IN THE SUPREME COURT OF THE STATE OF MONTANA

MAKAYLA MASSE, Petitioner/Appellee, vs. BRAD RICHARDSON, Respondent/Appellant.	Appeal Cause No. DA 24-0270

APPELLEE'S ANSWER BRIEF ON APPEAL

On Appeal from the Montana First Judicial District Court, Lewis and Clark County, the Honorable Mike Menahan, Presiding
District Court Cause No. ADR 2024-180

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COMES NOW Petitioner/Appellee Makayla Masse ("Makayla") by and through her counsel of record and provides this Answer Brief on Appeal.

I. STATEMENT OF ISSUES

Did the District Court abuse its discretion when it made Makayla's temporary restraining order a permanent Order of protection?

II. STATEMENT OF THE CASE

In June of 2023, Respondent Brad Richardson ("Brad") reopened a parenting plan matter, ultimately seeking a modified parenting plan. That matter had a final merit's hearing in February of 2024. After the final hearing in the parenting matter, Brad sent a series of emails in which Makayla's safety was threatened. Makayla sought an order of protection on or about March 28, 2024, and that order was initially granted on April 2, 2024. A hearing on the matter was held on April 18, 2024, at which time the Court ruled from the bench that the temporary restraining order would become a permanent Order of Protection which expires on April 18, 2025. This appeal followed.

III. STATEMENT OF RELEVANT FACTS

Makayla and Respondent/Appellant Brad Richardson ("Brad") have a long history together. They were in an intimate relationship which ultimately resulted in the birth of their son, LM, who was born in 2019. See Appendix, Exhibit A. In

August of 2020, the District Court issued a final parenting plan, which was stipulated to between the parties in open Court. *Id*. On August 20, 2020, both parties agreed that no additional hearings were necessary and that no additional reviews were needed. *Id*., ¶ 6. In June of 2023, Brad reopened this case when he first filed a Petition for Contempt, which was accompanied by a proposed Amended parenting plan. See Appendix, Exhibit B, PP Docket Nos. 23, 25. Thereafter, on June 28, 2024, Brad submitted HIS "evidence" regarding various issues. *Id*., PP Docket No. 60. The very same day, the Honorable Christopher Abbot issued an Order Striking Exhibits, in which he not only struck Brad's "evidence," but also had the exhibits filed under seal to maintain Makayla's privacy. Appendix, Exhibit C. Brad filed a motion for substitution the following day. Appendix, Exhibit B, PP Docket 65. Due to the nature of the "evidence" Brad attempted to submit, Makayla filed a *Motion in Limina to Exclude Evidence Predating August 20, 2020*. Appendix, Exhibit B, PP Docket 68. Brad did not file a response, and the Court granted Makayla's motion on August 8, 2023. Appendix, Exhibit D.

During the parenting dispute, Makayla sought two separate orders of protection. The first time, she filed her petition in September of 2023. Appendix, Exhibit B, PP Docket No. 89-90. The request was made, in part, after Makayla's

counsel received a text in which Brad stated, “Hey you know how in Pakistan they bury women up to their necks and the community gathers around and throws rocks at them.” Appendix, Exhibit E. At the hearing, Makayla suggested the use of a civil no contact order, hoping that it would help her co-parenting relationship, and the Court adopted this suggestion. Appendix, Exhibit F.

The Second order of protection is the subject of this appeal. After the final hearing, Brad sent several threatening emails to Makayla’s counsel. Based on the content of those emails, Makayla sought an order of protection on March 28, 2024, which was granted on April 2, 2024. OOP Docket Nos. 1-2. The hearing on the Petition was held on April 18, 2024. OOP Docket No. 4. After the hearing, the Court granted a permanent Order of Protection which is scheduled to expire on April 18, 2024. OOP Docket No. 5.

IV. STANDARD OF REVIEW

The standard of review for a district court’s decision in granting an order of protection is an abuse of discretion. *Schiller v. Schiller*, 2002 MT 103, ¶ 24, 309 Mont. 431, 435, 47 P.3d 816, 819. “The question under this standard is not whether [a different 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. *Lockhead v. Lockhead*, 2013 MT 368, ¶ 12, 373 Mont. 120, 123-24, 314 P.3d 915, 918.

V. SUMMARY OF ARGUMENT

Brad's entire argument hinges on his claim that Makayla did not fear for her safety when the second order of protection was issued. Brad contends, albeit with difficulty, that had the District Court allowed him to present six years of history, he would have been able to convince the District Court that Makayla did not fear for her safety regardless of Brad's own words. Makayla, on the other hand, argued that their history had no relevance to her current fear, because her current fear was based on the threats that Brad made in his communication, and based on his behavior during child pick-ups. The Court correctly determined that when Brad clearly stated that if Makayla touched him again, he would "beat her senseless," that Makayla was in reasonable fear for her safety.

Through this appeal, Brad tries to relitigate disputes the parties have had since 2018. The Court correctly determined that their history, regardless of what it was, did not give Brad the right to repeatedly threaten Makayla, tell her that his threats were "fair warning," and then try and claim that Makayla was not in reasonable apprehension of her safety.

This Court should affirm the District Court's decision and uphold the Order of Protection.

VI. ARGUMENT

Under Montana law, a person who is in "reasonable fear of apprehension of bodily injury by [that person's] partner or family member as defined in 45-5-206" may file a petition for an order of protection. Mont. Code Ann. § 40-15-102(1)(a) (2023). As Brad correctly points out, "the object of a TOP proceeding is the swift and efficient protection of one who is being harassed and intimidated by another." *Lear v. Jamrogowicz*, 2013 MT 147, ¶ 26, 370 Mont. 320, 325, 303 P.3d 790, 793-94. "The statutory scheme contemplates that the petition will succeed if the petitioner establishes good cause for the entry of an order and will fail if she does not. *Lear*, ¶ 26. Once the initial temporary restraining order is issued, district courts may continue, amend or make a temporary of protection permanent "upon a showing of good cause." Mont. Code Ann. § 40-15-202(1); *Schiller* ¶ 25. On April 18, 2024, that is exactly what the District Court did, and this Court should not upset the District Court's Order.

Brad contends that the District Court did not weigh all the factors prior to granting the Order of Protection and refused evidence that should have been admitted. He argues that the evidence should have been admitted because it was

legally relevant, and it would have had the tendency to prove character. Finally, he contends that if the evidence were admitted, it would have shown that issuing the order of protection served no legal purpose.

The evidence that Brad complains was improperly rejected was "historical" in nature and not legally relevant. As Brad's factual history demonstrates, most of it was at least four years old. However, the District Court was not interested in things that occurred in the distant past. The District Court did not believe that evidence of matters occurring sometime between 2018-2020 had any bearing on whether emails sent in 2024 were threatening or reasonably caused Makayla fear. The District Court correctly stated that the hearing was "not talking about the past. [The hearing is] about these emails that [Brad] sent to Makayla Masse after [the] last hearing, and that's the basis." *Transcript*, 7:13-16. The District Court determined that he would not "[open] this up to all of [Brad and Makayla's] relationship before now." *Transcript*, 7:16-17. The District Court then correctly limited the extent to which Brad could question Makayla, stating that it "gets to determine whether or not [Brad's questions are] relevant. . . . But if [Brad has] questions for her that relate to these particular emails and whether or not it's reasonable for her to fear [Brad], fine. But as [the Court], this is not a time to relitigate everything." *Transcript*, 7:21-8:10.

Brad correctly points out that relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Mont. R. Evid., 401 (2023). However, Brad ignores the fact that District Courts have the discretion to determine what might be helpful for the fact finder to make those determinations. When the District Court is also the fact finder, this provides the District Court with significant discretion. In this case, the District Court determined that hearing ***disputed*** facts about matters that were more than four years old, and in some cases more than five years old, would not help it determine if Makayla reasonably feared for her safety. Accordingly, Rule 401 does not provide any basis to determine that the District Court erred in not considering disputed facts.

Brad also claims that if the District Court allowed the evidence, it would have convinced the District Court of Makayla's bad character and therefore convinced the District Court that she did not fear for her safety. Brad tries to use Rule of Evidence 404 to show this Court why the District Court's exclusion was a mistake. When dealing with claims of assault and evidence that might dispute the claims of a victim, Montana Rule of Evidence, 404 states that "evidence of a pertinent trait of character of the victim of the crime" is admissible. Mont. R.

Evid. 404(a)(1) (2023). Generally, this means that an accused may introduce evidence of the violent character of a victim to show that the victim was the first aggressor or to show that the accused used a reasonable amount of force in defending himself. Mont. Code Ann. § 26-10-404 (2023) (Commission Comments). This Order of Protection was not based on incidents of assaults where Brad could reasonably try and claim that he was defending himself. This Order of Protection was based on written threats made by Brad against Makayla. It is hard to see how threats made in 2024 were in defense of conduct from years before, in some cases more than five years ago.

Moreover, this was the third time that the District Court had the opportunity to judge the credibility of both parties. It was familiar with the parties' various disputes and could use that knowledge in its determination of what history was relevant to determine whether the Order of Protection should be granted. Additionally, each time the parties went before the District Court, Brad had the chance to discredit Makayla if he could. Instead of using unproven allegations from disputes that were years old, the District Court properly looked to the words in Brad's email and determined that a person on the receiving end of those threats would reasonably fear for their safety. These threats included the following:

- "she ever touches me ill [sic] beat her senseless. This is fair warning" (emphasis in original).
- "I hope [she] gets some."
- "She will get the 1-2 from me I'm telling you."
- "But next time she feels the right to strike me and does it…." (implicitly stating a beating would follow).
- "She needed her ass kicked, I never did. But that's exactly what she needed. But to reiterate if she ever puts her hands on me she wont [sic] like what she gets."
- "It don't [sic] mean shit to me to punch a woman. Figuratively or literally. . . I'm not a woman beater. I don't beat women, however I have no problem knocking one out. . . Its [sic] not going to be that if she hits me again. . ."
- I've said it about 20 times, if mm strikes or grabs or does anything physically aggressive towards me ..."

OOP Docket No. 1, Pg. 2. Brad's factual history includes allegations about what the State intended to do in a criminal trial that never occurred because the State dismissed the charges; it includes Brad's version of a series of events surrounding two different assault charges against him; it even includes the way he got his criminal attorneys to quit. None of the facts he includes have any bearing on whether Makayla reasonably feared for her safety when Brad threatened her via email. Paradoxically, by including statements about his verbal assault against his own attorneys, Brad admits that he indeed engages in a pattern of assault to get what he wants. His threats against Makayla should not be viewed any differently. Consequently, it should be no surprise to this Court that Brad resorted to emailing

threats of physical harm against Makayla barely a month after the last court hearing they had in their parenting matter.

Finally, Brad implies that Makayla is not legally entitled to the Order of Protection and that had his evidence been considered, the Court would have realized this. He believes that she sought out the order of protection to make his life difficult, stating that "it's just another imposition on [his] life, another harassment, another nonsense [he has] to deal with that [he has] to explain to people and, you know -- that's the only purpose it serves. It serves no purpose other than that. It's just for them to be in court, being Machiavellian, being --whatever, causing me issues." *Transcript*, 24:8-14. When evaluating whether this argument has any merit, this Court must consider the absolutely irrational measures Brad used to connect behavior of third parties to Makayla. The level of irrationalism employed by Brad provides clear evidence of why Brad's threats cause a reasonable apprehension of harm. Since Brad defended his emails by saying they all said something like "if she touched him again," Brad's irrational connections are important. In this regard, Brad testified that a third party he claims Makayla had a relationship with several years ago was "snooping on his Facebook." *Transcript*, 20:25-21:8. Moreover, Brad tried to connect the third party's actions snooping on his Facebook directly to Makayla, implying it was her fault.

Transcript, 21:11-21. Brad's ability to read into anything also means he can interpret the most innocent of touches by Makayla as something he needs to "beat her senseless" over. Makayla was very clear that she was concerned about this irrationalism by Brad. *Transcript*, 5:2-6:19.

Ultimately, the District Court correctly determined that the hearing was not about Makayla, but about Brad's behavior. *Transcript*, 9: 2-3. The District Court specifically stated that the issue for the hearing as Brad's emails, correctly pointing out that Makayla was not "sending emails to [Brad] . . . threatening [Brad], [or] doing anything to disturb [Brad's] peace, [Brad's] sense of security, [Brad's] safety. [Brad was] doing that." *Transcript*, 9:2-9. And, after considering all the evidence presented, determined that Makayla was legally entitled to an order of protection and issued one that will expire in a year.

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VII. CONCLUSION

Based on the facts, the District Court not only correctly concluded that Makayla was legally entitled to an Order of Protection, that she reasonably and genuinely feared for her safety, and that Brad's testimony about issues that occurred several years previously were not admissible. This Court should affirm the District Court's decision.

Dated: July 11, 2024

VANISKO LAW, PLLC

By: /S/ Michelle H. Vanisko

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing Appellee's Answer Brief on Appeal is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count calculated by Microsoft Word Office 365 for Windows is 2,558 excluding the Certificate of Service and Certificate of Compliance.

Dated: July 11, 2024

VANISKO LAW, PLLC

By: /S/ Michelle H. Vanisko

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2024, I served true and accurate copies of the foregoing **APPELLEE'S RESPONSE BRIEF ON APPEAL** as follows:

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By Regular US Mail

/S/ Michelle H. Vanisko

Michelle H. Vanisko

CERTIFICATE OF SERVICE

I, Michelle H. Vanisko, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 07-11-2024:

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Electronically Signed By: Michelle H. Vanisko
Dated: 07-11-2024