IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-24-0130

CHRISTOPHER J. LAMM,

Petitioner and Appellant,

v.

AMANDA R. KINNEY ANDERSON,

Respondent and Appellee.

On Appeal from the Montana Fifteenth Judicial District Court,
Roosevelt County, Cause No. DR-43-2023-004, Honorable David Cybulski,
Presiding

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

INDEX OF DISTRICT COURT DOCUMENTS

REFERENCED WEBSITES

STATEMENT OF ISSUES TO BE PRESENTED

I. Whether the District Court's refusal to allow evidence and witness testimony to be presented, which resulted in an incomplete trial, was an abuse of discretion constituting reversible error?

II. Whether the District Court engaged in an abuse of discretion through its failure to follow the statutory scheme pursuant to MCA § 40-4-212 (l) and 40-4-219 (3).

STATEMENT OF THE CASE

Petitioner and Appellant, Christopher James Lamm ("Chris"), brings this action to the Montana Supreme Court on appeal from the District Court's Final Parenting Plan which favors the Respondent and Appellee, Amanda Rose Kinney Anderson ("Amanda").

Chris and Amanda have never been married but have one child together, namely F.L.L, (currently) age 19 months. Amanda lives in Bainville, Montana; Chris lives in Williston, North Dakota. A Final Parenting Plan hearing was ordered by the District Court to take place in Plentywood, Montana on February 5, 2024.

During the hearing, the District Court conducted an Informal Domestic Relations Trial, during which the following occurred: (1) the Court failed to fully and properly explain the informal domestic relations trial process and advise the Parties of their right not to consent as well as their right to present evidence; (2) the Court did not allow the Parties to present evidence nor did the Court review evidence to test for relevance; (3) the Court did not allow the Parties to call up or

question their expert witness nor did the court ask the Parties' what relevance the expert witness would present; and (4) the Court failed to apply or acknowledge known legal standards and applicable Montana law. As a result of the hearing, the court concluded erroneous *Findings of Fact* and the Court issued a Final Parenting Plan favoring Amanda.

STATEMENT OF FACTS

Chris and Amanda became acquainted through online social media and engaged in certain conduct that resulted in the conception and later the birth of the parties' daughter, F.L.L. The parties' daughter was born in late October 2022 (age 19 months). Within twenty days of the child's birth, Chris voluntarily submitted a paternity test in order to establish paternity. It was determined that Chris was the biological father. Once paternity was established, Chris attempted to be involved in his daughter's life as much as he could. Chris even attempted being in a relationship with Amanda whereas the two Parties could live together and raise their daughter as a family. When the relationship ended so did Chris' reasonable parenting time end. This prompted Chris to file a Parenting Plan with the District Court to establish a parenting plan in the best interests of his daughter.

Chris has no ties to Montana and the child was conceived in North Dakota but Amanda lives in Montana. Unfortunately, ever since Chris ended his relationship with Amanda, Amanda has engaged in multiple acts contrary to the minor child's best interest most of which by filing a frivolous order of protection in

a North Dakota court on August 8, 2023, which included the Parties' own daughter as a protected party. August 21, 2023 the North Dakota Court granted the order for 45 days but there was an exception to the order which allowed Chris to continue to parent his daughter. Amanda ignored that exception and withheld the child from Chris for a total of 109 days. The protection order was ultimately reversed by the North Dakota Supreme Court and later dismissed. Additionally, there were two more spans of time prior where Amanda withheld the minor child from Chris for 55 days and then again for 27 days.

The Court should note that on May 23, 2023, the initial hearing for this case, the parties entered into a parenting agreement on the record facilitated by the District Court. At this hearing Amanda agreed to initially provide Chris with 2 visits per week visiting time and to increase visitation duration and frequency as experts monitoring the supervised visits suggested. The District Court also agreed that if Amanda did not keep to the agreement that the Parties would return to court for a hearing and address the issue. By June 5, 2023 (13 days after the hearing) Amanda had broken the parenting agreement and Motioned that the District Court order Chris to supervised visitation until their daughter was of pre-school age. Chris filed a motion for a hearing as he was not seeing his daughter as agreed upon by both Parties. The District Court denied the motion. Despite the District Court agreeing on the record that the District Court would hold a hearing if Amanda did not honor the agreement. Chris ultimately did not see his daughter for 109 days.

Only 66 days being related to the protection order. Additionally, the only reason Chris was subjected to supervised visitation with his daughter was because this is Chris' first child.

STANDARD OF REVIEW

The Montana Supreme Court "reviews a district court's findings of fact to determine if they are clearly erroneous." *In re Marriage of Olson*, 2008 MT 232, ¶ 20, 344 Mont. 385, 194 P.3d 619. "A finding of fact is clearly erroneous if the district court 'misapprehended the effect of the evidence, or our review of the record convinces us the district court made a mistake'." *Id.*

Further, "the Court's standard of review for custody and visitation is whether substantial credible evidence supports the district court's judgment, and we will uphold the district court's findings and conclusions unless they clearly demonstrate an abuse of discretion." *Schiller*, 2002 MT at ¶ 24. "The question under this standard is not whether [the appellate court] would have reached the same decision as the trial judge, but whether the trial judge acted arbitrarily without conscientious judgment or exceeded the bounds of reason." *Id.* (citing *Newman v. Lichfield*, 2012 MT 47, ¶ 22, 364 Mont. 243, 272 P.3d 625).

SUMMARY OF THE ARGUMENT

This Court on August 30th 2024 adopted the guidelines for Informal Domestic Relations Trials. The guidelines of Rule 17- Informal Domestic

Relations Trials (IDRT) provides clear instructions for District Courts on how IDRT will proceed. IDRT may have been too new for the District Court in this case as the District Court did not conduct a complete trial. The Montana Judicial Branch website makes public an *IDRT Explanation Script* (https://courts.mt.gov/idrt/). The District Court did not read this script to the Parties but more importantly failed to inform either Party that they could present evidence or an expert witness. Chris had both evidence in person to be presented and referenced this evidence on several occasions and referenced an expert witness available at least three times. All attempts to present evidence and witness were ignored by the District Court. The District Court never informed Chris that he could excuse his witness or that Chris' witness would not be needed.

The District Court also abused its discretion when it failed to apply MCA § 40-4-212 (l) and acknowledging MCA § 40-4-219 (3). This Court has a long history of presuming that "frequent and continuing contact with both parents, which is considered to be in the child's best interest" and that "The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(a)(iv) one parent has willfully and consistently: (A) refused to allow the child to have any contact with the other parent; or (B) attempted to frustrate or deny contact with the child by the other parent." This Court's opinion on *State v. Young (2007)* confirms that withholding a child from a parent is criminal

and not in the child's best interest.

The District Court also failed to acknowledge this Court's opinion regarding *Marriage of Clingingsmith (1992).* Where this Court suggested that "the parents' ability to cooperate in their parental roles" is an additional factor which should be considered in the best interest of the child.

ARGUMENT

I. THE DISTRICT COURT'S FAILURE TO HOLD A COMPLETE TRIAL BY NOT ALLOWING EVIDENCE OR WITNESS TESITIMONY TO BE PRESENTED WAS AN ABUSE OF DISCRETION RESULTING IN A REVERSIBLE ERROR.

The Montana Supreme Court reviews all of the issues on appeal for an abuse of discretion.

On January 22nd 2024 the District Court ordered a hearing to be set for February 5th 2024 as an Informal Domestic Relations Trial (IDRT) District Court Document 60 (Doc. 60). In this order the District Court failed to inform the Parties that they may *opt out* of the IDRT nor did the Court provide the Parties with a deadline date to *opt out* as Rule 17 requires.

On February 5th 2024 the IDRT was conducted and the District Court provided the only instructions to the Parties as (Doc.73, pg.4, ln.11-21):

> **THE COURT**: Okay. I don't know if you read about that uh, I can't remember what they call it but it's domestic relations informal trial process.
>
> **MR. LAMM**: Yes Your Honor.
>
> **THE COURT**: And that's where I get to ask the questions as opposed to having people ask their own questions. It's a new thing so it hasn't been, you

know, [inaudible] understand that the standard for child support is or child custody and visitation is the best interest of the child.

MR. LAMM: Yes Your Honor.

Montana District Courts are provided with an *IDRT Explanation Script* to be read to the parties at the IDRT (https://courts.mt.gov/idrt/idrtscript.docx). During the hearing the Court failed to read this script to the Parties. The Court's failure to properly inform the Parties of their rights deprived the Parties from a complete trial.

The Parties were not instructed at the time of the hearing that they were able to present evidence or have an expert witness testify.

Despite not being properly informed of being able to present evidence, Chris referenced to presenting evidence on at least three separate occasions with no response or acknowledgment from the District Court:

- **MR. LAMM:** but I have documentation from documentation that just proves that everything she says is false (Doc. 73, pg. 19, ln. 10-11).

- **MR. LAMM:** I do have a copy of the transcript as well as uh a copy of the restraining order here if the Court wants to see it (Doc. 73, pg. 24, ln. 18-20).

- **MR. LAMM:** I do have the police reports where essentially, she's breaking

the law. She's committing parental interference (Doc. 73, pg. 26, ln. 2-3).

- **MR. Lamm:** That's what she says, that's really in the text message. I can show you the text messages Your Honor (Doc. 73, pg. 26, ln. 2-3).

Chris was attempting to present evidence that is relevant to the case which may have assisted the District Court in coming to more accurate *Findings of Fact*. The Court did not review the evidence for potential relevance denying Chris' right to fully testify thereby denying Lamm's right to a complete trial.

Moreover, Chris attempted to provide expert witness testimony from a subpoenaed expert witness to the District Court on at least three separate occasions with no response or acknowledgment from the District Court:

- **MR. LAMM**: She missed several visits, I do – I someone [inaudible] someone from Family Bridges should be on the line to testify but I also have the text messages between her and them (Doc. 73, pg. 22, ln. 18-21).

- **MR. LAMM**: there should be someone on the line right now I don't know if they are or not um, willing to testify that they can testify to my being with my daughter (Doc. 73, pg. 74, ln. 9-10).

- **MR. LAMM**: and that's one of the things I was gonna have Family Bridges testify to (Doc. 73, pg. 74, ln. 9-10).

The District Court failing to allow evidence resulted in the District Court coming to several erroneous *Findings of Fact* and depriving any future hearings or trials from the complete facts of the case. While the District Court weighed the testimonies of the two Parties the District Court should have allowed evidence to support or refute any challenged testimonies by the Parties relevant to the District Court's *Findings of Fact.*

Examples of the District Court's erroneous findings:

Example 1: "*29.* *Ms. Kinney claims that Mr. Lamm did not contact her for F.L.F.L.K.'s 1st birthday. It is important to note that F.L.F.L.K.'s birthday fell during the time that Ms. Kinney had a No Contact Order against Mr. Lamm* (Doc. 68, pg. 5)." False and False, Chris testified in the hearing that Chris had copies of an email he sent to Amanda and her attorney that Chris was trying to see his daughter after the restraining order had expired; the restraining order ended 21 days or three weeks prior to the Child's birthday (Doc. 73, pg. 25, ln. 10-25). Amanda withheld the Child from Chris for weeks including the Child's first birthday is a fact.

Example 2: "*G.* *The Parties did not agree to a parenting plan prior to the hearing and no parenting plan has been established by the Court Previously* (Doc. 68, pg. 6)." Incorrect, the Parties agreed upon a graduating visitation schedule on the May 23rd 2024 hearing that Amanda did not honor and the

District Court did not uphold. *"THE COURT: Like I said for the interim plan I think we should work towards twice a week, for a couple hours. Then you convince the lady in Williston to bump it up. And you will agree to bump it up if the lady in Williston says to bump it up*? MS. KINNEY ANDERSON: *Yeah (Doc. 46, pg. 47, ln. 14-17)." "THE COURT: Well, have Ms. Rhonda talk to her and then if you guys can't get along, come back and we will set up another hearing (Doc. 46, pg. 55, ln 8-10)."*

Example 3: "***L.*** *Mr. Lamm has tried to exercise parenting time with the Minor Child and, despite his lack of trying, has only exercised parenting time with the Minor Child on a limited basis* (Doc. 68, pg. 7)." Incorrect, Chris' testimony and reference to evidence and expert witness testimony suggestions that the lack of parenting time was not due to Chris's "*lack of trying*" but due to Amanda's Parental Interference.

Example 4. "***T.*** *Mr. Lamm has not alleged that Ms. Kinney is not a good parent based upon testimony* (Doc. 68, pg. 7)." Misleading, Chris' testimony repeatedly noted that Amanda was not acting in the Child's best interest as Amanda was repeatedly withholding the Child from Chris.

Example 5: "***T.*** *While the Father has not yet created a strong bond with the Minor Child, he wishes to do so* (Doc. 68, pg. 8)." Assumption, the District

Court could not know the bond between Chris and his Daughter because the District Court did not allow the expert witness testimony of Family Bridges. Family Bridges was present during the supervised visitations. Amanda nor the District Court can come to a conclusion of fact between the bond of Chris and his Daughter because they were not present during visits nor did they present reports from Family Bridges as evidence.

This alone constitutes a reversible error. At the very least this case should be remanded back to District Court as to have a proper and complete trial which may very likely change the facts of the case.

II. THE DISTRICT COURT'S FAILURE TO APPLY THE STATUTORY CRITERIA OF MCA § 40-4-212 (l) and 40-4-219 (3) WAS AN ABUSE OF DISCRETION RESULTING IN A REVERSIBLE ERROR.

This Court has long held that Frequent and Continuing contact for a parent and child is in the child's best interest.

The District Court did not acknowledge Chris' rights to parent the Child, and thereby did not properly apply MCA § 40-4-212 (l) *whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests* and 40-4-219 (3) *The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(a)(iv) one parent has willfully and consistently: (A) refused to allow the child to have any contact with the other parent; or (B) attempted to frustrate or deny contact with the child by the other parent.*

The District Court suggested that because there was no *actual parenting plan in place* that Parental Interference did not apply in this case (Doc. 73, pg. 27, ln. 8-10).

MCA § 45-5-634 (a) defines Parenting Interference as: *(1) A person commits the offense of parenting interference if, knowing that the person has no legal right to do so, the person: (a) before the entry of a court order determining parenting rights, takes, entices, or withholds a child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting rights.*

State v. Young (2007) MT 323 P. 30-39 upholds that Parenting Interference is "before the entry of a court order determining parenting rights . . . ."

The District Court acknowledged that Chris was the biological Father and there was no dispute of parentage during the May 23rd 2023 hearing.

On the February 5th 2024 hearing the District Court clearly did not acknowledge this Court's opinion of *State v. Young (2007)*. Chris did bring up *State v. Young (2007)* to the District Court but misspoke and Chris stated "*I hadn't seen my daughter in oh about two months and I cited uh parental interference on that notice and I looked up State v. Jones and in that case the father didn't see his kid from like December 1st through February something*" (Doc. 73, pg. 74, ln. 9-10). Chris did misspeak and stated "Jones" instead of Young as he intended. Regardless the District Court ignored Chris' reference to a previous case instead of exploring case precedent and applying known precedent to the IDRT.

Moreover, Chris referenced the case of *The Marriage of Clingingsmith (2007)*. Whereas this Court determined "*This Court has suggested that the parents' ability to cooperate in their*

parental roles and the geographical proximity of the parents' residences are at least two additional factors which should be considered." Chris cited the case as stating "My point is – is Your Honor is that, there is um, there is, it's uh, Kling and Smith, Your Honor uh, marriage of Kling and Smith uh that a parent's ability to cooperate in their parental roles in the geographic proximity of the parents residence are als – and two additional factors that should be considered and..." Chris was again attempting to present to the District Court precedent relevant to this case in order to validate the reason for presenting evidence and testimony but the District Court interrupted Chris' testimony and moved on with the IDRT.

CONCLUSION

For the foregoing reasons, Respondent-Appellant respectfully requests this Court provide the following relief:

(1) Remand this case back to a District Court for a complete hearing; and

(2) Any further relief the Court deems appropriate.

Dated this 16th day of June 2024.

By: _____

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CERTIFICATE OF COMPLIANCE

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

Dated this 16th day of June 2024.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on 06-16-2024, I served true and accurate copies of the foregoing Appellant's Opening Brief by depositing said copies into the U.S. mail postage prepaid to the following:

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I, Christopher James Lamm, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 06-16-2024:

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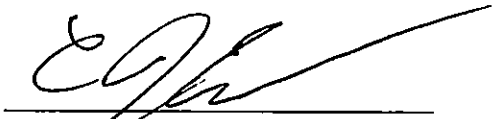
Dated this 16th day of June 2024.



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