

DA 21-0289

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 27

IN THE MATTER OF:

C.K.,

A Youth in Need of Care.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDN 18-179
Honorable Elizabeth Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Kelly M. Driscoll, Driscoll Hathaway Law Group, Missoula, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Jonathan M. Krauss, Assistant
Attorney General, Helena, Montana

Joshua A. Racki, Cascade County Attorney, Valarie Winfield, Deputy
County Attorney, Great Falls, Montana

Submitted on Briefs: December 15, 2021

Decided: February 8, 2022

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 A.M. (Mother) appeals from the May 17, 2021 Order from the Eighth Judicial District Court, Cascade County, terminating her parental rights to her son, C.K. (Child).

We restate the issues on appeal:

1. Whether the District Court abused its discretion when it failed to amend Mother’s treatment plan;

2. Whether the District Court abused its discretion when it determined Mother was unlikely to change within a reasonable time.

¶2 We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶3 Mother appeals from the order terminating her parental rights to Child.¹ The Department of Public Health and Human Services, Child and Family Services Division, (the “Department”) removed Child from Mother’s care on May 25, 2018. The Department became involved with the family due to concerns of physical neglect. Child protection specialist (CPS) Casey Jones alleged in the affidavit accompanying the petition for protective custody that Mother was using and selling methamphetamine in front of Child and engaging in sexual acts with a registered sex offender in front of Child.

¶4 The Department filed its Petition for Emergency Protective Services, Adjudication as a Youth in Need of Care, and Temporary Legal Custody on May 31, 2018. After a continuance, the District Court held a show cause hearing on the petition on July 26, 2018.

¹ The parental rights of R.K., the birthfather of Child, were terminated in the same order. Father did not appeal the termination of his parental rights. We discuss only the facts relevant to Mother.

Mother was present at the hearing. Mother stipulated to adjudication of Child as a Youth in Need of Care (YINC) and Temporary Legal Custody (TLC). The court adjudicated Child a YINC and granted TLC to the Department based on Mother's stipulation and the allegations in the affidavit. The court concluded Child was subjected to physical neglect based on Mother's "substance abuse, lack of protective capacities, exposure to inappropriate caregivers, and inability to meet the Youth's basic needs."

¶5 Mother signed and the District Court approved a treatment plan for Mother at a hearing on August 16, 2018. The stated goals and objectives of the treatment plan included "assess[ing] the strengths, needs, and concerns of the family"; assisting Mother "in acquiring the necessary skills to provide for her child's [sic] safety, permanency, and well-being"; providing the Department "with the necessary information to determine whether it will be safe for the child to be returned"; and achieving "long-term change and . . . lasting stability so that further intervention by the [Department] is no longer needed." The treatment plan required Mother to "complete a chemical dependency evaluation with a provider approved by the Department, and follow the recommendations of the evaluator," to "enroll with a parenting program approved by the Department," and enroll with and attend all scheduled appointments "with a family based service provider approved by the Department, when the child is within two weeks of being returned to the home." The plan required her to follow the "directions and recommendations for reunification" from the family-based service provider. The plan required Mother to attend all supervised visits with Child, and "follow all recommendations of the supervision specialist." In addition,

the plan required Mother to apply for Medicaid, sign releases of information for the Department, and maintain regular contact with the Department. At the time of the August 16, 2018 hearing, Mother reported she was attending AA meetings and was enrolled in parenting classes at Better Beginnings.

¶6 The court held a status hearing on November 15, 2018. Mother was present for the hearing. Counsel for the Department advised the court Mother was working on her treatment plan. She explained Mother had completed a chemical dependency evaluation through Gateway, was scheduled for a mental health evaluation through the Center for Mental Health, and was on the drug patch. Counsel also informed the court Child was in foster care and engaged in speech, physical, and occupational therapy services and was scheduled to be evaluated for autism. Child had recently had surgery and was fitted for ear tubes and was thriving in his foster placement. Counsel for the Department asked for the status of the case to be maintained and stated Mother “should just coordinate with the Department to make sure that she’s current and talking with all of [Child’s] providers. And certainly, she can attend meetings if that’s feasible for her. It’s good for her to be engaged with all of [Child’s] providers, so that she knows what they know.” The District Court commended Mother on her engagement and hard work.

¶7 On February 8, 2019, the Department filed its first of five motions to extend TLC in this case. In her affidavit, CPS Amanda Big Head reported Mother continued to be engaged in services and was regularly attending visitation with Child but needed more time to complete the treatment plan. She noted the Department needed to make a referral to

“appropriate parenting classes.” The District Court held a hearing on the motion to extend TLC on February 14, 2019. Mother was present at the hearing. When asked whether things were going well, CPS Big Head informed the court Mother’s drug patch continued to test positive for marijuana. The court encouraged Mother to abstain from marijuana use and commended her progress otherwise. The court extended TLC for six months.

¶8 The court held a status hearing on May 16, 2019. New counsel appeared for Mother and transcripts from the hearing state Mother was not present at the hearing. Counsel for the Department updated the court Mother continued to be engaged with services, was working with Misfits for chemical dependency, working fulltime, and maintained good contact with CPS Big Head. Child underwent testing for autism, but the Department did not have the results yet to report to the court. Child continued to attend weekly speech and physical therapy appointments.

¶9 The Department filed a Motion for Permanency Plan Hearing and Notice of Permanency Plan Report on May 23, 2019. In the supporting affidavit, CPS Big Head reported Mother was engaged in services, worked fulltime, had completed her chemical dependency evaluation, and was attending visitation with Child. The Department proposed reunification with Mother as the permanency plan. At the hearing on the proposed permanency plan on June 20, 2019, the Department told the District Court Mother was engaged in services and visits, but still needed to follow the recommendations made in her January 2019 chemical dependency evaluation. Mother was not present at the hearing. The District Court approved the permanency plan of reunification with Mother.

¶10 The Department filed its second Motion to Extend TLC on August 8, 2019. In the accompanying affidavit, CPS Big Head attested Mother had engaged with Misfits in April 2019, maintained contact with the Department, and attended weekly visits with Child. CPS Big Head further attested since the last motion to extend TLC, Mother had a positive test for methamphetamine from a drug patch. She further noted Mother still needed to complete a parenting class and the Department “will make referrals to appropriate parenting classes” but did not mention whether the Department had made any referrals for Mother. In her update on the status of Child, CPS Big Head attested testing had confirmed Child had autism in May 2019.

¶11 The court scheduled a hearing on the motion for August 15, 2019. Mother was present, but her counsel failed to attend. The Department advised the court Mother’s attorney, who had taken over the case in May 2019, was not in good contact with Mother, but Mother was in good contact with the Department. The court continued the hearing to September 19, 2019. Mother was not present at the rescheduled hearing, but her new counsel was present. The Department told the court after her chemical dependency evaluation in January, Mother did not engage in recommended treatment until April 25. She then attended sessions in May but stopped attending in June. She had a positive drug patch in June. The Department also told the court Mother had not completed parenting education, but she was regularly attending visits and maintaining good communication with the Department. The Department did not explain whether it had referred Mother to parenting education classes at this point. Child continued to receive services through

Benchmark and attend occupational and speech therapy. Mother's counsel did not object to an extension of TLC. The court extended TLC for an additional six months.

¶12 On November 18, 2019, an updated chemical dependency evaluation for Mother was filed with the court. It did not recommend further chemical dependency treatment but did recommend Mother seek a mental health evaluation. The court held a status hearing on December 19, 2019. Mother was not present. The Department informed the court Mother was engaged in services, working with Gateway, and was living in her own apartment and had a fulltime job. Child continued to attend weekly speech and physical therapy and receive services through Benchmark. Mother's counsel informed the court he had nothing to add and the only time he had met Mother was at the status hearing in May 2019.²

¶13 The Department filed its third Motion to extend TLC on March 6, 2020. In the accompanying affidavit, CPS Big Head reported Mother had an updated chemical dependency evaluation in November 2019 and it did not recommend further treatment. CPS Big Head further reported Mother was engaged in wearing the drug patch and was testing negative for substances. Mother had engaged in parenting services with Safe Care, was attending twice weekly visits with Child, and maintained contact with the Department. CPS Big Head noted Mother would need to start attending Child's various appointments so the services could be maintained upon reunification. The court held a hearing on the

² The transcript from the May 2019 hearing indicated Mother was not in attendance at that hearing.

motion on March 12, 2020. Mother was present at the hearing. CPS Big Head informed the court Mother was engaged at this time and the Department was going to start working with Mother to schedule some unsupervised visits and have her go to some of Child's various therapy appointments. Mother's counsel stated he had nothing to add. A few days before the hearing, Corrie Dorrington was assigned as a Guardian Ad Litam (GAL) to the case. In that time, she reviewed the file and met with Child. She explained to the court when you meet Child, it is immediately obvious he has many special needs. She explained to the court Child has a great deal of trouble with transitions and needs a structured and consistent environment and a great deal of one-on-one supervision to maintain his safety and the safety of those around him. She informed the court the case had been ongoing for twenty-two months and the Foster Care Review Board recommended termination of Mother's parental rights. The Court thanked Dorrington for the information but extended TLC, stating "[i]t sounds like there's a lot of work for everyone involved. This is a very challenging situation for everyone involved," and admonished Mother to keep in contact with CPS Big Head. The court extended TLC for six months.

¶14 The Department filed a Notice of Permanency Plan on June 9, 2020. CPS Charles Asmus had taken over as the assigned CPS and prepared the report for the court. CPS Asmus informed the court reunification with Mother remained the most viable option. CPS Asmus reported Mother engaged with her providers and maintained sobriety. He emphasized the importance of connecting Mother to Child's providers, writing "[a]n important part of the reunification process will be ensuring that the parents are educated on

[Child's] needs and have the right tools to support their son.” The District Court held a combined status and permanency plan hearing on June 11, 2020. Mother was present. The Department informed the court Child has autism and exhibits significant deficits in mobility, cognitive functioning, speech, and social-relational functioning. The services and supports Child had received in foster care “allowed him to surpass what his initial prognosis was.” The Department informed the court Mother had done well addressing her personal issues under the treatment plan. The Department’s main concern now was Mother’s need for “psychoeducation and all those tools” to meet Child’s significant needs, “[a]nd this is an important component that is laid out in the treatment plan.” The Department informed the court it would be working on establishing consistent relationships between Mother and Child’s providers and making sure she applies what she learns. Mother’s counsel informed the court he was in contact with Mother on and off and had nothing to add. The court commended Mother and encouraged her to keep going. GAL Dorrington then asked to speak and informed the court she disagreed with the assessment presented so far, but instead concurred with the Foster Care Review Board’s recommendation for termination of parental rights, “[m]ainly in part due to the length of the case” and “the fact that there has been a considerable lack of parental involvement.” She noted since the stay-at-home order in March 2020, Mother had not taken any initiative to inquire into Child’s well-being. She did not initiate contact with Child’s daycare providers, any of Child’s therapists, or the foster parents. In the past two months, Mother had only two video calls with Child, and both were initiated by the foster parents. Mother

did attend an educational meeting. Dorrington explained in-person visitation had restarted last week, but during in-person visits Mother was not engaged with Child and does not know how to proceed when Child becomes frustrated and difficult to control, which happens frequently. Mother responded she did not know she could go to Child's therapy appointments until January 2020, and she was not able to do much after COVID-19 started. She stated she plans to call Child's therapist and she is working with someone from Safe Care, who "is supposed to be my parenting class. And they also work with children with autism and are supposed to be helping me with those frustrations. So I am trying—." The District Court approved the permanency plan for reunification.

¶15 The Department filed its fourth motion to extend TLC on September 1, 2020. The accompanying affidavit informed the court Mother suffered a relapse and had tested positive for methamphetamine twice in July 2020. The Department had referred Mother to a relapse prevention program through Benefis. The court held a hearing on the motion on September 10, 2020. Mother did not attend the hearing. The Department informed the court Mother had not completed her treatment plan. The Department reiterated Child's substantial needs and services. Mother's counsel informed the court he had not heard from his client "in quite some time" and had no grounds to object to an extension of TLC. GAL Dorrington expressed her concern the case had been ongoing for twenty-eight months and Mother had tested positive for methamphetamine recently on two different occasions. She informed the court the Foster Care Review Committee once again voted to recommend the

termination of Mother's parental rights. The District Court extended TLC for an additional six months.

¶16 The District Court held a status hearing on December 10, 2020. Mother was present. Mother's counsel reported Mother had not been compliant with the treatment plan but was motivated to do so. The District Court found Mother was "minimally engaged and ha[d] not made substantial progress despite the length of time the case has been pending. The Youth has special needs and requires a dedicated and motivated caregiver to thrive."

¶17 The Department filed a Petition for Termination of Parental Rights on February 22, 2021, thirty-three months after Child had been removed from Mother's care. The Department sought to terminate Mother's parental rights pursuant to § 41-3-609(1)(f), MCA, alleging Mother failed to complete her court-ordered treatment plan, had not addressed the concerns that led to the Department's involvement, had not demonstrated she was able to safely parent Child, and had not demonstrated this situation was likely to change in the near future. The Department alleged Mother had not demonstrated ongoing sobriety due to her relapse in the summer of 2020 and she had not maintained contact with Child's providers. CPS Christa Waliezer, who took over the case in late October 2020, wrote the accompanying affidavit. She asserted Mother struggled with motivation, did not follow a potty-training schedule, gave Child snacks while he played video games, and avoided discipline. She further attested Child's therapists asked Mother to stop attending Child's physical and occupational therapy appointments because she did not follow

providers' instructions and her presence was counterproductive. CPS Waliezer also attested Mother was minimally involved in her relapse prevention program at Benefis.

¶18 The Department filed its final motion to extend TLC on March 12, 2021. The District Court held a hearing on the motion on March 18, 2021. Mother was present via Zoom. The Department advised it had offered every service it could contemplate to engage Mother. The Department explained Child has multiple challenges and the Department had not seen sufficient progress or engagement from Mother during the almost three years the case had been open. Mother's counsel told the court he had sporadic contact with Mother and had no grounds to object to the extension of TLC. The court extended TLC for six months.

¶19 GAL Dorrington filed a report with the District Court on March 24, 2021, recommending Mother's parental rights be terminated. Dorrington explained Mother had not completed her treatment plan and "continues to rely on others to tell her what to do, showing little personal motivation, initiative, or consistency." Dorrington opined Mother lacked the ability to care for the ongoing physical, mental, and emotional needs of Child. Dorrington emphasized Child's need for permanency and "worr[ied] that [Mother] is not taking this process seriously."

¶20 The District Court held termination hearings on April 1 and May 6, 2021. Mother was present via Zoom at both hearings. Mother's counsel opened the April 1, 2021 hearing with a request for a continuance. He told the court he had "a chance to meet with my client this morning" and she opposed termination. Counsel represented he learned from his

conversation with Mother that morning she was receiving services from RE Family Services and Youth Dynamics, Inc. (YDI) and he needed time to get documentation from those service providers. Mother's counsel stated he "did not know that there were providers still working with her" until he received the report from GAL Dorrington. He told the court he only had what was in the Department's petition and objected to anything outside of the petition because he was not prepared to address it. He objected to the Department's subpoenaed witnesses from RE Family Services and YDI. The Department related it had provided extensive discovery to Mother's counsel and he should have more than the petition for termination. The District Court granted the continuance.

¶21 On April 28, 2021, Mother's counsel filed a Motion to Continue & Amend Treatment Plan & Memorandum in Support. The Motion asked the District Court to amend Mother's treatment plan to include parenting education and services particularly tailored to parenting a child with autism. Mother contended the original treatment plan was developed and approved before Child's diagnosis and therefore did not include services to address Child's significant needs. In support, counsel attached visitation notes from visitation coaches, which noted Mother would benefit from assistance with parenting skills for a child with autism. Mother contended she was not given any parenting material or assistance concerning parenting a child with autism during her supervised visitation. Mother requested the termination hearing be vacated and her treatment plan be amended to include services specifically tailored to Child's diagnosis.

¶22 The Department did not file a written response to the motion but addressed the motion at the beginning of the May 6, 2021 hearing. CPS Waliezer testified on behalf of the Department. She explained the Department did not believe the treatment plan needed to be amended. She opined the treatment plan required Mother to follow the recommendations of her providers and “[f]ollowing their recommendations still keeps it within the treatment plan.” CPS Waliezer explained the expectation of the Department is when a treatment plan requires parents to follow the recommendations of their chemical dependency providers, the parent will follow those recommendations even if they are not related to chemical dependency. CPS Waliezer went through Mother’s chemical dependency treatment history. She explained Mother was referred first to Misfits and she completed a chemical dependency evaluation in January 2019, which referred her to further chemical dependency treatment. Mother engaged with treatment in roughly March of 2019 and then disengaged in June 2019. The Department then referred her to Gateway in November 2019. She completed another chemical dependency evaluation at that time, which did not recommend further chemical dependency treatment but did recommend she engage in mental health services. Mother was referred to Benefis for a chemical dependency evaluation in August 2020, which recommended further chemical dependency treatment and mental health services. She did not engage with recommended chemical dependency treatment until January 2021. After the Gateway recommendation, the Department referred Mother first to Alluvion and then to Enlightening Minds to complete a mental health evaluation, but Mother did not engage with either of those services until

two days before the May 6 termination hearing. Turning to the parenting component of the treatment plan, CPS Waliezer explained it is always the understanding when there is a parenting education component in a treatment plan, it is a requirement to engage in education appropriate for the needs of the specific child. When CPS Waliezer took over the case in October 2020, Mother was supposed to be engaged with Child's providers so she could understand how to respond to and meet Child's needs. She was set up with a Family Based Services (FBS) care manager through YDI, who tried to facilitate Mother in enrolling in autism-specific parenting classes through Big Sky Therapy. The Department referred Mother to parenting classes with Big Sky Therapy in September 2020. Mother worked with her FBS care manager but did not engage with Big Sky Therapy. CPS Waliezer explained she believed working with Big Sky Therapy for specialized classes fell within the existing parenting component of the treatment plan. CPS Waliezer explained Mother "struggle[s] with getting overwhelmed and shutting down and then not following through with most of her appointments." The Department had tried a variety of ways to address this issue but had not been successful. Mother depended on the CPS and the FBS care manager to keep up with the level of services to meet her own and Child's needs. CPS Waliezer believed the Department had identified the resources Mother and Child needed to complete the treatment plan and referred Mother to those resources. CPS Waliezer believed the resources and referrals already in place would help Mother if she were able to engage and be consistent. On cross-examination, CPS Waliezer explained Mother's current visitation coaches could not provide guidance specific to a Child with autism, and

that is why the Department referred Mother to Big Sky Therapy. The court denied Mother's motion to amend the treatment plan and her request for a continuance. The court determined the current treatment plan "covers what is being asked of [Mother], so I expect her to cooperate with the Department and work within the recommendations that are being made. They're obviously intended to help her parent and improve her relationship with her very challenging child."

¶23 The court then proceeded with the termination hearing. CPS Waliezer, YDI FBS care manager Chloe Blevins, and RE Family Services visitation coach Janet Hernandez testified for the Department during the termination hearing. Mother did not present any witnesses or testify on her own behalf. Blevins testified Mother started working with a FBS care manager in June 2020 and with Blevins in August 2020. Blevins worked with Mother on self-motivation and taking initiative to reach out to providers. As the goal was reunification with Child, Blevins worked with Mother on taking the steps necessary to be able to provide a safe home for Child and get her prepared for if she were reunified with Child, such as reaching out to providers. She would meet with Mother weekly to identify goals and articulate steps to attain them, but Mother would fail to follow through. They would then discuss different ways Mother could accomplish tasks, but Mother still did not follow through. During her time working with Mother, Mother did get into chemical dependency counseling at Benefis, finished a parenting class through Safe Care, which Blevins characterized as "a big accomplishment," and set up and had an appointment with a doctor to address pain management. Blevins stated Mother did not follow through with

finding new housing,³ engaging in mental health counseling,⁴ or setting up parenting classes through Big Sky Therapy.⁵

¶24 Hernandez was a visitation coach at RE Family Services from July through December 2020, where she supervised Mother's visits with Child twice a week. Hernandez explained RE Family Services visitation coaches do not provide parents with specific education related to dealing with children with autism. Hernandez believed Mother lacked motivation and follow through.

¶25 CPS Waliezer explained when she took over the case in October 2020, Mother had not engaged with mental health services and was struggling to set up those services. CPS Waliezer made a new referral for mental health services shortly after taking on Mother's case, but Mother did not engage with mental health services until two days before the termination hearing. Mother also had a rough start engaging with relapse prevention services after her chemical dependency evaluation in August 2020, but she did eventually engage in January 2021 and was making progress on that front. CPS Waliezer stated Mother was engaged with Child's providers off and on, but she had been more engaged in the past few months. Child attends occupational, physical, and speech therapy every week

³ Blevins explained finding new housing was one of the first goals they had set because Mother did not think her neighbors were safe. Mother struggled to make any progress on this goal, but the neighbors eventually moved out and Mother was no longer concerned about safety.

⁴ Blevins acknowledged Mother had gotten an appointment with a therapist set up very recently.

⁵ Blevins explained Mother had recently called Big Sky Therapy and left a message but had not followed up further.

and goes to school part-time with special educational services through Benchmark. CPS Waliezer told the court Child's physical therapist asked Mother not attend Child's physical therapy appointments because she was disruptive. CPS Waliezer believes if Mother had engaged with Big Sky Therapy, she would have had more productive visitation and she would have been able to respond to Child's behaviors like hitting, biting, and pinching. CPS Waliezer stated Mother had not completed her treatment plan and had not fully addressed the issues that led to Department involvement.

¶26 After the parties presented argument, the court acknowledged the progress Mother had made, especially on chemical dependency, but ultimately terminated Mother's parental rights. The District Court issued its Order terminating Mother's parental rights to Child on May 17, 2021. The District Court terminated Mother's parental rights pursuant to § 41-3-609(1)(f), MCA, concluding Child had been adjudicated as a YINC, an appropriate treatment plan was approved by the court and Mother had not completed it or it had been unsuccessful, and the conduct or condition rendering Mother unfit, unable, or unwilling to give Child adequate parental care is unlikely to change within a reasonable time. The court noted the Department had referred Mother to services designed to address Child's special needs, but she did not engage in a way to demonstrate an appreciation for the seriousness of his condition or attempt to become engaged with his providers. The court concluded Mother's conduct or condition rendering her unfit, unable, or unwilling to give Child adequate parental care was demonstrated by Mother engaging with her chemical dependency providers but failing to address the mental health issues those providers

identified and failing to substantially engage with Child’s providers or complete autism parenting education.

¶27 Mother appeals.

STANDARD OF REVIEW

¶28 This Court reviews a district court’s decision to terminate parental rights for an abuse of discretion, considering the applicable standards of review of Title 41, chapter 3, MCA. *In re D.D.*, 2021 MT 66, ¶ 9, 403 Mont. 376, 482 P.3d 1176. A court abuses its discretion if it terminates parental rights based on clearly erroneous findings of fact, erroneous conclusions of law, or otherwise acts arbitrarily, without conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re D.D.*, ¶ 9. Findings of fact are clearly erroneous if not supported by substantial evidence, the court misapprehended the effect of the evidence, or this Court has a definite and firm conviction the district court was mistaken. *In re D.D.*, ¶ 9. The Court reviews conclusions of law for correctness. *In re D.D.*, ¶ 9.

DISCUSSION

¶29 *1. Whether the District Court abused its discretion when it failed to amend Mother’s treatment plan.*

¶30 Mother argues the District Court abused its discretion when it failed to amend Mother’s treatment plan to enumerate specific parenting tasks related to raising a child with autism and to provide for related services.⁶ Mother contends the District Court erred when

⁶ On appeal, Mother does not challenge the inclusion of mental health services in her treatment plan under the auspices of following recommendations from her chemical dependency provider or

it refused to amend her treatment plan to include services for parenting a child with autism and then subsequently used Mother's alleged failure to engage in those services to terminate her parental rights.

¶31 A treatment plan is one of the primary tools the Department uses to help a parent address the conditions that led to removal. “[T]he Department must in good faith develop and implement . . . treatment plans designed ‘to preserve the parent-child relationship and the family unit.’” *In re R.J.F.*, 2019 MT 113, ¶ 28, 395 Mont. 454, 443 P.3d 387 (quoting *In re D.B.*, 2007 MT 246, ¶ 33, 339 Mont. 240, 168 P.3d 691). Section 41-3-443(2), MCA, requires a treatment plan to include, in part, “the identification of the problems or conditions that resulted in the abuse or neglect of a child” and “the treatment goals and objectives for each condition or requirement established in the plan,” including “the conditions or requirements that must be established for the safe return of the child to the family.” After the district court orders a treatment plan, it “may not be altered, amended,

the Department's broad stance that its expectation is the parent will follow a recommendation from a chemical dependency provider even if the recommendation is not related to chemical dependency. As Mother does not challenge this on appeal, we do not address whether the Department correctly required mental health services under Mother's treatment plan on such a basis or whether amendment of the treatment plan was required to include mental health services. It is not uncommon for chemical dependency treatment providers working with individuals with substance use disorder to suspect a mental health component is at issue that should also be addressed. Recognizing this, a treatment plan would more appropriately specifically include such a possibility and state the parent must follow the recommendations of the chemical dependency evaluator or provider, *including obtaining a mental health evaluation if such is recommended by the chemical dependency evaluator or treatment provider*. The Department should ensure the requirements of treatment plans are clear, so parents understand what is required for reunification with their children.

continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.” Section 41-3-443(4), MCA.

¶32 The parenting portion of Mother’s treatment plan required her to “enroll with a parenting program approved by the Department.” In addition, she was required to enroll with a FBS provider “when the child is within two weeks of being returned to the home.” She was required to attend all appointments with the FBS provider “and follow their directions and recommendations for reunification.” Additionally, she was required to attend all supervised visits with Child, and “follow all recommendations of the supervision specialist.” Mother argues the plan did not require her to enroll in autism-specific services or parenting classes and the Department cannot shoehorn in such a requirement through the existing requirements to follow recommendations from the FBS provider and supervision specialist.

¶33 We agree with Mother that a requirement “to follow recommendations” of a provider has limits. The amorphous requirement “to follow the recommendations” of a provider cannot expand the treatment plan into a completely new area: that is, a provider cannot create an entirely new category of requirements in a parent’s treatment plan by recommending a parent pursue additional services outside that provider’s area of expertise. But the requirement to engage in special training to parent a child with autism did not arise from the recommendation of the FBS provider or supervision specialist. The FBS care manager testified she developed goals for Mother based on the referrals made by the Department. Her recommendations to Mother were aimed at helping Mother gain the

motivation to set up services and engage with providers in order to provide for Child's needs—she did not recommend Mother engage in any particular service. CPS Waliezer and Hernandez both testified Mother's supervision coaches were not qualified to make recommendations specific to parenting a child with autism, although the visit coaches did recognize Mother could gain from such training. Rather, the requirement to engage in parenting classes specific to raising a child with autism arose out of the stated requirement in the treatment plan to enroll in a parenting program approved by the Department. CPS Waliezer explained it is always the understanding when there is a parenting education component in a treatment plan, that it is a requirement to engage in education appropriate for the needs of the specific child—in this case a child with autism. The District Court did not abuse its discretion in denying Mother's motion to amend the treatment plan. It is clear from the record Mother understood she was to enroll in a parenting program approved by the Department. She enrolled in and eventually completed Safe Care. The Department also referred her to Big Sky Therapy, raised the issue of Mother's engagement with autism-specific programming at multiple hearings, and had Mother's FBS care manager work with her for months in an attempt to have her to set up an appointment. Mother did not contest the Department's referral to an additional autism-specific parenting program until less than a week before the rescheduled termination hearing—more than seven months after the referral and three months after the Department petitioned for termination. She did not object when the Department started reporting to the court in June 2020 the case should be maintained and TLC extended, in part, because she had yet to complete

psychoeducation related to autism. Mother's counsel repeatedly reported he had no basis upon which to object.⁷

¶34 Mother thus largely acquiesced to the inclusion of autism-specific parenting classes as a requirement for her reunification with Child under the requirement to enroll in a Department-approved parenting program. By at least June 2020, the Department was reporting to the District Court this task remained to be completed. Mother offered no objection until a week before the continued termination hearing. Mother does not contest by this point, the Department and her FBS care manager had been working with her for months to sign up for services with Big Sky Therapy and she had not engaged with those services. Given the history of the case, the District Court did not abuse its discretion in refusing to amend Mother's treatment plan on the day of the termination hearing.

¶35 *2. Whether the District Court abused its discretion when it determined Mother was unlikely to change within a reasonable time.*

¶36 Mother concedes Child was adjudicated as a YINC and she did not successfully complete her treatment plan. Mother challenges the District Court's determination she was unlikely to change within a reasonable time. Mother first argues the Department did not carry its burden to prove Mother's conduct was unlikely to change within a reasonable time and contends ample evidence supported a finding Mother was fit and able to meet the physical, emotional, and developmental needs of Child. Secondly, Mother argues the District Court's finding she was unlikely to change in a reasonable time should be called

⁷ On appeal, Mother has not challenged the efficacy of her counsel.

into question because the Department failed to provide her with reasonable efforts as the Department did not provide timely assistance to Mother. She contends the Department did not ask Mother to engage in autism specific training until September 2020, despite its knowledge of Child's autism diagnosis since May 2019.

¶37 A court may terminate parental rights when (1) a child has been adjudicated as a YINC; (2) an appropriate treatment plan approved by the court has not been complied with by the parent or has not been successful; and (3) the conduct or condition of the parent rendering her unfit is unlikely to change within a reasonable time. Section 41-3-609(1)(f), MCA. Each factor must be supported by clear and convincing evidence. Section 41-3-609(1), MCA. In determining whether the conduct or condition of the parent is unlikely to change within a reasonable time, “the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parent[] renders the parent[] unfit, unable, or unwilling to give the child adequate care.” Section 41-3-609(2), MCA. “Determining whether conduct or a condition rendering a parent unfit is likely to change within a reasonable time requires an assessment of the parent’s past and present conduct.” *In re L.S.*, 2003 MT 12, ¶ 10, 314 Mont. 42, 63 P.3d 497.

¶38 Although Mother maintains ample evidence supported a finding she was fit to care for Child and continuing the relationship would not result in continued abuse or neglect of Child, that is not our inquiry. When reviewing a district court’s findings, this Court does not consider whether the evidence could support a different finding and we will not

substitute our judgment for that of the factfinder regarding the weight given to the evidence. *In re L.S.*, ¶ 10. The District Court found the conduct or condition rendering Mother unfit was unlikely to change within a reasonable time, “based on the three year history of this case and [Mother’s] continued failure to meaningfully progress in [her] treatment plan.” It found Mother did not engage in individual therapy to address mental health issues or “in the special services [Child] requires, despite being provided with assistance and referrals, as well as encouragement, to do so.” Mother does not dispute she did not engage in individual therapy until two days before the termination hearing and she did not engage with services through Big Sky Therapy to gain skills for parenting an autistic child.

¶39 Mother counters the Department did not provide her with reasonable efforts to complete education on parenting a child with autism and therefore the District Court’s finding she was unlikely to change within a reasonable time should be called into question. Mother argues the Department did not refer her to Big Sky Therapy until September 2020, twenty-eight months after Child was removed from Mother’s care. Mother argues it is fundamentally unfair for the Department to delay making referrals to services required in the treatment plan and then rely on the length of the time of the case to support termination of parental rights.

¶40 The Department is statutorily required to provide reasonable efforts to preserve and reunify the family in most dependency and neglect cases. Section 41-3-423(1), (2), MCA. The Department must develop and implement a treatment plan “reasonably designed to address the parent’s treatment and other needs precluding the parent from safely

parenting.” *In re R.L.*, 2019 MT 267, ¶ 22, 397 Mont. 507, 452 P.3d 890. While not a separate criterion for termination, the provision of reunification services may be a predicate for determining whether a parent’s conduct or condition is likely to change in a reasonable time. *In re R.J.F.*, ¶ 26. A district court’s “conclusion that a parent is unlikely to change could be called into question if the Department failed to make reasonable efforts to assist the parent.” *In re C.M.*, 2019 MT 227, ¶ 22, 397 Mont. 275, 449 P.3d 806. “What constitutes reasonable efforts is not static or determined in a vacuum, but rather is dependent on the factual circumstances of each case—the totality of the circumstances—including a parent’s apathy and/or disregard for the Department’s attempts to engage and assist the parent.” *In re R.L.*, ¶ 22.

¶41 We find the long delay in referring Mother to autism-specific parenting classes very troubling. In the first year and a half of the case, the Department largely provided rosy updates to the District Court about Mother’s progress in addressing her chemical dependency issues. Other than saying Mother was doing well and progressing with the plan for reunification, the Department did not report to the court why it had not referred Mother to the parenting services it believed she needed for her to complete the treatment plan. If Mother’s inability to follow through was an issue during this time, the Department should have informed the court this was going on so it could be addressed by the court in a timely manner. From the beginning of the case, the Department set up supervised visitation for Mother with Child. Mother’s treatment plan required her to follow the recommendations of her visitation coaches. But none of Mother’s visitation coaches had

training or expertise in parenting autistic children or provided her with material on parenting an autistic child. While it appears at least one visitation coach recognized early in the case Mother may benefit from parenting classes related to children with autism, the Department did not refer Mother to such services until September 2020.

¶42 In March 2020—twenty-two months into the case—GAL Dorrington first raised the issue Mother was not progressing in gaining the skills she needed to parent her special needs child and Mother’s parental rights should be terminated. The Department first raised the issue Mother needed to engage in “psychoeducation and all those tools and demonstrate that concrete ability to be proactive on this level to meet [Child’s] significant needs” in June 2020. But the Department still did not refer Mother to Big Sky Therapy for those services until September 2020—twenty-eight months into the case. The Department has a duty to provide a parent with timely interventions and referrals to services designed to preserve the family unit if possible. The Department cannot run out the clock to termination by failing to refer parents to the necessary services until two years into its intervention in the family and then rely on the length of the case as proof the parent has not progressed and cannot change in a reasonable time.

¶43 Ultimately, however, the significant delay by the Department in making the necessary referrals does not, under the particular circumstances here, call the District Court’s finding Mother was unlikely to change in a reasonable time into question given Mother’s complete failure to engage with Big Sky Therapy after the Department’s referral. For more than seven months after finally receiving the referral to Big Sky Therapy, Mother

failed to act. “[A] parent has an obligation to avail herself of services arranged or referred by the Department and engage with the Department to successfully complete her treatment plan.” *In re R.J.F.*, ¶ 38. The Department’s obligation to develop a treatment plan and work with parents with the good faith goal of reunifying the family, “does not diminish a parent’s obligation to engage with the Department or to avail herself of services arranged or referred by the Department in working toward successful completion of a treatment plan.” *In re R.J.F.*, ¶ 38. Had Mother engaged with Big Sky Therapy in September 2020, she would have had over seven months of autism-related parenting education by the May 2021 termination hearing. Had Mother engaged when the Department made the belated referral, Mother’s argument the Department’s delay, not hers, is the cause of her failure to make progress in a timely manner might be well taken. But Mother did not engage with Big Sky Therapy in the over seven months between the Department referral and the termination hearing. Testimony at the termination hearing established Mother had difficulty taking initiative and addressing both her needs and those of her son in a timely manner. The District Court did not abuse its discretion in considering Mother’s failure to engage with Big Sky Therapy for over seven months when determining Mother was unlikely to change in a reasonable time. Even though the Department did not timely refer Mother to Big Sky Therapy, she had sufficient time from referral to the time of the termination hearing to engage and make some substantial progress—she did not. Despite the Department’s excessive delay in referring Mother to Big Sky Therapy, we cannot conclude the District Court’s conclusion Mother was unlikely to change in a reasonable

period of time was erroneous given Mother's failure to engage with those services in the over seven months before the termination hearing.

CONCLUSION

¶44 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ LAURIE McKINNON