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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 14-0084

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 14-0084

IN THE MATTER OF:

S.B.C., Jr.,

A Youth in Need of Care.

BRIEF OF APPELLANT

On appeal from the Montana Fourth Judicial District Court, Missoula County, the Honorable Judge Edward P. McLean Presiding

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STATEMENT OF THE ISSUES

The district court erred in denying the Blackfeet Nation's Motion to Transfer Jurisdiction because the State did not present clear and convincing evidence that good cause supported the State's retention of jurisdiction.

The district court abused its discretion by acting without employment of conscientious judgment in terminating N.B.'s parental rights.

SUMMARY OF THE CASE

This is an appeal from the termination of N.B.'s parental rights to her son, S.B.C., Jr. The Indian Child Welfare Act ("ICWA") applies to this case.

On July 28, 2011, the State filed a Petition for Emergency Services and Temporary Investigative Authority which initiated this case. (D.C. Doc. 1.) On February 29, 2012, the Court approved a Treatment Plan for the mother, N.B. On March 29, 2013, the Court adjudicated S.B.C., Jr. as a Youth in Need of Care ("YINC"). (D.C. Doc. 50.)

On September 10, 2013, the Court held a hearing on the State's Petition to Terminate the Mother's and Father's Rights ("Termination Hearing") and the Court issued an Order dated January 15, 2014 terminating N.B.'s rights to her son, S.B.C., Jr. The Court concluded beyond a reasonable doubt that N.B. had abandoned S.B.C., Jr., that N.B. failed to

comply with her Treatment Plan, that N.B.'s conduct or condition was unlikely to change within a reasonable time and that S.B.C., Jr. would likely suffer serious emotional or physical harm if N.B. retained custody. (D.C. Doc. 91.)

N.B. appeals the decision of the district court.

STATEMENT OF THE FACTS

The Mother N.B., the Father S.B.C. and the child, S.B.C., Jr. are all enrolled members of the Blackfeet Tribe. The State concedes that the Indian Child Welfare Act ("ICWA") applies to this proceeding and, specifically, to N.B.

The Department of Public Health and Human Services ("the Department") removed S.B.C., Jr. from N.B.'s care when he was less than one month old. (D.C. Doc. 91.) S.B.C., Jr. was placed first with a member of his extended family and then was placed briefly at the Watson's Children Home. (D.C. Doc. 76.)

S.B.C., Jr. was then returned to N.B.'s care while she was staying at Mountain Home in Missoula, a facility for homeless mothers and their babies. (Tr. 395:9-15.) N.B. left Mountain Home after two weeks. (Tr. 395:14-15.) The Department left S.B.C., Jr. in N.B.'s care with no supports in place. (Tr. 395:23-24.) At that time, N.B. was just 21 years old.

In October, 2011, N.B. was arrested for a 4th D.U.I. and incarcerated. (Tr. 42:20-23, 45:16.) S.B.C., Jr. was then placed in his current foster care placement. (D.C. Doc. 76.)

On February 29, 2012, the Court approved a Treatment Plan for N.B. (D.C. Doc. 34.) The Treatment Plan required that N.B. participate in inpatient treatment at a facility of her choice; that N.B. sign releases of information; that N.B. successfully complete her inpatient treatment; that during her inpatient treatment, N.B. apply for a sober living environment whether it is on her own or an environment like Carole Graham Home; that N.B. keep the social worker informed of her plans for aftercare and approve them, that N.B. successfully complete her aftercare. (D.C. Doc. 34.)

N.B. successfully completed the WATCH treatment program. (Tr. 396:14-15.) N.B. then entered the Carole Graham home in December 2012 and was reunified with her older daughter and had visits with S.B.C., Jr. (Tr. 396:4-9.) However, N.B. was asked to leave the Carole Graham home. (Tr. 397:13.)

On March 6, 2013, the State filed a Petition to Terminate Mother's and Father's Parental Rights and Grant CFS Permanent Legal Custody with the Right to Consent to Adoption. (D.C. Doc. 48.) The Court adjudicated S.B.C., Jr. as a Youth in Need of Care on March 29, 2013. (D.C. Doc. 50.)

On April 10, 2013, the Blackfeet Nation filed a Motion to Transfer Jurisdiction and Dismiss Case. The district court granted the Motion on April 18, 2014, but rescinded the transfer order on April 25, 2014, after receiving the State's objection to the Motion. (D.C. Doc. 53, 56 and 54.)

On April 29, 2013, N.B. filed a motion joining in the Blackfeet Nation's motion to transfer jurisdiction. (D.C. Doc. 58.) N.B. also filed a Response to State's Objection to Petition to Transfer Proceeding and a Response to State's Notice of Additional Legal Authority. (D.C. Doc. 61 and 72.) A contested hearing on the Transfer Motion was held on May 14, 2013. (D.C. Doc. 73.) The Court denied the Blackfeet Nation's transfer request in an order filed June 3, 2013. The Court concluded that there was good cause to deny transfer based on the untimeliness of the Nation's motion. (D.C. Doc. 76.)

At the time of the Termination Hearing, September 2013, there was an active warrant for N.B.'s arrest for absconding from probation. (Tr. 397:22-24.) No testimony was given during the Termination Hearing regarding efforts of the Department to work with N.B. during the time period between her departure from the Carole Graham home and the Termination Hearing.

SUMMARY OF THE ARGUMENT

The district court erred in denying the Blackfeet Nation's motion to transfer. Rather than relying on the statutory basis for denying transfer, the district court improperly placed the burden on the Blackfeet Nation to prove that they had made active efforts during the state court proceedings. The district court's order contains unsupported statements indicating a strong bias and lack of confidence in the tribal forum. For these reasons, this Court should reverse the district court's decision to deny transfer of the proceedings to the Blackfeet Nation.

Additionally, the termination of N.B.'s parental rights to S.B.C., Jr. should be reversed because the State did not present the necessary testimony on the elements of abandonment and on the issue of whether N.B. successfully completed or complied with her treatment plan.

STANDARD OF REVIEW

This Court reviews a district court's decision to terminate parental rights to determine whether the district court abused its discretion. *In re D.B.*, 2007 MT 246, 339 Mont. 240, 168 P.3d 691 ¶ 16. In reviewing for abuse of discretion, this Court considers whether the trial court acted

arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice. *In re D.B.*, ¶ 16.

A parent's right to the care and custody of a child is a fundamental liberty interest which must be protected by fundamentally fair procedures. As a result, when determining whether to terminate parental rights, a district court must make specific factual findings in accordance with the requirements set forth in § 41-3-609, MCA. *In re J.W.*, 2001 MT 86, ¶ 7, 305 Mont. 149, ¶ 7, 23 P.3d 916, ¶ 7.

This Court reviews findings of fact to determine whether they are clearly erroneous. *In re D.B.*, ¶ 18. The court's conclusions of law are reviewed for correctness and its decision to terminate rights is a discretionary ruling reviewed for an abuse of discretion. *In re K.C.H.*, 2003 MT 125, ¶ 12, 316 Mont. 13, ¶ 12, 68 P.3d 788, ¶ 12.

The party seeking to terminate parental rights must prove by clear and convincing evidence that the statutory criteria for termination have been met. However, in a case under ICWA, the standard is beyond a reasonable doubt.

ARGUMENT

I. The District Court erred in denying the Blackfeet Nation's Motion to Transfer Jurisdiction because the State did not present clear and convincing evidence that good cause supported the State's retention of jurisdiction.

The Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-1963 was the product of rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes. *Mississippi Band of Choctaw Indians v. Holyfield* (1989), 490 U.S. 30, 109 S.Ct. 1597, 104 L.Ed.2d 29. Studies undertaken by the Association on American Indian Affairs in 1969 and 1974, and presented in ICWA Senate hearings, showed that 25 to 35 percent of all Indian children had been separated from their families and placed in adoptive families, foster care or institutions. H.R. Rep. no. 95-1386 at 9 (1978).

The Congressional findings that were incorporated into the ICWA reflect these sentiments. The following Congressional findings are set forth at 25 U.S.C. § 1901:

> (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children ...;
> (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarming high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
> (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families.

The ICWA represents the federal remedy to a nationwide problem. The problem originates from what is in the majority of cases a naturally predisposed inability of states to consider fully the best interests of Indian children in custody proceedings, specifically in the context of their Indian heritage.

The problems that prompted ICWA's adoption have not disappeared. Currently, over 30% of the Department's cases involve Indian children[1], when American Indians make up only 6.4% of Montana's population. *See* U.S. Census Bureau American Indian and Alaska Native Data.

At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody proceedings. *Holyfield,* 490 U.S. at ___, 109 S.Ct. at 1601, 104 L.Ed.2d at 38. The ICWA provides for the State and the Tribe

[11] Statistic was presented by Casey Family Programs at Critical Legal & Clinical Indian Child Welfare Issues conference, April 17 – 18, 2014, Missoula, MT.

to have concurrent jurisdiction when the Indian Child is not domiciled or living on a reservation, with a presumption in favor of tribal jurisdiction:

> (b) Transfer of proceedings; declination by tribal court
> In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child *not domiciled or residing within* the reservation of the Indian child's tribe, the court *in the absence of good cause to the contrary,* shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe; *Provided,* That such transfer shall be subject to declination by the tribal court of such tribe. (Emphasis supplied.)

25 U.S.C. § 1911(b).

This Court has repeatedly affirmed the intent of the ICWA and sought to implement its presumptions in favor of a tribal role in Indian child custody proceedings. *See In re Adoption of Riffle* (1995), 273 Mont. 237, 902 P.2d 542 (granting the tribe, as opposed to the Bureau of Indian Affairs, ultimate authority to determine whether a child is eligible for tribal membership, and thus, final authority to determine whether a child satisfies the ICWA definition of Indian child); *In re Matter of Baby Girl Doe* (1993), 262 Mont. 380, 865 P.2d 1090 (stating that the ICWA is paramount to a natural parent's desire for anonymity); *In re Parental Placement of M.R.D.B.* (1990), 241 Mont. 455, 787 P.2d 1219 (interpreting broadly language from the tribal court to conclude that Indian child was a ward of the tribal court and subject to exclusive tribal jurisdiction pursuant to the ICWA); *In re M.E.M.* (1986), 223 Mont. 234, 725 P.2d 212 (recognizing a

family member's right to intervene pursuant to the ICWA even after considerable steps in adoption proceeding had occurred).

In regards to a state court assuming jurisdiction over Indian children, this Court in *In re: Marriage of Skillen,* 1998 MT 43, ¶¶ 37 -40, 287 Mont. 399, 956 P.2d 1, offered the following analysis:

> [T]hat Congress felt the need to curtail states in these matters indicates that state courts are apt to exercise jurisdiction when the best interests of the Indian child do not necessarily support that assumption of jurisdiction. In other words, it puts states on notice that they are, in fact, a significant part of the problem, and that they should weigh their potential assumption of jurisdiction very judiciously.
> Second, the ICWA indicates that regardless of the child's residence, tribal courts are uniquely and inherently more qualified than state courts to determine custody in the best interests of an Indian child. Relatedly, it accentuates that custody matters that involve Indian children implicate a broader range of concerns than custody matters that do not involve Indian children, and furthermore, that those interests are of great importance to the United States, and of course, to the integrity of Indian tribes.
> Finally, the ICWA demonstrates confidence in the tribal forum, not only for the substantive expertise of its perspective, but also for its ability to make a fair and appropriate determination and to serve the interests of all the parties, including the state. . . The ICWA also demands that state courts give full faith and credit to the decisions of the tribal court. *See* 25 U.S.C. § 1911(d). Therefore, we appreciate that in terms of our jurisdiction analysis, any disregard for the clear policy behind the ICWA preferences for a tribal determination instead of a state determination would at least in part provoke a "decline in the authority of the Tribal Court.

This Court has also recognized that the State of Montana has a strong and independent commitment to the principles embodied in ICWA:

> Our constitution recognizes `the distinct and unique cultural heritage of the American Indians and is committed in its education goals to the preservation of their cultural integrity'. 1972 Mont. Const., Art. X, § 1(2). Preservation of Indian culture is undoubtedly threatened and thereby thwarted as the size of any tribal community dwindles. In addition to its artifacts, language and history, the members of a tribe are its culture. Absent the next generation, any culture is lost and necessarily relegated, at best, to anthropological examination and categorization. *In applying our state law and the Indian Child Welfare Act we are cognizant of our responsibility to promote and protect the unique Indian cultures of our state for all future generations of Montanans.* (Emphasis added.)

M.E.M., 223 Mont. at 214.

In this case, the district court erred in denying the Blackfeet Nation's motion to transfer – the Court failed to acknowledge that the tribal court is "uniquely and inherently more qualified" to determine the best interest of S.B.C., Jr. as he is a member of the Blackfeet Nation, as is both of his parents. The district court improperly placed a burden on the Blackfeet Nation regarding their previous participation in the case and its decision was based on a lack of confidence in the tribal forum and not on the stage of the proceeding.

At the Transfer Hearing held on May 14, 2013, the attorney for the State acknowledged that the only issue before the court was whether good cause existed because of the advanced stage of the proceeding. (Tr. 183:6-8.) The other statutory criteria had already been established: the Blackfeet Nation had accepted jurisdiction and both parents consented to the transfer.

The State noted that it could not establish that the tribal forum was inconvenient. (Tr. 183:1-5.)

The district court's decision is based more on a lack of confidence in the tribal forum than on the stage of the proceedings. Although the State had been working with N.B. and S.B.C., Sr. for some time, the Court had only issued its order adjudicating S.B. C., Jr. as Youth in Need of Care on March 29, 2013 (D.C. Doc. 50.) The Blackfeet Nation filed its Motion to Transfer less than two weeks after S.B.C., Jr, was adjudicated as a YINC. The court clearly did not feel that the proceeding was too advanced as it immediately ordered the transfer. (D.C. Doc 53.) Only when the State filed an objection did the Court rescind its transfer order. (D.C. Docs. 54, 55, 56.)

It seems contradictory for the State to hold the Blackfeet Nation to a timeliness standard when the State itself delayed the order adjudicating S.B.C., Jr. as a YINC. If the State was concerned about the stage of the proceeding, perhaps it would not have filed its Petition for Termination before the adjudication order was filed or ensured that the adjudication order was timely entered.

The testimony that the State presented at the Transfer Hearing clearly indicates that it did not respect the Blackfeet Nation's ability to adequately determine S.B.C., Jr.'s best interests. The foster mother testified that the

transfer would effectively remove S.B.C., Jr. from her care; (Tr. 177:7-8.) and that she did not trust the Blackfeet Nation to make decisions regarding the care of its children. (Tr. 187:11-13.) The Judge stated that he could not understand that "someone can come in and want to destroy the mother-son bond that has been established in this case." (Tr. 200:1-4.)

A majority of the testimony at the Transfer Hearing had to do with the Tribe's perceived lack of involvement in the state proceedings. For instance, in questioning Anna Fisher, the Blackfeet Nation's Indian Child Welfare expert, the State asked, "Can you tell me where the Tribe was since S.B.C., Jr. was placed in foster care?" and "What steps has the Tribe taken to protect its own and bring the child back to the reservation?" (Tr. 309:2-4, 13-15.) This is not a relevant factor in the statutory analysis. ICWA does not require a Tribe to actively participate in state court proceedings. Indeed, as this Court has noted, ICWA put the State courts on notice that they are part of the problem. If good cause exists not to transfer a case to tribal court, it cannot be based on the state court's perception of the Tribe's involvement or lack thereof. The entire Transfer Hearing reads like an indictment against the Tribe rather than a focus on the state court proceeding and its stage.

The fact that S.B.C., Jr. had been with his current foster placement for 20 months does not automatically mean that the proceedings were at too

advanced a stage to transfer. In *M.E.M.*, the child had also been removed from his parents' custody soon after birth and this Court held that a paternal aunt could intervene in the adoption matter three years' later when she learned of the adoption proceeding.

The fact that this district court incorrectly denied transfer based on the Tribe's actions rather than on the stage of the proceedings is supported by the language of the court's Conclusions of Law:

> Anna Fisher testified that the Tribe intends to remove the Youth from the only loving, secure home he has ever known, place him with his paternal grandmother, Agnes Spotted Bear, whom he does not know and has never met, and, in essence, begin the whole custodial process anew in tribal court, or allow the Youth to be passed from family member after another under the guise of the position that it is the Tribe's responsibility to raise its children for the rest of his childhood, regardless of the parents' abilities or desires to do so.

(emphasis added) (D.C. Doc. 76.)

A review of Ms. Fisher's testimony reveals no statements of the kind. These statements show, at best, a biased misunderstanding of tribal culture and lack of confidence in the tribal forum and at worst, racism of exactly the type which ICWA was adopted to combat.

The court's order contains other disturbing statements regarding the Blackfeet Nation that show an extreme bias against the tribal forum and an intentional misinterpretation of the testimony:

"[T]he Tribe in this matter chose to sit on its hands and delay seeking jurisdiction over [S.C.B., Jr.] for tribal financial reasons;" "a Tribe who claims their children are sacred and yet are willing to sit on its hands for financial reasons;" and "It is the sound judgment of this Court that the Blackfeet Tribe wants to exercise its sovereign rights as a Nation, but only when it is in its best financial interests to do so. Clearly, the Tribe wants to have it both ways." (D.C. Doc. 76.)

These unsupported, unnecessary and inflammatory comments should not be permitted to stand. The district court was biased in its decision making and erred when it based its decision to deny transfer of jurisdiction on its perception of the Blackfeet Nation's lack of involvement in the state proceedings and its clear lack of confidence in the tribal forum.

II. The District Court abused its discretion by acting without employment of conscientious judgment in terminating N.B.'s parental rights.

The district court may order termination of the parent – child legal relationship upon a finding that the following circumstances exist:

> The child is an adjudicated youth in need of care and both of the following exist:
>
> (i) An appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) The conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.
§ 41-3-609(f), MCA.

In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the Court may consider "emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time." § 41-3-609 (2)(a), MCA.

A. The evidence did not prove beyond a reasonable doubt that N.B. had abandoned S.B.C., Jr. The court does not include any of the statutory findings which form the basis for a finding of abandonment under § 41-3-102(1), MCA.

No testimony was given at the Termination Hearing on the issue of whether or not N.B. had abandoned S.B.C., Jr. However, the district court entered a finding to that effect and based its termination of N.B.'s parental rights on abandonment. (D.C.Doc. 91.)

Pursuant to Mont. Code Ann. § 41-3-102(1) abandonment means:

(i) Leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;
(ii) Willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) That the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) The voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

Subsections (iii) and (iv) are not relevant to the facts of this case. As to subsection (ii), N.B. did not willfully surrender custody of S.B.C., Jr. He was taken from her custody by the Department. Further, there is no testimony that she had no contact with the Department for a period of six months.

Finally, as to subsection (i), there was no testimony that N.B. had left S.B.C., Jr. under circumstances that make reasonable the belief that she did not intend to resume his care in the future. The testimony at the hearing established that N.B. was at the Carole Graham home in December 2012 and that reunification efforts were made at that time. (Tr. 396:4-9). The only testimony about N.B.'s activities from December 2012 until September 2013 was that she was not present at the Termination Hearing and that there was a warrant for her arrest at that time. (Tr. 397:22-24.) The Department's social worker, Sheila Finley, did not testify that she had no contact with N.B. during that time period. Finley simply does not mention what contact and activities the Department undertook with N.B. during that time period. The State cannot prove abandonment by a lack of testimony. The district court

clearly erred in finding that N.B. had abandoned S.B.C., Jr. as there is no evidence in the record to support such a finding.

B. The evidence did not prove beyond a reasonable doubt that N.B. had not complied with her treatment plan or that the treatment plan had not been successful.

One of the essential elements for the State to prove beyond a reasonable doubt to support termination of N.B.'s parental rights to S.B.C., Jr. is that she did not comply with an appropriate court ordered treatment plan or she did not successfully complete such a plan. Mont. Code Ann. § 41-3-609(1)(f)(i). The district court's finding on this element is not supported by evidence.

N.B.'s Treatment Plan was approved by the court on March 8, 2012. (D.C. Doc. 34.) The Treatment Plan required that N.B. participate in inpatient treatment at a facility of her choice; that N.B. sign releases of information; that N.B. successfully complete her inpatient treatment; that during her inpatient treatment, N.B. apply for a sober living environment whether it is on her own or an environment like Carole Graham Home; that N.B. keep the social worker informed of her plans for aftercare and approve them, that N.B. successfully complete her aftercare. (D.C. Doc. 34.)

Finley testified that the Department was seeking termination of N.B.'s parental rights on the basis of "two failed reunifications and only being able

to last in a structured environment for two weeks." (Tr. 415:10-16.) This is obviously not a statutory basis for termination of parental rights. Further, the first reunification effort took place in September 2011, before the Treatment Plan was even entered, so it is irrelevant to the question of N.B.'s compliance or completion of the Treatment Plan. (Tr. 393:19-24.)

Finley never testified as to whether she believed N.B. had completed or complied with her Treatment Plan. Finley stated that N.B. was asked to leave the Carole Graham Home for three seemingly minor rule violations (N.B. had a cell phone, she once left the yard with her older daughter and she had Facebook contact with her daughter's aunt). (Tr. 472:2-19.) However, the State never asked and Finley never testified on the question of completion or compliance with the Treatment Plan. Without such testimony, the Court clearly erred in finding beyond a reasonable doubt that N.B. had not complied with her treatment plan.

The district court's broad attempt to include all the facts in the record in order to supplement sworn testimony is unlawful. The court's first Finding of Fact states that it "takes judicial notice of all prior facts and testimony previously placed before it." The court cannot take judicial notice of facts in the record and not testified to unless they are facts either "generally known within the territorial jurisdiction of the trial court," or are

"capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." M.R.Evid. Rule 201(b). Although it is unclear from the court's order what "facts" it is relying on, no facts in this case fit the above definition and any reliance on facts which were not presented through sworn testimony in open court was in error.

The district court further states that the "Affidavits and Reports to the Court previously filed with this Court ... are expressly incorporated in this Order." § 26-1-1002, MCA addresses the permissible uses for affidavits. An affidavit may be used:

> (1) To verify a pleading or paper in a special proceeding;
> (2) To prove the service of a summons, notice or other paper in an action or special proceeding;
> (3) To obtain a provisional remedy, the examination of a witness, or a stay of proceeding;
> (4) Upon a motion; and
> (5) In any other case expressly permitted by some other provision of this code.

None of these provisions allow for the use of facts presented in an affidavit to be relied upon in a decision to terminate a parent's right to the care and custody of their child. To the extent that the court relied on facts presented in affidavits, the court clearly erred.

As such, there is insufficient testimony in the record on the essential element of whether N.B. successfully completed or complied with her

treatment plan and the district court's termination of N.B.'s parental rights should be reversed.

CONCLUSION

The district court's denial of the Blackfeet Nation's motion to transfer jurisdiction was based on the same biased viewpoint which ICWA was adopted to combat. Montana courts can and should do better. The district court's denial of the transfer of jurisdiction should be reversed.

N.B. respectfully requests that this Court reverse the termination of her parental rights to S.B.C., Jr. because the district court abused its discretion by acting without employment of conscientious judgment and exceeded the bounds of reason when it found evidence beyond a reasonable doubt that N.B. abandoned S.B.C., Jr. and that N.B. had not successfully completed or complied with her treatment plan.

DATED this 28th day of April, 2014.

Kristina Neal for
Carolynn M. Fagan

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Appellant to be mailed and/or hand delivered to:

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Dated this 1st day of ~~April~~ May, 2014.

Kristina Neal

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionally spaced Times New Roman text typeface of 14 points; is double spaced except for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

Kristina Neal for
Carolyn M. Bagan

APPENDIX

1. Opinion and Order re: Tribe's Motion for Jurisdiction; Setting Termination Hearing;
2. Order Involuntarily Terminating Father's and Mother's Parental Rights to Youth and Order Awarding CFS Permanent Legal Custody with the Right to Consent to Adoption.