

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. _____

JEROMY ARCHER,

Petitioner,

vs.

EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY,
MONTANA,

HONORABLE JOHN BROWN, PRESIDING JUDGE

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

On Petition from the Eighteenth Judicial District Court

Cause No. DR-22-468C
Hon. John Brown, Presiding Judge

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TABLE OF AUTHORITIES

STATUTES

Mont. Code Ann. § 3-5-126(2)

Mont. Code Ann. § 40-4-212

M. R. App. P. 14(3)

CASES

State ex rel. First Bank Sys. v. Dist. Court, 240 Mont. 77, 84, 782 P.2d 1260, 1264 (1989).

ISSUE PRESENTED

Did the District Court proceed under a mistake of law, thereby resulting in a gross injustice to the parties' minor children, I.A. and N.A., age 9 years and 7 years, respectively, in entering new Findings of Fact, Conclusions of Law, and Order ("FOFCOL"), rather than following the procedure outlined in § 3-5-126, MCA, seven months after a hearing was held on Respondent's Objection to Standing Master Order?

STATEMENT OF THE CASE

This Court must consider whether the District Court erred in issuing its own FOFCOL, rather than following the procedure prescribed by § 3-5-126, MCA, in

addressing the objections Respondent raised to the Standing Master's FOFCOL. The District Court did not discuss whether it was adopting the Standing Master's FOFCOL or modifying or rejecting in whole or in part the Standing Master's FOFCOL. *See Findings of Fact, Conclusions of Law, and Order* (attached as Exhibit A). By delaying seven months and then failing to follow the necessary procedure, the District Court allowed the removal of the children I.A. and N.A. from their community and prejudiced Petitioner with its significant delay.

Petitioner Jeromy Archer ("Petitioner") and Respondent Rachael Haedt ("Respondent") have two minor children together, I.A. and N.A. Petitioner resides in Bozeman, Montana, and Respondent resides in Billings, Montana. Respondent previously resided in Bozeman, Montana, then relocated with I.A. and N.A. to Billings, Montana in November of 2022.

Petitioner initiated his action for a parenting plan in the Eighteenth Judicial District Court, Gallatin County, on October 31, 2022, and the action was referred to the District Court Standing Master (the "Standing Master"). Petitioner subsequently filed a motion for an Emergency Ex Parte Interim Parenting Plan. A hearing was held on the Motion on February 21, 2023, wherein the Standing Master issued oral findings of fact, conclusions of law, and an order on the record. Respondent filed a Notice of Objections to the Standing Master's FOFCOL on February 28, 2023. A hearing was held on the Notice of Objections before the District Court on May 2,

2023. The parties each presented oral argument through counsel, and the District Court took the matter under advisement. Over seven months later, on December 14, 2023, the District Court issued its FOFCOL, inexplicably making new findings of fact and conclusions of law and replacing the Standing Master's conclusions of law based thereon. Further, the District Court issued an entirely different interim parenting plan as a part of its FOFCOL rather than recommitting the matter to the Standing Master. Such issuance of an interim parenting plan is statutorily improper, as it was done without the District Court holding an evidentiary hearing prescribed by statute. Lastly, the District Court marked the case as "closed" after issuing the Interim Parenting Plan. No final parenting plan or other order has been issued in the case, and no final hearing was ever held.

It is apparent from the District Court's FOFCOL that the District Court merely signed the proposed FOFCOL and interim parenting plan filed by Respondent, as the FOFCOL and interim parenting plan are identical to what was proposed by Respondent and does not currently follow the procedure outlined by § 3-5-126, MCA. Whether by mistake or not, the District Court also marked the case as closed. As a result, I.A. and N.A. remain removed from their home and community in Bozeman. The difficulty of the situation has been significantly exacerbated by the amount of time that passed between the District Court's hearing on the Respondent's objections and the District Court's decision on the objections.

ARGUMENT

Article VII, Section 2(2) of the Montana Constitution states that this Court possesses “supervisory control over all other courts.” *See also* Mont. R. App. P. 14.

Such control is an extraordinary remedy that is

sometimes justified when urgency or emergency factors exist making the normal appeal process inadequate, when the case involves purely legal questions, and when one or more of the following circumstances exist:

- (a) The other court is proceeding under a mistake of law and is causing a gross injustice;
- (b) Constitutional issues of state-wide importance are involved;
- (c) The other court has granted or denied a motion for substitution of a judge in a criminal case.

See id. The petition “may be made to the supreme court at any time.” Mont. R. App. P. 14(5)(a).

In this matter, urgency exists, the questions at issue are purely legal, and the District Court is proceeding under a mistake of law, resulting in a gross injustice.

I. Urgency factors exist that make the normal appeal process inadequate.

Minor children I.A. and N.A. have been allowed to be removed from their home community for well over a year, both due to the Court’s seven-month delay in issuing a decision and due to the Court’s incorrect application of governing law. The normal appeal process is inadequate because this Court disfavors interlocutory appeals, and no final judgment has been entered which can be appealed. *See State ex*

rel. First Bank Sys. v. Dist. Court, 240 Mont. 77, 84, 782 P.2d 1260, 1264 (1989).

No trial on the merits of the case has been set, and the case has been erroneously marked as closed. Were the case to be marked as reopened, given District Court timelines, it could be several months to over a year before a final judgment is issued in the case. Therefore, supervisory control is the only process through which Petitioner may seek relief from the District Court's order.

II. Whether the District Court's erred in issuing its FOFCOL and Interim Parenting Plan is a purely legal question.

The District Court did not follow the statutorily outlined procedure in addressing Respondent's objections to the Standing Master's FOFCOL, and the District Court issued an interim parenting plan without holding a hearing thereon rather than recommitting the matter to the Standing Master.

Section 3-5-126 of the Montana Code provides the procedure for the District Court in resolving objections to Findings of Fact, Conclusions of Law, and Orders issued by Standing Masters. Specifically,

The district court, after a hearing, if requested, may adopt the findings of fact and conclusions of law or order and may modify, reject in whole or in part, receive further evidence, or recommit the matter to the standing master with instructions.

3-5-126(2), MCA.

The District Court did not follow the procedure outline in § 3-5-126(2). The District Court instead issued entirely new, yet limited, findings of fact, then relied

on those findings of fact to reject certain conclusions of law made by the Standing Master and insert new conclusions of law. *See Findings of Fact, Conclusions of Law, and Order*, pp. 1-7. Such a process is not authorized by statute.

Additionally, the District Court issued a new interim parenting plan despite not having held an evidentiary hearing. *See Findings of Fact, Conclusions of Law, and Order*, pp. 10-24. The statutory requirements for a court to adopt an interim parenting plan are provided by § 40-4-213 of the Montana Code and include that a court “may adopt an interim parenting plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing.” Petitioner’s original motion for an interim parenting plan was heard by the Standing Master on February 21, 2023. The Standing Master received evidence and issued her FOFCOL, resulting in an interim parenting plan. Such procedure was proper. The District Court did not follow such a procedure. Instead, the District Court heard oral arguments limited to Respondent’s Notice of Objections, then issued new findings of fact and conclusions of law, as well as an interim parenting plan. These mistakes by the District Court are a purely legal question to be analyzed by this Court.

III. The District Court is proceeding under a mistake of law, resulting in a gross injustice.

As described in the preceding paragraph, the District Court is proceeding under a mistake of law. The District Court failed to follow § 3-5-126(2). According to that section, the District Court was to “adopt the [Standing Master]’s findings of

fact and conclusions of law or order” and could “modify, reject in whole or in part, receive further evidence, or recommit the matter to the standing master with instructions.” 3-5-126, MCA.

Instead, the District Court issued new findings of fact, modified conclusions of law, and an interim parenting plan, then marked the case as closed. The modified conclusions of law are predicated on the new, erroneously issued findings of fact. The interim parenting plan is based on the erroneous findings of fact and the conclusions of law, and the interim parenting plan was also issued by the District Court without the District Court holding a hearing pursuant to § 40-4-213. Such action is an improper application of the law and is therefore a mistake of law.

A gross injustice results from the District Court’s mistake of law, as well as the District Court’s delay. The minor children I.A. and N.A. have now been removed from their home community for approaching a year and a half when they should not have been removed in the first place. The Standing Master found that the children were well adjusted to their community in Bozeman, based upon several factual findings that do not appear to have been altered by the District Court. *See* Parenting Plan Hearing Trans. 146:6-15 (attached as Exhibit B). The Standing Master also concluded that remaining in Bozeman would be in their best interests due to those facts. *See* Trans. 146:6-149:13, 158:16-23. The duration of their removal is the result of the District Court’s delay, as well as the ultimate decision of the District Court for

the children to remain displaced in Billings under an interim parenting plan. There is no doubt that it was easier for the District Court to order that the children remain in Billings after they had been there for over a year, but the situation would not have arisen but for the District Court's delay and mistake of law.

CONCLUSION

This Petition meets the requirements of M. R. App. P. 14(3) for this Court to exercise supervisory control over this matter. Urgency factors exist, the question is purely legal, and the District Court has proceeded under a mistake of law. The District Court's FOFCOL does not follow the requirements of § 3-5-126(2) and is causing gross injustice to the minor children.

The Petitioner therefore requests that the Court grant this Petition and enter an order reversing the District Court's FOFCOL and Interim Parenting Plan.

DATED February 21, 2024.

BRIDGER LAW

/s/ Maggie Rose
Maggie Rose
Jackson Alvey
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to M. R. App. P. 12, I certify that this Petition for Writ of Supervisory Control is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double-spaced, and the word count as calculated by Microsoft Word is 2045, in compliance with the word limit of M. R. App. P. 14 (9)(b).

BRIDGER LAW

/s/ Maggie Rose
Maggie Rose
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on February 21, 2024, I served a true and correct copy of this document by U.S. Mail, postage prepaid, upon:

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APPENDIX

Findings of Fact, Conclusions of Law, and OrderEx. A

Transcript of February 21, 2023 Hearing before the Standing Master.....Ex. B

CERTIFICATE OF SERVICE

I, Jackson O'Brien Alvey, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 02-21-2024:

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Electronically Signed By: Jackson O'Brien Alvey
Dated: 02-21-2024