

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

IN THE MATTER OF MICKEY MOUSE, Youth In Need of Care	Cause No. DN XX-YYY ORDER FOLLOWING EMERGENCY PROTECTIVE SERVICES HEARING, GRANTING EMERGENCY PROTECTIVE SERVICES, AND ORDER TO SHOW CAUSE Judge Rod Souza
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1. This matter is set for Show Cause Hearing in Courtroom _____ of the Yellowstone County Courthouse, Billings, Montana, at _____ o'clock ____ .m. on the _____ day of _____, 2021.

2. This matter is set for the Adjudicatory, Dispositional, and Treatment Plan Hearings in Courtroom _____ of the Yellowstone County Courthouse, Billings, Montana, at _____ o'clock ____ .m. on the _____ day of _____, 2021.

Following the Emergency Protective Services Hearing and upon reading the Petition for Emergency Protective Services, Adjudication of the Child as a Youth in Need of Care, and Temporary Legal Custody filed by the Montana Department of Public Health and Human Services, Child and Family Services Division (“the Department”), and the affidavit in support attached to the petition alleging that the above Indian child is, or is in danger of being, abused and/or neglected within the meaning of Mont. Code Ann. § 41-3-102, the Court hereby finds:

3. **Child was removed.** Pursuant to Mont. Code Ann. § 41-3-301, the Department had sufficient reason to believe that the above-named child was in immediate or apparent danger of harm requiring the child to be immediately removed from the child’s legal custodian and emergently placed in a protective setting on May 27, 2015, to prevent imminent physical damage or harm to the child. The Department made appropriate and active, but unsuccessful, efforts to prevent or eliminate the need for the child’s emergency removal from the home and to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to make it possible for the child to

return home, including investigating the CI report/s received regarding this child; however, at the time of the child's removal, due to the emergent need for placement, no other efforts could have been made to make it possible for the child to safely remain in the child's home, and this finding is supported by the facts set forth in the supporting affidavit attached to the petition. The child's removal was necessary to prevent imminent physical damage or harm to the child because continuation in the home would be contrary to the welfare of the child and an out-of-home placement is in the best interests of the child due to the following nature of the abuse and/or neglect that placed the child in imminent physical danger: Abandonment and Physical Neglect.

4. The Department made diligent efforts to determine whether the above-named child is an "Indian child" as defined by the Indian Child Welfare Act (ICWA), and at this time there is reason to know that the child is an "Indian child" or that the ICWA applies to this proceeding.

5. There is clear and convincing evidence to believe that above-named Indian child is, or is in danger of being, abused and/or neglected within the meaning of Mont. Code Ann. § 41-3-102, and further that immediate protection of the child is required; and that this finding is supported by the facts set forth in the supporting affidavit attached to the petition.

6. The Court has considered any parental statements included in the petition and supporting affidavit.

IT IS HEREBY ORDERED:

1. The Department is hereby awarded immediate protection and emergency protective services of the above-named child beginning immediately and continuing until the show cause hearing or until further order of the Court, including the following:

- a. The right of entry into the home, or prospective home, of the youth by a peace officer or by the Department's Child Protection Specialist.
- b. The right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a non-custodial parent, kinship or foster family, group home or institution.
- c. The authorization to consent to medical, dental, and psychological care for the children and to require the parents of the child to assume full responsibility for any services that may be provided.
- d. The right to require medical, dental, educational, or psychological evaluations of the youth by professionals of petitioner's choice.
- e. The authorization to obtain educational services for and educational or Youth Court records of the child.

- f. The right to assistance of any law officer of the State of Montana or any agency thereof in the carrying out of the provisions and intent of this Petition.
- g. The right to obtain the medical records of the above-named youth, including but not limited to the medical records concerning prenatal activity of the natural mother and psychological, counseling, and substance abuse records of the children. The Department is further designated as the child's personal representative as set out in the Federal Health Insurance Portability and Accountability Act (HIPAA) regulations.
- h. The right to approve, arrange, and supervise visitation with the child.
- i. The right to exchange information in the Department's case records, County Attorney records, and court records with doctors, psychologists, parties to this action, and others as necessary.
- j. The right to authorize travel for said youth inside or outside the state.
- k. The right, pursuant to Mont. Code Ann. § 41-3-446, to inquire into the financial ability of the parents, guardian or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth; and to request an order requiring contribution for those costs.
- l. The right to require that the child's parents, guardian, or other person having physical or legal custody furnish information that the Court may designate and obtain evaluations that may be necessary to determine whether the child is a youth in need of care.
- m. The right to require the parents, guardian, or other person having physical or legal custody to provide the Department with the name and address of the other parent, if known, unless parental rights have been terminated.
- n. The right to require the parents, guardian, or other person having physical or legal custody to provide all their vital statistical information and the same for their child, including copies of birth certificates, social security cards and criminal histories and any information, including tribal membership or eligibility for membership with a Native American Tribe, that makes it possible to determine whether the child is an "Indian child" as defined by the Indian Child Welfare Act.
- o. The right to require the parents to provide the Department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding.

2. Parents are hereby ordered not to take or allow anyone else to take the above-named child from her current placement or from the county in which the child is currently placed without the Department's prior written approval.

3. Parents are hereby ordered to not have contact with the above-named child except as arranged and approved by the Department.

4. Parents shall keep the Department informed of their current contact information including any address, emails and/or telephone numbers, including any change in address or telephone numbers prior to any move and shall keep the Department informed of the identity of all people residing with them, temporarily or otherwise, prior to any change.

5. Parents should contact their Regional Office of the Public Defender to receive additional instructions and information regarding parental eligibility to receive assistance from a court-appointed attorney: Region 9 (Billings) – (406) 256-6861.

6. Parents shall contact their CPS every week or as the Department recommends and keep in contact with any Court-appointed attorney.

7. **COUNSEL FOR INDIGENT PARENTS:** Pursuant to Mont. Code Ann. § 41-3-425(2), the Office of the State Public Defender is appointed to assign counsel to represent the interest of any of the above-named child's indigent biological parents, adoptive parents, putative parents, or stepparents pending a determination of eligibility for court-appointed counsel pursuant to Mont. Code Ann. § 41-7-111.

8. **NO COUNSEL FOR YOUTH APPOINTED AT THIS TIME** Pursuant to Mont. Code Ann. § 41-3-425(2)(b), a court-appointed **attorney for a child is not required** because the court is appointing a Guardian ad litem (GAL) or a Court Appointed Special Advocate (CASA) as the child's Guardian ad litem.

9. **APPOINTMENT OF GUARDIAN AD LITEM:** Bethany E. Bender, 217 North 27th Street, Billings, Montana, telephone number (406) 256-2850, is appointed Guardian ad litem to assist in determining the welfare and best interests of the child. The Guardian ad litem shall have authority to inspect and /or copy any records relating to the child and the parents; shall maintain any information received from any source as confidential except as to the parties in this action; shall be notified of any hearings or other proceedings concerning the child; shall be considered a party to the case; and shall be deemed agents of the Court and as such are granted judicial immunity.

10. **DEPARTMENT'S OBLIGATION IF CHANGE IN PLACEMENT FOR THE YOUTH.** Except in an emergency, in the event the Department intends to change the placement of the above-named Youth and the change in placement does not involve reunification of the child with a

natural parent, the Department shall, at least two (2) business days prior to the change in placement, provide written notice of the placement change to the appointed Guardian ad litem (hereinafter GAL), the appointed Court Appointed Special Advocate (hereinafter CASA), and the attorneys of record. The notice shall provide the date the placement change is to occur, the reason for the placement change, and the new contact information for the new proposed placement. The notice to the GAL, the CASA, and the attorney for the child shall also include contact information of the new placement. If a party, the GAL, or the CASA worker object to the change of placement, the objecting entity may make an objection by contacting the Court, the other parties, the GAL, and the CASA worker to request immediate hearing. The change in placement may occur on the date specified unless an objection is received prior to the change of placement. If the placement is necessitated by an emergency (with imminent danger to the child), the placement will be immediate, subject to the Department providing immediate notice of the particular emergency and Court review upon objection.

11. Should a participant in this proceeding subsequently receive information bearing upon the above-named youth's status as an Indian child as defined by the ICWA, then that person shall immediately file the information received regarding the child's Indian status with the Court and serve the same upon all parties.

12. If paternity has not been established, the Department of Public Health and Human Services, Child Support Enforcement Division, shall immediately complete a paternity test to determine whether any named putative father is the natural father of the above-named Youth.

13. Any named putative father shall cooperate with the Department and present as directed for paternity testing.

14. Grace Brekhus, Minnie Mouse and Donald D. Duck shall immediately comply with the terms of this Order, and appear before this Court as set forth on page 1 to show cause, if any, why they have or have not complied or should not comply with this Order and why the relief requested in the Petition should not be granted. Grace Brekhus, Minnie Mouse and Donald D. Duck are ordered to appear at this hearing. Parents will be given the opportunity to admit or deny the allegations contained in the petition and to provide testimony. Parents have the right to be represented by an attorney or request appointment of counsel if indigent. Failure to comply with this order, or to show cause why parents have not complied, could result in the court holding parents in contempt of court or granting the relief requested by the Department in its petition by default.

15. Since there is reason to know the child is an Indian Child, pursuant to 25 U.S.C. § 1912(a), no out-of-home care placement or termination of parental rights proceedings shall be held until at least 10 days after the receipt of the notice by the parent or Indian custodian and the tribe or the Secretary.

16. Pursuant to 25 U.S.C. § 1912(a), upon request, the Guardian, Natural Mother and Putative Father and the child's tribe have the right to be granted an **additional 20 days** to prepare for any child custody proceeding.

Service of process is directed upon parents as provided for in Mont. Code Ann. § 41-3-422(6) and (7).

Electronically signed and dated below.

PLEASE TAKE NOTICE pursuant to Mont. Code Ann. § 41-3-422(14) that the Court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of the child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home. If a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights. Completion of a treatment plan does not guarantee return of the child.

cc: AT / Pamela LeBlanc, Deputy County Attorney
Bethany E. Bender, Guardian ad Litem
Marilyn Monroe, Attorney for Donald Duck
Fred Astaire, Attorney for Minnie Mouse
Will Linden, Child Protection Specialist
Jeriene Yatch, Court-Appointed Special Advocate
Ak-Chin Indian Community
Confederated Tribes of Siletz Indians
Katharine Hepburn, Qualified Expert Witness