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8 Attorney for Respondent/Appellee

9 IN THE SUPREME COURT OF THE STATE OF MONTANA

10 IN RE THE MARRIAGE OF	)	CASE NO. DA 20-0460, DA 21-0039
	)	
11 DAVINA ATTAR-WILLIAMS,	)	
	)	
12                   Petitioner/Appellant,	)	<b><u>MEMORANDUM IN OPPOSITION</u></b>
	)	<b><u>TO MOTION FOR STAY OF</u></b>
13                   and	)	<b><u>APPELLATE PROCEEDINGS</u></b>
	)	
14 STEVEN THOMAS WILLIAMS,	)	
	)	
15                   Respondent/Appellee.	)	

16 COMES NOW Steven Thomas Williams, Appellee, through counsel and pursuant  
 17 to Rule 16, M.R.App.P. submits the following memorandum for the consideration of the  
 18 Court.  
 19

20 Appellant has moved this Court for an order staying proceedings pending her  
 21 motion to disqualify the district judge who presided over the divorce trial, issued findings  
 22 and conclusions, and had just found her in contempt for failing to follow the parenting plan  
 23 imposed as part of his decision. The motion herein is not well taken.  
 24

25 Appellant has filed two appeals before this court; DA 20-460 and DA 21-0039.  
 The first is to challenge the ruling by District Judge Donald Harris after the completion of

1 the trial in the parties' dissolution of marriage case. The second concerns a later order of  
2 Judge Harris regarding his enforcement of the adopted parenting plan. Judge Harris  
3 ordered that Appellant follow the holiday schedule noted in the parenting plan that  
4 Appellant signed and that he accordingly adopted into his findings and conclusions.

5 Appellant has had difficulty or flat refused to follow the parenting plan in the case  
6 and has been the subject of several motions for orders to show cause. The most recent  
7 order held Appellant in contempt for refusing to follow the parenting plan and required her  
8 to make up parenting days which she had denied to the Appellee. A copy of that order is  
9 attached as exhibit 1 for the Court's convenience. Appellant was to file objections to the  
10 attorney's fees ordered against her and also to submit different make up parenting days if  
11 they were unworkable. Appellant chose not to so file, but instead presented the district  
12 court with a motion to disqualify Judge Harris on the basis of bias under Mont. Code Ann.  
13 3-1-805. She has presented to this Court through her Affidavit the entire materials that  
14 were filed in the district court before Judge Harris.  
15

16 The record also shows that Appellant's opening brief was due for filing with the  
17 Court on February 10, 2021. She did not file anything. The Court noted such and on  
18 February 23, 2021 ordered that Appellant file her opening brief by March 25, 2021. Now,  
19 about one week before her opening brief is due, she asks this Court to stay all proceedings  
20 while she challenges the objectivity of the district judge. The disingenuousness of this  
21 action is stark, and sanctionable.  
22  
23  
24  
25

## DISCUSSION

1           This Court should deny Appellant's motion for a stay, order her opening brief to be  
2 filed as currently scheduled, and when she fails to file it, dismiss both appeals. The bias of  
3 a district court judge, if any, is not grounds for a stay in this Court. The asserted basis for a  
4 stay is that the transcripts that have been delivered are not accurate. This is something that  
5 is in the sole imaginary belief of Appellant. She has no proof, and offers no proof.  
6 Because, there is no proof all she can put forth is a warped claim the transcripts are  
7 inaccurate. Appellant is wrong. The apparent justification for the wrongness of the  
8 transcripts is that the district court judge, court reporter, court judicial assistant, and the  
9 undersigned, all conspired to make, keep, change, or omit material that should be in the oral  
10 record. The language in Appellant's motion is that the court reporter and judicial assistant  
11 of District Judge Harris submitted "fraudulently inaccurate" transcripts to this court.  
12 Really?

13  
14           Mont. Code Ann. 3-1-805 applies to district court judges and provides a litigant  
15 with a procedure if there is bias by the judge. The filing of an affidavit by the party  
16 precludes the district court judge from further acting in the case until a hearing is held on  
17 the issue. The affidavit must be in compliance with three mandates; (1) it must be filed  
18 more than 30 days before the date of a hearing or trial;(2) it must contain's counsel's  
19 certificate that it is made in good faith, and (3) it must allege facts showing personal bias or  
20 prejudice. Lacking this, it is void. *Id.*

21  
22           Appellant's affidavit fails on two of the three requirements. All she gets correct is  
23 the certification of good faith. There is no hearing pending in this Court, or the district  
24 court, nor does she set forth any facts establishing bias. Only her belief. Her grounds are  
25 legally insufficient.

1 For Appellant to prevail, one has to findr that the entire system was against her for  
2 some reason; apparently a perceived belief that Judge Harris is a friend of the undersigned.  
3 Because of a perceived friendship, Appellant would have this Court conclude that the  
4 parenting plan that she signed and initialed was a result of bias, that her failure to follow  
5 the parenting plan and orders to enforce it are somehow bias, and that the court reporter and  
6 judicial assistant would make up testimony out of thin air and so were all in on this stunt.

7 For some reason, Appellant cites this court to *Draggin' Y Cattle Company*. It has  
8 no relevance to the bias allegations of a district court judge, nor is it a basis for a stay in this  
9 Court. See *Draggin' Y Cattle Company v. Addink*, 372 Mont. 334, 312 P.3d 451 (2013).  
10 *Draggin' Y* involved a professional liability action against some accountants and the result  
11 was a remand to the district court, not for bias, but to correct some rulings. Nothing more.

12 Appellant does not want to follow a parenting plan that she signed. To avoid the  
13 district court's logical adoption of that plan, she concocts unsupported allegations that the  
14 entire proceeding in the court of Judge Harris was biased or fraudulent. It must be noted  
15 she waits to make this allegation until the eve of being found in contempt, and the eve of  
16 having to file her opening brief in this Court. Her effort is false, insincere, and legally  
17 insufficient. See *In re Marriage of Cini*, 363 Mont. 1, 6, 266 P.3d 1257, 1261 (2011)  
18 (Nigel did not file a motion to disqualify the judge until over a month after the hearing had  
19 concluded; therefore, his motion was untimely); *State v. Strang*, 388 Mont. 428, 433, 401  
20 P.3d 690, 695 (2017) (failure to timely assert bias under Mont. Code Ann. 3-1-805 is a  
21 waiver). Additionally, what Appellant really wants is to overturn the orders of Judge Harris.  
22 A stay is not the proper avenue, nor a complaint of bias. *State v. Howard*, 359 Mont. 356,  
23 405 P.3d, 1263 (2017) (judicial ruling are solely a basis for bias).

24 Appellant's motion for a stay in this Court should be denied.

1 DATED this 18<sup>th</sup> day of March, 2021.

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3 P. O. Box 2502  
4 Billings, MT 59103-2502

5 By: /s/ KELLY VARNES  
6 Kelly J. Varnes  
7 Attorney for Respondent

8 **CERTIFICATE OF SERVICE**

9 This is to certify that a true and correct copy of the  
10 foregoing was served by certified U. S. Mail upon  
11 all parties and/or counsel of record as follows:

12 Davina Attar-Williams  
13 4210 Arrowwood Drive  
14 Billings, MT 59106  
15 davinaattarwilliams@gmail.com

16 on the 18<sup>th</sup> day of March, 2021.

17 **HENDRICKSON LAW FIRM, P.C.**

18 By: /s/ JEN HAMMOND  
19 Jen Hammond, Legal Assistant

20 cc: Steven Thomas Williams  
21  
22  
23  
24  
25

## **CERTIFICATE OF SERVICE**

I, Kelly J. Varnes, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 03-18-2021:

Davina Attar-Williams (Appellant)  
4210 Arrowwood Drive  
Billings MT 59106  
Service Method: Conventional

Electronically Signed By: Kelly J. Varnes  
Dated: 03-18-2021