ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 24-0228

IN RE THE MARRIAGE OF,

BENJAMIN MARTIN
Petitioner and Appellant,

v.

BRANDI WILLIAMS
Respondent and Appellee,

APPELLANT'S REPLY BRIEF

On Appeal from the Montana Eighteenth Judicial District Court, Gallatin County
Cause No. DR-16-2012-60C,
Honorable Michael B. Hayworth Presiding

APPEARANCES:

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I. THE APPELLEE MADE NO LEGAL ARGUMENT IN THEIR RESPONSE BRIEF

Mrs. Williams makes no legal argument in her response brief but instead admits:

1. She did not comply with the mediation requirement of Amended Final Parenting Plan Section 16, Page 10, Lines 12-17 (D.C. Doc 126), prior to filing to modify the parenting plan.
2. Admits to committing Res *Judicata,* ignoring *Stare decisis*

Mrs. Williams states in her brief that: "Mr. Martin's appeal from a CSSD hearing in (D.C) because he has not yet exhausted his "administrative remedies" is not even mentioned in the Appellant's Opening Brief, in the argument. In fact, this matter and appeal are currently sitting before the District Court.

Mrs. Williams goes on to state that "*Mr. Martin is a vexatious litigant who must be sanctioned.*" Yet again, Mrs. Williams offers no legal stance to support that belief. The District Court has not deemed Mr. Martin a vexatious litigant.

Motta v. Granite County Comm'rs, 2013 MT 172, ¶¶ 17, 22, 370 Mont. 469, 304 P.3d 720, and Article II, § 16, of the Montana Constitution guarantees every person access to the courts of the state, that while the right is not an absolute right and may be reasonably restricted" Motta, ¶ 18.

This Court has previously adopted the criteria used by the Ninth Circuit Court of Appeals: Whether the litigant was given notice and a chance to be heard before the order was entered; whether the trial court has compiled an adequate

record for review; whether the trial court has made substantive findings about the frivolous or harassing nature of the plaintiff's litigation; and whether the vexatious litigant order is narrowly tailored to closely fit the specific vice encountered. Motta, ¶ 20 (citing Molski, 500 F.3d at 1057). In addition to the endorsement of the Ninth Circuit's five-factor test to examine whether a pre-filing order is justified: (1) the litigant's history of litigation and, in particular, whether it has entailed vexatious, harassing, or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation; e.g., whether the litigant has an objective good faith expectation of prevailing; (3) whether counsel represents the litigant; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties. Motta, ¶ 20 (citing Molski, 500 F.3d at 1058).

Mr. Martin has been denied a hearing every single time he has asked for one. Nor has the opposing counsel been granted a hearing on their request for sanctions and attorney's fees. In December of 2021, the court denied Mrs. Williams's request for attorney's fees. Therefore, the District Court has had ample time to hold a hearing to deem Mr. Martin a vexatious litigant but has not.

Therefore, it appears that Mrs. Williams is attempting to have the Supreme Court deem the Appellant Vexatious and receive attorneys' fees rather than addressing the issues at hand. The orders denying vexatious litigant classification and awarding attorney's fees, as well as time for appeals, have long since passed, and it appears that the Appellee's Brief is an inappropriate attempt to file an out-of-time appeal.

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN ALLOWING VEXATIOUS DUPLICATIVE FILINGS

a. In *Motion to Suspend Parenting Time with Respect to K.A.M. & Brief in Support* (D.C Doc #253). Mrs. Williams Exhibit A is also Mr. Martin's Exhibit 9 in *Motion for Contempt of the Parenting Plan* (DC Doc #241)

b. In *Motion to Suspend Parenting Time with Respect to K.A.M. & Brief in Support* (D.C Doc #253). Mrs. William's Exhibit B is also Mr. Martin's Exhibit 3 in *Motion to Modify Parenting Plan and Parenting Assessment, and Mental Health Evaluations of the Parties* (D.C. Doc #238) & *Motion for Contempt of the Parenting Plan* (D.C. Doc #241), Exhibit 10. (D.C. Doc 253)

c. In the *Motion to Modify Parenting Plan and Parenting Assessment, and Mental Health Evaluations of the Parties* (D.C. Doc #238, Page 2-Line 30-32 & 3 Line 1-26) & *Motion for Contempt of the Parenting Plan* (D.C. Doc #241 Page 3 Line 19-32, Page 4 (entire), Page 5 Line 1-5) speaks explicitly to the exact situation and issues that Mrs. Williams brings forth in her April 3, 2024 *Motion to Suspend Parenting Time with Respect to K.A.M. & Brief in Support* (D.C Doc #253).

Yet on February 8, 2024, the Court issued "*Court Denying Motion to Modify Parenting Plan*" (D.C. Doc #244). On February 9, 2024, the Court issued "*Court Denying Motion for Contempt of the Parenting Plan*" (D.C. Doc #245).

Therefore, on prima facie evidence alone, if the District Court Judge felt a modification of parenting time was warranted, they had the pre-trial evidence to make sufficient decision to warrant setting a hearing. However, this Court did not do so. The decision was to the contrary. Instead, what this showcases is judicial bias and vexatious litigation on the part of Mrs. Williams to avoid complying with the court order and avoiding criminal prosecution.

Mrs. Williams attempted to "take another bite of the apple" as she was now facing potential criminal and civil charges for failing to follow a Court Order. She now hoped the District Court would allow HER to suspend parenting time based on her and child's wants when this issue was already litigated in the *Motion to Modify Parenting Plan and Parenting Assessment, and Mental Health Evaluations of the Parties* (D.C. Doc #238), & *Motion for Contempt of the Parenting Plan* (D.C. Doc #241), to which On February 8, 2024, the District Court issued "*Court Denying Motion to Modify Parenting Plan*" (D.C. Doc #244). On February 9, 2024, the Court issued "*Court Denying Motion for Contempt of the Parenting Plan*" (D.C. Doc 245).

Furthermore, if Mrs. Williams wished to initiate any of the other actions that she attempted to compact into that motion, each action would require an appropriate separate Motion, Brief, and Affidavit requesting such actions, not compressing them into a single request.

The reality is that since the Court's February 8 & 9, 2024 Court Orders, the only changes that have occurred are the continuation of Mrs. William's

unwillingness to abide by a Court Order, her continued psychological abuse of the children, and the increased campaign of parental alienation.

III. THE DISTRICT COURT ABUSED ITS DISCRETION IN RULING ON A MOTION THAT WAS STATUTORILY UNSOUND

Precluding very specific circumstances in Montana Code Annotated §40-4-219 (8), the very statute which Mrs. Williams claims is the reason for *Motion to Suspend Parenting Time with Respect to K.A.M. & Brief in Support* (D.C. Doc 253 Line 15-16), there is no provision nor legal mechanism for the District Court to suspend parental rights in the context of a Parenting Plan or action. In fact, nowhere in Title 40, Chapter 4, does the term "suspend," "terminate," or "limit" appear.

The rules of statutory construction "require our construction of a statute to account for the statute's text, language, structure, and objection." Van der hule v. Mukasey, 2009 MT 20, ¶ 10, 349 Mont. 88, 217 P.2d 109. As it relates to statute construction, "the intention of the legislature is to be pursued if possible." Montana Code Annotated. § 1-2-102. "Legislative intent is to be ascertained, the first instance, from the plain meaning of the words used – [the Court's] inquiry must begin with the words of the statute themselves." Id. (citing State v. Heath, 2004 MT 126, ¶¶24-25, 321 Mont. 280, 90 P.3d 426). If a statute can be reasonably interpreted, "statutory construction should not lead to an absurd result." Id. (citing State v. Letasky, 2007 MT 51, ¶ 11, 336 Mont. 178, ¶11, 152 P.3d 1288, ¶ 11).

When the rules of statutory construction are applied to Montana Code Annotated § 40-4-219(8), the reasonable interpretation is that the statute is meant to define a particular and specific set of circumstances that allow a trial court to suspend parental rights in a parenting matter. The Legislature went out of its way to enumerate such circumstances, even creating an exclusive list of qualifying crimes. Clearly, the Legislature intended the Montana Code Annotated. § 40-4-219(8)(a)-(b) to limit when a suspension of parental rights can be commenced in a parenting action.

To interpret the statute in any other manner would mean that the Legislature specified the circumstances and procedure to suspend parenting rights in a parenting action but that it, meanwhile, intended District Courts to have complete discretion to suspend parental rights without following any procedures or guidelines. Such an interpretation of the statute would lead to statutorily unsound results.

There is no finding from the District Court in this case, nor any suggestion in any filing by any party, that Mr. Martin was/is convicted of an offense that falls under Montana Code Annotated. § 40- 4-219(8)(b). Therefore, there is no finding from the District Court or any filing that suggests that Mrs. Williams gave Mr. Martin notice in accordance with the Montana Code Annotated. § 40-4-219(8)(a), nor would doing so have been appropriate given that he has not been convicted or accused of any of the offenses.

Accordingly, Mr. Martin's parenting rights cannot correctly be suspended under the Montana Code Annotated. § 40-4-219(8), and there is no other statutory provision that allows for suspension of his rights in a parenting action.

Although not entirely akin to suspension of parental rights, District Courts can limit a parent's contact with the child by ordering supervised contact pursuant to Montana Code Annotated. § 40-4-218(2), which reads, in relevant part, "*if both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development significantly impaired, the court may order supervised visitation by the noncustodial parent*". In this case, the Montana Code Annotated would not satisfy the remedy that Mrs. Williams and minor child K.A.M. are looking for or what was requested in the action. The motion sought a permanent no-contact relationship of any type with Mr. Martin, under the request of a minor child and alienating parent, which is not allowed by statutes without meeting the legal criteria. Additionally, Mrs. Williams has consistently venomously opposed any professional evaluation of the minor children to seek out what may be the source of disdain for Mr. Martin.

Mrs. Williams and the minor children have other legal remedies available to them to accomplish this objective; this includes the emancipation of the minor children or filing to terminate the parental rights of Mr. Martin. However, all of which would require a professional evaluation, something Mrs. Williams is not willing to allow and claims is "abusive and unnecessary."

The brief does highlight her continued coercive control and alienation. Mrs. Williams references a video taken on March 31, 2024, showing the child unwilling to attend visitation; in the video at:

0.07 the child states "she doesn't want to go with him" (him being Mr. Martin)
0.29 the child admits she doesn't want to communicate with Mr. Martin

0.44 The child states, "We have documents that you don't feel comfortable with me, and many, many threats.

1:13 The child states, "You feel as a parent you feel it appropriate to threaten me." Mr. Martin then responds by saying, "Yes, because I am attempting to parent you. You feel it's appropriate to dictate what happens at my house."

1:42 The child states, "She is not telling me no; she is supporting me and me feeling safe" (she being Mrs. Williams)

1:54 Mr. Martin states that "he is standing up for his rights (parenting), and the child replies, "So, am I."

Mrs. Williams admits that she would not force the minor child K.A.M. to attend parenting time under the order. In *Marez v Marshal*, 2014 MT 33, ¶ 34, 377 Mont. 304, 340 P.3d 520

¶32 As noted by the District Court, whether a parent may be held in contempt when a child refuses to attend court-ordered visitation because the parent has either acquiesced in or encouraged the child's refusal is an issue of first impression in Montana.

¶34 A parent is not "a powerless bystander" in the decisions and actions of a child and has "an obligation to attempt to overcome the child's resistance" to visitation. Rideout, 77 P.3d at 1182. A parent has "a great deal of influence over [a child's] ideas and feelings," which carries with it an affirmative responsibility to nurture in the child a positive regard for his or her other parent. Ermel, 469 A.2d at 685. Although we recognize the difficulty, at times, of compelling a child's compliance with parental—or judicial—directives, a parent must make a good faith effort to do so. Hancock v. Hancock, 471 S.E.2d 415, 419 (N.C. Ct. App. 1996) (contempt order not appropriate where mother "did everything possible short of using physical force or a threat of punishment to make the child go with his father."). This obligation is in no way met where a parent allows a child to disregard a court-ordered parenting plan, passively. submits to the child's judgment about his or her own parenting arrangements, or actively fosters animosity and distrust toward the other parent. The District Court was justified in exercising its contempt powers to "[e]nsure respect for the law and the orderly progress of relations between family members" in this case. Milanovich, 201 Mont. at 336, 655 P.2d at 965.

Even with the February 2024 District Court rulings, Mrs. Willams would not produce the minor child K.A.M. for visitation or any contact. Mrs. Williams continued/s to assert that the minor child was abused. The minor child claims that she will not participate in visitation as Mr. Martin's home is "abusive." Mrs.

Williams has failed to produce the minor child K.A.M. since August 2023. The other two minor children are so academically behind and need assistance and are so over-scheduled with activities they are unable to attend regularly scheduled parenting time as well.

The reality is that if Mr. Martin was indeed abusing Mrs. Williams and the children, as she has testified to in December of 2021, proclaimed in October of 2022, July of 2023, or August of 2023, why would she not do everything in her power to remove the children legally from Mr. Martin or use every available resource to protect the children? The reality is that there is no danger, there is no abuse, and Mrs. Williams believes that Mr. Martin should not have any parenting rights and uses alienating and coercive control behaviors to achieve that goal rather than co-parenting. However, Mr. Martin has asked the District Court to investigate Mrs. Williams's abuse claims several times, and they ignore him,

In the February 9, 2024, "*Court Denying Motion for Contempt of the Parenting Plan*" (D.C. Doc. 245). The Court stated that:

> "***Both*** *parents are placed on notice of the issues and concerns raised through Mr. Martin's (Filings).* ***Each*** *must act to address any issue that is negatively impacting the children's care, including each parent's own conduct.*" (D.C. Doc. 245 Line 19-21)

> "*Mr. Martin's filings support the conclusion the parents,* ***in some ways both parents*** *need to stop feeding the ongoing animosity between the households. The present standoff is counterproductive to cooperative coparenting and is ultimately contrary to the children's needs and security and stability*". (ROA #245 Line 13-17)

Here, the court explicitly speaks to the actions of BOTH parents.

The reality is that Mrs. Williams, fueled by her counsel, does not feel that District Court orders apply to her.

Mr. Martin has asked the court for counseling no less than three times, filed several motions for mediation to keep the ongoing issues out of the court, and several additional motions to investigate Mrs. Willams's claims.

Mr. Martin admits that, given the volatile situation, he felt it would not only serve in the best interest of the children but also provide the court with a much-needed expert witness opinion, given that to date, the court has only heard the testimony of the parties. Mr. Martin recommended and confirmed that Dr. Michal R. Butz meets all these requirements and satisfies the Montana Code Annotated.§ 40-4-234 & 37-17-104 requirements. Additionally, he is an in-network provider for the insurance that covers the children, minimizing costs. However, Mrs. Williams is venomously opposed to any counseling, professional evaluation or intervention, claiming that it is abusive and that there is no need for it. However, in her brief, she argues that the requirement for visitation was putting "tremendous stress on K.A.M."

Furthermore, Mrs. Williams and her counsel failed to accept the fact that under Montana Code Annotated. §26-1-807, which clearly states that

> *"Mental health professional-client privilege. The confidential relations and communications between a psychologist, psychiatrist, licensed professional counselor, or licensed clinical social worker and a client must be placed on the same basis as provided by law for those between an attorney and a*

client. Nothing in any act of the legislature may be construed to require the privileged communications to be disclosed".

Therefore, unless the person providing the services is court-appointed and required to submit a recommendation or testimony or does so willingly, there is no way to compel their testimony about the best interests of the children or their findings.

II. THE DISTRICT COURT HAS THE OBLIGATION TO UPHOLD THE VERY ORDER THAT IT ISSUES

The District Court has a legal obligation to uphold its orders and review substantial documentation to set a hearing. Whether or not the court feels that there is enough to amend is the decision of the court after a hearing is held.

The District Court ignored the filling for *Motion for Contempt of the Parenting plan* on March 14, 2024, when Mr. Martin again asked the court to intervene and hold a hearing to enforce its January 2, 2022, order in addition to enforcing their most recent February 8 (D.C. Doc 244) and February 9, 2024 (D.C. Doc 245), orders.

Montana law says that disobeying any lawful judgment, process, or order of the Court is in contempt of the Court's authority. Montana Code Annotated.§ 3-1-501(1)(e). Contempt can be criminal or civil. Contempt is civil if the purpose for imposing a penalty is to force compliance with a court order. The penalty can be ended, reduced, or avoided by complying with the Court's order in civil contempt Montana Code Annotated.§ 3-1-501(3).

Montana law also states that it is not in the children's best interest when one parent does not allow or attempts to obstruct the other parent from seeing the children or tries to keep the other parent from seeing the children Montana Code Annotated.§ 40-4-219 (3).

The law says the offense of interference with parent child-control happens when someone is given parent-child contact under a court-ordered parenting plan knowingly or purposely prevents, obstructs, or frustrates the rights of any other person, primarily the other parent who has been given rights under said court-ordered parenting plan; is a violation of Montana Code Annotated.§ 45-5-631(1).

A parent's right to the care and custody of their child "*is a fundamental constitutional interest protected by both the United States Constitution and the Montana Constitution.*" In re B.H., 2020 MT 4, ¶ 36, 398 Mont. 275, 456 P.3d 233; Santosky v. Kramer, 455 U.S. 745, 753-54, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982); see also, In re M.A.E., 1999 MT 341, ¶ 18, 297 Mont. 434, 991 P.2d 972.

This Court recognized the constitutional rights of natural parenting to parent their child in In re Doney. Doney, 174 Mont. 282, 570 P.2d 575 (1977).

> "*This careful protection of parental rights is not merely a matter of legislative grace but is constitutionally required.*"

In re Parenting of J.N.P., 2001 MT 120, ¶ 17, 305 Mont. 351, 27 P.3d 953 (citing Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L.Ed.2d 551(1972)).

"*The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the*

Fourteenth Amendment, and the Ninth Amendment." Id. "*This constitutional protection is based upon the integrity of the family unit, which necessarily includes the child's right to be with his or her parent.*" Id., (citing Stanley, at 652, 559.)

In Montana, the law presumes that "frequent and continuing contact" with both parents is best for the children unless it is proven to the court that this is not true. Absent a legal premise, there is no reason why there should not be the creation and execution of a parenting plan that has maximum time for both parents, in addition to consequences for parents who obstruct the visitation and relationship with the other parent.

CONCLUSION

Mr. Martin is not the vexatious, evil, abusive parent Mrs. Williams portrays him to be. In fact, he is just the opposite. He is a long-term, self-employed, home-owning father who wants equal parenting time with his children. He does not feel that Mrs. Williams has the right to interfere with that relationship unless legally supported. Mr. Martin wants to be a good, loving, stable party who shares custody of his children with their mother, Mrs. Williams.

Mrs. Williams did not argue or deny that several documented changes in circumstances and issues with the 2022 Amended Parenting Plan existed or that they needed to be resolved (D.C. Doc 126), I.E., changes in the children's school schedule, how the children of the action's academics have plummeted under her

sole care, how given the new legislation passed under House Bill 203 and M.C.A. §20-5-321 & §20-10-121, would affect the terms of the parenting plan, or how some of the children of the action no longer want a relationship with their father due to alienation, and her inability or desire to abide with the terms of the parenting plan, or any court order.

It is Mrs. Williams who, in fact, does not feel that Mr. Martin has any rights and no role to play in the lives of the children. She refuses to "act in the children's best interest" to allow for "frequent and continuing contact." She does everything in her power to obstruct the relationship. She refuses to let a professional be engaged with the children to address her allegations of abuse or co-parenting, even when Mr. Martin stated that he would pay for it.

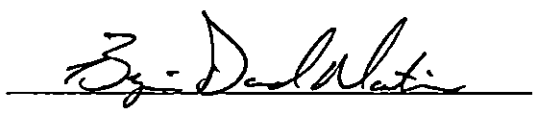
The District Court abused its discretion by continually failing to intervene and enforce the terms of the Parenting Plan and their other order, in addition to addressing documented changes in circumstances as a reason to modify and intervene in the ongoing contempt for the order. The District Court has a legal obligation to intervene in cases under the Montana Statute and to enforce its orders. The Court must ensure that the orders it issues are enforceable, statutorily sound, and act in the best interests of the children of the action. Parties have no other mechanism to enforce the orders than the District Court. The District Court stated the February 9, 2024, "*Court Denying Motion for Contempt of the Parenting Plan*" (D.C. Doc. 245). The Court stated that: "*Some of Mr. Matin's concerns may*

be legitimate..." (D.C. Doc. 245 Page 2 Line 5-6), but still refused to address any of the issues even after saying they may be legitimate, and failing to enforce their order.

The District Court made a severe clerical error claim that there were only two children in the (D.C. Doc 126 Line 18-19), which is false as there are three children of the action. K.A.M., M.G.M., and K.R.M, When the Judge who is overseeing this case was selected from over 300 miles away, rather than returning the case to the court of original jurisdiction or a nearby jurisdiction, the access to justice is severely impacted, and significant errors are made.

The appropriate remedy is for this Court to place this case back in the court of original jurisdiction, which was the First Judicial District Court, and reverse the District Court's "*Order Confirming Docketed Hearing & Invitation to Identify Counselors*" (D.C. DOC #251), "*Order as to Petitioner's Motions*" (D.C. DOC #250, and remand for a new trial. This latest trial would include addressing "*Petitioner's Motion of Contempt of the Parenting Plan*" (D.C. DOC #249) and Mrs. Williams's continued abuse claims and parental alienation of the children.

Respectfully Submitted this the 17th day of July 2024



Benjamin David Martin

Appellant

CERTIFICATE OF SERVICE

I, Benjamin David Martin, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply Brief to the following on July 17, 2024:

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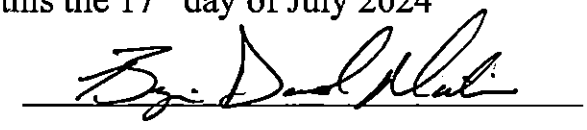
Respectfully Submitted this the 17th day of July 2024



Benjamin David Martin

Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Reply Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material and the word count calculated by Microsoft Word for Windows is not more than 14 pages or 5,000 words, excluding the certificate of the table of authorities, certificate of service, and certificate of compliance.

Respectfully Submitted this the 17th day of July 2024

Benjamin David Martin

Appellant