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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 22-0521

In re the Marriage of: Andrea Okland, Petitioner and Appellant, v. Christopher Okland, Respondent and Appellee.	**APPELLANT'S REPLY BRIEF**

Appealed from the Twentieth Judicial District Court, Lake County

Cause No. DR-2020-42

Honorable James A. Manley and Honorable Molly Owen Presiding

Appearances:

Petitioner/Appellant:
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Respondent/Appellee:
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I. ARGUMENT

The only case law cited (without even a pinpoint cite) by Chris's counsel, Paula Johnson-Gilchrist, in his Response Brief to support his contention that this Court should uphold the District Court's failure to follow Mont. Code Ann. § 40-4-301(2) is *Fronk v. Collins*, 2011 MT 315. Both the District Court and Chris's counsel are wrong that *Fronk* applies to the parenting plan in this matter. *Fronk* is purely a contract case. This Court stated in *Pankratz v. Teske*, 2002 MT 112, ¶12, 48 P.3d 30, 309 Mont. 499, "[I]t is well established in Montana that where the interests of minor children are concerned, a district court is not bound by an agreement reached by the parties." *Pankratz*, citing *In re Marriage of Syverson* (1997), 281 Mont. 1, 9, 931 P.2d 691, 696.

Chris's brief also offers the circular logic that the District Court's ruling should be upheld because it is what the District Court ruled. Just because the District Court said in its order that I waived my objection to mediate under Mont. Code Ann. § 40-4-301(2) does not mean that I actually did. As my opening brief points out, the statute itself states that the only valid waiver to such an objection is written, informed consent. My previous attorneys did not inform me of the statute, and I did not provide written consent to mediation. I assert that to uphold the District Court ruling as it is would create a gross miscarriage of justice and perpetuate the financial and emotional abuse our minor child, J.M.O. and I

have endured throughout this dissolution process since we fled our marital home.

In the response brief Chris's counsel, Paula Johnson-Gilchrist tries to do the same thing she did during the final hearing in this matter—to negate Mont. Code Ann. § 40-4-301(2) because of Paula Johnson-Gilchrist's ignorance of it. One can see in the transcript excerpt from March 30, 2021 on page 8, lines 12 through 14, Paula Johnson-Gilchrist stated, "There must be written, informed consent for mediation. I've never—I don't see any caselaw on that." Later in the same transcript, on page 18, lines 19 through 23, Chris's attorney, Paula Johnson-Gilchrist asked me, "And as far as the—any requirement for written, informed consent for mediation, you—isn't it true you haven't provided any documentation that written, informed consent for mediation is required? Where are you getting that?" Despite that being an inappropriate question to ask a layperson, where my attorney got it from is Mont. Code Ann. § 40-4-301(2). Chris's attorney then further reveals her ignorance of this statute by stating on page 19, lines 1 through 3, ". . . I can honestly say I have never in 40 years of practice gotten written informed consent for mediation. . . ." Her ignorance of the statute is also shown by her repeated use in the response brief of quotation marks around the word "permitted" or "permitting" as though my attorney had inappropriately inserted that word into the discussion. The statute itself states, "Unless each of the parties

provides written, informed consent, the court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party (Emphasis added)." I assert that in retrospect a mediation that lasted from 9am-11pm for a total of 14 hours in length was excessive and further added to the abusive, domination and intimidation I had experienced while married for almost 22 years, as Chris' unaddressed alcoholism spiraled out of control.

The language of Mont. Code Ann. § 40-4-301(2) has come before the Supreme Court on several previous occasions. The first time the Court interpreted this statute was to define the "reason to suspect" standard. *Hendershott v. Westphal*, 2011 MT 73, 253 P.3d 806. In this case the Court held, "'Reason to suspect' sets a minimal standard that the legislature expressly considered and included in the law.... The 'reason to suspect' standard was used because it was lower than probable cause and consistent with doctor and teacher standards for investigating abuse." ¶24.

In *Hendershott*, this Court held that Mont. Code Ann. § 40-4-301(2) was an absolute bar to mediation if there was a reason to suspect any abuse.

The Legislature responded by adding the "written, informed consent" clause to the statute. This new language came before this Court in *In re PHR*, 2021 MT 231, 495 P.3d 38, a case in which the Court addressed the new language and further discussed the "reason to suspect" standard. The Court held that, even though the abused party voluntarily participated in mediation, the "reason to suspect" standard was still met due to the district court's "concern" about abuse having taken place. ¶24. The Court further stated that "written, informed consent" means "an educated, competent, and voluntary choice to enter into mediation." ¶22. My decision to participate in mediation with Chris cannot be considered educated or competent when my counsel never informed me about the requirements of Mont. Code Ann. § 40-4-301(2). I entered in good faith into mediation to settle our property and establish a parenting plan that would be in the best interest of our minor child. Prior to the Mediation we were operating under a Stipulation for Interim Parenting Plan and Interim Family Support filed on June 16 , 2020. (See District Court ROA Filing #12). Under the SIPP, I was the sole caretaker for our minor child, was the only one who could transport JMO, Chris was under alcohol monitoring via a breathalyzer three times per day that he had to pay for, Chris had no overnights with JMO, and limited parenting time. Everything changed drastically for the worse after that 14 hour long mediation took place.

An Order signed by Judge Manley on April 21, 2021.

Lines 18-22 states "The Court required the parties to participate in mediation before final hearing. The parties had the option of using our law clerk, Ms. Newsom, as mediator without charge. Ms. Newsom is an experienced mediator with a strong record of mediation results. Andrea declined that option, based on concerns about bias. Therefore, the parties hired mediator Schult[e]." As a layperson if a judge orders you to go to mediation and the attorney you hire with the expectation of being a professional to protect your interests and that of your minor child tells a person you must mediate, what do you think one does? I am just a schoolteacher by trade but as Judge Manley stated, I had concerns around bias and allowing Ms. Newsom to act as mediator in our dissolution. Ms. Newsom was Judge Manley's clerk, in that capacity wrote the document I am referencing, and was recommended to be our mediator free of charge. I found that perplexing and had profound reservations about having Ms. Newsom also act as mediator when she was involved in all of those roles in my case. I questioned how she could act as a neutral mediator and decided that it would not be in my best interest. Therefore, my attorney of record at the time recommended we hire Jocke Schulte, a private mediator out of Missoula.

Chris offers *In re Marriage of Dirnberger*, 2007 MT 84 (without pinpoint

cite) and *In re Marriage of Garst*, 206 Mont. 89 (1983) to support his position that the District Court's valuation of the marital home was not arbitrary and an abuse of discretion. Both of these cases differ from the facts at hand, however.

In both *Dirnberger* and *Garst*, the appealing party was disputing the District Court's methodology in arriving at a value between two values offered by the parties based on the value of property at the time of dissolution. In this case, the District Court chose a midpoint valuation between two values offered by the parties with one of those values at the time of separation and the other at time of dissolution. The District Court did not allow into evidence the most recent and highest appraisal of the marital home performed just before trial. Chris is correct that the use of averaging values of property is often done by district courts, but that averaging is between two values offered for the property at the same point in time. The case law in my opening brief is clear that district courts must tether the value of marital property to either the date of separation or the date of dissolution. Averaging the two disparate values in the way the District Court did in this case was arbitrary and an abuse of discretion.

Chris is correct when he says that there was no evidence before the District Court of the values of marital property as of the date of dissolution, and this is the fault of the District Court alone. Chris tries to blame me, but the District Court's

final ruling was issued 420 days after the final hearing, and nearly six months after the last filing in the matter. Judge Manley apparently decided not to decide the case until he was on the brink of retirement; there is no other explanation why the final decision was delayed for so long. This was arbitrary and unconscionable and brings into question every valuation decided by the District Court. I assert that property values need to be recalculated, appraisals need to be redone and updated to reflect the current market values, particularly of the marital home, to ensure an equitable division of property. The home is still titled in both parties' names, the mortgage is held in both parties' names, the homeowner's insurance is still held in both parties' names. It has been two years since the last hearing and almost a year since the final divorce decree was issued. Chris makes at least $80,000 per year at his oil industry job, has made $80,000 per year in Okland entity dividends the last few years, and pays $534/ month in child support plus 10% of his dividends to me. This is evidenced by the letters I receive quarterly from Mr. Whaley, Chris and the Okland Family Corporate Entity's accountant. The letters state the 10% of the amount of Chris' dividends I am to receive.

Chris continues to live in our marital home we purchased jointly with combined marital funds and some of the equity we received from the sale of our Anchorage, Alaska home we sold when we moved to Montana in June of 2018.

Our marital home in Polson, Montana is situated on almost two acres with Flathead Lake Access, a boat slip, and hot tub we purchased separately from Ron and Lyn Fricker. Chris only lives in the home the 12 days out of the month he is not commuting to and from or working rotational oil work in Alaska. By contrast, I live in a 2- bedroom apartment with our minor daughter and parent 16 days a month under the current parenting plan. We rented the unfurnished apartment at the height of the COVID-19 Pandemic when we fled the marital home thinking it would be temporary until the divorce finalized and settled. Three years later, we are still here in the apartment in Polson, Montana.

In the response brief, Chris's counsel continues to misunderstand James Whaley's valuation of the Okland entities. The response brief states that the District Court reversed the values of Okland, Inc. and Okland Family Partnership, but that is clearly not the error alleged in my opening brief. In my Opening Brief I clearly asserted that Mr. Whaley made a valuation of the surface rights of the assets owned by both entities, and a valuation of the mineral rights of the assets owned by both entities. There was never a separate valuation of Okland, Inc. and Okland Family Partnership as Chris's proposed FOFCOL and response brief assert. The 1,500-acre farm in North Dakota was not valued. The Royalties from the oil wells in the Bakken Oil fields on the Okland property were never

valued. There was never a full disclosure done of the property holdings in the two Corporate Okland Entities. Chris' 1/5 monetary payment in the form of dividends from the proceeds from the sale of his late mother's Flathead Lake Condominium while Andrea and Chris were still married was never disclosed, the proceeds from his late brother's estate (who died while we were still married) that was probated during the divorce was never disclosed. These proceeds were also held in those two Okland Corporate and Partnership entities.

Chris also asserts that I did not put on any credible evidence of the value of the Okland entities. I did offer credible evidence at the time of the trial in 2021, using the amounts of the quarterly dividends that the entities had been paying out to Chris by check. I offered as exhibits nearly four years of records showing that, while we were married between 2014 and 2018, Chris had earned nearly $66,000.00 per year in dividends from both the Okland entities. Chris ran those dividend checks through our joint bank account. $66,000.00 per year multiplied by 4 years= $264,000 in dividend payouts to Chris in 4 years.

Chris had received dividends from both the Okland entities during the last 7 years of our marriage, I asserted that the value of the Okland entities should be based on the value of dividends that would likely be paid out over the 7 years following our dissolution. I arrived at a value of $263,476.50 for Okland Family

Partnership, because between 2014 and 2018 this entity paid Chris an average of $37,639.50 per year. ($37,639.50 multiplied by 7 years = $236, 476.50). I arrived at a value of $198,455.25 for Okland, Inc. because between 2014 and 2018 this entity paid Chris an average of $28,350.75 per year. ($28, 350.75 per year multiplied by 7 years = $198,455.25). Combining the values from Okland Family Partnership and Okland Inc. $263,476.50+$198,455.25 =$461, 931.75. If you multiply that total of both entities by 5 living adult Okland children as heirs (Chris is 1 of 5) you arrive at 7 years of dividends totaling **$992, 276.25**. This seemed to me to be much more credible that Mr. Whaley's assertion that the Okland entities, which had paid Chris nearly $66,000.00 per year, were worth less than $80,000.00 combined. I did not even ask the District Court to apportion any ownership of the Okland entities to me when it divided the marital estate; I simply wanted the Court to assign a reasonable value to the entities and include them as part of the marital estate. The District Court did neither of these.

I also assert that if The Court does not allow the Okland Partnership and the Okland Inc. to be included in the marital estate, then at least The Court will know the amount of income Chris receives on top of his regular Halliburton Salary as well as potential future income from the two entities.

I assert if that is the decision then, I am entitled by law to more of our marital estate to achieve an equitable division of property. I assert and maintain all of my rights to have a court of equity review my case and make an equitable division our marital assets and debts. I ask that MCA 40-4-203 Maintenance be applied 2a, B time necessary to acquire sufficient education of training to find employment (passing Praxis scores, Montana license)C the standard of living established during the marriage. D the duration of the parties' 22-year marriage.

E -the age and physical and emotional condition of the spouse seeking maintenance. I petitioned for dissolution at age 42 and I am now almost 55. MCA 40-4-202 obligates a court to equitably apportion between all parties' assets and property of either or both spouses regardless of by whom and when acquired. Please take all of this into consideration when making and equitable decree in the matter of our dissolution and most importantly I ask that this Court help protect the needs of our minor child, JMO who was 12 at the time of petition for dissolution and is now 15 years of age.

Andrea Okland
Pro Se Appellant

May 24, 2023

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 1,603, excluding certificate of service and certificate of compliance.

Andrea Okland
Pro Se Appellant

May 24, 2023

Certificate of Service

I hereby certify that I have filed a true and accurate copy of the foregoing REPLY BRIEF with the Clerk of the Montana Supreme Court on the 26th Day of May 2023; and that I have served true and accurate copies of the foregoing REPLY BRIEF upon each attorney of record in the above-referenced Supreme Court action, as follows:

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May 26, 2023