

## IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 24-0063

\* \* \* \* \*

HIRSA HIRAD,

*Respondent/Appellant,*

v.

JOSEPH GHAHARI,

*Petitioner/Appellee.*

\* \* \* \* \*

***APPELLANT'S OPENING BRIEF***

\* \* \* \* \*

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## **I. Statement of Issues.**

1. Whether the district court erred in denying Hirsas Motion to Enforce the parties' Marital Property Settlement Agreement (MPSA) when Joe did not pay the entire amount due as agreed in the MPSA.
2. Whether the district court erred in refusing to enter judgment against Joe for the unpaid sums due under the MPSA.
3. Whether the district court erred when it did not require Joe to pay pre-judgment and post-judgment interest on the unpaid sum due under the MPSA.
4. Whether the district court erred when it did not require Joe to pay Hirsas professional costs and fees related to bringing her motion to enforce the MPSA.

## **II. Statement of the Case.**

This matter regards enforcement of an MPSA. Respondent/Appellant, Hirsas Hirad, ("Hirsa") filed her Motion to Enforce the parties' MPSA in District Court on October 17, 2023 requesting that the unpaid funds due under the MPSA be reduced to a judgment to include pre-judgment and post-judgment interest as well as attorney fees in bringing her motion. Doc 150. Petitioner/Respondent Joseph Ghahari ("Joe") filed his response on December 13, 2023. Doc 157. Hirsa filed her reply brief on January 2, 2024. Doc 160. The District Court denied her motion issuing its ruling on January 3, 2024. Order on Motion to Enforce MPSA dated 1/3/2024 (Doc 161). Hirsa appeals.

### **III. Statement of Facts.**

The parties entered into a Marital Property Settlement Agreement after engaging in mediation to resolve their marital estate on March 25, 2023. Stipulated Marital Property Settlement Agreement, Waiver of Hearing and Consent to Decree, Doc 144. The district court adopted the MPSA and ordered the parties to comply with its provisions. Doc 149, Findings of Fact, Conclusions of Law and Decree of Dissolution dated April 5, 2023, pg. 4, ¶ 12.

The relevant portion of the MPSA states:

On or before July 24, 2023, Joe shall pay to Hirsra the sum of \$456,000. Such funds shall be payable to "The Trust Account of VanEngen Law Office, PC for the benefit of Hirsra Hiram" and delivered to VanEngen Law Office, PC. In the alternative, Hirsra may elect to have Joe pay off the remainder of the mortgage on the Kingwood Drive property and remit the remainder made payable to her via a check for the remainder to VanEngen Law in the manner described above. Joe shall supply to Hirsra a payoff statement for the mortgage and a signed Quit Claim Deed, and if applicable proof that he has paid off that mortgage, at the time he provides Hirsra with the funds described herein... Joe shall make timely monthly mortgage payments on the home until such time as he a) remits the entire sum, or b) remit payment for the payoff of the mortgage....

Doc. 144, pp 4-5.

Joe did not provide the payment due on July 24, 2023. Rather, on August 4, 2023 he paid the mortgage company \$219,049.15 which included the

August monthly mortgage payment. Supp. Appendix Exh. 3. He also made a partial payment to Hirsá in the amount of \$232,040.54 on August 18, 2023, and largely ignored Hirsá's repeated requests from June 1 through October 18, 2023, to receive the mortgage documentation required under the MPSA including proof of dates and amounts of payments for the April-August mortgage payments to show they were paid timely and proof of the balance he paid off on the mortgage. Supp. Appendix Exh. 2-3. At the time of filing her motion to enforce on October 17, Hirsá believed that Joe still owed additional funds, but was unable to determine the exact amount due without the information required in the MPSA. Therefore, she asserted that Judgement should be entered in the amount of \$223,959.46 – the difference between the \$456,000 due under the MPSA and the amount Joe actually paid Hirsá – so she could force Joe's compliance with the Court's Order that the parties comply with the terms of the MPSA, and requested interest and attorney fees in bringing her motion to enforce the MPSA. At all times, Hirsá anticipated that Joe would receive appropriate credits for his payments to her and for the mortgage payoff, less any untimely monthly mortgage payments toward any judgment.

On October 18, 2023, four months after they were due, Joe finally



provided Hirsu with the documentation necessary to determine the amount paid and due under the MPSA through his exhibits submission to the Montana Department of Health and Human Services Office of Administrative Hearings for the parties' child support determination in Case No. 2022-07297, Dept. Ref. Number 273777. Supp. Appendix 4. By this time, Hirsu had already filed her Motion to Enforce the MPSA requesting that the court enter judgment against Joe so that she could enforce his payment and for interest and her attorney fees.

This documentation showed that on August 4, 2023 Joe paid off the mortgage with a payment of \$219,049.15. Supp. Appendix 3. This payment included the August mortgage payment that was not paid timely as it was due on August 1, 2024, in the amount of \$2,896.66. Supp. Appendix Exh. 3-6.

On August 18, Joe paid Hirsu \$232,040.54, alleging that he "arrived at that amount by subtracting the loan payoff amount of \$223,959.46 from the equalization payment of \$456,000." Response to Respondent's Motions to Enforce MPSA, for Entry of Judgment, for Interest and Attorney Fees, Doc 157, pp 9, lns 4-5; Supp. Appendix 2. Joe also argued that he had been paying the mortgage on time, in full every month until he was able to pay off the mortgage. Response brief p 9, lns 6-7. Hirsu disagrees that the last monthly payment was made timely. Supp. Appendix 3-6.

Joe contends that he has paid all sums due and has not disputed whether interest should be awarded and left it to the court's discretion "whether interest should be imposed for the intervening period between July 24-August 1 and, if so, how much." Response to Respondent's Motions to Enforce MPSA, for Entry of Judgment, for Interest and Attorney Fees, Doc 157, pp 9, lns 4-5; p 18 lns 9,18-20.

After receiving Joe's documentation of the dates and amounts paid toward the mortgage on the marital home, Hirsu contends that Joe still owes her \$7,781.97 due under the MPSA, plus \$1,580.37 interest for 7/24/23-8/4/23, plus \$1,057.85 interest for 8/4/23-8/18/23, - for a total of \$10,420.19, plus \$2.45/day in pre and post judgment interest starting August 18, 2023 until the sums are paid in full and asks the court to order Joe to pay for Hirsu's attorneys fees and costs in bringing this motion.

#### **IV. Standard of Review.**

Section 40-4-201(1), MCA, authorizes spouses contemplating separation or marital dissolution to enter into a written separation agreement. In a dissolution proceeding, the terms of a separation agreement relating to property are binding on the court unless it finds, after considering the parties' economic circumstances and any other relevant evidence produced by the parties, that the

agreement is unconscionable. See § 40-4-201(2), MCA. A district court's determination of whether a property settlement agreement is unconscionable is reviewed for abuse of discretion. *See In re Marriage of Rolf*, 2000 MT 361, P 20, 303 Mont. 349, P 20, 16 P.3d 345, P 20 (citations omitted).

The standard of review of a trial court's discretionary ruling is for abuse of discretion. *Mont. Rail Link v. Byard*, 260 Mont. 331, 337, 860 P.2d 121, 125 (1993). This standard may be applied to rulings on post-trial motions, which “encompass the power of choice among several courses of action, each of which is considered permissible.” *Steer, Inc. v. Dep't of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (citations omitted) (1990); see also *Johnson v. Hamilton*, 2003 MT 199, ¶ 9, 317 Mont. 24, 27, 75 P.3d 778, 780.

The standard of review in equity cases is set forth in § 3-2-204(5), MCA. Under that provision, the Supreme Court has a “duty to determine all of the issues of the case and to do complete justice.” *Glacier Park Co. v. Mountain, Inc.*, 285 Mont. 420, 427, 949 P.2d 229, 233 (1997). In reviewing a district court's exercise of its equitable powers, the Supreme Court is required to review “all questions of fact arising upon evidence presented in the record” to determine if the court's findings are clearly erroneous. *Kauffman-Harmon v. Kauffman*, 2001 MT 238, ¶ 11, 307 Mont. 45, 36 P.3d 408 (citation omitted).

The Court determines if a finding is clearly erroneous by (1) reviewing the record to see if the district court's findings are supported by substantial evidence; (2) if the findings are supported, determining if the district court has misapprehended the effect of the evidence; and (3) although evidence exists to support the findings, the Court finds its review of the record leaves it with the definite and firm conviction that a mistake has been committed. *In re Marriage of Richards and Trussler*, 2015 MT 314, ¶ 12, 381 Mont. 357, 360 P.3d 1126. Substantial evidence is “more than a scintilla of evidence but may be less than a preponderance of the evidence regardless of whether there is also substantial evidence or even a preponderance of the evidence to the contrary.” *Gypsy Highview Gathering Sys. v. Stokes*, 221 Mont. 11,15, 716 P.2d 620, 623 (1986).

The decision to grant or deny pre-judgment interest is reviewed to determine whether the district court correctly interpreted the law. *DiMarzio v. Crazy Mt. Constr., Inc.*, 2010 MT 231, ¶ 23, 358 Mont. 119, 243 P.3d 718; *Tidyman's Mgmt. Servs. v. Davis*, 2014 MT 205, ¶ 13, 376 Mont. 80, 90, 330 P.3d 1139, 1147. Whether a party is entitled to post-judgment interest is a conclusion of law which is reviewed de novo. *Tipp v. Skjelset*, 1998 MT 263, ¶ 11, 291 Mont. 288, 967 P.2d 787; see also *In re Marriage of Debuff*, 2002

MT 159, ¶ 15, 310 Mont. 382, 385, 50 P.3d 1070, 1073.

A determination that the legal authority exists to award attorney's fees is a conclusion of law which the Montana Supreme Court reviews for correctness. *Mlekush v. Farmers Ins. Exch.*, 2015 MT 302, ¶ 8, 381 Mont. 292, 358 P.3d 913; see also *Houden v. Todd*, 2014 MT 113, ¶ 19, 375 Mont. 1, 324 P.3d 1157; *Chase v. Bearpaw Ranch Ass'n*, 2006 MT 67, ¶ 14, 331 Mont. 421, 133 P.3d 190. “Our review of a district court's legal conclusion that no basis for attorney fees exists is plenary.” *Tanner v. Dream Island*, 275 Mont. 414, 429, 913 P.2d 641, 650 (1996) (internal citations omitted).

Where legal authority exists to award attorney fees, the Supreme Court reviews a trial court's award of attorney fees and costs for an abuse of discretion.” *Ferdig Oil Co. v. ROC Gathering, LLP*, 2018 MT 307, ¶ 13, 393 Mont. 500, 432 P.3d 118. It also uses the abuse of discretion standard to review “discretionary trial court rulings” like the payment and timing of such fees. *See May v. First Nat'l Pawn Brokers*, 270 Mont. 132, 132, 890 P.2d 386, 388 (1995). An abuse of discretion occurs when the trial court “acts arbitrarily without conscientious judgment or exceeds the bounds of reason.” *State v. Essig*, 2009 MT 340, ¶ 14, 353 Mont. 99, 218 P.3d 838.

## **V. Summary of Argument.**

Joe has not abided by the District Court's Order for the parties' to comply with their MPSA, has failed to pay all sums due to Hirsra under the MPSA, and should be required to pay pre-judgment and post-judgment interest as well as Hirsra's attorney fees and costs in bringing her motion to enforce the MPSA.

## **VI. Argument.**

### **A. The district court erred when it did not require Joe to pay Hirsra \$7,781.97 that is yet unpaid under the MPSA.**

Section 40-4-201(1), MCA, authorizes spouses contemplating separation or marital dissolution to enter into a written separation agreement. In a dissolution proceeding, the terms of a separation agreement relating to property are binding on the court unless it finds, after considering the parties' economic circumstances and any other relevant evidence produced by the parties, that the agreement is unconscionable. See § 40-4-201(2), MCA. A district court's determination of whether a property settlement agreement is unconscionable is reviewed for abuse of discretion. *See In re Marriage of Rolf*, 2000 MT 361, P 20, 303 Mont. 349, P 20, 16 P.3d 345, P 20 (citations omitted).

The district court abused its discretion when it denied Hirsra's motion to

enforce the MPSA. *Mont. Rail Link v. Byard*, 260 Mont. 331, 337, 860 P.2d 121, 125 (1993); *Steer, Inc. v. Dep't of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (citations omitted) (1990); see also *Johnson v. Hamilton*, 2003 MT 199, ¶ 9, 317 Mont. 24, 27, 75 P.3d 778, 780. The district court failed to review and take into consideration all of the information before it regarding the amounts paid and amounts due under the MPSA. The district court cited that unforeseen circumstances and misunderstandings resulted in delays, but that it was unpersuaded that Hirsa is owed additional equalization funds, interest and fees. Hirsa contends this finding is clearly erroneous. Once Joe provided the documentation in October 2023, the simple math shows that he shorted Hirsa in excess of \$7,781 which is still outstanding, and without explanation.

The Supreme Court has a “duty to determine all of the issues of the case and to do complete justice.” *Glacier Park Co. v. Mountain, Inc*, 285 Mont. 420, 427, 949 P.2d 229, 233 (1997). In reviewing a district court's exercise of its equitable powers, the Supreme Court is required to review “all questions of fact arising upon evidence presented in the record” to determine if the court's findings are clearly erroneous. *Kauffman-Harmon v. Kauffman*, 2001 MT 238, ¶ 11, 307 Mont. 45, 36 P.3d 408 (citation omitted). The Court determines if a finding is clearly erroneous by (1) reviewing the record to see if the district

court's findings are supported by substantial evidence; (2) if the findings are supported, determining if the district court has misapprehended the effect of the evidence; and (3) although evidence exists to support the findings, the Court finds its review of the record leaves it with the definite and firm conviction that a mistake has been committed. *In re Marriage of Richards and Trussler*, 2015 MT 314, ¶ 12, 381 Mont. 357, 360 P.3d 1126. Substantial evidence is "more than a scintilla of evidence but may be less than a preponderance of the evidence regardless of whether there is also substantial evidence or even a preponderance of the evidence to the contrary." *Gypsy Highview Gathering Sys. v. Stokes*, 221 Mont. 11,15, 716 P.2d 620, 623 (1986).

Here, Hirsä provided documents supplied by Joe to show that his payment to the mortgage company added to the payment he made to Hirsä did not equal the \$456,000 due under the MPSA. A review of the record will show that the district court's findings are not supported by substantial evidence. If the Court finds that the district courts findings are supported, then the district court has misapprehended the effect of the evidence. This Court should find that even if evidence exists to support the findings, then the Court should also make definite and firm conviction that a mistake has been committed. *In re*



*Marriage of Richards and Trussler*, 2015 MT 314, ¶ 12, 381 Mont. 357, 360 P.3d 1126. Each of the exhibits to Hirsas Reply brief in support of her Motion to Enforce the MPSA show that Joe has not paid her, whether directly or through payment of the mortgage, all of the funds due under the MPSA. These documents were supplied to Hirsas by Joe. In this matter, the district court abused its discretion and appears to have acted “arbitrarily without conscientious judgment or exceeds the bounds of reason” where all of the evidence in the court’s file shows that Joe shortchanged Hirsas a portion of her marital equalization payment. *State v. Essig*, 2009 MT 340, ¶ 14, 353 Mont. 99, 218 P.3d 838.

The parties entered into an MPSA then were ordered by the District Court to comply with its terms. Doc 144, 149. Joe has not complied. Pursuant to the MPSA, a payment was due from Joe to Hirsas in the amount of \$456,000.00 by July 24, 2023. Joe paid and should receive credit for his payment to Hirsas which was received by her attorney’s office on August 18, 2023, in the amount of \$232,040.54, although it was nearly a month past due. Exh. 2-3. Joe paid off the mortgage on the parties’ marital home on August 4, 2023, with a final payment of \$219,049.15.

Next, Joe was required to make timely monthly payments due under the

MPSA on the mortgage until the mortgage was paid off. MPSA, doc 144. He did not make a timely payment on August 1, 2023, rather he rolled that payment into the final mortgage payoff on August 4, 2023 in the amount of \$219,049.15. The minimum mortgage payment due each month was \$2,871.66. Supp. Appendix Exh. 5. Where the mortgage payment was due on August 1 and Joe did not provide that payment until August 4 when he paid the mortgage in full, Joe should not receive credit for \$2,871.66 for the missed August payment that he included in his final payment to the bank. This reduces his credit on the mortgage payoff as follows  $\$219,049.15 \text{ minus } \$2,871.66 = \$216,177.49$ .

When taking the \$223,959.46 balance after Joe's payment to Hirsra and subtracting the amount Joe paid for the mortgage payoff as outlined above in the amount of \$216,177.49, Joe still owes Hirsra \$7,781.97 as an equalization payment, plus interest and attorney fees as requested in her motion.

**B. The district court erred when it failed to enter judgment against Joe for the unpaid sums due.**

The district court erred by failing to enter judgment against Joe. The Findings of Fact, Conclusions of Law, and Decree of dissolution set out that the parties must comply with the MPSA. Any failure to do so is "enforceable

by all remedies available for enforcement of a judgment, including contempt.” Findings of Fact, Conclusions of Law, and Decree of Dissolution, dated April 5, 2023, page 5, ¶ 14. Joe unabashedly refused to provide full payment to Hirsra and the Court should enter Judgment against him for \$7,781.97 plus interest and attorney fees as set out herein.

**C. Joe should pay pre-judgement and post-judgment interest.**

The decision to grant or deny pre-judgment interest is reviewed to determine whether the district court correctly interpreted the law. *DiMarzio v. Crazy Mt. Constr., Inc.*, 2010 MT 231, ¶ 23, 358 Mont. 119, 243 P.3d 718; *Tidyman's Mgmt. Servs. v. Davis*, 2014 MT 205, ¶ 13, 376 Mont. 80, 90, 330 P.3d 1139, 1147. Whether a party is entitled to post-judgment interest is a conclusion of law which is reviewed de novo. *Tipp v. Skjelset*, 1998 MT 263, P11, 291 Mont. 288, P11, 967 P.2d 787, P11; see also *In re Marriage of Debuff*, 2002 MT 159, ¶ 15, 310 Mont. 382, 385, 50 P.3d 1070, 1073.

In this matter, Joe did not dispute whether interest should be awarded and the District Court made no ruling as to the law regarding pre-judgment or post-judgment interest. Response to Respondent’s Motions to Enforce MPSA, for Entry of Judgment, for Interest and Attorney Fees, Doc 157, pp 18 lns 9-10. The district court simply stated that Hirsra admitted Joe had made a payment,

therefore her motion was denied. Order on Motion to Enforce MPSA, Doc 161.

Joe contends that he has paid all sums due and did not dispute whether interest should be awarded and left it to the court's discretion "whether interest should be imposed for the intervening period between July 24-August 1 and, if so, how much." Response to Respondent's Motions to Enforce MPSA, for Entry of Judgment, for Interest and Attorney Fees, Doc 157, pp 9, lns 4-5; p 18 lns 9,18-20. Having made no other comments in his response brief, Hirsu contends that Joe does not dispute the requests for pre-judgment and post-judgment interest and both should be granted.

**1. Joe should pay pre-judgement interest on the payment that was not received on its due date.**

Montana Courts may award interest to a person "who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover that is vested in the person upon a particular day is entitled also to recover interest on the damages from that day except during the time that the debtor is prevented by law or by the act of the creditor from paying the debt." § 27-1-211 Mont. Code Ann. The amount of interest is determined by § 25-9-205 Mont. Code Ann. It provides:

25-9-205. Amount of interest. (1) (a) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state and on the cost incurred to obtain or enforce a judgment at a rate equal to the rate for bank prime loans published by the federal reserve system in its statistical release H.15 Selected Interest Rates or in any publication that may supersede it on the day judgment is entered, plus 3%. The interest may not be compounded.

(b) The rate for bank prime loans established in subsection (1)(a) must be set as of January 1 of each year and remain in effect until December 31 of each year.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.

§ 25-9-205 Mont. Code Ann. Supp. Appendix Exh. 9 for the applicable interest rate which was 11.5% at the time of filing her motion.

In this case, the amount of interest can be made certain by calculation. Joe's payment to Hirsu in the amount of \$456,000 was due July 24, 2023. On August 4 Joe paid off the mortgage in the amount of \$216,177.49 and on August 18, 2023 he paid Hirsu \$232,040.54, leaving an unpaid balance of \$7,781.97.

- \* **Interest for July 24 through August 4, 2023:** Although the payment was due by July 24, 2023, Joe provided his mortgage payoff on August 4, 2023, in the amount of \$216,177.49. Interest at 11.5% on \$456,000 for July 24 - Aug 4 (\$143.67/day) for 11 days = \$1,580.37.
- \* **Interest for August 4 through August 18, 2023:** After paying off the mortgage, Joe still owed Hirsu \$239,822.51. Joe should pay 11.5% interest on that \$239,822.51 for August 4-18 when he

provided her a partial payment in the amount of \$232,040.52, or 14 days at \$75.56/day for a total of \$1,057.85.

- \* **Interest for August 18 through date of Judgment:** Ongoing interest until the equalization payment is paid in full: Joe still owes Hirsu \$7,781.97, so he owes interest of \$2.45 per day from August 18 until the date of Judgment.

## **2. Joe should pay post-judgement interest.**

When Judgment is entered, post-interest judgment shall be applied. § 25-9-204 Mont. Code Ann. Hirsu requests that the Court enter Judgment and that the Clerk apply interest pursuant to § 25-9-205 Mont. Code Ann. Joe still owes Hirsu \$7,781.97, therefore he owes interest of \$2.45 per day from the date of Judgment until he pays the balance in full.

### **D. The district court erred by not ordering Joe to pay Hirsu's legal fees and costs for bringing her motion to enforce the MPSA.**

The Supreme Court reviews a trial court's award of attorney fees and costs for abuse of discretion where legal authority exists to award attorney fees. *Ferdig Oil Co. v. ROC Gathering, LLP*, 2018 MT 307, ¶ 13, 393 Mont. 500, 432 P.3d 118; *Wohl v. City of Missoula*, 2013 MT 46, ¶ 29, 369 Mont. 108, 300 P.3d 1119; see also *Chamberlin v. Puckett Constr.*, 277 Mont. 198, 206, 921 P.2d 1237, 1242 (1996); *Boehm v. Cokedale, L.L.C.*, 2011 MT 224, ¶ 12, 362 Mont. 65, 261 P.3d 994. An abuse of discretion occurs when the trial court

“acts arbitrarily without conscientious judgment or exceeds the bounds of reason.” *State v. Essig*, 2009 MT 340, ¶ 14, 353 Mont. 99, 218 P.3d 838. Hirsa contends that the district court abused its discretion to grant her motion for attorney fees where substantial evidence shows that Joe refused to communicate for months and did so only after she filed her motion to enforce the MPSA, and has failed to provide Hirsa with all sums due under the MPSA. Hirsa contends that the district court has acted “arbitrarily without conscientious judgment or exceeds the bounds of reason” in making its January 3, 2023, decision. *State v. Essig*, 2009 MT 340, ¶ 14, 353 Mont. 99, 218 P.3d 838.

Legal authority exists in support of Hirsa’s request for attorney fees and costs. Montana follows the American Rule regarding attorney's fees that “in the absence of a specific contractual or statutory grant . . . the prevailing party in an action is not entitled to an award of attorney fees either as costs of the action or as an element of damages.” *Foy v. Anderson*, 176 Mont. 507, 511, 580 P.2d 114, 116 (1978). Exceptions exist. District courts have equity power to grant complete relief, including attorney's fees, absent statutory authority on a case-by-case basis. *Foy*, 176 Mont. at 511, 580 P.3d at 116–117. The Supreme Court has narrowly construed this exception to apply only to cases

"where the action into which the prevailing party has been forced is utterly without merit or frivolous." *Erker v. Kester*, 1999 MT 231, ¶ 44, 296 Mont. 123, 988 P.2d 1221. Award of attorney's fees under this exception is discretionary and is therefore reviewed for abuse of discretion. *Boehm v. Cokedale, LLC*, 2011 MT 224, ¶¶ 24–29, 362 Mont. 65, 261 P.3d 994. The Supreme Court has upheld a grant of attorney's fees in a contempt action to enforce the terms of a divorce decree. *In re Marriage of Redfern*, 214 Mont. 169, 692 P.2d 468 (1984).

Also, §40-4-110 Mont. Code Ann. allows a court to order a party to pay a reasonable amount to the other for “maintaining or defending any proceeding under chapters 1 and 4 and for professional fees, including sums for legal and professional services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the professional, who may enforce the order in the professional's name.” § 40-4-110 Mont. Code Ann., (Emphasis added).

Where Joe defies the District Court’s Order to comply with the terms of the MPSA, Hirsra requests that Joe bear responsibility for Hirsra’s attorney’s fees and costs for seeking enforcement of it’s April 5, 2023 Order for the parties to comply with the terms of their MPSA. Joe has unreasonably and



inexplicably failed to provide the full equalization payment and created substantial delay in providing the documentation required under the MPSA and refused to timely communicate as issues arose in his loan process. This request for Joe to pay Hirsa's attorney fees in bringing her motion would serve to both compensate Hirsa and her attorney for the time necessary to seek Joe's compliance as well as sanction Joe to compel him to follow the MPSA.

## **VII. Conclusion.**

The District Court abused its discretion when it denied Hirsa's Motion to Enforce the parties' Marital Property Settlement Agreement. This Court should reverse the district court and hold that Joe should pay Hirsa the unpaid \$7,781.97, due under the MPSA, plus \$1,580.37 interest for 7/24/23-8/4/23, plus \$1,057.85 interest for 8/4/23-8/18/23, - for a total of \$10,420.19, plus \$2.45/day in pre and post judgment interest starting August 18, 2023 until the sums are paid in full, and remand this matter back to the District Court for calculation the amount attorney fees due.

Dated this 6<sup>th</sup> day of May 2024.

/s/ Miva VanEngen  
Miva VanEngen, Attorney at Law  
VanEngen Law Office, P.C.  
ATTORNEYS FOR  
RESPONDENT/APPELLANT

### **CERTIFICATION OF COMPLIANCE**

I certify that the Appellant's brief complies with Rule 11, M.R.App.P. by using proportionately-spaced typeface of 14 points with appropriately-sized margins of no less than one inch in width, double-spaced except for quoted material, and not exceeding 10,000 words.

Dated this 6<sup>th</sup> day of May 2024.

/s/ Miva VanEngen

## **CERTIFICATE OF SERVICE**

I, Miva VanEngen, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-06-2024:

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