

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**Supreme Court Cause No. DA 20-0223**

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IN RE THE PARENTING OF B.K.,

A minor child.

JESSICA SMALLLING,

Petitioner and Appellee,

and

JASON KLUBBEN,

Respondent and Appellant.

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**APPENDIX TO OPENING BRIEF OF APPELLANT**

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Findings of Fact, Conclusions of Law, and Order Establishing Temporary Guardianship .....	App. A
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Minute Entry dated 03/03/21 .....	App. D

# APPENDIX A

1 Jason Marks, District Judge  
2 Fourth Judicial District, Dept. 4  
3 Missoula County Courthouse  
4 200 West Broadway  
5 Missoula, MT 59802  
6 (406) 258-4774

FILED MAR 16 2021

SHIRLEY E. FAUST, CLERK  
By  Deputy

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

<p>8 IN RE THE PARENTING OF: 9 B.K. A Minor Child. 10 MARGARET LOUISE KLUBBEN 11 and FRED KLUBBEN, 12 Co-Petitioners, 13 and 14 JESSICA SMALLING and JASON 15 KLUBBEN, 16 Respondents.</p>	<p>Dept. 4 Cause No. DG-21-11 DR-32-2016-0000476-PP FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER ESTABLISHING TEMPORARY GUARDIANSHIP</p>
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17 This matter was originally filed on February 1, 2021, when Margaret and Fred  
18 Klubben filed a petition seeking guardianship over their 7-year-old granddaughter  
19 B.L.K. who was, and still is, residing with them. The Petition alleged generally that  
20 both of B.L.K.'s parents had their ability to parent limited by circumstances. This  
21 matter is closely related to a parenting case this Court is presiding over, DR-2016-  
22 476, *Jessica Smalling and Jason Klubben*. The Court notes that the parenting case  
23 has been heavily litigated including two appeals and a Petition for a Writ of  
24 Mandamus at the Montana Supreme Court. Jason was cautioned regarding the

1 possibility of being designated a vexatious litigant by the Montana Supreme Court.  
2 The parenting case is currently being actively litigated giving rise to this Order.

3  
4 As this guardianship case was in its initial stages, Jessica Smalling (Jessica)  
5 filed a Motion for Contempt in the parenting case and Jason Klubben (Jason) sought  
6 to amend the existing parenting plan. Both of those matters are still pending.

7  
8 In this matter the Court held a hearing on February 11, 2021, and took  
9 testimony from Margaret and Jessica. The Court then directed Jessica to  
10 immediately submit to a drug test which she did. At subsequent hearings in this  
11 matter Margaret and Fred agreed that Jessica's ability to parent was no longer  
12 limited by circumstance but requested that this case remain open pending the  
13 resolution of matters in the parenting case. The Court, in what in retrospect was an  
14 undue desire for efficiency, denied that request and closed this case.  
15  
16

17 A hearing was held in the parenting case on April 15, 2021. Testimony was  
18 taken from Jason, Margaret, and Jessica. From the testimony taken in both DG-  
19 2021-11 and DR-2016-476, the Court makes the following findings of fact and  
20 conclusions of law.  
21

### 22 FINDINGS OF FACT

- 23  
24 1. Jessica and Jason are the biological parents of B.L.K. who is currently 7  
25 years old. Jessica is 30 years old and Jason is 48 years old.  
26

- 1 2. The Montana Supreme Court has previously affirmed this Court's jurisdiction  
2 over the parenting of B.L.K.
- 3
- 4 3. Margaret and Fred are the parents of Jason. They are over the age of 18.
- 5 4. Margaret and Fred reside in the state of Washington outside of Spokane.
- 6 5. Jason resides in a fifth wheel camper trailer on his parent's property.
- 7
- 8 6. Jessica is residing temporarily with her mother and sister in the Corvallis area  
9 in Montana.
- 10 7. B.L.K. has been residing with Margaret and Fred since August 8, 2020.
- 11
- 12 8. In August of 2020, Jessica agreed to have B.L.K. reside with Margaret and  
13 Fred for the 2020-2021 school year. Jessica was struggling with  
14 methamphetamine addiction and wanted B.L.K. to live in a safe and stable  
15 environment while she sought help for her addiction.
- 16
- 17 9. Jessica entered an inpatient drug treatment program in September of 2020.
- 18
- 19 10. Following the treatment program relations between Jessica and the entire  
20 Klubben family, but with Jason in particular, gradually degraded leading to  
21 Jessica demanding in January of 2021 that B.L.K. be returned to her care  
22 which has spawned all of the litigation involving this family which is  
23 currently pending before the Court.
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11. Jessica was clean until March of 2020 when she relapsed and began using methamphetamine again. She has enrolled in drug treatment which will include random drug testing.

12. Jessica agrees that her ability to parent B.L.K. is currently limited by her addiction and agrees that Margaret and Fred should have temporary guardianship of B.L.K. while she engages in treatment.

13. Jason testified that he is a highly involved parent and while he has recently been limited by some physical problems, he is fully capable of parenting B.L.K. full time. He further testified that he is undergoing medical treatment to resolve his physical problems.

14. Jessica testified that Jason is heavily dependent on marijuana and routinely drives and parents while under the influence of THC. The Court finds this testimony credible.

15. Jason testified that while he does drive, without a valid license, he does not do so while under the influence and that Jessica exaggerated his THC use. He said he would be positive for THC if drug tested.

16. Jessica testified that Jason is minimally involved as a parent and that he spends his days getting high and playing on his computer. The Court finds this testimony credible.

1 17. Margaret testified that Jason's involvement in parenting since B.L.K. has  
2 lived with them has been limited to tucking her in at night and sometimes  
3 having her spend the night with him in his trailer. She testified that she and  
4 Fred handle all of the day-to-day care of B.L.K. and that this has been  
5 unchanged since B.L.K. came to live with them. The Court finds the  
6 testimony credible.  
7

8  
9 18. Jason does not agree to his parents being appointed as B.L.K.'s temporary  
10 guardians.  
11

12 19. Margaret testified that they are still willing to be guardians of B.L.K. but they  
13 are hoping that B.L.K.'s parents can get to a point of being able to parent so  
14 that Margaret and Fred can go back to being retired.  
15

16 20. All witnesses agree that B.L.K. is safe, happy, and doing well in school while  
17 in Margaret and Fred's care.  
18

19 **CONCLUSIONS OF LAW**

20 1. The Court has jurisdiction of the parties and subject matter of this  
21 proceeding and Margaret and Fred have agreed to venue by virtue of filing  
22 the Petition with this Court.  
23

24 2. Margaret and Fred are capable and qualified to serve as guardians of  
25 the minor child.  
26

1 3. Jessica has consented to a temporary guardianship. In addition, her  
2 ability to parent is currently limited by circumstances due to her  
3 methamphetamine addiction.  
4

5 4. Jason's ability to parent is currently limited by circumstance primarily  
6 due to drug dependence but secondarily due to his temporary physical  
7 limitations.  
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9 5. It is in B.L.K.'s best interest to have Margaret and Fred appointed as  
10 temporary guardians.  
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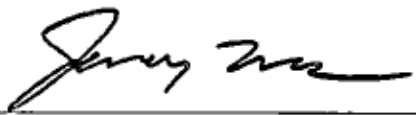
12 **ORDER**

13 1. Margaret and Fred Klubben are appointed as temporary guardians of  
14 B.L.K. with the appointment running through July 9, 2021.  
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16 2. The Clerk of Court is directed to reopen this case and set it for a status  
17 on July 9, 2021 at 9:00 a.m. which is the time set for a further hearing  
18 in DR-2016-476.  
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20 3. The Clerk of Court is directed to file a copy of this Order in DR-2016-  
21 476.  
22

23 DATED this 16<sup>th</sup> day of April, 2021.

24   
25 \_\_\_\_\_  
26 Jason Marks  
District Judge



1 cc: Margaret and Fred Klubben  
2 Jason Klubben  
3 Jessica Smalling  
4 Jill Hughes, Esq.  
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# APPENDIX B

MONTANA DISTRICT COURT  
MISSOULA COUNTY

MINUTE ENTRY

**Date:** 02/11/2021 09:00 AM

**Event Type:** Conference - Status

**Case Number:** DR-32-2016-0000476-PP

**Presiding Judge:** Jason Marks

**Jessica Smalling and Jason Klubben**

**Department: 4**

**Appearances:** Presiding Judge: Jason Marks; Catherine Rebish, Court Reporter; Donna Duffy, Court Clerk.

Appearing by video conference, the Petitioner and the Respondent appearing on their own behalf, came into court, this being the time set for a status conference.

Thereupon, a hearing was held in related Cause No. DG-21-11. The Court advised that it will not rule today on the Motion for Contempt filed in this matter and this status conference is to get more information in both causes.

Thereafter, as a directive in Cause No. DG-21-11, the Petitioner is to be tested for drugs today at Compliance Monitoring and file the results with the Clerk of Court. After further discussion in the related matter, the Court set a further status conference on **Tuesday, February 23, 2021 at 3:00 P.M.**

cc: Jessica Smalling, Pro Se  
Jason Klubben, Pro Se

# APPENDIX C

MONTANA DISTRICT COURT  
MISSOULA COUNTY

MINUTE ENTRY

**Date:** 02/23/2021 03:00 PM

**Event Type:** Conference - Status

**Case Number:** DR-32-2016-0000476-PP

**Presiding Judge:** Jason Marks

**Jessica Smalling and Jason Klubben**

**Department:** 4

**Appearances:** Presiding Judge: Jason Marks; Catherine Rebish, Court Reporter; Donna Duffy, Court Clerk.

Appearing by video conference, the Petitioner appearing on her own behalf and the Respondent appearing on his own behalf, came into court, this being the time set for a status conference in this matter and related Cause No. DG-21-11.

Thereupon, upon inquiry by the Court, counsel for the Petitioners in related Cause No. DG-21-11 advised they did receive Ms. Smalling's drug test results. The Court then inquired if they still wish to pursue the guardianship. Ms. Smalling then gave the Court an update on her living situation and that she is working with resources regarding the same. Jason Klubben then made a statement to the Court. After further discussion, the Court set further proceedings on reinstating the parties' parenting plan in this matter and the status of the guardianship in Cause No. DG-21-11 for **Wednesday, March 3, 2021 at 11:00 A.M.**

cc: Jessica Smalling, Pro Se  
Jason Klubben, Pro Se

# APPENDIX D

MONTANA DISTRICT COURT  
MISSOULA COUNTY

MINUTE ENTRY

**Date:** 03/03/2021 11:00 AM

**Event Type:** Further Proceedings

**Case Number:** DR-32-2016-0000476-PP

**Presiding Judge:** Jason Marks

**Jessica Smalling and Jason Klubben**

**Department:**

**Appearances:** Presiding Judge: Jason Marks. Attorney, Pro Se, appears with Petitioner, Jessica Lynn Smalling. Attorney, Pro Se, appears with Respondent, Jason Klubben. Also attending: Catherine Rebish Court Reporter; M.T. Court Clerk.

Upon inquiry by the Court, the Petitioner advised of her current living situation and employment status. The Petitioner further advised she is opposed to amending the parenting plan and voiced concerns about securing housing while the minor child is not residing with her. The Court advised the current parenting plan should suffice for any housing application needs.

The Respondent's parents having advised of the minor child's spring break, the Court directed the Petitioner should have parenting time to encompass the entirety of spring break. The Court directed the minor child be delivered to the Petitioner by 12:00 PM on April 3, 2021 for parenting time to run through April 11, 2021 at 12:00 PM. The exchange location shall be the McDonald's location on North Reserve Street.

The Court set an evidentiary hearing for Friday, April 16, 2021 at 9:00 AM. The Court advised the parties may call witnesses and present exhibits, but all physical exhibits must be filed with the Clerk of Court prior to the hearing.