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## IN THE SUPREME COURT OF THE STATE OF MONTANA

CAUSE NO. DA 21-0233

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JASON C. MILLER,

Petitioner & Appellee,

vs

ERIN O MILLER,

Respondent & Appellant,

Vs

CHRISTIAN FOLGER MILLER,

Intervenor & Appellee.

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Appellant's Brief

ERRATA

Comes now the Appellant, Erin O Miller, by and through her attorney, and submits the Findings of Fact, Conclusions of Law and Order as Appendix B, inadvertently not included with the Appellant's brief.

Respectfully submitted this 19<sup>th</sup> day of November, 2021.

/s/Klaus D Sitte

I, Klaus D Sitte, hereby certify that I have served true and accurate copies of the foregoing **Errata and Appendix B** to the following on November 19, 2021.

**CERTIFICATE OF SERVICE**

Molly Howard  
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Jason Miller  
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Representing: himself, pro se  
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Electronically Signed By: Klaus D Sitte

Leslie Halligan, District Court Judge  
Fourth Judicial District  
Missoula County Courthouse  
200 West Broadway Street  
Missoula, MT 59802-4292  
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## MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN RE THE MARRIAGE OF:

JASON C. MILLER,

Petitioner,

and

ERIN O. MILLER,

Respondent.

CHRISTIAN FOLGER MILLER,

Intervenor.

Dept. No. 1

Cause No. DR-15-647

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
FINAL DECREE OF DISSOLUTION**

Trial in this matter was held on October 24 and 25, 2019. Petitioner Jason C. Miller appeared pro se. Respondent Erin O. Miller appeared with and was represented by attorneys Klaus Sitte and Geoffrey Maher. Intervenor Christian Folger Miller (Mr. Miller) appeared and was represented by attorneys Jenna Lyons and Matthew McKeon. The parties submitted exhibits, as well as point briefs on outstanding legal issues.

1 From the parties' pleadings, pre-trial motions, and affidavits, as well as  
2 the testimony, exhibits, and point briefs presented at trial, and upon  
3 consideration of the evidence presented at prior hearings in this matter, the  
4 Court hereby issues the following:

5 **FINDINGS OF FACT**

6 **The Parties**

7 1. Jason and Erin were married August 24, 2013 in Big Fork,  
8 Montana, and registered their marriage license in Missoula County.<sup>1</sup>

9 2. At the time of their marriage, Erin was five months pregnant with  
10 the parties' first child, A.T.M. (born in December 2013). Subsequently, Erin  
11 gave birth to the parties' second child, M.K.M., in October 2016.

12 3. From 2013 to 2016, Jason and Erin resided together at 3045  
13 Snowdrift Lane in Missoula County, Montana, with the exception of four  
14 months in 2015 when the parties temporarily separated, then reconciled.

15 4. The parties separated, a second time, on June 16, 2016.

16 5. Jason currently lives at 3045 Snowdrift Lane residence with  
17 Taylor O'Connell and children, N.M., C.M., and D.M.

18 6. At the time of separation, Erin and A.T.M. (M.K.M. was born later)  
19 moved to the Hamilton, Montana area. They first lived in a residence loaned  
20 to them by a friend, and then in a home purchased in 2018 with the financial  
21 assistance of Intervenor Christian Miller and Erin's family members.

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22  
23  
24 <sup>1</sup> Jason and Erin entered into a Premarital Agreement, but the Court found this agreement to be  
unconscionable and unenforceable. See Order issued November 7, 2017; and Order Denying  
Renewed Motion issued June 7, 2018.

1           7.     M.K.M. was born after the parties separated and has resided with  
2 Erin and A.T.M. in Hamilton since her birth.

3                                   **Intervenor**

4           8.     Christian Miller (“Mr. Miller”) is Jason’s father and thus  
5 grandfather to A.T.M. and M.K.M.. In July 2019, Mr. Miller sought to  
6 intervene in this proceeding for the “purposes of protecting his rights to funds  
7 which Erin claims she is entitled to be paid from Jason Miller for purposes of  
8 maintenance and support.” See Motion to Intervene and Brief in Support,  
9 filed July 25, 2019. He became concerned that his estate may be depleted  
10 if Jason was ordered to assume significant financial obligations, because the  
11 majority of Jason’s income is received from Mr. Miller’s estate. The Court  
12 allowed Mr. Miller to intervene in accordance with Rule 24(b)(1)(B), to  
13 determine the nature of Jason’s entitlement, if any, to money or property in  
14 the future from Mr. Miller. See Order, filed Aug. 29, 2019.

15           9.     Mr. Miller has substantial personal wealth and is a generous  
16 benefactor to many people.<sup>2</sup> Jason has been a primary recipient of Mr.  
17 Miller’s largess, both during Jason’s marriage to Erin and afterwards. Erin  
18 also has benefited from Mr. Miller’s financial contributions, both directly and  
19 indirectly, during the parties’ marriage and after their separation.

20     ///

21     //

22     /

23                                   \_\_\_\_\_

24     <sup>2</sup> The Court admitted Mr. Miller’ Exhibit AA (sealed), Mr. Miller’ unverified estimate of his net worth based upon estimates of his assets, liabilities, and annual income. Mr. Miller estimates his total worth at \$14,061,791; his net worth at \$12,939,030.

## **Procedural History**

10. Jason petitioned the Court for dissolution on September 2, 2015. Throughout these proceedings, Jason has been represented by various attorneys or has been a self-represented litigant.<sup>3</sup>

11. Erin was served with the Petition and Summons on September 29, 2015.

12. Erin filed her Response to the Petition on June 22, 2016.

13. Jason and Erin have been domiciled in the State of Montana for at least 90 days prior to the filing of the Petition. Neither party is an active member of the U.S. armed forces.

14. Venue is proper in Missoula County.

15. The marriage is irretrievably broken in that there is serious marital discord that adversely affects the attitude of one or both of the parties toward the marriage and there is no reasonable prospect of reconciliation.

16. The parties engaged in significant discovery, through which financial disclosure has occurred as required in Mont. Code Ann. §§ 40-4-252 through -254.

17. Erin is not now pregnant. The children have lived in Montana their entire lives.

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<sup>3</sup> Jason was represented by Randy Harrison (9/2/2015 to 6/4/2016), Clifford Irwin (6/4/2016 to 8/4/2016), Nathan Hulling, limited appearance (6/21/2017 to 12/12/2017), and then Nathan Hulling with general representation (12/12/2017 to 2/4/2018). Since 2/4/2018, Jason has represented himself in these proceedings.

1                                    **Income, Employment and Health Insurance**

2                                    **Petitioner**

3            18. Jason, currently 41 (born July 1979), is not currently employed,  
4 does not have a college education, and has minimal work experience.<sup>4</sup>  
5 Jason reports that has dreams of becoming a businessman, entrepreneur  
6 and a film person. He identified himself as a filmmaker, who experienced  
7 some success years ago, but has not been successful in the last several  
8 years. As a filmmaker, he reports being self-employed and working  
9 approximately two to 10 hours per week at this work, but recognizes that his  
10 work has not produced significant or sustained income. He also testified that  
11 his work as a filmmaker is very complex and because the divorce was very  
12 stressful, he was foregoing this work until it had been completed.

13           19. Jason indicated that his intermittent and loosely scheduled  
14 obligations to take care of his children make it difficult to find full-time  
15 employment.

16           20. Jason has no physical or mental impairments that would prevent  
17 him from working.

18           21. Mr. Miller testified that Jason would likely have difficulty finding a  
19 job because he didn't have experience with applying for jobs, and would  
20 likely be anxious to do so. He also said that Jason didn't have a lot to offer  
21 on the job market because of his limited job experience.

22  
23  
24           \_\_\_\_\_  
<sup>4</sup> Jason identified prior work as follows: filmmaking, coffee shop manager & barista, maintenance and landscaping worker.

1           22. Because Jason is unemployed but has significant expenses, Mr.  
2 Miller routinely gives Jason financial resources from Mr. Miller's own wealth.  
3 Mr. Miller testified at trial that he has given approximately \$140,000 to  
4 \$160,000 annually to Jason for the last ten years via check, money transfers,  
5 annual gifts, and the payment of Jason's housing expenses. Mr. Miller  
6 testified to his intention to reduce the monthly income he pays to Jason to  
7 \$5,000 or \$5,500. Based upon a review of bank statements, it appears that  
8 deposits from Mr. Miller to Jason ranged from \$2,500 to \$8,900 per month,  
9 through both deposits and direct transfers. Respondent's Ex. 1.

10           23. Mr. Miller has told his two sons that he intends to leave half of  
11 his estate to each of them, after providing for certain other people. And, he  
12 has explained that he intends for the money that he gives them while he is  
13 alive to be credited against what he will eventually leave them. Mr. Miller  
14 has indicated that there will not be any sort of strict accounting to this end.  
15 Mr. Miller indicated that he considers what he has given to Jason to be gifts,  
16 with no expectation of repayment or other benefit in return, and that though  
17 he intends to continue his generosity and ensure that Jason is not homeless,  
18 he does not consider himself obliged to do so. Mr. Miller's estate plan may  
19 change.<sup>5</sup>

20           24. Additionally, Mr. Miller has indicated his intention to establish an  
21 educational trust for all of his grandchildren, which will provide them with the  
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23  
24 <sup>5</sup>The Court admitted under seal Mr. Miller's estate planning documents, including his current Last Will and Testament, which incorporates the Christian Folger Miller Revocable Inter Vivos Trust. Intervenor's Ex. BB.



1 necessary funding to obtain college or vocational training. Intervenor's Ex.  
2 BB, §5.2, §7.2.

3 25. Jason characterizes the money he receives from Mr. Miller as  
4 loans, gifts or liens against his own future inheritance. Jason acknowledged  
5 that he does not financially support himself, but relies entirely on Mr. Miller  
6 to provide for his support.

7 26. Jason acknowledged that he has not filed tax returns or paid  
8 taxes on any of the money he receives from Mr. Miller. Petitioner's Ex. A.  
9 Jason testified that he does not file taxes because he claims to receive no  
10 taxable income.

11 27. Jason repeatedly acknowledged that he is a financial burden to  
12 Mr. Miller and is ashamed to ask him for money. He also said that he is very  
13 grateful and appreciative to Mr. Miller for the financial assistance.

#### 14 **Respondent**

15 28. Erin, currently 41, (born in June 1979), resides in Hamilton,  
16 Montana.

17 29. Erin is seeking to further her training and education, is enrolled  
18 in on-line classes through Jackson College in a general sonography  
19 program. Her goal is to obtain a job as a diagnostic medical sonographer.  
20 She anticipates graduating from this program in early 2022 or late 2021.

21 30. In addition to her educational pursuits, Erin spent two years in  
22 AmeriCorps, and previously attended the University of Montana, from 1997-  
23 2000 studying linguistics, and from 2011-2012, studying pre-nursing. Erin  
24

1 periodically has been gainfully employed at minimum wage jobs.<sup>6</sup> At the time  
2 of trial she was unemployed.

3 31. Erin testified that she has thus far financed her part-time  
4 schooling with a scholarship, a grant, and a loan from her stepmother. She  
5 is attempting to complete her own schooling by the time M.K.M. starts  
6 kindergarten.

7 32. Erin also has received significant monetary benefits from Mr.  
8 Miller. When Jason and Erin were married, Mr. Miller provided them cash  
9 and paid their credit card bill. While married, Jason and Erin enjoyed a  
10 comfortable upper-middle-income lifestyle which was mostly funded by  
11 money given by Mr. Miller to Jason.

12 33. After Jason and Erin separated, Mr. Miller continued to provide  
13 Erin with direct support, initially \$700/month and then \$500/month. The  
14 \$500/month payment is consistent with amounts he contributes to the  
15 mothers who no longer live with Jason, but care for his other children.  
16 Respondent's Ex. F.

17 34. To assist in providing his grandchildren appropriate housing, Mr.  
18 Miller paid to Erin's parents approximately \$175,000, which was to be used  
19 as a down payment for the house in which Erin lives.

20 35. Mr. Miller provided Erin with a relatively-new vehicle, has given  
21 her money for her to buy presents for his grandchildren, and he has paid  
22

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23 <sup>6</sup> Erin reported working part-time at ASUM Legal Services, Rockin' Rudy's and full time at the  
24 Ravalli County Clerk & Recorder in Hamilton, earning \$8.25/hour. Erin testified that she has held  
primarily minimum-wage jobs in the past and was employed most of her adult life except for times  
she had problems with alcohol. Erin has testified that Jason would not allow her to work outside  
the home while they were married.

1 significant medical expenses for Erin. Mr. Miller has provided these benefits  
2 for Erin's benefit out of his magnanimity and his concern for the parties' two  
3 children.

#### 4 **Real Property**

5 36. Neither party owns real property, but both parties are receiving  
6 the benefit of reduced housing expenses because each party is residing in a  
7 home owned by their parents.

8 37. Jason resides at 3045 Snowdrift Lane, a home located on a five-  
9 acre parcel one-quarter of a mile from the Ranch Club golf course in  
10 Missoula. Mr. Miller owns this home, which is valued at \$630,000.  
11 Intervenor's Ex. AA. Mr. Miller pays the mortgage and taxes for this  
12 residence, approximately \$3,000/month. Jason incorrectly reported in  
13 discovery responses that he paid the Snowdrift residence mortgage, which  
14 he listed at \$2,200/month.

15 38. To determine the economic value of Jason's housing benefit, it  
16 is reasonable to determine the rental value of the property. To determine a  
17 reasonable monthly rent for the property, the Court has calculated rent using  
18 .8% x the value of the home, \$600,000, for a total of \$5,040/month or an  
19 annual benefit of \$60,480.

20 39. Mr. Miller testified that he has contemplated selling this home  
21 and finding a smaller residence in which Jason could reside, but he has not  
22 taken any steps to sell the Snowdrift residence.

23 40. Erin resides in a home at 306 S. 9<sup>th</sup> Street, Hamilton, Montana,  
24 which was purchased in large part through a contribution made by Mr. Miller,

1 and title to which is held by her father and step-mother, Geoffrey and Karen  
2 Mahar. She said that the mortgage payment on the home is \$886/month  
3 and utilities average \$220/month. She makes a partial contribution to these  
4 payments, depending on her monthly income, and her family assists in  
5 paying the remaining balance.

6 41. To determine the economic value of Erin's housing benefit, it is  
7 reasonable to determine the rental value of the property. To determine a  
8 reasonable monthly rent for the property, the Court has calculated rent using  
9 .8% x the estimated value of the home, \$200,000, for a total of \$1,600/month  
10 or an annual benefit of \$19,200.

### 11 **Business Assets**

12 42. Although Jason reports that he is self-employed as a filmmaker,  
13 he provided no asset information to value any filmmaking business.

14 43. Jason testified that in 2015, Mr. Miller provided him with  
15 approximately \$1,300,000 to invest in a business venture, but these funds  
16 were lost, perhaps as a result of financial exploitation or a fraud.

17 44. Mr. Miller owns the Linda Vista Golf Course in Missoula,  
18 Montana, together with his sons, Jason and Charlie, as part of a limited  
19 liability corporation. Jason owns a five percent share in the Linda Vista Golf  
20 Course and restaurant.

21 45. Mr. Miller estimated the value of this asset to be \$1,150,000, with  
22 debt of \$755,503. Therefore, Jason's 5% interest would be valued at  
23 approximately \$20,000. Intervenor's Ex. AA.

1           46. Mr. Miller indicated that he plans to buy out Jason's interest and  
2 will transfer it his other son, Charlie, who manages the golf course. This had  
3 not been done by the time of trial and no specific timeline for the transfer was  
4 provided.

### 5                                   **Vehicles**

6           47. Jason owns a 2013 Ford F-150 truck, which was purchased for  
7 \$40,000 but has an estimated value of \$12,000. Jason also owns three other  
8 vehicles, two of which are a 2008 Dodge Charger, valued at \$5000, and a  
9 GMC Yukon, valued at \$3000.

10          48. Erin owns a vehicle, a 2011 Toyota RAV 4, given to her by Mr.  
11 Miller, valued at approximately \$10,000.

### 12                                   **Personal Property**

13          49. Jason has personal property and household items, which he has  
14 accumulated, including a large library of movies.

15          50. Jason previously testified that he owns various expensive  
16 watches, including Rolex, and firearms.

17          51. Erin has personal property and household furnishings. The  
18 majority of this property has been divided; however, Erin identified several  
19 items of personal property still in the Snowdrift residence that she would like  
20 to have returned to her: some china that she identified as a family heirloom;  
21 a piece of furniture and a Vitamix.

22          52. Erin would like to sell her wedding ring, so she can obtain  
23 additional funds to pay expenses. Jason seeks possession of Erin's wedding  
24

ring, so that he can transfer it to their daughter, M.K.M., when she is older.  
Pet. Ex. 13.

53. The parties have divided most of their personal property. No more specific valuation of the property was provided to the Court.

### **Financial Accounts**

54. Jason has a checking account at Wells Fargo. The balance of this account fluctuates on a monthly basis. Most of the deposits to this account are the result of funds transfers from Mr. Miller's financial assets.

55. Erin also has a bank account, but with negligible balance.

56. Neither party identified any retirement accounts, or other financial accounts, stock accounts or other significant assets.

### **Debts**

57. Erin testified that the birth costs for the parties' son, A.T.M., remain outstanding, and are estimated at \$17,000, along with an additional debt to Missoula Anesthesiology also related to their child's birth. Erin seeks an order directing Jason to pay for these expenses.

58. Jason testified that at the time of A.T.M.'s birth, he was stressed because Erin was on a drinking bender and he was trying to save her life. He suggested that the expenses be divided between the parties.

59. Neither party identified any other unpaid marital expenses.

60. To the extent the birth-related expenses associated with A.T.M.'s birth have not been resolved, the remaining expenses should be equitably divided between the parents.

1                    **PARENTING AND BEST INTERESTS OF THE CHILDREN**

2            61.    The Court established several interim parenting plans. The first  
3 parenting plan placed A.T.M. in the care of Jason because Erin was unable  
4 to parent as a result of addiction. *Temporary Order Granting Petitioner's*  
5 *Proposed Parenting Plan and Setting Show Cause Hearing*, Doc. 8. After  
6 Erin regained her sobriety, an Interim Parenting Plan was established in  
7 which Erin became the primary residential parent for A.T.M., as M.K.M. had  
8 not yet been born. Doc. 33.

9            62.    After the birth of M.K.M. and further hearings, the Court amended  
10 the prior interim parenting plans and issued *Findings of Fact, Conclusions of*  
11 *Law and Order Amending Interim Parenting Plan* ("Amended Interim  
12 Parenting Plan" Doc. 54). In this order, the Court more comprehensively  
13 reviewed the statutory factors and concluded that it was in the best interests  
14 of the children to award primary parenting to Erin, but to establish a schedule  
15 of parenting that would allow Jason to have frequent and continuing contact  
16 with the children. Following issuance of that Plan, Jason had regular contact  
17 with A.T.M., and engaged in therapeutic contact with M.K.M. Subsequently,  
18 the parents participated in a parenting evaluation conducted by Sarah  
19 Baxter, Ph.D. Her report was filed under seal on October 16, 2018 and was  
20 admitted as Exhibit 4 at trial.

21            63.    Dr. Baxter opined that Jason needs therapy aimed at helping  
22 Jason better understand his own tendency to need his children's support.  
23 For example, therapy would help Jason to understand that behaviors such  
24 as showing the children his website may feel beneficial to him, but actually

1 seriously compromises his children's developmental status and need to be  
2 supported in their relationships. Dr. Baxter recommended a therapist who  
3 has a good knowledge of the needs of toddlers to aid Jason in this regard.

4 64. As stated in her Parenting Evaluation, Dr. Baxter recommended  
5 that video games should be limited and all potential devices in Jason's  
6 residence for accessing inappropriate material should be kept under lock and  
7 key.

8 65. Dr. Baxter testified that she has been made aware of one of  
9 Jason's older children engaging in pornographic searches at Jason's  
10 residence, including particular searches for "sex with siblings." Dr. Baxter  
11 testified that children in their teens have a tendency to act out what they are  
12 watching and accessing pornography can be compulsive. Dr. Baxter stated  
13 that this situation needs to be clearly investigated. She explained that  
14 pornography should be taken seriously in regard to children for several  
15 reasons: at this developmental state, early sexualization is not good.  
16 Children may act out at school. If this occurs, then children get labeled.

17 66. Dr. Baxter stressed that close supervision of the children, in light  
18 of this discovery, is absolutely necessary. In this case, Dr. Baxter  
19 recommended that the smaller children not be left alone with the older child.

20 67. Jason testified that he is familiar with Dr. Baxter's Parenting  
21 Evaluation which has the following recommendations for Jason: Quit  
22 smoking or, alternatively, consult with A.T.M.'s doctor to determine what he  
23 needed to do to smoke-proof his home for A.T.M.'s benefit; make a bedroom  
24 in his residence more welcoming for A.T.M.; restrict the children's access to



adult themed and violent, sexual, or otherwise inappropriate content in his home via video, video games, computers, or electronic devices, noted to be particularly important when A.T.M. or M.K.M. spend time at Jason's home with their older siblings; abstain from all alcohol and drug use when the children are in his care; obtain therapy to help him better understand the needs of toddlers and how his actions of exposing the children to inappropriate adult material may compromise their developmental status; and verify his compliance with these conditions through a guardian ad litem.

68. Jason acknowledged that he has done little or nothing since October 2018 to comply with Dr. Baxter's recommendations, except installing three air filters in his home.

69. Jason acknowledged that he is primarily parenting one of his older children, because the child's mother was no longer able to contain the child's behaviors. The child's mother parents on alternating weekends. This child has been recommended to participate in therapy.

70. Dr. Baxter recommended the appointment of a Guardian ad Litem, to assist the parties in the gradual increase of the children's parenting time with Jason, and to address parenting issues.

71. On November 12, 2019, with the agreement of the parties, the Court appointed Simon T. Fickinger IV, as Guardian ad Litem.<sup>7</sup>

72. Mr. Fickinger provided a Status Report and Interim Recommendations on January 6, 2020. Of primary focus were recommendations to provide safety to the children whenever they were with

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<sup>7</sup> Mr. Miller agreed to pay for Guardian ad Litem Simon Fickinger as recommended by Dr. Baxter.

1 an older half sibling, who had been identified as in need of evaluation to  
2 determine whether that child posed a risk to the younger children because  
3 the exposure to inappropriate sexual material. As a result of an evaluation  
4 of the older child and its resulting recommendations for a safety plan, Mr.  
5 Fickinger recommended that when the older child was present during  
6 Jason's parenting time with A.T.M. and M.K.M. that she be in line-of-sight  
7 supervision of Jason, or another authorized adult, that she engage in  
8 treatment, and that internet devices be installed to minimize any risk of the  
9 children's exposure to inappropriate adult material. Jason opposed the  
10 recommendations.

11 73. In accordance with the Interim Parenting Plan, A.T.M. is to spend  
12 parenting time with Jason at Jason's residence every Friday and every other  
13 Sunday. Exchanges for these visits occur at Peak Fitness in Missoula, and  
14 Woodside Crossing near Hamilton.

15 74. Since 2018, A.T.M. spent additional parenting time with Jason  
16 on Wednesdays when Jason was scheduled to parent M.K.M. in Corvallis,  
17 Montana by agreement of the parties.

18 75. Jason has engaged in parenting classes as directed by the Court  
19 and completed Circle of Security in 2017. See Petitioner's Ex. 5.

20 Wishes of the Children's Parents:

21 76. Jason proposes a parenting plan in which the children continue  
22 to reside primarily with Erin, but have ongoing visitation with them. He  
23 proposes that he continue his visits with A.T.M. every Friday from noon  
24 (exchange at the Peak) to 6 p.m. (exchange at Victor Sinclair), and to include

1 M.K.M. as well during these visits. He also seeks continued visits with A.T.M.  
2 on alternating Sundays. Jason indicated his desire to eliminate Wednesday  
3 visits with the children in Corvallis, as these visits are “too inconvenient” for  
4 Jason. Jason instead requested overnight visits and a different, more  
5 convenient exchange location for drop off and pick up of the children.

6 77. Jason testified that he cannot afford to continue to drive to  
7 Hamilton to transport his children for parenting time and therefore can only  
8 be available for weekend visits in Missoula.

9 78. As recommended by Dr. Baxter, he would like to progress with  
10 more time and overnights with the children, and longer visits during spring  
11 and winter holidays, and during the summer.

12 79. Erin proposes a parenting plan in which the children reside  
13 primarily with her. She supports Jason having ongoing contact with the  
14 children in accordance with their developmental needs. She is concerned  
15 about Jason parenting the children at his home overnight, being left  
16 unsupervised in his home, and is particularly concerned that the children will  
17 be negatively influenced by the activities of their older half-siblings. She has  
18 become aware of Jason’s older child’s interest in pornography, and does not  
19 want the children to have unsupervised contact with that child until  
20 appropriate treatment has been provided. Given the children’s ability to  
21 access adult-themed materials and the internet, Erin is concerned that  
22 A.T.M. and M.K.M. will be exposed to inappropriate material while in the care  
23 of Jason at his home.

1           80. Erin supports the recommendations of Dr. Baxter and Mr.  
2 Fickinger, GAL.

3           81. Erin testified that Jason has cancelled numerous visits over the  
4 last year of parenting for a variety of reasons, including having a “buddy in  
5 town” and being “broke.”

6           82. Erin attempted on at least seven occasions to make up some of  
7 the cancelled visits. For example, she offered Jason parenting time with  
8 M.K.M. on his birthday in October 2019, which Jason declined.

9           83. On at least nine occasions over the past year, Erin agreed to  
10 allow Jason extra parenting time or drove both ways to facilitate Jason’s time  
11 with the children.

12           84. These cancellations are verified on the parties’ communication  
13 on Our Family Wizard (“OFW”). The parties’ communications over OFW,  
14 also establish a pattern of regular contact with Jason and the children.

15           85. In terms of Jason’s parenting, Erin testified that visits with M.K.M.  
16 and A.T.M. will work on Fridays. Erin goes to church on Sundays, however,  
17 and would like to be more consistent with her attendance and get the children  
18 involved in church activities such as AWANA on Sundays, which activities  
19 are interrupted by A.T.M.’s Sunday visits.

20           86. Erin is concerned about the children visiting Jason unless they  
21 are appropriately supervised to ensure they are not exposed to inappropriate  
22 material or situations. Erin testified it is absolutely imperative the children’s  
23 interactions with their half-siblings be closely supervised, because Erin  
24 wants the children to be in a healthy, safe environment.

1 Wishes of the Children:

2 87. The children are too young to express their wishes.

3 Interaction and Interrelationship of the Children with Parents, Siblings, and

4 Any Other Person who Significantly Affects the Children's Best Interests:

5 88. Both children are bonded to their parents. Erin provides primary  
6 care for the children and Jason has regular contact with both children. The  
7 children have grandparents, who are interested in their care and welfare.  
8 Additionally, the children have half-siblings, some of whom are in close  
9 proximity and age, others who are likely to have limited contact because of  
10 their location. Given the age of the children, there was limited evidence  
11 provided as to the quality of their relationships with extended family and half-  
12 siblings, however, it is generally in their best interests to develop positive  
13 attachments to extended family and half-siblings, as long as these  
14 relationships do not pose any risk to the children.

15 89. Erin believes Jason's home environment is currently unsafe, with  
16 inadequate supervision and unrestricted access by the children not only to  
17 pornography, but to violent video games and adult movies. Evidence was  
18 provided to establish that another child, who resides out of state and  
19 previously was cared for by Jason, was exposed to inappropriate materials  
20 when allowed access to Jason's movie library and developed an addiction to  
21 pornography. Therefore, it is important that safeguards be implemented to  
22  
23  
24

1 reduce the risk that A.T.M. and M.K.M. have access to adult material or  
2 involved in any inappropriate activity.<sup>8</sup>

3 90. Jason testified that he stores R-rated movies on the shelves in  
4 his basement that are readily accessible to his children. Jason admitted that  
5 he has not removed these adult movies, despite the fact that Dr. Baxter  
6 recommended over a year before that these adult materials be kept under  
7 lock and key. Immediately prior to the hearing, Jason began making efforts  
8 to remove some adult videos from his library; however, after assessing the  
9 situation, Jason said that he would take other measures to restrict the playing  
10 of these materials, such as locking up the controllers so that the material  
11 could not be played.

12 91. Jason testified he was aware that some of his children were  
13 accessing pornography at his residence in 2016. Despite his awareness of  
14 these issues, Jason does not think this is abnormal and considers this  
15 conduct that of a typical curious teenager. Jason was resistant to  
16 recommendations for therapy to address this issue.

17 92. Jason acknowledged receiving this Court's Order dated October  
18 1, 2019, in which the Court advised that "an ongoing lack of supervision or  
19 indifference to the [access to pornography] issue by Jason could be  
20 considered by the Court when determining the best interests of the children  
21 and the more permanent parenting plan."

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22  
23  
24 <sup>8</sup> Although the record contains more detail about the children who may have been exposed to inappropriate adult material and developed an interest in pornography, the Court has attempted to protect the privacy of these children by generalizing the identified concerns.

1           93. Jason acknowledged he was advised in the October 1, 2019,  
2 Order to take all reasonable precautions to prevent his children's exposure  
3 to age-inappropriate material while in his care. Nevertheless, Jason  
4 conceded that one of his children had again accessed the Internet from his  
5 residence using Jason's I-pad during the first week of October, after the  
6 Court issued its Order.

7           94. It is important that both parents take appropriate actions to  
8 ensure that A.T.M. and M.K.M. are not exposed to inappropriate adult  
9 material, do not have access to this material, and are not at risk of abuse.  
10 Neither child has the ability to understand the significance of these issues or  
11 protect themselves. Close supervision of the children is necessary  
12 whenever they are in the care of a parent, both to ensure their needs are  
13 met, to protect them from physical harm, and to ensure they are not  
14 negatively impacted by inappropriate actions taken by their half-siblings or  
15 other individuals.

16 Children's Adjustment to Home, School, and Community:

17           95. The children have resided in Missoula, and now Hamilton.

18           96. M.K.M. is now attending preschool and is very routine-oriented.

19           97. A.T.M. attends kindergarten, 4 days a week, Monday-Thursday  
20 from 8 am to 4 pm. A.T.M. has participated in tennis and swimming lessons  
21 and social events and leads a fairly active life.

22           98. Erin detailed the children's schedules: they awaken about 6:30  
23 a.m. and go to bed around 7:30 p.m. On Friday, A.T.M. has the day off and  
24 usually spends parenting time with Jason.

1            99.     Given their ages, the children are well-adjusted in their current  
2 placements, and thriving.

3 Mental and Physical Health of all Individuals Involved:

4            100. A.T.M. has been diagnosed by two physicians as having a  
5 respiratory ailment, reactive airway disease, that is aggravated by being  
6 exposed to a smoke environment.

7            101. Erin testified that she has personally observed Jason smoking  
8 around A.T.M. at parenting exchanges, including in the last few months.

9            102. Erin testified specifically about another example at Christmas  
10 2018 when Jason pushed for contact with A.T.M. prior to Christmas despite  
11 the fact A.T.M. had a respiratory illness. Against her better judgment, Erin  
12 agreed to let A.T.M. visit Jason. When A.T.M. returned from his visit with  
13 Jason, A.T.M. smelled strongly of smoke and was coughing incessantly.  
14 A.T.M. had to return to the doctor and was prescribed a nebulizer. The doctor  
15 wrote a note ordering A.T.M. to stay in a completely smoke-free environment  
16 for several weeks so he could recover. Erin testified that Jason does not  
17 take the risk of smoke exposure to the children seriously and instead denies  
18 smoking around the children.

19            103. Jason smokes, and often smokes in his office, which is located  
20 right next to the room that would serve as A.T.M.'s bedroom in the basement  
21 of the family home should A.T.M. visit overnight.

22            104. Jason provided photos of air purifiers that he installed in his  
23 home. Petitioner's Exs. 11 and 12. These photos also show his efforts to  
24 lock up certain items in his office. Jason acknowledged issues with the



1 basement in his residence because it “is stinky” due to accumulated cigarette  
2 butts. Jason stated this could be remedied by installation of more air purifiers.

3 105. Jason testified that he is aware of A.T.M.’s respiratory ailment  
4 but has not had any conversations with A.T.M.’s doctors as recommended  
5 by Dr. Baxter.

6 106. Jason testified that he has not obtained the therapy  
7 recommended by Dr. Baxter. Jason testified that he has anxiety issues and  
8 may have an anxiety attack sometime during the trial and have to excuse  
9 himself, although this did not occur.

10 107. Jason testified that he has had a medical marijuana card for the  
11 last two years, which he failed to disclose to Dr. Baxter during the 2018  
12 Parenting Evaluation. Exhibit 4.

13 108. Jason stated the underlying medical condition that prompted him  
14 to get his medical marijuana card was a back ailment. Jason claims that his  
15 marijuana use does not affect him, although he testified he is unsure whether  
16 it would affect his driving, with or without his simultaneous use of a cell  
17 phone.

18 Physical Abuse or Threat of Physical Abuse by Parent Against the Other  
19 Parent or the Children:

20 109. The Court takes judicial notice of the references in the Amended  
21 Interim Parenting Plan to controlling and abusive behaviors by Jason  
22 towards Erin. (Feb. 23, 2017, Doc. 54.)

23 110. A No Contact Order between Erin and Jason currently remains  
24 in place, “prohibiting Jason from discussing issues other than immediate

1 transfer and care of A.T.M. with Erin in person.” February 27, 2017 *Interim*  
2 *Parenting Plan*, p. 30. Because of Jason’s history of bullying, intimidating,  
3 and disparaging communications toward Erin, she wants no contact with  
4 Jason other than what is necessary for co-parenting. Erin requests  
5 continued use of “Our Family Wizard” to communicate about the children and  
6 their needs. Dr. Baxter also recommends limiting the Our Family Wizard  
7 messages to the use intended. Exhibit 4.

8 111. The Court finds that this No Contact Order should remain in  
9 effect, with limited exceptions to allow contact through Our Family Wizard for  
10 parenting issues and at exchanges.

11 112. The Court finds that Jason has been abusive and controlling  
12 towards Erin during throughout their relationship. Jason has also attempted  
13 to influence Erin’s family members against her.

14 113. The Court heard testimony in regard to a blog which Jason had  
15 written which discusses Erin and the children. The Court finds that this is an  
16 invasion of Erin’s privacy and a risk to the children’s safety. The Court finds  
17 that allowing Jason to maintain personal, private information about Erin in a  
18 place where it is accessible to the public via Internet search is not in the best  
19 interest of the children, as they might be able to access that information. The  
20 Court further finds that it is not in the best interest of the children as potential  
21 employers may access this information, which could negatively affect Erin’s  
22 attempts to seek employment and support her family. Erin should be  
23 protected from this happening.

1 Chemical Dependency:

2 114. Erin has been diagnosed and treated for a serious substance use  
3 disorder. At the initial stages of these proceedings, Erin required inpatient  
4 treatment and her addiction substantially interfered with her ability to safely  
5 parent. Over the course of these proceedings, Erin engaged in substance  
6 abuse treatment, submitted to urinalysis testing and has demonstrated a  
7 sustained period of sobriety.

8 115. Erin testified that she has been sober from alcohol for four years;  
9 and sober from all drug usage for the past three and one-half years. The  
10 Court admitted Exhibit H, which verifies Erin's most recent negative alcohol  
11 and drug test result from October, 2019. Other negative tests results are on  
12 file with the Court.

13 116. Dr. Baxter made contact with the collateral professionals, Alison  
14 Cobb and Shawna Heckeroth, who work with Erin. These professionals  
15 stated that Erin was compliant with all treatment and making sufficient  
16 progress to be relieved from further random drug testing, which Erin had  
17 undergone for approximately three years with no failed tests.

18 117. Dr. Baxter commended Erin for the progress she has made in  
19 the last three years in a positive direction.

20 118. Given Erin's history of addiction, it is important that she establish  
21 a relapse prevention plan and continue to use natural supports and treatment  
22 providers to address any stresses or triggers that she may encounter. Any  
23 relapse prevention plan should include provisions for the safety of the  
24 children in the event Erin relapses and is unable to safely parent.

1 119. Jason believes it is imperative to have a provision in the  
2 parenting plan to ensure that the children are protected in the event that Erin  
3 relapses.

4 120. Jason admitted to Dr. Baxter that he has resumed drinking  
5 alcohol. Exhibit 4.

6 121. Jason has a history of substance use; however, no evidence has  
7 been presented to indicate that he is actively using substances that would  
8 interfere with his parenting.

9 122. Given Jason's use of marijuana, alcohol and tobacco, Jason  
10 should take steps to understand and/or limit his use of these substances.  
11 The use of tobacco and marijuana is particularly concerning because A.T.M.  
12 is highly sensitive to smoke, its use could impair Jason's ability to parent,  
13 and may negatively influence the children

14 Continuity and Stability of Care:

15 123. The children have been residing primarily in Hamilton with Erin.  
16 This placement provides stability and security for the children. Although it is  
17 some distance from Jason's home in Missoula, Jason is parenting the  
18 children at developmentally appropriate intervals. As long the parents  
19 comply with the parenting plan, ensure that the necessary protections are in  
20 place to address the children's health and safety, the children should enjoy  
21 stable, healthy relationships with both parents.

22 Developmental needs of the Children:

23 124. Both children need structure and predictability. A child can form  
24 a secure attachment with a parent when that parent provides consistent,

1 loving, sensitive, nurturing, and responsive care to the children. A healthy  
2 attachment helps a child learn to manage stress, understand others' feelings,  
3 and form stable relationships throughout life. It is appropriate for both  
4 parents to commit, as much as possible, to the parenting schedule and to  
5 work to maintain scheduled contact.

6 125. A.T.M. is seven years old. He is old enough to understand the  
7 subtle messages that are conveyed when parents treat each other poorly.  
8 He also is old enough to be capable of exploring his environment, seeking  
9 out activities and wanting to spend time with half-siblings. Given his age, he  
10 continues to need adult supervision to ensure his safety, and to ensure that  
11 he is not negatively influenced by the activities of his older half-siblings. He  
12 should have an opportunity to enjoy his childhood free from negative  
13 influences or parental conflict.

14 126. M.R.M. is four years old and is more dependent on adults for her  
15 physical and emotional care. As reflected in Jason's supervised parenting  
16 sessions, M.R.M. is bonded to him and she enjoys spending time with him.  
17 She also is securely bonded with Erin, with whom she is primarily attached.

18 127. With regard to parenting and exchanges, the Montana Fourth  
19 Judicial District Parenting Guidelines suggest that preschoolers and young  
20 children need structure and predictability, but most can begin to handle  
21 longer time away from their primary attachment figure. It is recommended  
22 that more frequent contact, over shorter periods of time, be provided to the  
23 non-residential parent, with gradual increases in length. While it may be  
24 appropriate to begin more visitation between Jason and the children;

1 however, given the distance between homes, Jason's other parenting  
2 obligations and his apparent inattention to recommendations to implement  
3 Dr. Baxter's recommendations, these factors warrant a slower transition to  
4 longer or overnight visitation with the children.

5 Failure to Pay Birth-Related Costs:

6 128. Erin has repeatedly requested that Jason contribute to unpaid  
7 birth related costs. Many of these expenses were charged to credit cards or  
8 when to collections. She has requested that he pay \$17,000 toward these  
9 expenses, plus an additional birth-related bill which may be unpaid from  
10 Missoula Anesthesiology.

11 129. Jason agreed that he had not used any of his resources to pay  
12 A.T.M.'s birthing costs.

13 Failure to Financially Support the Children:

14 130. The Court issued a temporary child support order, setting child  
15 support for each child at \$280/month for a total of \$560/month. Erin seeks  
16 an increase in the amount of child support, as later addressed. Jason has  
17 complied with the Court's temporary order.

18 Frequent and Continuing Contact with Parents:

19 131. As explained above and set forth in the Parenting Guidelines, it  
20 is important for both parents to have frequent and continuing contact with the  
21 children. The Court has adopted a parenting schedule, which includes both  
22 parenting and communication with the children. Unless otherwise agreed,  
23 the parties must abide by the provisions of the parenting plan to ensure  
24 appropriate contact with the children.

1 Adverse Effects of Continuous and Vexatious Parenting Plan Amendment

2 Actions:

3 132. This factor is not applicable to this case.

4 **Temporary Maintenance**

5 133. Erin requested temporary maintenance to supplement her actual  
6 income and child support (temporarily ordered at \$560/month) to meet her  
7 monthly expenses of \$3,264. Erin requested two to three years of  
8 maintenance so Erin can attend school during that time and begin work when  
9 M.K.M. starts school at 6 years of age.

10 134. During the course of this case, Mr. Miller provided Erin with  
11 additional money to assist her in caring for his grandchildren. Mr. Miller has  
12 provided similar support to Jason's other ex-partners with whom he has  
13 children, in an effort to contribute to the wellbeing of all his grandchildren.  
14 Affidavit of Mr. Miller, Doc. #140, ¶ 6.

15 135. Initially, Mr. Miller provided \$700/month to Erin's father and step-  
16 mother for her benefit and the benefit of his grandchildren. He later reduced  
17 this amount of \$500/month, after providing Erin's father and step-mother with  
18 \$175,000, so that a home could be purchased for Erin and the children.  
19 While these funds were not directly paid to Erin, or to Jason for transfer to  
20 Erin, these amounts were substantial and should be considered when  
21 determining the appropriateness of Erin's request for temporary  
22 maintenance.

1           136. Erin understands that the \$500.00 per month from Mr. Miller to  
2 help with expenses has not been ordered by the Court and may end at any  
3 time.

4           137. Erin has repeatedly sought temporary maintenance to help her  
5 meet her ongoing expenses, and now seeks sufficient funds to cover her  
6 monthly expenses, estimated at \$3,624, after deduction of child support,  
7 which include the current monthly mortgage payment on the home in which  
8 Erin and the children reside, \$866.00; utilities of approximately \$280 per  
9 month; and other expenses such as automobile maintenance and auto  
10 insurance. She acknowledges that her father and step-mother are paying  
11 her mortgage payments, but she would like to have the ability to make these  
12 payments on her own.

### 13                           **Child Support and Medical Support**

14           138. In setting temporary child support, the Court considered the  
15 amount of child support established for each of Jason's children. Early in  
16 the case, Jason reported paying \$280/month in child support for each of his  
17 children, which prior to a change in the parenting of N.M., resulted in total  
18 monthly payments of \$1,400 for the support of K.H., N.M., A.M., A.T.M. and  
19 M.K.M.

20           139. The Court later took judicial notice of the child support calculation  
21 established for K.H., in which an administrative law judge determined that  
22 transfers of money from Mr. Miller to Jason in the amount of \$30,000 should  
23 be used as income, when establishing child support. Specifically, the 2013  
24 order applied gift income for \$30,000 to Jason from Mr. Miller, and resulted



1 in Jason being obligated to pay \$284/month in child support. See *Order*  
2 *Proposing Modification of Administrative Order*, Case 146169, February 14,  
3 2013.

4 140. While the amount determined for child support of approximately  
5 \$280/month was specific to K.H., it appears that this amount formed the  
6 basis for other child support determinations. However, because the initial  
7 determination relied on gift income (and that reliance is no longer permissible  
8 under Montana law) and because it does not adequately reflect the specific  
9 facts related to the parenting of A.T.M. and M.K.M., it is reasonable for the  
10 Court to determine child support appropriate to this case.

11 141. In accordance with the Court's temporary order, Erin currently  
12 receives \$560.00 from Jason each month in child support for both children  
13 (\$280.00/child). Although child support is due by the 5th of each month, Erin  
14 stated that Jason's payments are not on time and sometime are not received  
15 until mid-month.

16 142. Erin testified Jason does not provide any additional financial  
17 assistance, including for the children's clothes, schooling, or activities.

18 143. The Court sought and the parties provided updated child support  
19 financial affidavits to assist in the calculation of child support.

20 144. Currently, neither Jason or Erin are employed, so income should  
21 be imputed to each parent based on his or her abilities to work or because  
22 of their status as a student as provided in the Guidelines.

23 145. Erin is currently classified as a student, and is unemployed. The  
24 guidelines provide for imputed income for a student based on the ability to

1 work half-time during the school year and full-time during the summer. This  
2 averages 25 hours per week year-round. The Court has imputed income to  
3 Erin based upon her status as a student and allowed for deductions for  
4 childcare expenses.

5 146. Pursuant to the guidelines, income should be imputed to Erin for  
6 39 weeks at half-time employment at minimum wage (39 weeks x  
7 20/hrs./week x \$8.75/hr.= \$6,825) and for 13 weeks at full-time employment  
8 at minimum wage (13 weeks x 40/hrs./week x \$8.75/hr.= \$4,550) for a total  
9 of \$11,375.

10 147. Income should be imputed to Jason for full-time employment at  
11 minimum wage (40/hr./week x \$8.75 x 52 weeks) for a total of \$18,200.

12 148. In order for Erin to attend school, M.K.M. attends preschool three  
13 mornings/week, which is a monthly expense of \$189. A.T.M. also  
14 participates in after-school care, and it is appropriate to give Erin credit for  
15 payment of these expenses in the child support calculations. A.T.M.'s other  
16 activities and lessons are paid by family as a gift. The Court finds it  
17 reasonable to give Erin credit for payment of daycare and after-school care  
18 in the amount of \$2,268 per year for A.T.M. and \$2,040 per year for M.K.M.

19 149. The children are covered under Medicaid, but Erin incurs  
20 expenses to treat A.T.M.'s asthma, and it is appropriate that she receive  
21 credit in the child support calculations for these medical expenses to treat  
22 his asthma in the amount of \$400 per year.

23 150. Erin and Jason both incur travel expenses when exchanging the  
24 children. Erin is credited for mileage at .50/mile for 4 trips per month, using

1 110 miles per trip, for total miles of 5,280 x .50=\$2,650. Jason is credited  
2 with mileage for 2 trips per month, using 110 miles per trip for total miles of  
3 2,640 x .50=\$1,320.

4 151. In calculating child support, no deductions were made for child  
5 support paid for his other children, since the funds are paid using funds from  
6 Mr. Miller. A deduction was allowed for Jason's care of the two youngest  
7 children who reside with him.

8 152. Calculating child support in accordance with the Montana Child  
9 Support Guidelines creates a presumption of the adequacy and  
10 reasonableness of child support awards. Using the information set forth  
11 above, results in an award of child support totaling \$85/month or  
12 \$42/child/month, owed by Jason to Erin. The Court finds that this child  
13 support determination is inequitable, unjust and unreasonable, and contrary  
14 to the best interests of the children. The presumption of adequacy is  
15 rebutted.

16 153. Under the specific circumstances of this case, the Court must  
17 determine an adequate and reasonable child support award that meets the  
18 needs of the children and does not adversely affect the children's standard  
19 of living.

20 154. Erin submitted child support calculations based on the  
21 information known about Jason's income during the marriage: an estimate  
22 of \$7,000 for Jason's per month income from Mr. Miller and imputed  
23 minimum wage employment for Jason. Using these income amounts, Jason  
24 should pay child support to Erin at \$2,286 per month (\$1,143/month/child).

1 While this amount of monthly child support may more accurately reflect the  
2 standard of living enjoyed by the children during the marriage, Erin's  
3 proposed calculation includes gift income which is now specifically exempted  
4 from consideration under the guidelines.

5 155. In an effort to determine the amount of child support necessary  
6 to meet the children's basic needs and maintain their standard of living, the  
7 Court has included an amount attributable to the economic benefit received  
8 by the parents and children through the provision of housing, but not paid by  
9 the parents.

10 156. The Child Support Guidelines also provide an amount for "self-  
11 support," or SOLA. However, neither Erin nor Jason support themselves at  
12 present. Therefore, the calculations should not take a "self-support"  
13 allowance into consideration and the Court should eliminate it from the  
14 calculations.

15 157. Rather than randomly determine an amount of child support that  
16 provides for the children's basic needs and reflect the standard of living  
17 enjoyed by the children during the marriage, the Court applied a housing  
18 adjustment and considered a variety of SOLA adjustments to provide a more  
19 reasoned and equitable amount of child support.

20 158. As previously determined, both Jason and Erin receive all or  
21 most of their housing costs. To quantify this benefit for purposes of child  
22 support, the Court has estimated the amount of monthly rent each party  
23 would pay for their current housing, by calculating monthly rent at .8% of the  
24 value of each home, and then annualizing the benefit. For Jason, rent is

1 estimated at \$4800/month ( $\$600,000 \times .008$ ) or \$57,600/yr. For Erin, rent is  
2 estimated at \$1600/month ( $\$200,000 \times .008$ ) or \$19,200. This is a financial  
3 benefit to both parents, and is one indication of their standard of living.

4 159. Applying only the housing adjustment for both parents to the  
5 original child support calculation results in a child support award of  
6 \$1,487/month from Jason to Erin. Applying the housing adjustment for both  
7 parents, and eliminating SOLA for both parents results in an award of  
8 \$1,683/month from Jason to Erin. Applying the housing adjustment for both  
9 parents and eliminating SOLA only for Jason results in a child support award  
10 of \$1,820/month from Jason to Erin.

11 160. Child Support calculations which take these factors into  
12 consideration result in Jason owing Erin monthly child support in the range  
13 of \$1,487/month to \$1,821/month. Although these calculations are a  
14 variance from the guidelines, they are reasonable and in conformance with  
15 the goals of providing a reasonable amount of support to allow the children  
16 to share in their parents' standard of living.

17 161. Alternatively, the Court has considered establishing child support  
18 based upon a percentage of the child support obligee's (Erin's) household  
19 expenses. Here, Erin estimates that her basic monthly expenses total  
20 \$3,642. If the Court were to attribute 50% or one-half of these expenses as  
21 necessary to provide for the children's support, child support would be  
22 established at \$1,821/month.

23 162. After comparing the various awards of child support that  
24 considers the housing benefits received by the parents, adjustments to

1 SOLA, and a percentage of Erin's actual monthly expenses, the Court  
2 concludes that child support should be established in the amount of  
3 \$1,800/month or \$900/child/month. This determination more accurately  
4 reflects a reasonable and equitable amount of child support that reflects the  
5 standard of living enjoyed by the children prior to the separation of the  
6 parents. Having concluded that the traditional application of Montana's child  
7 support guidelines results in an inequitable child support award, the modified  
8 calculation (Exhibit B) results in a revised child support award that more  
9 accurately reflects the unique circumstances of this case, more equitably  
10 meets the needs of the children and their prior standard of living, and is in  
11 the best interests of the children.

12 163. Erin requested retroactive child support from Jason in the above  
13 Guidelines amount from November 2016, after she first filed her motion and  
14 affidavit for temporary support in October 2016.

15 164. While the Court has discretion to award retroactive child support  
16 from Jason to Erin, the Court does not find retroactive child support or family  
17 support to be necessary or appropriate due to the payments made to Erin by  
18 Mr. Miller, including the \$175,000 for housing and the monthly awards of at  
19 least \$500 paid by Mr. Miller for the benefit of Erin and the children. These  
20 amounts exceed any proposed amounts sought for retroactive child support,  
21 or temporary family support. Providing an award of retroactive child support  
22 would result in another financial windfall to Erin, the source of which would  
23 be Mr. Miller, and ignore the substantial financial contributions provided by  
24 Mr. Miller for the benefit of Erin and the children.

## **CONCLUSIONS OF LAW**

1. This Court has jurisdiction over this cause.

2. The marriage of the parties is irretrievably broken.

3. A.T.M. and M.K.M. are young children that need age-appropriate, properly supervised care.

4. Both parties currently have residences that allow them to parent A.T.M. and M.K.M., though the Parenting Evaluation indicates some changes are necessary to Jason's residence before parenting time with the children at his residence increases.

5. In making its parenting determination in accordance with the best interests of the children, the Court considers the following relevant factors:

a. Both Jason and Erin wish to parent the children;

b. A.T.M.'s and M.K.M.'s continued interaction and interrelationship with both parents, their siblings, and other family members such as grandparents significantly affect their best interests;

c. A.T.M. and M.K.M. are currently adjusted to their home, school, and preschool activities in Hamilton;

d. Erin continues to participate in appropriate counseling and support groups as recommended by treatment providers;

e. A.T.M. suffers from a respiratory ailment that is aggravated by a smoking environment;

f. There is a history of domestic abuse in the parties' relationship and a No Contact Order has been established by the Court to restrict communication between Jason and Erin;

- 1 g. Erin has a documented history of drug and alcohol abuse which  
2 is currently in sustained remission;
- 3 h. Jason has a remote history of substance use, and has resumed  
4 his use of alcohol; he also uses medical marijuana; use of these  
5 substances may negatively affect parenting of the children;
- 6 i. Dr. Baxter's Parenting Evaluation found that Jason needs further  
7 therapy and education to understand the developmental needs  
8 of his children, but to date Jason has failed to obtain any therapy  
9 to improve his parenting skills, which is not in the best interest of  
10 his children;
- 11 j. Jason's knowing failure to pay 2013 birth-related costs that he  
12 was financially able to pay for A.T.M. is not in A.T.M.'s best  
13 interests; and
- 14 k. Jason's continued claim of poverty, misrepresentation of his  
15 financial resources, and knowing failure to financially support his  
16 children when he is able to do so is not in the children's best  
17 interests.

18 6. It is in the best interests of the children to be parented in  
19 accordance with the Final Parenting Plan established by the Court which  
20 considers the statutory parenting factors and the recommendations of Dr.  
21 Baxter's 2018 Parenting Evaluation and Guardian ad Litem Simon Fickinger.  
22 The Court's Final Parenting Plan (filed separately) is in the children's best  
23 interests and should be adopted.

24 7. Intervenor Chris Miller does not intend to cease making monthly  
payments to Jason in the foreseeable future.



1           8. Jason has no mortgage payment on the residence in which he  
2 lives, and it is not anticipated Jason will have a housing payment in the future  
3 based on the testimony of Intervenor Chris Miller.

4           9. By choice, Jason has been unemployed most, if not all, of his  
5 adult life. Jason remains voluntarily unemployed as of the date of the trial,  
6 making no efforts to seek employment. However, Jason has produced no  
7 evidence that he is unable to seek employment to contribute to the support  
8 of his children.

9           10. According to Montana's Child Support Guidelines, "it is the first  
10 priority of parents to meet the needs of the child according to the financial  
11 ability of the parents." Admin. R. M. 37.62.101(2).

12           11. "[P]arents have not only a legal obligation, but also a social and  
13 moral responsibility to support their children." *In re Marriage of Hopper*, 1999  
14 MT 310, ¶ 37, 297 Mont. 225, 991 P.2d 960.

15           12. The Court concludes that, based on the testimony and exhibits  
16 presented, throughout the parties' marriage and at the time of trial Jason has  
17 sufficient financial resources to pay child support and medical support for his  
18 children.

19           13. A "child's standard of living should not, to the degree possible,  
20 be adversely affected because a child's parents are not living in the same  
21 household." *Id.* Here, the standard of living for Erin, and hence A.T.M. (as  
22 M.K.M. was not yet born), dropped dramatically when Erin left Jason's  
23 residence.

1           14. In calculating child support, the Court must consider the lifestyle  
2 the children would have had if there had been no divorce and the children  
3 had continued to live with both parents. Mont. Code Ann. § 40-4-404; *In re*  
4 *Marriage of Hoffmaster*, 239 Mont. 84, 780 P.2d 177 (1989).

5           15. It would be fundamentally unfair to the children in this matter for  
6 the Court to base Jason's child support obligation on an amount that fails to  
7 consider the standard of living the children enjoyed while in Jason's home.  
8 *Paschen v. Paschen*, 2015 MT 350, ¶ 37, 382 Mont. 34, 363 P.3d 444.

9           16. In determining a parent's obligation to pay child support, the  
10 Court must consider "all relevant factors," including "the financial resources  
11 of the parents." Mont. Code Ann. § 40-4-204(2).

12           17. Actual income includes "economic benefit from whatever source  
13 derived" per Admin. R. M. 37.62.105(2), which includes paid housing.

14           18. Under the circumstances in this case, the Court must determine  
15 whether the economic benefits received by Jason and Erin from Mr. Miller  
16 and the benefits they can reasonably expect to receive from him must be  
17 considered among their "financial resources" in calculating child support.

18           19. Regulations promulgated by the Department of Public Health  
19 and Human Services largely define "financial resources" as used in Mont.  
20 Code Ann. § 40-4-204(2).

21           20. "Income for child support includes actual income, imputed  
22 income as set forth in Admin. R. M. 37.62.106, or any combination thereof  
23 which fairly reflects a parent's resources available for child support." Admin.  
24 R. M. 37.62.105(1). "'Imputed income' means income not actually earned

1 by a parent, but which is attributed to the parent based on the provisions of  
2 this rule.

3 21. Mr. Miller testified he intends to continue to provide financial  
4 support and a free residence to Jason into the foreseeable future. Jason has  
5 regularly and reliably received a housing benefit throughout the majority of  
6 his adult life and throughout the duration of the parties' marriage up to the  
7 time of trial. The Court concludes that it is appropriate to consider the net  
8 value of Jason's housing in its child support calculation, pursuant to Admin.  
9 R. 37.62.105(1)(b). As determined above, monthly rental is estimated at  
10 \$4,800/month, for an annual benefit totaling \$57,600.

11 22. The Court so concludes that it is appropriate to consider the net  
12 value of Erin's housing in its child support calculation, pursuant to Admin. R.  
13 M. 37.62.105(1)(b). As determined above, monthly rental is estimated at  
14 \$1,600, for an annual benefit totaling \$19,200.

15 23. The regulations promulgated by the Department of Public Health  
16 and Human Services do not address how courts are to account for gifts  
17 received by a parent and gifts that can be reasonably expected to be  
18 received by a parent. Montana law defines "gift" as "a transfer of personal  
19 property made voluntarily and without consideration." Mont. Code Ann. §  
20 70-3-101. The Montana Supreme Court has expressly held that a court may  
21 not impute gifts as income for child support purposes. *Paschen*, ¶ 37.

22 24. Income should not be imputed to a noncustodial parent based on  
23 past gifts that have ceased and are no longer received. *Paschen*, ¶ 37.

1           25. The “unpredictable largesse or generosity of a third person  
2 should not be a basis for determining a parent’s ability to provide child  
3 support.” *Paschen*, ¶ 37.

4           26. On the above authorities, the Court concludes that Mr. Miller’s  
5 transfers of money to Jason and Erin, either directly or indirectly, are gifts  
6 that the Court may not impute as income for either party. Transfers of money  
7 to Erin from her family members are also gifts and thus should not be  
8 imputed as income.

9           27. It would be fundamentally unfair to base a parent’s future monthly  
10 child support obligation on gifts not yet received and which may never be  
11 given. The unpredictable largesse or generosity of a third person should not  
12 be a basis for determining a parent’s ability to provide child support. *Id.*

13           28. Though the Court cannot impute Mr. Miller’s gifts as income for  
14 Jason, it can and must impute income to Jason based on Admin. R. M.  
15 37.62.106(2). It is presumed that all parents are capable of working at least  
16 40 hours per week at minimum wage, absent evidence to the contrary.”  
17 Admin. R. M. 37.62.106(1). It is appropriate to impute income to a parent  
18 who is unemployed and who has not made diligent efforts to find and accept  
19 suitable work. Admin. R. M. 37.62.106(2), (6).

20           29. Jason is not a student nor is he disabled and unable to work.  
21 Though he lacks a college degree, he is literate and able-bodied. For  
22 purposes of calculating child support, the Court finds it appropriate to impute  
23 income to him in the amount of 40 hours a week at minimum wage, which  
24 equals \$8.75 per hour x 40/week x 52 weeks=\$18,200/year. In addition, the

1 Court finds it appropriate to consider the value of Jason's housing in its child  
2 support calculation, pursuant to Admin. R. M. 37.62.105(1)(b). As  
3 determined above, the value of his housing is estimated using monthly rental  
4 of \$4,200, for an annual benefit of \$50,400.

5 30. When a parent's status is that of a full-time student, whose  
6 education or retraining will result, within a reasonable time, in an economic  
7 benefit to the child for whom the support obligation is determined, the child  
8 support guidelines provide that the parent's earning capacity be determined  
9 by imputing full-time employment for 13 weeks and approximately half of full-  
10 time employment for the remaining 39 weeks of a 12-month period. Admin.  
11 R. M. 37.62.106(5)(a).

12 31. The Court concludes that Erin is engaged in a course of study  
13 that, within a reasonable time, will allow her to contribute to the support of  
14 her family.

15 32. Though the Court cannot impute Mr. Miller's and her family's gifts  
16 as income to Erin, it can and must impute income to Erin based on Admin R.  
17 M. 37.62.106(2). Erin is a student, who must pay for some childcare in order  
18 to complete her remote classes. The guidelines also provide a formula for  
19 the amount of income that should be imputed to her while attending school  
20 on a full-time basis. While imputing income may be inappropriate if childcare  
21 costs are significant, the Court finds it appropriate to impute income to her  
22 as specified in the child support guidelines. More specifically, income should  
23 be imputed at 20 hours a week during the school months, and 40 hours a  
24 week during the summer months, for an average of 25 hours per week year-

1 round. This provides a total imputed income for Erin in the amount of  
2 \$11,375.

3 33. Although the amount of child support requested by Erin supports  
4 the standard of living enjoyed by the children during the marriage, its use of  
5 gifts of income from Mr. Miller is not in accordance with Montana law.

6 34. A child support determination that considers the economic value  
7 of housing paid to each parent, imputed income based on the earning  
8 capacity of each parent, and a consideration of the standard of living in each  
9 household is in accord with the Montana Child Support Guidelines and  
10 Montana law.

11 35. The amount of child support determined under the Montana Child  
12 Support Guidelines is “presumed to be an adequate and reasonable support  
13 award, unless the court finds by clear and convincing evidence that the  
14 application of the standards and guidelines is unjust to the child or to any of  
15 the parties or that it is inappropriate in that particular case.” Mont. Code  
16 Ann. §40-4-204(3)(a).

17 36. By clear and convincing evidence, the Court has found that the  
18 amount of child support which is calculated in accordance with the Montana  
19 Child Support Guidelines based solely on imputed income (\$85 per month  
20 or \$42/month/child) is unjust, inequitable and contrary to the best interests  
21 of the children. Therefore, the Court concludes that the presumption that the  
22 child support award established through application of the guidelines is  
23 rebutted because of the unique circumstances of this case, i.e. each parent  
24

1 enjoys a standard of living based on factors other than income. Mont. Code  
2 Ann. § 40-4-204(3)(b).

3 37. Having determined that strict application of the child support  
4 guidelines fails to establish a reasonable child support award, the Court is  
5 faced with having to determine an appropriate amount of child support.  
6 Given the unique circumstances of this case and restrictions on considering  
7 gift income, the Court has included the economic benefit that each parent  
8 receives from paid housing as one objective factor to consider when  
9 establishing child support.

10 38. Additionally, because Jason does generate income to pay for any  
11 of his essential expenses, it is reasonable to eliminate the SOLA or standard  
12 of living adjustment from the guidelines' calculation. Here, Jason's standard  
13 of living has been established through support from his father and he does  
14 not have any independent income that must be reserved in order for him to  
15 maintain his standard of living.

16 39. The Court has again attempted to use the structure of the child  
17 support guidelines to recalculate child support using each parent's imputed  
18 income as well as the value of their housing (to reflect their standard of living  
19 under "other non-taxable income" in the calculations). The Court has  
20 prepared various child support calculations with modifications to SOLA: to  
21 include SOLA for both parents, to include SOLA for Erin but not Jason, and  
22 exclude SOLA for each parents. The Court also considered establishing  
23 child support as a percentage of Erin's monthly essential expenses, which is  
24 considered by other states when establishing child support.

1           40. After review of these various calculations, the Court concludes  
2 that it is reasonable, adequate and appropriate to establish a child support  
3 amount of \$900 per child per month or a total of \$1,800/month which is owed  
4 by Jason to Erin for the support of the two children.

5           41. This is an appropriate variance from the Montana Child Support  
6 Guidelines, which more appropriately considers the standard of living the  
7 children would have enjoyed had the parents not separated, and the  
8 circumstances of the children.

9           42. This amount also considers the concerns expressed by Mr. Miller  
10 and examines the support that has been consistently paid to Erin for the  
11 benefit of the children, i.e. temporary child support of \$560/month, along with  
12 the \$500/month contributed directly by Mr. Miller. While the temporary child  
13 support was initially established for Jason's eldest child beginning in 2013,  
14 the amount no longer reflects a reasonable level of support to meet the  
15 needs of the children and has not kept pace with increasing costs of living or  
16 childcare. Establishing a set child support award also provides financial  
17 security for the children.

18           43. As required by statute, the Court has attached the calculations  
19 showing the amount of support without a variance, Exhibit A, as well as  
20 calculations which include consideration of the parties' housing benefit and  
21 SOLA variance, Exhibit B.

22           44. Child support as calculated by the Court in this Decree should  
23 start as of April 1, 2021.  
24



1           45. Should either parent become employed and have an opportunity  
2 to provide health insurance coverage for the children at a reasonable rate,  
3 that parent should insure the children. If such insurance is not available,  
4 then the children should remain covered by Healthy Montana Kids or  
5 Medicaid. Jason shall be responsible for providing for health insurance for  
6 the children if available to him at a reasonable cost, at such time as the  
7 children are no longer eligible to receive Medicare coverage.

8           46. All uninsured medical, dental, and ocular expenses for the  
9 children should be divided equitably with Jason paying 85% and Erin paying  
10 15% of these expenses in accordance with the line 9 percentage established  
11 in the child support calculation, Exhibit B.

12 Retroactive Support

13           47. Under Mont. Code Ann. § 40-4-208, modification of child support  
14 can be ordered retroactively to the date of notice of a motion within the  
15 discretion of the District Court. *In re Marriage of Hill*, 265 Mont. 52, 53, 874  
16 P.2d 705 (1994).

17           48. Child support is for the benefit of the children and the obligation  
18 exists regardless of disagreements between the parties; to deny support on  
19 the basis of a prior stipulation may be an abuse of discretion. *Hill*, 265 Mont.  
20 at 60. Therefore, this Court is not limited by the parties' stipulation in Court  
21 on September 6, 2016 that Jason would pay temporary child support in the  
22 amount paid for his other children.

1           49. A retroactive award of child support may be made by the Court  
2 even if it results in a lump sum being owed by the paying parent. *Welch v.*  
3 *Welch*, 273 Mont. 497, 905 P.2d 132 (1995).

4           50. Erin is eligible for maintenance sufficient to establish a home for  
5 herself and the children out of available marital resources until she finishes  
6 school, and the youngest child is enrolled in school. Mont. Code Ann. § 40-  
7 4-203; *Hoffmaster*, 239 Mont. at 93 (district court awarded the wife child  
8 support, a property and cash settlement, and monthly maintenance until the  
9 child reached school age).

10           51. In this case, while Erin and/or the children may benefit from a  
11 retroactive child support award and award of temporary maintenance to  
12 establish a home and care for the children until she finishes school, Erin has  
13 received significant financial support during these proceedings to assist her  
14 in providing for the children. The Court has considered the ongoing financial  
15 support paid by Mr. Miller in the amount of \$500/month for Erin's benefit and  
16 his significant contribution of \$175,000 toward her housing in determining the  
17 appropriateness of any retroactive child support or maintenance. Based  
18 upon the transfer of these funds, which have been paid by Mr. Miller for the  
19 benefit of Erin, either directly or through payments to Jason to pay temporary  
20 child support, during the pendency of this case, the Court concludes that  
21 retroactive family support or retroactive child support is not appropriate.

#### 22 Property & Debt Allocation

23           52. Under Mont. Code Ann. §§ 40-4-202 and -203, the Court, without  
24 regard to marital misconduct, shall finally and equitably apportion marital

1 property and assets and debts between the parties, in conjunction with a  
2 determination of maintenance.

3 53. Both parties should assume an equitable portion of any  
4 remaining marital assets, which have been identified as A.T.M.'s birth related  
5 costs. Given the Court's review of child support, Jason should be  
6 responsible for 85% and Erin should be responsible for 15% of these  
7 expenses, if any, that remain unpaid. These amounts approximate the line  
8 9 recommendations for the division of child-related expenses.

9 54. Erin left the home with only her car and some personal items for  
10 herself and the (then-one) child.

11 55. Further, Jason also owns at least three vehicles and personal  
12 assets, including expensive watches and firearms.

13 56. The property and debt allocation set forth above is a fair and  
14 equitable division of marital assets and debts.

15 No Contact Order and Protection of Privacy (Jason's Blog)

16 57. The Court concludes that allowing Jason to maintain personal,  
17 private information about Erin in a place where it is accessible to the public  
18 via Internet search is not in the best interest of the children, as they might be  
19 able to access that information. The Court concludes this is not in the best  
20 interests of the children as potential employers may access this information,  
21 which could negatively impact Erin's attempts to seek employment and  
22 support her family.

23 58. It is appropriate for the No Contact Order to remain in effect to  
24 limit communication to parenting issues and the parties should continue to

1 use Our Family Wizard as a source for parenting communication regarding  
2 the children.

3 Based upon the foregoing Findings of Fact and Conclusions of Law,  
4 the Court issues the following Final Decree of Dissolution and Final  
5 Parenting Plan:

6 **DECREE**

7 1. The marriage of the parties is dissolved.

8 2. The Court dissolves the Temporary Economic Restraining Order  
9 issued in this matter at the time the Summons was issued.

10 3. The Final Parenting Plan, set forth separately, is hereby  
11 incorporated and expressly made a part of this Final Decree of Dissolution.

12 4. Jason shall pay child support to Erin in the amount of \$900 per  
13 child per month (\$1,800 total per month) effective as of April 1, 2021. Child  
14 support shall be paid by the 5<sup>th</sup> of each month.

15 5. Each party shall be responsible for their own medical insurance  
16 and costs.

17 6. The Court will issue a separate Child Support and Medical  
18 Support Order incorporating these provisions. Although the Court has  
19 granted a variance from the amount of support that would have been ordered  
20 by general application of the guidelines, the Court has included a child  
21 support guideline that reflects the child support amount awarded by the  
22 Court. Using this calculation, Exhibit B, the Court also determines that past  
23 and future child-related expenses should be divided between the parties on  
24

1 an equitable basis, with Jason being responsible for 85% of the expense and  
2 Erin being responsible for 15% of the expense.

3 7. The real and personal property of this marriage shall be divided  
4 as follows:

5 a. Erin shall be awarded the following personal property:  
6 Boxes of her family's china, currently stored in Jason's basement;  
7 Storage shelves, currently at Jason's residence, or the financial  
8 equivalent of replacement shelves of comparable quality; Vitamix,  
9 currently at Jason's residence; Erin's wedding ring, currently in  
10 Erin's possession. If Erin makes a decision to sell her wedding  
11 ring, Jason shall be given the first opportunity to purchase the  
12 wedding ring, at fair market value, so that he may retain it as a  
13 family heirloom. If Jason declines to purchase the wedding ring  
14 and remit payment within 30 days, then Erin may sell the ring to  
15 any other purchaser.

16 b. Each party shall retain all other personal property  
17 currently in his or her possession.

18 8. The debts of this marriage shall be apportioned as follows: Jason  
19 shall be responsible for 85%, and Erin shall be responsible for 15% of the  
20 following debts: A.T.M.'s birth costs, including those owed to Community  
21 Medical Center and Missoula Anesthesiology. Each party shall pay or make  
22 arrangements for paying their portion of these expenses within 90 days of  
23 the date of this Order. Neither party has disclosed any additional marital or  
24 joint debts.

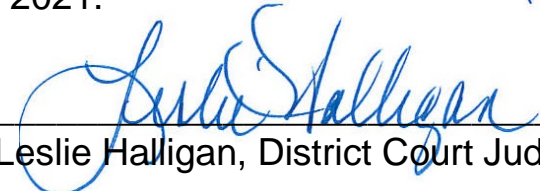
1           9. Each party shall be responsible for all other debts in their name  
2 and all individual debts incurred since the parties' separation on June 16,  
3 2016.

4           10. Jason is prohibited from publicly disseminating any information  
5 or accusations related to Erin's physical or mental health; any protected  
6 information related to the parties' children, and any information or  
7 accusations that Erin has engaged in criminal or tortious conduct during the  
8 time of their acquaintance or relationship.

9           11. The No Contact Order issued August 10, 2016 remains in effect  
10 and prohibits Jason from discussing issues other than immediate transfer  
11 and care of the children with Erin in person. The Court provides the ability  
12 for parties to have contact in an emergency situation (including medical  
13 emergencies involving the children) and the situation where one party  
14 provides notice that he or she will be late to an exchange. The parties shall  
15 continue to communicate through Our Family Wizard to address parenting  
16 issues only.

17           12. Each party is ordered to execute any and all documents which  
18 now or in the future may be necessary to carry into full force and effect the  
19 terms and conditions of this Decree.

20           Dated this 31st day of March, 2021.

21  
22             
Leslie Halligan, District Court Judge

23 CC: Klaus Sitte/Geoffrey Maher, Esqs.  
Jason Miller, Pro Se  
24 Jenna Lyons/Matthew McKeon, Esqs.  
Simon Fickinger, GAL  
Courtesy Copy: CSSD (jen.fussell@mt.gov)

# MONTANA CHILD SUPPORT GUIDELINES: WORKSHEET A

<b>CAUSE/CASE NO.:</b> DR-15-647				<b>CALCULATION INCLUDES</b> <input checked="" type="checkbox"/> Worksheet A or <input type="checkbox"/> A&B				
<b>PARENT:</b> Erin O. Miller				<b>PARENT:</b> Jason C. Miller				
<b>CHILDREN:</b>	<b>CHILD 01</b>	<b>CHILD 02</b>	<b>CHILD 03</b>	<b>CHILD 04</b>	<b>CHILD 05</b>	<b>CHILD 06</b>	<b>CHILD 07</b>	<b>CHILD 08</b>
Enter year of birth for each child of this calculation	2013	2016						

<b>1</b>	<b>INCOME</b>	<b>Mother</b>	<b>Father</b>	<b>PARENT TOTALS</b>	<b>1</b>
1a	Wages, salaries, commissions			<b>REMEMBER:</b> <b>ALL ENTRIES</b> <b>ARE ANNUAL</b>	1a
1b	Self-employment net earnings				1b
1c	Pensions, Social Security				1c
1d	Unearned income				1d
1e	Imputed income	11,375	18,200		1e
1f	Earned Income Tax Credit (EITC)			<b>TOTAL INCOME</b>	1f
1g	Other taxable income			<b>Mother</b> <b>Father</b>	1g
1h	Other non-taxable income				1h
1i	<b>TOTAL INCOME</b> (Add 1a through 1h)	11,375	18,200	11,375    18,200	1i
<b>2</b>	<b>ALLOWABLE DEDUCTIONS</b>				<b>2</b>
2a	Ordered child support for other children				2a
2b	Allowance for other children from Table 2		4,147		2b
2c	Ordered alimony/spousal support				2c
2d	Ordered health insurance premium for other children				2d
2e	Federal income taxes				2e
2f	State income taxes	102			2f
2g	Social Security (FICA plus Medicare)	870			2g
2h	Mandatory retirement contributions				2h
2i	Required employment expense			<b>INCOME AFTER DEDUCTIONS</b>	2i
2j	Dependent care expense for other children, less dependent care tax credit				2j
2k	Other (specify): transportation for exchanges	2,640	1,320		<b>Mother</b> <b>Father</b>
2l	<b>TOTAL ALLOWABLE DEDUCTIONS</b> (Add 2a through 2j)	3,612	5,467		2l
<b>3</b>	<b>INCOME AFTER DEDUCTIONS</b> (line 1i minus line 2l)	7,763	12,733	7,763    12,733	<b>3</b>
	<b>PARENTS' PERCENTAGES and PRIMARY CHILD SUPPORT ALLOWANCE</b>	<b>Mother</b>	<b>CHILD</b>	<b>Father</b>	
<b>4</b>	Personal allowance from Table 1	16,588		16,588	<b>4</b>
<b>5</b>	Income available for child support (line 3 minus line 4; if less than zero, enter zero)				<b>5</b>
<b>6</b>	If line 5 = zero, enter minimum contribution from Worksheet C. If line 5 > 0, multiply line 3 by 12% (.12) and enter here	311		1,019	<b>PERCENTAGE OF INCOME</b>
<b>7</b>	Compare each parent's lines 5 & 6; enter higher number	311		1,019	
<b>8</b>	Combined income available (add both columns, line 7)		1,329		<b>Mother</b> <b>Father</b>
<b>9</b>	Parental share of combined income (line 7 ÷ line 8)	23%		77%	23%    77%
<b>10</b>	Number of children listed above due support		2		<b>10</b>
<b>11</b>	Primary child support allowance from Table 2		8,294		<b>11</b>
<b>12</b>	Supplement to primary allowance for children of calculation: combine annual expenses of Mother, Father, and third party custodian, if any.				<b>12</b>
12a	Child care cost less dependent care tax credit		4,308		12a
12b	Child health insurance premium				12b
12c	Unreimbursed medical expenses (>\$250/child)		400		12c
12d	Other (specify)				12d
12e	Total supplement (add lines 12a through 12d)		4,708		12e
<b>13</b>	Total primary allowance and supplement (add lines 11 and 12e)		13,002		<b>13</b>

**MONTANA CHILD SUPPORT GUIDELINES: WORKSHEET A (page two)**

SOLA AND PARENT'S ANNUAL CHILD SUPPORT		Mother	Father	PARENT TOTALS	
14	<b>For each parent, if line 6 &gt; line 5, skip to line 21 and enter line 6 amount. If Line 6 &lt; line 5, go to line 15</b>				14.
15	Parent's share of total (for each column, line 13 x line 9)				15
16	Compare line 15 to line 5; enter lower amount here				16
17	Income available for SOLA (line 5 minus line 16; if zero, enter zero and skip to line 21)			<b>REMEMBER:</b> <b>ALL ENTRIES</b> <b>ARE ANNUAL</b>	17
18	Adjustments to income available for SOLA				18
18a	Long distance parenting adjustment (Worksheet D)				18a
18b	Other (specify) _____				18b
19	Adjusted income for SOLA [line 17 minus (18a + 18b)]				19
20	SOLA amount (Worksheet E)				20
21	Add line 16 and line 20	311	1,019		21
22	<b>Gross Annual Child Support</b> (for each parent, compare line 21 to line 6; enter the higher amount)	311	1,019	<b>TOTAL ANNUAL CHILD SUPPORT (Line 24)</b>	22
23	Credit for payment of expenses (enter amount of line 12 expenses paid by each parent)	4,708			23
24	<b>Total Annual Child Support</b> (line 22 minus line 23; if less than zero, enter zero)		1,019	<div style="display: flex; justify-content: space-between;"> <span>Mother 0</span> <span>Father 1,019</span> </div>	24
<b>PARENTING DAYS AND ANNUAL CHILD SUPPORT</b>					
25	Enter annual number of days each child spends with each parent in Table 25-A, below. Divide Mother's line 24 by line 10 and enter the same amount for each child in Mother's column of Table 25-B. Do the same for Father in his column. Total the parent's columns in Table 25-B.				25
<b>Table 25-A: PARENTING DAYS PER YEAR</b>			<b>Table 25-B: CHILD SUPPORT/YEAR</b>		
	Mother +	Father =	365 days	Mother	Father
Child 01	317	48	365		509
Child 02	317	48	365		509
Child 03					
Child 04					
Child 05					
Child 06					
Child 07					
Child 08					
				1,019	<b>TOTAL</b>
<b>CHILD SUPPORT PER CHILD</b>			<b>ANNUAL</b>		<b>MONTHLY</b>
26	QUESTION: Do all children on line 10 reside primarily with the same parent and do not spend more than 110 days per year with the other parent?		<b>Table 26-A: ANNUAL CHILD SUPPORT PER CHILD</b>		<b>Table 26-B: MONTHLY SUPPORT PER CHILD</b>
			Mother	Father	Mother
	<b>IF THE ANSWER IS "YES":</b> Divide each child's ANNUAL support from Table 25-B, by 12, round per instructions and enter each child's amount for each parent into MONTHLY Table 26-B at far right. Total columns and enter total for non-residential parent at line 27.  <b>IF THE ANSWER IS "NO":</b> Complete Worksheet B, Parts 1 and 2; follow instructions for entering results into ANNUAL Table 26-A, at right. Divide each amount in Table 26-A by 12, round according to instructions, and enter in MONTHLY column of Table 26-B, at far right. Total all columns. From Table 26-B, subtract the lower total from the higher total and enter the difference at line 27 in the column of the parent with the higher total.			Child 01	42
				Child 02	42
				Child 03	
				Child 04	
				Child 05	
				Child 06	
				Child 07	
				Child 08	
			<b>TOTAL</b>		85
<b>WORKSHEET</b> PREPARED BY: LH DATE: 1/18/2021					
<b>FINAL MONTHLY TRANSFER PAYMENT</b>					<b>CHILD SUPPORT/MO.</b>
					<div style="display: flex; justify-content: space-between;"> <span>Mother</span> <span>Father</span> </div>
The amount shown at right is the final MONTHLY TRANSFER PAYMENT for the children of this calculation. It is owed by the parent in whose column it is entered.					85



# SUPPLEMENTARY INFORMATION

Cause/Case number: DR-15-647

Case Name: Miller DR-15-647

Parent's Name: Erin O. Miller

Report Date: 1/18/2021

Parent's Name: Jason C. Miller

	Daycare		Health Insurance		Other Medical		Other	
	Mother	Father	Mother	Father	Mother	Father	Mother	Father
Child A	2,268				400			
Child B	2,040							
Child C								
Child D								
Child E								
Child F								
Child G								
Child H								

	Mother	Father
1. For dep care tax credit the annual amount of child care costs that each parent will claim	4,308	
2. For dep care tax credit the number of children of this computation under 13 years of age	2	
3. For dep care tax credit the annual amount of child care costs for other children		
4. Number of children not of this computation that will be claimed for dep care tax credit		
5. Number of personal exemptions to be claimed (used for Montana tax credit)	3	3
6. Marital status of each parent	Single	Married
7. For the determination of Earned Income Credit the amount of earned income		
8. For the determination of Earned Income Credit the number of qualifying children	2	
9. For the determination of Earned Income Credit the number of other qualifying children		
10. For the determination of Child Tax Credit the number of qualifying children	2	
11. For the determination of Child Tax Credit the number of other qualifying children		2
12. Railroad Tier II tax computation	No	No
13. Mandatory retirement contribution (after tax contribution)		
14. Mandatory deferred compensation (before tax contribution)		
15. Annual mileage driven to exercise long-distance parenting		
16. Annual cost of transportation by means other than automobile		
17. Number of OTHER children for allowance		2
18. Adjustments to Personal Allowance		

MTCS Version Number: 20.2

**MONTANA CHILD SUPPORT GUIDELINES**  
**NOTES TO CALCULATION**

Parent's Name: Erin O. Miller

Parent's Name: Jason C. Miller

Cause Number: DR-15-647

Erin's income imputed as student: 13 weeks, full time at \$8.75 = \$4,550,  
plus 39 weeks at half-time at \$8.75 = \$6,825  
for Total Imputed income as student at \$11,375

Jason's income imputed at minimum wage, full time:  $\$8.75 \times 40 \times 52 = \$18,200$ .

Erin given credit for mileage at .50/mile for 4 trips per month, using 110 miles per trip, for total miles of 5280  
 $\times .50 = \$2640$ .

Jason given credit for mileage at .50/mile for 2 trips per month, using 110 miles per trip, for total miles of 2640  
 $= \$1320$

Erin given credit for child care expenses necessary for school: Ari  $\$189/\text{mo} \times 12 \text{ months} = \$2,268$ ;  
Mya  $\$170/\text{mo} \times 12 \text{ months} = \$2040$

No credit for child support paid for other children, because funds are not paid by Jason, rather passed through from Father.

# MONTANA CHILD SUPPORT GUIDELINES: WORKSHEET A

<b>CAUSE/CASE NO.:</b> DR-15-647				<b>CALCULATION INCLUDES</b> <input checked="" type="checkbox"/> Worksheet A or <input type="checkbox"/> A&B					
<b>PARENT:</b> Erin O. Miller				<b>PARENT:</b> Jason C. Miller					
<b>CHILDREN:</b>		<b>CHILD 01</b>	<b>CHILD 02</b>	<b>CHILD 03</b>	<b>CHILD 04</b>	<b>CHILD 05</b>	<b>CHILD 06</b>	<b>CHILD 07</b>	<b>CHILD 08</b>
Enter year of birth for each child of this calculation		2013	2016						

1	INCOME	Mother	Father	PARENT TOTALS	1
1a	Wages, salaries, commissions				1a
1b	Self-employment net earnings				1b
1c	Pensions, Social Security				1c
1d	Unearned income				1d
1e	Imputed income	11,375	18,200		1e
1f	Earned Income Tax Credit (EITC)				1f
1g	Other taxable income				1g
1h	Other non-taxable income	19,200	57,600		1h
1i	<b>TOTAL INCOME</b> (Add 1a through 1h)	30,575	75,800	30,575      75,800	1i
2	<b>ALLOWABLE DEDUCTIONS</b>				2
2a	Ordered child support for other children		6,720		2a
2b	Allowance for other children from Table 2		5,806		2b
2c	Ordered alimony/spousal support				2c
2d	Ordered health insurance premium for other children				2d
2e	Federal income taxes				2e
2f	State income taxes	102			2f
2g	Social Security (FICA plus Medicare)	870			2g
2h	Mandatory retirement contributions				2h
2i	Required employment expense				2i
2j	Dependent care expense for other children, less dependent care tax credit				2j
2k	Other (specify): transportation for exchanges	2,640	1,320		2k
2l	<b>TOTAL ALLOWABLE DEDUCTIONS</b> (Add 2a through 2k)	3,612	13,846		2l
3	<b>INCOME AFTER DEDUCTIONS</b> (line 1i minus line 2l)	26,963	61,954	26,963      61,954	3
	<b>PARENTS' PERCENTAGES and PRIMARY CHILD SUPPORT ALLOWANCE</b>	<b>Mother</b>	<b>CHILD</b>	<b>Father</b>	
4	Personal allowance from Table 1	16,588			4
5	Income available for child support (line 3 minus line 4; if less than zero, enter zero)	10,375		61,954	5
6	If line 5 = zero, enter minimum contribution from Worksheet C. If line 5 > 0, multiply line 3 by 12% (.12) and enter here	3,236		7,434	6
7	Compare each parent's lines 5 & 6; enter higher number	10,375		61,954	7
8	Combined income available (add both columns, line 7)		72,329		8
9	Parental share of combined income (line 7 ÷ line 8)	14%		86%	9
10	Number of children listed above due support		2		10
11	Primary child support allowance from Table 2		8,294		11
12	Supplement to primary allowance for children of calculation: combine annual expenses of Mother, Father, and third party custodian, if any.				12
12a	Child care cost less dependent care tax credit		4,308		12a
12b	Child health insurance premium				12b
12c	Unreimbursed medical expenses (>\$250/child)		400		12c
12d	Other (specify)				12d
12e	Total supplement (add lines 12a through 12d)		4,708		12e
13	Total primary allowance and supplement (add lines 11 and 12e)		13,002		13

**MONTANA CHILD SUPPORT GUIDELINES: WORKSHEET A (page two)**

SOLA AND PARENT'S ANNUAL CHILD SUPPORT				Mother	Father	PARENT TOTALS	
14	For each parent, if line 6 > line 5, skip to line 21 and enter line 6 amount. If Line 6 < line 5, go to line 15						14.
15	Parent's share of total (for each column, line 13 x line 9)			1,820	11,182		15
16	Compare line 15 to line 5; enter lower amount here			1,820	11,182		16
17	Income available for SOLA (line 5 minus line 16; if zero, enter zero and skip to line 21)			8,555	50,772	<b>REMEMBER:</b> <b>ALL ENTRIES</b> <b>ARE ANNUAL</b>	17
18	Adjustments to income available for SOLA						18
18a	Long distance parenting adjustment (Worksheet D)						18a
18b	Other (specify)						18b
19	Adjusted income for SOLA [line 17 minus (18a + 18b)]			8,555	50,772		19
20	SOLA amount (Worksheet E)			1,796	10,662		20
21	Add line 16 and line 20			3,617	21,844		21
22	Gross Annual Child Support (for each parent, compare line 21 to line 6; enter the higher amount)			3,617	21,844	<b>TOTAL ANNUAL CHILD SUPPORT (Line 24)</b>	22
23	Credit for payment of expenses (enter amount of line 12 expenses paid by each parent)			4,708			<div style="display: flex; justify-content: space-between;"> <span>Mother</span> <span>Father</span> </div>
24	Total Annual Child Support (line 22 minus line 23; if less than zero, enter zero)				21,844	<div style="display: flex; justify-content: space-between;"> <span>0</span> <span>21,844</span> </div>	24
<b>PARENTING DAYS AND ANNUAL CHILD SUPPORT</b>							
25	Enter annual number of days each child spends with each parent in Table 25-A, below. Divide Mother's line 24 by line 10 and enter the same amount for each child in Mother's column of Table 25-B. Do the same for Father in his column. Total the parent's columns in Table 25-B.						25
<b>Table 25-A: PARENTING DAYS PER YEAR</b>				<b>Table 25-B: CHILD SUPPORT/YEAR</b>			
	Mother +	Father =	365 days	Mother	Father	Child	Rounding: For amounts ending in \$0.49 or less, round down to the nearest whole dollar; ending in \$0.50 or more round up to next whole dollar.
	Child 01	285	80	365	10,922	Child A	
	Child 02	285	80	365	10,922	Child B	
	Child 03					Child C	
	Child 04					Child D	
	Child 05					Child E	
	Child 06					Child F	
	Child 07					Child G	
	Child 08					Child H	
				21,844	<b>TOTAL</b>		
<b>CHILD SUPPORT PER CHILD</b>				<b>ANNUAL</b>		<b>MONTHLY</b>	
26	QUESTION: Do all children on line 10 reside primarily with the same parent and do not spend more than 110 days per year with the other parent?			<b>Table 26-A: ANNUAL CHILD SUPPORT PER CHILD</b>		<b>Table 26-B: MONTHLY SUPPORT PER CHILD</b>	
				Mother	Father	Child	26
	IF THE ANSWER IS "YES": Divide each child's ANNUAL support from Table 25-B, by 12, round per instructions and enter each child's amount for each parent into MONTHLY Table 26-B at far right. Total columns and enter total for non-residential parent at line 27.  IF THE ANSWER IS "NO": Complete Worksheet B, Parts 1 and 2; follow instructions for entering results into ANNUAL Table 26-A, at right. Divide each amount in Table 26-A by 12, round according to instructions, and enter in MONTHLY column of Table 26-B, at far right. Total all columns. From Table 26-B, subtract the lower total from the higher total and enter the difference at line 27 in the column of the parent with the higher total.					Child 01	
						Child 02	910
						Child 03	910
						Child 04	
						Child 05	
						Child 06	
						Child 07	
						Child 08	
						<b>TOTAL</b>	1,820
<b>WORKSHEET</b> <b>PREPARED BY:</b> LH <b>DATE:</b> 1/18/2021							
<b>FINAL MONTHLY TRANSFER PAYMENT</b>						<b>CHILD SUPPORT/MO.</b>	
The amount shown at right is the final MONTHLY TRANSFER PAYMENT for the children of this calculation. It is owed by the parent in whose column it is entered.						Mother	Father
							1,820
27							27

# SUPPLEMENTARY INFORMATION

Cause/Case number: DR-15-647

Case Name: Miller final

Parent's Name: Erin O. Miller

Report Date: 1/18/2021

Parent's Name: Jason C. Miller

	Daycare		Health Insurance		Other Medical		Other	
	Mother	Father	Mother	Father	Mother	Father	Mother	Father
Child A	2,268				400			
Child B	2,040							
Child C								
Child D								
Child E								
Child F								
Child G								
Child H								

	Mother	Father
1. For dep care tax credit the annual amount of child care costs that each parent will claim	4,308	
2. For dep care tax credit the number of children of this computation under 13 years of age	2	
3. For dep care tax credit the annual amount of child care costs for other children		
4. Number of children not of this computation that will be claimed for dep care tax credit		
5. Number of personal exemptions to be claimed (used for Montana tax credit)	3	3
6. Marital status of each parent	Single	Single
7. For the determination of Earned Income Credit the amount of earned income		
8. For the determination of Earned Income Credit the number of qualifying children	2	
9. For the determination of Earned Income Credit the number of other qualifying children		
10. For the determination of Child Tax Credit the number of qualifying children	2	
11. For the determination of Child Tax Credit the number of other qualifying children		2
12. Railroad Tier II tax computation	No	No
13. Mandatory retirement contribution (after tax contribution)		
14. Mandatory deferred compensation (before tax contribution)		
15. Annual mileage driven to exercise long-distance parenting		
16. Annual cost of transportation by means other than automobile		
17. Number of OTHER children for allowance		3
18. Adjustments to Personal Allowance		-16,588

MTCS Version Number: 20.2

**MONTANA CHILD SUPPORT GUIDELINES**  
**NOTES TO CALCULATION**

Parent's Name: Erin O. Miller

Parent's Name: Jason C. Miller

Cause Number: DR-15-647

Erin's income imputed as student: 13 weeks, full time at \$8.75 = \$4,550,  
plus 39 weeks at half-time at \$8.75 = \$6,825  
for Total Imputed income as student at \$11,375  
Given the estimated rental value of housing, not paid by Erin, the court has imputed \$1600 for 12 months = \$19,200.

Jason's income imputed at minimum wage, full time:  $\$8.75 \times 40 \times 52 = \$18,200$ .  
Given the estimated rental value of housing, not paid by Jason, court has imputed \$4800 for 12 months = \$57,600.

Adjustment to SOLA to reflect Jason's ongoing receipt of financial support to provide for his basic living expenses.

Given no tax filings by Jason, tax deductions were eliminated.

Erin given credit for mileage at .50/mile for 4 trips per month, using 110 miles per trip, for total miles of 5280  
 $\times .50 = \$2640$ .

Jason given credit for mileage at .50/mile for 2 trips per month, using 110 miles per trip, for total miles of 2640  
 $= \$1320$

Erin given credit for child care expenses necessary for school: Ari  $\$189/\text{mo} \times 12 \text{ months} = \$2,268$ ;  
Mya  $\$170/\text{mo} \times 12 \text{ months} = \$2040$

Jason given credit for child support paid to other children (2); and care of 3 children.