IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE NO. DA 23-0469

IN RE THE MARRIAGE OF BRADLEY JOHN STRECKER,

Appellant/Respondent,

v.

LISA MARIE STRECKER,

Appellee/Petitioner.

ANSWER BRIEF OF APPELLEE LISA MARIE STRECKER

On Appeal from the Montana Thirteenth Judicial District Court, Yellowstone County, Docket No. DR 21-506, the Honorable Ashley A. Harada, Presiding

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STATEMENT OF ISSUES PRESENTED FOR REVIEW[1]

1. Whether the District Court may clearly value and apportion the marital estate in a manner supported by substantial evidence—giving millions of dollars in assets to each party—but with which Brad presents an unfounded disagreement.

2. Whether the District Court may allocate a purportedly joint parental-loan, from Brad's mother, solely to Brad and offset that loan with Lisa's undisputed $145,000.00 inheritance entirely spent on marital assets, when there was no evidence presented of the loan's terms, nor of an unpaid balance.

3. Whether substantial evidence supports the District Court's calculation of $150,000.00 to Lisa in joint income, since separation, for which Brad failed to provide an accounting and which Brad attempted to conceal in clear disobedience of the District Court's April 25, 2022, order (Trial Ex. 10).

4. Whether, due to Brad's failure to follow the District Court's pre-trial orders, the District Court may require Brad to pay Lisa's attorney fees and costs incurred as a result of Brad's contemptuous conduct.

STATEMENT OF THE CASE

This matter involves a dissolution proceeding and the District Court's apportionment of the marital estate between Petitioner/Appellee, Lisa Marie Strecker ("Lisa"), and Respondent/Appellant, Bradley John Strecker ("Brad"). Lisa filed the Petition for Dissolution on June 17, 2021. (DC Dkt. 1). In April 2022, after Lisa moved the court due to Brad's contemptuous conduct, the District Court issued a number of specific directives, including several in regard to use and accounting of joint assets pending trial. (DC Dkt. 22,Trial Ex. 10, *Contempt Order*).

[1] Because Appellant's Statement of the Issues before this Court (Opening Brief, p. 1) is inadequate, Appellee provides this restatement permitted under Rule 12(2), M.R.App.P.

The trial schedule was protracted over several months, with the first day of trial occurring on November 14, 2022, and the last two days of trial occurring on March 13 and 14, 2023. On August 22, 2023, the Honorable Ashley Harada, of Montana's Thirteenth Judicial District, Yellowstone County, issued Findings of Fact, Conclusions of Law, and a Final Decree apportioning the parties' marital estate, finding Brad in contempt for violating the April 2022 order (DC Dkt. 22, Trial Ex. 10, *Contempt Order*), and ordering payment of Lisa's attorney fees and costs related to Brad's contemptuous conduct. (DC Dkt. 98, *FOF/COL/Decree*, Ex. A). Brad appeals this order, including the allocation of marital assets and liabilities.

STATEMENT OF FACTS

Brad's opening brief contains a section of "facts" that largely cherry-pick and distort his own trial testimony, testimony of other witnesses on his behalf, and spreadsheets and other exhibits which he contends to be credible—but that the District Court considered and found not to be credible. Brad may not simply state as "fact" his preferred interpretation of evidence at trial without contending with the District Court's findings. Because Brad makes no explicit challenge or argument that the District Court's findings of fact are not supported by substantial evidence, the relevant facts governing this case are those which were found by the District Court and adopted in its final decree, stated as follows.

Background

The parties are each in their early 60s, in moderate health, and—at the time of trial—had been married since 1981. (DC Dkt. 98, *FOF/COL/Decree*[2] at p. 2). Early in the marriage, Lisa quit her job in town and began working with Brad on his family's farm, "at the request of both Brad and Brad's father." (*Id.*). Brad handled most of the heavy equipment operation and farming. (*Id.*). Lisa's responsibilities on the farm continued until the parties separated (June 2020), and "included, but were not limited to, cleaning; cooking; yardwork; painting; driving truck; and maintaining all bookkeeping and records for the farm business." (*Id.*). The District Court concluded, based on the testimonial and other evidence at trial, the parties have a significant marital estate valued at $8 million–$10 million, with limited liabilities. (*Id.* at p. 13).

Marital Assets – Powmer/Hoskins

Brad and Lisa purchased[3] real property—termed the "Powmer/Hoskins" property—from Brad's parents which was then placed in a trust and utilized for agricultural purposes until Brad retired in 2017. (*Id.* at p. 2 (citing Trial Ex. 2, *Trust Documents*)). This property was previously two separate, neighboring parcels with houses and other buildings on each property. Brad's parents purchased Powmer

[2] Brad's opening brief attaches the District Court's Final Decree but does not adhere to Rule 12(1)(i), M.R.App.P, failing to file a separate appendix for the attached documents. Out of deference to Rule 12(5) discouraging the filing of duplicate materials in a supplemental appendix, Lisa's references to the District Court's judgment herein will unfortunately be in longform, rather than "Appx. __."

[3] At trial, Brad advanced the theory that he inherited or was otherwise gifted Powmer/Hoskins by his parents. (Trial Tr. - Vol. III, 477:22–478:5). There is no evidence to support Brad's claim and ample evidence against it.

(~222.4 acres), then the adjoining Hoskins (~296 acres), before later selling both properties to Brad and Lisa on a contract for deed. Brad's elderly mother, Betty, holds a life estate on the Powmer portion of the property and still resides there. (Trial Tr. - Vol. II, 280:14–281:8). It is beyond reasonable debate that, because the bulk of the value of the marital estate is held in Powmer/Hoskins, nearly any equitable allocation would require division between Powmer and Hoskins, unless the properties are instead liquidated. (DC Dkt. 98, *FOF/COL/Decree* at p. 7).

The District Court heard testimony from prospective buyer and attorney Joe Cook—interested in purchasing either segment of Powmer/Hoskins or the entire property—and from realtor Gina Moore. Mr. Cook testified he would be interested in buying just the Hoskins parcel for around $3 million or just Powmer, also for around $3 million. (Trial Tr. - Vol. I, 22:5–7, 22:15–20). The District Court heard this testimony and other evidence to resolve the current value of Powmer/Hoskins to be between $6 million and $8 million. (DC Dkt. 98, *FOF/COL/Decree* at pp. 2–3, 7 (citing Trial Ex. 1, *Comparative Market Analyses "CMAs"*)).

In conjunction with Brad crying "foul" for—in Brad's view—the District Court's failure to value the marital estate's real property, his opening brief (pp. 4, 5) contends the parties presented differing property values and, further, speculates that the Powmer property—compared to the Hoskins property—"is likely worth less in the market, in the view of most purchasers." First, Brad's latter claim here

references, confusingly, trial transcript pages 265–66 which make no mention at all of the value of the parties' real property, nor to any disparity in value between Powmer and Hoskins. Moreover, the record simply does not support either of these claims made by Brad, neither that a tremendous range of values were legitimately attributed to Powmer/Hoskins, nor that there is a significant disparity in value between the Powmer and Hoskins segments of the land.

Indeed, Brad's lay witness testimony is the only admitted evidence in the record[4] that presents a wide range of values—$4 million–$8 million—for Powmer/Hoskins, together. Even Brad's position regarding the Powmer/Hoskins valuation changed drastically throughout the case, based on his lay opinion and seemingly depending on his mood. *See, e.g.*, (Trial Tr. - Vol. III, 555:13–557:17 (Brad reading his previous deposition testimony during trial, stating he would not sell Powmer/Hoskins for $5 million or $6 million but would like to list the property for $8 million)).

Further bolstering this point, Brad's own property allocation spreadsheet attached to his pre-trial proposed findings and filed with the District Court (Trial Ex. 16) does not place a dollar amount on the value of Powmer/Hoskins but simply divides the property among the parties into Powmer and Hoskins, giving Powmer to

[4] Brad did attempt—without success—to introduce at trial the hearsay Broker Price and Opinion reports from Premier Land Company regarding this property. He called no expert or other witness to testify as to the substance of the reports.

Lisa and Hoskins to Brad. As noted in its findings, the District Court's allocation, as it relates to Powmer/Hoskins, does not differ significantly from the proposed allocation Brad submitted pre-trial. *Compare* (DC Dkt. 98, *FOF/COL/Decree*, p. 9, Ex. A), *with* (Trial Ex. 16, *Brad's Proposal*). The District Court's allocation deviates from Brad's pre-trial proposal[5] largely by allocating Powmer to Brad and Hoskins to Lisa (DC Dkt. 98, *FOF/COL/Decree*, Ex. A)—a sensible plan given that Brad's mother holds a life estate and still resides in Powmer. *See* (Trial Tr. - Vol. III, 591:11–25 (Brad testifying that he would not (could not) make his mother leave Powmer, even if the Court apportioned that property to Lisa)); (Trial Tr. - Vol. II, 201:3–12 (Lisa's testimony regarding the same)).

The District Court highlighted and the record, including Brad's trial testimony, overwhelmingly demonstrates Brad's apparent attempts to delay the matter and obscure—among other things—his perceived values of the properties, his current occupation, and any intentions regarding a future occupation. (DC Dkt. 98, *FOF/COL/Decree* at pp. 9–10). During trial, Brad flipped his position and opinions repeatedly. *See, e.g.*, (Trial Tr. - Vol. III, 475:2–476:25, 589:6–591:10 (Brad simply talking in circles: that he could retire even if he is not apportioned Powmer *and*

[5] The other differences between the District Court's allocation and Brad's proposed findings, which are further addressed below, consist of the District Court allocating certain cash amounts to be paid from Brad to Lisa attributed to (1) Brad being found in contempt; (2) income which the District Court found Brad derived from marital assets since separation, but for which he did not account to Lisa; and (3) Brad's unaccounted-for and improper personal expenditures made with joint funds in violation of the District Court's economic restraining order. (DC Dkt. 98, *FOF/COL/Decree*, p. 9).

Hoskins; that, to retire, he needs to have both Powmer *and* Hoskins so he can farm one and develop a feedlot on the other; that he is not physically able to run a feedlot anymore; and that, because times and technologies have changed, he would not do any farming himself)).

The District Court deemed Brad's pre-trial proposed findings (Trial Ex. 16) to be judicial admissions. (*Id.* at pp. 9, 14); *see In re Marriage of Hart*, 2011 MT 102, ¶ 18, 360 Mont. 308, 258 P.3d 389 (concluding a party's unambiguous statements in previous court filings constituted judicial admissions, and finding the court did not err in concluding said admissions precluded that party from later arguing the diametrically opposite position). Brad's opening brief (Ex. B, p. 3) argues the unsupported value of $4,522,284.00 for Powmer/Hoskins which he now fancifully contends should be allocated solely to himself—again, contrary to his proposed findings (*see* Trial Ex. 16). The District Court identified the tremendous inequity and inconsistency of Brad's latest proposal. (DC Dkt. 98, *FOF/COL/Decree* at p. 9, ¶ 29 ("After testifying about why he should receive the majority, Brad conceded he had seen and reviewed his proposed pretrial Findings of Fact and Conclusions of Law identified at Exhibit 16 and that he agreed with the proposal.")).

To the extent Brad now claims the value of Powmer/Hoskins and that of other properties in the marital estate are in dispute, the District Court found Brad's

testimony not to be credible and to be inconsistent among Brad's own statements and with the other evidence at trial. (*Id.* at pp. 2–3, 7–9).

Additional Marital Assets and Liabilities

Brad's parents co-owned a roughly 2,000-acre grassland property—known as the "Molt property"—with Mike and Diane Whalen, which was held in W & S Partnership. (Trial Ex. 3, *Assignment of Partnership Interests*). In August 2017, Betty Strecker—Brad's now 93-year-old mother—gifted her entire 50% partnership interest in the Molt property to both Brad and Lisa, with the partnership now consisting of Mark, Diane, Brad, and Lisa all as 25% owners. (Trial Ex. 3–4, *Assignment of Partnership Interests*). Brad argued at trial, and in his opening brief (p. 6), that the Molt property was gifted solely to him and not to Lisa, and that the District Court's allocation fails to consider this in light of the law regarding gifted property.

Lisa's receipt of this gift is explicit in the documents assigning the partnership interests and admitted at trial. In fact, as with many of Brad's other claims, all the evidence beyond Brad's own statements completely contradicts this claim, which the District Court amply detailed in the following excerpt of its findings:

> In furtherance of [Brad's claim that Lisa was not gifted a 25% ownership interest in the Molt property], he offered a hearsay affidavit from his mother, Betty Strecker, (Exhibit K) as well as purported testimony from Betty Strecker. Betty's testimony was that she was going to turn 93 years old in four months and that she has memory issues. Betty did not recall testifying about the purported affidavit she

> signed regarding the property and she did not recall where the affidavit was prepared. Betty was able to testify she assumed the affidavit was prepared by Brad's counsel, but she did not know the date of the affidavit, nor could she remember the year or the month. When Betty was asked to read the affidavit to determine if the statements in the affidavit were truthful, she stated that she could not read it to determine whether the statements were truthful.

(DC Dkt. 98, *FOF/COL/Decree* at p. 8 (citing Trial Tr. - Vol. II, 253:21–254:14, 255:14–259:8, 261:13–20)). The entire Molt property—including the 50% interest not held by the marital estate—was valued at roughly $1,150,000.00. (Trial Tr. - Vol. I, 6:24–8:2 (Realtor Gina Moore's testimony); Trial Ex. 1, *CMAs*). The value of the Molt property is not in dispute; the District Court and Brad's pre-trial proposed findings (Trial Ex. 16) allocated Molt to Lisa.

The parties own a house in Billings, known as the "Mary Street" property, valued between $270,000.00 and $290,000.00. (DC Dkt. 98, *FOF/COL/Decree* at p. 6 (citing Trial Ex. 1, *CMAs*); Trial Tr. - Vol. I, 6:15–23). Contrary to Brad's claim, the value of Mary Street is not legitimately in dispute because the only professional opinions admitted into evidence as to this property's value—or any of the properties' values—were those provided by Lisa.

All farm/ranch real property was leased out in 2019 and earns significant rental income. (DC Dkt. 98, *FOF/COL/Decree* at p. 3). The parties sold the majority of their farm equipment in 2017, and the District Court allocated the remaining farm machinery and tools to Brad—of which there are thousands of dollars' worth,

undisputed by the parties. (*Id.*, Ex. A); *see also* (Trial Ex. 16, *Brad's Pre-Trial Findings*). From selling farm equipment, the parties had roughly $750,000.00 in savings which Lisa equally divided at separation and deposited into separate accounts, for Brad and for herself. (*Id.* at p. 4).

Lisa inherited $145,000.00 from her mother during the marriage which was entirely spent on improvements to the parties' farm/ranch. (*Id.* at pp. 4, 14; Trial Tr. - Vol. II, 268:2–269:5). Brad received no property or other assets by way of inheritance. (DC Dkt. 98, *FOF/COL/Decree* at p. 14).

Lastly, Brad's opening brief (pp. 23–25) quotes Lisa's trial testimony in reference to $180,000.00 of purportedly undisputed marital debt that Brad borrowed from his mother. The unabridged version of Lisa's testimony on this issue, quoted below, reveals that Lisa had very little knowledge of or involvement with this arrangement.

> BY MR. HEITZ:
>
> Q. Lisa, let's talk about this purported loan; have you ever seen the loan document?
> A. Never.
> Q. So what was your understanding about this?
> A. She loaned us $180,000 -- actually, I think it was 200,000 or maybe a little above 180, but she took some back at one point so it was just kind of set at $180,000, but it was all set up between him and his mom, and it was their agreement, and there was never an contract or I was never asked to signed [sic] anything.
> Q. So to your knowledge, did Brad ever sign a document?
> A. Nope, I've never seen a thing.
> Q. Was it your understanding it was an interest-free type of obligation or do you know?

> A. I think she just wanted a little -- she hasn't gotten very much money on interest in the past few years because CDs weren't paying very well so she just wanted a little interest payment and that was just kind of good enough, $6,000, but we've been paying that interest on that loan for a long time.
> Q. Approximately how long?
> A. Probably 20 years.
> Q. So you think you've paid at least 120?
> A. Correct.
> Q. Was that part of her estate planning, to your knowledge, or do you know?
> A. I don't know. She had cash.
> Q. Has Betty or anyone on her side ever asked you or -- has Betty or anyone on her side ever asked for repayment of the principle amount?
> A. No.
> Q. To your knowledge, was the principle amount ever going to be repaid?
> A. I didn't believe it would, no.
> Q. Why not?
> A. Because I think she was just satisfied with the $6,000 a year payment, she didn't care, it wasn't -- but she did like her little payment at Christmastime, I do agree to that.

(Trial Tr. - Vol. II, 266:9–268:1).

Lisa does not know the amount borrowed nor the terms. She never signed nor even laid eyes on a document. All evidence of the debt came from Brad, either directly or relayed to Lisa, and it consisted of almost nothing. *See* (DC Dkt. 98, *FOF/COL/Decree* at pp. 9, 11–12 (regarding the $180,000.00 debt, the court found "[n]either Brad nor his mother provided any loan documents to this effect; a complete payment history; outstanding balances; or any terms of the loan"; nor any "testimony substantiating the amount or existence of an alleged unpaid balance")).

Moreover, notably absent in Brad's argument regarding the $180,000.00 debt is any mention of Lisa's $145,000.00 inheritance. *Actually* undisputed, is that Lisa received this sum from her mother during the marriage and its entirety was spent on farm/ranch improvements and other joint expenses. (*Id.* at pp. 4, 14; Trial Tr. - Vol. II, 268:2–269:5). Thus, to the extent there does exist a legitimate joint liability owed to Brad's mother—not a safe assumption, given Brad's well-documented and persistent fallibility—the District Court did adequately consider and balance this debt with Lisa's inheritance.

April 2022 Contempt Order

After separation—*and after Brad retired from farming*—Brad unilaterally moved $270,000.00 from the parties' farm equipment sale joint-account into his personal account, with which he purchased a new pickup, two trailers, a side-by-side, and a new welder. (DC Dkt. 98, *FOF/COL/Decree* at p. 3). Brad later returned to the joint account only $140,000.00 of this money for the payment of taxes, leaving $130,000.00 in joint funds unreturned by Brad. (*Id.*). The District Court also found that, since separation, Brad used the marital farm equipment and machinery to earn income which he had neither accounted for nor deposited into the parties' joint account. (*Id.* at p. 6).

On April 25, 2022, months before trial, the District Court, in response to Brad's expenditures and unaccounted-for income generated by marital assets,

ordered the following, in relevant part: (1) Brad to deposit back certain funds that he took from the joint trust account and all future rental and other income received from joint property; (2) Brad to account for all income generated from jointly held property from the date of separation (June 2020), forward; and (3) that no further unapproved withdrawals occur from the joint trust account. (*Id.* at p. 4 (citing Trial Ex. 10, *Contempt Order*)). Based on the parties' trial testimony, bank and other statements introduced at trial indicating farm income, and three affidavits from Lisa, the District Court found Brad had ignored its contempt order. (*Id.* at pp. 4–5). Brad did not provide an accounting of farm income from the date of separation, forward, and continued to withdraw funds from the joint account without Lisa's authorization. (*Id.*).

Brad's opening brief (pp. 8–10) attempts to argue that Lisa did not abide by the April 2022 contempt order protocol regarding Lisa authorizing Brad's proposed farm expenditures, thus requiring Brad to spend without authorization. This is simply not true and any confusion on the topic borne of Brad's attorney's questioning of Lisa at trial was certainly cleared up in the following redirect which occurred immediately after:

> Now, Lisa, you were asked some questions about whether or not you ever responded to requests for payments after April 28, 2022; do you remember that line of questioning?
> [LISA STRECKER]: Yes.
> MR. HEITZ: May I approach, Your Honor?
> THE COURT: Yes.

BY MR. HEITZ:

Q. Take a look at that, does that refresh your recollection as to whether there was ever a response by you or through counsel?

A. I don't recall there was, no.

Q. Well, take a look at it. First, what is it? Can you identify what you are looking at, Lisa?

A. Well, it's an E-mail, obviously, to Corbin Howard[(Brad's previous attorney)].

Q. Who is it from?

A. It's from you.

Q. And does it talk about paying bills?

A. Yes, it does.

Q. Does it say are you going to pay for -- that you don't agree to pay for his personal expenses?

A. Yes.

Q. Consistent with your testimony?

A. Yes.

Q. And does it say what you need to do before you move forward with releasing money?

A. Yes.

Q. Okay. Do you recall more than one of those E-mails going out?

A. Yes.

* * *

BY MR. HEITZ:

Q. Clear back in May, isn't it true that you said all nonfarm-related bills cannot be paid unless you get a similar type of compensation?

A. True.

Q. And that was represented back in May; correct?

A. Yes.

Q. Right after the order?

A. Yes.

Q. So it isn't true to say that you've never responded to payment of bills; true?

A. Yes.

Q. You have responded to pay bills?

A. Yes.

Q. What has your response been?

A. That they could pay farm bills, but I needed money also.

> Q. You weren't going to allow him to use joint accounts to pay for personal expenses?
> A. Yeah, [(*facetiously*) Brad] can pay for doctors bills, dentist, attorneys when I'm paying mine on my own.

(Trial Tr. - Vol. II, 269:22–272:3). The evidence at trial demonstrated and the District Court found that Lisa did respond, through counsel, to authorization requests for proposed farm expenses—to the extent Lisa was required to do so. However, the District Court's order did not require Lisa to approve any expenditure proposed by Brad. *See* (Trial Ex. 10, *Contempt Order*).

Brad's opening brief (p. 8) contends that, "[p]ost-separation[,] the parties, by their agreement, both lived off of their farm income and both drew from funds to pay their respective expenses." (citing Trial Tr. - Vol. II, 245:5–6). This is simply a misrepresentation of the referenced testimony and of the evidence generally. Lisa was explicitly addressing the financial situation—call it agreement—between the parties back in 2020, before separation. (Trial Tr. - Vol. II, 244:22–245:7). Lisa explained that yes, there was not an issue with Brad or Lisa each spending from their joint account at that time, "but[,] since then[,] there has been income coming in." (Trial Tr. - Vol. II, 244:22–245:7).

The District Court found based on the evidence at trial that Brad was receiving income from multiple sources after separation, to include from selling hay, use of the parties' beet truck, rental income, additional farming, and federal Covid relief, all derived from marital assets and which he did not account to Lisa for nor deposit

into the parties' joint accounts. (DC Dkt. 98, *FOF/COL/Decree* at p. 6, ¶ 21 (citing Trial Ex. 5, 7, 11, 13, 14, 15, 19, 21)); *see also* (Trial Tr. - Vol. I., 35:17–36:25, 42:5–20 (testimony of the parties' longtime neighbor and friend, Bill Michael, that Brad expressly told Bill he was keeping income away from Lisa, likely several thousands' of dollars)). Lisa's affidavit testimony was admitted at trial (Trial Ex. 14 & 15) and provides a thorough breakdown of missing income, totaling roughly $150,000.00.

Even worse, while not sharing joint income, Brad was paying his personal expenses through the joint account. *See* (Trial Tr. - Vol. III, 554:20–555:12 (Brad agreeing that he funneled all his personal expenses through the joint trust account but was not willing to do the same with any of Lisa's personal expenses)). By all interpretations, including Brad's, Brad simply wanted to save his share of the joint savings account for himself by using joint farm income for personal expenses, while keeping Lisa from accessing those same joint funds for *her* personal expenses. Lisa was forced to use her half of the $750,000.00 of the parties' savings for her living expenses during the pendency of the divorce because Brad took all rental and other income produced from their shared property. (DC Dkt. 98, *FOF/COL/Decree* at p. 4).

Brad's opening brief (pp. 10–14, 26–27) devotes a good deal of time to the hearsay report[6] and testimony of Rebecca Schmitz. Ms. Schmitz is an EA—enrolled agent, not a CPA—tax preparer who Brad hired and disclosed to Lisa after the first day of trial in this case. (Trial Tr. - Vol. III, 397:8–398:12). Ms. Schmitz was not asked to—and she did not—account for anything outside the 2021–2022 tax year. The "accounting" Ms. Schmitz did perform, and her conclusions derived therefrom, were based on incomplete or outright false information provided by Brad, primarily consisting of Brad's representations and the 2021 tax return prepared by another professional. Ms. Schmitz did not independently verify the information.

Ms. Schmitz concluded, in her report and testimony on direct examination, that Lisa owed Brad $12,408.61 (net) in addition to the full amount of the joint trust account, purportedly based on her accounting of farm income and farm expenditures covered by Brad to date. However, this contention was thoroughly refuted on cross-examination, illustrating that Ms. Schmitz failed to account for a number of relevant factors in assessing the income produced from the parties' jointly held marital property. *See e.g.*, (Trial Tr. - Vol. II, 334:8–359:21 (demonstrating farm income from several sources never deposited into the joint account and not considered in

[6] Ms. Schmitz's report was proposed Trial Ex. M. The clerk of court's list of items admitted at trial includes this report as being admitted. However, the trial transcript appears to indicate this is not accurate. When the report was offered, Mr. Heitz objected, then, after further discussion, reserved his objection based on opposing counsel's representations. (Trial Tr. - Vol. II, 315:1–316:10). The matter was never revisited, and the Court never issued a ruling.

Ms. Schmitz's calculations); Trial Tr. - Vol. II, 341:1–23 (Brad's misrepresentations that some income undeniably generated by joint property was Brad's personal income); Trial Tr. - Vol. III, 399:1–409:17 (Ms. Schmitz's failure to discern farm expenses from Brad's personal expenses, as well as additional sources of farm income not deposited into the joint account).

Ms. Schmitz's analysis, purportedly aimed to account for farm expenditures since separation—although this is not what the District Court's April 2022 contempt order required—made no determination or inquiry as to whether said expenditures were farm-related or were personal to Brad. (DC Dkt. 98, *FOF/COL/Decree* at p. 5). Ms. Schmitz merely relied on Brad (and a tax return that also relied on Brad) listing items as business expenses, and trusted this to be so. Further, the District Court found, and Ms. Schmitz testified, that Brad's instructions to Ms. Schmitz made no attempt to follow the April 2022 contempt order requiring accounting of all income from jointly held property from the date of separation forward. (*Id.*; Trial Tr. - Vol. II, 331:23–334:7).

Ultimately, the District Court found that Brad attempted to hide a significant amount of income from Lisa, from multiple sources earned by marital assets since separation. (DC Dkt. 98, *FOF/COL/Decree* at p. 11 ("Lisa established Brad did not comply with the Court's order to deposit all farm and ranch related income into the joint trust account. Brad did not offer any credible contrary evidence nor could he

provide appropriate justification as to why he failed to follow the Court's order."); *see also* Trial Ex. 5, 13, 14, 15). This included Brad's application for governmental assistance for flood damage on the joint real property (which Brad sought months before trial but did not disclose until after trial); a $28,083.00 Covid relief PPE loan; and significant rental and other passive marital income identified in Trial Ex. 11, 13–15. (DC Dkt. 98, *FOF/COL/Decree* at p. 11 (finding Brad's testimony on these issues and on his persistent lack of disclosure to be vague, evasive, and not credible)). For these reasons, the District Court ordered Brad to pay, out of Brad's portion of the marital estate, Lisa's attorney fees and costs unnecessarily caused by his contemptuous conduct. (*Id.* at pp. 11–13, 15).

The District Court allocated the parties' marital estate in accordance with Exhibit A attached to its Final Decree, leaving the parties with cash and other assets totaling millions of dollars each. (*Id.* at p. 11). This allocation included for Lisa to receive one-half of the parties' joint trust account (a minimum of $54,000.00 to Lisa of the $108,000.00 balance), and $150,000.00[7] to Lisa, attributed to Lisa's one-half portion of joint farm and ranch income, Covid relief, and improper withdrawals of joint funds made and concealed by Brad, since the date of separation. (*Id.*, Ex. A (citing Trial Ex. 5, 7, 11, 13–15, 19, 21)).

[7] Lisa's affidavit testimony was admitted at trial (Trial Ex. 14 & 15) and provides a thorough breakdown of this missing income, totaling roughly $150,000.00.

In dividing the marital estate, the District Court's conclusions of law made explicit reference to the controlling Montana Code section, "§ 40-4-202, MCA, as well as relevant case law," before analyzing all relevant factors individually by heading. (*Id.* at p. 11, ¶ 3; *Id.* at pp. 11–14 (the District Court's specific conclusions of law as to relevant factors, including the following: duration of the marriage; prior marriages; age, health, station, and occupation; amount and sources of income; vocational skills/employability; marital estate/liabilities; needs of each party; apportionment of property in lieu of or in addition to maintenance; acquisition of capital assets and income; marital contributions/dissipation of value; property acquired prior to marriage; gifted or inherited property; sufficiency of property to provide for reasonable needs; and each party's ability to support through appropriate employment)).

STANDARD OF REVIEW

This Court should affirm the District Court's Final Decree and allocation of marital property because the judgment was sound, based on the overwhelming evidence in the record and at trial. "[T]he District Court has far-reaching discretion in dividing the marital property. [This Court's] standard of review is that the District Court's judgment, when based upon substantial credible evidence, will not be altered unless a clear abuse of discretion is shown." *In re Marriage of Stephenson*, 237 Mont. 157, 159, 772 P.2d 846, 848 (1989) (quoting *In re Marriage of Stewart*, 232

Mont. 40, 42, 757 P.2d 765, 767 (1988), *overruled on other grounds by In re Marriage of Funk*, 2012 MT 14, 363 Mont. 352, 270 P.3d 39; quoting *In re Marriage of Watson*, 227 Mont. 383, 387, 739 P.2d 951, 954 (1987)). A district court's conclusions of law are reviewed for correctness. *In re Marriage of George & Frank*, 2022 MT 179, ¶ 32, 410 Mont. 73, 517 P.3d 188 (citing *Schwartz v. Harris*, 2013 MT 145, ¶ 15, 370 Mont. 294, 308 P.3d 949).

The Montana Code "vests the district court with broad discretion to equitably apportion the marital estate in a manner equitable to each party according to the circumstances of each case." *Id.*, ¶ 35 (citing *Funk*, ¶¶ 16, 19). Likewise, "[a] district court has broad discretion to adopt any reasonable valuation of property supported by the record and this Court will not substitute its judgment for that of a trial court on such matters." *In re Marriage of Swanson*, 2004 MT 124, ¶ 15, 321 Mont. 250, 90 P.3d 418 (citing *In re Marriage of Bee*, 2002 MT 49, ¶ 34, 309 Mont. 34, 43 P.3d 903; *In re Marriage of Oehlke*, 2002 MT 79, ¶ 21, 309 Mont. 254, 46 P.3d 49).

Additionally, this Court's review of a family law contempt order "is limited to determining whether the district court 'acted within its jurisdiction and whether the evidence supports the findings.'" *In re Marriage of Cini*, 2011 MT 295, ¶ 15, 363 Mont. 1, 266 P.3d 1257 (quoting *In re Marriage of Sullivan*, 258 Mont. 531, 540, 853 P.2d 1194, 1200 (1993)); *see also In re Marriage of Winters*, 2004 MT 82, ¶ 41, 320 Mont. 459, 87 P.3d 1005 (citing *In re Marriage of Baer*, 1998 MT 29, ¶

45, 287 Mont. 322, 954 P.2d 1125) ("we review the findings and decision in a family law matter not to hold a party in contempt for a blatant abuse of discretion").

Lastly, "[r]easonable attorney fees are permissible in a contempt action." *In re Marriage of Novak*, 2014 MT 62, ¶ 37, 374 Mont. 182, 320 P.3d 459 (citing *In re Marriage of Redfern*, 214 Mont. 169, 173, 692 P.2d 468, 470 (1984)). The Supreme Court is, first, to "review for correctness whether legal authority exists to award attorney's fees; if it does, [the Court] review[s] a district court's order granting or denying attorney's fees for an abuse of discretion." *Hurly v. Lake Cabin Dev., LLC*, 2012 MT 77, ¶ 14, 364 Mont. 425, 276 P.3d 854 (citing *Hughes v. Ahlgren*, 2011 MT 189, ¶ 10, 361 Mont. 319, 258 P.3d 439).

SUMMARY OF THE ARGUMENT

Brad's argument boils down to frustration that the District Court found his testimony untrustworthy. Yet, the District Court's allocation does not differ drastically from Brad's pre-trial findings. (Trial Ex. 16). The District Court allocated assets to each party that could be sold for millions of dollars or, contrarily, kept to continue producing a substantial passive income. (DC Dkt. 98, *FOF/COL/Decree*, Ex. A). Before doing so, the District Court listened to three long days of trial testimony and argument from counsel in this matter.

Lisa provided the following in support of the monetary values she placed on the marital properties: Lisa's testimony, realtor Gina Moore's testimony and several

thorough CMAs (admitted Trial Ex. 1), and prospective buyer for the real properties Joe Cook's testimony as to his interest in buying and the purchase price he has considered offering. This evidence was consistent and abundant. In support of Brad's valuations, the only evidence admitted at trial was Brad's testimony. Brad's trial testimony regarding valuation completely contradicted himself and his own deposition testimony several times—agreeing to $8 million for Powmer/Hoskins during his deposition but roughly $4 million for the same at trial. Brad's trial testimony also directly contradicted his pre-trial findings.

Brad argues the District Court failed to resolve fact disputes regarding valuations and otherwise. In reality, the District Court did resolve valuations but did so in Lisa's favor and based on substantial evidence. The District Court's findings are replete with citations to the many inconsistencies and flaws in Brad's testimony. The District Court considered and outlined in its findings all the evidence presented, then discounted Brad's opinions as not credible or otherwise accurate and adopted the valuations provided by Lisa and the other witnesses called on her behalf. Brad providing baseless and erratic property valuations does not render the value of marital assets perpetually in dispute and unresolvable. The District Court clearly adopted Lisa's valuations—well-supported by the entire record—and allocated the estate accordingly.

Lastly, the record overwhelmingly demonstrates Brad's vexatious and dilatory conduct throughout the case, and the many instances of Brad apparently refusing to follow the court's orders. The District Court ordered Brad to pay Lisa's attorney fees and costs incurred as a result of his contemptuous conduct, which is certainly permissible under Montana law in these circumstances.

ARGUMENT

I. The District Court accounted for and divided the marital estate based on substantial evidence.

Brad's opening brief (pp. 19–23) argues that Montana law plainly requires courts to explicitly tabulate the marital estate's net value in every case. This is simply not an accurate statement of the law.

Section 40–4–202(1), MCA, "does not specifically require the District Court to determine the net worth of the assets of the parties." *Stephenson*, 237 Mont. at 160, 772 P.2d at 848. Instead, the rule is that a district court's property distribution will not be overturned on this basis so long as "the findings as a whole are sufficient to determine the net worth and to decide whether the distribution was equitable." *Id.* (citing *In re Marriage of Nunnally*, 192 Mont. 24, 26, 625 P.2d 1159, 1161 (1981)); *see also In re Marriage of Walls*, 278 Mont. 413, 417, 925 P.2d 483, 485 (1996) (citations omitted) ("A net valuation by the district court therefore is not always mandatory. Rather, the test is whether the findings as a whole are sufficient to determine the net worth and to decide whether the distribution is equitable.").

In *Nunnally*, this Court reviewed evidence that, for example, the parties' house "appraised at $38,500 and [was] encumbered by a $13,000 loan executed solely by the wife, [giving] a net value of $25,500." 192 Mont. at 27, 625 P.2d at 1161. The Court noted that, although the district court had "indeed failed . . . to make a specific finding of net worth[,] . . ." "[t]hese figures [we]re easily computed from the findings of fact." *Id.* Therefore, this Court affirmed the district court's property division because "the findings as a whole [we]re sufficient to determine the net worth and to decide whether the distribution was equitable." *Id.*

The following facts are completely clear from the District Court's findings and record: the marital estate's value is $8 million–$10 million, with limited liabilities (DC Dkt. 98, *FOF/COL/Decree* at p. 13); the Powmer and Hoskins portions of the farm/ranch property, individually, are comparable in value, worth roughly $3 million each, and Powmer/Hoskins, together, is worth $6 million–$8 million (*Id.* at pp. 2–3, 7 (citing Trial Ex. 1, *CMAs*; Trial Tr. - Vol. I, 22:5–7, 22:15–20 (Joe Cook's testimony)); Trial Ex. 16, *Brad's Proposal* (judicial admission allocating Powmer to Lisa and Hoskins to Brad)).

The cases cited in Brad's opening brief (pp. 20–21) simply do not support his position. In *Cook v. Cook*, this Court reversed the district court's property division and remanded to determine values, <u>when values were in dispute and there was not evidence in the record which would permit the court to make a finding on the issue</u>.

188 Mont. 472, 479–80, 614 P.2d 511, 515 (1980) (noting that "[w]here parties cannot agree as to the value of a particular asset, we further encourage counsel to provide ample testimony for the District Court regarding values. Despite the statements of counsel, that was not done here . . .").

The *Cook* opinion further supports its holding with this Court's decision in *Martinez*, where, again, "no evidence was introduced regarding property values at trial." *Cook*, 188 Mont. at 478, 614 P.2d at 515 (citing *Martinez v. Martinez*, 175 Mont. 280, 284, 573 P.2d 667, 669–70 (1978)). In *Martinez*, the record was silent as to property values—"[n]either the appraised valuation nor the assessed valuation were introduced as evidence at trial; nothing in the judge's findings of fact or conclusions of law show[ed] that he ever considered the assessed or appraised value of the land prior to his property disposition order." *Id.* (quoting *Martinez*, 175 Mont. at 284, 573 P.2d at 670).

Lastly, this Court vacated and remanded the trial court's property division, in *In re Marriage of Collett*, because "there was no evidence presented on the existence of several items of property or the values thereof." 190 Mont. 500, 504, 621 P.2d 1093, 1095 (1981). There, this Court noted the district court "relied exclusively on statements of and valuations of assets submitted by the parties . . ."; continuing with the following account of the court's deficiencies:

> Where one item appeared on one of the parties' statement and not on the other parties' statement the court included the item at the value

> stated. When the parties disagreed on a valuation the court assigned a value halfway between the two submitted valuations. The husband also asserted that several of the items listed on the wife's statement of assets were purchased after the filing of the petition, and therefore, these items were considered twice[,] once in the amount of cash on hand on May 24, 1979, and again on the amount of the asset purchased after said date.

Id.

The *Collett* opinion states "[t]he factors listed in section 40-4-202, MCA, must be considered and referred to in the court's findings and conclusions and there must be competent evidence presented on the values of the property." *Id.* (citations omitted). Here, this is exactly what occurred. At trial, Lisa provided a considerable amount of credible evidence as to the valuation of the parties' real property, including the testimony of herself, of realtor Gina Moore, and of prospective buyer Joe Cook, as well as offering and admitting numerous detailed CMAs. There is virtually nothing more Lisa could have introduced at trial to establish valuations. The District Court adopted those values and entered judgment accordingly. Detailed above, the District Court thoroughly documented all this evidence in its findings, and explicitly considered and referenced the relevant statutory factors (DC Dkt. 98, *FOF/COL/Decree* at p. 11, ¶ 3; pp. 11–14).

Brad's apparent plan was to confuse the valuation evidence so completely that, no matter the District Court's findings, he could argue a failure to resolve/value the estate based on the evidence. Regarding property values from Brad's perspective, the only admitted evidence at trial was Brad's testimony—although this

is somewhat difficult to say since Brad's own testimony often disagreed with itself. The District Court thoroughly documented this evidence as well, and noted Brad's seemingly deliberate ambiguity, the inconsistency and unfounded nature of his claims, and the overall lack of credibility in Brad's testimony.

Brad's opening brief argues the evidence indicates an unresolved, wide range of legitimate values attributed to the estate and that the District Court's findings are silent as to whose values are correct. This is simply untrue. The District Court's findings clearly stated, in several places, that Brad's values were not credible or accurate. *See, e.g.*, (*Id.* at pp. 7–11). These findings are based on substantial evidence, and they should be affirmed by this Court.

II. There was no credible evidence of an outstanding $180,000.00 joint debt. Nonetheless, the District Court balanced the claimed debt with Lisa's $145,000.00 inheritance.

The District Court indeed considered a potential joint debt of $180,000.00, and, in its property division, compensated for it with the $145,000.00 Lisa inherited from her mother and contributed to the marital estate. Brad's claim as to the District Court's treatment of this item is not supported by the findings themselves. (DC Dkt. 98, *FOF/COL/Decree* at pp. 4, 14).

However, to the extent the District Court may not have accounted for this claimed $180,000.00 debt, it was perfectly within Montana law for the court not to do so. Brad argues that Lisa agrees to owing a joint $180,000.00 debt to Brad's

mother, rendering inapplicable the authority cited by the District Court at pp. 11–12—*In re Marriage of Schmitz*, 255 Mont. 159, 841 P.2d 496 (1992) and *In re Marriage of Malquist*, 227 Mont. 413, 739 P.2d 482 (1987). It is true Lisa was not surprised to hear the potential existence of this liability during trial. But that is not the operative point on this issue. The fact is, Lisa knows virtually nothing about the terms in effect for this obligation. *See* (Trial Tr. - Vol. II, 266:9–268:1). And, apparently, neither does Brad. *See* (DC Dkt. 98, *FOF/COL/Decree* at pp. 9, 11–12 (noting Brad provided no documentation or even testimony to substantiate the loan or any alleged unpaid balance thereof)).

When deciding this issue, in *Malquist*, this Court reiterated that "[p]roposed findings of fact and conclusions of law must be sufficiently comprehensive to provide a basis for the trial court's decision, and must be supported by the evidence presented." 227 Mont. at 416, 739 P.2d at 485. Similar to *Malquist*, the present record provides no credible information at all to determine what obligation still exists from this alleged debt. On the record before us, there would be no way for the District Court to even know what obligation exists, let alone to impose this obligation on Lisa in its property distribution, and for that distribution to adhere to Montana law requiring that it be based on substantial evidence.

III. The District Court's finding that Brad owed Lisa a minimum of $150,000.00 in income, that Brad derived from joint marital assets and concealed from Lisa, was based on substantial evidence.

From Brad's opening brief, it appears he has difficulty understanding that the District Court, while required to consider all the evidence presented, is not required to agree with Brad or find his evidence credible. Lisa's affidavit testimony admitted at trial (Trial Ex. 14 & 15) outlines $150,000.00 in missing income alone. This was in addition to the court finding that Brad improperly spent tens of thousands from the joint account on extraordinary and unnecessary personal expenses and without authorization. (DC Dkt. 98, *FOF/COL/Decree* at p. 6, ¶ 21 (citing Trial Ex. 5, 7, 11, 13, 14, 15, 19, 21)); *see also* (Trial Tr. - Vol. I., 35:17–36:25, 42:5–20 (Bill Michael's testimony that Brad expressly said he was keeping income received in cash and away from Lisa)). Overall, the District Court calculated that Brad likely spent or diverted significantly more than $150,000.00 in joint funds away from the parties' joint accounts, from separation forward (mid-2020 through March 2023). (*Id.*). This was the basis for ordering the $150,000.00 payment to Lisa, and there is substantial evidence to support it.

Brad relies on the report and testimony from Ms. Schmitz to contend that Lisa actually owes Brad money, due to purported farm expenses covered by Brad and reported in the 2021 joint tax return. As thoroughly detailed in the above facts, Ms. Schmitz did not account for income Brad received but did not report on his taxes nor did she account for anything outside the 2021–2022 tax year. Further, Ms. Schmitz's conclusions were based on Brad's unverified misrepresentations, and they failed to

account for expenditures which Brad deemed business-related on the tax return but which were shown to be Brad's personal expenses. *See e.g.*, (Trial Tr. - Vol. II, 334:8–359:21 (demonstrating farm income from several sources never deposited into the joint account and not considered in Ms. Schmitz's conclusion); Trial Tr. - Vol. II, 341:1–23 (Brad's misrepresentations that some income generated by joint property was Brad's personal income); Trial Tr. - Vol. III, 399:1–409:17 (Ms. Schmitz's complete failure to discern farm expenses from Brad's personal expenses, as well as additional sources of farm income not deposited into the joint account).

Brad's argument simply regurgitates findings he wishes the District Court would have made but which are not supported by the evidence. Brad's own testimony even supports the District Court's findings regarding his improper personal expenditures. *See* (Trial Tr. - Vol. III, 554:20–555:12 (Brad agreeing that he funneled all his personal expenses through the joint trust account but was not willing to do the same with any of Lisa's personal expenses since separation)).

Brad argues that, while the divorce was pending, Lisa improperly used marital assets by living in the Mary Street residence (joint property) and that Lisa failed to account for her income at the clothing store. Neither of these arguments have merit. First, Brad too has been living at the Hoskins (joint) property during this time. Second, the parties do not own the clothing store which employed Lisa, and her income from this business since separation is derived solely from her labor. The

parties do, however, own the farm/ranch from which Brad has been passively selling crops, receiving lease income, and obtaining federal assistance, and they own the equipment and vehicles which Brad has been leasing or using himself to produce income.

IV. The District Court's order regarding Brad's contemptuous conduct and requiring payment of Lisa's attorney fees as a result was proper.

Brad's opening brief (pp. 27–29) incoherently babbles and concludes without support that the District Court requiring Brad to pay a portion of Lisa's attorney fees constitutes him being held in criminal contempt without due process. This argument overlooks the virtually endless examples of this Court upholding contempt rulings that order a party to pay the attorney fees of another in family law cases. *See, e.g.*, *Novak*, ¶ 37 (citing *Redfern*, 214 Mont. at 173, 692 P.2d at 470) ("Reasonable attorney fees are permissible in a contempt action.").

Disobedience of "any lawful judgment, order, or process of the court" is grounds for contempt. § 3-1-501(1)(e), MCA. "A district court has the responsibility to enforce its own orders and may exercise its discretionary contempt power as necessary to enforce the dignity and authority of the court." *In re Marriage of Marez & Marshall*, 2014 MT 333, ¶ 32, 377 Mont. 304, 340 P.3d 520 (citing *Baer*, ¶ 45; *Winters*, ¶ 41). Furthermore,

> [W]here parties are reluctant to abide by orders pertaining to custody, child support, maintenance, and property division, "the best remedy to insure respect for the law and the orderly progress of relations between

> family members split by dissolution is to give effect to the contempt powers of the District Court."

In re Marriage of Lee, 2000 MT 67, ¶ 33, 299 Mont. 78, 996 P.2d 389 (quoting *Milanovich v. Milanovich*, 201 Mont. 332, 336, 655 P.2d 963, 965 (1982); citing *State v. Dist. Ct. of First Jud. Dist. in & for Lewis & Clark Cty.*, 58 Mont. 276, 288, 191 P. 772, 774 (1920)).

Awarding attorney fees "must be (1) based on necessity; (2) reasonable; and (3) based on competent evidence." *Novak*, ¶ 31 (citing *Bee*, ¶ 42). The District Court's basis for holding Brad in contempt is thoroughly documented herein on pp. 12–20, *supra*. Over the course of this litigation, Brad blatantly disregarded the District Court's orders requiring him to account for joint income and cease unapproved personal expenditures from the parties' joint account. Although the District Court could not have been clearer in its directives, Brad simply refused to adhere to the order and cease his dissipation and concealment of marital funds. Thus, it was proper to find Brad in contempt.

Furthermore, to repeatedly establish Brad's improper, vexatious, and dilatory conduct, and attempt to prevent Brad from completely obfuscating marital funds of which Lisa is entitled a fair share, Lisa was forced to incur substantial unnecessary attorney fees and costs. As a sanction and necessary to ensure Brad's future compliance with the court's orders, the District Court ordered Brad is responsible for Lisa's reasonable attorney fees and costs incurred as a direct result of his

improper conduct. The District Court has yet to identify the amount of fees, which will require a hearing unless approved by Brad. However, the necessary evidence of Brad's contemptuous conduct is undeniable. The District Court's order was proper and should be upheld by this Court.

CONCLUSION/RELIEF SOUGHT

For the foregoing reasons, the Appellee/Petitioner, Lisa Marie Strecker, respectfully asks this Court to affirm the District Court's Findings of Fact, Conclusions of Law, and Final Decree in its entirety.

DATED this 6th day of December, 2023.

PARKER, HEITZ & COSGROVE, PLLC

/s/ *Michael L. Dunphy*
Casey Heitz
Michael L. Dunphy

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and quoted and indented material; and the word count calculated in Microsoft Word is 8,678 words excluding the Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service.

DATED this 6th day of December, 2023.

PARKER, HEITZ & COSGROVE, PLLC

/s/ *Michael L. Dunphy*
Casey Heitz
Michael L. Dunphy

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing Appellee's Opening Brief with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing Appellee's Opening Brief upon each attorney of record in the above-referenced District Court action as follows:

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Dated this 6th day of December, 2023.

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I, Michael L. Dunphy, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-06-2023:

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