

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
OP 24-0189

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HELEN SNEATH,

Petitioner,

v.

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

Respondent.

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**DISTRICT COURT'S RESPONSE TO  
PETITION FOR WRIT OF SUPERVISORY CONTROL**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii, iii

INDEX OF  
EXHIBITS.....iv

INTRODUCTION.....1

BACKGROUND..... 1

ARGUMENT.....5

    I.    Supervisory Control Inapplicable and No Urgent Factors Exist.....5

    II.   No Mistake of Law Within March 21, 2024, or March 22, 2024,  
          Orders.....7

    III.  Relief Requested in Petition is Harsh and Unnecessary .....13

CONCLUSION.....13

CERTIFICATE OF  
COMPLIANCE.....15

CERTIFICATE OF  
SERVICE.....16

## TABLE OF AUTHORITIES

### Cases:

<i>Bessette v. Bessette</i> , 2019 MT 35, 394 Mont. 262, 434 P.3d 894.....	8
<i>In re C.J.</i> , 2016 MT 93, 383 Mont. 197, 369 P.3d 1028.....	11
<i>In re D.E.</i> , 2018 MT 196, 392 Mont. 297, 423 P.3d 586.....	11
<i>Jacobsen v. Thomas</i> , 2006 MT 212, 333 Mont. 323, 142 P.3d 859.....	11
<i>Lohmeier v. Montana Eighteenth Judicial Dist.</i> , 2007 Mont. LEXIS 197.....	6
<i>Martz v. Montana Sixth Judicial Dist. Court</i> , 2007 Mont. LEXIS 196.....	6
<i>State ex rel. Thompson v. Thirteenth Judicial Dist.</i> , 2007 Mont. LEXIS 107.....	6
<i>Truman v. Montana Eleventh Judicial District</i> , 2003 MT 91, 315 Mont. 165, 68 P.3d 654.....	6
<i>Redding v. Mont. First Judicial Dist. Court</i> , 2012 MT 144A, 281 P.3d 189.....	7

**TABLE OF AUTHORITIES**

Montana Rule:

M.R.App.P., Rule 17(a).....6

Montana Constitution:

Article VII, Section 2(2) of the Montana Constitution.....5

Mont. Code Annotated:

Mont. Code Ann. §§ 40-4-212.....11

Mont. Code Ann. §§ 40-4-219(1) and 220(1).....7, 8, 11

Mont. Code Ann. § 40-4-220(2)(a)(i).....7, 8

## INDEX OF EXHIBITS

1. July 17, 2023, Stipulated Parenting Plan filed and Order Adopting Stipulated Parenting Plan (DR-20-243, Doc. 116-117).....	1
2. March 1, 2024, Motion for Leave to File Information (DC-24-121, Doc. 1) and Order Granting Leave to File Information (DC-24-121, Doc. 2).....	2
3. Pre-Trial Supervision Activity Report from 2/29/24 to 3/21/24.....	2, 10
4. March 19, 2024, Order to Continue Show Cause (DR-20-243, Doc. 124)....	2
5. March 19, 2024, Order Resetting Time of Arraignment Hearing (DC-24-121, Doc. 9).....	3
6. Minutes of March 21, 2024, hearing in DC-24-121.....	3
7. Transcript of March 21, 2024, in Criminal Case DC-24-121, <i>State of Montana v. Ian Daniel Stewart</i> .....	4, 9, 11
8. March 22, 2024, Order Regarding Parenting (DR-20-243, Doc. 127).....	4
9. Order Setting Hearing (DR-20-243, Doc. 129).....	5, 11
10. Pre-Trial Supervision low battery alert of March 26, 2024.....	10
11. Pre-Trial Supervision Reports from initial monitoring from February 29, 2024, to April 4, 2024.....	10
12. April 5, 2024, Transcript of Proceedings.....	12, 13, 14

## INTRODUCTION

Comes now, the Honorable John W. Larson, District Judge (District Court), presiding over District Court Cause Nos. DR-20-243, *Helen Kean Sneath and Ian Daniel Stewart* (Domestic Relations Case), and DC-24-121, *State of Montana v. Ian Daniel Stewart* (Criminal Case), and responds to Petitioner Sneath's Petition for Writ of Supervisory Control in the Domestic Relations Case.

## BACKGROUND

The focus of this response is the *ex parte* process in the Domestic Relations Case which was affected by the Criminal Case involving the father.

The parties resolved and settled their Domestic Relations Case by filing on July 17, 2023, a Stipulated Amended Parenting Plan, which the District Court approved by an Order Adopting the Stipulated Parenting Plan on July 18, 2023. (Exhibit 1). The Stipulated Plan included a visitation schedule (*See* Exhibit 1 Stipulated Amended Parenting Plan, p 3:14-21), which the parties implemented without Court intervention until February 29, 2024, when Petitioner Helen Sneath ("Ms. Sneath") filed an Emergency *Ex Parte* Motion to Suspend Parenting Time in the Dissolution Case based on Mr. Stewart's incarceration following a DUI citation. On February 29, 2024, the District Court granted the suspension of visitation without a hearing and set an Order to Show Cause hearing for April 3,

2024.

On or about February 28, 2024, Mr. Stewart was ticketed for driving under the influence, fourth offense and was detained in the Missoula County Jail. On February 29, 2024, he appeared in Justice Court to have bond and conditions of release set. (Exh. 2, March 1, 2024, Motion for Leave to File Information and Order Granting Leave to File Information in the Criminal Case). On February 29, 2024, Mr. Stewart posted a \$1,000 cash bond and was put on Pre-Trial Supervision's continuous alcohol monitoring with readings occurring two times each hour. Between March 1, 2024, and March 21, 2024, there were over 900 readings without detection of alcohol or tampering with the monitoring device. (See Exh. 3, Pre-Trial Supervision Activity Report from 2/29/24 to 3/21/24).

On March 1, 2024, the State filed an Information in District Court in the Criminal Case charging Mr. Stewart with Driving under the Influence – Fourth Offense, a felony.

On March 14, 2024, in the Domestic Relations Case, Ms. Sneath moved to continue the show cause hearing previously set for April 3, 2024. On March 19, 2024, the Court entered an Order resetting the April 3, 2024 show cause hearing to March 21, 2024, and stating the hearing in the Domestic Relations Case would "...be held in conjunction with

Respondent's arraignment in Cause No. DC-24-121." (See Exh. 4). On March 19, 2024, in the Criminal Case, the Court issued an Order Resetting Time of Arraignment Hearing to March 21, 2024, and stated, "[t]he Court will hold this hearing in conjunction with the Defendant's parenting case DR-20-243." (See Exh. 5). The District Court thus attempted to schedule the March 21, 2024, hearings on Mr. Stewart's Criminal Case and his Domestic Relations Case at one time according to the Fourth Judicial District Court Rule No. 2 (one family-one Judge rule).

On March 20, 2024, Ms. Sneath filed an unopposed motion to continue the March 21, 2024, hearing in the Domestic Relations Case, and on the same day, the District Court continued the show cause hearing on the Domestic Relations Case (but not the Criminal Case) to April 5, 2024, at 3:00 p.m.

On March 21, 2024, Mr. Stewart was arraigned in the Criminal Case, pleading not guilty. During the arraignment hearing, Mr. Stewart's counsel requested Mr. Stewart's monitoring of alcohol be switched to remote breath testing, which was not opposed and was granted. During the March 21, 2024 hearing, the Court withdrew the Order of February 29, 2024, granting Ms. Sneath's emergency *Ex Parte* Motion in the Domestic Relations Case, and approved Mr. Stewart parenting his children "...as long as the Defendant remains in compliance

with testing.” (See Exh. 6, Minutes of March 21, 2024, hearing in DC-24-121 and Exh. 8, Order Regarding Parenting in DR-20-243). During the arraignment hearing, the District Court notified Mr. Stewart that the Court would be carefully monitoring remote testing as a condition to resuming the parenting schedule, stating “[b]ecause if you miss a bunch of tests, let’s say two or three consecutive, then I will put a hold on your visits until you get your tests regularly administered and they’re clean.” (See Exh. 7, Transcript of March 21, 2024, hearing, p.7:15-18).

On March 22, 2024, in the related Domestic Relations Case, the District Court vacated the Court’s February 29, 2024, Order Suspending Parenting Time. (See Exh. 8). The March 22, 2024, Order Regarding Parenting provided that the parties’ July 17, 2023, Stipulated Amended Parenting Plan shall “...govern the parenting of the parties’ minor children until further order of the Court or written agreement signed by both parties.” In the March 22, 2024, Order Regarding Parenting, the Court emphasized “**Defendant shall be in compliance with his additional conditions of release ordered in his criminal case concerning testing, obtaining a chemical dependency evaluation and any recommended treatment.**” In the same order, the District Court also vacated the April 5, 2024, Show Cause hearing.

On March 26, 2024, Ms. Sneath filed her Petition for Writ of Supervisory

Control, requesting the following relief: (1) reversal of the District Court’s Order Regarding Parenting entered in the Domestic Relations Case on March 22, 2024 providing the parties’ July 17, 2023 Stipulated Amended Parenting Plan shall “...govern the parenting of the parties’ minor children until further order of the Court or written agreement signed by both parties.” and (2) directing that the Court’s February 29, 2024 Order Suspending Parenting Time (entered *ex parte* and without hearing) be followed until a show cause hearing can be conducted.

On April 1, 2024, the Court set a hearing in the Domestic Relations Case to discuss “all outstanding issues” for Friday, April 5, 2024, at 3:00 p.m., the same date and time that the District Court originally set the show cause hearing pursuant to Ms. Sneath’s March 20, 2024, unopposed motion to continue the show cause hearing. (*See* Exh. 12, April 5, 2024, Transcript).

## ARGUMENT

### I. Supervisory Control Inapplicable and No Urgent Factors Exist.

Article VII, Section 2(2) of the Montana Constitution grants this Court “general supervisory control over all other courts.” The Montana Supreme Court has exercised its supervisory control authority with caution, due in part to the Supreme Court’s deference to the district courts’ ability to manage their own dockets pursuant to the Montana Rules of Civil Procedure. Rule 14(3) of the

Montana Rules of Appellate Procedure provides that supervisory control is an extraordinary remedy and 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.”

Unless a mistake of law has been established, “which, if left uncorrected, would cause a significant injustice for which there is no adequate remedy of appeal,” the Supreme Court does not exercise supervisory control. *Lohmeier v. Montana Eighteenth Judicial Dist.*, 2007 Mont. LEXIS 197, ¶ 4 (citations omitted). “Supervisory Control is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making the consideration in the trial courts and due appeal to this Court an inadequate remedy.” *State ex rel. Thompson v. Thirteenth Judicial Dist.*, 2007 Mont. LEXIS 107, ¶ 2 (citing M.R.App.P., Rule 17(a)). The Montana Supreme Court has been cautious in granting applications for writs of supervisory authority, limiting exercise of this remedy to extraordinary circumstances and the need to prevent an injustice. *Martz v. Montana Sixth Judicial Dist. Court*, 2007 Mont. LEXIS 196, ¶ 2 (citations omitted). Writs have been granted on the basis that “if the district

court proceeded based upon a mistake of law, the course of discovery, the cost of preparation, and the trial itself would be adversely affected.” *Truman v. Montana Eleventh Judicial District*, 2003 MT 91, ¶ 15, 315 Mont. 165, 68 P.3d 654 (citing *Plumb v. Fourth Judicial Dist. Court, Missoula Co.*, 279 Mont. 363, 370, 927 P.2d 1011, 1016 (1996)). Considerations include whether allowing the district court’s ruling to proceed to appeal would require a retrial, whether litigants would lose the protection of the law, and how the district court’s ruling would affect the case moving forward. *Redding v. Mont. First Judicial Dist. Court*, 2012 MT 144A, 281 P.3d 189.

In these cases, no emergency factors exist, making the normal appeal process inadequate. The District Court respectfully submits that no mistake of law can be identified in the May 22, 2024, Order Regarding Parenting, and Respondent District Court’s withdrawal of the *ex parte* Order was reasonable. In light of the April 5, 2024, hearing in DR-20-243, the parties were permitted to be heard on all outstanding issues. (See Exh. 12, April 5, 2024, Transcript, pp. 3-4

II. No Mistake of Law Within Orders of May 21, 2024, or May 22, 2024

The party seeking amendment to a parenting plan may seek an *ex parte* interim order for temporary living arrangements for the child. Mont. Code Ann. § 40-4-220(2)(a)(i). In addition to the affidavit showing required by Mont. Code

Ann. §§ 40-4-219(1) and -220(1), the motion must be further supported by an additional affidavit showing that an emergency situation has arisen endangering the child's physical, mental, or emotional health and that an immediate parenting plan change is necessary to protect the child pending further proceedings. Section 40-4-220(2)(a)(ii). If the *ex parte* affidavit showing is sufficient to establish a *prima facie* showing of an emergency situation endangering the child and a resulting need for immediate protection as required by § 40-4-220(2)(a)(ii), then the court shall issue an order granting the requested temporary parenting plan and then require all parties to appear before the court within 21 days from the execution of the interim parenting plan and show cause why the interim parenting plan should not remain in effect until further order of court. Section 40-4-220(2)(b).

The moving party has a “heavy burden” of proving entitlement to relief under §§ 40-4-219(1), -220(1), and -220(2)(a)(ii), MCA. *Bessette v. Bessette*, 2019 MT 35, ¶ 19, 394 Mont. 262, 434 P.3d 894 (citation omitted). In *Bessette*, the Montana Supreme Court noted the district court compassionately explained to the party who had parenting modified by an *ex parte* interim order “...the necessity of the temporary modification and the built-in pathway for reinstatement of the prior plan.” *Id.*, ¶ 23.

On February 29, 2024, Ms. Sneath filed an Emergency *Ex Parte* Motion to Suspend Parenting Time, and on the same day, the District Court suspended the parenting plan and set an Order Setting Show Cause for April 3, 2024. In the March 19, 2024, Order to Continue Show Cause, the District Court set the show cause hearing for March 21, 2024, specifically stating, and providing notice to both parties that “this will be held in conjunction with Respondent’s arraignment in Cause No. DC-24-21.” The March 21, 2024, show cause hearing was continued based on Ms. Sneath’s unopposed motion, and the Court held a hearing on all outstanding issues on April 5, 2024, the same date in which the District Court had previously set the show cause hearing.

At Mr. Stewart’s arraignment hearing in District Court on March 21, 2024, the Court determined that it was reasonable to withdraw the *ex parte* Order of March 21, 2024, suspending his parenting time, after discussing release conditions including testing, chemical dependency evaluation as well as recommended counseling and/or treatment. The District Court’s decision was based on the understanding the parties in both the Criminal and Domestic Relations Cases, together with an independent supervising agency, would be monitoring Mr. Stewart every day regardless of whether or not he was visiting his children. As discussed at Mr. Stewart’s arraignment, the

period of required treatment and possible supervision can extend for up to seven (7) years if he is convicted of a fourth DUI. (*See* Exh. 7, Transcript p. 3:20-25, p. 4:1-3). At the time of the arraignment, Mr. Stewart had been under supervision for almost three weeks and was subject to transdermal readings every half hour during that period without an indication of use or tampering. (*See* Exh. 3, Pre-Trial Supervision Activity Report from 2/29/24 to 3/21/24). Mr. Stewart also had begun the chemical dependency evaluation process and had the services of the supervising agency as well as his criminal and domestic relations attorneys to assist and motivate him as well as report violations or even issues of concern to the Court.

In the Criminal Case, the District Court, the State's prosecutor, and Mr. Stewart's defense attorney are immediately notified by Pre-Trial Supervision of violations by email. It is a general practice for Pre-Trial Supervision to provide updated supervision reports prior to each appearance in District Court and even report concerns of low battery. (*See* Exh. 10, Pre-Trial Supervision low battery alert, and Exhibit 11, Pre-Trial Supervision Reports from Mr. Stewart's initial monitoring from February 29, 2024, to April 4, 2024). The alleged offense might have long-term impacts on Mr. Stewart's parenting, including his out of community placement in the WATCH Program in Galen, Montana for up to

thirteen months. *See* M.C.A. 61-8-1008. Through the high level of supervision afforded Mr. Stewart, any violation(s) would cause immediate suspension of his visitation rights and possibly revocation of his release. During the arraignment hearing, the District Court specifically stated to Mr. Stewart, “[b]ecause if you miss a bunch of tests, let’s say two or three consecutive, then I will put a hold on your visits until you get your tests regularly administered and they’re clean.” (*See* Exh. 7, Transcript of March 21, 2024, hearing, p.7:15-18).

District courts have broad discretion to make and modify parenting plan determinations under the applicable standards of §§ 40-4-212, 219, and 220, MCA. *In re C.J.*, 2016 MT 93, ¶ 13, 383 Mont. 197, 369 P.3d 1028. Parenting plan determinations and modifications are reviewed for a clear abuse of discretion. *C.J.*, ¶ 13; *Jacobsen v. Thomas*, 2006 MT 212, ¶ 13, 333 Mont. 323, 142 P.3d 859. An abuse of discretion occurs if a court exercises granted discretion based on a clearly erroneous finding of fact, an erroneous conclusion or application of law, or otherwise “acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice.” *In re D.E.*, 2018 MT 196, ¶ 21, 392 Mont. 297, 423 P.3d 586.

The District Court received an additional fifteen (15) days of

breathalyzer results at the time of the April 5, 2024, hearing, which was set to “discuss all outstanding issues.” (See Exh. 9, Order Setting Hearing in DR-20-243). Notably, the April 5, 2024, hearing is the same date that was previously set in response to Ms. Sneath’s Unopposed Motion to Continue Show Cause. In addition, both parties were able to raise other issues which may involve the other case. During the April 5, 2024, hearing, counsel in the Domestic Relations case were notified they would receive updates regarding any violations occurring in the Criminal case. (See Exh. 12, April 5, 2024, Transcript, p. 23:22-p.24:7).

The District Court intended the Domestic Relations Case Show Cause hearing about Mr. Stewart’s parenting to be held in conjunction with Mr. Stewart’s arraignment in the Criminal Case because, as seems obvious to the District Court, the Criminal Case has possible impacts upon the parenting at issue in the Domestic Relations Case. This District Court concedes that the February 29, 2024, Order entered in the Domestic Relations Case without hearing based on Ms. Sneath’s emergency *ex parte* motion should have been modified only after a show cause hearing with an opportunity for both parties to be present. The numerous continuances requested by Petitioner and granted by the Court resulted in the Court hearing all outstanding issues

on the same date and time as originally requested by both parties. The District Court intends to permit coordination of the cases by the following: (1) throughout the remainder of the Criminal Case until judgment and even after judgment, if an authorization to pick up and hold or a petition to revoke is filed, notice of such action(s) will be given to the parties in the Domestic Relations Case; and (2) if the Court enters a judgment in the Criminal Case, it will contain an express provision requiring a copy of the judgment be sent to the parties in the Domestic Relations Case. (*See* Exh. 12, April 5, 2024, Transcript pp. 23-25). Furthermore, after judgment in the Criminal Case, the probation officer will be accessible to the parties in the Domestic Relations Case, and may share information about the Criminal Case and any petitions to revoke, authorizations to pick up and hold, or other matters.

### III. Relief Requested in Petition is Harsh and Unnecessary

The Court has remained available for either party to address any parenting issue and held a hearing on April 5, 2024, regarding all outstanding issues. (*See* Exh. 9, Order Setting Hearing in DR-20-243; Exh. 12, April 5, 2024, Transcript). During the April 5, 2024, hearing, Ms. Sneath and her counsel noted various outstanding issues regarding parenting, the marital property division and child support arrearages. (*See* Exh. 12,

April 5, 2024, Transcript, p. 7:12 – p,10:2-25). During the April 5, 2024, hearing, the Court gave both parties an opportunity to address the criminal case as it relates to Mr. Stewart’s parenting time. (See Exh. 12, April 5, 2024, Transcript, pp. 6-9). As of the date of this submission, no custody motion has been brought before the Court and no inquiry from local law enforcement concerning the implementation of the custody order has been received. (See Exh. 12, April 5, 2024, Transcript, p. 18:2-20). No new written motion has been filed or hearing requested on any issue in the criminal matter. The relief requested by the Petition, as well as a multitude of other intervention/sanctions are more readily available to the District Court.

**CONCLUSION**

Respondent District Court respectfully submits the decision for Mr. Stewart to resume visitation pursuant to continuous monitoring for alcohol, a chemical dependency evaluation and any recommended substance abuse counseling/ treatment does not constitute an abuse of discretion.

RESPECTFULLY SUBMITTED this 9 day of April, 2024.

  
\_\_\_\_\_  
JOHN W. LARSON, Respondent

## CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11(4)(c) and 14, M.R.App.P., the Respondent Montana Fourth Judicial District Court, Missoula County, the Honorable John W. Larson, Presiding Judge, hereby provides a Certificate of Compliance. This response brief to Petitioner's Petition for Writ of Supervisory Control was created as follows:

- x   Double-spaced
- x   Proportionally Spaced Times New Roman test typeface of 14 point typeface
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2024, I electronically served a true and correct copy of the foregoing document by email (where indicated) and U.S. Mail, postage prepaid upon:

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