

## IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 11-0549

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STATE, ex rel., DOMINIQUE COURTURIER,

Petitioner,

v.

O R D E R

THIRTEENTH JUDICIAL DISTRICT COURT,  
HON. GREGORY TODD, District Judge,Respondent.

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Before this Court is a Petition for a Writ of Supervisory Control and supporting affidavit filed by the mother of an eight-year-old boy. It appears that the mother is disabled and that an action is pending in District Court to appoint a guardian for the boy who is not related to him by blood or marriage. On August 24, 2011, the District Court denied the mother's request for the appointment of counsel on the grounds that there is no statutory basis for doing so.

The mother contends that she is indigent (she receives \$606 per month in Social Security Disability benefits), that she is unable to afford counsel to represent her, and that, as a result of her disability, she suffers from impaired thinking and faulty communication skills. The mother argues that she is at risk of losing custody of and visitation with her son. The mother contends that she has no adequate remedy of appeal and that her inability to effectively participate in the guardianship proceedings implicates the loss of her fundamental right to custody of her child.

The mother argues that in parental rights termination proceedings (which this is not), the parent has a statutory right to be represented by counsel at all stages of the proceedings. Section 41-3-423, MCA. The mother argues that the proceedings at issue here carry the potential of even greater harm than if she were the subject of a dependent and neglect action. She maintains that in those proceedings, she would at least have the

benefit of being offered a treatment plan, visitation with her child, and appointed counsel to represent her. In that regard, the mother points out that in *In re J.C.*, 2008 MT 127, 343 Mont. 30, 183 P.3d 22, we held that fundamental fairness requires that a parent in a termination proceeding be represented by counsel in order to not be placed at a disadvantage and so as to have an equal opportunity to present evidence and scrutinize the State's evidence. *J.C.*, ¶ 35. The mother argues that the same standard should apply in the instant guardianship proceedings because she stands to suffer the same, if not greater, harm to her fundamental right to parent. *See also In re A.S.A.*, 258 Mont. 194, 198, 852 P.2d 127, 129 (1993) (The potential for unfairness to an indigent parent is especially likely if the parent has limited education and is unfamiliar with legal proceedings. If the parent is unrepresented by counsel at the termination proceedings, she risks losing her child due to intimidation, inarticulateness or confusion.). Mother contends that, unlike the petitioner in *In re Kessler*, 2011 MT 54, 359 Mont. 419, 251 P.3d 147, she has requested counsel, she has no advisory counsel or guardian ad litem, and she has virtually no disposable income with which to hire an attorney.

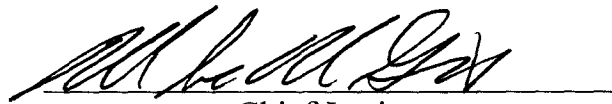
We agree with the District Court that there is no statute authorizing the court to appoint counsel under the circumstances here. Notwithstanding this lack of statutory authority, however, we conclude that the District Court has the inherent authority to appoint pro bono counsel in appropriate cases.

Having no response from the Respondent (although we twice ordered one), we will assume as true the particular harms set out in the mother's petition. Those harms include potential impact on mother's parent-child relationship; mother's inability to competently appear on her own behalf; and mother's lack of resources to secure the services of an attorney. Under M. R. Civ. P. 4.1, limited representation may be appropriate as determined by counsel after appointment. Therefore,

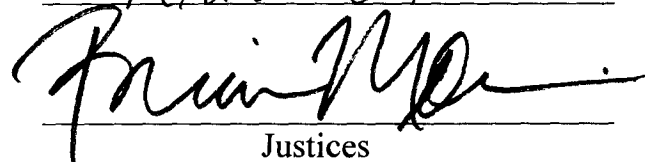

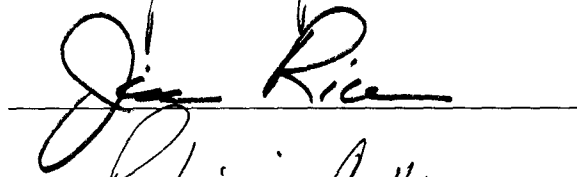
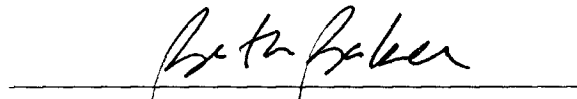
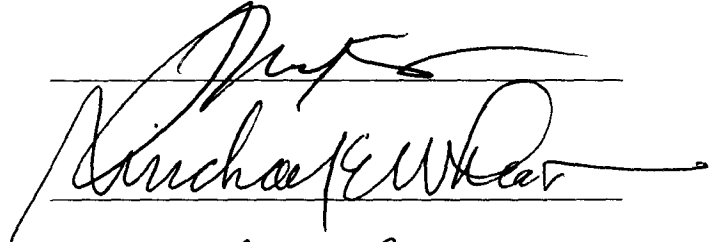
IT IS ORDERED that pro bono counsel shall be appointed for the mother in the underlying proceedings, Yellowstone County Cause No. DG 2011-0063.

The Clerk of this Court is directed to give notice of this Order to all counsel of record and to the Hon. Gregory R. Todd, District Judge, Presiding.

Dated this 6<sup>th</sup> day of December, 2011.



Chief Justice



Justices