

DA 19-0465

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 49N

IN RE THE MARRIAGE OF:

HERBERT CHRISTIAN PASCHEN,

Petitioner and Appellee,

and

ANNE KEMSLEY PASCHEN,

Respondent and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DR 12-825C
Honorable Heidi Ulbricht, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Anne Paschen, Self-represented, Whitefish, Montana

For Appellee:

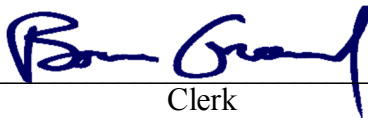
Ryan A. Phelan, Christian Samson, PLLC, Missoula, Montana

Patrick A. Quinn, Special Assistant Attorney General, Department of Public
Health and Human Services, Missoula, Montana

Submitted on Briefs: February 5, 2020

Decided: February 25, 2020

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Anne Kemsley Paschen (Anne) appeals from the Findings of Fact, Conclusions of Law, and Order Following June 11, 2019 Hearing issued July 10, 2019, and the Order Amending July 10, 2019 Findings of Fact, Conclusions of Law, and Order issued August 8, 2019, by the Eleventh Judicial District Court, Flathead County. We affirm.

¶3 The parties have had protracted disagreements in dissolving their marriage, distributing their assets and debts, and addressing maintenance, parenting plan, and child support issues. This is the third appeal in this cause. *See Paschen v. Paschen*, 2015 MT 350, 382 Mont. 34, 363 P.3d 444 (*Paschen I*); *In re Marriage of Paschen*, No. DA 16-0079, 2016 Mont. LEXIS 973 (*Paschen II*). Following another round of litigation regarding issues primarily related to child and medical support,¹ the District Court issued its Findings of Fact, Conclusions of Law, and Order Following June 11, 2019 Hearing and its Order Amending July 10, 2019 Findings of Fact, Conclusions of Law, and Order. Anne appeals from these orders asserting the District Court erred in: holding she was not entitled to

¹ Anne also asserts Appellee owes her \$50,000 in restitution for jewelry awarded to her in *Paschen I*. However, on remand, the District Court reallocated the jewelry to Herb. Anne did not appeal this reallocation in *Paschen II* and this award was left undisturbed on remand, becoming a completely settled issue—the law of the case. *See Paschen II*.

\$50,000 of restitution for missing jewelry; ending child support at age 18; ordering modification of child support; and refusing to award attorney fees and sanctions against Appellee Herb Paschen (Herb).

¶4 We review a district court's findings of fact to determine whether they are clearly erroneous. *In re Marriage of Kesler*, 2018 MT 231, ¶ 15, 392 Mont. 540, 427 P.3d 77. We review a child support award to determine whether the court abused its discretion. *Anderson v. Anderson*, 2014 MT 111, ¶ 11, 374 Mont. 526, 323 P.3d 895. We review conclusions of law to determine if they are correct. *In re Marriage of Kesler*, ¶ 15. Finally, we review denial of an award of attorney fees to determine whether the court abused its discretion. *Cadena v. Fries*, 2015 MT 90, ¶ 7, 378 Mont. 409, 346 P.3d 347.

¶5 Upon review of the record, we find no error by the District Court. The District Court set forth detailed findings of fact supported by substantial evidence. The court then thoroughly and conscientiously considered the law of the case, as well as the law relating to child and medical support and attorney fees. The evidence of record supports the detailed findings made by the District Court. The District Court appropriately followed Montana's statutes and well-settled precedent in its application of the facts to the law. *See generally* Title 40, chapter 5, MCA; § 40-4-110, MCA. Thus, we conclude the District Court's findings of fact are not clearly erroneous, its conclusions of law are correct, and it did not abuse its discretion in its child support determinations or by refusing to impose attorney fees or sanctions against Herb.

¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the

Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶7 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE

Justice Laurie McKinnon took not part in the consideration of this matter.