

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

**Supreme Court Case No. DA 23-0747**

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**APPELLANT'S BRIEF**

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**On Appeal from the Twentieth Judicial District Court, Lake County,  
Montana**

**Case No. DR-22-23: Stutzman**

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**Hon. Deborah Kim Christopher, Presiding Judge**

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## **I. INTRODUCTION**

This appeal urgently calls for the correction of grave injustices arising from the family court proceedings between Kris Stutzman (Appellant), pro se and Shawn Stutzman (Appellee). Central to this appeal is the challenge against the December 7, 2023, order issued by the Twentieth Judicial District Court of Lake County, which compelled the sale of the marital home under purported emergency conditions that lacked substantive justification and procedural integrity. This order represents a profound failure in observing the due process rights of the Appellant and the court's *parens patriae* duty to safeguard the welfare of the children involved.

The cases at issue highlight egregious errors in judgment and procedure that have led to decisions severely impacting the Appellant's ability to maintain financial stability and fulfill her parental responsibilities. This appeal aims to underscore the lower court's abandonment of its protective role as *parens patriae*, which has resulted in rulings that prioritize procedural expediency over the emotional and psychological well-being of children, contrary to the fundamental principles enshrined in Montana law.

By bringing these issues to the forefront, the Appellant seeks a comprehensive appellate review to rectify the misapplications of law and restore fairness and justice to the proceedings. This is imperative not only to redress the wrongs experienced by

the Appellant but also to uphold the integrity of the judicial system in managing family disputes where the highest stakes involve the rights and welfare of children.

## **II. STATEMENT OF THE CASE**

### ***Procedural History***

Kris Stutzman ("Appellant") and Shawn Stutzman ("Appellee") married in 2008 and have three minor children together. In September 2021, after numerous unsuccessful attempts to resolve marital issues, the Appellant initiated divorce proceedings. Due to persistent safety concerns for herself and her children, the Appellant was referred by Christina Larsen, the parties' mediator, to the Abbie Shelter and an attorney in March 2022. This referral was consistent with CNM, APRN Angela Love's previous recommendation in 2019 for the Appellant and her children to relocate from Florida to a domestic violence shelter (referenced in Case Notes).

The Appellee filed for divorce in the Twentieth Judicial District Court of Lake County, Montana. In April 2022, he attempted to serve the Appellant with divorce papers, although the service was subsequently contested by the Appellant as improper and invalid, she was threatened by the Appellee and his counsel, with

allegations of parental alienation if she did not accept. Throughout the divorce proceedings, the Appellant persistently raised concerns about the Appellee's history of domestic violence and financial misconduct. She maintained that these issues should be carefully considered when determining the parenting plan and the division of marital assets.

The Property Settlement Agreement (PSA) signed by Kris Stutzman ("Appellant") and Shawn Stutzman ("Appellee") on May 1st, 2023, was the result of contentious circumstances. The Appellant alleges that she was coerced into signing the PSA through threats and manipulation by the Appellee. Despite these allegations, the District Court adopted the PSA, which ultimately led to its December 7, 2023 Order.

The Appellant argues that the PSA is unconscionable under Montana law (MCA § 30-2-302) due to the coercive tactics, duress, and manipulation employed by the Appellee during negotiations. She seeks judicial review and possible nullification or modification of the PSA to address the injustices she faced during the negotiation process.

The District Court's decision to adopt the PSA and issue the December 7, 2023 Order is one of the central issues in the Appellant's appeal. She maintains that the court's actions violate Montana law, infringe upon her constitutional rights, and fail to

prioritize the best interests of the children involved. The Appellant seeks relief from the court, including vacating the December 7, 2023 Order, remanding the case for a new trial before an impartial judge, and setting aside the unconscionable PSA.

The Appellant also raises concerns about the conduct of the Guardian ad Litem (GAL) and the presiding judge, alleging that their actions contributed to the unfair and biased outcome of the case. She argues that the cumulative effect of the alleged legal and ethical violations by the District Court, the Appellee, his counsel, and the GAL necessitates appellate intervention to rectify the injustices and ensure compliance with Montana law.

In summary, the Property Settlement Agreement signed under contentious circumstances is a significant aspect of the Appellant's appeal. The Appellant argues that she was coerced into signing the PSA and seeks judicial review to address the alleged unconscionability of the agreement. The District Court's adoption of the PSA and the subsequent December 7, 2023 Order are central issues in the appeal, with the Appellant seeking relief to rectify the perceived injustices and ensure compliance with Montana law.

The Appellant, Kris Stutzman, is appealing the District Court's December 7, 2023 Order, arguing that it violates Montana law, infringes upon her constitutional rights, and fails to prioritize the best interests of her children. The appeal follows a series



of contentious events in the divorce proceedings between Kris and her husband, Shawn Stutzman.

On February 29, 2024, the District Court issued a stay on all proceedings. Despite this stay order, the Appellee, Shawn Stutzman, continued to take actions related to the sale of the marital home. This behavior is alleged to be in violation of the stay order and raises concerns about the Appellee's disregard for court orders.

Additionally, on March 23rd, 2024, the presiding judge, Deborah Kim Christopher, abruptly resigned amid allegations of misconduct in another case (Manywounds v. 20th Judicial Dist. Court, OP 23-0629). This development raises questions about the impartiality and fairness of the judicial process in the Appellant's case..

### **III. STATEMENT OF ISSUES**

This appeal presents several critical legal issues arising from the district court's decisions, which have significant implications for the equitable treatment of Kris Stutzman and the welfare of her children. The issues on appeal are framed to address whether the lower court adhered to the procedural and substantive mandates of Montana law, particularly in light of its *parens patriae* obligations. The questions posed are essential for the appellate court's review to ensure justice and legal propriety in the resolution of this complex divorce case.

**Procedural Due Process Violations:** Did the district court violate Kris Stutzman's procedural due process rights under Montana law by ordering the sale of the marital home without a proper evidentiary hearing, thus denying her a fair opportunity to contest the terms and conditions of the sale that significantly affected her financial stability and parental responsibilities?

**Interpretation and Enforcement of the Marital and Property Settlement Agreement (PSA):** Did the district court err in its interpretation and enforcement of the PSA, particularly regarding the obligations to refinance or assume the mortgage on the marital home?

Specifically, was the court's decision influenced by an incorrect application of the PSA terms, compounded by a failure to adequately consider Shawn Stutzman's alleged interference that obstructed Kris's ability to comply with these terms?

**Failure to Uphold Parens Patriae Obligations:** Did the district court neglect its parens patriae duty to protect the best interests of the children involved in the proceedings?

This issue examines whether the court's decisions—particularly those involving the forced sale of the family home and the subsequent custody arrangements—adequately considered the emotional and psychological well-being of the children, as required under Montana law.

**Applicability of the Emergency Order for the Sale of the Marital Home:** Was the district court's emergency order for the sale of the marital home justified under the circumstances presented at the time of the order?

This issue challenges the appropriateness of the court's use of emergency measures in a context that did not seem to warrant such an expedited process, especially considering the significant adverse impacts on Kris and the children.

**Equitable Distribution of Marital Assets:** Did the district court fail to ensure an equitable distribution of marital assets, contrary to the provisions of Montana family law? This issue seeks to review the court's asset distribution decisions to determine if they were made fairly and in a manner that respects the financial contributions and future needs of both parties, especially in the context of Kris's ongoing financial obligations and parenting responsibilities.

Through the resolution of these issues, this appeal seeks to rectify what Kris Stutzman contends were critical legal errors that not only affected the outcome of her case but also set a concerning precedent for the handling of divorce and custody cases in Montana. The appellate court's decisions on these matters are crucial for upholding legal standards and ensuring that the state's courts are truly serving their role as protectors of both individual rights and family welfare.

#### **IV. SUMMARY OF ARGUMENT**

This appeal is rooted in the dissolution proceedings between Kris Stutzman, the Appellant, and Shawn Stutzman, the Appellee, which have involved extensive disputes over the division of marital assets and custody of their children. Central to these disputes is the interpretation and implementation of the Marital and Property Settlement Agreement (PSA), particularly the conditions stipulated for the refinancing of the marital home's mortgage or its sale.

**Marital Home and Financial Disputes:** The PSA mandated that Kris refinance the mortgage on the marital home to remove Shawn's financial obligations linked to the property. The agreement specified a 90-day window for this refinancing, including provisions for extensions under certain verifiable delays. However, Kris faced substantial difficulties in complying with these terms, which she attributes to Shawn's lack of cooperation and deliberate interference. These obstructions allegedly included Shawn's reluctance to provide necessary documentation and actions that negatively impacted the home's financial status, such as disputing appraisals and obstructing sale efforts.

As the refinancing deadline approached without resolution, Shawn petitioned the court for an emergency sale of the home, claiming that Kris's failure to meet the PSA conditions was jeopardizing his financial situation. The court, in an attempt to

resolve the impasse and under the guise of protecting both parties' fiscal interests, issued an order for the emergency sale of the home.

**Custody and Children's Welfare:** Alongside the financial issues, the custody of the children emerged as a major point of contention. Kris maintained primary custody throughout the proceedings and argued that the instability from the financial disputes and the court-ordered sale of the home significantly affected the children's emotional and psychological well-being. She contended that the court's decisions inadequately considered the children's best interests, in violation of the *parens patriae* obligations upheld by Montana law.

**Court Proceedings and Orders:** The divorce proceedings were marked by several interim orders leading up to the critical order for the emergency sale of the marital home. Kris's subsequent motions for reconsideration and requests for a stay of the order were denied, setting the stage for the current appeal. She challenges the trial court's failure to conduct an adequate evidentiary hearing before issuing the sale order and claims the court ignored substantial evidence she presented regarding Shawn's interference and the negative impact on the children.

**Current Appeal:** In this appeal, Kris seeks a review of the lower court's decisions, arguing they were made without proper procedural safeguards and disregarded established principles of family law. Specifically, she requests that the appellate

court reverse the emergency sale order and remand the case for new proceedings that adhere strictly to legal precedents, particularly those emphasizing the protection of children's welfare in family law disputes. This appeal emphasizes the need for a fair resolution to the financial issues and a custody arrangement that truly considers the best interests of the children, consistent with Montana's legal framework and the court's duty as *parens patriae*.

## **V. STANDARD OF REVIEW**

The appellate review of the District Court's rulings in this case will be governed by several legal standards, crucial for ensuring that the appellate court's oversight is both rigorous and fair.

**Abuse of Discretion:** This standard is primarily applied to decisions concerning parenting plans, property distribution, and the assessment of the Property Settlement Agreement's unconscionability. The pivotal question here is whether the District Court acted arbitrarily, without conscientious judgment, or exceeded reasonable bounds, thereby causing significant injustice. This standard will scrutinize the discretionary decisions referenced in *in re Marriage of Guffin*, 2010 MT 100, and *Albrecht v. Albrecht*, 2002 MT 227.

**Clearly Erroneous:** For findings of fact by the District Court, the clearly erroneous standard will be employed. A finding is deemed clearly erroneous if it lacks



substantial evidence support, the court misapprehends the effect of the evidence, or if after reviewing the record, the appellate court is firmly convinced a mistake has been made, as illustrated in *In re Marriage of Crowley*, 2014 MT 42, and *In re G.M.N.*, 2019 MT 18.

**De Novo:** Legal questions, including the interpretation of statutory and constitutional provisions, are reviewed de novo. This standard ensures that the appellate court independently evaluates the lower court's legal conclusions without deference, as seen in cases such as *In re C.B.*, 2019 MT 294, and *In re Marriage of Funk*, 2012 MT 14.

**Plain Error:** If issues were not preserved for appeal through proper objection, the plain error doctrine might be invoked. This review is discretionary and is applied when the alleged error involves a fundamental right and the failure to address it might result in a manifest injustice, fundamentally unfair proceedings, or compromise the judicial process integrity. Key references for this doctrine include *In re J.S.W.*, 2013 MT 34, and *In re D.K.D.*, 2011 MT 74.

## **VI. SUMMARY OF ARGUMENT**

The December 7 Order issued by the District Court epitomizes a systemic failure of justice, marred by egregious legal and ethical violations that undermine the principles of Montana family law. This appeal looks to rectify the profound

injustices endured by Kris Stutzman (Appellant) due to the actions of Shawn Stutzman (Appellee), the opposing counsel, and the now-resigned judge, all of which have combined to deprive the Appellant of fair and equitable treatment under the law.

**Violation of Due Process Rights:** The Appellant's due process rights, as protected under both the Montana and U.S. Constitutions, were flagrantly violated when the court issued an order that stripped her of her property and parental rights without adequate notice or a hearing. This denial of fundamental rights occurred without any justifiable emergency circumstances that might have otherwise suspended standard procedural requirements. The Appellant was thusly denied her constitutional right to be heard, a cornerstone of procedural justice, rendering the ex parte order not only unjust but also invalid.

**Endorsement of an Unconscionable PSA Under Duress:** The court's enforcement of the PSA, which the Appellant was coerced into signing under conditions of duress and without full disclosure, stands as a stark example of unconscionability in contract enforcement. This legal doctrine protects against agreements that are excessively unfair and one-sided, particularly when signed under pressure. By ratifying this agreement, the court legitimized the Appellee's manipulative tactics

and disproportionately stripped the Appellant of her marital assets, compounding her vulnerability and financial instability.

**Compromised Child Welfare and Guardian ad Litem Oversight:** The District Court egregiously failed in its parens patriae duty to protect the children's welfare, choosing instead to prioritize the Appellee's fiscal interests. This failure was exacerbated by the Guardian ad Litem (GAL), whose role to impartially safeguard the children's interests was compromised by a lack of thorough investigation and clear bias towards the Appellee's narrative. The GAL's failure to adequately stand for the children's best interests facilitated the court's decision to unjustly limit the Appellant's custodial rights, placing the children at risk of enduring emotional and psychological harm.

**Misapplication of Equitable Distribution Statutes and Judicial Misconduct:** The misapplication of Montana's equitable distribution statute (MCA 40-4-202) by granting the Appellee a disproportionate share of the marital assets was significantly influenced by judicial misconduct. The resignation of Judge Deborah Kim Christopher amidst allegations of misconduct casts a long shadow of doubt over her rulings, including those affecting this case. This misconduct suggests a compromised judicial process that influenced the disproportionate asset distribution and failed to provide an impartial tribunal.

**Aggravated Circumstances by Opposing Counsel and GAL:** The already grave situation was further aggravated by the actions of the opposing counsel and the GAL, both of whom failed to conduct themselves with the professionalism and impartiality required by their roles. Their actions not only supported the Appellee's abusive litigation tactics but also actively undermined the legal process, contributing to a biased and unfair trial environment.

In light of these compounded legal failures, this Court must vacate the December 7 Order and remand the case for a new trial. The new proceedings must be untainted by the due process violations, judicial bias, and unconscionable agreements that have characterized the initial trial. This Court should direct strict adherence to procedural justice, critically evaluate the PSA for unconscionability, ensure the children's best interests are paramount, and demand fair asset distribution according to Montana law.

Further, this Court should consider sanctions against the Appellee's counsel and the GAL for their roles in perpetuating these injustices. Only through such comprehensive measures can the Appellant and her children hope to receive a just and equitable resolution, and only thus can Montana's legal system restore public confidence in its commitment to due process and fair treatment in family law proceedings.

**Absence of Emergency Justification:** The district court might bypass typical due process requirements under certain emergency circumstances, as acknowledged in legal precedents such as *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975). However, no such emergency was present or articulated by the court at the time of issuing the December 7 Order. The Appellant's situation did not pose an immediate threat that could justify the suspension of standard procedural protections. The lack of an exigent circumstance makes the court's decision to continue without a hearing not only inappropriate but also unconstitutional.

**Consequences of Procedural Shortcomings:** The procedural shortcomings in this case are not merely technical errors, but substantive injustices that critically affected the Appellant's life and parental rights. The U.S. Supreme Court has emphasized the importance of procedural justice in protecting the significant interests of individuals against unjustified governmental interference (*Lassiter v. Department of Social Services*, 452 U.S. 18 (1981)). By neglecting to provide a fundamental due process, the District Court has rendered the December 7 Order void ab initio (from the beginning).

**Remedial Action Required:** To rectify this profound violation of due process, this Court should vacate the December 7 Order and remand the case for proceedings consistent with constitutional norms. A new hearing must be conducted where the

Appellant is given proper notice and a full opportunity to be heard, thereby restoring her rights to procedural fairness, and ensuring that any decisions are made on a robust and fair examination of all relevant matters.

## **VII. ARGUMENT**

### **I. Violation of the Appellant's Due Process Rights**

The District Court's ex parte order removing the Appellant, Kris Stutzman, from her marital home without proper notice or hearing constituted a blatant violation of her due process rights under both the Montana Constitution (Art. II, § 17) and the U.S. Constitution (Amendments V and XIV).

The ex parte order severely compromised the Appellant's property and liberty, destabilizing the children's lives without providing her a meaningful opportunity to be heard, contradicting the due process requirements established in *Dorwart v. Caraway*, 2002 MT 240. During the January 4 hearing, the Appellant stated, "I was forced to file the appeal on my own" [2, p.4, lines 12-14], underscoring the lack of proper legal representation and her challenges in contesting the court's decisions.

No compelling state interest or emergency justified the ex parte order, misaligning with the criteria set in *Connecticut v. Doe*, 501 U.S. 1 (1991), which limits such orders to instances of immediate, significant risk. This misuse of judicial discretion



disadvantaged the Appellant and prioritized the Appellee's interests over the children's welfare.

The presiding judge's resignation amid misconduct allegations, as detailed in *Manywounds v. 20th Judicial Dist. Court*, OP 23-0629, casts further doubt on the impartiality of the proceedings and suggests potential bias against the Appellant. During the hearing, the judge acknowledged, "I don't know how this case could go up to the Montana Supreme Court. I -- I'm not exactly sure where you're headed." [2, p.10, lines 22-25] This lack of clarity on proper appellate procedure from the bench is remarkable, noting her tenure in Lake County District Court.

To rectify these due process violations, the ex parte order must be vacated, and the case remanded for a new hearing with an unbiased judge. Ensuring a fair process is crucial, especially when fundamental parental and property rights are at stake. The appellate court's decision will set a key precedent for safeguarding constitutional rights in family law cases.

## **II. Unbalanced Financial Obligations and Asset Distribution Void Ab Initio**

The PSA details the division of both real and personal property, with particular conditions that place Kris Stutzman in a financially precarious position:

1. **Real Property Obligations:** Kris must either refinance the mortgage or assume all debts on the marital home within 90 days of the court's decree (Section 3 of the PSA). This stipulation, paired with the requirement to pay Shawn \$55,000 in conjunction with these financial adjustments, creates an unbalanced financial burden. If refinancing or assumption of the mortgage is not feasible within the period, the home must be sold, yet Kris retains the responsibility for all associated costs until the sale is completed. Feasibility is not based on factoring in judicial disregard and the contemptible and fraudulent actions of the Appellee and his counsel. In signing, the Appellate negotiated what was due to her under the principles of fair and equitable in order to end the destabilization; time spent on both defending her property rights and combatting attempted logins, and sales proceeding and a forced eviction of both her and children with a writ. The targeted abuse enabled by the lower court has been a constellation of damages to both the appellant and the children. Considering the course of action in totality, the fiduciary duties of the Appellee's counsel failed all parties, but her own, as financial harm was the cited urgent and dire circumstance Shawn is now faces in his Motion to Dismiss the Appeal in District Court. The Appellant posits any arguments regarding the Appellant's harm to the Appellee's finances by the Appellee be disregarded as a subjective complaint unsubstantiated by any founded logic

or legal grounds in consideration of the added distress and destabilization faced when one parent depletes all asset and resources with Counsel's legal strategy; the duty the children has been failed grossly for unfair gain.

2. **Risk of Financial Duress:** The requirement for Kris to manage all mortgage payments, taxes, utilities, and maintenance (Section 3 of the PSA) without adequate time or financial flexibility significantly disadvantages her. This is particularly onerous given that the agreement does not proportionately distribute other assets that might offset these liabilities. Additionally, the penalty for non-compliance (forced sale of the home) and the complex process for setting the sale price further complicated her ability to meet these obligations without suffering financial harm. Having not responded to the proposed parenting plan, the Appellee and his counsel have yet to establish and remit child support as mandated in the temporary parenting plan submitted; compounded by the lack of fair and due spousal support and the Appellee's focus on finalizing the dissolution of all the Appellant's assets and resources before addressing the paramount item, the parenting plan and ensuring the stabilization that is required for children to transition in times such as a divorce. While the Appellee felt clear to move on, this has continued to disturb all sense of stability and security for the Appellant and the children.

3. **Personal Property and Debt Division:** Although personal property and debts are to be divided as per Exhibit “A” (Sections 2 and 4 of the PSA), the explicit terms favoring Shawn in the cash payout and the prioritization of his retrieving certain assets (e.g., the R.V.) without a corresponding benefit to Kris create an imbalance. These conditions suggest that the division of assets and debts was not equitably managed.

The conditions outlined in the PSA, which place disproportionate financial and operational burdens on Kris, call into question the fairness and legality of the agreement:

1. **Unconscionability Doctrine:** The doctrine of unconscionability might apply here, where one party is significantly disadvantaged by an agreement that imposes unreasonable burdens or conditions that one party cannot realistically meet. Montana law (Mont. Code Ann. § 40-2-302) and cases such as *Summers v. Crestview Apartments*, 2010 MT 164, highlight the need for contractual fairness and the avoidance of one-sided agreements that could be deemed oppressive or unfair.
2. **Void Ab Initio Due to Procedural Failures:** Given the substantive issues with the PSA compounded by the procedural failures in ensuring Kris had a fair opportunity to contest or negotiate the terms under equitable

circumstances, the agreement—and subsequently the court order enforcing it—could be argued to be void ab initio. This legal principle asserts that if an order or agreement is founded on a significant legal flaw, such as a violation of due process, it is void from the outset.

3. **Legal Precedents:** Cases like *Mullane v. Central Hanover Bank & Trust Co.* and *Connecticut v. Doeher* emphasize the necessity of fair procedural practices, particularly where significant rights and obligations are concerned. The absence of such fairness in the process that led to the enforcement of the PSA supports the argument for the agreement's invalidation.

To address these issues, the court should reconsider the terms of the PSA under the principles of equitable distribution and procedural fairness. A new hearing should be mandated where both parties can renegotiate the terms with adequate legal representation and without the undue pressure or imbalance that characterized the original agreement. This would ensure that the settlement reflects a fair and just division of assets and responsibilities, establish maintenance and child support aligning with Montana's legal standards for divorce settlements.

### **III. Disregard for the Best Interests of the Children**

The District Court neglected its parens patriae duty to prioritize the children's welfare in its custody and asset distribution decisions, contrary to the "best interest" standard mandated by Mont. Code Ann. § 40-4-212.

*The Guardian ad Litem's recommendations prioritized the Appellee's interests over the children's safety and well-being, despite unmistakable evidence of abuse.*

The Guardian ad Litem (GAL) in this case, Marybeth Sampsel, made recommendations that prioritized the Appellee's interests over the safety concerns raised by the Appellant,

Kris Stutzman. Despite the Appellant's allegations of domestic violence and the pending temporary order of protection, the GAL recommended lifting restrictions on the Appellee's parenting time and access to the children's school and events (Emergency Motion, Exhibit A, GAL Affidavit).

These recommendations demonstrate a concerning disregard for the potential risks to the children's safety and well-being, given the Appellee's documented history of abusive behavior.



By advocating for the removal of protective measures without adequately investigating or addressing the Appellant's concerns, the GAL failed to fulfill her primary duty of safeguarding the children's best interests.

Montana law is unequivocal in its mandate that the best interests of the child are the paramount consideration in any parenting plan decision. Mont. Code Ann. § 40-4-212(1). The GAL's failure to give due weight to the Appellee's history of abuse and the potential impact on the children's welfare contravenes this foundational legal principle and her statutory obligations under Mont. Code Ann. § 40-4-205.

*The Appellee's emergency motion and supporting documents prioritized his own interests over the children's welfare, demonstrating a pattern of self-serving behavior.*

The Appellee's emergency motion to change the temporary order of protection focused primarily on his role as a hockey coach and the impact of the protection order on his employment, rather than the best interests of the children (Emergency Motion, p. 2). This framing indicates that the Appellee's priorities lie in protecting his own status and finances, not the safety and emotional well-being of his children in light of the abuse allegations.

The GAL's lack of input regarding the displacement of the Appellant and the children she is duty-bound to protect, demonstrates either an explicit bias towards

the Appellee or a concerning level of incompetence. The potential harm to the children resulting from this displacement is immediately evident and should have been a primary consideration for the GAL. By failing to advocate for the children's stability and emotional well-being in the face of this sudden upheaval, the GAL has neglected her fundamental responsibility to prioritize their best interests.

This troubling pattern of conduct by the GAL, which consistently favors the Appellee's preferences over the children's welfare, raises significant questions about her ability to fulfill her role as an impartial advocate for the children. The GAL's seeming disregard for the potential trauma and disruption caused by abruptly removing the children from their primary caregiver and home environment, without sufficient justification or emergency, is a glaring red flag that cannot be ignored.

The court's reliance on the GAL's recommendations, despite these clear indications of bias or incompetence, further compounds the injustice suffered by the Appellant and her children. By failing to critically examine the GAL's actions and motivations, the court has effectively sanctioned a course of action that prioritizes the Appellee's interests over the children's well-being, in direct contravention of Montana's statutory mandates and the principles of fairness and equity.

This Court must intervene to rectify this egregious oversight and ensure that the children's best interests are properly safeguarded. The GAL's conduct must be

thoroughly investigated, and measures should be taken to address any bias or incompetence that has undermined her ability to advocate for the children's welfare. Moreover, the court's reliance on the GAL's tainted recommendations must be reevaluated, and any decisions that have placed the children's well-being at risk must be revisited.

The Appellee's concerted efforts to undermine the protections established by the temporary order of protection, aimed at safeguarding the Appellant and their children, exemplify a troubling pattern of behavior that places his own interests above the well-being of his family. This conduct starkly contravenes the "best interest of the child" standard mandated by Mont. Code Ann. § 40-4-212 and mirrors the Appellee's documented history of abusive and controlling actions, as detailed in the court record (Transcript p. 15, lines 16-25; p. 32, lines 2-4). This persistent undermining not only jeopardizes the safety and stability of the children but also highlights the Appellee's ongoing strategy to harass and destabilize any sense of protection for the Appellant, further entrenching the cycle of abuse.

Legally, this behavior represents a direct violation of the statutory requirement that all decisions concerning parenting should foremost consider the children's safety and well-being. Under Mont. Code Ann. § 40-4-212, courts are required to assess several

factors that contribute to the best interests of the child, including the need for a stable environment and the mental and physical health of the parents.

The statute explicitly provides for protective measures when a parent's behavior potentially compromises the child's safety, per Mont. Code Ann. §40-4-219(8)(b), which stipulates that courts must limit a parent's contact with the child if there is evidence of physical abuse or threats thereof against the child or other parent.

Furthermore, the Montana Supreme Court has consistently upheld the principle that the safety of the child in family law cases is paramount. In the precedent-setting case of *In re Marriage of Guffin*, the Court overturned a lower court's parenting plan that failed to consider the full extent of one parent's abusive behavior, reiterating that such oversight could not stand when it conflicted with the statutory mandate to protect children from harm (2010 MT 100, ¶¶ 20-21, 356 Mont. 218, 232 P.3d 888).

In light of these principles, the Appellee's actions not only undermine statutory guidelines but also pose a significant threat to the psychological and physical welfare of the children involved.

The established pattern of attempting to dismantle protective measures not only raises questions about the Appellee's fitness as a parent but also necessitates judicial intervention to realign the case's outcomes with the foundational legal standards designed to safeguard vulnerable family members. This includes revisiting and

reinforcing the conditions of the order of protection to ensure they serve their intended purpose without being compromised by the Appellee's manipulative tactics.

***The Appellee's counsel facilitated the prioritization of the Appellee's interests over the children's welfare, contributing to the pattern of disregard for their best interests and potentially violating ethical duties under the Montana Rules of Professional Conduct.***

The Appellee's counsel, Casey Emerson, played a significant role in advancing the Appellee's self-serving agenda, to the detriment of the children's best interests. By filing the emergency motion and supporting documents that emphasized the Appellee's personal and professional concerns over the documented safety issues, Emerson effectively facilitated the Appellee's efforts to undermine the court-ordered protections (Emergency Motion to Remove TRO).

Furthermore, Emerson's failure to consult with the GAL before filing the ex parte motion to forcibly evict the Appellant and the children, as required by the court's order appointing the GAL, in an effort to transparently make the children a priority over litigious matters. This conduct may also implicate ethical concerns under the

Montana Rules of Professional Conduct, particularly Rule 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and Rule 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Emerson's actions, when viewed in the context of the Appellee's history of abusive and controlling behavior, suggest a troubling pattern of enabling and reinforcing the Appellee's misconduct. By prioritizing the Appellee's interests over the children's safety and well-being, Emerson has contributed to the perpetuation of harm and the erosion of the legal system's ability to protect vulnerable children in family law proceedings.

*The misalignment between the motions, recommendations, and the best interests of the children underscores the need for immediate appellate intervention to ensure the welfare of the children is properly safeguarded, consistent with Montana's statutory framework and case law.*

The collective actions of the GAL, the Appellee, and his counsel demonstrate a disturbing pattern of disregard for the best interests of the children, as mandated by Montana law. The prioritization of the Appellee's personal and professional interests over the documented safety concerns and the children's emotional well-being raises grave doubts about the ability of the lower court to properly safeguard the welfare of the children in these proceedings.



The misalignment between the motions, recommendations, and the best interests of the children is not merely a procedural irregularity but a fundamental failure of the legal system to uphold its most sacred duty: the protection of vulnerable children caught in the midst of parental conflict and abuse. This systemic breakdown demands immediate intervention by this Court to ensure that the children's welfare is given the paramount consideration it deserves, consistent with Montana's statutory framework under Title 40 and the Montana Supreme Court's precedents prioritizing child safety in cases involving domestic violence (see, e.g., *In re Marriage of Guffin*, 2010 MT 100; *Hendershott v. Westphal*, 2011 MT 73).

The Guardian ad Litem's failure to prioritize the children's best interests, coupled with the Appellee's self-serving motions and his counsel's enabling conduct, demonstrates a disturbing pattern of disregard for the welfare of the children. The misalignment between these actions and the best interests of the children, as mandated by Montana law, underscores the urgent need for appellate intervention.

The Appellant's counsel explicitly highlighted the serious risks posed to both Ms. Stutzman and the children due to ongoing abusive behavior by Mr. Stutzman. This concern, as articulated in the counsel's statement, underscores a profound conflict that impeded her ability to continue representation: "Ms. Stutzman has significant issues with the way I have attempted to move forward to protect her and the children

from further abuse from Mr. Stutzman, and I believe that rises to the level of a conflict that I cannot continue to represent her." [Transcript, 2, p.5, lines 16-20]. This acknowledgment of a conflict suggests a recognition of the severity of the situation and the limitations faced by counsel in effectively advocating under such strained circumstances.

Despite these severe allegations and the counsel's withdrawal based on ethical considerations, the court's response—or lack thereof—reveals a troubling oversight. The court's apparent indifference to these claims, especially as they relate to the children's safety, suggests a dismissive attitude towards the fundamental principle that the best interests of the children should be a primary concern in any family law proceeding. The minimal attention given to the children's wellbeing in the proceedings, as noted, seems to implicitly endorse the existing procedural and substantive imbalances that favored Mr. Stutzman, potentially exacerbating the risk to both the appellant and her children.

This oversight not only calls into question the fairness of the proceedings but also raises significant concerns about the court's adherence to legal standards that prioritize the safety and emotional welfare of children in custody disputes. The court's failure to engage meaningfully with these issues necessitates a stringent appellate review to ensure that the children's best interests are duly considered and

safeguarded in any further proceedings. The appellate court must rectify this neglect by mandating a thorough reassessment of both the procedural and substantive decisions made, ensuring that all future determinations align with the statutory and ethical requirements designed to protect vulnerable family members, particularly children, in such disputes.

The Appellee's documented history of abuse was a crucial factor that should have guided custody arrangements under § 40-4-212(1)(b). By overlooking this history, the court placed the children at risk of continued exposure to an abusive environment, as warned against in *In re Marriage of Guffin*, 2010 MT 100.

Safeguarding children from abuse should be the top priority in custody decisions, superseding other considerations, per *In re Marriage of Miller*, 2008 MT 419. On remand, the parenting plan must be reassessed with the children's health and safety as the primary focus, adhering to Montana's statutory protections against family violence.

#### **IV. Improper Asset Distribution**

The court misapplied Montana's equitable distribution statute (MCA 40-4-202) by granting the Appellee a disproportionate share of the marital assets under unreasonable terms with the clear intent of contravention of the spirit and letter of the

law guiding distribution. This inequitable ruling was influenced by the presiding judge's pattern of misconduct and bias.

The Appellant's efforts to maintain the family home and provide stability for the children were not properly weighed in the asset division. As noted during the hearing, "I was attempting to have counsel before the court." [2, p.4, lines 13-14] Without adequate representation, her contributions and needs were overshadowed.

The Appellee's financial misconduct and dissipation of marital assets should have been considered in the distribution per *In re Marriage of Funk*, 2012 MT 14. By disregarding this economic fault, the court unjustly enriched the Appellee and left the Appellant without sufficient resources to care for the children.

On remand, it is imperative that the court conducts a thorough review and equitable redistribution of the marital assets, taking into consideration the respective contributions, needs, and any misconduct by the parties during the marriage. The division of assets must aim for true justice, ensuring that the Appellee's past misdeeds do not unjustly benefit him at the expense of the Appellant.

## **V. Judicial Bias and Misconduct**

The presiding judge's impartiality and fitness to oversee this case were severely compromised by her draconian conduct and subsequent resignation, as evidenced in

Manywounds v. 20th Judicial Dist. Court, OP 23-0629. Her actions cast doubt on the fairness of all rulings made in this matter particularly in the glaring void of competent application of law.

During the January 4 hearing, the judge demonstrated a concerning lack of procedural knowledge and clarity, stating, "I don't know how this case could go up -- I'm not exactly sure where you're headed." [Transcript p. 2, p.10, lines 22-25] This uncertainty suggests a failure to properly guide the proceedings.

The Montana Code of Judicial Conduct demands that judges maintain exacting standards of integrity, impartiality, and competence to ensure public confidence in the judiciary. By engaging in alleged misconduct and rendering questionable decisions, the presiding judge violated these fundamental tenets.

Her recent resignation during the pendency of this case raises further questions about the discretion behind her rulings and potential evasion of accountability. As the Montana Supreme Court affirmed in *State v. Berdahl*, 2017 MT 26, impartiality is a core component of due process.

To restore integrity to these proceedings, all orders issued by the compromised judge must be vacated. On remand, a new judge must be assigned to provide a fair and unbiased forum for resolving the multifaceted issues in this case, free from the taint of impropriety and exploitative legal abuse. Moreover, the history of financial and

litigation abuses driven solely by the Appellee's self-interest should be critically evaluated as it significantly reflects on his suitability for custodial co-parenting. This reassessment is crucial to ensure that the distribution of assets and custodial responsibilities are aligned with the principles of equity and the best interests of the children involved.

## **VI. CONCLUSION**

The appeal brought forth underscores a series of significant legal and ethical missteps within the family law system, emphasizing the critical need for a comprehensive review and corrective measures to align with Montana's legal standards and the principles of fairness and justice.

The District Court's handling of this case, particularly its implementation of the Marital and Property Settlement Agreement and the decisions surrounding custody and asset distribution, reflects a disregard for both procedural and substantive legal standards. The consequences of these decisions have deeply affected the Appellant's financial stability and parental rights, raising substantial questions about the fairness of the judicial process and the impartiality of the decisions rendered. The District Court's handling of this case, marred by judicial misconduct, the Appellee and his counsel's unclean hands, and a shocking disregard for the welfare of the children, represents a grievous injustice that cries out for appellate intervention. The taint of

impropriety and unfairness that permeates these proceedings undermines public confidence in the judiciary and perpetuates the cycle of abuse and trauma inflicted upon the Appellant and her children. The doctrine of *parens patriae*, deeply rooted in Montana law, obligates the court to act as a guardian of the interests of children and other vulnerable individuals. Mont. Code Ann. §41-3-101(2). In this case, the District Court's failure to adequately consider and address the Appellee's extensive history of domestic violence and its impact on the children constitutes a clear breach of its *parens patriae* duties. By allowing the Appellee to maintain substantial unsupervised parenting time and decision-making authority, despite the compelling evidence of his abusive behavior, the court has placed the children at ongoing risk of physical, emotional, and psychological harm.

Moreover, the Appellee's conduct throughout these proceedings, characterized by a pattern of contemptuous behavior, violations of court orders, and the manipulation of the legal process to exhaust the Appellant's resources and undermine her rights, epitomizes the doctrine of unclean hands. The court's failure to consider and address this misconduct has resulted in an inequitable outcome that effectively rewards the Appellee's wrongdoing, contravening the fundamental principles of fairness and justice.

The Guardian ad Litem's (GAL) investigation and recommendations, which failed to fully account for the dynamics of domestic violence and the importance of upholding protective measures, further compound the injustices suffered by the Appellant and her children. The GAL's apparent bias in favor of the Appellee and lack of due diligence in exploring the impact of his abusive behavior on the children render her recommendations suspect and unreliable, raising serious concerns about her ability to fulfill her role as an impartial advocate for the children's best interests.

The cumulative effect of these legal and ethical violations, coupled with the profound harm inflicted on the Appellant and her children, demands a comprehensive review of all actors who participated in or enabled the abuse. This includes not only the Appellee himself but also his legal counsel, the GAL, and the presiding judge, whose actions and omissions contributed to the injustices that occurred.

The principle of *res ipsa loquitur*, though typically applied in tort law, is instructive in this context. The facts of this case speak for themselves: the numerous irregularities, biased decisions, and disregard for the children's welfare point to a systemic failure that can only be explained by the negligence or misconduct of those entrusted with the administration of justice. The appellate court must not turn a blind



eye to this compelling evidence of wrongdoing and must take decisive action to rectify the harm done.

In light of these grave circumstances, this Court must vacate the December 7 Order and all other orders tainted by the alleged judicial misconduct and the Appellee's unclean hands enabled by Counsel. The case should be remanded for a new trial before an impartial judge who can review the matters afresh, with a clear directive to prioritize the best interests of the children and to properly consider the Appellee's history of misconduct. Additionally, the court should consider sanctions against the Appellee and his counsel for their role in perpetuating the inequitable conduct and manipulation of the legal process.

Furthermore, this Court should take steps to ensure that the children's welfare is the paramount consideration in all future proceedings. The appointment of a new, impartial GAL, tasked with conducting a thorough investigation and providing unbiased recommendations, is essential to protecting the children's best interests. The Court should also consider ordering appropriate therapeutic interventions and support services to help the children heal from the trauma they have endured and to mitigate the harmful effects of the Appellee's abusive conduct.

By taking these decisive actions, this Court can send a powerful message that the misuse of the legal system to perpetuate abuse, strip fundamental rights, or

undermine the welfare of children will not be tolerated in Montana. A victory for the Appellant will reaffirm the state's unwavering commitment to due process, equity, and the inviolability of parental rights in family law proceedings, while also establishing a groundbreaking precedent that enshrines a mother's sacred right to defend her children against all manner of harm, including the insidious abuse perpetrated through legal channels. The stakes in this appeal could not be higher, as the outcome will have profound implications not only for the Appellant and her children but for countless other families navigating the complexities of divorce and child custody in the face of domestic abuse. By vacating the tainted orders, remanding for a full rehearing, and holding all parties accountable for their roles in perpetuating this injustice, this Court can fulfill its solemn duty to protect the vulnerable, uphold the integrity of the legal system, and ensure that Montana's family courts become a beacon of justice and a bulwark against abuse.

The confluence of *parens patriae* failures, unclean hands, *res ipsa loquitur* implications, and the ethical misconduct of various actors in this case demands immediate correction. This Court must rise to the challenge and take bold, decisive action to restore fairness, integrity, and public trust in the handling of this case and the administration of justice in Montana. The Appellant and her children deserve nothing less than a fair and impartial hearing, untainted by the specter of impropriety and conducted with the highest standards of integrity and commitment to justice.

The time for action is now, and the eyes of Montana are upon this Court, eagerly awaiting a resounding affirmation of the principles of equity, due process, and the unwavering protection of the most vulnerable among us

Respectfully submitted,

*Kris Stutzman*

Kris Stutzman, Appellant, Pro Se

April 13, 2024

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.

*Kris Stutzman*  
\_\_\_\_\_  
[Signature]



**CERTIFICATE OF SERVICE**

I certify that I filed this

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☒ Other Appellant's Brief

*[Name of document]*

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

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DATED this 13th day of April, 2024.

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