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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 18-0491

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 18-0491

IN RE THE PARENTING PLAN FOR:
N.C.D., a minor child,

TIMOTHY KANE DAVIS,

Petitioner and Appellee,

and

DEBORAH SUSAN SMITH,

Respondent and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana First Judicial District Court,
Lewis & Clark County, the Honorable John W. Larson, Presiding

APPEARANCES:

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INTRODUCTION

Debbie brings two preliminary matters to the Court's attention:

(1) Tim's 22-page statement of facts contains multiple assertions for which no record cites are provided, in violation of Mont. R. App. P. 12(d). (Appellee Br. at 13 – 25.) A good number of these assertions are not facts. They are unfounded argument.

More than a few of these statements are defamatory, including, but not limited to, the assertion that Debbie, a licensed attorney, "attempted to block and inhibit [the GAL's] investigation" or that she "personally attack[ed] and threaten[ed] Greg Daly." These inflammatory accusations are patently false claims of criminal and contemptuous conduct, but which Tim, through his counsel Robyn Weber, wants this Court to believe.

(2) Since Debbie filed her opening brief on January 9, 2019, there are a number of developments of which Debbie requests the Court to take judicial notice.[1] Several of these developments occurred prior to the filing of Tim's response brief on April 8, 2019:

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[1] The documents included as appendices hereto, which provide proof of these developments, were prepared after transmittal of the record on appeal. Despite counsel's unsupported protestations to the contrary (Appellee Br. at 27 – 28), they are admissible evidence of which this Court may take judicial notice on appeal, pursuant to Mont. R. Evid. 201(b)(2), (d), (f), and 803(4), (6), (24).

- January 10, 2019 – N.C.D. was admitted to St. Peter Hospital and subsequently to Shodair Children's Hospital following a suicide attempt and a sexual assault. (App. O.)
- January 30, 2019 – An individualized education plan was finalized for N.C.D. (App. P.)
- February 11, 2019 – N.C.D. again was admitted to St. Peter Hospital and then to Shodair Children's Hospital following continued mental health episodes and academic problems. (App. Q.)
- February 19, 2019 – N.C.D. was admitted to Open Sky Wilderness Program ("Open Sky") directly from her Shodair discharge. (App. R.)
- March 20, 2019 – A comprehensive psychological evaluation was conducted of N.C.D. by Kevin Gonzelez Boas, Ph.D. (App. S, including only pages 1 – 2, and 51 – 54 of the report, which provide identifying and background information to authenticate the report, as well as Dr. Gonzalez Boas's diagnoses and recommendations.)
- May 16, 2019 – N.C.D. was admitted into Solstice West Residential Treatment Center upon her discharge from Open Sky. (App. T.)

I. THE DISTRICT COURT VIOLATED DEBBIE'S RIGHTS TO DUE PROCESS OF LAW AND TO PARENT N.C.D.

Tim asserts that Debbie received due process when the District Court re-wrote the parenting plan in April 2018 based solely on the GAL's recommendation

and an irregularly noticed interview with N.C.D. by telephone when she was in her bedroom at Tim's house. (Appellee Br. at 29 – 30.) Tim states that Tami Darlow, the licensed clinical professional counselor who conducted 66 hours of therapy with Debbie and N.C.D., "did not make any 'recommendations' in this case." (Appellee Br. at 28.) Citing nothing, Tim claims that that notice of the interview "was simply a courtesy and not a statutory requirement." (Appellee Br. at 30.) Additionally, without citation, Tim asserts, "District Courts throughout Montana have relied on a child's preference in determining that child's residence and contact with parents. There is no reason why N.C.D.'s wishes should be discounted just because she has some challenges." (Appellee Br. at 33.) Without support, Tim avers that Debbie filed "highly sensitive and confidential documents regarding her daughter's mental health care while there was no seal on the Court's docket." (Appellee Br. at 34.) Tim argues that the District Court orders Debbie challenges on appeal that keep the two N.C.D. interviews and all "psychological records" secret from both of N.C.D.'s parents, properly "within its discretion to protect the child's privacy[.]" (Appellee Br. at 30 – 31, 35.) Tim's contentions are baseless.

First, Debbie has statutory and due process rights as N.C.D.'s parent to access all of her psychological and counseling records, to be apprised of N.C.D.'s statements to any and all professionals, and to review the District Court's two

interview transcripts. Mont. Code Ann. § 40-4-225, could not be clearer: "**Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent who is a party to a parenting plan.**" In interpreting a statute, a judge should not insert what is omitted or omit language that the Legislature has inserted. Mont. Code Ann. § 1-2-101.

The District Court's order denying Debbie, and Tim, access to any of N.C.D.'s records or knowledge of her statements to medical professionals – psychological, counseling, or otherwise – is *ultra vires* and must be reversed by this Court. It was incorrect as a matter of law to withhold these records and statements from N.C.D.'s parents. Failure to reverse the District Court's decision in this regard, would violate due process of law under the Fourteenth Amendment to the United States Constitution as a clear violation of an unambiguous state statute.

Second, nothing in Mont. Code Ann. § 40-4-214(1) authorizes a district court in its discretion to hold an unnoticed interview or to withhold the interview transcripts of a minor-age child from her parents. Parents have a federal due process right to review the child's interview transcript. While this Court does not

appear to have addressed this question, the Court of Appeals of Michigan has explained:

> Courts have historically allowed *in camera* interviews with children in recognition of the emotional trauma felt by a child required to testify in open court or in front of his or her parents. . . . However, **this enlightened and sensitive focus on the child's well being should not permit courts to ignore issues of fundamental fairness in proceedings affecting a parent's custodial rights. The *in camera* interview with the child is not meant to be a reliable form of fact-finding.** . . .
>
> Studies in child development suggest that the real purpose of an *in camera* interview is to provide a child with an opportunity to make a "psychological statement ... of how he or she has resolved (or failed to resolve) the inevitable loyalty conflict that divorce and separation creates." Levy, M.D., *The meaning of the child's preference in child custody determination*, 8 J. of Psychiatry & L. 221, 223 (1980). We note that many children have difficulty simply expressing their viewpoints. "Even a child mature enough to understand the uniqueness and privacy of his own mind may lack the sophistication to appreciate the conflicts and ambiguity in his views." Buss, *Confronting developmental barriers to the empowerment of child clients*, 84 Cornell L.R. 895, 928 (1999). A child's viewpoint can also be influenced by a desire not to hurt or offend a parent out of loyalty, fear of reprisal, or a combination of the two. *Id.* at 943, n. 159. Thus, the proposition that a child, who is going through one of the most emotional and trying experiences in his or her life, can briefly and clearly relate a viewpoint on a custodial preference to a virtual stranger (the judge) may not be realistic.
>
> **Assuming arguendo that the child is able to express a preference, the interview should not take**

> **place in a vacuum. Inquiry must be made in order to test the authenticity, the motives, and the consistency of the preference. Often a good interview will result in information that affects other child custody factors and therein lies the problem.**

Molloy v. Molloy, 247 Mich. App. 348, 637 N.W.2d 803, 805 - 06 (2001) (footnotes and citations omitted; emphasis added), *rev'd in part on other grounds Molloy v. Molloy*, 466 Mich. 852, 643 N.W.2d 574 (Table) (2002).

Debbie has not challenged the District Court's authority "to consider N.C.D.'s wishes regarding her own parenting plan." (Appellee Br. at 32.) Debbie challenges the District Court's order and the GAL's recommendation that N.C.D. be allowed to unilaterally decide the terms of her parenting plan with regard to time spent with Debbie or whether to attend family therapy. There is no legal or medical basis for granting such expansive authority to a teenager with multiple diagnosed mental health conditions. (App. S at 51.)

Third, the district court record in this case been continuously sealed since May 23, 2016. (D.C. Doc. 104.) Ms. Weber's statement to the contrary is unequivocally false. (Appellee Br. at 34.) This Court ruled in Debbie's first appeal that Tim improperly attempted to substitute Judge Menahan after Debbie's notice of appeal was filed in 2016. *Parenting of N.C.D.*, 2017 MT 272N, ¶ 14. Accordingly, Judge Menahan's order purporting to unseal the docket was void *ab initio* because he lacked jurisdiction to issue it. (*Parenting of N.C.D.*, ¶ 14; App. A

at 2 – 3; D.C. Doc. 208.) On remand, the District Court re-affirmed the seal on this docket, twice, over Tim's opposition. (App. A at 4; App. G at 1.) Debbie properly filed confidential documents concerning N.C.D. in a manner that protected N.C.D.'s privacy, made a record for judicial review, and enabled the District Court to have an informed basis on which to make parenting decisions.

Finally, Ms. Weber falsely states that Ms. Darlow "did not make any recommendations" concerning the parenting of N.C.D. In fact, Ms. Darlow's report dated April 17, 2018, was admitted as an exhibit at the hearing on June 29, 2018. (06/29/2018 Tr. ("Tr.") at 14 – 15 and Exh. B.) Ms. Darlow recommended that Debbie and N.C.D. spend more time together. (Tr. at 22.) "[I]t is important that [N.C.D.] spend time with both parents and that efforts are made to maintain relationships with both." (Exh. B at 3.) Additionally, Ms. Darlow testified that N.C.D. is a "people-pleaser" and that making her choose between her parents "is going to be extremely difficult for her." (Tr. at 25.)

Concerning Debbie's alleged "anger", Ms. Darlow testified that in 66 hours of therapy, "never once did I see Debbie lose her cool in my office at all", even though "[t]here was some intensity to the conversations, as there – as is to be expected with the nature of what we were talking about." (Tr. at 25.) Ms. Weber objected to Ms. Darlow making parenting recommendations, but then sought Ms. Darlow's opinion on parenting schedules during cross-examination, over Debbie's

objection that the District Court had denied her motion to appoint Dr. Paul Silverman for a parenting evaluation. (Tr. at 39.)

It is unclear why Ms. Weber cites Admin. R. Mont. 24.189.807(c) as a basis for discounting Ms. Darlow's opinion. (Appellee Br. at 29.) Ms. Darlow was not a parenting evaluator in this case and did not testify as such. (Tr. at 45 – 46.) Nor is Greg Daly authorized to conduct parenting evaluations. Nevertheless, Ms. Weber elicited testimony from Daly concerning parental alienation, over Debbie's objection, that Daly lacks the qualifications to undertake parenting evaluations. (Tr. at 56 – 57.) Paul Silverman, Ph.D., is a parenting evaluator with expertise that qualifies him to evaluate Debbie's and Tim's respective parenting skills and to make recommendations about N.C.D.'s contact with her parents. (Appellant Br. at 10; D.C. Doc. 321.)

Dr. Silverman should be appointed on remand to conduct a parenting evaluation that is filed with the District Court and shared with N.C.D.'s current team of professionals to inform their therapeutic objectives. It was an abuse of discretion for the District Court to deny Debbie's motion to appoint Dr. Silverman.[2] A parenting evaluation is in N.C.D.'s best interest going forward,

[2] Debbie's corresponding request to appoint Dr. Silverman for a psychological evaluation of N.C.D. is moot. (Appellant Br. at 10.) N.C.D. had a comprehensive psychological evaluation conducted two months ago while she was at Open Sky, in which she admitted to a lot of lying, including about matters pertinent to this parenting action that warrant attention on remand. (App. S.) Daly and Tim

even though she will be 18 in seven months. The effects that the current parenting situation have had, and will continue to have, on N.C.D.'s physical and mental health generally, and specifically on her relationship with Debbie, may last her lifetime.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY NOT REMOVING OR REPLACING GREG DALY AS N.C.D.'S GAL AND IN GRANTING HIM ADDITIONAL AUTHORITY.

Tim continues to support Daly's actions as GAL and denies any problems. (Appellee Br. at 35 -37.) Even though Daly's GAL role was defended by the County Attorney's office when Debbie filed an ethics complaint charging, *inter alia*, that Daly was performing GAL duties on county time and with county resources, Tim disputes that Daly has a conflict of interest with his day-job as a line-level county caseworker and his duties as a GAL for N.C.D. (Appellee Br. at 36.) Tim notes that Daly is not a county attorney, deputy county attorney, or an employee of the Department of Public Health and Human Services. (Appellee Br. at 36.) Tim overlooks that Daly testified, "I did staff the case [i.e., N.C.D.'s parenting plan] with the supervisor at Child Protective Services." (Tr. at 50.) No evidence exists of such "staffing" or what that even means.

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opposed the psychological evaluation, claiming that it and the parenting evaluation were unnecessary. (D.C. Doc. 322.) Daly testified, over Debbie's continuing objection, that N.C.D. would be "a horrible liar." (Tr. at 54.) Had the parenting and psychological evaluations been conducted when Debbie requested them, N.C.D. might have been spared the harm she has endured since Tim's and Greg Daly's parenting plan recommendations were adopted by the District Court.

Daly averred that he is a mandatory reporter, but that he possesses authority not to report alleged abuse to CPS, claiming he still could report abuse "based on the new revelations", which he did not identify. (Tr. at 93 – 96.) The record contains no "new revelations" – or past revelations – of any kind of abuse. Daly testified from the point of view of a government case worker, which is what Mont. Code Ann. § 40-4-205 prohibits. Accordingly, Debbie's argument that Daly possesses a conflict of interest to serve as GAL is well-founded.

Concerning Daly's qualifications to serve as GAL, Ms. Weber inaccurately asserts that Debbie could and should have challenged his qualifications when he was appointed. As a matter of fact, Debbie *did* challenge Daly's qualifications in the prior appeal. (*Parenting of N.C.D.*, DA 16-0592, Appellant Reply Brief at 17, citing Debbie's Rule 22 motions that were never adjudicated by the District Court, which addressed, *inter alia*, Daly's qualifications and bias.) This Court declined to examine Daly's qualifications or bias in the prior appeal. Accordingly, Debbie moved to remove Daly as the GAL as soon as the prior appeal concluded. (D.C. Doc. 210.) An overwhelming majority of documents filed in District Court on remand pertain to the GAL's actions, Debbie's efforts to remove or replace Greg Daly as the GAL, or the District Court's orders thereon, because Daly is incompetent, offensive, and dangerous to N.C.D.'s well-being. (Appellant Br. at 13 – 14.)

Daly claimed on direct examination that he possessed, "special advanced education in attachment". (Tr. at 54 – 55.) Debbie objected to the lack of foundation establishing that Daly possessed any "advanced education". (Tr. at 55.) Ms. Weber sought, and obtained over Debbie's objection, Daly's opinion that Tim had not engaged in parental alienation against Debbie. (Tr. at 56 – 57.) Providing no examples, Daly testified, over objection, that Debbie's alleged "anger" was "so visible in the community and in my interactions with the parent." (Tr. at 57.) Again without any personal knowledge, Daly testified falsely, "And even though she's not being slapped in the face anymore, that there are things being thrown around the room and there are anger fits that go on." (Tr. at 57.) Daly provided hearsay testimony, over objection, that educators at N.C.D.'s school "are, like, walking on eggshells[,]" and "feel intimidated by Debbie." (Tr. at 57 – 58.)

Daly testified, falsely, that his residential parenting recommendations included limitations on N.C.D.'s choice, so that Debbie "wouldn't be just, you know, forgotten". (Tr. at 59.) Over Debbie's hearsay objection, Daly testified concerning N.C.D. was "released from a lot of anxiety" in April when she could start choosing when to be with Debbie, "no more distress calls to the bathroom", and "functioned better in school." (Tr. at 60 – 61.) Daly testified that N.C.D. had an emotional "anchor" at her dad's house. (Tr. at 64.)

On cross examination, Daly admitted that he had never spent any time together with Debbie and N.C.D., despite being the GAL for nearly two years. (Tr. at 74.) Daly acknowledged that he has no personal knowledge of how Debbie and N.C.D. interact together. (Tr. at 76.) Daly testified that his highest degree is "a bachelor's degree in Psychology in '92", and "Circle of Security" training, which he declined to describe. (Tr. at 76.) Contrary to his testimony under oath that he had "special advanced education in attachment", Daly testified on cross that he had only "training and experience" on "ACEs", i.e., Adverse Childhood Experiences, which he could not explain in any detail. (Tr. at 77.) Daly was not certain how many cases for which he served as GAL at that time; he guessed "probably on a couple", after confessing he "flushed a few out". (Tr. at 79.) Yet even though he only had one other GAL case at that time, Daly did not know what the case was. (Tr. at 79.) At one point during cross-examination, Daly told Debbie, "I've just not ever encountered anyone like you, to be honest." (Tr. at 81.)

Daly admitted that he lacked professional credentials, testifying without foundation that he had been "allowed to testify in court by our county attorney, in Gallatin County, and here as an expert witness . . . in a number of different cases based on my experience and aptitudes in this work and what I've done for our community." (Tr. at 84 – 85.) Daly claimed, "if you go outside in the hallway, you'll find my name on a plaque where I got the pro bono guardian ad litem award

from Judge Sherlock at one point. I put in my time, you know. I've been asked to do this stuff. I guess that's some kind of a professional credential.", following which Debbie inquired, "Oh, really?" (Tr. at 85.)

Despite Debbie's ability during cross-examination to challenge Daly's professional qualifications and the bases of his recommendations, not to mention the fact that a "plaque on the wall" for volunteer service does not qualify someone as an expert under the Montana Rules of Evidence or DPHHS regulations on parenting evaluations, the District Court reprimanded Debbie, "Ma'am, now you're at the point where you do one more comment like that, you'll be sitting down, okay?" (Tr. at 85.) Debbie's "Oh, really?" question to Mr. Daly – a witness who testified under oath that he had been involved in "dozens and dozens, if not hundreds, of CPS cases" (Tr. at 50) – was within the scope of proper cross-examination. The District Court's reprimand was off-base and belittling. Yet this attitude by the District Court, which denied Debbie due process and allowed Daly to provide hearsay testify without a foundation permeated the entire hearing.

Daly testified that Debbie "didn't want to make a recommendation that you should have a psychological report, which I really kind of think you do. But I didn't want to anger you. But I do really think you need to look at yourself. And you're not doing your child any good by your approach in the community." (Tr. at 86.) Daly testified about Debbie, "you seem to be disorganized to the point where

you couldn't maintain coherency." (Tr. at 88 – 89.) Daly admitted that he was not a psychologist, a lawyer, or a psychiatrist. (Tr. at 89 – 90.) Daly claimed the basis of his claim that Debbie was "disorganized" to the point of incoherency was based on his training in attachment training from Circle of Security, which he could not describe. (Tr. at 89 – 90.) Daly's claims are false and defamatory.

Daly testified that, despite his repeated claims to the contrary in reports and under oath, Debbie had not physically abused N.C.D. (Tr. at 93 – 95.) Daly admitted that there is no definition of "emotional abuse" in Montana law, and that there was no evidence of "psychological abuse." (Tr. at 95 – 96.) Nevertheless, Daly concluded, "It's my professional opinion, after having worked in the field for 25 years, and then other places for longer than that, that what you did was abusive to your daughter." (Tr. at 96.) No evidence backs up Daly's allegations of abuse, but these sweeping, highly prejudicial, unfounded lies have been projected onto Debbie throughout this case, down to reckless, defamatory claims that Debbie's "approach in the community" was harming N.C.D.

The GAL's label of Debbie as "angry" while he communicates with her in ALLCAPS email missives *is* sexist and *is* typical of Donald Trump's communications. (Appellee Br. at 14.) The GAL's lack of professional or educational credentials, while at the same time purporting to provide "professional opinions" and recommendations that he is patently unqualified to provide, which

then cause permanent harm or death to human beings, *is* akin to Pol Pot's actions. (Appellee Br. at 14.) My child has tried to take her life, engaged in multiple instances of self-harming, was sexually assaulted, and was failing school *after* Tim's and Greg Daly's recommended parenting plan was in full force and effect. Debbie did not cause these things. Debbie barely saw, let alone meaningfully parented, N.C.D. after the District Court adopted the GAL's parenting recommendations in April 2018. Greg Daly's incompetence and malevolence, combined with Tim's secrecy and callous disregard of Debbie's rights as N.C.D.'s mother, caused harm to N.C.D.

Record evidence combined with more recent, judicially noticeable evidence establishes that Greg Daly's service as GAL in this case has been an abject failure. Daly must be removed as the GAL, and the injunction prohibiting Debbie from contacting Lewis and Clark County, or any part thereof, must be vacated. There is no objective standard by which Daly's service as N.C.D.'s GAL can be said to be successful or in her best interest. My child's well-being has decreased by any measure since Greg Daly came into her life in 2017.

Daly's recommended parenting plan was a disaster for N.C.D. Nevertheless, Judge Larson ramrodded a final parenting plan through a two-hour hearing, run on a timer, that was noticed as a hearing on an interim parenting plan. This scheme denied Debbie time to adequately rebut Daly's recommendations or to support her

own proposals. To avoid additional violations of Debbie's federal due process and civil rights to parent her child, this Court should reverse the District Court's order denying Debbie's motion to remove or replace the GAL. The District Court's order was an abuse of discretion, and, as subsequent events demonstrate, is illegal. The final parenting plan does not serve N.C.D.'s best interest.

III. THE DISTRICT COURT FAILED TO APPLY CONTROLLING LAW AND ABUSED ITS DISCRETION WHEN IT ORDERED DEBBIE TO PAY TIM'S ATTORNEY'S FEES AND COSTS CONCERNING FIVE SEPARATE MATTERS.

Tim contends that the District Court acted lawfully and within its discretion when it ordered Debbie to pay his attorney fees and costs in five separate matters. (Appellee Br. at 38 - 44.) Debbie rests on her arguments in her opening brief concerning these matters, with the exception that she responds to Tim's unsupported assertion that attorney fees and costs in this parenting plan case are not subject to Mont. Code Ann. § 40-4-110, but rather to § 37-61-421. (Appellant Br. at 30 – 39.)

None of the District Court orders requiring Debbie to pay Tim's attorney fees and costs cites or relies on Mont. Code Ann. § 37-61-421. Contrary to Tim's unsupported contention, nothing in Mont. Code Ann. § 40-4-110 limits its applicability to a situation in which a party claims that he cannot afford his attorney. (Appellee Br. at 39.) Further, even if the fee and cost awards against Debbie in this case were justified, which they are not, Tim disregards controlling

precedent when he fails to acknowledge or discuss *Marriage of Harkin*, 2000 MT 105, ¶¶ 70 – 77, 299 Mont. 298, 999 P.2d 969, in which this Court reversed an attorney fee award and remanded for an inquiry into whether the fees were reasonable and necessary.

In fact, the five challenged orders are not yet final, because the District Court has not ordered Debbie to pay any specific amount of Tim's fees and costs. No hearings were ever set for Debbie to challenge the fees or reasonableness thereof before Tim noticed entry of judgment, which started the 30-day timeframe to appeal. Mont. R. App. P. 4(5)(a)(i). Nevertheless, because the five orders are based on incorrect conclusions of law and an abuse of discretion in findings, Debbie seeks reversal of them in this appeal in the interest of judicial economy to avoid a hearing on orders that were improvidently entered in the first place.

IV. TIM'S REQUEST FOR SANCTIONS, COSTS, AND ATTORNEY FEES LACKS MERIT AND SHOULD BE DENIED.

As he did in the first appeal of this case, Tim asks this Court to sanction Debbie pursuant to M. R. App. P. 19(5) by ordering her to pay his attorney fees and costs to defend this appeal. (Appellee Br. at 44 - 45.) M. R. App. P. 19(5) authorizes this Court to award sanctions, costs, or attorney fees to a prevailing party on appeal if the Court determines that the appeal is "frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial or

reasonable grounds." Just like before, Tim's request lacks merit and should be denied.

Debbie's appeal is well-founded. Her motions in District Court and this Court have been thoroughly argued and grounded in evidence and the law. Debbie has filed motions that in her professional judgment were warranted to protect her substantial rights in these proceedings, and to preserve the record for review of state and federal issues. She has acted with N.C.D.'s best interest in mind at all times. Irrefutable evidence establishes that the challenged orders on appeal were not in N.C.D.'s best interest.

Furthermore, as this Court noted when it denied Debbie's petition for supervisory control in May 2018, Debbie "retain[ed] the remedy of appeal in which she may raise any issues or alleged errors." (App. N at 2.) Debbie's appeal of Judge Larson's challenged orders is meritorious and does not fall within any of the categories subject to sanctions on appeal.

CONCLUSION

Debbie requests this Court to vacate the District Court's final amended parenting plan; vacate the prohibitions prohibiting Debbie's or Tim's access to N.C.D.'s mental health records and against professionals providing specific quotes from N.C.D. to Debbie or Tim; order the Court Reporters to provide copies of N.C.D.'s *in camera* interview transcripts to Debbie and Tim; and order the

appointment of Dr. Silverman to conduct a parenting evaluation on remand for which Tim should pay.

Debbie requests this Court to reverse the District Court's denial of her motion to remove Greg Daly as N.C.D.'s GAL and to vacate the Amended Order appointing him as Guardian ad Litem. Through Debbie's request above to vacate the Amended Final Parenting Plan, the injunction against Debbie contacting Lewis and Clark County would be vacated. The District Court abused its discretion in retaining Greg Daly as N.C.D.'s GAL and giving him additional authority.

Debbie requests this Court to vacate all five orders requiring Debbie to pay Tim's attorney fees and costs.

Given the developments since this appeal was filed in August 2018, this case should be remanded to a different district court judge to hold a hearing on a parenting plan that should govern the remaining period of time until N.C.D. reaches the age of 18, and to determine whether N.C.D. requires a guardianship past the age of 18. The current parenting plan does not reflect reality in terms of the parenting schedule or the parties' ability to share in N.C.D.'s medical and educational costs, which costs tens of thousands of dollars per month, which Tim can afford and is paying in-full, but which the parenting plan mandates Debbie pay 40% to 50% that she cannot afford. It is clear from Tim's and Ms. Weber's filings in District Court and in this Court that they do not care about N.C.D.'s best

interest. Rather their goal is to try to obtain and execute judgments against Debbie to try to prevent her from exercising her rights to parent N.C.D., a psychologically abusive tactic to Debbie and N.C.D. that this Court should not condone.

Lastly, Debbie maintains her own request for an award of sanctions, attorney fees, and costs and any other relief that the Court considers just and proper, pursuant to M. R. App. P. 19(5). (Appellant Br. at 39.) In addition, Debbie maintains her request for this Court to assign this case to a different district judge on remand. (Appellant Br. at 39.) Further, given multiple, knowing false claims that Ms. Weber makes in her response brief on Tim's behalf, failure to disclose pertinent developments that plainly affect the parenting plan, and ceaseless, baseless attacks on Debbie's personal character and professional integrity, Debbie renews her request for disqualification of Ms. Weber as Tim's counsel due to Ms. Weber's several conflicts of interest and unprofessional conduct in this matter that have denied Debbie due process. *See Keuffer v. O.F. Mossberg & Sons, Inc.*, 2016 MT 127, ¶¶ 11-12, 383 Mont. 439, 373 P.3d 14 (affirming the Court's authority governing the conduct of attorneys who practice law in this State, and ruling that violations of the rules of professional conduct may tip the scales in favor of counsel disqualification).

DATED this 30th day of May, 2019.

Respectfully submitted,

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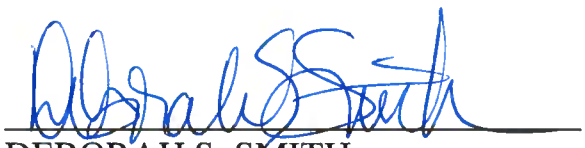
CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Mac is 4,939, excluding the Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service.



DEBORAH S. SMITH

CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a true and complete copy of the foregoing Reply Brief of Appellant on the following individuals by the methods indicated below:

Robyn L. Weber (conventional)
Weber Law Firm
221 5th Avenue
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DATED this 30th day of May, 2019.