

William J. Paul, Esq.
Paul Law Office, PLLC
210 East Pine St., Ste. 200
Missoula, MT 59802
406-728-0007 / bcpaullaw@gmail.com
Attorney for Alia Floren

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 21-0181

IN RE THE MARRIAGE OF:

ALIA DAY FLOREN,

Petitioner and Appellee,

v.

JAVIER BAUTISTA-SCHEUBER,

Respondent and Appellant.

MOTION FOR ORDER TO OPT

OUT OF MEDIATION DUE TO

DOMESTIC VIOLENCE

Appellant was contacted about this motion, and he stated that he objects to the motion.

Appellee moves the Court for an order allowing Appellee to opt out of mandatory mediation pursuant to M. R. App. P. 7(2)(b).

M. R. App. P. 7(2)(b) reads, in pertinent part, that the mandatory mediation rules apply to “[a]ppeals in domestic relations cases, including but not limited to all dissolution issues” However, “[i]n addition, unless each party provides written, informed consent within 15 days of the filing of the notice of appeal, the supreme court will not order appellate mediation in cases where the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party. An appellant or cross-appellant desiring to opt out of mandatory mediation under this provision shall certify in the notice of appeal or cross-appeal that the domestic relations case is not subject to mandatory mediation pursuant to this section of the rule.”

The Court does have reason to suspect that Appellee has been physically, sexually, or emotionally abused by Appellant because the District Court’s Register of Actions filed with the Supreme Court shows that under Record of Action #26, that the District Court entered a Permanent Order of Protection [against Appellant] in this matter on March 9, 2020.

In addition, the District Court Transcript filed with the Supreme Court states on Page 28, Lines 4 thru 10, that the District Court granted “the Order of Protection as requested as it is clear that Mr. Bautista is engaged in stalking behavior. I will take judicial notice of the prior Order of Protection hearing where

it was found that you [Ms. Floren] were the victim of domestic violence and incorporate that as a reason for granting the Order of Protection in this matter.”

When Appellant, Mr. Bautista-Scheuber filed his Notice of Appeal he certified that the appeal was subject to the mediation process required by M. R. App. P. 7. However, a copy of his Notice of Appeal was not received by the undersigned, nor have any copies of his other filings been received by the undersigned from Mr. Bautista-Scheuber.

Nor has Appellee provided written, informed consent to engage in mediation with Appellant, and it is Appellee’s position that she should not be required to do so.

For those reasons Appellee request the Court issue an order allowing Appellee to opt out of mandatory mediation in this matter.

DATED this 24th day of June, 2021.

s/  _____

William J. Paul, Attorney for Appellee.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of June, 2021, I filed this Motion with the Clerk of the Montana Supreme Court and that I mailed copy to Appellant, Javier Bautista-Scheuber, 1441 Edward L. Grant Hwy., Apt. 2A, Bronx, NY 20452 (courtesy copy to: jbscheuber@gmail.com), and to the Mediator, Debra A. Steigerwalt, Esq., 234 E. Pine Street, Missoula, MT 59802, (courtesy copy to: debbie@missoulafamilylaw.com).

s/  _____

William J. Paul, Attorney for Appellee.

CERTIFICATE OF SERVICE

I, William J. Paul, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 06-24-2021:

Javier Bautista-Scheuber (Appellant)
1441 Edward L. Grant Hwy., Apt. 2A
Bronx NY 10452
Service Method: Conventional

Debra A Steigerwalt (Attorney)
234 E. Pine Street
Missoula MT 59802
Service Method: eService
E-mail Address: debbie@missoulafamilylaw.com

Electronically Signed By: William J. Paul
Dated: 06-24-2021