

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE THE MATTER OF THE
MARRIAGE OF:

NANCY M. STEWARD

Petitioner/Appellant,

vs.

JOSEPH H. STEWARD,

Respondent/Appellee.

Appellant Cause No. DA 23-0118

APPELLANT'S REPLY BRIEF

On Appeal from the Montana First Judicial District Court, Lewis and Clark
County, the Honorable Mike Menahan, Presiding
District Court Cause No. ADR 2019-545

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Appellant Nancy Meinhard (“Nancy”) files her reply to Appellee Joseph Steward’s (“Joseph”) Answer Brief.

INTRODUCTION

This case is solely about modification of child support. Nancy agrees that Joseph’s timeline of events as set forth in his Statement of Facts is accurate. As Joseph himself sets forth, on December 31, 2019, the District Court entered an order establishing child support at a rate of \$1,680.00 per month. As such, the Department of Health and Human Services, Child Support Services Division’s (“CSSD”) *Modification* Notice and Order issued on May 6, 2021 (emphasis added), is a modification subject to section 40-4-208(1), MCA, and *Healy v. Healy*, 2016 MT 154, 384 Mont. 31, 376 P.3d 99. Ultimately, the question before this Court is what defines “Notice” for purposes of section 40-4-208(1) of the Montana Code Annotated. The *Healy* decision has already determined that Notice must include notice of the actual modified amount.

ARGUMENT

In Joseph’s response, he argues the district court’s decisions should be upheld because Nancy received “notice” when Joseph filed his Request for Hearing on November 9, 2020. As it applies to this case, this Court is "not required to affirm simply because the [lower court's application]...was not unreasonable or arbitrary. . . the issue is not whether the [lower court] . . . had

some reasonable basis for its conclusion...but whether, in view of the findings of fact, this Court agrees that the conclusion was the most appropriate application of the statute to the facts." *Anderson v. Carlsons Transp.*, 178 Mont. 290, 293, 583 P.2d 440, 443 (1978). When reviewing a question of law, "an appellate court is not bound by the findings of the trial court, but is free to draw its own conclusions from the evidence presented." *Sharp v. Hoerner Waldorf Corp.*, 178 Mont. 419, 423, 584 P.2d 1298, 1300 (1978).

The District Court erred as a matter of law when it concluded in its Conclusion of Law No. 5 that the start date is based on reasonableness. Furthermore, it erred in finding "the CSSD modification should have been implemented no later than January 1, 2021. Legally, the start date for modified child support is not based on what is reasonable or "essentially equitable." The District Court could not implement a date for child support before Nancy knew how much the modified amount would be.

1. Actual Notice Means After Receiving Notice of the Modified Child Support Amount.

Joseph argues Nancy was given "actual notice" when she received a copy of his Request for Hearing. Moreover, he argues that the *Healy* decision supports his argument because in that case, there were two modifications, and in this case, there is only one modification. Even though he makes this claim, Joseph completely

fails to explain how having only one modification request impacts when Nancy received notice.

When *Healy* is read in its entirety, it becomes clear that “actual notice” only occurs after the parties know the amount of the modified child support. In *Healy*, the mother requested a child support review, and both parents actively participated in the modification process. *Healy*, ¶ 6. The father had notice of the modification request because he was able to participate in the process. CSSD then made its calculation and made a formal motion to the district court for an Order adopting the modified child support amount. *Id.* Thereafter, while the modification hearing was still pending in district court, CSSD “submitted a revised modification order [to the Court] that included [the father’s] recalculated child support. *Healy*, ¶ 8. CSSD did not file an amended motion, it simply submitted a revised modification order with an updated calculation. *Id.* Despite the father having notice of the modification request since January of 2014, this Court held that the calculation presented in August, 2014, could not be made retroactive to before September, 2014, because father did not have actual notice. *Healy*, ¶ 32.

The facts and this Court’s holding in *Healy* directly contradict Joseph’s argument. The father in *Healy* clearly had notice that child support would be modified when he started participating in the modification process. Indeed, the father in *Healy* had actual notice of a motion for modification in January of 2014,

when CSSD first filed its motion for modification. Nonetheless, this Court held that a subsequently revised calculation presented during the same proceeding, and before any decision had been made on CSSD's initial motion, could not be made retroactive to before that calculation was presented to the district court because the father did not have actual notice of the *amount*. *Healy*, ¶ 32. Under Joseph's theory of the case, *Healy* would have been decided differently.

Practically speaking, the *Healy* decision makes perfect sense. If child support is modified as of the date of notice of the process being started, the obligor may well be several months behind before they ever get a calculated figure. For example, if it takes ten months to modify a prior support order (as it sometimes did during the pandemic), a parent may owe several thousand dollars in back support before they were ever given the chance to pay the new amount. The law requires arrearages to be reported to credit reporting agencies and for those credit bureaus to include in credit reports information about that overdue child support. *See* 42 U.S.C. § 666(a)(7)(A); 15 U.S.C. § 1681s-1. The immediate arrearage has the potential for harming the obligor parent before that person ever knew how much they were obligated to pay. Whether *Healy* considered that issue or not, the policy of not putting the obligor parent's credit in jeopardy for failing to pay a child support amount they did not know they were required to pay is a policy worth promoting. If notice does not begin until after the amount of modification is

known by both parties—even if the modified calculation is objected to—the obligor parent has the ability to pay the new amount pending a final decision or, at the very least, putting the extra money aside so the arrearage can be paid immediately upon receiving a final order.

Under section 40-4-208(1), MCA, and *Healy*, the child support modification cannot be made retroactive to a date prior to June 1, 2021, the first full month after Nancy had actual notice of the Modification Order.

2. The District Court Erred When, with no Basis in Law, it Concocted a “Reasonable” Time Frame Standard Based on Pure Speculation.

Even if the District Court could make child support retroactive, nothing in the law allowed the District Court to apply a “reasonable date” standard after Joseph’s Request for Hearing was submitted. The January 1, 2021, date is not only contradictory to *Healy*, but has no basis as a standard for application of section 40-4-208(1), MCA.

The District Court determined January 1, 2021, was “reasonable” because it believed that date was “essentially equitable” after hearing testimony from Joseph that expressed a reasonable period of time pulled out of thin air. Transcript 14:18-15:11; 32: 16-23. Even the District Court agreed that the Joseph’s testimony on this issue was pure speculation:

MR. GALLIK: what [do] you believe would have been appropriate for CSSD to do the from the time you made your first

request for a hearing to CSSD, which was six, November 6, do you believe that according to the child support documents that you have read how long would it have taken them under normal circumstances?

MS. VANISKO: Objection. That's speculation...only child support can respond to that question appropriately.

THE COURT: **It is speculation...** He may not know what is reasonable but I think he can just offer.

Transcript, 14:18-15:11 (emphasis added). Moreover, the District Court also acknowledged that *Healy* and its notice requirements dictated what the start date should be:

THE COURT: I'm struggling with a couple of things. One is the fact that Mr. Johnson who was representing Nancy at the time drafted the stipulated final parenting plan that included conditions like child support and so based on that seems like a January 1 date is **essentially equitable**, but I think that *Healy* and the notice requirements would dictate that I have to use the basics (unintelligible).

Transcript, 32:16-23 (emphasis added). Yet despite acknowledging the speculative nature of Joseph's testimony and the validity of the process required by *Healy*, the District Court nonetheless erred as a matter of law and issued a start date for child support that did not comply with the law because the District Court thought that date was "essentially equitable." The determination of child support is not based on equity, it is based on legal statutory requirements which are further explained in *Healy*.

3. Even if this Court Determines a “Reasonableness” Standard May be Applied, January 1, 2021, is not Reasonable.

If this Court determines Nancy received “notice” on November 9, and a reasonable time determination is appropriate, a reasonable start date cannot be before April 1, 2021. In contrast to the speculative January 1, 2021, date, Joseph himself submitted evidence that could have provided the District Court with a basis for determining a “reasonable” start date, if it had the discretion to do so. The Modification Notice and Order was issued in May of 2021. The Request for Review upon which it was based was submitted in January of 2021. Accordingly, it took four months for CSSD to recalculate child support during a time when employees were not taking time off for the holidays and pandemic-related work issues were finally decreasing and therefore not impacting timelines.

Based on the length of time it actually took CSSD to issue a modified order, it is not reasonable to believe that CSSD could have calculated a modified child support by January 1, 2021. This would be true even if Joseph had properly submitted his Request for Review in November. Between the ongoing pandemic issues occurring in late 2020, the holiday season vacations, and the normal times delays of calculating child support, a modified decision could not have come out before March of 2021. If the decision came out in March, the modified calculation would have become effective on April 1, 2021. Nancy is not suggesting this Court

should use this date; she does not believe that she should be held accountable for Joseph's inability to follow the process by which child support is modified, particularly when he has counsel helping him. This information is provided to demonstrate the level to which the District Court erred in its decision.

CONCLUSION

The District Court failed to apply the correct law when it did not follow the notice requirements of section 40-4-208(1) of the Montana Code Annotated and in *Healy*. Moreover, even if, *arguendo*, a start date could be based on a reasonableness standard, the District Court erred as a matter of law even in that application.

Dated: January 5, 2024.

HINSHAW & VANISKO, PLLC

By: Michelle H. Vanisko

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Attorney for Petitioner/Appellant
Nancy Meinhardt

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count calculated by Microsoft Word Office 365 for Windows is 1,813 excluding the Tables of Contents, Tables of Authorities, Certificate of Service and Certificate of Compliance.

Dated: January 5, 2024.

HINSHAW & VANISKO, PLLC

By: *Michelle H. Vanisko*

Michelle H. Vanisko
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Nancy Meinhardt

CERTIFICATE OF SERVICE

I, Michelle H. Vanisko, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 01-05-2024:

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Dated: 01-05-2024