FILED
01/17/2019
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 18-0399

CHRISTIAN M SARACKI
419 W Iron Street
Butte. Montana 59701
503-708-9537

ORIGINAL

FILED
JAN 17 2019
Bowen Greenwood
Clerk of Supreme Court
State of Montana

THE SUPREME COURT OF THE STATE OF MONTANA,
APPEAL IN THE MATTER OF **DR-17-162** IN THE MONTANA SECOND JUDICIAL DISTRICT, SILVER BOW COUNTY

TAM THI NGUYEN, Appellee/Petitioner, and CHRISTIAN SARACKI Appellant/Respondent.	*Supreme Court Case No. DA 18-0399* **MOTION TO VACATE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PARENTING PLAN, AS ESTABLISHED BY THE ORDER OF THE BENCH OF THE STATE OF MONTANA SECOND JUDICIAL DISTRICT – DEPARTMENT II – ON JUNE 7TH, 2018, AND TO REMAND THIS MATTER BACK TO THE STATE OF MONTANA SECOND JUDICIAL DISTRICT FOR A NEW TRIAL**

I, CHRISTIAN M SARACKI, respectfully request that the Court enter an Order that does the following:

1) – Vacates the parenting plan established by The Bench of the State of Montana Second Judicial District in the matter of **DR-17-162** *due to judicial bias and numerous procedural irregularities during various hearings and during the bench trial. These irregularities and instances of bias had been detrimental to the Respondent's ability to state his case, and:*

2) – Remand the matter back to the Second Judicial District for a new trial regarding the final parenting plan and the conditions imposed with that parenting plan.

Approved by Montana Supreme Court Commission on Self-Represented Litigants, 05/18/05

BECAUSE:

Respondent had previously filed an appeal with this Panel of Five (Supreme Court No. DA 17-0703) regarding an extremely unusual bench trial scheduling conference in the matter of State of Montana Second Judicial District matter DR 17-162. Appellant/Respondent felt that the bench's changing of procedure for the scheduling conference was solely in order to accommodate the Appellee/Petitioner. The Appellee/Petitioner had failed to even attend the scheduling conference (despite the threat of sanctions, signed by the bench, for any party who fails to appear at the scheduling conference – see attached exhibit), and the bench itself had refused to even hear the scheduling conference and, instead, had directed its law clerk to track down the Appellee/Petitioner via telephone and have *the law clerk,* instead of the presiding judge, conduct the conference.

This method of conducting the scheduling conference had NOT been suggested by nor had it been approved by all parties to the action, since the presiding judge's letter (please refer to exhibits attached to this motion for this letter) regarding the scheduling conference, in addition to threatening sanctions upon <u>any</u> party who *fails to appear*, <u>also stated</u> that the conference may indeed be held telephonically *if all parties in the matter agree to such an arrangement*. Appellant/Respondent was forced to show up in person, and he waited and was finally done with the "conference" two hours later.

Because of the numerous irregularities that occurred with this matter (that Appellant/Respondent believes do NOT fall under "Judicial Discretion") that had been

committed by the bench and the clerical staff of The State of Montana Second Judicial District, and the damages suffered by the Appellant/Respondent (specifically, two hours taken away from his employment), Appellant/Respondent additionally seeks compensatory relief in this appeal from The State of Montana Second Judicial District Court in the amount of fifty dollars ($50.00).

In matter DA 17-0703, The Panel of Five of the Supreme Court of the State of Montana dismissed without prejudice the Appellant/Respondent's motion to vacate the bench trial date for State of Montana Second Judicial District matter DR 17-162, claiming that Appellant/Respondent's interlocutory action was *"premature"* and that *"matters of trial administration are within the trial judge's discretion."*

Appellant/Respondent believes that The Panel of Five was in error when it had made this determination, as Appellant/Respondent asks: Did The Panel of Five believed that the judge going above and beyond to contact a party <u>who failed to appear at a required conference</u> *constitute standard trial administration* within judicial discretion? In its written determination of DA 17-0703, there were no objective criteria or guidelines or benchmarks offered by The Panel as to where the thin blue line is located between standard judicial discretion and blatant bias emitting from the actions of a bench, which had the effect of leaving the Appellant/Respondent feeling that subjective, arbitrary "gut feelings" ruled the day.

Appellant/Respondent believes that his interlocutory motion was not "premature", as he had felt at that time that he had filed his appeal to this Panel that this (the scheduling conference improprieties) would possibly create a sort of "slippery slope" of continuing abuse of judicial discretion and bias by this bench in the administration of a trial should the fiasco that had occurred with the trial scheduling conference go unchallenged. Appellant/Respondent feels that, as it turned out, he was correct.

Regarding the administration of the trial itself, the first sign where the Appellant/Respondent felt that judicial administration was questionable at best was with a pre-trial motion by the Appellant/Respondent to permit the two minor children speak privately, where neither parent would be present, with the bench in its chambers. The Bench immediately denied this written motion, first claiming that (apparently all) children of the minor children's age are incapable expressing their wishes regarding their preference of residence due to immaturity, and verbally stating "…..I've seen it happen before and it screws the kids up….." – The Bench had then proceeded to continue to defend its denial of the Appellant/Respondent's motion by verbally citing Montana Code Annotated statute 40.4.214 - 40.4.216, that (the bench claimed) stated that minor children must be at least sixteen (16) years of age to be permitted to speak with the bench regarding their wishes in terms of with which parent they feel more comfortable living with.

There are two grave concerns held by the Appellant/Respondent regarding the bench's reasoning for its denial of Appellant/Respondent's motion to have the minor children

involved hold a private conference with the bench in Judge's chambers with neither parent present. Firstly, the bench, in its hastily written final order in the matter of DR 17-162 ("hastily written" in that the bench had to very quickly wrap up its existing caseload, as it had just received a plum political appointment from the Governor himself) weakly attempts to defend its decision to deny the motion by stating, quote: *"The children are not mature enough to make this determination."* – unquote. That all children at whichever age are too immature to make their wishes clear regarding their living situation is a grossly negligent, careless and lazy over-generalization, as the bench has never met the Appellant's minor children, and therefore has no factual basis to make such a statement (unless the bench is licensed as a clinical child psychologist). It would be akin to making a statement that "All _____ are criminals" – a court of law surely is no place for sweeping over-generalizations.

Secondly, and most importantly, Montana Code Annotated cited by the bench makes absolutely zero mention of an age requirement of sixteen years or older. In actuality, that section cited by the bench states: - *"40-4-214. Interviews.* *(1) The court may interview the child in chambers to ascertain the child's wishes as to residence and parental contact."* – which appears to show that this bench had, with intent, acted contrary to Montana Code Annotated. Additionally, the Appellant/Respondent's intent with filing that motion was to follow M.C.A. 40-4-212(b), which states that the wishes of the minor children be taken into consideration by the bench. By denying the minor children involved a chance to allow their voices to be heard, it leads a reasonable person to believe that the bench's actions in denying the motion were contrary to the verbiage of the statute 40-4-212(b) itself,

therefore, due process had been denied to the Appellant/Respondent and the Montana Code Annotated was blatantly disregarded by this Bench in this matter, thusly, a question of law arises in this action.

The next question of law in the proceedings of the bench trial is in regards to the refusal of the bench to allow submission of evidence that a shelter manager with a previous criminal conviction of fraud (and who is currently wanted by law enforcement in Montana) was allowed to have access to personal identifying information (willingly provided to the felon by the Appellee/Petitioner) of Appellant/Respondent's minor children, including, but not limited to, the minor children's social security numbers. This was an attempt to display numerous examples of the safety of Appellant/Respondent's minor children being placed in jeopardy whenever they are in the Appelle/Petitioner's custody (with thee most recent instance, oddly enough, occurring on September 5th, 2018).

The bench in this matter had refused to allow the evidence showing the current "wanted-by- law-enforcement" status of the person (former SafeSpace, Inc. shelter manager Shawnee Maldonado) with having access to personal identifying information of the Appellant/Respondent's minor children.

The bench had stated that it was impractical and unreasonable to expect that, when entering a domestic violence shelter, the Appelle/Petitioner had been expected to run a background check on the shelter staff.

Approved by Montana Supreme Court Commission on Self-Represented Litigants, 05/18/05

It seemed to make no difference to the judge when Appellant/Respondent stated to the bench that there was never, at any time, a forced removal or even an implied statement made to the Appelle/Petitioner to leave the family residence and that the fact remains that she had simply *done so at her own choosing*.....thusly, the judge's implication that it is unreasonable to check the background of individuals who have access to your children's identifying information is not applicable here as there had been no genuine emergency where the Appellee/Petitioner was physically harmed in any way, shape or form, and had NO CHOICE BUT TO stay at SafeSpace, Inc's shelter. Again, at no time was the Appellee/Petitioner told that she must leave the family residence nor had she been threatened by the Appellant/Respondent at any time!

Appellant/Respondent had spoken to a number of individuals (most had told him that "Butte is a small town, and I really do not want to get involved") who had stated to the Appellant/Respondent that the bench in the matter of DR 17-162, in its campaign for the State of Montana House of Representatives in 2000, had only one major issue in its campaign - reformation of Montana's domestic violence laws (see attached MT Standard Newspaper article). These individuals had stated that, because of this, there is a close association between the bench and SafeSpace domestic violence shelter (and, thusly, by extension, anybody that is assisted by SafeSpace, Inc. claiming to be a "victim"). Later research by the Appellant/Respondent will show that the presiding judge happened to be a

Approved by Montana Supreme Court Commission on Self-Represented Litigants, 05/18/05

member of The Board of Directors for SafeSpace, Inc.

Appellant/Respondent feels that the items he had offered into evidence would have placed SafeSpace, Inc. (again, an organization that had the presiding judge in DR-17-162 serving on its Board of Directors) in a rather negative light (hiring convicted felons and placing them in close proximity to children), so the Bench had simply refused to admit the evidence into the record and, additionally, had required the Appellee/Petitioner to cease questioning of the Appellee/Petitioner in that matter. Again, Appellant/Respondent states unequivocally that this evidence's relevancy was simply one part, albeit not thee most relevant one, of an accumulation of events that plainly displayed the Appellee/Petitioner's clear disregard for the safety of the minor children!

Given the Bench's long affiliation with the SafeSpace shelter and its refusal to allow relevant evidence into the proceedings, this brings grave concerns about the integrity of the judicial process and thusly, brings up another instance of a question of law regarding judicial bias as well as a rather apparent *conflict of interest* on the part of the Bench, as SafeSpace personnel, including Ms. Maldonado, had been acting as the Appellee/Petitioner's handlers, if you will, in encouraging and assisting the Appellee/Petitioner (and, illegally, also the minor children) in their removal from the family residence. When asked by the Appellant/Respondent how the procedure went for her filing for a decree of divorce, Appellee/Petitioner's response to him was that she had been guided *directly* first to a Mr. Anthony Denino (Law Clerk for Part II of the State of

Montana Second Judicial District) by the SafeSpace individual who had accompanied her to the courthouse and that she had then began filling out the paperwork *from that point.* This also calls into significant question the Second Judicial District's public claim that all matters initially presented before the Second District for litigation are "randomly" assigned between the Benches of Part I and Part II.

Appellant/Respondent has grave concerns regarding the procedure as to how DR-17-162 ended up being presented to a Bench that had previously served on The Board of Directors of the Non-Governmental Organization that had been acting as handlers for the Appellee/Petitioner.

Finally, in the bench's "Findings of Fact" written statement, in Article 14 – the bench claims that – quote "No credible evidence exists that either parent has placed the children's safety or welfare was at risk *(sic)*" – unquote.

The actions of the bench during the entire proceeding of matter DR 17-162 greatly contradict that opinion. The Appellant/Respondent here will display two very similar incidents that had occurred during the proceedings of DR 17-162 that had been handled in an almost opposite manner by the bench, and respectfully requests that The Panel of Five contrast the manner in which the two situations had been determined by the bench.

In the first example, what the bench had (conveniently?) failed to write about in its final

order was an *ex parte* ruling it had granted (attached with this motion) in favor of the Appellee/Petitioner on July 6th, 2017, which had the effect of legally removing the minor children from the Appellant/Respondent's custody. The Appellant/Respondent was never notified of such a procedure from the bench and was never afforded the opportunity to contest the allegations made to the bench by the Appelle/Petitioner. As, to the admittedly limited legal knowledge of an individual who is representing himself pro se, *ex parte* rulings are not especially common in the judiciary, except in cases of proven dire emergencies, or where one party simply cannot be made available for the proceedings, Appellant/Respondent questions why this ruling, based upon ONLY an allegation by the Appellee/Petitioner (which she had later recanted), was issued by this bench.

In the second example, there had been an incident, after the bench trial of DR 17-162 had been completed, where the Appellant/Respondent's minor child had been struck on the head by a male "friend" of the Appelle/Petitioner's whilst the minor children were in the Appelle/Petitioner's custody.

Appellant/Respondent respectfully questions - HOW LEGALLY can the two examples (The first example of Appelle/Petitioner's lie on July 6th, 2017 about how the Appellant/Respondent is going to run away with the minor children vs. the second example on January 27th, 2018 with an actual police report of the assault on the Appellant/Respondent's son) – two *similar examples* of children's safety alleged to be in

Approved by Montana Supreme Court Commission on Self-Represented Litigants, 05/18/05

danger – be handled so differently by the Bench? Especially when the one example (example #1) was based upon a later-recanted accusation by the Appelle/Petitioner that had zero basis in proven fact along with no physical documentation to actually back up the allegation made by the Appellee/Petitioner? Meanwhile, the other example is backed by a LawEnforcement report (enclosed with this motion).

Again, how is it "standard judicial administration" when Example One was granted an ex parte ruling taking the Appellant/Respondent's minor children away from him - while the other example was an incident backed by a report from law enforcement and was basically called "speculative" and dismissed, with what basically amounts to the bench calling the minor child a liar?

***A reasonable person* simply has to ask: Are these two examples, when contrasted in terms of how they had been processed by the Bench of The Second Judicial District in regard to the final order, bias on the part of the Bench?? These two examples regarding the safety of the minor children in the matter of DR 17-162, one of the Appellee/Petitioner and the other of the Appellant/Respondent, and the vastly different ways they were determined by this bench, bring up a <u>significant</u> question of law, in terms of judicial bias.**

In summary, in your ruling regarding this appeal, Appellant/Respondent requests from The Panel of Five an actual determination of whether the Second District bench's actions during the administration of the entire matter of DR 17-162 (as stated in this brief and the

exhibits attached to this brief, from the initial ex parte ruling, to the scheduling conference, at the trial, and post-trial matters such as child endangerment and documents regarding perjury on the part of the Appellee/Petitioner regarding statements made under oath of her removing the children from daycare without the Appellant/Respondent's knowledge or consent), constituted standard judicial administration of a case brought before the Bench, or if, as Appellant/Respondent believes, those actions had crossed the line into abuse of judicial discretion and bias.

Additionally, as stated early on in this brief, Appellant/Respondent respectfully requests, in this appeal, that objective criteria utilised by the Panel of Five to reach their conclusion be included in this Panel's written decision order, so that the Appellant/Respondent has a better understanding of why the Panel ruled in the manner that it did.

Given the evidence presented in this motion, Appellant/Respondent respectfully requests that The Panel of Five refer this appeal to the full bench of the State of Montana Supreme Court for a hearing on Appellant/Respondent's motion for matter DR 17-162 to be remanded back to the State of Montana Second Judicial District for the determination regarding the final parenting plan to be re-heard in that venue. Appellant/Respondent wishes to make it clear that <u>he is not contesting the dissolution of marriage decree itself</u>, but rather is contesting the Parenting Plan as well as the conditions imposed by the Bench of Part II of The State of Montana Second Judicial District in its Final Order of DR-17-162.

At this time Appellant/Respondent would wish to advise The Panel of Five that he currently <u>*does not possess the financial means to obtain copies of the bench trial*</u>

transcription, **as they are in excess of $1,000 in fees that he cannot afford to pay at this time to obtain copies of the transcripts. Purely as an aside, Appellant/Respondent had been required to pay the required fees for all of the procedures in defending himself and his minor children during the matter of DR-17-162, however, the Appellee/Petitioner had every single one of her fees waived by The Second Judicial District.**

Appellant/Respondent does understand that, in states with a very low population, that Justices all across a state usually know each other quite well outside of the Courtroom and that the Judiciary often walks in lockstep and, therefore, is frequently loathe to overturn a ruling that may appear to cast criticism on one of their peers. Given the blatant conflict of interest in this matter, Appellant/Respondent respectfully requests that The Panel of Five make the correct moral and ethical ruling and refer this matter to the full bench of The State of Montana Supreme Court for its consideration and review.

☒ I would like a hearing before the full Supreme Court on this Motion.

I have filed the following documents along with this Motion:

☒ My Affidavit in support of this Motion.

☒ My Affidavit of Service, which indicates how I served copies of these documents on the opposing party.

☐ Other:_____

Dated this _____ day of _____, 20____.
(date) *(month)* *(year)*

_____
(Your signature)

_____
(print your name)

State of Montana

County of Silver Bow

This instrument was signed or acknowledged before me on 1-16-2019

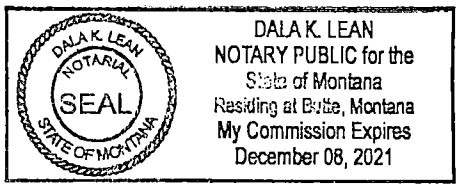
by Christian M. Saracki acting in the capacity of Self

Print name of signer

on behalf of Self

Dala K. Lean

Notary Signature



Affix seal/stamp as close to signature as possible.

Certificate of Service

I hereby certify that I have filed a true and accurate copy of the foregoing motions w[illegible] the Clerk of the Montana Supreme Court. I further certify that copies of all motions that have been filed in appeal DA 18-0399 to both, the Appellee/Petitioner (Ms. Tam Thi Nguyen) and the Court of Original Jurisdiction in the matter of DR-17-162 (The State of Montana Second Judicial District Court – Part II).

I had physically handed to the Appellee/Petitioner a true and accurate copy of the attached Motion For Review of DR 17-162 by The State of Montana Supreme Court, appeal on January 16, 2019 at approximately 6:00 PM at the address of 1308 Silver Bow Homes, Butte, MT 59701.

I had physically handed to the Court of Original Jurisdiction in the matter of DR-17-162 a true and accurate copy of the attached Motion For Review of DR 17-162 by The State of Montana Supreme Court, on January 16, 2019 at approximately 3:10 PM at the address of at the address of 155 W Granite Street, Butte, MT 59701.

Appellant/Respondent - Pro Se

Christian M. Saracki
Printed Name

State of Montana

County of Silver Bow

This instrument was signed or acknowledged before me on 1-16-2019

by Christian M. Sara CKI acting in the capacity of Self

Print name of signer

on behalf of _____

Dala K. Lean

Notary Signature

DALA K. LEAN NOTARIAL SEAL STATE OF MONTANA

DALA K. LEAN
NOTARY PUBLIC for the
State of Montana
Residing at Butte, Montana
My Commission Expires
December 08, 2021

Affix seal/stamp as close to signature as possible.