IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA22-0627

IN RE THE MARRIAGE OF:

DAWN TAYLOR,

Petitioner and Appellant,

and

JOHN TAYLOR

Respondent and Appellee.

APPELLANT'S AMENDED REPLY BRIEF

On Appeal from the Montana Sixth Judicial District Court, Park County
Cause No. DR19-53
The Honorable David Cybulski, presiding.

APPEARANCES:

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I. STATEMENT OF CASE AND FACTS

Dawn Taylor adopts the Statement of the Case and Facts in her opening brief. However, for clarity, Dawn will provide additional detail and citations to the record, and address assertions in John's Response which are inaccurate or misleading. Not all pleadings are referenced.

Dawn and John have three children, OT, born August 2013, LT, born June 2015, and BT, born March 2017. Dawn was the primary caregiver. Aug. Tr. 164:4-17, 167:5-23, Sept. Tr. 55:9-21. Dawn has two children from a previous marriage who reside primarily with her, SG and KG. Aug. Tr. 76:18-25. Dawn primarily homeschooled KG and SG. She and John agreed that they would do the same with their children. Aug. Tr. 75:25-76:1-25.

In March 2019, the parties separated. Aug. Tr. 70:6-8. On May 24, 2019, Dawn filed for dissolution, requested a restraining order, and asked for exclusive use of the residence. CR 1, 3, 6. On June 6, 2019, Dawn requested maintenance. In response, on June 21, John filed a motion for contempt, and responses to Dawn's motions and filed a response to the motion for maintenance in August. CR 6, 9, 13, 14.

John did not request a parenting plan until July15, 2019. He requested an order directing OT attend public school. CR 31, 32. At a hearing on August 2, 2019, the court issued an oral ruling. Aug. Tr. 73: 21-25-74:1, 185-189. The court adopted John's interim plan and directed John's counsel to prepare orders. CR 47. The court

did not address the factors in Section 40-4-212, MCA. Without explanation, or request from John, the court gave John primary decision making and designated him the custodial parent. Aug. Tr. 186-190, CR 12 pg. 2, ¶5, 31 and 32. John was granted the authority to decide whether OT would attend public school, even though John's related testimony was brief and lacked reasoning. John was not opposed to private school but didn't want to pay for it. Aug. Tr. 43:25-44:1-21, 86:8-11. Dawn continued to be responsible for the children's health appointments, haircuts, activities, and schooling. Aug. Tr. 165: 4-17, 167: 8-25, Sept. Tr. 55:5-21, 96:12-97:1-9, 242:6-25-243:1-2.

The parties settled their dissolution in May 2020, agreeing Dawn would parent the children most of the school week and John would parent from Thursday at noon, until Saturday at noon, and every other weekend from Saturday at noon until Monday at noon. If John's schedule changed, he had to give Dawn two weeks' notice and they were to work together to adjust. Neither was designated the 'custodial parent', and both had equal decision-making. The plan required that the children attend public school but was not specific as to when, how or where. CR 89.

Dawn and the children continued to occupy the marital residence. John had an apartment in Livingston having moved back from Bozeman. When the martial residence sold in 2020, Dawn moved to Three Forks and John purchased a home in Belgrade. At no time did John argue that the children move with him or attend school in his district. The children have always attended school in the district in

which Dawn resided.

Dawn enrolled OT in public school in Three Forks. Due to the COVID 19 pandemic, Dawn enrolled him in remote learning. CR 96, 97. John's statement that he was 'forced' to file a motion to enforce the public-school provision is misleading. BT was five years old. The plan was silent as to when he would start school. Based on the recommendation of the pediatrician, and her belief he wasn't ready, Dawn did not enroll him. CR 97. Without a hearing, or analysis, the court ordered both boys to be enrolled for in-person learning. CR 100. Soon thereafter, BT and OT had difficulties and they agreed BT would be homeschooled by Dawn, and OT would attend Petra Academy, on the condition that Dawn paid the tuition. CR 104,105.

In 2022, Dawn learned that her lease would not be renewed. She could not find affordable or suitable housing in Gallatin County. She looked at neighboring areas. Sept. Tr. 13, CR 108, 112, 116. Her search led her to Butte. John was aware of Dawn's plight and co-signed for a rental. Sept. Tr. 56: 11-13. Prior to moving, Dawn purchased the rental. Her significant other put in part of the down-payment, and Dawn put in the rest. Dawn testified they had an agreement to pay him back for his downpayment and pay the mortgage. Sept. Tr. 57. Dawn investigated schools for the boys, finding that Highland View Christian School in Butte was the best for them. Sept. Tr. 225:25-236-238. While she testified homeschooling was an option, they talked about private school, to which John did not object. Sept. Tr. 227:1-5, 235: 3-24.

Contrary to John's assertion, to Dawn's knowledge, John's schedule did not change in June 2022, although it had changed a few times in the prior years and could change again. Sept. Tr. 152:15-25-153:1, Exhibits 10, 4 and 5. Around July 2022, John began to shift his schedule at work so that he would have more weekdays off. John never said he would seek a custody change if she moved to Butte. Sept. Tr. 233, 234:1-5, Exhibits 4, 5. Dawn did not have John's schedule for the months following July until she subpoenaed them. Sept. Tr. 252:23-25-253-254.

John filed a motion to enforce the parenting plan (which was a motion to amend), arguing that he should have the children during the school year because his days off were during the week (he works some weekdays). CR 106, Exhibits 4, 5. That motion was verified, but did not cite law and was not supported by an affidavit. Section 40-4-220, MCA. Dawn filed her notice of intent to move and modify the parenting plan, along with supporting affidavits and a proposed plan. CR 108, 109, 110, 111, 112, 113, 116.

In August 2022, Dawn requested her vacation time, so she would not lose it. Sept. Tr. 252:10-18. She planned to go camping, but wanted to settle in. Sept. Tr. 18:1-24. She received notice that John had enrolled the boys in Belgrade Public School. She then learned that Highland was starting, so enrolled them. CR 18, Sept. Tr. 258:2-7. Dawn filed an ex parte motion requesting the court order the children attend Highland, because both parents started taking the children to school

in their districts, which the court ignored. CR 115, 117, 118.

At a hearing on September 22, 2022, Dawn provided extensive testimony regarding her investigation into which school would be best for the children, given that they were going to have to change schools. Sept. Tr. 223-225, 235-238. When she home schooled them, they utilized curriculum and had one day a week with a teacher and other students Aug. Tr. 167: 17-20, 177:1-178:1-11. She had them assessed at the Sylvan Learning Center to ensure that they were progressing. Tr. 138:13-18, 227-230. She testified that Highland had regular assessments to ensure. Tr. 231. She testified she was seeking a degree in Elementary Education through Western Governors University. Sept. Tr. 232:6-13.

Dawn called two witnesses (in addition to her mother): Diane Haulman and Donna Gettle-Briggs. Ms. Briggs, a private counselor with a child who attends Highland, testified about her son's experience and its positive effect on him. She testified to her observations of Dawn and the children. Sept. Tr. 37-39, 44-45. Ms. Haulman, the school principal and teacher at Highland testified about the student to teacher ratio, accreditation, the assessments, and academic program. Sept. Tr. 195-199, 202:25-204. She testified that Highland was the ideal school for the boys. Sept. Tr. 212:7-25. In contrast, John knew nothing about what was offered in Belgrade, had not made any effort to investigate which school was better. Sept. Tr. 128:8-10, 146:20-147:22-148 and 149, 146: 20-25. When provided with the opportunity to have the children assessed at Highland, John refused "...because [the children] are

not supposed to be enrolled in that school," and he was not 'interested.' When he was told that they were standardized, he replied sarcastically, "fantastic." Sept. Tr. 130-131:13-15. Thereafter, the court similarly engaged in sarcasm, stating:

> Okay. So, somehow this school has had some sort of a miraculous impact on them, and they now all qualify for full-ride scholarships to Harvard?

Sept. Tr. 132:5-7.

Dawn investigated opportunities for the boys in Butte and engaged them in Cub Scouts, 4H, horseback lessons, play dates, swimming, field trips, and volunteered at school. Sept. Tr. 218-220:1-6. Dawn testified that they have 'great neighbors. Sept. Tr. 218. In contrast, again, John made no effort to engage the boys in activities and while he represented that they had friends, he did not know their parents and play dates he arranged did not occur, nor did he call independent witnesses to support his assertion that the kids were adjusted to Belgrade. Sept. Tr. 133: 7-25 and 134: 1-20. Only after the court took a recess did John 'become aware' that Belgrade had two Scout troops, contradicting an earlier statement that he had not tried to get the boys into Scouts. Sept. Tr. 134:2-4 and 174: 4-7.

John acknowledged that Dawn primarily took care of their medical appointments and struggled to name any providers. Tr. 91: 17-25, 92-93. He failed to take OT to the dentist for an infected tooth. Tr. 94: 1-20 and Exhibit 2. While he attended a few appointments, he left that responsibility to Dawn. Sept. Tr. 91:17-25.

John asserted that it was Dawn's fault that the children had absences and

tardies the prior year, but acknowledged that some of them may have been on 'his time,' failed to consider that was the year of the COVID 19 pandemic, which resulted in quarantines and neither party was not sure if OT's school suspension was counted in his absences. Sept. Tr. 24:3-20, 25:15-25, 136-137:1-12, 138: 5-12.

The court focused on the size of Dawn's house versus John's, the belief that Dawn had frequently moved, and John's work schedule. The court erroneously concluded that Dawn "moved and moved and moved" and could not be sure that she would not again, even though she had only moved once before purchasing her house in Butte, and John had moved four times since their separation. Sept. Tr. 265:16-18. When Dawn corrected the court, it shifted to the size of Dawn's house. Despite testimony and photos showing that, though John's house was bigger, rooms were not livable the boys slept with John. Sept. Tr. 103:16-35, 265-256. Exhibit 2. The court stated, "So, I mean, I recognize that people sometimes have messes in their homes" and "Social workers get grumpy when there's dog feces on the kitchen table." Sept. Tr. 102: 14. Exhibit 2. The court ignored Dawn's testimony about the size of her house, and though he had a copy of the property record he misstated the square footage of her house. Sept. Tr. 273:23-25, 274:1-23 and Exhibit D. Contrary to John's assertion, and the court's erroneous finding (Sept. Tr. 265:24-266:2), Dawn's house has a large basement where the boys sleep with storage and a bathroom, two bedrooms and a bathroom upstairs for Dawn and her daughter, and a finished outbuilding where Dawn's oldest son sleeps. Sept. Tr.

143:21-25, 144, 215:11-25 and 216: 1-18. The court disregarded safety concerns, such as John leaving his prescriptions on the dining room table, stating "Children that are well-raised don't just go taking stuff that's not supposed to be eaten by them because they know better." Sept. Tr. 111:9-11.

While the court took exception with Dawn having her oldest son pick up the kids occasionally, Ms. Haulman testified that Dawn typically transports the children to and from school. Sept. Tr. 205:13-24. The court also erroneously found that John did not use third party caregivers, although he testified he had, and his time was scheduled on his days off. Sept. Tr. 86:17-25, 87:1-15 and 268:7-12. The court erroneously stated,

> So, you know, he doesn't use any third-party care for his kids. And I recognize that fact.

Sept. Tr. 86 and 268:7-8. There was no testimony that Dawn used outside providers, except their older siblings for a few hours.

At the conclusion of that hearing, the Court made an abbreviated oral pronouncement, giving John primary custody and decision making. He did not specifically address the factors of Section 40-4-212, MCA. Sept. Tr. 264:9-272:22. The court did not make an oral finding regarding the award of attorney's fees and costs, the order drafted by Ms. Swandal included such an award and erroneous authority. Similarly, the order included findings from allegations alleged to have occurred post-hearing in its order.

The court stated Dawn that she would have an opportunity and provide comments before orders were issued. That did not occur. Ms. Swandal submitted the orders to the court on the afternoon of Wednesday, September 28, 2022, did not give Dawn an opportunity to review them prior. The Court wholly adopted the proposed orders on Monday, October 3, 2022. CR 133, 135, 136. Dawn filed objections and requested that the court set aside the orders, which were denied with scant analysis.

III. SUMMARY OF ARGUMENT

Dawn presented evidence to support that the children should attend Highland, as well as her engagement in their lives. John offered minimal testimony to support that the children should reside with him, or that attending school in Belgrade was in their best interests. John's focus was on 'his' schedule. The court ignored the boy's relationships with KG and SG, and attachment to Dawn as their primary caregiver. By adopting John's schedule, the court penalized Dawn for lacking the resources to stay in Gallatin County and exercising her right to travel. See *In re Solem*, 2020 MT 141, ¶9, 400 Mont. 186, 464 P.3d 981.

The court made mistakes of law and fact, and the orders were not supported by substantial evidence. The court abused its discretion. The court did not state, or have the authority, to award attorney's fees and costs to John. John's request for attorney's fees is without merit. This matter should be remanded to the district court, with a new judge presiding.

I. ARGUMENT

A. THE DISTRICT COURT ABUSED ITS DISCRETION IN ADOPTING THE AMENDED FINAL PARENTING PLAN, BASED ON THE ORDER AMENDING PARENTING PLAN PREPARED BY THE RESPONDENT.

John argued that since 2019, the parties had 'approximately equal' time with the children. John's assertion ignores the reality that Dawn parented the children most of the time, and primarily during the school week. CR 46, 83,104.

John knew Dawn was moving to Butte. He shifted his work schedule and took vacation days to maintain his charade that he had scheduled days off. Sept. Tr.118:16-24, Exhibit 4, 5 (August 2022). John argued that Dawn took the children to Drummond on September 19, 2022, (where her father resides) 'knowing that he was coming to Butte,' which she did not, to paint her in a bad light. Sept. Tr. 32:17-25, 33:1-24.

Dawn focused on the boys' educational needs and tried to resolve matters with John. Dawn focused on finding a school where she could volunteer and address their individual needs. Sept. Tr. 219. Dawn is seeking a degree in Elementary Education, and finding the right school was particularly important to her. Sept. Tr. 232. Highland was the best fit and does assessments three times per year. Sept. Tr. 44:14-25, 235-238. The children are academically advanced, due to Dawn's tutelage, even though acknowledged that he did not contribute to the same degree. Exhibits 8, 9, and Sept. Tr. 139:3-24. When both parties enrolled the

children in school, even though they had always been enrolled in Dawn's district. Dawn attempted to mitigate the confusion by filing an ex parte motion to clarify, which the court ignored. CR 115,117.

Contrary to John's assertion, the court did not address all the best interests' factors. The court failed to consider the bond between the children, KG and SG, or consider that Dawn has always been the primary caregiver. Section 40-4-212(b), MCA and Tr. 216:9-217:1-18. The court made a mistake of law when it determined that where children attend school was not a factor for consideration. The court erroneously judged the size and layout of Dawn's house, despite her testimony. The court ignored that although John has a four-bedroom house, he and the boys sleep in his bedroom, the shared bath was filthy, and other bedrooms uninhabitable. Exhibit 2, Sept. Tr. 103:16-23.

As stated in *In re S.E.L.*, 2015 MT 228, ¶11, 380 Mont. 256, 259, 354 P.3d 1237, 1239, referring to Section 40-4-212, MCA,

> The statute provides a non-exhaustive list of factors to be considered, including: the wishes of the parents; the interaction and interrelationship of the child with her parents; the child's adjustment to home, school and community; continuity and stability of care; and whether the child has frequented and continuing contact with both parents.

In re S.E.L., 2015 MT 228, ¶11, 380 Mont. 256, 259, 354 P.3d 1237, 1239 (emphasis added). Nonetheless, considering only the factors specifically addressed, the court erred.

The court erroneously found that the children were adapted to Belgrade, although John had never enrolled them in any activity, play dates 'had not worked out,' did not know his children's friends and had not tried to meet anyone. Sept. Tr. 82:7-13. In contrast, in the short amount of time that Dawn had been in Butte, she met other families, had them in riding lessons, swimming, and Scouts. The court found that the proximity of John's work would make him available but did not consider that Dawn had already volunteered at school in Butte, could be home within an hour, whereas John would have to find coverage to leave work. It was unjust to penalize Dawn for her job.

The court made a mistake of law by dismissing the importance of where the children attend school stating,

> And when I look at the criteria other than the gist of the school, that really isn't one of the criteria that comes into when we have custody issues. So, I think the Belgrade school, nobody has said a word about it being bad, so, you know.

Sept. Tr. 267:2-6. Recognizing Highland was better the court stated,

> But in any event, that's the basic findings that I find. I mean, the rest of the things are moot, but I recognize that the school may be considered better in some aspects, but it's not one of the factors that are primarily for us to consider in the best interests of the kids.

Sept. Tr.270:22-25-271:1. The court failed to consider that Section 40-4-212, MCA, is not an exclusive list, and requires the court to consider the child's developmental needs and schooling.

The court erroneously attributed the number of schools that the children

attended to Dawn, finding that OT had attended five schools. In reality Livingston, Three Forks, and Petra (based on his lack of adjustment to public school), were all agreed to by John. The fourth and fifth schools were Highland and Belgrade. The court attributed absences and tardies to Dawn, although John acknowledged some may have been his responsibility. Neither party knew if the absences were attributed to OT being suspended or days missed due to COVID quarantines.

The court abused its discretion and infringed on Dawn's fundamental right to parent and travel. US. Const. Amend. 14 and Mont. Const., Art. II, Sec. 17. Without basis, the Court ordered that John solely make decisions related to the children's educations. The record supports that the Court ignored most of the testimony and evidence presented. Although the court has broad discretion, the findings on the record were scant. See *Daley v. Burlington Santa Fe Railway*, 2018 MT 197, ¶13, 392 Mont. 311, 425 P.3d 669, *In re the Marriage of Williams*, 2018 MT 221, ¶5, 392 Mont. 484, 425 P.3d 1277 and *In re the Parenting of C.J.*, 2016 MT 93, ¶12, 383 Mont. 197, 369 P.3d 1028. Final parenting plans must be supported by substantial evidence.

> Findings are clearly erroneous if they are not supported by substantial evidence, the district court misapprehends the effect of the evidence, or the Montana Supreme Court's review of the record convinces it that a mistake has been made. If the findings on which the district court's decision are based are not clearly erroneous, the supreme court will reverse a district court's decision regarding custody modification or visitation only when an abuse of discretion is demonstrated.

In re Marriage of Hedges, 2002 MT 204, ¶1, 311 Mont. 230, 231, 53 P.3d 1273,

1275. A finding must be based on more than a scintilla of evidence. *In re J.H.*, 2016 MT 35, ¶1, 382 Mont. 214, 214, 367 P.3d 339, 341.

The court erred in not considering the relationship between the children and SG and KG. The court erred by not considering that Dawn was addressing their individual needs in choosing a school, whereas John had not done any investigation. John enrolled the children in school in Belgrade, before Dawn enrolled them in Highland. The court erred by not considering that John had never overseen, and participated minimally in the children's education, except when it unconstitutionally gave him the authority to put OT in public school.

In some instances, John misrepresented the hearing testimony and evidence, or grossly exaggerated the testimony. Specifically, regarding the findings, the court did not find Dawn withheld the children from John in August 2019. John and Dawn exchanged Wednesdays for Fridays. Dawn was not aware of John's schedule. Dawn clearly testified to the size of her home. John did not testify that he moved to Belgrade to be closer to the children. Dawn enrolled OT in public school for remote learning because of COVID 19. Neither party testified for certain who or what contributed to the absences. Dawn did not take the children on vacation with her. Dawn paid part on the downpayment on the house in Butte and could produce a contract between herself and significant other. Dawn did not testify that she used her vacation time to enroll the children in Butte and referenced citations do not support that finding. Dawn did not testify that she was 'adamantly opposed'

to enrolling her children in public school. Sept. Tr. 48-49. Dawn did not testify that her daughter took the pictures at John's house. John did. Sept. Tr. 98-99. Dawn did not pick up the children from school before school was out. John's schedule has changed multiple times in the last several years. Dawn and Ms. Haulman testified that Dawn picks up the children regularly. John utilizes third party caregivers. And, FOF 31 and 32 were Findings were based on allegations that occurred after the hearing.

The findings are not comprehensive, pertinent or supported by the evidence. *In re the Marriage of Wolfe*, 202 Mont. 454, 458, 659 P.2d 259, 261 (1983). The court's verbal findings were minimal and orders an abuse of discretion.

B. THE AWARD OF ATTORNEYS FEES AND COSTS TO JOHN WAS NOT BASED ON THE LAW OR PROPERLY PLED.

John cited *Wiebert v. Weibert*, 2015 MT 29, 378 Mont, 135, 343 P.3d 563, to support his position that district courts have discretion in awarding attorney's fees. Such a reading of *Weibert* is superficial.

In *Weibert*, the husband argued that Section 40-4-110, MCA, did not apply because they had a contractual provision, which provided that the prevailing party should be awarded attorney's fees and costs. He argued that there was no prevailing party, so that provision did not apply. The Court determined that 40-4-110, MCA, applied. The wife sold her car, maxed out her credit cards and took a loan. *Weibert* ¶ 18. The Court stated,

> [T]he district court judge examines what is reasonable in light of each party's circumstances. Awarding Crissy attorney's fees was not unreasonable when Jim changed his position on his motion after eight months and caused the parties to expend considerable expenses to resolve an issue that may have been resolved through direct discussion or mediation.

Weibert v. Weibert, 378 Mont. 135, 138-139, 2015 MT 29, P13, 343 P.3d 563, 565, 2015 Mont. citing *In re Marriage of Brownell*, 263 Mont. 78, 85, 865 P.2d 307, 311 (1993).

John did not cite Section 40-4-110, MCA, until he responded to Dawn's objections. CR 140,143. The court did not receive evidence of the parties' financial resources or needs. The court did not hold a hearing on the appropriateness of the fees for work performed. Dawn does not have the financial resources to pay John's fees. She moved from Gallatin County because she couldn't afford to stay. Sept. Tr. 13:11-17, 52:14-16, 56:21-25. John argued that Dawn testified she was saving '$2000 per month', ignoring that she could not afford to pay that rent. While Dawn has paid for private school, and has animals, she was willing to do so for her children. In contrast, when John only agreed to send OT to private school, if Dawn paid, even though OT was struggling in public school. CR 104. While John argued that the court was familiar with the parties' respective finances because it "...presided over this matter for just shy of four years and has become very familiar with their respective financial situations as they have litigated matters of child support, spousal maintenance and property

distribution" that is an exaggeration of the court's knowledge of the parties' resources. *Response*, pg. 31. The court held four hearings and did not take testimony in two. The court heard limited testimony that Dawn earned minimum wage at the hearing on August 2, 2019, but did not take testimony regarding John's income, and nearly four years have lapsed since.

Dawn filed the required notice of intent to move. The notice was slightly delayed; it was not intentional, a surprise or advantageous. She believed they could work matters out, as they had previously. CR 104, 93, 100, 104. Once Dawn committed to moving, John began to change his work schedule to work weekends (and some weekdays), which was a major change from his previous schedule. Exhibit 10, Sept. Tr. 57:4-1. Thereafter, John refused to discuss which school the children would attend. Exhibit 10. Then, John filed his Motion to Enforce Parenting Plan, knowing she was filing her intent to move, without requesting the required mediation. CR 93, 106,107,108,109. He asked for relief beyond enforcement, didn't cite the law, or file an affidavit. Section 40-4-220, MCA.

Attorney's fees are not provided for in the *Stipulated Final Parenting Plan*, and no statue applies to the facts of this case. The purpose of that statue is to ensure that the parties have equitable and timely access to funds to maintain or defend an action. Dawn timely objected. The court never set a hearing. It would be unjust and contrary to law, to award John fees for all filings and the hearing, even if the Court faulted Dawn for not filing a notice of intent to move on time. Dawn

had no choice but to move. Without mediation, court was inevitable.

C. RESPONSE TO MOTION FOR ATTORNEY'S FEES

John argued that Dawn did not have reasonable grounds for the appeal and should be sanctioned. While M.R. App. P. 19(5) allows for a sanction if the appeal is frivolous, vexatious, or taken without substantial reasonable grounds, that is not the case in this matter.

John cited *Lee v. Lee*, 2000 MT 67, 996 P.2d 389, 299 Mont. 78. His reliance on *Lee* is misplaced. In *Lee*, the wife sold a horse and trailer, awarded to the husband in the dissolution. She then lied to her ex-husband, attorney, and the court by representing that she would preserve the property during the appeal, knowing she had already sold the property. The Supreme Court found she showed a lack of "...respect for the integrity of the judicial process..." and that her appeal was "...without sufficient reasonable grounds." *Lee* at ¶ 70.

Dawn appealed because the district court ruling was not based on substantial evidence, was an abuse of discretion, and was in error. Dawn's appeal was filed in good faith. The Court received overwhelming evidence that it was in the best interests of the children to continue to reside with Dawn, KG and SG, during the school week and attend school at Highland. Dawn provided extensive testimony regarding her investigation of available schools. Sept. Tr. 223-225, 235-238. The Court did not have the authority or evidence to base its attorney's fee award or include findings about matters alleged to have occurred post-hearing in its order.

John argues that Dawn's statements to Judge Cybulski showed disdain, she was never disrespectful. The court engaged the parties in a discussion, and prior to making the statement John referenced, Dawn asked for permission to speak, which the court allowed. The exchange was respectful. Tr. 275: 5-25.

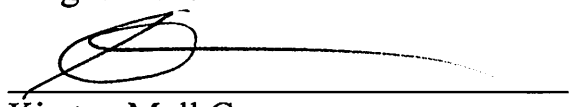
An award of attorney's fees and costs is not justified or appropriate under the circumstances. Even if the court were to find that the district court's ruling should stand, the testimony and evidence presented by Dawn does not support that Dawn's appeal lacked good faith. See *In re Chamberlin*, 2011 MT 253, ¶26, 362 Mont. 226, 230, 262 P.3d 1097, 1100.

IV. CONCLUSION

Dawn has always been the primary caregiver and responsible for the children's schooling and appointments. She is the only parent that engages them in activities. She cannot be penalized for the necessity of the move to Butte. *In re Custody of DMG*, 1998 MT 1, 287 Mont. 120, 951 P.2d 1377. Dawn's focus was on the children, John's focus was on him. The court abused its discretion by adopting the orders prepared by John's counsel and infringing on Dawn's fundamental right to parent. This case should be reversed and remanded to the district court, with a new judge presiding. Section 3-1-804, MCA.

WHEREFORE, the Appellant, Dawn Taylor, respectfully requests that this Court reverse the orders of the district court, remand the case for further proceedings, and deny the Respondent's motion for attorney's fees and costs.

Respectfully submitted this 3RD day of August 2023.



Kirsten Mull Core

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4) of the Montana Rules of Appellate Procedure, I certify that this Response is printed with a proportionally spaced Times New Roman text typeface of 14 points, is double spaced, and the word count calculated by Word for Windows is not more than 5000 words, excluding Certificate of Service and Certificate of Compliance.

DATED this 3rd day of August 2023.

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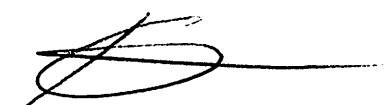

Kirsten Mull Core

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing **APPELLANT'S AMENDED REPLY BRIEF** with the Clerk of the Montana Supreme Court and each party not represented by an attorney in the above-referenced District Court action as follows:

Rebecca Swandal
Swandal Law, PLLC
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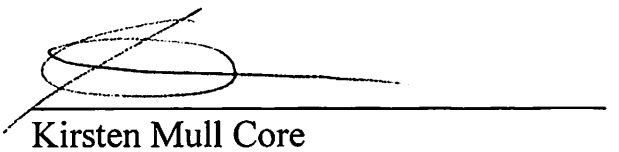
Livingston, Montana 59047

(x) BY FACSIMILE/EMAIL/E-FILE SERVICE: I caused all the pages of the above-described document(s) to be sent to the recipient(s) listed above via electronic transfer at the respective facsimile numbers/EMAIL ADDRESS/E-FILING address indicated thereon.

I declare under penalty of perjury under the laws of the State of Montana that the above is true and correct.

Executed on August 3, 2023, at Bozeman, Montana.



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