IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 24-0146

IN RE THE MARRIAGE OF:

BENJAMIN MARTIN,

Petitioner and Appellant.

and

BRANDI WILLIAMS,

Respondent and Appellee.

APPELLEE'S BRIEF

On Appeal from the Montana Eighteenth Judicial District Court
The Honorable Michael Hayworth, District Judge, Presiding

APPEARANCES:

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STATEMENT OF THE ISSUE

Did the District Court abuse its discretion when it denied Mr. Martin's *Motion to Modify Parenting Plan* and *Motion for Contempt of Parenting Plan*?

STATEMENT OF THE CASE

This is a post-divorce parenting plan matter involving the parties' three minor children. The District Court properly denied Mr. Martin's *Motion to Modify Parenting Plan* and *Motion for Contempt of Parenting Plan*. The District Court did not abuse its discretion. Mr. Martin is vexatious litigant who must be sanctioned.

STATEMENT OF THE FACTS

The parties have three minor children, ages 16, 12, and 10. Following a contested hearing on Ms. Williams's motion to modify the parenting plan on December 14, 2021, the District Court issued an *Amended Final Parenting Plan* (Doc. 126) which substantially reduced Mr. Martin's parenting time. Mr. Martin appealed the decision to this

Court in DA 23-0009, but then withdrew his appeal before the deadline for his appellant's brief.

Over the last four years, Mr. Martin has engaged in a campaign of vexatious litigation against anyone whom he perceives as an enemy:

- He moved twice to have Standing Master Magdalena Bowen disqualified from the case (Docs. 124, 142), which the District Court denied.
- He moved to have District Judge John Brown disqualified from the case (Doc. 165), which this Court denied in PR 22-0001 (Doc. 171).
- Displeased with the District Court's decision following the contested parenting plan hearing on December 14, 2021, Mr. Martin filed four separate lawsuits against Gallatin County judges and officials:
    - Mr. Martin ignored the black letter law of judicial immunity and filed suit against Standing Master Bowen for "intentional legal malpractice." *App. A.* This case was promptly dismissed. *App. B.*

- Mr. Martin filed suits against Gallatin County for "constitutional rights violations" (*App. C*); District Court Judges John Brown and Rienne McElyea for "negligent supervision" of Standing Master Bowen (*App. D*); and the Gallatin County Attorney and Commissioners for "constitutional rights violations" (*App. E*). The first of these three cases has been voluntarily dismissed (*App. F*); the latter two are still pending.
- Mr. Martin's lawsuits resulted in the recusal of all Gallatin County judges and caused this case to be reassigned to Judge Hayworth (Docs. 191, 192, 193), to say nothing of the wasted taxpayer dollars incurred in defending four meritless lawsuits.

- Mr. Martin then moved to disqualify Judge Hayworth, alleging that because Judge Hayworth is a member of the LDS Church, he would be biased in favor of Ms. Williams, who is also LDS (for the record, Judge Hayworth is not LDS; Mr. Martin simply fabricated that allegation) (Doc. 212). This Court denied that motion in PR 23-0001 (Doc. 213).

- Mr. Martin has filed an endless string of meritless motions related to the parenting plan, all of which were denied (*See, e.g.*, Docs. 202, 225, 226, 230, 231, 232, 244, 245, 262, 270).
- Mr. Martin's wife sued Ms. Williams for defamation, which the Broadwater County District Court dismissed on a Rule 60(b) motion. *App. G.*
- Mr. Martin has now filed a second appeal to this Court (DA 24-0228).
- Mr. Martin and his wife filed a *Notice of Claim & Intent to Sue* against the State of Montana's Child Support Services Division and its employees because of its alleged mishandling of the recalculation of child support. *App. H.*
- Mr. Martin even has one closed and two open cases against his own parents. *App. I.* While not related to this parenting case, these suits against his own parents underscore Mr. Martin's strategy of pursuing legal action against anyone whom he perceives as his enemy.
- In total, Mr. Martin has caused five appeals to this Court (PR 22-0001, PR 23-0001, DA 23-0009, DA 24-0248, and the instant

case), despite this being a simple and straightforward parenting dispute. Mr. Martin is a vexatious litigant, and he has made Ms. Williams's life miserable.

The District Court implemented a procedure to reduce frivolous filings in its *Order Modifying Procedure for Response & Reply* (Doc. 224) dated August 10, 2023. The Court ordered that "any filing making a factual assertion must be supported by affidavit(s) that assert the facts at issue based on personal knowledge." The Court then reviews each motion, brief, and supporting affidavit, and "[i]f, but only if, the filing supports the movant's contention, the Court will direct a Response by written Order." If, after reviewing the motion, brief, and affidavits, the Court determines that "the filing does not support the movant's contention," the Court will summarily deny the motion without requiring a written response from the opposing party. *Id.*

Since the District Court issued this order in August 2023, Mr. Martin has filed approximately six "requests" or motions, all of which were summarily denied by the Court, and two of which form the basis for Mr. Martin's instant appeal. To be clear, Ms. Williams has not been

required to file any written responses, so Mr. Martin's appeal arises out of two District Court orders that summarily denied his motions.

Because Mr. Martin did not appeal the *Order Modifying Procedure for Response & Reply* (Doc. 224) last summer, he has no basis to now challenge the validity of that *Order*. Rather, he can only challenge the District Court's orders denying his *Motion to Modify Parenting Plan* (Doc. 244) and *Motion for Contempt of Parenting Plan* (Doc. 245). The Court's orders are well reasoned and self-explanatory, and they should be affirmed by this Court.

Finally, Ms. Williams notes that Mr. Martin's eight-page "Statement of The Facts" contains many false allegations. In fact, it is difficult to find even a single grain of truth anywhere in those eight pages. Some of his allegations are allegedly supported by references to the record (and in particular the hearing transcript from the December 14, 2021 hearing), but a review of the record reveals that Mr. Martin has misconstrued the record or entirely fabricated his "facts." Many other allegations contain no reference to the record. However, there is no need for Ms. Williams to refute those specific allegations, because

they are entirely irrelevant to the issues in this case. Ms. Williams categorically denies Mr. Martin's allegations.

Mr. Martin's entire Brief is an attempt to relitigate the 2021 hearing. But of course, that ship has long since sailed. Mr. Martin appealed the decision from that hearing in DA 23-0009, but then withdrew his appeal. Accordingly, the merits of the current parenting plan cannot be challenged. The single, narrow issue is whether the District Court abused its discretion in summarily denying Mr. Martin's *Motion to Modify Parenting Plan* and *Motion for Contempt of Parenting Plan*.

STANDARD OF REVIEW

The District Court has "broad discretion when considering the parenting of a child, and we must presume that the court carefully considered the evidence and made the correct decision. Accordingly, absent clearly erroneous findings, we will not disturb a district court's decision regarding parenting plans unless there is a clear abuse of discretion. A district court abuses its discretion if it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds

of reason resulting in substantial injustice." *In re C.J.,* 2016 MT 93, ¶ 13, 383 Mont. 197, 369 P.3d 1028 (internal quotations and citations omitted).

SUMMARY OF ARGUMENT

The District Court did not abuse its discretion when it summarily denied Mr. Martin's *Motion to Modify Parenting Plan* and *Motion for Contempt of Parenting Plan*. Furthermore, this Court should impose the same restrictions on Mr. Martin's filings that the District Court has already imposed, and award Ms. Williams attorney's fees under § 40-4-219(5), MCA.

ARGUMENT

I. Mr. Martin has a high threshold burden in asking the District Court to modify the parenting plan.

Both of Mr. Martin's motions seek to amend the parenting plan (his *Motion for Contempt of Parenting Plan* is not strictly a motion for contempt; he seeks affirmative relief in the form of an amended parenting plan). The current parenting plan was thoroughly litigated in

2021, culminating in a hearing before Standing Master Bowen, an objections hearing before Judge Brown, and an appeal to this Court (which Mr. Martin then withdrew).

Pursuant to § 40-4-219, MCA, the District Court "may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child."

The District Court "shall deny the motion [to amend a final parenting plan] unless it finds that adequate cause for hearing the motion is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing on an order to show cause why the requested plan or amendment should not be granted." § 40-4-220(1), MCA (emphasis added).

Accordingly, the presumptive starting point for any District Court judge faced with a motion to modify a final parenting plan is to deny the motion. There's a very good reason for this statute: to provide stability for the children, prevent "ping pong" custody litigation, and "to

implement the principle that finality of the custody decree is of greater importance to the best interests of the child than the determination of which parent should have custody." *Korol v. Korol*, 288 Mont. 351, 356, 613 P.2d 1016, 1019 (1980). Mr. Martin's actions illustrate the wisdom of the *Korol* decision, with his endless motions to amend the parenting plan filed since the hearing in 2021.

II. The District Court properly applied the terms of its *Order Modifying Procedure for Response & Reply* (Doc. 224) and § 40-4-219, MCA, in evaluating Mr. Martin's two motions.

Given the high burden required of a movant to amend a final parenting plan, and given the high volume of filings and motions in this matter, the District Court implemented an appropriate procedure to prevent the filing of frivolous or meritless motions.[1] However, the District Court's *Order Modifying Procedure for Response & Reply* (Doc. 224) did not substantively change the way the Court reviews a motion

[1] While Mr. Martin cannot now challenge the validity of the *Order Modifying Procedure for Response & Reply* (Doc. 224), Ms. Williams notes that "[w]hile Article II, Section 16, of the Montana Constitution guarantees every person access to the courts, it does not grant a person license to relitigate a cause or to burden the resources of the court with successive claims." *Langemeier v. Kuehl*, 2001 MT 306, ¶ 31, 307 Mont. 499, 40 P.3d 343. Accordingly, the *Order Modifying Procedure for Response & Reply* (Doc. 224) was an appropriate way to ensure that Mr. Martins' Constitutional rights were protected while limiting the wasting of Court resources and Ms. Williams's need to respond to meritless motions.

to amend a parenting plan, because, as noted above, the presumptive starting point under § 40-4-219, MCA, is to deny the motion. The fact that the Court summarily denied Mr. Martin's two motions without ordering Ms. Williams to respond and without scheduling a hearing simply means that the Court was closely following the applicable statute.

III. The District Court did not abuse its discretion in denying Mr. Martin's two motions.

The two District Court orders from which Mr. Martin appeals (Docs. 244 and 245) included detailed findings and well-reasoned conclusions. The District Court could review the entire record and the volume of Mr. Martin's filings, along with the specific allegations and request for relief in these two motions, and easily conclude that Mr. Martin did not clear the threshold burden of demonstrating that a "change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child," as required by § 40-4-219, MCA. Absent that threshold showing, the Court was required, by law, to deny Mr. Martin's motions without a hearing.

Both orders contain the identical following sentence, which is particularly condemning of Mr. Martin's litigation tactics: **"Mr. Martin's ferocious pursuit of all claims, including the clearly trivial, communicates to the Court that he may be motivated to pursue vexatious amendments to harass the Respondent rather than motivation based in the best interests of his children."** Doc. 244, p. 3, line 15; Doc. 245, p. 2, line 9.

As set forth above in the Statement of the Facts, Mr. Martin has indeed employed a scorched-earth strategy with respect to any imaginable legal issue involving Ms. Williams. If his goal is to inflict deep emotional and financial harm to Ms. Williams and the parties' children, then Mr. Martin is to be congratulated on his achievements.

IV. This Court should impose restrictions on Mr. Martin's filings and award attorney's fees under § 40-4-219(5), MCA.

As has been demonstrated by this appeal and the pending appeal in DA 24-0228, Mr. Martin will not stop with a District Court order denying a motion. It's entirely possible—if not likely—that Mr. Martin will continue to file meritless motions in District Court and then appeal

them all to this Court. While the procedure in the *Order Modifying Procedure for Response & Reply* (Doc. 224) relieves Ms. Williams of her burden of defending against meritless motions, it does not relieve her of the burden of responding to meritless appeals (like this one). If left unchecked, Ms. Williams will be constantly defending herself in appeals for the next eight years until the youngest child is an adult.

Ms. Williams respectfully asks this Court to impose on Mr. Martin the same restrictions as the District Court's *Order Modifying Procedure for Response & Reply* (Doc. 224). Specifically, Ms. Williams asks for an order that would waive appellate mediation and only require Ms. Williams to file an appellee's brief if this Court first reviews Mr. Martin's appellant's brief and deems it sufficiently meritorious to warrant a response.

This Court has authority to enter a pre-filing order against Mr. Martin:

> The Montana State Constitution grants this Court general supervisory control over all other courts, and the Montana Rules of Appellate Procedure afford this Court discretion … [through] a request included in a brief … to sanction frivolous or vexatious conduct by imposing a penalty as the supreme court deems proper under the circumstances. Pursuant to this Rule, [t]his Court may sanction a litigant,

> including [with] the imposition of a pre-filing order, for vexatious litigation conduct.

Wallace v. Law Offices of Bruce M. Spencer, PLLC, LPH, Inc. 2021 MT 253 ¶ 3, 405 Mont. 473, 495 P.3d. 1047 (internal quotations and citations omitted).

Ms. Williams cannot even guess at the number of hours she has spent reviewing and defending against Mr. Martin's frivolous filings over the last five years, and she is deeply saddened that she has spent tens of thousands of dollars in legal fees on these matters instead of putting that money towards college savings or materially improving her children's lives.

Pursuant to § 40-4-219(5), MCA, "Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment." (Emphasis added.)

Additionally, under M.R.A.P. 19(5), this Court may "award sanctions to the prevailing party in an appeal . . . determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial reasonable grounds." Such sanctions "may include

costs, attorney fees, or such other monetary or non-monetary penalty as the Supreme Court deems proper under the circumstances." M.R.A.P. 19(5). M.R.A.P. 19(3) further entitles a prevailing party to costs incurred on appeal, including "the costs of reproducing briefs and necessary appendices."

This Court has previously awarded attorney fees where one party shows a "significant disdain for the integrity of the judicial process." *Lee v. Lee*, 2000 MT 67, ¶ 66, 299 Mont. 78, 996 P.2d 389 (quotations omitted). This Court has also stated that "while pro se litigants may be given a certain amount of latitude in their proceedings, they may not proceed in such a fashion as to abuse the judicial process and prejudice the opposing party's interests." *Lee*, ¶ 66 (citations omitted).

Here, Mr. Martin has presented no legal or factual grounds for his appeal. He has proceeded throughout this case with disdain for the integrity of the judicial process by treating as an enemy every judge, CSSD worker, or other state official with whom he disagrees. Due to his behavior and lack of reasonable legal or factual basis for bringing this appeal, Ms. Williams respectfully asks this Court to order Mr. Martin to

reimburse her for the fees and costs she incurred in defending against this frivolous appeal.

CONCLUSION

Ms. Williams respectfully asks this Court to affirm the District Court's two orders, to impose a pre-filing order on Mr. Martin, and to order Mr. Martin to pay Ms. Williams's attorney's fees and costs associated with this appeal.

Dated this 26th day of June, 2024.

Eric Goldwarg
Counsel for Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to M. R. App. 11, I certify that this Brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count is not more than 20,000 words.

Dated this 26th day of June, 2024.

Eric Goldwarg
Counsel for Appellee

Appendix

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