

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0219

IN RE THE MARRIAGE OF:

MIKI ADAMS,

Petitioner and Appellee,

and

DIRK ADAMS,

Respondent and Appellant.

APPELLEE'S RESPONSE BRIEF

On Appeal from Montana Sixth Judicial District Court, Park County

Cause No. DR-34-2020-43

Before the Honorable Yvonne Laird, Presiding.

APPEARANCES:

DIRK ADAMS
140 Banks Street
Cambridge, Massachusetts 02138
Telephone: (406) 551-5022
dirkadams@mac.com
Appellant Pro Se

ADRIENNE ELLINGTON
Law Office of Adrienne Ellington, PLLC
1700 West Koch, Suite 9
Bozeman, Montana 59715
Telephone: (406) 602-4200
Email: adrienne@ellingtonlegal.com

JAMI REBSOM
Jami Rebsom Law Firm, P.L.L.C.
Livingston, Montana 59047
Telephone: (406) 222-5962
Attorneys for Appellee Miki Adams

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS	2
STANDARDS OF REVIEW	8
SUMMARY OF ARGUMENT	9
ARGUMENT	10
1. Did the District Court err by holding Dirk in contempt of the Decree of Dissolution?.....	10
2. Did the District Court err when it issued a Permanent Order of Protection against Dirk?.....	12
3. Did the District Court err when it denied Dirk leave to file post-hearing motions after the contempt hearing?.....	13
MOTION FOR ATTORNEY FEES AND COSTS.....	14
CONCLUSION	15
CERTIFICATE OF COMPLIANCE	16

TABLE OF AUTHORITIES

CASES

<i>Goodover v. Lindsey's</i> , 257 Mont. 38, 847 P.2d 699 (1993)	11
<i>Henrickson v. State</i> , 2004 MT 20, 319 Mont. 307, 84 P.3d 38	13
<i>In re Capser</i> , 2019 MT 215, 397 Mont. 227, 448 P.3d 1084	9, 14
<i>In re Marriage of Lewis</i> , 2020 MT 44, 399 Mont. 58, 458 P.3d 1009	12
<i>In re the Marriage of Miki L. Adams and Dirk S. Adams</i> , 2023 MT 95N (May 23, 2023).....	2
<i>Lee v. Lee</i> , 2000 MT 67, 299 Mont. 78, 996 P.2d 389	8, 10, 15
<i>Lockhead v. Lockhead</i> , 2013 MT 368, 373 Mont. 120, 314 P.3d 915.....	9
<i>Moore v. Imperial Hotels Corporation</i> , 285 Mont. 188, 948 P.2d 211 (1997). 9, 13, 14	
<i>Newman v. Lichfield</i> , 2012 MT 47, 364 Mont. 243, 272 P.3d 625	9
<i>Novak v. Novak</i> , 2014 MT 62, 374 Mont. 182, 320 P.3d 459	8
<i>Schiller v. Schiller</i> , 2002 MT 103, 309 Mont. 431, 47 P3d 616.....	9
<i>State v. Pedersen</i> , 2003 MT 315, 318 Mont. 262, 80 P.3d 79	13

STATUTES

Section 40-15-202 MCA	12
Section 3-1-501, MCA	10, 11
Section 40-15-204, MCA.....	12

ORDERS

<i>Deere & Co. v. Mont. Eighth Judicial Dist. Court</i> , OP 22-0101, at 3 (Mont. Mar. 22, 2022).....	13
---	----

RULES

M. R. App. 19.....	14, 15, 16
--------------------	------------

STATEMENT OF THE ISSUES

1. Did the District Court err by holding Dirk in contempt of the Decree of Dissolution?
2. Did the District Court err when it issued a Permanent Order of Protection against Dirk?
3. Did the District Court err when it denied Dirk leave to file additional motions after the contempt hearing?

STATEMENT OF THE CASE

This is the second of three appeals filed by Appellant Dirk Adams arising out of the dissolution of marriage proceeding involving Dirk and Appellee Miki Adams.

The District Court issued its *Findings of Fact, Conclusions of Law, and Decree of Dissolution* (“Decree”) on September 27, 2021, which awarded Miki her Apple I-Mac computer gifted to her by Dirk. (Doc. 280, p. 33, ¶ 65). Thereafter, the District Court ordered an *Interim Order After Hearing on Recent Motions* (“Interim Order”) instructing Dirk to deliver the computer Miki had been awarded to Miki’s counsel by March 4, 2022. (Doc. 353). The District Court then issued an *Order on Post-Trial Motions and Issues* on April 18, 2022, which contained a five-year No-Contact Order preventing Dirk from contacting Miki. (Doc. 391).

This Court affirmed both the Decree and No-Contact Order issued as part of the *Order on Post-Trial Motions and Issues in In re the Marriage of Miki L. Adams and Dirk S. Adams*, 2023 MT 95N (May 23, 2023).

In this appeal, Dirk seeks review of two discretionary post-trial orders dated March 16 and March 30, 2023. In its March 16, 2023 *Order on Petitioner's Motion for Contempt and Request for Permanent Order of Protection*, the District Court found Dirk in contempt of previous court orders requiring him to deliver a computer to Miki awarded to her under the Decree, and issued a permanent order of protection in favor of Miki after determining the previous No-Contact Order insufficient to protect Miki from Dirk's continued harassment. (Doc. 481). In its March 30, 2023 *Order Denying Leave to File Lodged Motions*, the District Court denied Dirk leave to file the additional motions that he had submitted in violation of the District Court's bench order that the parties refrain from filing further motions or briefing in the case until the District Court had an opportunity to issue a decision on Miki's motion for contempt and request for a permanent order of protection. (Doc. 484).

STATEMENT OF FACTS

On June 27, 2022, Miki filed a Motion for Contempt against Dirk due to his failure to ship the Apple I-Mac computer Miki had been awarded, as required by the District Court's Decree and Interim Order. (Doc. 428). The Decree stated that Miki

shall be awarded “the Apple Computer in the kitchen gifted to her by Dirk,” (Doc. 280, p. 33, ¶ 65), and the Interim Order required Dirk to ship the computer to Miki’s counsel by March 4, 2022. (Doc. 353).

In her motion, Miki also requested the District Court issue a permanent order of protection. (Doc. 428).

The District Court held a two-day hearing on December 6, 2022 and January 24, 2023. On the first day of the hearing, Miki testified that Dirk shipped to Counsel Ellington’s office what was purportedly the computer she was awarded by the Decree. Miki testified that she drove from Utah to her counsel’s office to retrieve the computer, which was still boxed with a shipping label in Dirk’s handwriting showing it had shipped from Massachusetts, where Dirk resides. (12/6/22 Tr., 7:18-20; 6:1-3). Miki drove the boxed computer from her counsel’s office to her home in Utah. (12/6/22 Tr., 7:24-25; 8:1-2).

Miki stated that once she arrived home, she took the computer out of the box and put it on her desk but “noticed immediately” that “it was a lot heavier than [her] normal computer . . . it felt unusually heavy” and that it “was more rectangular” than her computer. (12/6/22 Tr., at 8:4-7; 15:9-15). Miki described that she did not recognize the computer’s keyboard and the mouse, and that the keyboard and mouse were further “[Microsoft] Windows specific” and could not be used on the computer.

(12/6/22 Tr., 8:8-13). Miki had also noticed the computer Dirk had shipped to her had more ports than she recalled being on her computer, and that many of these ports were unrecognizable to her. (12/6/22 Tr., 8:13-16).

Miki testified that when she powered on the computer, she did not recognize the information or login information that appeared on the startup screen. (12/6/22 Tr., 8:19-24; 11:5-9). Miki stated she had observed a message located at the bottom of the startup screen that said “[t]hank you for your [eBay] purchase.” (12/6/22 Tr., 9:1-2; 10:20-22). Miki testified the computer did not contain any of her personal or business documents, spreadsheets, photographs, or other content that she recalled being on her computer. (12/6/22 Tr., 11:12-25; 12:9-14; 17:16-24).

Miki introduced into evidence photographs of the computer’s login screen, the mouse and keyboard, and photographs of the computer’s screen showing no storage data was being used and the files and information she recalled being on the computer she owned were not there. (12/6/22 Tr., 10:18-20; 11:12-15; 12:19-25). Miki further noted that Dirk shipped the computer that had been awarded to Miki several months later than the deadline provided by the District Court’s Interim Order. (12/6/22 Tr., 7:11-17).

Miki also testified at the hearing to Dirk’s continued efforts to contact her despite the No Contact Order in place. Miki discussed Dirk’s attempts to subpoena

her bank records in a federal district court action that he had commenced against Miki's family members, causing Miki to have to file a motion to quash the subpoena. (12/6/22 Tr., 18:18-25; 19:1-23; 20:1-12). Miki introduced into evidence a copy of the federal district court's order quashing Dirk's subpoena and finding that Dirk had failed to establish why Miki's financial records were relevant or discoverable in that action, and barring Dirk from issuing additional subpoenas in the case without leave. (12/6/22 Tr., 21: 17:17-18, 23-25; 22:1-13).

Miki also introduced into evidence photographs Dirk had taken of her outside Dirk's ranch house and of her vehicle outside of her workplace that he attempted to use as evidence in other unrelated federal actions. (12/6/22, 24:2-22; 25:1-4). Miki testified she was concerned about the photographs because she felt she was being followed and stalked by Dirk. (12/6/22 Tr., 53:17-20).

Regarding Dirk's efforts to use his other litigation to contact her or harass her, Miki stated:

[E]verywhere I turn, he's . . . there, he's doing something to try to harass me. . . . I have felt like I have not prior earlier on been able to get any kind of protection from him, and it just felt like no matter how hard I tried, . . . I can't get him away from me, I can't get him to leave me alone, and this was just another instance of that where I had no idea that my bank records were being – it – it took this in order to get Wells Fargo to not release the bank statements to . . . him.

(12/6/22 Tr., 22:23-25; 23:1-10).

During Dirk's testimony, he admitted he removed his data from the computer he sent to Counsel Ellington's office, and that "information that belonged to a third party was destroyed." (12/6/22 Tr., 58:16-25; 60:1-3). Dirk also testified he removed Miki's photographs from the computer and put them on a hard drive in his possession. (12/6/22 Tr., 61:8-14). When asked about why the computer he sent Miki showed on the screen that it was enabled to share its screen with a PC computer Dirk may have had in his possession. (12/6/22 67:20-25; 68:12-25).

During the second day of the hearing, on January 24, 2023, Dirk produced a computer he had located in his barn that appeared to be Miki's awarded computer, and alluded to his failure to previously deliver the correct computer to Miki as ordered was the result of a miscommunication. (1/24/23 Tr., 6:15-22, 11:16-25; 12:1-16). When asked by the Court why he did not alert opposing counsel to his discovery of Miki's computer prior to the hearing, Dirk explained that he had only recently discovered the computer, despite the photographs of the computer he introduced into evidence showing they were printed on December 6, 2022. (1/24/23 Tr., 13:6-25; 14:1-2). Miki testified during the hearing that she last recalled seeing the computer awarded to her in the kitchen of the ranch house, and that she did not recall ever moving her computer anywhere else on the property. (1/24/23 Tr., 54: 6-24).

At the conclusion of the hearing, the District Court informed the parties it would take the motion under advisement and issued the following order from the bench:

The Court will not accept any post hearing briefs or any further motions in this matter without leave of the Court, which will not be granted until the order on contempt has been finalized and filed, and unless directed by the Court. But there will be no further filings and no post trial briefs filed in this matter.

(1/24/23 Tr., 66: 10-18).

On March 16, 2023, the District Court issued an *Order on Petitioner's Motion for Contempt and Request for Permanent Order of Protection* (the "Contempt Order"). (Doc. 481). The District Court determined in its Contempt Order that Dirk had failed to comply with the Interim Order based on his removal of data from the Awarded Computer that should have transferred with the Awarded Computer to Miki. The District Court further deemed Dirk was in contempt of the No Contact Order and the Post Trial Order, stating:

[T]he Court finds that Dirk has intentionally used litigation as a means to circumvent the No Contact Order and the Post Trial Order Throughout this proceeding, the Court has been patient with Dirk and attempted to craft safeguards to protect Miki while imposing minimal detriment to him. However, Dirk has repeatedly blown past these safeguards and persisted in his efforts to stalk and harass Miki. For these reasons, the Court finds that the safeguards set forth in the No Contact Order and the Post Trial Order have proven insufficient to protect Miki from Dirk's egregious conduct.

(Doc. 481, ¶¶ 8, 9).

On March 30, 2023, the District Court issued its *Order Denying Leave to File Lodged Motions* upon finding that Dirk had submitted two motions to the Clerk of Court that were lodged in the file on January 31, 2023, and March 2, 2023. (Doc. 484). The District Court found Dirk's attempts to file both motions in the intervening time between the hearing and decision on the motion for contempt violated the court's order given from the bench that prohibited the parties from filing any further motions or briefing prior to the Court issuing its order on Miki's Motion for Contempt. (Doc. 484, at 1). The District Court further noted that Dirk's motions appeared to be "submitted as part of a vexatious effort to delay resolution of the proceeding" and denied Dirk leave to file his additional motions. (Doc. 484, at 2).

STANDARDS OF REVIEW

This Court reviews a district court's contempt order in a family law proceeding to determine whether the court acted within its jurisdiction, and if so, whether the evidence supports the finding of contempt. *Lee v. Lee*, 2000 MT 67, ¶ 19, 299 Mont. 78, 996 P.2d 389. A finding is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if this Court is convinced from a review of the record that the district court made a mistake. *Novak v. Novak*, 2014 MT 62, ¶ 16, 374 Mont. 182, 320 P.3d 459.

“This Court will not overturn a district court’s decision to continue, amend, or make permanent an order of protection absent an abuse of discretion.” *Lockhead v. Lockhead*, 2013 MT 368, ¶ 12, 373 Mont. 120, 314 P.3d 915 (citing *Schiller v. Schiller*, 2002 MT 103, ¶ 24, 309 Mont. 431, 47 P3d 616). “The question under this standard is not whether [this Court] would have reached the same decision as the trial judge, but whether the trial judge acted arbitrarily without conscientious judgment or exceeded the bounds of reason.” *Lockhead*, ¶ 12 (citing *Newman v. Lichfield*, 2012 MT 47, ¶ 22, 364 Mont. 243, 272 P.3d 625).

“Discretionary rulings of a district court include trial administration issues, post-trial motions, and similar issues.” *Moore v. Imperial Hotels Corporation*, 285 Mont. 188, 190, 948 P.2d 211, 213 (1997). Discretionary rulings are reviewed for an abuse of discretion. *Moore*, 285 Mont. at 190, 948 P.2d at 213. An abuse of discretion only occurs when a district court acts arbitrarily, without the employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re Capser*, 2019 MT 215, ¶ 6, 397 Mont. 227, 448 P.3d 1084.

SUMMARY OF ARGUMENT

The District Court was presented with substantial, credible evidence to support a finding that Dirk committed contempt by failing to deliver Miki’s awarded

computer to her as specified in both the Decree and Interim Order. Dirk cannot show the District Court's findings of contempt are clearly erroneous.

The District Court was further presented with substantial, credible evidence when it issued a permanent order of protection in favor of Miki against Dirk. Dirk cannot show the District Court's order was arbitrary, rendered without conscientious judgment, or exceeded the bounds of reason.

Lastly, the District Court acted well within its discretion to control post-trial procedure when it issued a bench order proscribing the parties from filing further motions or briefs before a decision on Miki's motion for contempt and permanent order of protection had been issued. When Dirk filed two motions in violation of the District Court's bench order, the District Court acted within its inherent authority and discretion to deny Dirk leave to file his additional post-hearing motions and briefs.

ARGUMENT

1. Did the District Court err by holding Dirk in contempt of the Decree of Dissolution?

A district court in a dissolution case has continuing jurisdiction to enforce its orders regarding matters of property disposition. *Lee*, ¶ 49. “[D]isobedience of any lawful judgment, order, or process of the court” constitutes a contempt of court. Section 3-1-501(1)(e), MCA.

The District Court's Decree awarded Miki possession of the iMac, and the Interim Order specified the procedures Dirk was to follow to provide Miki with computer she was awarded. Based on Miki's testimony and evidence presented, the District Court concluded that Dirk removed the data that should have transferred with the computer to Miki, and sent her the incorrect computer. Based on this testimony, the District Court concluded that Dirk violated the Decree and Interim Order.

Dirk's "disobedience" of the Decree and Interim Order was sufficient to support a finding that he was in contempt of court. *See* § 3-1-501(1)(e), MCA. *Novak*, ¶ 37. The District Court did not err when it determined Dirk was in contempt of these lawful orders of the Court.

Further, the District Court's order provided definite, certain, specific directives to Dirk to follow in order for him to cure his contempt. *See Goodover v. Lindsey's Inc.*, 257 Mont. 38, 42, 847 P.2d 699, 701 (1993) (citations omitted) (a contempt order will stand on appeal if the terms of the order are "definite, certain, and specific."). These directives included requiring Dirk to restore the data he testified he previously removed to the computer awarded to Miki, ship the correct computer that had been awarded to Miki with the restored data, as well ship the hard drive he used to remove the data to Miki, by a date certain. (Doc. 353).

Dirk's request that the District Court's order should be reversed to "reflect the actual facts of the computer ownership issue" and dispute over the computer's software and digital files. (Op. Br., at 34). What Dirk is really asking this Court to do is reweigh the evidence presented at the hearing, which this Court will not do. *See In re Marriage of Lewis*, 2020 MT 44, ¶ 12, 399 Mont. 58, 458 P.3d 1009. The District Court's contempt order should be affirmed.

2. Did the District Court err when it issued a Permanent Order of Protection against Dirk?

Under § 40-15-202(1), MCA, a district court has discretion to "determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent," following a hearing. Further, "[i]n a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection." Section 40-15-204(2), MCA.

Miki testified that Dirk continued harassing her despite the No-Contact Order when he issued subpoenas for Miki's bank records in the various lawsuits he initiated against some of Miki's family members. (12/6/22 Tr., 18:18-25; 19:1-23; 20:1-12). Miki also testified that Dirk had her vehicle photographed outside of her workplace after the initial No Contact Order went in effect, and tried to introduce these photographs in his other cases he brought against Miki's family members. (12/6/22

Tr., 53:17-20). Miki also stated that the No-Contact Order currently in place was insufficient to protect her from Dirk's attempts to continue stalking and harassing her and requested the order be made permanent. (12:6/22 Tr., 22:23-25; 23:1-10; Doc. 428).

Based on the evidence presented at the hearing, the District Court had good cause to issue its Permanent Order of Protection against Dirk. The District Court is in the best position to evaluate the credibility and demeanor of witnesses, and its determination regarding the weight and strength of the evidence presented will not be second-guessed by this Court on appeal. *Lewis*, ¶ 8 (quotations and citations omitted). The District Court's order should be affirmed.

3. Did the District Court err when it denied Dirk leave to file post-hearing motions after the contempt hearing?

“District courts have wide latitude in controlling courtroom procedure.” *State v. Pedersen*, 2003 MT 315, ¶ 26, 318 Mont. 262, 80 P.3d 79. *See also Deere & Co. v. Mont. Eighth Judicial Dist. Court*, OP 22-0101, at 3 (Mont. Mar. 22, 2022) (quoting *Henrickson v. State*, 2004 MT 20, ¶ 35, 319 Mont. 307, 84 P.3d 38) (“A trial court has ‘inherent discretionary power to control trial administration.’”). As part of this inherent authority, the district court has the power to issue rulings governing post-trial motions and proceedings. *Moore*, 285 Mont. at 190, 948 P.2d at 213. This Court has declined to disturb a district court's discretionary rulings

governing post-trial procedure absent an abuse of discretion. *Moore*, 285 Mont. at 190, 948 P.2d at 213.

Given the volume of filings in the case, the District Court acted within its discretion to control post-trial procedure when it limited the parties from filing any additional motions or briefs before the Court could issue its decision on Miki's contempt motion and request for a permanent order of protection. (1/24/23 Tr., 66: 10-18). Dirk disregarded the District Court's clear directive, and the District Court subsequently acted within its discretion to deny Dirk leave to file his motions. Dirk cannot establish the District Court's order was arbitrarily rendered, without employment of conscientious judgment, or that it exceeded the bounds of reason resulting in substantial injustice. *Capser*, ¶ 6. The District Court's order should be affirmed.

MOTION FOR ATTORNEY FEES AND COSTS

Pursuant to M. R. App. 19(5), this Court may "award sanctions to the prevailing party in an appeal . . . determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial reasonable grounds." Available sanctions "include costs, attorney fees, or such other monetary or non-monetary penalty as the Supreme Court deems proper under the circumstances." M.

R. App. 19(5). M. R. App. 19(3) also entitles a prevailing party to costs incurred on appeal, including “the costs of reproducing briefs and necessary appendices.”

In *Lee v. Lee*, this Court awarded attorney fees on appeal where one party showed a “significant disdain for the integrity of the judicial process.” 2000 MT 67, ¶ 66, 299 Mont. 78, 996 P.2d 389 (quotations omitted). This Court also stated that “while pro se litigants may be given a certain amount of latitude in their proceedings, they may not proceed in such a fashion as to abuse the judicial process and prejudice the opposing party’s interests.” *Lee*, ¶ 66 (citations omitted).

Dirk has presented no real legal or factual basis for bringing his second appeal. Throughout the lower court proceedings and now on appeal, Dirk has behaved with disdain for the integrity of the judicial process by disregarding multiple judicial orders and continuing to file frivolous motions and then appeal them. Dirk’s efforts can only be construed as delaying final resolution of this case and prejudicing Miki’s interests. As such, Miki respectfully requests that this court order Dirk to reimburse her for the fees and costs she incurred at the district court contempt proceedings and in defending against this frivolous appeal.

CONCLUSION

For the foregoing reasons, Miki respectfully requests this Court affirm the District Court’s discretionary, post-trial orders.

Miki further respectfully requests her attorney fees and costs incurred at the district court contempt proceedings and in responding to this appeal be awarded to her pursuant to M. R. App. 19(3) and (5).

Respectfully submitted this 8th day of November, 2023.

/s/ Adrienne Ellington
ADRIENNE ELLINGTON
Attorney for Appellee Miki Adams

CERTIFICATE OF COMPLIANCE

Pursuant to M. R. App. 11, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count is not more than 5,000 words, excluding the Certificate of Service and Certificate of Compliance.

/s/ Adrienne Ellington
ADRIENNE ELLINGTON
Attorney for Appellee Miki Adams

CERTIFICATE OF SERVICE

I, Adrienne R. Ellington, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-08-2023:

Jami L. Rebsom (Attorney)
Jami Rebsom Law Firm
PO Box 670
Livingston MT 59047
Representing: Miki L. Adams
Service Method: eService

Dirk S. Adams (Appellant)
140 Banks Street
Cambridge MA 02138
Service Method: Conventional

Electronically Signed By: Adrienne R. Ellington
Dated: 11-08-2023