

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 22-0545

LINDSAY B. GOUDREAU,

Petitioner, Appellee, Cross-Appellant

and

JEFFREY A. GOUDREAU,

Respondent, Appellant, Cross-Appellee

LINDSAY B. GOUDREAU'S REPLY BRIEF ON HER CROSS-APPEAL

On Appeal from the Montana Eleventh Judicial District Court, Flathead County
Cause No. DR-15-2020-064, the Honorable Robert B. Allison, Presiding.

APPEARANCES:

Penni L. Chisholm
Dean Chisholm
P.O. Box 2034
Columbia Falls, MT 59912
Tel: (406) 892-4356
Fax: (406) 892-4901
penni@chisholm.com
dean@chisholmlawfirm.com

*Attorneys for the Appellant/
Cross-Appellee*

David F. Stufft
Attorney at Law
P.O. Box 2957
Kalispell, MT 59901
Tel: (406) 471-4819
Fax: (866) 751-9606
david@stufftllaw.com

*Attorney for the Appellee/
Cross Appellant*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
1. Overview.....	1
2. Jeff’s King’s X Argument Does Not Work	1
3. Facts in Evidence	2
4. Pre-Trial Order.....	2
5. Personal Property.....	3
6. Standard of Review.....	7
7. Equity Requires Doing Complete Justice.....	7
8. Conclusion.....	8
9. Certificate of Compliance.....	9

Appendix (Under Previous Separate Cover)

TABLE OF AUTHORITIES

Montana Cases

<i>State v. Ferguson</i> , 330 Mont. 343 (Mont. 2005), 330 Mont 103, 126 P.3d 463.....	2
<i>State v. Cybulski</i> , 2009 MT. 70, 349 Mont 429, 204 P.3d 7.....	2
<i>Fronk v. Collins</i> , 211 MT. 315, (Mont. 2011), 363 Mont. 110, 266 P.3d 1271.....	2
<i>In re Marriage of Crilly</i> , 2005 MT 311, 329 Mont. 479, 124 P.3d 1151.....	7
<i>Bock v. Smith</i> , 2005 MT 40, ¶ 14, 326 Mont. 123, 107 P.3d 488.....	7
<i>In re Marriage of Stoneman</i> , (2008), 348 Mont. 17, 199 P.3d 232.....	7
<i>Quigley v. Acker</i> , (1998), 288 Mont. 190, 955 P.2d 1377.....	8
<i>Kauffman-Harmon v. Kauffman</i> , (2001), 307 Mont. 45, 36 P.3d 408.....	8

Statutes and Rules

§3-2-204(5) MCA.....	16
----------------------	----

LINDSAY GOUDREAU’S CROSS-APPEAL REPLY BRIEF

Lindsay Goudreau through her counsel of record, David F. Stufft, respectfully replies to the April 7, 2023, *Reply Brief submitted* on behalf of Jeffrey Goudreau. (pages 2-4).

1. Overview.

This *Reply Brief* focuses on Lindsay’s seeking the Court’s help and intervention in obtaining her personal property. Because Jeff does not object to Lindsay’s restoring her maiden name and because Jeff acknowledges the District Court made a onetime clerical error reflecting child support in the *Findings of Fact* was \$61.00 per month instead of \$713.00 per month, those two issues are moot.¹ (April 7, 2023, JRB., p. 2).

2. Jeff’s King’s X Argument Does Not Work.

The remaining issue is the return of Lindsay’s personal property, much being sentimental. In Jeff’s proposed April 7, 2022, *FOF*, pp. 22-23, he states these items belong to Lindsay. (LAPP., Ex. # 7). Lindsay’s August 1, 2022, *Affidavit* breaks

¹ This Brief uses following abbreviations: “Dkt”—Case Register Docket #; “Tr.”—trial transcript; “Ex.”—trial exhibit; “FOF”— Finding of Fact in the Decision (APP-A) “COL”— Conclusion of Law in the Decision; “JAPP” — Jeff’s Appendix; “LAPP—Lindsay’s Appendix; and “AOB”—Appellant’s Opening Brief, “JRB” — Jeff’s Reply Brief

down those items. (LAPP., Ex. #8). There is no legitimate reason for Jeff retaining her personal property. Jeff admission that Lindsay is entitled to her personal property in his proposed *Findings of Facts* is fatal to his now claiming King's X. We should not have to proceed any further.

3. Facts in Evidence.

Jeff admits Lindsay is entitled to her personal property. This fact is in evidence. The cases in his *Reply Brief* are not of any guidance. *State v. Ferguson*, 330 Mont. 343 (Mont. 2005), 330 Mont 103, 126 P.3d 463 involved a defendant incorporating a trial brief, which was not evidence. *State v. Cybulski* 2009 MT. 70, 349 Mont 429, 204 P.3d 7, involved Mrs. Cybulski referring the Court to her arguments contained in her district court briefs. *Fronk v. Collins*, 211 MT. 315, (Mont. 2011), 363 Mont. 110, 266 P.3d 1271, failed to argue his point or cite any authority because the Court should not have to do the research on behalf of a party. Here, Jeff admitted in his *Proposed Findings*, Lindsay is entitled to her specifically listed personal property. (LAPP., Ex. # 7).

4. Pretrial Order.

On December 15, 2021, the Court held its Pre-Trial Conference. During the Pre-Trial Conference hearing, Lindsay's counsel encouraged the District Court to set the matter for a three-day trial. (Transcript, Pre-Trial Order p. 8:11-15). Jeff's

counsel claimed this was a “simple divorce” warranting only a one-day trial. (Transcript, Pre-Trial Order p. 9:4-9). In order to obtain a trial date because of the district court’s heavy criminal jury calendar, it was agreed to a shorten two-day trial. (Transcript, Pre-Trial Order p.9:21-25—10:1-7).

Attorney Chisholm referred at length to Lindsay’s Pre-Trial Contentions when examining her client, Jeff. (Tr.352:16-25—353:1-12). Lindsay had earlier testified that all of her contentions in her Pre-Trial Order were true and that they were referred because of the time constraints of trial. (Tr.51:1-12 —167:20-25—168:1-11—409:17-23).

5.

Personal Property

The District Court made an error regarding the personal property to be delivered to Lindsay. (JAPP., Ex. #A, Finding of Fact #50). Lindsay has attempted to retrieve her personal property items since separation. (Tr. 164:10-15, 167:23-25—168 1:11). Jeff’s April 7, 2022, *Proposed Findings* stated Lindsay should have this personal property. (LAPP., Ex. #7). Lindsay’s personal property which she has attempted to obtain is reflected as follows:

1. *Pre-Trial Order*. The December 15, 2021, *Pre-Trial Order* states the personal property which Lindsay was seeking to be returned by Jeff. (*Pre-Trial Order* Exhibit A #43, p. 38-39).

2. Lindsay's April 7, 2022, *Proposed Findings of Fact, Conclusions of Law, and Decree*. Dkt # 87, Exhibit 2).
3. Jeff's April 7, 2022 *Proposed Findings of Fact, Conclusions of Law, and Decree*. (LAPP., Ex. # 7). That exhibit submitted by Jeff clearly and unequivocally states Lindsay is to have her personal property consisting of:

PERSONAL PROPERTY VALUATIONS & DISTRIBUTION CHART			
PERSONAL PROPERTY	VALUE	LINDSAY	JEFF
Homemade Queen bed frame with mattress	Premarital		X
8 guns: 300 win mag; 6 MM Remington; 44 mag Colt Anaconda; PMR 30; 1100 Remington Express; 41 Magnum, AR 1, 223 Remington	Premarital		X
3' Diameter deck table w/ 2 chairs	Premarital		X
Kimber .45 blue 10 round mag	Inherited		X
Honda short shaft 5 hp outboard	Inherited		X
small utility trailer	500	500	
Entertainment center	100		100
1 Reclining 2 person couch	100		100
1 3 person couch	100	100	
1 year old King bed & mattress from Wright's	750	750	
1 year old Full Trundle bed & mattress	200	200	
2 kids IKEA full bedframes & new mattresses	600	600	
Red desk w/ leather roll chair	150	150	
Custom made "Gondola" metal artwork	380	380	
Antique green flip top desk	200	200	
ceramic space heater	150	150	
Green chair from Wright's	25	25	
Large Dresser	100	100	
2 small pine dressers	100		100
IKEA pine tv/shelf	25		25
2 deck chairs- 1 rocker & 2 solid leg wicker w/ cushions	50	50	
deck chair rocker wicker w/ cushions	100	100	
Kitchen table w/ 2 matching benches/ custom metal frames	400	400	
2 new red barstools	360	360	
Mountain bike Kona	350		350

24	Mountain bike Salsa Timberjack	2000	2000	
25	Gretas stacyc e-bike	849	849	
	Gretas strider blue strider bike	150	150	
26	Garmin Alpha dog tracking and training system w/ collar	700	700	
27	Ladder scaffolding	499	499	
28	Toro snowblower	100	100	
	walk behind trimmer	100		100

1	2 led headlamps	260	260	
	yellow metal bicycle artwork	75	75	
2	childrens side by side	499	499	
3	2 picnic tables	200	100	100
4	2 pieces of Artwork from Kids bedroom	200	200	
	2017 purchase downhill skis	500	500	
5	xc ski equipment Lindsays	300	300	
6	xc ski equipment Jeffs	300		300
7	desk for work	150	150	
	fort / sandbox	300	300	
8	couch and chair	1900	1900	
9	11 foot camper	500	500	
	hardwood floor steamer	X	X	
10	carpet cleaner	X	X	
11	Yellow kinder shuttle xc ski sled	X	X	
12	picture of 3 kids eating popsicles	X	X	
	Ruler with kids' heights attached to wall	X		X
13	two wedding dresses for sale	1,000	1,000	
14	wooden display & ski rack	X	X	
15	Jeff's premarital furniture, furnishing, tools, equip. etc.	X		X
16	TOTALS:	\$15,322	\$14,147	\$1,175

4. Lindsay's July 1, 2022, *Motion to Alter or Amend Judgment*. (Dkt. #99 pp. 2-3).

5. Lindsay's July 1, 2022, *Brief to Alter or Amend Judgment* Dkt #100, pp. 3-4).

This is the same identical language contained in Jeff's *Proposed Finding of Fact* #57, page 22) which Jeff said belonged to Lindsay and were to be delivered to Lindsay, besides the snowshoes if located the following personal property:

1. Lindsay's grandpa's snowshoes (pre-marital).
 2. pelican case for her camera gear (pre-marital).
 3. The ladder scaffolding her father bought when he installed windows and doors on their home. (subsequently delivered).
 4. Yellow metal bike artwork from Greta's room bought in WA from antique shop.
 5. the hardwood floor steamer.
 6. the carpet cleaner.
 7. C.O.C.'s dirt bike
 8. The yellow kinder shuttle xc ski pulk sled (pre-marital)
 9. The picture of the 3 kids in the white frame at the lake eating popsicles - the frame was premarital and purchased in California.
 10. Ruler hanging on the wall in laundry room that her brother gave her for a Christmas gift.
 11. The two wedding dresses (lace and beaded)
 12. The two small pine dressers from Lindsay's family lake cabin (pre-marital)
 13. The IKEA pine tv shelf/pantry shelf, was a gift from her grandparents. (pre-marital)
 14. XC ski bathroom fixtures. (towel and toilet roll holder in upstairs bathroom)
 15. Gold mirror in shop bathroom
 16. Round gold mirror from downstairs bathroom that he removed
 17. 2 gold globe sconces from downstairs bathroom that he removed
 18. C.O.C.'s clothing that Lindsay was holding on to for Gus. Jeff did not buy any of C.O.C.'s clothing.
6. Lindsay's August 1, 2022, *Affidavit* sets forth in detail how her personal property was acquired and Jeff's agreement that these personal property items belonged to Lindsay. (LAPP #8). This corresponds to the above documents submitted to district court.

6.
Standard of Review.

This Court reviews the findings of a district court sitting without a jury to determine if the district court's findings were clearly erroneous. The Montana State Supreme Court reviews the district court's findings to determine whether they are clearly erroneous." *In re Marriage of Crilly*, 2005 MT 311, 329 Mont. 479, 124 P.3d 1151. "A finding is clearly erroneous if it is not supported by substantial evidence, the district court misapprehended the effect of the evidence or our review of the record convinces us that the district court made a mistake." *Crilly*, (citing *Bock v. Smith*, 2005 MT 40, ¶ 14, 326 Mont. 123, 107 P.3d 488). The District Court made a mistake when not awarding Lindsay her personal property that Jeff represented to the Court in his *Proposed Findings* belonged to Lindsay.

7.
Equity Requires
"Doing Complete Justice."

A dissolution of a marriage is a proceeding in equity. In equity cases, an appellate court applies the standard of review set forth in Mont. Code Ann. §3-2-204(5). Under §3-2-204(5) MCA, the appellate court has a duty to determine all of the issues of the case and to do complete justice. This includes the power to fashion equitable results. *In re Marriage of Stoneman*, (2008), 348 Mont. 17,

199 P.3d 232, *Quigley v. Acker*, (1998), 288 Mont. 190, 955 P.2d 1377, *Kauffman-Harmon v. Kauffman*, (2001), 307 Mont. 45, 36 P.3d 408.

Complete justice includes the return of Lindsay's personal property which Jeff told the district court belonged to her. To do anything else will allow Jeff to take advantage of the Court, Lindsay, and our system of laws. It will send the message to Jeff that it is ok not to honor one's word in a court proceeding. There is no reason for Jeff to keep Lindsay's personal property much of which is sentimental than to continue to make life difficult for Lindsay.

8. CONCLUSION.

It is requested in this Cross-Appeal the Court remand this matter to District Court so Lindsay may have her maiden name restored, correct the clerical \$67.00 error for monthly child support and order that Jeff return those items of person property that he has stated in district court belong to her. Then justice will be done on those issues stated in this cross-appeal.

Dated: April 14, 2023.

/s/ David F. Stufft
David F. Stufft, Counsel for the Appellee
and Cross-Appellant, Lindsay Goudreau

CERTIFICATE OF COMPLIANCE

I, David F. Stufft, certify that the *Appellee's Reply Brief* complies with Rule 27 Montana Rules of Appellate Procedure as follows:

1. The Appellant's Opening brief is printed with a Times New Roman text type space of 14 points proportionately spaced.
2. The typeface of the Brief is double-spaced; Word for Mac, with the exception of quotations.
3. The word count does not exceed 5,000 words and does not average more than 280 words per page, excluding the Certificate of Compliance.
4. The word count as reflected by the word processing system used to prepare the brief is approximately 1,820 words, excluding the Certificate of Compliance.

Dated: April 14, 2023.

/s/ David F. Stufft

David F. Stufft, Counsel for the Appellee
and Cross-Appellant, Lindsay Goudreau

CERTIFICATE OF SERVICE

I, David F. Stufft, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee and Cross to the following on 04-14-2023:

Penni L. Chisholm (Attorney)
PO Box 2034
516 First Ave W
Columbia Falls MT 59912
Representing: Jeffrey A Goudreau
Service Method: eService

Dean D. Chisholm (Attorney)
PO BOX 2034
516 1st Ave. W.
Columba Falls MT 59912
Representing: Jeffrey A Goudreau
Service Method: eService

Electronically Signed By: David F. Stufft
Dated: 04-14-2023