IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 24-0105

JEROMY ARCHER,
Petitioner,
vs.

MONTANA EIGHTEENTH
JUDICIAL DISTRICT COURT,
GALLATIN COUNTY,
HONORABLE JOHN BROWN,
PRESIDING,
Respondent.

RACHAEL HAEDT'S RESPONSE OPPOSING PETITION FOR SUPERVISORY CONTROL

APPEARANCES:

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STATEMENT OF THE ISSUES

Named party, Rachael Haedt ("Rachael"), objects to Petitioner, Jeromy Archer's ("Jeromy"), "issue presented." Rachael restates the alleged issues presented as follows:

1. Whether the District Court complied with § 3-5-126, MCA's grant of authority for the District Court to "modify, reject in whole or part" the Standing Master's Interim Parenting Plan and included findings of fact and conclusions of law.
2. Whether Jeromy's parenting every Friday through Sunday is a gross injustice, when that substantially tracks the parties' four-year de-facto parenting schedule.
3. Whether the Court should award attorney fees and costs to Rachael under M. R. App. P. 19.

STATEMENT OF THE CASE

The Court should not exercise supervisory control because the District Court properly followed the authority granted to it by §3-5-126, MCA and because there is no gross injustice that justifies supervisory control. Rachael timely and properly served objections to the *Interim Parenting Plan* and the conclusions and applications of law included therein. The district court properly held a hearing during which both parties argued their objections. At no point during the hearing, before, or after did Jeromy "seek to admit further evidence" as allowed under §3-5-126, MCA. The District Court then properly considered the objections, oral argument, and the record. The District Court acted in its discretion, as explicitly granted in the language of § 3-5-126, MCA, and modified the *Interim Parenting Plan*. Additionally, there are no extraordinary circumstances that compel this Court's exercise of supervisory control.

STATEMENT OF FACTS

Since their separation, the parties have parented according to an agreed-upon, *de facto* parenting plan under which Rachael was the primary parent. Prior to this action, the parties have not required any court involvement.

On October 31, 2023, Jeromy filed a *Verified Petition for Parenting Plan* and *Proposed Final Parenting Plan*. On November 14, 2022, Rachael filed her

Verified Response to Petition and Counter Petition and *Respondent's Proposed Interim and Final Parenting Plan*.

On November 30, 2022, Jeromy filed an *Ex Parte Motion for Interim Parenting Plan* and a concurrently filed *Interim Parenting Plan*. On December 2, 2022, Rachael filed her *Response to Petitioner's Ex Parte Motion for Interim Parenting Plan*.

On January 25, 2023, Jeromy filed a *Request for Hearing*. On February 1, 2023, Rachael filed her *Response to Request for Hearing*, and Jeromy replied on the same date. The District Court held a hearing on Interim Parenting on February 21, 2023 and entered an *Interim Parenting Plan* on February 27, 2023.

After hearing, Rachael timely and properly made specific objections to Standing Master Bowen's *Interim Parenting Plan* and the findings of fact and conclusions of law included therein, and Standing Master Bowen orally entered her findings into the record on February 28, 2024—within the ten (10) day deadline established by § 3-5-126(2), MCA.

On March 6, 2023, the District Court issued the Order Staying Enforcement of Interim Parenting Plan until District Court Conducts Case Review. The order stayed the Interim Parenting Plan and instructed the parties to resume the residential schedule they had been following prior to the hearing. The Court further set a hearing on Rachel's objections for April 13, 2023.

On March 17, 2023, Jeromy filed his *Response to Respondent's Objections to Standing Master Findings of Fact and Conclusions of Law*. The District Court granted a hearing at which both parties presented oral argument, neither sought to introduce new evidence, and the Court asked factual and legal questions to the parties. Jeromy did not seek to admit further evidence as allowed by § 3-5-126(2), after the hearing.

The District Court entered its Findings of Fact, Conclusions of Law, and Order (the revised *Interim Parenting Plan*) on December 14, 2023, preserving the status quo, in place since March 6, 2023, and substantially similar to the parenting schedule followed by the parties for over four years, by allowing the children to reside primarily with Rachael, and for Jeromy to exercise parenting time every Friday through Sunday.

Jeromy filed his *Petition for Writ of Supervisory Control* on February 21, 2024 arguing that the District Court proceeded under a mistake of law when it rejected the Standing Masters findings of fact and conclusions of law, issued its own findings of fact and conclusions of law, and entered an interim parenting plan.

REQUIREMENTS FOR SUPERVISORY CONTROL

Supervisory control is an "extraordinary remedy" and is only "sometimes justified when urgency or emergency factors exist." M. R. App. P. 14. The presumption against supervisory control is overridden in limited cases when "(1) urgency or emergency factors make the normal appeal process inadequate, (2) the case involves purely legal questions, and (3) in a civil case, the district court is proceeding under a mistake of law causing a gross injustice or constitutional issues of state-wide importance are involved." *Lewis v. Montana Eight Judicial Dist. Court*, 2012 MT 200, ¶ 4, 366 Mont. 217, 219, 286 P. 3d 577, 578 *citing* M. R. App. P. 14(3). In considering whether these factors exist, this Court must also consider the presence of extraordinary circumstances and the particular need to prevent injustice. *Id.* (*citing Park v. Sixth Jud. Dist. Ct.,* 1998 MT 163, ¶ 13, 289 Mont. 367, 961 P. 2d 1267). Here, Petitioner only alleges that the District Court is operating under a mistake of law causing a gross injustice.

SUMMARY OF ARGUMENT

The District Court proceeded and continues to proceed in accordance with the law, making supervisory control inappropriate. There are no extraordinary circumstances that merit and/or justify this Court's exercise of supervisory control. Because the District Court reasonably and clearly followed the explicit authority in § 3-5-126(2), MCA, and ruled following a hearing on Rachael's objections the

District Court's *Interim Parenting Plan* does not result in a gross injustice; rather it substantially tracks with the parties' long-standing agreed upon, *de facto* parenting plan. As well, given the unnecessary burden Jeromy's Petition places on this Court, the District Court, and Rachael—where he both failed to seek admission of additional evidence, and failed to seek alternative means to this filing to achieve the same result (confirmation that the case is not closed)—this Court should award Rachael reasonable fees and costs.

ARGUMENT

The District Court is not acting under a mistake of law and there is no gross injustice arising from its *Interim Parenting Plan*. Accordingly, supervisory control is inappropriate.

1. The District Court followed the explicit authority in § 3-5-126, MCA and therefore is not operating under a mistake of law.

Section 3-5-126(2), MCA, grants the District Court authority in addressing objections to standing master findings of fact and conclusions of law. "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." *Id.* (Emphasis added.) As well, the statute instructs that "if a party *seeks to admit*

further evidence and the request is denied, the party may make an offer of proof with affidavits and additional proposed exhibits." *Id.* (Emphasis added.)

It is well settled that the after the initial hearing on objections, the district court may accept, modify, or reject the standing master's findings with or without further proceedings. *See e.g. Scrantom v. Masters,* 2018 MT 109, ¶ 8, 391 Mont. 251, 253, 417 P. 3d 339, 340 (*citing Beals v. Beals*, 2013 MT 120, ¶ 12, 370 Mont. 88, 300 P. 3d 1158) ("Once a party moves for filing by specific objection, the district court is 'required to set a hearing, consider the specific objections raised, and accept, modify, or reject the Standing Master's findings and conclusions *or* conduct further proceedings regarding the objections.'"). Accordingly, the District Court must hold a threshold hearing on the objections, but after the initial hearing, the District Court has discretion to rule. The District Court is not required to hold additional hearings and/or admit new evidence. *See id.*; § 3-5-126(2), MCA.

Here, Jeromy alleges that the District Court failed to follow the procedure in § 3-5-126, MCA, where (a) the District Court held a hearing on Rachel's objections and the District Court considered the record and the party's arguments in modifying the *Interim Parenting Plan*. Jeromy fails to highlight that he did not "seek to admit further evidence" during, and / or after the hearing, Jeromy's argument fails because the District Court followed the explicit procedure and authority granted to it in § 3-5-126(2), MCA.

Here, it is undisputed that Rachael properly and timely served specific objections to the Standing Master's findings of fact and conclusions of law, and to the interim parenting enter as a result thereof. The District Court followed § 3-5-126(2), MCA, in setting and holding a hearing to address those objections. At the hearing, both parties argued Rachael's specific objections. The District Court then exercised the authority explicitly granted in § 3-5-126(2), MCA, to modify the interim parenting plan.

At no point prior to the hearing on the objections, during the hearing on the objections, or in the months after the hearing and leading up to the District Court's order did Jeromy "seek to admit further evidence" or make further "offer[s] of proof with affidavits and additional proposed exhibits" as allowed under § 3-5-126(2), MCA. As such, Jeromy waived any right he had to do so.

Jeromy further alleges that the District Court was required to hold an additional hearing modifying the interim parenting plan. An additional hearing is not required by § 3-5-126(2), MCA. *See* § 3-5-126(2), MCA; *Scrantom* ¶ 8; *Beals*, ¶ 12. Moreover, Petitioner's assertion that an additional evidentiary hearing was required to create a new interim plan does not make practical sense and is not in the interest of judicial efficiency. Jeromy had the opportunity to present testimony at the original hearing and did so. Jeromy had the opportunity to present additional testimony and evidence subsequent to the hearing. And Jeromy had the opportunity

to make an offer of proof with "with affidavits and additional proposed exhibits" after the hearing, or at any time throughout. *See* § 3-5-126(2). Jeremy took none of these opportunities. Accordingly, the District Court acted properly in modifying the interim parenting plan without setting an additional evidentiary hearing.

Finally, Jeromy argues that the District Court "closed" the case following its entry of an interim parenting plan, preventing him from further challenging the issue at the district court level. As the district court stated on page seven of its Response brief, "This allegation is false." The District Court did not and has not closed the case.[1] An *Interim Parenting Plan* is, in its nature, a temporary order that can be modified by the parties and/or the district court in the future. If Jeromy had concern that the district court prematurely and/or inappropriately closed the case, he could have simply called the district court clerk or filed a motion for a status conference prior to creating an unnecessary burden on the judiciary and parties.

The Court properly followed the procedure under § 3-5-126(2), MCA, by holding a hearing on the objections and then modifying the Standing Master's Interim Parenting Plan. The District Court was not required to hold additional

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[1] This also demonstrates that Jeromy has not exhausted his ability for relief at the District Court level, and further shows that there are no "urgency or emergency factors make the normal appeal process inadequate" as the parties have not yet litigated a final parenting plan, during which Jeromy can pursue whatever parenting plan he so chooses. *Lewis*, ¶ 4.

hearings, nor did Jeromy seek to admit additional evidence before, during, and/or after the live hearing on Rachel's objections. The District Court did not mark the case as closed. As such, the District Court is not operating on a mistake of law, and supervisory control is not appropriate.

2. Jeromy exercising parenting time Friday through Sunday every week is not a "gross injustice."

As discussed *supra,* Jeromy need establish both that the District Court is operating based on a mistake of law and that the mistake is "causing a gross injustice." *See e.g. Sweeney v. Dayton*, 2018 MT 95, ¶6, 391 Mont. 224, 225, 416 P. 3d 187, 189. Much as he did not show that the District Court is operating on a mistake of law, Jeromy has not shown that the district court created a gross injustice.

Jeromy argues that the gross injustice is the Court's modification of the interim parenting plan and incorrectly relies on the Standing Master's findings rejected by the District Court to do so. The District Court's *Interim Parenting Plan* does not create a gross injustice; it acts substantially similar in accord with the parties' long-standing and agreed-upon approach to parenting time. Jeromy exercises parenting time every week from Friday through Sunday. Accordingly, the interim plan in itself does not create any gross injustice.

3. The Court should award attorney's fees and costs to Rachael under Rule 19(3)(b).

Rule 19(3)(B) of the Montana Rules of Appellate Procedure grants this Court discretion to award attorney fees under special circumstances. Here, the circumstances justify an award.

First, Jeromy argues against the explicit language of § 3-5-126, MCA, and the well settled case law enforcing the District Court's authority. However, Jeromy does not argue that the well-settled procedure and authority is improper or unconstitutional as applied to Jeromy or that the law needs to change, instead he appears to argue that well-settled law is not clear to him. As such, the unnecessary burden of restating well-settled law falls on this Court, the District Court, and Rachael.

Second, Jeromy petitioned for supervisory control arguing that he should have been entitled to an additional evidentiary hearing without bothering to exercise his ability under § 3-5-126(2), MCA, to seek admission of additional evidence, provide additional offers of proof, and/or file affidavits. Accordingly, Jeromy argues that he was entitled to add additional evidence at a hearing but did not attempt to exercise any of his opportunities to introduce evidence allowed and explained in § 3-5-126(2), MCA. Jeromy had months between the hearing and the District Court's Order to seek the admission of additional evidence, offers of proof, and/or affidavits but chose not to do so. As such, the cost and burden of addressing

Jeromy's choice not to inappropriately falls on this Court, the District Court, and Rachael.

Third, if Jeromy had concern that the District Court "closed" the case, or that he was barred from litigating a final parenting plan, there were ample, less expensive, and more judicially economic routes for him to confirm his concern. His choice not to take any of these alternative and more efficient routes should not create a burdensome expense for Rachel.

This is a case where special circumstances justify an award of attorney fees to Rachael. Where (a) the law is explicit and well-settled, (b) Jeromy doesn't argue that the law is improper, (c) Jeromy failed to seek to enter admit further evidence, but then retroactively asks for that ability, and (d) where there were ample means of getting the same result, special circumstances exist that support an award of fees and costs to Rachael.

CONCLUSION

Supervisory control is inappropriate as the District Court has not been operating on a mistake of law resulting in a gross injustice. The District Court followed the authority explicitly granted to it in § 3-5-126, MCA, and the end result—the *Interim Parenting Plan*—does not create any gross injustice. It instead puts in place a temporary plan substantially similar to the parties' multi-year *de*

facto parenting plan. The Court should therefore deny Jeromy's request and award Rachael attorney fees and costs.

Dated, this 25th day of March, 2024.

Dillon A. Post
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11, Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionally spaced Times New Roman text typeface of 14 points; is double-spaced (except footnotes); and the word count as calculated by Microsoft Word 2016 is not more than four thousand words, excluding title page, tables, certificate of compliance, and certificate of service.

Dillon A. Post

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on the following via E-Service, USPS First Class, and E-MAIL this the 25th day of March, 2024.

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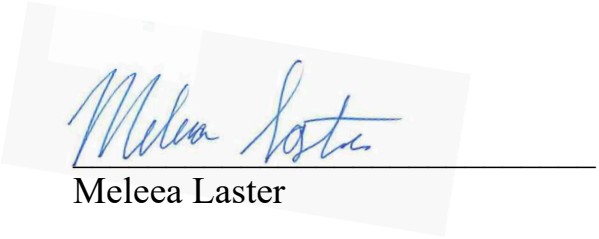

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I, Dillon A Post, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 03-25-2024:

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