

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. _____

HELEN SNEATH,

Petitioner,

vs.

FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY, MONTANA,
HONORABLE JUDGE LARSON, PRESIDING JUDGE,

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

On Petition from the Fourth Judicial District Court

Cause No.: DR-20-243

Hon. John Larson, Presiding Judge

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ISSUE PRESENTED

Did the district court proceed under a mistake of law, thereby resulting in a gross injustice to the parties' young minor children, R.S. and R.S.—and the Petitioner—in entering its *Order* dated March 20, 2024; returning the parenting schedule to the regular parenting plan's residential schedule, during their father's arraignment for a charge of felony DUI (4th) (and not in the parenting case), after issuing an ex parte order granting their mother, Helen Sneath, sole custody pending a hearing on an ex parte order suspending their father's parenting time?

STATEMENT OF THE CASE

This Court must consider whether the district court erred in conducting proceedings and making rulings related to a parenting plan during the father's criminal arraignment, with Ms. Sneath and counsel absent, after continuing the hearing related to the ex parte motion and order in the parenting plan. In issuing the subject *Order*, the district court returned the children to the joint care of their mother, and their father, Ian Stewart, who is charged with felony DUI (4th).

Mother filed an ex parte motion asking the Court to suspend Mr. Stewart's parenting time after learning of his 4th DUI charge. *Ex Parte Motion*. This motion was granted, and a hearing was set for a show cause hearing. *Order Suspending Parenting Time and Setting Hearing*. The undersigned moved to continue the hearing, and it was "continued" to March 21, 2024. *Order Continuing*. The undersigned submitted an

unopposed motion to continue the hearing again, as the undersigned and Ms. Sneath were unable to attend a hearing with two days' notice. *Unopposed Motion*. This was granted, and the show cause hearing continued to April 5, 2024. *Order Continuing to April 5, 2024*. In spite of continuing the hearing, the district court judge proceeded to conduct a hearing on the parenting case at the March 21, 2024 arraignment hearing of Ian Stewart, during which neither Ms. Sneath nor her counsel were present. *Minutes of Ian Stewart's Arraignment*. Ian Stewart's counsel for his parenting case was not even present, because the hearing for the ex parte parenting matter was continued to April 5, 2024, and then apparently vacated by Judge Larson during the arraignment hearing. *Order Re: Parenting and Vacating Show Cause Hearing*. This *Order* is at issue in this petition.

Mr. Stewart was charged with felony DUI (4th) and was arraigned on March 21, 2024. During that hearing, he apparently indicated that there was an order signed by Judge Larson related to parenting, and Judge Larson made the determination to reverse that *Order* during the arraignment hearing, with no parties present other than Mr. Stewart and his counsel for his criminal case.

ARGUMENT

The Montana Constitution, Article VII, Section 2(2) grants this Court "general supervisory control over all other courts." Acceptance of supervisory control is limited to urgent or emergency cases involving purely legal questions. M. R. App. P. 14(3). Supervisory control is appropriate only where additional circumstances exist, including

where a lower court is proceeding under a mistake of law and thereby causing a gross injustice, and where the normal appeal process is not an adequate remedy. *Miller v. Eighteenth Judicial Dist. Court*, 2007 MT 149, ¶ 16, 337 Mont. 488, 162 P.3d 121 (citations omitted).

Granting supervisory control, though extraordinary, is an appropriate and necessary remedy to protect R.S. and R.S. from harm, and to prevent a gross miscarriage of justice as a result of Judge Larson's failure to adhere to the requirements of due process of law and proper case management and scheduling. The district court's *Order* places R.S. and R.S. in immediate risk of harm by issuing an ex parte order granting Helen Sneath sole custody to protect the children, and then issuing an order returning the children to the regular parenting schedule and placing them at risk of endangerment via drinking and driving with their father. Even if there was no underlying issue with parenting, the fact that Judge Larson conducted parenting proceedings in a criminal proceeding violates all notions of due process. The district court's conclusion that it is acceptable to conduct proceedings clearly germane to one case in an entirely different case, with no other parties to the case present, is unacceptable and warrants supervisory control.

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

At their young age, the children should be protected from elements of parenting which are not in their best interests, and not intentionally exposed to them. The decision to throw these children into a traumatic situation as a result of clear mismanagement of

the court calendar and violations of due process of law and clear Montana statute governing ex parte parenting matters, places them at risk of serious mental and emotional harm and violates the rights of Ms. Sneath, who obviously should be present during any proceedings that relate to her parenting case with Mr. Stewart.

Besides violating notions of due process and being punitive in nature, Judge Larson's actions of issuing orders and then reversing them 180 degrees without any protective or prophylactic measures in place is contrary to attachment theory, which is accepted as crucial to human—and child—wellbeing, and is echoed in the best interests factors articulated in Mont. Code Ann. § 40-4-212 (i.e. continuity and stability of care, developmental needs of the children, substance abuse of a party, etc.).

II. The district court's error in entering its Order is purely a legal question.

The material facts regarding this family are not truly at issue in this petition, because the only true issue presented to this Court involves the issue of whether a district court judge can adjudicate family law matters in an entirely separate criminal hearing when one party is not present. Accordingly, this Petition solely addresses a question of law: whether the district court erred by entering its *Order* returning the children to the normal parenting schedule without a hearing, when it had previously issued an ex parte order granting sole custody to Helen Sneath pending a hearing and/or resolution of the father's criminal case. This was done without considering the best interest factors of Mont. Code Ann. § 40-4-212.

None of the best interest factors of Mont. Code Ann. § 40-4-212 were addressed or considered by the district court during the March 21, 2024 arraignment hearing, or in the court's *Order*. Even if they were addressed or considered by the Court in any way, there was no hearing on these issues, which is required under Mont. Code Ann. § 40-4-220(2)(b) and which violates Ms. Sneath's right to due process of law for parenting, which is a fundamental liberty interest. Mont. Const. Art. II, § 17.

The district court's failure to consider the best interest factors of § 212 is error as a matter of law. Mont. Code Ann. § 40-4-212(1). When the best interest factors are considered, as they must be in all parenting cases, the *Order* is clearly detrimental to the children's best interests. Mont. Code Ann. § 40-4-212(1). Furthermore, the failure to conduct a hearing—and conducting what almost amounts to an ex parte hearing with only one-party present—violates Helen Sneath's right to due process of law.

III. The district court is proceeding under a mistake of law that is causing a gross injustice and risk of harm to the parties' minor children.

It is well established in Montana's jurisprudence that a natural parent's right to the care and custody of his or her child is a fundamental liberty interest which must be protected by fundamentally fair procedures. *Matter of A.S.A.*, 258 Mont. 194, 197, 852 P.2d 127 (1993) (citing *Santosky v. Kramer*, 455 U.S. 745, 753–54, 102 S.Ct. 1388, 1394–95, 71 L.Ed.2d 599, 606 (1982); *In re A.C.*, 2001 MT 126, ¶ 20, 305 Mont. 404, 27 P.3d 960.

Given the facts set forth above and in the court record and given the blatant disregard for due process and the best interests of the child factors, there is a serious risk of harm to the minor child unless this Court exercises supervisory control, reverses the district court's *Order*, and orders that the Court conduct a show cause hearing, **with both parties to the case present**, as required by law. This is required by clear law governing parenting as a fundamental liberty interest. Due process requires fundamental fairness which, in turn, requires fair procedures. *In re A.N.W.*, 2006 MT 42, ¶ 80, 331 Mont. 208, 227, 130 P.3d 619 (C.J. Gray, concurring in part and dissenting in part) (citation omitted). Thus, due process requires notice of an action which may deprive a person of a liberty interest and the opportunity to be heard regarding that action. *Id.* (citing *State v. Niederklopper*, 2000 MT 187, ¶ 10, 300 Mont. 397, ¶ 10, 6 P.3d 448).

This includes the opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* (citing *Smith v. Board of Horse Racing*, 1998 MT 91, ¶ 11, 288 Mont. 249, 956 P.2d 752). The due process guarantee requires that a person be given an opportunity to explain, argue and rebut any information which may lead to the deprivation of a liberty interest. *Id.* (citing *Bauer v. State*, 1999 MT 185, ¶ 22, 295 Mont. 306, ¶ 22, 983 P.2d 955).

Furthermore, a show cause hearing is required by Mont. Code Ann. § 40-4-220, which provides as follows:

40-4-220. Affidavit practice. (1) Unless the parties agree to an interim parenting plan or an amended parenting plan, the moving

party seeking an interim parenting plan or amendment of a final parenting plan shall submit, together with the moving papers, an affidavit setting forth facts supporting the requested plan or amendment and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing on an order to show cause why the requested plan or amendment should not be granted.

(2) (a) A party seeking an interim parenting plan may request that the court grant a temporary order providing for living arrangements for the child ex parte. The party shall make the request in the moving papers and shall submit an affidavit showing that:

(i) no previous parenting plan has been ordered by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary living arrangements for the child were as proposed by the moving party; or

(ii) although a previous parenting plan has been ordered, an emergency situation has arisen in the child's present environment that endangers the child's physical, mental, or emotional health and an immediate change in the parenting plan is necessary to protect the child.

(b) If the court finds from the affidavits submitted by the moving party that the interim parenting plan proposed by the moving party would be in the child's best interest under the standards of 40-4-212 and that the child's present environment endangers the child's physical, mental, or emotional health and the child would be protected by the interim parenting plan, the court shall make an order implementing the interim parenting plan proposed by the moving party. The court shall require all parties to appear and show cause within 21 days from the execution of the interim parenting plan why the interim parenting plan should not remain in effect until further order of court.

requisite pleadings and affidavit pursuant to Montana law governing emergency ex parte parenting motions, and under Mont. Code Ann. § 40-4-220(2)(a)(ii). Under § 40-4-220(2)(b), a hearing was mandatory. There is no law authorizing Judge Larson to make rulings in the parenting case during the criminal arraignment without both parties present.

CONCLUSION

This Petition meets the requirements of M. R. App. P. 14(3), for the exercise of supervisory control in this matter. The emergency nature of this case, coupled with the misguided order that R.S. and R.S. be returned to their father's care pursuant to the regular parenting plan, without a proper show cause hearing, after the Court had ruled that the children should be in the sole care and custody of Helen Sneath due to father's pending felony DUI (4th) charge, make the normal appeal process inadequate. Furthermore, the inconsistent and punitive nature of the judge's rulings –and rulings made without hearings being properly conducted—render supervisory control necessary in order to ensure that the law is followed.

This case involves a purely legal question – whether the district court erred in entering its *Order* relating to parenting during a different criminal case. The Montana Fourth Judicial District Court, State of Montana is proceeding under a mistake of law and is causing gross injustice and a risk of harm to the minor children, and due process violations to Ms. Sneath.

Ms. Sneath requests that this Court grant this *Petition for Writ of Supervisory Control* and enter an order: (1) Reversing the district court's *Order*; and (2) directing that the ex parte order be followed in full force and effect until a proper show cause hearing can be conducted.

Respectfully submitted this 26th day of March, 2024.

REEP, BELL & JASPER, P.C.

By: /s/ Jenna P. Lyons
Attorney 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 2,217, in compliance with the word limit of M. R. App. P. 14 (9)(b).

CERTIFICATE OF SERVICE

I certify that on March 25, 2024, I served a true and correct copy of this document by email (where indicated) and U.S. Mail, postage prepaid, upon:

Hon. John J. Larson
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By: /s/ Jenna P. Lyons
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APPENDIX

<i>Order Regarding Parenting</i>	Ex. A
Minutes from March 21, 2024 Hearing	Ex. B
Current Parenting Plan.....	Ex. C
<i>Order Suspending Parenting Time</i>	Ex. D
<i>Order Continuing Hearing</i>	Ex. E

CERTIFICATE OF SERVICE

I, Jenna Penielle Lyons, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 03-26-2024:

Fourth Judicial District Court (Respondent)
200 W Broadway
Missoula MT 59802
Representing: Self-Represented
Service Method: E-mail Delivery

Electronically signed by Gloria Dominguez on behalf of Jenna Penielle Lyons
Dated: 03-26-2024