

## IN THE SUPREME COURT OF THE STATE OF MONTANA

SHANELLE J. VAN DYKE,

Appellant/ Respondent,

vs.

DAVID ALLEN WARD,

Appellee/ Petitioner.

Appellant Cause No. \_\_\_\_\_

## NOTICE OF APPEAL

Appeal from the Montana First Judicial District Court, Lewis and Clark County,  
the Honorable Michael F. McMahon, Presiding  
District Court Cause No. BDR-2020-49

## APPEARANCES:

Michelle H. Vanisko  
HINSHAW & VANISKO, PLLC  
1 N. Last Chance Gulch, Ste. 1  
Helena, Montana 59601  
(406) 442-1925 (Voice)  
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Attorneys for Appellant/Respondent  
Shanelle Van Dyke

Attorneys for Appellee/ Petitioner  
David Allen Ward

NOTICE hereby is given that Shanelle J. Van Dyke, the above-named Appellant (and the Respondent in that cause of action) filed in the First Judicial District, in and for the County of Lewis and Clark, Cause No. BDR-2020-49, hereby appeals to the Supreme Court of the State of Montana from the Findings of Fact Conclusions of Law and Order dated July 13, 2021 and the related Final Parenting Plan, filed the same day, upon which notice of entry was provided on July 15, 2021 (collectively, attached hereto as Exhibit 1), and from the trial court's Order on Pending Motions issued and filed on September 21, 2021 (attached hereto as Exhibit 2).

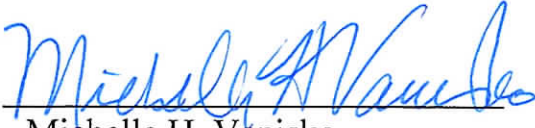
**THE APPELLANT FURTHER CERTIFIES THAT:**

1. This appeal is not subject to the mandatory appellate mediation process pursuant to M. R. App. P. 7(2)(b) due to a history of domestic violence between the parties.
2. This appeal is not an appeal from an order certified as final under M. R. Civ. P. 54(b).
3. All available transcripts of the proceedings deemed necessary for the appeal in this cause have been ordered from the court reporters. Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

4. Included herewith is the filing fee prescribed by statute.

Dated: October 21, 2021.

HINSHAW & VANISKO, PLLC

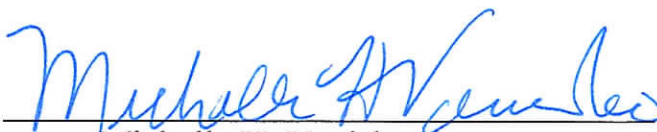
By:   
Michelle H. Vanisko  
Attorney for Respondent/Appellant  
Shanelle Van Dyke

### CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that on October 21, 2021, I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court and each attorney of record by U.S. mail, postage fully prepaid, as follows:

David B. Gallik  
Gallik Law Office, PLLC  
1124 Billings Avenue  
Helena, MT 59601

Clerk of the District Court  
228 Broadway  
Helena, MT 59601

  
Michelle H. Vanisko

FILED

JUL 13 2021

ANGIE SHARKE, Clerk of District Court  
By TREIDGERS Deputy Clerk

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

IN RE THE PARENTING OF:  
A.P.V.W., a minor child,

DAVID ALLEN WARD,

Petitioner,

and

SHANELLE J. VAN DYKE,

Respondent.

Cause No. BDR-2020-49

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND  
ORDER

On June 10, 2021, this contested parenting plan proceeding was heard. David Allen Ward (David) appeared with his attorney, David B. Gallik. Shanelle J. Van Dyke (Shanelle) appeared with her attorney, Michelle H. Vanisko. Guardian *ad Litem* Lindsay P. Ward, David, Karen Mikota, Sheldon Tighe, and Shanelle testified and were cross-examined.

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EXHIBIT 1



1                   9.     Shanelle's proposed parenting plan is not in A.P.V.W.'s best  
2 interests.

3                   10.    There is no evidence, to date, that David and Shanelle can  
4 effectively, cooperatively, compassionately, and respectfully co-parent A.P.V.W.

5                   11.    Ms. Ward's "Recommendations" set forth in her  
6 April 30, 2021 GAL Report as well as those set forth in her July 9, 2021  
7 Addendum are adopted by the Court and incorporated by reference as if fully  
8 restated herein.

9                   11.    Any Conclusion of Law more properly considered a Finding  
10 of Fact is hereby incorporated by reference.

11                  . From the foregoing Findings of Fact, the Court makes the  
12 following:

13                                   **CONCLUSIONS OF LAW**

14                  . 1.     The Court has jurisdiction over this cause, the parties,  
15 A.P.V.W., and all issues raised in the pleadings filed herein.

16                  2.     In parenting disputes, this Court is required to consider the  
17 factors enumerated at Montana Code Annotated § 40-4-212, commonly referred  
18 to as the "Best Interests of the Child" factors.

19                  3.     Ms. Ward's "Best Interest Analysis" set forth in her  
20 April 30, 2021 GAL Report as well as that set forth in her July 9, 2021  
21 Addendum is adopted by the Court and incorporated by reference as if fully  
22 restated herein.

23                  4.     The Court rejects David and Shanelle's respective proposed  
24 parenting plans as it is not in A.P.V.W.'s best interests.

25                  ////

1           5.     The Court adopts Ms. Ward's proposed parenting plan, as  
2 modified, relative to her living in East Helena with Shanelle and attending school  
3 in the East Helena School District since it is in A.P.V.W.'s best interests.

4           6.     A.P.V.W. is thriving in the current parenting arrangement.  
5 At her young age, she needs stable and continuous care. David and Shanelle  
6 show little prospect of being able to adequately co-parent A.P.V.W. An equal  
7 parenting plan requires a high degree of cooperative co-parenting that is certainly  
8 not present on either side in this proceeding.

9           7.     Child support shall be calculated and administered by  
10 CSSD.

11          8.     Each party is responsible for his or her own attorney fees, if  
12 any.

13          9.     Any Finding of Fact more properly considered a Conclusion  
14 of Law is hereby incorporated by reference.

15                 From the foregoing Findings of Fact and Conclusions of Law, the  
16 Court enters the following:

17                 **IT IS HEREBY ORDERED:**

18                 1.     The Court's Final Parenting Plan dated July 13, 2021 is  
19 made part of, and is incorporated by reference, into this Order.


20                 2.     That all Findings of Fact and Conclusions of Law not  
21 specifically addressed are incorporated into this Final Decree by reference.

22                 3.     All temporary parenting plan orders (interim or otherwise)  
23 issued in this proceeding or in Cause No. CDR-2019-685 are hereby vacated and  
24 are of no further legal force and effect.

25                 ////

1                   4.     Ms. Ward is hereby **DISCHARGED** as A.P.V.W.'s  
2     Guardian *ad Litem* effective the date of this Order. The Court sincerely thanks  
3     Ms. Ward for her exceptional services in this proceeding.

4                   DATED this 13<sup>th</sup> day of July 2021.

5  
6                     
7                   MICHAEL F. McMAHON  
8                   District Court Judge

9     cc:     David B. Gallik, 1124 Billings Avenue, Helena, MT 59601 (and via  
10     email to dave@galliklaw.com)  
11             Michelle H. Vanisko, 1 North Last Chance Gulch, Suite 3, Helena, MT  
12     59601 (and via email to michelle@hinshawlaw.net)  
13             Lindsay P. Ward, P.O. Box 1713, Helena, MT 59624-1713 (and via  
14     email to lindsay@mlfpllc.com)

15     MFM/tm/BDR-2020-49 - Ward and Van Dyke - Findings of Fact and Conclusions of Law.doc



FILED

JUL 13 2021

ANGIE SPARKS, Clerk of District Court  
By J. REDGERS Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

IN RE THE PARENTING OF:  
A.P.V.W., a minor child,

DAVID ALLEN WARD,  
  
Petitioner,

and

SHANELLE J. VAN DYKE,  
  
Respondent.

Cause No. BDR-2020-49

**FINAL  
PARENTING PLAN**

In accordance with this Court's July 13, 2021 Findings of Fact, Conclusions of Law, and Order in this contested parenting proceeding, this Final Parenting Plan (Plan) shall govern the parent and child relationships between David A. Ward, Shanelle J. Van Dyke, and their minor child (A.P.V.W.) as and for A.P.V.W.'s best interests pursuant to Mont. Code Ann. §§ 40-4-219 and 40-4-212 (2019):

1                   1.     Identification of the Parents: DAVID ALLEN WARD  
2 (Father) is the natural father of the child. Father resides at 941 North 4th Street,  
3 Lincoln, Montana. Father receives disability payments and rental income.  
4 SHANELLE J. VAN DYKE (Mother) is the natural mother of the child. Mother  
5 resides at 3818 Chokecherry Street, East Helena. Mother is phasing out of self-  
6 employment as a consultant into a career working at Dermawerx as a body  
7 piercer.

8                   2.     Minor child: The parents have minor child, namely  
9 A.P.V.W., a minor daughter, age four, born July 2016.

10                  3.     Objectives of Parenting Plan: This Plan is intended to:  
11                         a.     To protect the best interests of the child;  
12                         b.     To provide for the physical, emotional and  
13 educational care of the child;  
14                         c.     To maintain the child's emotional stability, security,  
15 and safety and minimize the child's exposure to parental conflict;  
16                         d.     To provide for the child's changing needs as she  
17 grows and matures;  
18                         e.     To set forth the authority and responsibilities of each  
19 parent with respect to the child; and  
20                         f.     To help the parents avoid expensive future court  
21 battles over the child.

22                  4.     Residential Schedule: It is presumed that the child's best  
23 interests will be served by allowing each parent to have reasonable and  
24 continuous parenting time with the child taking into consideration the parents'  
25 schedules and the child's schedule. A.P.V.W. shall reside primarily with Mother

1 in East Helena, Montana and shall attend school in the East Helena School  
2 District subject to Father's residential schedule as follows:

3           a.     **During the academic year:** Alternating weekends to  
4 begin Friday after school or after any school extra-curricular activities to Sunday  
5 night at 6:00 p.m. Mother shall be responsible for pick-ups and drop-offs, which  
6 shall occur at the Lincoln Cenex gas station. Father shall also have the option to  
7 exercise an after-school visit in East Helena, which shall occur after the child gets  
8 out from school until 7:00 p.m. on Tuesdays. Father shall be responsible for pick-  
9 ups and drop-offs at A.P.V.W.'s school or other mutually agreed to place for this  
10 afternoon parenting time.

11           i.     **Exercising Parenting Time:** The parents shall  
12 mutually agree upon the weekends during which Father exercises his parenting  
13 time by the fifteenth day of the month before. Should the parents be unable to  
14 reach an agreement, Father shall have parenting time the first, third, and if  
15 applicable the fifth weekends of the month.

16           b.     **Academic Summer Vacation:** Father shall have  
17 substantial time in the summer, to begin the day after school gets out in June at  
18 10:00 a.m. to the day before school resumes in August at 10:00 a.m. During this  
19 time Mother shall have parenting time on Tuesdays from 3:00 p.m. to 7:00 p.m.  
20 Mother shall be responsible for pick-ups and drop-offs, which shall occur at the  
21 Lincoln Cenex gas station.

22           c.     **Summer Family Vacations:** Both parents shall also  
23 have two continuous and uninterrupted weeks of parenting time during  
24 A.P.V.W.'s academic summer vacation. Each parent shall provide a written  
25 notice to the other parent advising of the anticipated vacation periods on or

1 before May 15th. If there is a conflict regarding the vacation schedule, Father  
2 shall have priority in even-numbered years and Mother shall have priority in odd-  
3 numbered years.

4 d. **Holiday Schedule:** In exercising the holiday  
5 schedule, Mother shall be responsible for pick-ups and drop-offs, which shall  
6 occur at the Lincoln Cenex station unless otherwise agreed to by the parties in  
7 writing. If a holiday or special occasion is not listed in this Parenting Plan, the  
8 child shall enjoy the holiday or special occasion with the parent with whom she is  
9 residing with on the holiday or special occasion. At the conclusion of each  
10 holiday, the parents will revert to their usual parenting arrangement, and  
11 depending on the schedule, the child will either return to the other parent or  
12 remain with the parent who completed the holiday time.

13 i. **Labor Day:** Mother shall have the child for  
14 Labor Day from 10:00 a.m. to 7:00 p.m. on odd-numbered years. Father shall  
15 have the child on Labor Day from 10:00 a.m. to 7:00 p.m. on even-numbered  
16 years.

17 ii. **Thanksgiving:** Mother shall have the child for  
18 Thanksgiving Day from 10:00 a.m. to 7:00 p.m. on odd-numbered years. Father  
19 shall have the child on Thanksgiving Day on even-numbered years. Should the  
20 time coincide with the weekend he is parenting, he shall have parenting time  
21 starting Wednesday before Thanksgiving at 10:00 a.m. to Sunday at 7:00 p.m.

22 iii. **Christmas:** The parties shall split the holiday  
23 break so that the first half begins after school on the day school ends to 10:00  
24 a.m. on December 26 and the second half begins on 10:00 a.m. on December 26  
25 until the Sunday before school resumes at 7:00 p.m. Mother shall have the child

1 on the first half on even-numbered years and the second half on odd-numbered  
2 years. Father shall have the child during the first half on odd-numbered years  
3 and the second half during even-numbered years.

4 iv. **Martin Luther King Day:** If A.P.V.W. does  
5 not have school, Mother shall have the child for MLK day from 10:00 a.m. to  
6 7:00 p.m. on even-numbered years. Father shall have the child on MLK day  
7 from 10:00 a.m. to 7:00 p.m. on odd-numbered years, unless the holiday should  
8 coincide with a weekend during which he is parenting in which case Father's  
9 parenting time shall be extended to Monday at 7:00 p.m.

10 v. **Spring Break:** Mother shall have the child for  
11 the Spring Break on even-numbered years. Father shall have the child for Spring  
12 Break from the day after school gets out at 10:00 a.m. to the Sunday before  
13 school resumes at 7:00 p.m. on odd-numbered years.

14 vi. **Easter:** Mother shall have the child for Easter  
15 day from 10:00 a.m. to 7:00 p.m. on odd-numbered years. Father shall have the  
16 child on Easter day from 10:00 a.m. to 7:00 p.m. on even-numbered years, unless  
17 the holiday should coincide with a weekend during which he is parenting, and  
18 Easter Monday is a school holiday in which case Father's parenting time shall be  
19 extended to Monday at 7:00 p.m.

20 vii. **Memorial Day Weekend:** Mother shall have  
21 the child for Memorial Day from 10:00 a.m. to 7:00 p.m. on even-numbered  
22 years. Father shall have the child on Memorial Day from 10:00 a.m. to 7:00 p.m.  
23 on odd-numbered years, unless the holiday should coincide with a weekend  
24 during which he is parenting in which case Father's parenting time shall be  
25 extended to Monday at 7:00 p.m.

1                                   viii.     **A.P.V.W.'s Birthday:** Mother shall have  
2 A.P.V.W. on her birthday from 10:00 a.m. to 7:00 p.m. in even-numbered years.  
3 Father shall have A.P.V.W. on her birthday from 10:00 a.m. to 7:00 p.m. in odd-  
4 numbered years.

5                                   ix.     **Mother's Day Weekend:** Mother shall enjoy  
6 Mother's Day with the child from 10:00 a.m. to 7:00 p.m.

7                                   x.     **Father's Day Weekend:** Father shall enjoy  
8 Father's Day with the child from 10:00 a.m. to 7:00 p.m.

9                                   e.     **Timeliness:** The parents and individuals authorized  
10 by the parents to do pickups and drop-offs shall be punctual. If a  
11 parent/individual authorized by the parents is running late for a pickup/drop-off,  
12 he or she shall inform the other parent.

13                                  f.     **Exchanges:** The parents shall comply with any  
14 governing Order of Protection when doing pick-ups and drop-offs with A.P.V.W.

15                                  g.     **Additional Parenting Time:** Other reasonable  
16 visitation shall occur as agreed between the parents. The parents are encouraged  
17 to allow each other to see the child when the child is in the other's care. The  
18 parents are expected to be flexible and fairly modify visitation when family  
19 necessities, illnesses, or other commitments reasonably so require.

20                                  h.     **Notice:** If either parent intends to take the child out of  
21 the State of Montana for any purpose, the parent shall provide at least two-weeks'  
22 notice unless circumstances do not allow, in which case the parent shall provide  
23 notice as soon as reasonably possible. The notice shall include the address for the  
24 intended destination, the dates for the visit, and any contact numbers that may be  
25 used to contact the child during her time out of Montana.

1                   i.     **Missed Parenting Time:** Each parent shall notify the  
2 other parent at least two days in advance when a scheduled parenting time shall  
3 not be exercised. The missed time shall not be substituted unless mutually agreed  
4 to by both parents. The parents are expected to fairly modify visitation when  
5 family necessities, illnesses, or other commitments reasonably so require. The  
6 requesting parent shall act in good faith and give as much notice as circumstances  
7 permit.

8                   j.     **Parenting Time Priority:** If the residential schedule  
9 result in a conflict where the child is scheduled to be with both parents at the  
10 same time, the conflict shall be resolved by priority being given to the  
11 holiday/special occasion schedule first and then the regular schedule. The child's  
12 school attendance shall take priority over the holiday and special day schedule.

13                   i.     **Modification of Schedule:** The parents may  
14 agree to temporary modifications of this Parenting Plan upon mutual agreement.  
15 Any temporary modification that lasts longer than two weeks shall be made in  
16 writing. Notwithstanding any mutual agreement, this Parenting Plan, or any  
17 portion hereof, may only be waived or permanently modified or amended by  
18 Court Order after motion by a party or by a writing executed by the parties and  
19 approved by the Court.

20                   5.     **Safe-Care Program:** Father enrolled in the Safe-Care  
21 Program with Florence Crittendon on May 17, 2021. He shall file proof of  
22 completion with the Court and Shanelle's counsel within thirty days of  
23 completion of the Safe-Care Program. He shall fully participate in the program,  
24 including participating in-home visits should they be recommended. Father shall  
25 /////

1 provide copies of any and all assessments with his counsel who shall share them  
2 with Mother's counsel.

3           6.     Child Support: If not already initiated, a case shall be  
4 opened within ten days with the Montana Child Support Services Division  
5 (CSSD). The CSSD shall calculate and collect child support pursuant to the  
6 Montana Child Support Guidelines. Such support shall be retroactive from the  
7 date the Petition for Establishment of Permanent Parenting Plan was filed and  
8 shall continue until the child reaches the age of eighteen, graduates from high  
9 school, or is otherwise emancipated, but in no event past the age of nineteen.

10           7.     Health Insurance: Both parents have an obligation to  
11 maintain health insurance for the minor child at a reasonable cost. The child is  
12 currently enrolled in Montana Healthy Kids. Within thirty days of the date of  
13 this Parenting Plan, Father shall provide to his attorney a letter from his health  
14 insurance indicating the status of coverage for A.P.V.W., specifically addressing  
15 if it is possible to cover the child under his plan. His attorney shall share a copy  
16 of the letter with Mother's attorney. Should health insurance through Montana  
17 Healthy Kids no longer be available, full coverage health insurance for the child  
18 shall be provided by Father as long as it is available under his plan. Should this  
19 also be unavailable, the parties shall find suitable coverage and equally split the  
20 costs. Any amounts not covered by health insurance, including any co-payments  
21 and deductibles, shall be equally split between the parents.

22           a.     The parent who receives the Explanation of Benefits  
23 will send a copy to the other parent within thirty days of receipt and that parent  
24 will pay their respective share or make arrangements with the provider for  
25 payment.



1                   8.     Dependent Minor Tax Claim: Mother shall claim the minor  
2 child on her State and Federal income tax returns.

3                   9.     Designation of Primary Parent: Solely for the purpose of  
4 federal statutes and programs which require a designation or determination of  
5 custody, Mother shall be designated custodian of the child. However, this  
6 designation made in this paragraph does not supersede the rights of each parent  
7 or affect any other clause in this Parenting Plan.

8                   10.    Appropriate Environment: Neither parent shall permit the  
9 child to be subjected to persons abusing alcohol or drugs of any kind within  
10 twenty-four (24) hours of contact with the child. This includes the abuse of  
11 alcohol or use of drugs by the parent. Neither parent shall allow the child to be in  
12 a smoking environment. Neither parent shall expose the child to the use of  
13 profane language.

14                   a.     **Drug testing**: Either parent may require the other to  
15 take a drug test. The testing parent shall take the test in a reasonable time frame.  
16 The requesting parent shall be responsible for costs associated with the test,  
17 including reasonable travel costs to include reimbursement for gas, unless the test  
18 comes back positive for any drug (with the exceptions as discussed below) in  
19 which situation the testing parent shall pay costs associated with the test and  
20 travel costs. The requesting parent may select the location and type of test  
21 administered, provided it is reasonable.

22                   i.     **Drug-testing violations**: Unless the parent is  
23 currently parenting when he/she tested or the test is positive for alcohol and/or  
24 marijuana use when the parent has not been parenting, testing positive for alcohol  
25 and/or marijuana is not a violation. Drug use that is congruent with validly

1 diagnosed prescription medication is not a violation. A test that indicates  
2 historical drug use is not a violation. Historical drug use is drug use that occurred  
3 prior to issuance of this Plan. A positive test is a basis to amend a parenting plan.  
4 Refusal to timely take a test is deemed a violation for the Court's contempt  
5 consideration.

6 ii. **Inconclusive results:** Should the test come  
7 back inconclusive, the requesting parent may require that the other retake the test  
8 at the testing parent's expense.

9 11. **Decision-Making Authority:**

10 a. **Day-to-Day Decisions:** Each parent shall make day-  
11 to-day decisions for the child when she is with that parent.

12 b. **Major Decisions:** All significant issues regarding the  
13 child including, but not limited to, education, religious training, and invasive  
14 medical procedures, shall be made by both parents.

15 c. **Emergency Decisions:** Each parent shall have the  
16 authority to make emergency decisions for the child while she is in his or her  
17 care.

18 d. The consent of both parents shall be required before  
19 the child, while she is under the age of eighteen, can be permitted to get a tattoo,  
20 pierce any body part, marry, or enlist in the armed services.

21 12. **Rights of Each Parent:** Each parent, at all times, has the  
22 following rights:

23 a. The right to access medical, dental, psychological,  
24 and educational records of the child;

25 /////

1                   b.     The right to consult with any physician, dentist, eye  
2 doctor, or psychologist or counselor of the child;

3                   c.     The right to consult with school officials concerning  
4 the child's welfare and educational status, including school activities;

5                   d.     The right to manage the child's estate to the extent the  
6 estate has been created by the parent or the parent's family;

7                   e.     The right to arrange for medical treatment, both  
8 emergency and non-emergency. If the child receives non-emergency medical  
9 treatment, the parent who arranges the non-emergency medical treatment shall  
10 inform the other parent of the treatment within forty-eight hours prior to such  
11 non-emergency treatment being provided. If the child receives emergency  
12 medical treatment, the parent arranging for the treatment shall immediately  
13 inform the other parent of the emergency treatment.

14                  f.     The right to equal and independent authority to confer  
15 with school(s) or other programs and individuals with regard to the child's  
16 progress and each shall have free access to school, medical, and other records.  
17 Each parent shall have authority to give parental consent or permission as may be  
18 required concerning school, emergency medical care, or other programs for the  
19 child while they are in his or her care.

20                  g.     Each parent will have equal access to all information  
21 concerning the child's well-being, including, but not limited to, copies of report  
22 cards, school calendars, school meeting and conference notices, diagnostic tests,  
23 calendars or notices of activities involving the child, samples of school-work  
24 order forms for school pictures, all communications from health care providers  
25 and the names, addresses and telephone numbers of all schools, health care

1 providers, or counselors. If the foregoing information is time critical, it shall be  
2 forwarded to the other parent as soon as possible to allow for adequate  
3 scheduling or action.

4 h. Each parent shall ensure that the child will have  
5 consistent contact with each parent. Parental contact with her takes priority. The  
6 parents are each entitled to the child at such other times as the parents from time-  
7 to-time mutually agree, including time when the scheduled parent cannot spend  
8 time with her as set forth above.

9 13. General Co-Parenting Guidelines:

10 a. The parents shall make it clear that they value their  
11 time with the child, as well as the child's time with the other parent;

12 b. The parents shall cooperate in every way possible to  
13 ensure that the child grow up in a healthy, happy, and stable home environment;

14 c. Each parent shall promote a healthy, beneficial  
15 relationship between the child and the other parent, and will not demean, speak,  
16 or act out negatively, in any manner, that would damage the natural flow of love  
17 and caring between either parent and the child. Likewise, neither parent shall  
18 allow third parents to demean, speak, or act out negatively toward the other  
19 parent in front of the child; and

20 d. Neither parent may physically, emotionally, or  
21 psychologically abuse the child, and neither parent shall reasonably permit a third  
22 person to abuse the child physically, emotionally, or psychologically.

23 14. Communication between the Parents: The parents shall  
24 communicate by the Talking Parents standard plan (or any other mutually agreed  
25 upon co-parenting app) to discuss any issues involving the child. Communication

1 between the parents is limited to communication about the child. Each parent  
2 agrees to advise the other parent of all significant events in the child's life,  
3 including school programs, and teacher conferences. Each parent shall share  
4 important information about the child's health, education, discipline and any  
5 other important aspect of the child's upbringing with each other.

6 15. Communication between a Parent and the Child: Each  
7 parent shall have reasonable telephone access, preferably FaceTime when  
8 available, to the child while she is residing with the other parent. Telephone calls  
9 are for the child, not the parent. Reasonable means, among other things, no calls  
10 after 8:00 p.m., no telephone calls before the child gets home from school, and  
11 must display respect for the residential parent, for example, no calls if the child is  
12 eating dinner. The parent making the call will limit messages directed to the  
13 child, and refrain from making remarks or demands in any form to the other  
14 parent about placing demands on the child to return calls. These calls shall be  
15 made on the child's apple tablet (or any other device that is used solely by the  
16 child) or placed within Talking Parents standard plan.

17 16. As required by Mont. Code Ann. § 40-4-204(6)(a), both  
18 parents shall update each other and the Court with written notice of changes to  
19 the following information:

- 20 a. Residential and mailing address;  
21 b. Name, address, and telephone number of employers;  
22 and  
23 c. Health insurance coverage for the child.

24 17. Residential Changes: As required by Mont. Code Ann.  
25 § 40-4-217, if a parent's change in residence will significantly affect the other

1 parent's contact with the child, written notice shall be served personally or sent  
2 by certified mail to the other parent not less than thirty (30) days before the  
3 proposed change in residence.

4 18. Confidentiality: Notwithstanding the provisions of Mont.  
5 Code Ann. § 40-4-234(7), each party may provide copies of this Plan to anyone.

6 19. Entire Final Parenting Plan:

7 a. This Parenting Plan constitutes the Court's Order with  
8 respect to its subject matter and supersedes all prior contemporaneous  
9 negotiations, representations, or agreements, whether written or oral. Neither this  
10 Parenting Plan, nor any portion hereof, may be waived, modified, or amended  
11 except by a writing executed by both parties.

12 b. Furthermore, the provisions in this Parenting Plan are  
13 severable. If any provision of the parenting plan is determined to be invalid or  
14 unenforceable for any reason, then such provision shall be stricken from the  
15 Parenting Plan and shall have no effect on the validity or enforceability of any of  
16 the other agreement provisions.

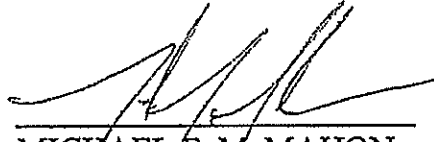
17 : 20. Attorney Fees: In the event of future litigation to enforce  
18 any provision of this Parenting Plan, the prevailing party shall be entitled to an  
19 award of his or her reasonable attorney fees and costs.

20 **WARNING: One parent's failure to comply with a provision**  
21 **of the parenting plan does not affect the other parent's obligation to comply**  
22 **with the parenting plan. Violation of residence provisions of this order with**  
23 **actual knowledge or its terms is punishable by contempt of court and may be**  
24 **a criminal offense under Montana Code Annotated § 45-5-626. Violation of**

25 /////

1 this order may subject a violator to arrest and a fine of up to \$500 or  
2 imprisonment in the county jail.

3 DATED this 13<sup>th</sup> day of July 2021.

4  
5   
6 MICHAEL F. McMAHON  
7 District Court Judge

8 cc: David B. Gallik, 1124 Billings Avenue, Helena, MT 59601 (and via  
9 email to dave@galliklaw.com)

10 Michelle H. Vanisko, 1 North Last Chance Gulch, Suite 3, Helena, MT  
11 59601 (and via email to michelle@hinshawlaw.net)

12 Lindsay P. Ward, P.O. Box 1713, Helena, MT 59624-1713 (and via  
13 email to lindsay@mlfpllc.com)

14 MFM/tm/BDR-2020-49 - Ward and Van Dyke - Final Parenting Plan.doc  
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FILED

SEP 21 2021

ANGIE SPARKS, Clerk of District Court  
By K. KRESGE, Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

IN RE THE PARENTING OF  
A.P.V.W., a minor child:

DAVID ALLEN WARD,

Petitioner,

and

SHANELLE J. VAN DYKE,

Respondent.

Cause No. BDR-2020-49

**ORDER ON PENDING  
MOTIONS**

On August 12, 2021, Shanelle J. Van Dyke (Shanelle) moved this Court to take Judicial Notice of Cause No. CR-21-516, Lewis and Clark County Justice Court wherein David Ward (David) was charged with three criminal counts, including Partner Strangulation and Partner Assault.

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**EXHIBIT 2**



1 On August 13, 2021, Shanelle moved, pursuant to Rule 59(e),  
2 Mont. R. Civ. P., for this Court to Alter or Amend its July 13, 2021 Final  
3 Parenting Plan.

4 David timely responded to Shanelle's Rule 59(e) motion. He did  
5 not respond to her Judicial Notice request.


6 Shanelle did not file a reply brief. Her motions are ready for this  
7 Court's decision. Neither Shanelle nor David requested oral arguments.

8 **DISCUSSION**

9 Shanelle's Judicial Notice request is **DENIED**. While David has  
10 been charged with one felony and two misdemeanor violent offenses relative to  
11 his current/former girlfriend, this Court, for purposes of A.P.V.W.'s best  
12 interests, may only consider "physical abuse or threat of physical abuse by one  
13 parent against the other parent or the child." Mont. Code Ann. § 40-4-212(1)(f)  
14 (2021). Certainly, the Court is genuinely concerned about David's conduct as  
15 alleged in CR-21-516. Notwithstanding, however, he has yet to be convicted  
16 and, under the law, is presumed to be innocent of the underlying violent domestic  
17 relation charges.

18 Shanelle's Rule 59(e) motion is also **DENIED**. It is untimely.  
19 Mont. R. Civ. P. 59(e). In this regard, on July 15, 2021, David filed a Notice of  
20 Entry of Judgment relative to this Court's July 13, 2021 "Judgment." Thereafter,  
21 Shanelle had twenty-eight days to seek Rule 59(e) relief. There are twenty-nine  
22 days from July 15, 2021 to August 13, 2021.

23 **ORDERED** this 21<sup>st</sup> day of September 2021.

24   
25 MICHAEL F. McMAHON  
District Court Judge

1 cc: David B. Gallik, (hand-delivered through interoffice mail, and via email  
2 to: dave@galliklaw.com)

3 Michelle H. Vanisko, (hand-delivered through interoffice mail, and via  
4 email to: michelle@hinshawlaw.net)

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## **CERTIFICATE OF SERVICE**

I, Michelle H. Vanisko, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice of Appeal to the following on 10-21-2021:

David B. Gallik (Attorney)  
1124 Billings Avenue  
Helena MT 59601  
Representing: David Ward  
Service Method: eService

Electronically Signed By: Michelle H. Vanisko  
Dated: 10-21-2021