

Gregory M. Worcester
Attorney for Appellant Echo Rene Sims
Aspen Law P.L.L.C.
120 Meadow Drive
Helena, MT 59601-0146
(406) 422-0719
AspenLawMT@gmail.com

**IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 22-0287**

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|---|--------------------------------|
| In re the Matter of the Guardianship of L.R.T.S. and A.M.T.S.: | |
| Echo Rene Sims, Respondent and Appellant, vs. | APPELLANT'S REPLY BRIEF |
| David Mark Sammons, Petitioner and Appellee. | |

Appealed from the First Judicial District Court, Lewis and Clark County

Cause Nos. BDG-2019-21 and BDG-2019-22

Honorable Michael F. McMahon Presiding

Appearances:

Respondent/Appellant:
Gregory M. Worcester
Aspen Law, PLLC
120 Meadow Drive
Helena, MT 59601-0146
(406) 422-0719
AspenLawMT@gmail.com

Petitioner/Appellee:
Michelle H. Vanisko
Hinshaw & Vanisko, PLLC
1 N. Last Chance Gulch, Ste. 1
Helena, MT 59601-4141
(406) 442-1925
michelle@hinshawlaw.net

TABLE OF AUTHORITIES

Cases

Fischer v. Fischer, 2007 MT 101, 337 Mont. 122, 157 P.3d 682

Schwarz v. Schwarz (In re L.R.S.), 2018 MT 48, 390 Mont. 366, 414 P.3d 285

Statutes

Mont. Code Ann. § 40-4-212 (2021)

Mont. Code Ann. § 40-4-219 (2021)

Mont. Code Ann. § 40-4-228 (2021)

Mont. Code Ann. § 40-9-102 (2021)

Mont. Code Ann. § 75-5-222 (2021)

ARGUMENT

In the *Appellee's Answer Brief*, counsel for Petitioner/Appellee David Sammons (“David”) states incorrectly that Respondent/Appellant Echo Sims (“Echo”) raised issues in her opening brief in this appeal that she did not raise at the District Court level. These issues were raised in a post-hearing brief that was requested by the District Court judge at the close of the guardianship hearing in this matter on April 12, 2022. Per the judge’s instructions, this brief, along with Echo’s proposed Findings of Fact and Conclusions of Law, were transmitted via email to the judge’s law clerk John Bacino. The brief is attached hereto as Exhibit 1.

The *Appellee's Answer Brief* further offers the falsehood, “The only statute referenced in the District Court’s decision is Mont. Code Ann. § 72-5-225.” This is false because the District Court also references Mont. Code Ann. § 16-12-106, and is misleading as well. David offers the quote above to infer that the District Court used the appropriate guardianship statutes in arriving at its ruling. In reality, the District Court only referenced the guardianship statute that David listed in its Conclusions of Law to show that proper notice of the time and place of the guardianship hearing was given to both parties.

The District Court’s Findings of Fact, Conclusions of Law, and Order fail to address the appropriate standards for ordering a guardianship. They do, however,

repeatedly refer to the children's "best interests" and "welfare," which are not appropriate or applicable standards for a guardianship proceeding.

David's *Brief* cites *In re Guardianship of D.T.N.* several times in an attempt to clarify the standard that applies in guardianship cases. 275 Mont. 480, 914 P.2d 579 (1996). As stated in David's *Brief*, "The best definition [of 'suspended or limited by circumstances'] from the case law is that when a parent is 'willing and able' to care for their child and they have expressed a desire to parent their child, District Courts cannot find that person's parenting is limited by circumstance." In opposing David's guardianship at the District Court and pursuing this appeal Echo has expressed a clear desire to parent her children, but David has urged both the District Court and this Court to either ignore or disbelieve her. The District Court's ruling and David's *Brief* both strive to show only that Echo is unable to care for her children, and hope this Court ignores the "willing" half of "willing and able."

Another instructive portion of *In re Guardianship of D.T.N.* restates a principle stated in Echo's opening brief: "This forfeiture [of natural parental rights] can result only where the parent's conduct does not meet the minimum standards of the child abuse, neglect and dependency statutes." *Id.* at 582 (internal citations omitted). The Court goes on: ". . . that kind of determination could not be made in a guardianship proceeding instituted by paternal grandparents, but only in

a proceeding instituted to have children declared dependent and neglected, brought by the county attorney pursuant to Title 41, Chapter 3, of the Montana Code Annotated.” *Id.*

Though David’s *Brief* presents it as fact, no documentary evidence has been offered during the course of this matter that Echo has been diagnosed with bipolar disorder. Perhaps even more galling, the *Brief* goes on to frame Echo’s desire to parent her own children as “her absolute need for control.”

In his *Brief*, David does his best to make the findings the District Court did not. Though the District Courts findings and conclusions are much more easily linked to the standards of Title 40 or 41 parenting issues, David goes to great pains to try to show that the District Court was intending to use Title 72 standards instead. The cases cited both in Echo’s opening brief and David’s response brief show that this is far from an original error for a district court to make, and it is a mistake that Echo urged this District Court not to make in her post-hearing brief that is attached as Exhibit 1. The District Court made the mistake anyway.

CONCLUSION

David’s response brief in this matter clearly demonstrated what the District Court’s findings and conclusions should have been in order to justify the ruling that was issued. As issued, the District Court’s findings and conclusions fall in line with several cases brought before the Supreme Court where it was found that the

District Court erroneously and inappropriately applied the wrong standards for a guardianship proceeding. The case laid out by David at the guardianship hearing endeavored to show that Echo has acted contrary to the parent-child relationship, that David had established his own parent-child relationship, and that the familiar “best interests” standards in the Montana Code Annotated weigh in favor of David’s guardianship over Echo’s right to parent her children.

The issues raised by Echo in this appeal were raised at the District Court level, in a brief submitted to the judge’s clerk in accordance with the judge’s instructions.

The undersigned respectfully requests that the Montana Supreme Court reverse the decision of the district court and terminate David Sammons’s guardianship over Echo Sims’s children.

Dated this 21st day of February 2023.

A handwritten signature in blue ink, appearing to read "Greg Worcester", is written over a horizontal line.

Gregory M. Worcester
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced, and the word count, calculated by Microsoft Office Word is 1,049, excluding certificate of service and certificate of compliance.

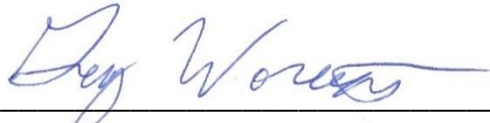
A handwritten signature in blue ink, reading "Greg Worcester", is positioned above a horizontal line.

Gregory M. Worcester
Attorney for Appellant

Certificate of Service

I hereby certify that I have filed a true and accurate copy of the foregoing BRIEF with the Clerk of the Montana Supreme Court; and that I have served a copy to the following through the Montana Court E-Filing System:

Michelle H. Vanisko
Hinshaw & Vanisko, PLLC
1 N. Last Chance Gulch, Ste. 1
Helena, MT 59601-4141



Gregory M. Worcester
Attorney for Appellant

APPENDIX

Brief in Support of Respondent's Position, Cause No. BDG-2019-22 and -23

CERTIFICATE OF SERVICE

I, Gregory Micheal Worcester, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 02-21-2023:

Michelle H. Vanisko (Attorney)
1 N. Last Chance Gulch, Ste. 1
Helena MT 59601
Representing: David Mark Sammons
Service Method: eService

Electronically Signed By: Gregory Micheal Worcester
Dated: 02-21-2023