be provided to Mother due to the three previous terminations. On May 20, 2014, Mother had her parental rights of I.T. terminated.

¶4 On October 24, 2017, Mother gave birth to C.B., who was fathered by S.B. (“Father”), a different birth father than that of her previous children. At the time of

C.B.'s birth, Mother tested positive for THC. However, a cord stat<sup>1</sup> performed on C.B. returned negative for drugs. Mother was otherwise deemed to be sober, addressing mental health issues, and able to meet the needs of C.B.

¶5 On November 19, 2018, law enforcement and probation officers conducted a search of a residence inhabited by Mother, Father, and C.B. Law enforcement discovered a syringe filled with an unknown substance located on a television stand inside the home. Father was arrested for possession of methamphetamine and other miscellaneous crimes. Mother admitted ongoing methamphetamine use to law enforcement. When Child Protection Specialist Jodi Burk arrived at the residence, law enforcement informed Burk that Mother was to be arrested for misdemeanor criminal contempt and misdemeanor possession of drug paraphernalia.

¶6 When Burk entered the home, she noted that it was “trashed” and posed a safety hazard to C.B. Burk observed clothes piled on the couch, clothes and garbage on a bed, food, garbage, and dirt on the floor, and dirty dishes on the counters. Burk asked Mother about the syringe, and Mother replied that it belonged to Father. However, Mother admitted that she continued to use methamphetamine but not around C.B. Burk informed Mother that it was her obligation to keep C.B. safe and told her that she was taking C.B. into custody. Burk told Mother to come to the office and speak to her when she was released from jail in order to discuss options regarding C.B. Mother was taken to jail but was not drug tested.

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<sup>1</sup> A cord stat, or umbilical cord tissue testing, is used to determine whether a newborn has been exposed to illicit substances in utero.

¶7 C.B. was placed in foster care. Soon after, it was discovered C.B. had not seen a doctor since March 2018, five months after birth, and was behind on immunizations. Burk also learned of Mother's prior termination of parental rights. Mother did not go to Burk's office upon release from jail. On November 27, 2018, the Department filed abuse and neglect proceedings against the parents of C.B. in the Butte-Silver Bow County District Court. The Department sought temporary legal custody ("TLC") of C.B. with respect to Father.<sup>2</sup> With respect to Mother, the Department sought EPS, a determination that preservation or reunification services need not be provided, permanent legal custody ("PLC"), and termination of Mother's parental rights.<sup>3</sup> The Department explained in its petitions that it had reason to believe C.B. was a youth in danger of abuse or neglect based on an affidavit of Burk, detailing Mother's ongoing methamphetamine use, incarceration of both parents, and condition of the home.

¶8 On November 28, 2018, the court granted EPS and set a show cause hearing for December 12, 2018, for both parents. In its Order to Show Cause, Order Granting EPS, and Notice of Show Cause Hearing for Mother, the court noted that it had sufficient reason to believe C.B. was in immediate and apparent danger of harm, requiring removal and placement in a protective setting, and there was probable cause to believe C.B. was abused or neglected, or in danger of being abused or neglected, requiring immediate

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<sup>2</sup> Because Father did not have a prior history with the Department, the Department sought only emergency protective services ("EPS"), adjudication of C.B. as a youth in need of care ("YINC"), and TLC to give him a chance to work on his treatment plan.

<sup>3</sup> The Department requested a determination that preservation or reunification services need not be provided to Mother, pursuant to § 41-3-423(2), MCA, because mother failed prior treatment plans and had her parental rights terminated to her other four children.

protection. The order further required Mother to immediately comply with its terms and appear before the court on December 12, 2018, or risk being held in contempt or having C.B. placed in TLC with the Department.

¶9 Prior to the December 18, 2018 show cause hearing, Father was served but Mother was not. At the hearing, counsel for the Department noted that the hearing would only involve Father and clarified that a different pleading had been filed against Mother. Burk testified about the circumstances of the intervention, including the fact that both parents were arrested and had continued use of methamphetamine. On December 18, 2018, the court issued an order continuing EPS, adjudicating C.B. as a YINC, granted TLC to the Department for a period not to exceed six months, and set a treatment plan hearing for Father. The court determined that C.B. was abused or neglected based on the parents' drug use, the condition of the home, and incarceration of both Mother and Father. Further, the court concluded that returning C.B. to the home created an unreasonable risk of harm.

¶10 Finally, on January 3, 2019, Mother was served with notice of the December 2018 show cause hearing. The notice explained that the Department sought PLC and termination of Mother's parental rights. In addition, Mother was provided with an affidavit of Burk supporting EPS and a determination that preservation or reunification services need not be provided. The petition for termination of parental rights/PLC sought by the Department was attached, as was the order to show cause and the order granting EPS. Burk spoke to Mother the day she was served with the petition and they discussed

the fact that the Department was requesting that the court need not determine reunification efforts, and that Mother's parental rights to one of her children had been terminated in the same fashion. On January 24, 2019, The Department filed a request for hearing on the petition. The court set a hearing date for February 20, 2019. On January 25, 2019, Mother's attorney was served with notice of the hearing.

¶11 On February 20, 2019, Mother, represented by counsel, attended the hearing and was granted a two-week continuance to March 6, 2019, without objection. At the hearing, Mother asked Burk if she could participate in random urinalysis testing, which the Department chose not to implement given the pending petition. Mother did not appear for the March 6, 2019 hearing and Mother's counsel reported that she had not been in recent contact with Mother. The Department provided certified copies of the termination orders for Mother's other four children. Burk testified that Mother missed at least two office visits and did not contact her after Mother's release from jail.<sup>4</sup> According to Burk, the conditions and circumstances that caused the termination of Mother's parental rights to her other four children had not changed. The District Court granted the Department's petition and awarded legal custody of C.B. to the Department.

¶12 On March 7, 2019, the District Court issued a Findings of Fact, Conclusions of Law and Order continuing EPS, determining preservation or reunification services were not required, terminating Mother's parental rights of C.B., and granting PLC to the Department. In its order, the District Court stated that Mother's prior terminations

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<sup>4</sup> Mother had not had visitation with C.B. since the Department assumed custody, nor had she requested visitation prior to the March 6, 2019 hearing.

created significant concerns regarding her drug use and ability to parent, and thus the circumstances surrounding her past terminations were relevant to her ability to adequately care for C.B. Mother appeals.

### **STANDARDS OF REVIEW**

¶13 This Court reviews a district court's termination of parental rights for an abuse of discretion. *In re J.W.*, 2013 MT 201, ¶ 25, 371 Mont. 98, 307 P.3d 274. We review a district court's conclusion of law for correctness and findings of fact to determine if they are clearly erroneous. *In re D.B.J.*, 2012 MT 220, ¶ 23, 366 Mont. 320, 286 P.3d 1201. A factual finding is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if a review of the record leaves this Court with a definite and firm conviction that a mistake has been made. *In re D.A.*, 2008 MT 247, ¶ 17, 344 Mont. 513, 189 P.3d 631. We view the evidence in the light most favorable to the prevailing party when determining whether substantial credible evidence supports the district court's findings. *In re J.B.*, 2016 MT 68, ¶ 10, 383 Mont. 48, 368 P.3d 715. Whether a district court violated a parent's right to due process in a termination proceeding is a question of constitutional law subject to plenary review. *In re T.S.B.*, 2008 MT 23, ¶ 20, 341 Mont. 204, 177 P.3d 429.

### **DISCUSSION**

¶14 As a threshold matter, we address the State's argument that Mother's due process claims were waived and not preserved for consideration on appeal. Generally, this Court will not address an issue presented for the first time on appeal. *In re M.A.L.*, 2006 MT

299, ¶ 55, 334 Mont. 436, 148 P.3d 606. However, this Court may invoke the plain error doctrine to enable those limited situations where the failure to review the claimed error may result in a manifest miscarriage of justice or compromise the integrity of the judicial process. *In re D.A.*, ¶ 33. Plain error review is discretionary and may be granted where an appellant demonstrates: (1) the asserted error implicates a fundamental right, and (2) not reviewing the asserted error may result in a manifest miscarriage of justice, leave unsettled the question of fundamental fairness of the proceedings, or compromise the integrity of the judicial process. *In re B.J.J.*, 2019 MT 129, ¶ 27, 396 Mont. 108, 443 P.3d 488.

¶15 The right to parent a child is a fundamental liberty interest and it must be protected by fundamentally fair procedures. *In re D.A.*, ¶ 18. Given the issues Mother raises here, declining to review Mother's due process claims risks a manifest miscarriage of justice by depriving her of a fundamentally fair termination proceeding. We turn to Mother's substantive arguments.

¶16 *Issue One: Whether Mother was afforded fundamentally fair procedures comporting with her constitutional due process rights when the District Court terminated her parental rights to C.B.*

¶17 Mother asserts that her due process rights were violated because: (1) the court's February 2019 hearing was held outside of the statutory timeframe permitted by § 41-3-432, MCA; (2) Mother was only on notice that failure to comply with the show cause order could result in contempt court or placing C.B. in TLC of the Department and not termination of her parental rights; (3) the court improperly conducted termination



proceedings at the show cause hearing, to which she was not notified; (4) the court failed to determine C.B. was abused or neglected prior to commencing termination proceedings; and (5) the Department failed to provide reasonable efforts to avoid removing C.B. such that the District Court abused its discretion in ordering that the Department need not provide preservation or reunification efforts to Mother.

¶18 The key components comprising fundamentally fair proceedings are notice and an opportunity to be heard. *In re T.C.*, 2001 MT 264, ¶ 22, 307 Mont. 244, 37 P.3d 70. Termination procedures must comport with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *In re C.J.*, 2010 MT 179, ¶ 26, 357 Mont. 219, 237 P.3d 1282. Due process is not a fixed concept but a flexible doctrine which must be tailored to each situation to meet the needs and protect the interests of the parties involved. *In re B.P.*, 2001 MT 219, ¶ 31, 306 Mont. 430, 35 P.3d 291. Therefore, when the State seeks to terminate a parent's interest in the care and custody of his or her child, the guiding due process principle requires that the parent not be placed at an unfair disadvantage during the termination proceedings. *In re A.S.*, 2004 MT 62, ¶ 12, 320 Mont. 268, 87 P.3d 408. For a parent to establish a claim for violation of due process, he or she must demonstrate how the outcome would have been different had the alleged due process violation not occurred. *In re B.J.J.*, 2019 MT 129, ¶ 13, 396 Mont. 108, 443 P.3d 488.

¶19 Mother first argues that the show cause hearing was held outside the statutory timeframe permitted by § 41-3-432, MCA, in contravention of her due process rights.<sup>5</sup> Section 41-3-432(1)(a), MCA, provides in pertinent part, “Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties . . . or unless an extension of time is granted by the court.” At the show cause hearing, if parents stipulate or do not sufficiently refute the allegations establishing probable cause that the child is abused or neglected or in danger of abuse or neglect, the court will continue EPS and at least grant the Department temporary investigative authority for a period of up to 90 days. Sections 41-3-432(2), -433, MCA. Beyond seeking temporary investigative authority, however, a youth may also be adjudicated as a YINC at an initial hearing. Section 41-3-432(9), MCA. Further, although § 41-3-432(1)(a), MCA, requires commencement of a show cause hearing within the statute’s 20-day time limit, the statute also allows for the determination of issues in a

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<sup>5</sup> Additionally, Mother attempts to characterize C.B.’s adjudication as a YINC at the December 12, 2018 hearing as applying only “as to Father,” arguing that for this Court to hold otherwise constitutes a violation of her due process rights. Undeniably, at the December 12, 2018 hearing, counsel for the Department noted that “this hearing on temporary legal custody today will only involve the birth father” and “The birth mother has yet to be served.” Nonetheless, in its December 18, 2018 order, the District Court determined there was sufficient evidence in the record to adjudicate C.B. as a YINC. We note that this Court has held that a child is not determined to be a YINC “as to” anyone, but rather, is adjudicated as such because he or she is being or has been abused, neglected, or abandoned. *In re K.B.*, 2016 MT 73, ¶ 19, 383 Mont. 85, 368 P.3d 722. Further, even assuming that C.B. was determined to be a YINC only as to Father, prior to an involuntary termination, as is the case as to Mother, the court need not determine a child is a YINC, but only that the child has been abused or neglected. *In re K.J.B.*, 2007 MT 216, ¶ 31, 339 Mont. 28, 168 P.3d 629. The District Court determined C.B. was “abused or neglected” in both orders to show cause. Under these facts, the District Court’s adjudication of C.B. as a YINC at the December 12, 2018 hearing had no bearing as to whether Mother was deprived of her due process rights.

show cause hearing to go beyond that time limit and occur in later hearings pursuant to such a finding by the court. *In re D.B.J.*, ¶ 43.

¶20 Here, it was proper for the District Court to extend the show cause hearing as to Mother beyond the 20-day time limit allowed by statute. The Department's initial petitions, filed November 27, 2018, specifically requested EPS and adjudication of C.B. as a YINC. The Court set the show cause hearing for December 12, 2018, well within 20 days as required by statute, and conducted the hearing following service on Father. Following service on Mother, the Department filed a second motion for hearing as to Mother, and the court issued an order for a show cause and termination hearing. The court's show cause extension as to Mother was clearly contemplated by § 41-3-432(1)(a), MCA, and it did not serve to prejudice her due process rights to notice and an opportunity to be heard. *See In re D.B.J.*, ¶¶ 43-44.

¶21 Next, Mother asserts that the show cause order, statute, and notices provided to her by the Department and the court did not afford proper notice that her parental rights could be terminated at the show cause hearing. Instead, Mother argues that she was only notified that during the show cause hearing, the court would explain the procedures to be followed in the case and the parties' rights.

¶22 Indeed, Mother is correct in her assertion that in the court's show cause order, the language provides that upon Mother's failure to comply, she may be held in contempt of court or the Department may be granted TLC of C.B. Mother, however, opportunely ignores the additional notice provided to her that her parental rights were at risk of being

terminated at the show cause hearing. On January 3, 2019, Mother was served with the Department's petition for PLC and termination of parental rights. Burk spoke to Mother the day she was served with the petition and they discussed the fact that the Department was requesting that the court conclude that reunification efforts need to be provided to her. The District Court subsequently issued an order setting hearing on the Department's petition for February 20, 2019, of which Mother was served, providing that the Department sought termination of her parental rights, PLC, and that preservation or reunification services need not be provided. Mother appeared at this hearing, represented by counsel, and was granted a continuance. The District Court reset the matter to occur in open court on March 6, 2019. Mother did not appear on this date. Mother's personal appearance at the February 20, 2019 hearing, combined with service of the petition and order, indicate Mother had full notice that the court intended to hear the petition to terminate her parental rights on March 6, 2019. Mother was afforded notice and an opportunity to challenge the Department's petition. The District Court cannot be held accountable for Mother's failure to appear.

¶23 Mother also asserts that the District Court deprived her of fundamentally fair procedures when it consolidated the show cause and termination hearings. Contrary to Mother's arguments, there is no requirement that a show cause hearing precede a termination hearing. Section 41-3-422(1)(a), MCA, provides that an abuse and neglect petition may request certain relief including EPS, temporary investigative authority, TLC, termination of parental rights, or a determination that reunification services are not

required. *In re L.N.*, 2014 MT 187, ¶ 15, 375 Mont. 480, 329 P.3d 598. Further, a petition may request any combination of relief “or any other relief that may be required for the best interest of the child.” Section 41-3-422(1)(a)(viii), MCA. Thus, a petition for termination of parental rights may be the initial petition filed if the petition also requests a determination that reunification services are not required. *In re L.N.*, ¶ 15 (citing § 41-3-422(1)(d), MCA). While the “majority” of termination proceedings do not proceed this way, such a procedure is clearly contemplated by § 41-3-422, MCA.

¶24 As already noted, the Department combined its petitions for EPS, determination that preservation or reunification efforts need not be provided, and termination of Mother’s parental rights. Additionally, the Department provided notice of its intent to terminate Mother’s parental rights when she was served on January 3, 2019. The court issued an order setting hearing on the Department’s combined petitions. Mother appeared on February 20, 2019, at the initial hearing on the combined petitions. The court granted Mother’s continuance, on the record and in her presence, to have additional time to prepare, and set a date of March 6, 2019. Mother had notice that the Department sought termination of her parental rights and a full opportunity to appear, present evidence, and refute the Department’s evidence against her in open court at the March 2019 hearing. Mother chose not to attend. Because Mother had notice and an opportunity to be heard, the District Court’s consolidation of the show cause and termination proceedings did not deny Mother her right to due process.

¶25 Next, Mother argues that her due process rights were violated when the District Court failed to determine C.B. to be “abused or neglected” prior to commencing termination proceedings. Sections 41-3-601 through 612, MCA, provide the procedures and criteria by which the parent-child relationship may be terminated. *In re K.J.B.*, ¶ 25. These provisions are only operative when there has first been a determination that a child has been “abused or neglected,” as defined in § 41-3-102, MCA. *In re T.S.B.*, ¶ 24. “Child abuse or neglect” is defined as “(i) actual physical or psychological harm to the child; (ii) substantial risk of physical or psychological harm to a child; or (iii) abandonment.” Section 41-3-102(7)(a)(i)-(iii), MCA. The threshold consideration, therefore, is whether the child constitutes a YINC. *In re J.C.*, 2008 MT 127, ¶ 39, 343 Mont. 30, 183 P.3d 22. An involuntary termination, however, under §§ 41-3-609(1)(d) and -423(2)(e), MCA, does not require that the child be adjudicated as a YINC, only that it be determined the child was abused or neglected. *In re K.J.B.*, ¶ 31.

¶26 Prior to entering an order terminating parental rights, a district court must adequately address each applicable statutory criterion and the party seeking termination of parental rights must present clear and convincing evidence to the district court that the applicable statutory criteria have been met. *In re T.S.*, 2013 MT 274, ¶ 22, 372 Mont. 79, 310 P.3d 538 (citing *In re M.T.*, 2002 MT 174, ¶¶ 24, 26, 310 Mont. 506, 51 P.3d 1141); *see also In re J.W.*, 2013 MT 201, ¶ 26, 371 Mont. 98, 307 P.3d 274 (“If a child is ‘abused or neglected,’ the court is authorized to terminate the parent-child relationship if it finds that any of the criteria enumerated in § 41-3-609(1), MCA, exist.”). Section

41-3-609(1)(d), MCA, permits the termination of the parent-child relationship when “the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through 2(e).” Section 41-3-423(2)(e), MCA, in turn permits termination when the parent has “had parental rights to the child’s sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent’s ability to adequately care for the child at issue.”

¶27 In both orders to show cause, the District Court determined C.B. was abused or neglected or in danger of being abused or neglected based on Burk’s affidavits. Further, in its December 18, 2018 order continuing EPS, the District Court adjudicated C.B. as a YINC. The District Court relied on specific facts related to how parents’ actions put C.B. at risk for abuse and neglect, including parents’ arrests, inability to provide care to C.B. during incarceration, parents’ methamphetamine use, and the condition of the home. Additionally, the court considered the fact that Mother’s involuntary terminations of her other children were based on similar circumstances involving her abuse of drugs and inability to parent. Accordingly, the District Court properly determined C.B. to be “abused or neglected” prior to terminating Mother’s parental rights.

¶28 Finally, Mother argues that the Department failed to provide reasonable efforts to avoid removing C.B. and failed to provide any efforts for four months thereafter, thus depriving her of her due process rights. Consequently, Mother asserts that the District Court erred in determining that the Department need not provide preservation or reunification efforts.

¶29 Typically, before seeking termination of parental rights, the Department must make “reasonable efforts” to remedy the parenting problems that prompted its intervention so as to preserve and reunify the family. Section 41-3-423(1), MCA; *In re J.W.*, ¶ 27. However, § 41-3-423(2)(e), MCA, exempts the Department from providing these services if the parent has had parental rights to the child’s sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights, supported by clear and convincing evidence, are relevant to the parent’s ability to adequately care for the child at issue. Section 41-3-423(2)(e), (4), MCA. Additionally, the statute does not provide a timeline for a hearing on a “reasonable efforts” motion or a decision by the court. *In re C.J.*, ¶ 25.

¶30 Mother’s argument ignores the fact that there were no additional efforts the Department could have implemented to prevent C.B.’s emergency placement given Mother’s incarceration. Further, Mother had notice of the Department’s intent to seek termination of her parental rights and that reunification services need not be provided based on service of the Department’s petition, the District Court’s December 18, 2018 order, and her attendance at the February hearing. Finally, as we have explained, the Department was exempt from providing “reasonable efforts” at reunification because there was clear and convincing evidence that Mother continued to abuse drugs such that her past involuntary terminations were relevant to her ability to adequately care for C.B. The District Court did not err in determining that the Department need not provide preservation or reunification efforts to Mother.



¶31 For the reasons stated, Mother was provided with notice and an opportunity to be heard such that she received the benefit of fundamentally fair procedures prior to termination of her parental rights. The District Court did not violate Mother's right to due process prior to terminating her parental rights to C.B.

¶32 *Issue Two: Whether the District Court abused its discretion by terminating Mother's parental rights following its determination that circumstances surrounding Mother's prior terminations of her parental rights were relevant to her parenting of C.B.*

¶33 Mother next argues that the District Court abused its discretion when it terminated her parental rights by finding by clear and convincing evidence that the circumstances related to the termination of Mother's rights to her other children were relevant to her ability to care for C.B. We disagree.

¶34 The court may determine that the Department need not make further preservation or reunification efforts if it finds that the parent has had parental rights to the child's siblings or other child of the parent involuntarily terminated, and the circumstances surrounding the prior termination are "relevant" to the current termination proceeding. Section 41-3-423(2)(e), MCA; *In re A.H.D.*, 2008 MT 57, ¶ 21, 341 Mont. 494, 178 P.3d 131. Circumstances of a prior termination continue to be relevant in a later termination of a sibling under §§ 41-3-609(1)(d) and -423(2)(e), MCA, unless the circumstances have changed. *In re K.J.B.*, ¶¶ 34-36.

¶35 Mother's parental rights to four of her children were involuntarily terminated on two separate occasions, both of which stemmed from ongoing substance abuse issues and inability to care for her children. Clearly, these prior terminations are relevant here.

Although C.B. did not test positive for illegal drugs at birth, Mother tested positive for THC. At the time of removal, Mother told Burk that she continued to use methamphetamine. Mother let dangerous drugs into the home, as evidenced by the needle on the television stand. The District Court's decision to terminate Mother's parental rights was supported by substantial and credible evidence in the record, indicating that Mother's circumstances remained unchanged following her prior terminations. Reviewing the evidence in the light most favorable to the Department, we hold that the District Court did not abuse its discretion in terminating Mother's parental rights.

### **CONCLUSION**

¶36 Prior to terminating Mother's parental rights to C.B., the District Court provided Mother with notice and an opportunity to be heard in support of her due process rights. The time between the Department's filing of the initial petition and the termination hearing, the consolidation of the show cause hearing with the termination proceeding, and the Department's decision to not provide reasonable efforts to avoid removing C.B. prior to termination did not violate Mother's right to due process. Further, the District Court determined that C.B. was "abused or neglected" prior to terminating these rights. There was substantial and credible evidence in the record to support the District Court's finding that Mother's circumstances remained unchanged following her prior terminations. The District Court did not abuse its discretion in terminating Mother's parental rights to C.B.

¶37 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE