

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT CAUSE NO. DA-18-690

BETTINA MALLOY,

Petitioner and Appellee,

v.

PATRICK A. MALLOY, III,

Respondent and Appellant.

APPELLEE'S RESPONSE BRIEF

On Appeal from Montana Fourth Judicial District Court, Missoula County,
Cause No. DR-17-532

Before the Honorable Robert L. Deschamps, III

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STATEMENT OF THE FACTS

The background of the parties and the relevant pretrial events are chronicled for the Court in the District Court's Findings of Fact and in the pleadings filed in the District Court. Appellant's ("Patrick") Opening Brief contains numerous false assertions and misstatements, including allegations that Appellee's counsel "missed numerous deadlines in the underlying matter; however was never penalized for her actions" (Respondent's Response to Motion to Dismiss, P. 3, Lines 5-6, Docket #). Patrick misstates the record and misleads this Court regarding several important factual issues, including deadlines, which are corrected below.

- ▶ **Patrick alleges Tina did not file a response to his first Motion for Maintenance** (Docket #6). Tina's Response (Docket #15) was filed on August 20, 2017. In addition, Patrick filed his Reply to Tina's Response on September 13, 2017 (Docket #18), effectively contradicting his claim that Tina did not file a response.
- ▶ **Patrick alleges that his first discovery requests were subject to an outstanding Motion to Compel, implying that Tina did not respond to those discovery requests.** Tina filed Notice of Service of Responses to Discovery Requests (Docket #19) on 9/13/2017 and also filed Notice of Service of Supplemental Discovery Responses (Docket #19.20) on 11/07/2017.

- 1 3. **Patrick alleged that Tina did not respond to his Motion to**
2 **Deposit Retirement Proceeds with Court** (Docket #17). Patrick
3 did not serve his Motion on Tina or her counsel. Tina only learned
4 of the Motion after the Court had issued an Order (Docket #35) on
5 January 29, 2018. On February 16, 2018, Tina filed a Motion to Set
6 Aside Order for Lack of Service (Docket #47).
7
8 ▶ **Patrick states that Tina refused to attend a hearing on June 1,**
9 **2018.** The Court's Order (Docket #83) of May 31, 2018, vacated
10 the trial scheduled for June 1, 2018 and stated "the attorneys are
11 nonetheless **ORDERED** to appear before the Court on June 1,
12 2018. The parties were not required to be present at that hearing.
13
14 ▶ **Patrick alleges that Tina's response to his Motion to Compel**
15 **Responses to his Third Discovery Requests (Docket #91) was**
16 **untimely filed.** Tina filed her Response on 7/27/18 (Docket #102).
17
18 ▶ **Patrick alleges that Tina did not file a response to his Motion for**
19 **Temporary Maintenance** (Docket #111). The Court's Order
20 (Docket #85) of 6/1/18 stated that Respondent's motion for
21 maintenance was HELD IN ABEYANCE. Patrick was ORDERED
22 to submit a supplemental memo, supporting affidavit, and any
23 exhibits in support of his motion by August 1, 2018. Instead, Patrick
24 filed a Renewed Motion for Temporary Maintenance (Docket
25 #111), which did not include a supplemental memo, supporting
26
27
28

1 affidavit, or any exhibits. Tina did not respond, as Patrick did not
2 provide any supplemental information which required a response
3 from Tina.
4

- 5 ▶ **Patrick alleged that Tina did not file a response to his Request**
6 **for Ruling on Discovery Motions** (Docket #58). Patrick's
7 pleading was entitled "Respondent's Notice of Issue and Request
8 for Ruling on Outstanding Motions" (Docket #58). No Response is
9 required to a party's Notice of Issue.
10
- 11 ▶ **At hearing of 4/23/18, Patrick requested the Court order his**
12 **football card collection be returned.** The Court advised the issue
13 would be addressed at trial. Unbelievably, immediately after that
14 hearing, Patrick filed a Motion for Civil Standby (Docket #64)
15 alleging that the Court stated he should get his own items and
16 requesting a civil standby to retrieve the football cards. This was in
17 direct disregard of the Court's statement that the football card issue
18 would be addressed at trial.
19
- 20 ▶ **Patrick alleged on numerous occasions and in his appellate brief**
21 **that the only personal property that Tina had provided him**
22 **were three bags full of garbage.** Patrick's father testified at trial
23 that he had retrieved a large amount of personal property belonging
24 to Patrick from Tina's counsel's office in January, 2018. He
25 confirmed that he had signed a receipt for the property, which
26
27
28

1 included three sealed boxes, one flat screen television set, one large
2 black plastic garbage bag, and one black fabric briefcase containing
3 documents. He was also provided with a black leather satchel full
4 of military records in July, 2018.
5

6 Tina and Patrick were married on August 4, 1990 (FOF #1). At the time
7 of the marriage, Patrick was an active duty enlisted member of the United States
8 Air Force (FOF #7). He was honorably discharged after six years of service.
9 Tina worked and attended school during the marriage to further her education
10 and employment opportunities (FOF #11).
11

12 After Patrick's separation from the military, the parties returned to their
13 hometown of Missoula. In 1997, while Patrick was employed by Columbia
14 Paints, he was rear-ended by a car while he was stopped at a red light (FOF #12).
15 The neck and back injuries he suffered as a high school football player were
16 aggravated, and he was not able to work for a period of two years, from 1997 to
17 1999. Because the accident occurred while Patrick was performing duties
18 related to his employment, his medical care was covered by Workers
19 Compensation.
20
21

22 Patrick was deemed to be 14% disabled during the Workers
23 Compensation/Insurance settlement case, and an independent medical expert
24 opinion provided that Patrick "could work" (FOF #13).
25

26 Patrick received a Workers Compensation settlement of approximately
27 \$250,000 in 1999 (FOF #12). At the time of hearing, none of the proceeds from
28

1 that settlement remained after almost 20 years.

2 Workers Compensation provided Patrick with re-training as a computer
3 repair technician, since he was unable to perform the heavy lifting required in his
4 position with Columbia Paints. However, Patrick never sought employment in
5 that field, because he alleged the pay in that field was too low (FOF #16, FOF
6 #104).
7

8 Patrick began working for Diamond Products in 2000 (FOF #18). After
9 repeated warnings, Patrick was terminated from employment because of poor
10 performance in 2009. Patrick alleged that his poor performance was due to the
11 amount of pain medication he needed to take (FOF #18). He later filed for
12 disability benefits, alleging his poor performance was due to an injury incurred at
13 Diamond Products. His Workers Compensation claim was denied. He then filed
14 a discrimination action against Diamond Products, with the Montana Human
15 Rights Division of the Department of Labor and Industry, which was also
16 denied.
17
18

19 Patrick attended a drug treatment facility for his prescription drug abuse
20 issue in 2012 (FOF #20).
21

22 After Patrick was terminated by Diamond Products, he attended the
23 University of Montana and incurred significant student loans. However, Patrick
24 quit college and testified at trial that he did not have “the patience” to finish his
25 degree (FOF #104).
26

27 During the marriage, Tina earned her Licensed Practice Nursing Degree
28

1 while she was working full-time at Community Medical Center (FOF #30). Tina
2 was the primary source of income for the parties and their two children from
3 2009 through the date of separation because of Patrick's refusal to work and his
4 substance abuse issues (FOF #30).

5 Tina testified that she did not agree to Patrick staying home and acting as a
6 homemaker after 2009 (Trial Testimony, Day One). Tina testified that she was
7 frustrated by the fact that she had to work between 60 and 70 hours a week
8 because of Patrick's continued refusal to seek employment (FOF #34). At trial,
9 Tina testified that she "would like to work 40 hours a week like everybody else"
10 (FOF #34).
11

12 Tina continued to attend college full-time, while also working full-time,
13 and earned a Bachelor of Science degree in Nursing (FOF #30). Both parties
14 admitted that they were big spenders during the marriage, which led to financial
15 difficulties (FOF #40). They incurred a large amount of consumer debt, which
16 resulted in several collections actions against the parties and were forced to
17 refinance the marital home on two separate occasions (FOF #52).
18

19 They were forced to sell two wave runners and the trailer on which they
20 were hauled to Tina's parents (FOF #64). Linda Weiler testified that the wave
21 runners and trailer are kept on their property, are titled and registered in the
22 Weilers' name, and are insured by the Weilers (FOF #65).
23

24 Tina and Patrick retained attorney Suzanne Marshall to represent them in
25 collections actions. While Ms. Marshall was representing the parties, she and
26

1 Patrick began having an extramarital affair (Trial Testimony, Day One).

2 Suzanne Marshall's husband, Doug Marshall, also an attorney, discovered
3 Patrick and Suzanne together at the Marshalls' lake cabin during the July 4th
4 weekend in 2017. He assaulted Patrick, who was treated for facial injuries. Mr.
5 Marshall was also criminally charged for the assault. This event led to both
6 couples separating and subsequently divorcing. Patrick incurred injuries
7 resulting from Mr. Marshall's assault, which Tina paid from her Health Savings
8 Account (FOF #93). Patrick also received a civil settlement in the amount of
9 \$3,000.00 as a result of the assault (FOF #81).
10
11

12 Following the parties' separation, Patrick began living with and working
13 as an investigator for Suzanne Marshall. Ms. Marshall testified at trial that she
14 had helped support Patrick since he separated from Tina and that she intended to
15 continue supporting him in the future and also intended to employ him at her law
16 firm (Trial Testimony, Day One).
17

18 On July 27, 2017, Tina took out a loan from her 401(k) in the amount of
19 \$19,000.00 (FOF #60). She used those funds to repay money the parties had
20 borrowed from her parents, to pay for her daughter's college tuition, and to retain
21 an attorney (FOF #61).
22

23 Contrary to Patrick's allegations, Tina did not use any portion of the loan
24 to pay for a 10-day cruise for herself, her daughter, and her parents. Tina's
25 parents testified that they had paid for their own trip expenses (Trial Testimony,
26 Day One).
27

1
2 As an honorably discharged veteran, Patrick is entitled to medical care
3 through the Veterans Administration until he reaches the age of 65 and becomes
4 eligible for Medicare. He testified that he had been denied veterans benefits
5 because of Tina's income during the marriage but that he intended to re-file for
6 VA benefits after the dissolution was finalized (FOF #15).

8 Patrick alleged that he has been unable to work since 2009 (FOF #19).
9 However, Patrick testified that he is able to work at the "right Job" and that he
10 intends to work as an investigator in the future (FOF #98).

12 Linda Weiler testified that Patrick "was able to do things physically and
13 that, in her opinion, Patrick can work" (FOF #24). Michael Weiler testified that
14 Patrick can do physical work and assisted him in digging fence post holes and
15 pouring cement (FOF #25). Patrick's father, Patrick Malloy, Sr., also testified
16 that he believed his son was able to work (Trial Testimony, Day One).

18 Tina testified that Patrick engaged in numerous physical activities since
19 2009, including vacations to Las Vegas and visiting Orlando theme parks, where
20 he was able to ride thrill rides and walk for hours unassisted (FOF #45). The
21 parties' daughter, Kiana, testified that she and Patrick had kayaked in the
22 Bahamas during a family vacation there in 2016 (FOF #43).

24 At trial, Patrick offered no evidence regarding his alleged disability. He
25 did not call any medical doctors or other providers to testify as to his current
26 condition and/or his ability to be employed.
27

SUMMARY OF THE ARGUMENT

The district court's denial of maintenance was not clearly erroneous because the district court's decision was supported by substantial evidence, the court did not make a mistake, and there was no abuse of discretion by the court in denying an award of maintenance.

The district court apportioned the marital estate, supported by extensive findings of fact and conclusions of law. The court did not make a mistake, misapprehend the evidence, or abuse its discretion in its equitable distribution of the marital estate.

The district court was within its discretion to deny Patrick's request for attorney fees. An award of attorney fees is appropriate when it is based on necessity, reasonable, and based on competent evidence. Patrick did not present any evidence that he needed help paying his attorney, nor did he present any evidence as to the amount of or reasonableness of his attorney fees.

Patrick failed to satisfy his burden to provide this Court with a sufficient record to enable it to address the issues raised on appeal. Patrick failed to provide a transcript of the hearings. The Appellant Brief contains numerous factual errors, which would be evident from the transcript.

STANDARD OF REVIEW

The Montana Supreme Court reviews a District Court's division of marital property and maintenance awards to determine whether the findings of fact upon which the decision is based are clearly erroneous. *Patton v. Patton*,

1 2015 MT 7, 378 Mont. 22, 340 P.3d 1242; *Jackson v. Jackson*, 2008 MT 25, 341
2 Mont. 227, 177 P.3d 474. “A finding is clearly erroneous if it is not supported
3 by substantial evidence, if the district court misapprehended the effect of the
4 evidence, or if our review of the record convinces us that the district court made
5 a mistake.” *Patton*, ¶ 18.
6

7 Absent a clearly erroneous finding, the Supreme Court will affirm a
8 district court’s division of marital property and maintenance award unless it
9 determines that the court abused its discretion. *Jackson*, ¶ 9. “In a dissolution
10 proceedings, the test for an abuse of discretion is whether the district court acted
11 arbitrarily without employment of conscientious judgment or exceeded the
12 bounds of reason resulting in a substantial injustice.” *Jackson*, ¶ 9. This Court
13 reviews a district court’s conclusions of law to determine if they are correct. *In*
14 *re the Marriage of Thorner*, 2008 MT 270, 345 Mont. 194, 190 P.3d 1063.
15
16

17 ARGUMENT

18 **I. THE DISTRICT COURT’S APPORTIONMENT OF THE** 19 **MARITAL ESTATE REFLECTED THAT THE DISTRICT COURT** 20 **ADEQUATELY CONSIDERED ALL OF THE RELEVANT FACTS,** 21 **CONSIDERED THE STATUTORY FACTORS FOR DIVISION OF** 22 **A MARITAL ESTATE, AND EQUITABLY DIVIDED THE** 23 **MARITAL ESTATE.**

24 Mont. Code Ann. § 40-4-202 governs the distribution of a marital estate. A
25 district court must consider the factors listed in that statute in the making of the
26 district court’s findings and conclusions, and there must be competent evidence
27 presented on the values of the property. *In re Marriage of Funk*, 2012 MT 14, ¶
28

1
2 7, 363 Mont. 352, 270 P.3d 39. A court has broad discretion when dividing
3 property in a marital dissolution. *In re Marriage of Binsfield*, 269 Mont. 336,
4 343, 888 P.2d 889, 893 (1995). The court shall also consider the contribution or
5 dissipation of value of the respective estates in making the apportionment. A
6 district court's decision with regard to property distribution is presumed correct.
7 *In re Marriage of Clyatt*, 267 Mont. 119, 122, 882 P.2d 503, 505 (1994).

8
9 A. **The Division of the Marital Estate was Equitable and Supported by the**
10 **Evidence on the Record and Presented at Trial.**

11 It is the appellant who bears the burden of establishing error by the court;
12 such error cannot be established in the absence of legal authority. Patrick does
13 not cite to any portion of the transcript nor does establish that the distribution of
14 the marital estate was not equitable, because the court did not assign his values to
15 the personal and real property.
16

17 Patrick included in his Proposed Findings of Fact property that was not
18 included on his Financial Disclosure Statement, including jewelry, household
19 furnishings, and car repair costs. He also included property that the court stated
20 was not marital property, such as Tina's parents' bank accounts, the wave
21 runners, and the Precious Moments collection.
22

23 The court found in FOFs #72 and #73 that Patrick did not include evidence
24 of the value of jewelry or household furnishing at trial nor did he include them in
25 his financial disclosures. The court also found that property not considered part
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27

1 of the marital estate included wave runners, firearms, Precious Moments
2 collections, and any other unidentified personal property. FOF #28.

3 Patrick also alleges that Tina willfully hid assets from Patrick during the
4 action, including his football card collection and several bank accounts.

5 Although Patrick raised the issue of the missing football card collection on
6 numerous occasions, he failed to present any evidence as to the value of the
7 collection nor did he present any evidence that Tina had possession of the cards.
8

9 Further, the court found that bank accounts that Patrick alleged were held
10 in the name of Tina were actually accounts held in her parents' name and were
11 not part of the marital estate.
12

13 Although a district court must consider each of the factors listed in Mont.
14 Code Ann. § 40-4-203, the court need not issue specific findings of fact regarding
15 each factor, provided this Court can determine the trial judge actually considered
16 these factors. *In re Marriage of Payer*, 2005 MT 89, ¶ 12, 326 Mont. 459, 110
17 P.3d 460.
18

19 It is apparent from the court's detailed Findings and Conclusions that the
20 court carefully considered the assets and liabilities of the parties and their
21 contribution to the marriage. Tina paid all of the expenses of the marital estate,
22 including Patrick's medical expenses, during the course of the action. She
23 provided the majority of financial support during the marriage; Patrick refused to
24 work because of his drug addiction issues and his claim that he was unable to
25 physically hold a job. Such allegations were contradicted by evidence showing
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1 Patrick engaging in physical labor and activities during the periods he claimed he
2 was “disabled.”

3 Patrick further objects to the district court’s awarding half of the parties’
4 marital debt to him, because he alleges he is “without means to pay the debts” and
5 further alleges that the debts were all incurred by Tina. Patrick offered absolutely
6 no evidence to show that the marital debts were incurred by Tina, as the court
7 noted.
8

9 Patrick further muddies the waters by suggesting that Tina’s counsel
10 engaged in unprofessional conduct in a prior case, *In re the Marriage of Kesler*
11 *and Rogers*, 2018 MT 231, 392 Mont. 540, 427 P.3d 77. In that action, this Court
12 found that several of the district court’s findings of fact and conclusions of law,
13 that were adopted almost verbatim from the Appellee’s Proposed Findings of
14 Fact, were not supported by the record, but also found that substantial evidence
15 supported the district court’s decision, in spite of the erroneous findings.
16
17

18 Patrick states that this Court found that counsel made “misrepresentations”
19 to the district court and took “liberties with the record.” That language is found
20 nowhere in the Supreme Court’s Order affirming the lower court’s decision.
21 Moreover, it should also be noted that Tina’s counsel informed both Patrick and
22 his counsel on numerous occasions that they were not counsel of record in the
23 district court action and were not involved in drafting the proposed findings and
24 conclusions. Nevertheless, Patrick has attempted to use that case as a weapon
25 against Tina’s current counsel throughout this proceeding.
26
27
28

1 **B. Patrick's Due Process Rights were not Violated by the District Court.**

2 Due process requires that a person must be given notice of legal
3 proceedings involving that person and must be afforded an opportunity to be
4 heard in those proceedings.

5 Patrick's opening brief is full of sound and fury and contains numerous
6 accusations involving Tina's frustration of the litigation process, her vexatious
7 and obstructive conduct, her deliberate defiance of court orders, and egregious
8 allegations concerning her alleged attempts to conceal property, none of which has
9 he established. He apparently believes that Tina's actions resulted in Patrick's
10 due process rights being violated.

11 Patrick was afforded ample opportunity to be heard and participate in his
12 action, as is apparent by his constant and numerous filings with the court, which
13 resulted in the court ordering that nothing further could be filed without leave of
14 court. Patrick has failed to prove that he was denied equal protection of the law.

15 **II. THE DISTRICT COURT CONSIDERED THE RELEVANT**
16 **FACTORS IN DETERMINING THAT PATRICK WAS NOT**
17 **ENTITLED TO SPOUSAL MAINTENANCE FROM TINA.**

18 The standard of review for spouse maintenance is whether the district
19 Court's findings are clearly erroneous. Mont. Code Ann. § 40-4-203 sets forth
20 the factors to be determined by a court in awarding maintenance and provides:

- 21 (1) In a proceeding for dissolution of marriage or legal separation or a
22 proceeding for maintenance following dissolution of the marriage. . .
23 the court may grant a maintenance order for either spouse **only if** it
24 finds that the spouse seeking maintenance:

- (a) lacks sufficient property to provide for the spouse's reasonable needs; and
- (b) is unable to be self-supporting through appropriate employment.

Patrick has failed to demonstrate that he meets the requirements of this statute. Patrick testified at hearing that he was able to work. Tina, Patrick's father, and Tina's parents all testified as to Patrick's ability to be employed. Patrick's paramour, Suzanne Marshall, testified that she intended to employ Patrick in the future.

The district court made detailed findings and conclusions regarding the factors set forth in § 40-4-202, MCA, contrary to Patrick's allegations. The district court noted in FOF #30 that Tina's income had increased annually because of her efforts in securing more education and improving her financial situation. The court found that Tina took full advantage of her education and has been able to achieve ongoing success as a nurse.

The court also found that Patrick is able to support himself through employment, even though he voluntarily chose not to work at meaningful employment since 2009.

Patrick's Preliminary Financial Disclosure statement indicates he receives an income of \$800.00 per month. The Court found that Patrick has the ability to be self-supporting through employment. Even if Patrick was paid minimum wage, his gross monthly income would be approximately \$1,473.33, which far exceeds his monthly expenses of \$645.00, as stated on his financial disclosure

1 statement.

2 In order for a court to make a finding of spousal maintenance, the spouse
3 requesting such maintenance must prove **both** prongs of Mont. Code Ann. § 40-
4 4-203 by proving that a party seeking maintenance: 1) lacks sufficient property to
5 provide for the spouse's reasonable needs; **and** 2) is unable to be self-supporting
6 through appropriate employment.
7

8 It was established by testimony and direct evidence that Patrick is able to
9 support himself by employment. He failed to present any evidence in support of
10 the requisite factors of Mont. Code. Ann. § 40-4-203 to establish that he does not
11 have the ability to be self-supporting.
12

13 **III. THE COURT WAS ACTING WITHIN ITS DISCRETION IN**
14 **DENYING PATRICK ATTORNEY FEES**

15 Patrick alleges that the district court was required to award him attorney
16 fees, pursuant to Mont. Code Ann. § 37-61-421 and should have also awarded
17 him attorney fees pursuant to Mont. Code Ann. § 40-4-110.
18

19 **A. The District Court Exercised Proper Discretion in Denying to Award**
20 **Patrick Attorney Fees under Mont. Code Ann.**
21

22 The court may order a party to pay a reasonable amount of attorney fees
23 incurred by the other party to ensure that both parties have timely and equitable
24 access to marital financial resources for costs incurred during a proceeding, per
25 Mont. Code Ann. § 40-4-110.
26

27 This Court has held that an appropriate attorney fee awarded pursuant to
28

1 Mont. Code Ann. § 40-4-110, is one which is: (1) based on necessity; (2)
2 reasonable; and (3) based on competent evidence. *Pfeifer v. Pfeifer*, 282 Mont
3 461, 466, 938 P.2d 684, 687 (1997).

4 Patrick did not present any evidence that he needed help paying his
5 attorney. Nor did Patrick present any evidence as to the amount of, or
6 reasonableness, of his attorney fees.
7

8 B. **The District Court's Denial of Attorney Fees is Supported by the Court**
9 **Order of August 27, 2018, that Found that the Time Consumed by**
10 **Counsel and Court over Motions, Including 19 Separate Motions Filed**
11 **by Patrick Malloy, Could have Been Resolved Without Involvement of**
12 **the Court.**
13

14 Patrick unnecessarily and vexatiously multiplied this action by filing
15 numerous motions and other pleadings, which both consumed and tried the
16 patience of the court. The court found on August 27, 2018, that Respondent filed
17 19 motions, including numerous Notices of Issue, Motions for Sanctions, and
18 Subpoenas duces Tecum. The court further found that the conflict associated
19 with the case and time consumed by court and counsel over motions that could
20 have been resolved extra-judicially resulted in the Court's decision that the
21 parties must seek leave to file any further motions. Nevertheless, without leave of
22 court, Patrick filed further Requests for Sanctions on October 17 and October 26,
23 2018.
24
25
26

27 An attorney or party to any court proceeding who, in the determination of
28

1 the court, multiplies the proceedings in any case unreasonably and vexatiously
2 may be required by the court to satisfy personally the excess costs, expenses, and
3 attorney fees reasonably incurred because of such conduct. Mont. Code Ann. §
4 37-61-421.

5 Patrick alleges that the court should have awarded him attorney fees
6 pursuant to Mont. Code Ann. § 37-61-421 because of her “history of non-
7 compliance.” However, to support his allegations, Patrick makes numerous false
8 statements about Tina’s actions, which are addressed in the Statement of Facts
9 above.
10

11 In fact, Patrick, himself, vexatiously multiplied this litigation, by filing
12 numerous pleadings on issues that the court had already resolved or that had no
13 basis in fact. For example, Patrick again raises the issue of his government-
14 issued documents in his Opening Brief, an issue which the court had ruled on
15 several times.
16

17 To support his position, Patrick cites to *Novak v. Novak*, 2014 MT 62, 374
18 Mont. 182, 320 P.3d 459, in which a wife was found in contempt and ordered to
19 pay her husband’s attorney fees because her son had maliciously destroyed
20 husband’s personal property while it was in wife’s possession. This Court found
21 evidence presented at the contempt hearing supported a finding that the wife was
22 in contempt for her failure to protect the items while they were in her home.
23

24 In this case, there is absolutely no evidence that Tina, or her daughter,
25 destroyed, hid, or “stole” any marital assets. Patrick alleges that Tina hid assets
26
27

1 from him during the proceeding and/or failed to disclose that assets. The court
2 found that the assets Patrick referred to were not marital assets, such as the jet
3 skis, Precious Moments collections, and Tina’s parents’ bank accounts.

4 Patrick also made the ludicrous allegation that Tina “stole” her own
5 retirement fund by taking a loan against her 401(k) prior to the commencement of
6 the dissolution proceedings. In fact, Tina has been repaying the loan on a
7 monthly basis, and Patrick was awarded one-half of that fund, including the
8 amount of the loan. Patrick was awarded the funds held in escrow by the Clerk of
9 Court and immediately withdrew those funds after the district court’s Findings of
10 Fact, Conclusions of Law, and Final Decree of Dissolution.

13 **IV. APPELLANT DID NOT MEET THE BURDEN OF PRESENTING**
14 **THIS COURT WITH A RECORD SUFFICIENT TO ENABLE IT**
15 **TO RULE UPON THE ISSUES RAISED ON APPEAL.**

16
17 **A. Patrick has Not Satisfied his Burden of Presenting the Court with a**
18 **Sufficient Record on Appeal by his Failure to Provide a Copy of the**
19 **Trial Transcript or Properly Citing to the Transcript.**

20 Patrick did not provide this Court with a full transcript of the October 11-
21 12, 2018 hearing. M.R.App.P. 8(2) states that the appellant “has the duty to
22 present the supreme court with a record sufficient to enable it to rule upon the
23 issues The Montana Rules of Appellate Procedure require an appellant to present
24 a concise, cohesive argument which “contains the contentions of the appellant
25 with respect to the issues presents, and the reasons therefor, with citations to the
26
27
28

1 authorities, statutes, and pages of the record relied on.” *In re McMahon*, 2002 MT
2 198, 311 Mont. 175, 53 P.3d 1266.

3 Patrick’s brief contains numerous factual allegations. He bases arguments
4 on information that is clearly contradicted by the trial transcript and vaguely cites
5 to portions of the record that he fails to provide. This Court is unable to address
6 Patrick’s claims of error, since Patrick did not provide the Court with the
7 pertinent portions of the record required to prove his allegations.
8

9 If an appellant seeks to challenge the sufficiency of the evidence
10 supporting a verdict, the appellant must provide Supreme Court with a trial
11 transcript, sufficient portions of a trial transcript, or a record sufficient to enable
12 the Court to rule upon the issues raised. *Giambra v. Kelsey*, 2007 MT 158, 338
13 Mont. 19, 162 P.3d 134.
14

15 The Montana Supreme Court Clerk of Court’s Office confirmed on May
16 28, 2019, that Appellant did not file a transcript of the trial, although he alleged in
17 his Notice of Appeal that a transcript had been ordered.
18

19 M. R. App. P. 8(2) provides that the appellant has the duty to present the
20 supreme court with a record sufficient to enable it to rule upon the issues raised.
21 Failure to present the court with a sufficient record on appeal may result in
22 dismissal of the appeal or affirmance of the district court on the basis the
23 Appellant has presented an insufficient record.
24

25 The appellant bears the burden of establishing error by the trial court. *City*
26 *of Billings v. Peterson*, 2004 MT 232, ¶ 19, 322 Mont. 444, ¶ 19, 97 P.3d 532, ¶
27

1 19. It is incumbent upon the appellant to transmit the proper record on appeal.
2 *State v. Johnson*, 2008 MT 227, ¶ 17, 344 Mont. 313, 187 P.3d 662.

3 B. **Failure to Comply with the Montana Rules of Appellate Procedure is**
4 **Fatal to an Appeal and the District Court’s Decision should be**
5 **Affirmed.**
6

7 In *State v. Huffine*, 2018 MT 175, 392 Mont. 103, 422 P.3d 102, the appeal
8 dismissed on procedural grounds pursuant to M. R. App. P. 12(1)(4) due to
9 Appellant’s failure to cite to relevant legal authorities and the pertinent portions
10 of the District Court record upon which he asserted error.
11

12 “We have repeatedly held that it is not this Court's obligation to conduct
13 legal research on behalf of a party or to develop legal analysis that might support
14 a party's position.” *State v. Cybulski*, 2009 MT 70, ¶ 13, 349 Mont. 429, 204 P.3d
15 7.
16

17 It is reasonable to expect all litigants to comply in most respects with the
18 applicable procedural rules. *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont.
19 136, 3 P.3d 124. Patrick has not complied with these rules and, by his failure to
20 provide evidence sufficient for this Court to consider his arguments, has failed to
21 demonstrate error on the part of the District Court.
22

23 **CONCLUSION**

24 As set forth above, Appellant has failed to prove that the district court's
25 findings were clearly erroneous or that its conclusions of law incorrect. The
26 district court did not abuse its discretion in its equitable apportionment of the
27
28

1 marital estate or in its decision to deny an award of maintenance. The district
2 court's decision should be affirmed by this Court.

3 DATED this ____ day of June, 2019.

4
5 JONES & COOK, ATTORNEYS AT LAW

6
7 By: _____
8 Jami L. Prins
9 Attorneys for Appellant
10
11

12 **CERTIFICATE OF SERVICE**

13
14 I hereby certified that, on the 14th day of June, 2019, I have filed a
15 true and accurate copy of the foregoing BRIEF OF APPELLEE with the Clerk of
16 the Supreme Court and that I have served true and accurate copies of the
17 foregoing BRIEF OF APPELLEE upon each attorney of record, as follows:
18

19 Jami L. Rebsom, Esq.
20 JAMI REBSOM LAW FIRM, PLLC
21 P. O. Box 670
22 Livingston, MT 59047

23 _____
24 JONES & COOK, ATTORNEYS AT LAW
25
26
27
28

1
2
3 **CERTIFICATE OF COMPLIANCE**

4 Pursuant to Rule 11 of the Montana Rules of Appellant Procedure, I certify
5 that this Brief of Appellee is printed with a proportionately spaced Times New
6 Roman non-script text typeface of 14 points; is double-spaced except for footnotes
7 and for quoted and indented material; and the word count calculated by
8 WordPerfect X8 for Windows does not exceed 10,000 words, excluding Table of
9 Contents, Table of Authorities, Appendix, Certificate of Service, and Certificate of
10 Compliance.
11
12

13 DATED this 14th day of June, 2019.

14 JONES & COOK, ATTORNEYS AT LAW
15

16 By: _____
17

18
19 **CERTIFICATE THAT DISKETTE HAS BEEN**
20 **SCANNED AND IS VIRUS FREE**

21 Pursuant to Rule 12(11) of the Montana Rules of Appellate Procedure,
22 Appellee's Brief was published to a .pdf document so that it is searchable and the
23 DVD-R disk submitted to the Court is virus free.

24 DATED this 14th day of June, 2019.
25
26 _____
27
28