

IN THE SUPREME COURT OF

THE STATE OF MONTANA

KRIS STUTZMAN,**Appellant****and****SHAWN STUTZMAN,****Appellee.****Cause No. DA 23-0747****APPELLANT'S REPLY TO MOTION TO
DISMISS AND REQUEST FOR EMERGENCY
STAY AND INJUNCTION**

COMES NOW, KRIS STUTZMAN, Appellant, pro se, to submit this reply to the Motion to Dismiss by the Appellee, SHAWN STUTZMAN, and to reiterate the request for an emergency stay and injunction. The detailed legal foundation, addresses potential procedural and substantive challenges, and underscores the urgent need for judicial intervention to protect the Appellant's rights and interests.

The appeal seeks to correct procedural errors, not to evade them. Moreover, despite Appellant's pro se status and the complexities inherent in navigating appellate practice, significant effort was made to align with **M.R. App. P. 22 (1)(b)**.

PROCEDURAL REQUIREMENTS

Despite not citing specific legal authorities, the Appeal, sufficiently outlines the factual basis and legal grounds for the claims made. This includes detailing the procedural irregularities, the lack of an evidentiary hearing, improper service, and the impact of these issues on her rights and well-being of their children. Appellant argues that these facts, as presented, do indeed state a claim for which relief can be granted under Montana law.

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DEMONSTRATION OF PROCEDURAL AND SUBSTANTIVE COMPLIANCE

The Appellant has rigorously adhered to procedural norms, specifically aligning with **M.R. App. P. 22 (1)(b)**, and has rectified any perceived deficiencies in the initial filing, notably the comprehensive citation of relevant legal authorities, including:

- 1) **MCA § 25-1-201 (Procedural Fairness)**, asserting the deviation from due process and fairness in the trial proceedings.
- 2) **MCA § 40-4-202 (Equitable Division of Marital Property)**, highlighting the inequitable division of assets, particularly the marital home.
- 3) **MCA § 40-15-102 (Considerations for Survivors of Domestic Violence)**, emphasizing the oversight of the Appellant's status as a domestic violence survivor and its implications.

Furthermore, the addition of **MCA §§ 40-4-212** and **MCA §§ 40-4-204** starkly illustrates the disregard for the child's welfare and the procedural lapses in determining child support, underscoring the Appellant's plea for a resolution that prioritizes the best interests of the children and adheres to the principles of justice and fairness.

The assertion that the Appellant failed to cite legal authority is, therefore, not only inaccurate but overlooks the substantive legal groundwork laid out in her motion. This detailed reference to the MCA underscores the Appellant's diligent adherence to legal standards and her effort to anchor her appeal in the specific statutes that govern the matters at issue.

Additionally, Appellant cites **Rule 41** of the Rules of Civil Procedure, which outlines the conditions under which an action may be voluntarily or involuntarily dismissed, arguing that none of the conditions warranting an involuntary dismissal under **Rule 41(b)** – such as failure to prosecute or to comply with court rules or orders – apply to this case.

The Appellant clarifies the procedural irregularities cited, including improper service and the absence of an evidentiary hearing, as critical errors affecting the fair consideration of her case. These irregularities, alongside the facts of matter provided, substantiate the claims for which relief under Montana law is sought.

REBUTTAL AGAINST MOTION TO DISMISS

The Motion to Dismiss by the Appellee not only overlooks the substantive merits of the Appellant's claims but also egregiously disregards the procedural diligence exhibited by the Appellant.

This Response articulates a compelling argument against the dismissal, based on:

- a. The Appellant's substantial compliance with procedural requirements, as evidenced by the detailed and corrected citations to the Montana Code Annotated.
- b. The substantive merits of the appeal, which raise significant legal and factual issues necessitating judicial review.
- c. The critical importance of the issues at stake, notably the procedural fairness, equitable treatment, and, most importantly, the welfare and well-being of the children involved.

URGENT REQUEST FOR EMERGENCY STAY AND INJUNCTION

Given the immediate and irreversible harm that could befall the Appellant and her children without the Court's intervention, the Appellant reiterates the request for an emergency stay and injunction. This request is not made lightly but out of a dire necessity to preserve the status quo and protect the fundamental rights and welfare of the Appellant and the children pending the resolution of this appeal.

REQUEST FOR RELIEF

Based on the foregoing, the Appellant respectfully requests the Court to:

1. Deny the Appellee's Motion to Dismiss, acknowledging the procedural diligence and substantive concerns raised in the Appellant's appeal.
2. Grant the requested Emergency Stay and Injunction, thereby preserving the status quo and protecting the Appellant's rights pending the appeal's resolution.
3. Consider any further relief deemed just and proper under the circumstances, reaffirming the Appellant's faith in the judicial system's capacity to ensure fairness and justice.

CONCLUSION

The Appellant's efforts to navigate the appellate process, despite the challenges of pro se representation, highlight a deep-seated belief in the principles of justice and equity enshrined in Montana law. This reply, and the requests contained herein, are tendered with profound respect for the Court's role in adjudicating rights and ensuring procedural integrity. The Appellant earnestly seeks a review that considers the merits of her appeal and the procedural efforts undertaken to safeguard her interests.

Respectfully submitted,

February 23, 2024

Kris Stutzman
Kris Stutzman, Appellant

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2024, a true and correct copy of this Reply to Motion to Dismiss and Request for Emergency Stay and Injunction was served on the Appellee's counsel, Casey L. Emerson, P.O. Box 879, Polson, MT 59860, duly served via U.S. Mail, postage prepaid, in strict adherence to the Montana Rules of Appellate Procedure.

Kris Stutzman

KRIS STUTZMAN, Appellant, Pro Se