IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 24-0379

IN RE THE PARENTING OF M.M.:

JASON R. HOLLISTER,

Appellee/Petitioner.

v.

HEATHER MATHEWS,

Appellant/Respondent.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Fourth Judicial District Court Missoula County, Cause No. DR-23-707
Before Hon. Jennifer B. Lint

Quentin M. Rhoades
Rhoades & Erickson PLLC
430 Ryman St
Missoula, Montana 59802
Telephone: (406) 721-9700
courtdocs@montanalawyer.com
Attorney for Heather Mathews, Appellant and Respondent

Margaret Rose
Bridger Law
1288 N. 14th Ave., Suite 104
Bozeman, Montana 59715
Telephone: (406) 404-6063
maggie@bridgerlawmt.com
Attorney for Heather Mathews, Appellant and Respondent

Thomas H. Stanton
Wells & McKittrick, P.C.
P.O. Box 9410
Missoula, Montana 59807
Telephone: (406) 728-7177
admin@wandmlaw.com
Attorney for Appellee and Petitioner

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STATEMENT OF THE ISSUES

Whether the district court committed prejudicial error in its June 17, 2024, Order Setting Hearing granting the mandatory injunctive relief requested in Appellee Jason R. Hollister's ("Hollister") *Ex Parte* Motion for Return of Child and Interim Parenting Plan ("*Ex Parte* Motion"), in which the court required, without findings of fact or conclusions of law, that Appellant and Respondent, Heather Mathews ("Mathews"), deliver the minor child, M.M., from Wisconsin to Montana.

STATEMENT OF THE CASE

This appeal arises from an action initially filed in Missoula County. In August 2023, Mathews notified Hollister that Mathews' mother's health had severely deteriorated. Mathews' mother, age 77, was diagnosed with dementia over twelve years ago and now has late-stage Alzheimer's disease. (Not. of Filing Ex. 6, ROA No. 45.) On August 27, 2023, Mathews notified Hollister that Mathews would travel with the minor child to address Mathews' mother's care needs. (Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-6, ¶ 3, ROA No. 22.) By prior agreement of the parties, Mathews has been the sole legal and residential custodian of the parties' minor child since birth. (Resp.'s Br. Supp. Mot. to

Decline Juris. Ex. A-7, ¶ 6, ROA No. 22.) Mathews alleges Hollister has taken no active role in raising the minor child, provided no financial support for the minor child, and has endangered the child's health, safety, and emotional well-being. (Not. of Filing Ex. 2, ¶ 7, ¶ 10, ROA No. 45; Not. of Filing Ex. 3, ¶ 7, ROA No. 45; Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-8, ROA No. 22.) Mathews provides in-home care for her mother, who is in Wisconsin, cannot perform any daily living tasks, cannot travel, and is at the end of her life. (Not. of Filing Ex. 6, ROA No. 45.)

On October 30, 2023, more than two months after Mathews left Montana, Hollister filed a Petition for Determination of Parenting Plan and Petitioner's Proposed Parenting Plan. (Pet. Proposed Parenting Plan, ROA No. 2.) Hollister's October 30, 2023, Proposed Parenting Plan concedes "the child will reside with Heather…" (Pet. Proposed Parenting Plan, ROA No. 2.)

On January 26, 2024, Mathews entered an appearance (Not. of Appearance, ROA No. 11), and then filed her Answer on March 11, 2024. (Answer, ROA No. 20.)

On March 11, 2024, Mathews filed a Motion to Decline Jurisdiction as Inconvenient Forum, wherein Mathews alleged Hollister's history of domestic

violence and child endangerment. Mathews alleged suspicions of Hollister being under the influence of opioids or other drugs directly in front of the child on supervised visits. (Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-5, ROA No. 22.) Mathews specifically requested a hearing. (Resp.'s Mot. to Decline Juris. Inconv. Forum, ROA No. 21.) In support of his response, Hollister presented an unsigned, undated document purportedly authored by his then eighteen-year-old daughter, KLH, a current household member. (Unsworn Decl. Jason Hollister Supp. Resp. Opp. Mot. Decline Juris., ROA No. 26.) Mathews alleges, however, that KLH refused to have any physical or verbal contact with Hollister between 2019 and 2020, asked to live with extended family in Texas, and considered emancipation. (Not. of Filing Ex. 1, ¶¶ 10-13, ROA No. 45.) Likewise, Mathews alleges Hollister's 13-year-old son, ALH, was recently transferred into Hollister's care in 2023, allegedly against ALH's wishes and away from his friends, activities, and middle school in Bozeman, Montana. (Not. of Filing Ex. 1, ¶ 14, ROA No. 45.)

The District Court did not set the Motion to Decline Jurisdiction as Inconvenient Forum for hearing.

On March 18, 2024, the Montana district court was notified that an action had been filed in Wisconsin. (Resp.'s Not. Commence Action in WI. ROA No.

24.) The Montana district court did not conduct the required Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) conference with the Wisconsin court. Mont. Code Ann. § 40-7-139; *see, In re B.K.*, 2018 MT 217, ¶ 3, 392 Mont. 426, 425 P.3d 703. Instead, on April 29, 2024, in Order Denying Motions, (Order Denying Motions, ROA No. 36), the district court denied, among other things, Mathews' motion to decline jurisdiction, making factual and credibility determinations as to contested issues of fact regarding whether domestic violence occurred without taking any testimony. (Order Denying Motions at 2-3, ROA No. 36.) The district court issued this ruling in advance of a hearing that had been set in the Wisconsin action.

On April 16, 2024, a Scheduling Order was entered. (Scheduling Order, ROA No. 35.) On May 15, 2024, and per the Court's Scheduling Order, the parties notified the Court of a settlement conference. (Not. of Settlement Conf., ROA No. 38.) The settlement conference was set for June 18, 2024.

On May 22, 2024, Hollister filed the *Ex Parte* Motion at issue on this appeal as well as Petitioner's Proposed Interim Parenting Plan and an Unsworn Declaration of Jason R. Hollister in Support of Motion for Return of Child and Interim Parenting Plan. (Pet.'s *Ex Parte* Mot., ROA No. 39; Pet.'s Prop. Interim

Parenting Plan, ROA No. 40; Unsworn Decl. of Jason Hollister Supp. *Ex Parte* Mot., ROA No. 41.) The *Ex Parte* Motion requested the district court order the child be brought to Montana and that the court adopt Petitioner's Proposed Interim Parenting Plan. The *Ex Parte* motion would have required Mathews to abandon her responsibilities to her dying mother with late-stage Alzheimer's disease to facilitate Hollister's new request for overnight visitation with M.M. in his home in Montana. If Mathews did not comply with the demand to abandon her dying mother, then Hollister sought the minor child be required to stay full-time in Hollister's home—something he had never sought in the years between M.M.'s birth and Mathews' departure to Wisconsin to care for her mother. (Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-6, ¶ 3; Ex. A-7, ¶ 6, ROA No. 22.)

On May 22, 2024, Mathews immediately filed her Notice of Objection, requesting an evidentiary hearing on Hollister's *ex parte* motion. (Not. of Obj., ROA No. 42.) On June 4, 2024, Mathews filed her Response in Opposition to Petitioner's *Ex Parte* Motion as well as a Notice of Filing that contained five signed and dated declarations from individuals supporting Heather and M.M. and opining on M.M.'s best interests. (Resp in Opp. to *Ex Parte* Mot., ROA No. 44; Not. of Filing, ROA No. 45.) Included in the statements from professionals is Dannette

Wollersheim, Ph.D., who has contributed to legislative guidelines on the family code and has over 30 years of experience as a clinical psychologist. Dr. Wollersheim opined, "[b]ased on my professional education, training, and experience, I would not recommend any six-year-old to have prolonged, sudden visitation with any parent that the child has had only prior limited contact for the entirety of her life without a much slower transition." (Not. of Filing Ex. 4, ¶ 12, ROA No. 45.) Dr. Wollersheim further opined, "[i]n the case of suspected substance abuse, it would be highly recommended that the parent with a suspected substance issue undergo a chemical dependency evaluation before a child is allowed to have unsupervised contact." (Not. of Filing Ex. 4, ¶ 12, ROA No. 45.)

Another expert educator, Katie Heckert, Director of Clark Fork School, with over 22 years of professional experience, further opined "[i]n my professional opinion as a child educator …and based on my experience with M.M. and Heather Mathews, transferring residential custody, even temporarily to Mr. Hollister who has displayed no interest in M.M.'s education and played no consistent, substantial role in the child's life would be both harmful and traumatic to M.M." (Not. of Filing Ex. 3, ¶ 11, ROA No. 45.) Ms. Heckert further opined, "[i]n my opinion, it is not in M.M.'s interest to have an interim parenting plan, removing M.M. from

the mother who has solely raised her without appropriate parenting evaluations of Mr. Hollister, safety assessments, and other therapeutic interventions for M.M. in advance of any unsupervised time with Mr. Hollister." (Not. of Filing Ex. 3, ¶ 12, ROA No. 45.)

In her Response in Opposition to the *Ex Parte* Motion (Resp in Opp. to *Ex Parte* Mot., ROA No. 44), Mathews asserts that Hollister failed to meet the statutory threshold for *ex parte* relief as required by Mont. Code Ann. § 40-4-220. To issue an *ex parte* parenting plan under Mont. Code Ann. § 40-4-220(2)(b), a court must find that "the interim parenting plan proposed by the moving party would be in the child's best interest under the standards of 40-4-212 and the child's present environment endangers the child's physical, mental, or emotional health and the child would be protected by the interim parenting plan[.]" Mathews argued that Hollister failed to present any evidence to allege that M.M.'s present environment is a danger to her physical, mental, or emotional health and that his proposed interim parenting plan would protect M.M. from danger as well as be in her best interest. (Resp. in Opp. to *Ex Parte* Mot. at 11-18, ROA No. 44.) Instead, Mathews alleges, M.M. is excelling at one of the top schools in the State of Wisconsin and regularly attends playdates, extracurriculars and is socially well-

adjusted and attached to close friends, teachers, and family. (Not. of Filing Ex. 7, ROA No. 45; Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-8-A-9, ROA No. 22.) M.M. does not know anyone who resides in or near Hollister's isolated home south of Stevensville, Montana, wherein Mathews alleges Hollister has a "large number of "unlocked guns inside the home and two other children who have been the recipient of Hollister's alleged verbal, psychological, and physical abuse. (Not. of Filing Ex.1, ¶ 13, ¶ 36, ¶ 47, ROA No. 45.) Mathews requested the parties' "de facto parenting plan remain in force and effect until further parenting evaluations are conducted, psychological evaluations are conduct[ed], and the parties engage/appoint various profession[al]s, …. and chemical dependency evaluations/drug testing are conducted." (Resp. in Opp. to *Ex Parte* Mot. at 18-19, ROA No. 44.)

On June 12, 2024, Hollister filed his Petitioner's Reply to Respondent's Response to *Ex Parte* Motion as well as the Unsworn Declaration of Jason R. Hollister. (Reply Supp. *Ex Parte* Mot., ROA No. 47; Unsworn Decl. Jason Hollister Supp. Reply Supp. *Ex Parte* Mot., ROA No. 48.) Hollister argues that per Mont. Code Ann. § 40-2-212, it is in M.M.'s best interest to have contact with both parents. Subsequently, he admits that "it is impossible for Jason to show the

child's present environment, and whether [his proposed interim parenting plan] is in her best interests…". (Reply Supp. *Ex Parte* Mot., ROA No. 47.) Hollister concludes his reply in support by reiterating his request that the district court "expedite a solution which would reunite him with his daughter" by ordering M.M.'s return to Montana. (Reply Supp. *Ex Parte* Mot., ROA No. 47.) In support of his reply to his *ex parte* motion, Hollister submitted two unsigned and undated witness statements, one purportedly authored by the mother of his other two children, and the other, the previously submitted unsigned, undated statement of his then 18-year-old daughter. (Unsworn Decl. Jason Hollister Supp. Reply Supp. *Ex Parte* Mot., ROA No. 48; Resp. to Mot. to Decline Juris., ROA No. 26.)

The district court's June 17, 2024, Order Setting Hearing, requiring Mathews to travel with six-year-old M.M., was issued the day before the settlement conference. In its June 17, 2024, Order Setting Hearing, the district court ordered an evidentiary hearing be held on June 26, 2024, "due to the length of time since Petitioner has seen the minor child" and required M.M. to "be brought to Montana for this hearing." (Order Setting Hearing, ROA No. 49.) The order included no findings of fact, conclusions of law, or legal analysis explaining the legal basis and factual underpinning for the mandatory relief granted.

A settlement conference was held on June 18, 2024. (Settlement Conf. Rep., ROA No. 54.)

On June 20, 2024, a Notice of Appeal was timely filed.

STATEMENT OF THE FACTS

A. Substantially uncontroverted facts. There are a few relevant facts in this case that are not contested, but not many. The substantially uncontested facts are:

1. The parties were never married. (Not. of Filing Ex. 1, ¶ 15, ROA No. 45.)

2. They met in 2011 and had one child together, M.M., born in 2018. Since her birth, M.M. has resided with Mathews by the parties' mutual agreement, even though the parties maintained separate residences throughout the near entirety of their relationship. (Not. of Filing Ex. 1, ¶ 15, ROA No. 45.) The parties only shared Mathews' residence for 13 months, during a period of time that M.M. was nine months old to twenty-one months old in which Hollister lived in the Mathews home cost-free and made no contributions to any childcare. (Not. of Filing Ex. 1, ¶¶ 15-17, ROA No. 45.) Hollister's stated reason for living in the Mathews home was not to provide for M.M. but to afford his mortgage after his

position as a lab technician resulted in a pay decrease and he needed to rent out his residence south of Stevensville to save for his own financial pursuits. (Unsworn Declaration of Hollister ¶ 56, ROA No. 48; Not. of Filing Ex. 1, ¶¶ 15-16 ROA No. 45.) Mathews has provided for all of M.M.'s daily care, as well as her physical and financial needs at all times. (Not. of Filing Ex. 3, ¶ 4; Ex. 1, ¶ 16, and Ex. 2, ¶ 7, ROA No. 45.) Hollister moved away from M.M. before she was two years old, in or around December 2019. (Not. of Filing Ex. 1, ¶ 17, ROA No. 45.)

3. After Hollister moved away from M.M., Heather was, and continues to be, supportive of Hollister creating a positive relationship with M.M. (Not. of Filing Ex. 1, ¶ 18, ROA No. 45.) Mathews accommodated Hollister's requests for parenting time based on his specifications for regularity and the type of contact he requested, but, historically, Hollister never took the initiative to organize, plan, or financially contribute to any activities during his visits with M.M. (Not. of Filing Ex. 1, ¶ 18, ¶ 20, ROA No. 45.) Because of this, Mathews organized and paid for various activities that took place during Hollister's parenting time due to his lack of initiative and interest. (Not. of Filing Ex. 1, ¶ 20, ROA No. 45.) As Hollister has only had supervised visits with M.M. at Mathews' home or in public, M.M. has

never been to Hollister's home, nor spent an overnight alone with him. (Not. of Filing Ex. 1, ¶ 32, ROA No. 45.)

4. Hollister has never contributed financially to M.M. or her well-being. Mathews has provided for all of M.M.'s financial, educational, medical, emotional, and social needs and expenses. (Not. of Filing Ex. 1, ¶ 16 and Ex. 3, ¶ 4, ROA No. 45.) Hollister has never meaningfully participated in suggesting or selecting any of M.M.'s schools or extracurriculars, contributed to filling out enrollment forms, paid deposits/tuition, or shown any interest in participating in school activities. (Not. of Filing Ex. 1, ¶ 33-34, ROA No. 45.) Hollister has only attended M.M.'s extracurricular activities on approximately three occasions. (Not. of Filing Ex. 1, ¶ 38, ROA No. 45.) Hollister has refused to travel to visit M.M. in Wisconsin since she arrived. (Not. of Filing Ex. 5, ROA No. 45.) Mathews has even offered to facilitate Hollister's travel and defray his costs by a substantial sum given the nature of the end-of-life care required for her mother. (Not. of Filing Ex. 5, ROA No. 45.)

5. In August 2023, Mathews was required to relocate from Montana to Wisconsin to provide in-home care for her mother, who is diagnosed with late-stage Alzheimer's disease and unable to perform any average daily living activities. (Not.

of Filing Ex. 6, ROA No. 45.) On August 27, 2023, Mathews notified Hollister that she and M.M. would be traveling to Wisconsin so Mathews could provide primary care for her mother. (Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-6, ¶ 3, ROA No. 22.) At the time, Hollister did not object. Notably, Mathews had traveled out of the State of Montana on other occasions with M.M. before August 2023 to care for her mother with no objection from Hollister. (Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-6, ¶ 3, ROA No. 22.)

6. In October 2023, Hollister sought to assert his parenting rights by seeking to establish a parenting plan—after Mathews and M.M. had relocated to Wisconsin over two months prior. (Pet.'s Prop. Parenting Plan, ROA No. 2.) During this time and throughout this litigation, Hollister has had frequent and continuing contact with M.M. at least once a week via videocall conferencing based on Petitioner's requested level of frequency of contact with M.M. (Not. of Filing Ex. 5, ROA No. 45.)

B. Contested material facts. As already alluded to in the Statement of the Case, there are many contested facts, with charges and countercharges, all in grave need of fully considered adjudication. The contested factual issues include the following:

1. Mathews alleges significant safety concerns for both her and M.M. For example, Mathews suspected that Hollister was actively using drugs on supervised visits as he would frequently excuse himself to use the restroom for prolonged periods—sometimes leaving Mathews to supervise M.M. for upwards of 20 minutes. (Not. of Filing Ex. 1, ¶¶ 21-23, ROA No. 45; Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-5, ROA No. 22.) Mathews alleges she often observed Hollister's face to be flushed; his nose runny, his gait was unsteady; his mood subject to dramatic change, swinging from detached to angry; and frequent episodes where he would lie down and close his eyes or nod off during supervised visits; and he frequently reported not eating all day. (Not. of Filing Ex. 1, ¶ 28, ROA No. 45.) Mathews also alleges Hollister exposed M.M. to what appeared to be serious drug use or paraphernalia on at least one occasion. (Not. of Filing, Ex. 4, ¶ 8, ROA No. 45; Not. of Filing Ex. 1, ¶ 24, ROA No. 45.)

2. In addition, Mathews alleges Hollister has verbally threatened her on multiple occasions. (Not. of Filing Ex. 1, ¶¶ 44-49, ROA No. 45.) During one altercation in May 2019, Hollister allegedly screamed at Mathews, who was holding an infant M.M., that he "should have knocked [her] upside [her] head." (Not. of Filing Ex. 1, ¶ 46, ROA No. 45.) In another incident that occurred on April 16,

2021, Mathews alleges Hollister threw a bag on the floor, breaking a tile in the entryway of Mathews' residence while screaming, "I'm going to hurt you, hurt her, or hurt somebody!" loud enough for the neighbors to hear. (Not. of Filing Ex. 1, ¶ 45, ROA No. 45; Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-2, ¶ 2(a), ROA No. 22.) On the last day that Mathews saw Hollister, August 20, 2023, Mathews alleges Hollister screamed at her in Bonner Park in Missoula loud enough for passersby to look over and observe. On this last day that Mathews saw Hollister in person, Mathews alleges Hollister threatened "if something should happen to you" and also referred to his own death by stating "if something should happen to him." (Not. of Filing, ROA No. 45, Ex. 1, ¶ 44; Resp.'s Br. Supp. Mot. to Decline Juris. Ex. A-2, ¶ 2(a), ROA No. 22.) Mathews further alleges Hollister has previously intimated Mathews by referencing his access to lethal biological agents that can kill him if he makes a mistake at work and telling a frightening story regarding ending the life of his former partner and the mother of his other children by method of lethal agents. (Not. of Filing Ex. 1, ¶ 4, ROA No. 45; Not. of Filing Ex. 4, ¶ 7, ROA No. 45.)

3. Regarding M.M., Mathews alleges that she has observed Hollister being aggressive or abusive to M.M. Specifically, Mathews has allegedly observed

Hollister holding M.M.'s legs in a manner that left bruising, painfully squeezing her hand out of anger, calling M.M. derogatory names such as "brat" in front of her; or showing M.M. no empathy during a temper tantrum or developmentally normal crying spell. (Not. of Filing Ex. 1, ¶ 35-36, ROA No. 45.) Mathews alleges that when Hollister witnessed M.M.'s tantrums, he routinely recommended corporal punishment for M.M. or locking or leaving M.M. in a room alone to resolve the issues herself. (Not. of Filing Ex. 1, ¶ 36, ROA No. 45.)

4. These are only a few of the allegations that Mathews intends to support at trial with documentation, percipient witness testimony, and expert witness opinions. (Not. of Filing Exs. 2-7, ROA No. 45.)

5. For his part, Hollister denies Mathews' allegations that he is of any danger to M.M. or Mathews. Hollister submitted declarations and supporting documentation in the district court to support his denials and counter-allegations. (Unsworn Decl. Jason Hollister Supp. Resp. Opp. Mot. Decline Juris., ROA No. 26; Unsworn Decl. Jason Hollister Supp. Reply Supp. *Ex Parte* Mot., ROA No. 48.) He alleges that Mathews is subjecting him to frivolous accusations as a litigation tactic to prevent him from having parenting contact with M.M. (Unsworn Decl.

Jason Hollister Supp. Resp. Opp. Mot. Decline Juris., ROA No. 26; Unsworn Decl. Jason Hollister Supp. Reply Supp. *Ex Parte* Mot., ROA No. 48.)

6. Despite the contested facts and conflicting evidence, the district court entered an order imposing mandatory relief without an evidentiary hearing on the parties' respective allegations. Without taking any evidence, the district court adjudicated Hollister's motion, imposing mandatory injunctive relief to the effect that M.M., as requested in Hollister's *ex parte* motion, be brought to Montana immediately. Moreover, the district court did so without identifying the facts upon which it based its order of relief or articulating the legal reasoning upon which it granted mandatory injunctive relief.

STANDARD OF REVIEW

A failure by the district court to make findings of fact or conclusions of law in the grant or denial of a preliminary injunction will result in this Court's order to vacate the preliminary injunction and remand to the district court for reconsideration following the entry of its findings of fact and conclusions of law. *Snavely v. St. John ex rel. Estate of Snavely*, 2006 MT 175, ¶ 10, 333 Mont. 16, 140 P.3d 492.

SUMMARY OF ARGUMENT

The district court entered an order for mandatory injunctive relief requiring Mathews, on short notice, to bring M.M. to Montana from Wisconsin for a hearing on Hollister's *ex parte* motion. In doing so, it issued no substantive findings of fact or conclusions of law to support the mandatory relief. While no formal labels are necessary, factual findings and legal conclusions are required to support injunctive relief in substance. The district court entered none in this case. The district court failure makes it impossible for this Court, on appeal, to undertake effective review.

Substantive analysis and a written rationale are required to support court decisions that bear on parties' substantial rights. The rigor of the required process is an indispensable aid in a district court's accurate and fair adjudication of the parties' competing claims. It serves the purposes of res judicata and estoppel by judgment to avoid duplicative litigation. It functions as a critical aid to an appellate court on review. By omitting this essential step from its decision-making, the district court abused its discretion and committed reversible error. The mandatory injunction should be vacated, and the case should be remanded for further proceedings consistent with law, including, but not limited to, findings of fact and conclusions of law when imposing mandatory relief.

ARGUMENT

I. The district court ordered mandatory injunctive relief to the effect that M.M. be brought to Montana from Wisconsin without entering findings of fact or conclusions of law to justify the form of relief.

In this case, at issue on appeal is the district court's allowance of Hollister's emergency *ex parte* motion for the immediate transportation of M.M. to Montana. (*See, generally*, Ex Parte Mot. Ret. Child and Inter. Parenting Plan, ROA No. 39.) Specifically, in his *ex parte* motion, Hollister requested two forms of relief:

> 1. Order [Hollister's] Proposed/Interim Parenting Plan as the interim plan, with [Hollister] as the primary parent, until the parties can negotiate their own parenting plan, or the Court can hold a hearing to determine a final parenting plan in this matter;
>
> 2. Order [Mathews] to return the minor child to [Hollister] in Montana immediately or as soon as the child is out of school for the summer; …

(*Ex Parte* Mot. Ret. Child and Inter. Parenting Plan 7, ROA No. 39.)

As legal justification for his motion, Hollister invoked Mont. Code Ann. §§ 40-4-213 and 212. Section 40-4-213(1) provides for interim parenting plans under the standards outlined in § 40-4-212.[1] Section 40-4-212(1) provides a non-

[1] Mont. Code Ann. § 40-4-213(1) States:

exhaustive list of factors a court must consider in determining the "best interest of the child."[2]

> A party to a parenting proceeding may move for an interim parenting plan. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may adopt an interim parenting plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

[2] Mont. Code Ann. § 40-4-212(1) states:

> The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:
> (a) the wishes of the child's parent or parents;
> (b) the wishes of the child;
> (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;
> (d) the child's adjustment to home, school, and community;
> (e) the mental and physical health of all individuals involved;
> (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;
> (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
> (h) continuity and stability of care;
> (i) developmental needs of the child;
> (j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;
> (k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;

In response to the motion, the district court imposed mandatory injunctive relief requiring Mathews to return M.M. to Montana on or before June 26, 2024. (Order Setting [Hearing], ROA No. 49.) The district court made its determination without making findings of fact or conclusions of law. The order, in its entirety, reads:

> Before the Court is [Hollister's] request for an Interim Parenting plan. The matter is fully briefed. The Court deems an expedited hearing is necessary *due to the length of time since* [*Hollister*]*has seen the minor child.* Therefore, a hearing on an Interim Parenting Plan shall be heard Wednesday, June 26, 2024 at 9 a.m. The matter will be heard in Courtroom #2 at the Ravalli County Courthouse, 205 Bedford St, Hamilton, MT. Ravalli County shall provide the clerk and court reporter. All parties and witnesses must appear in person. *The minor child shall be brought to Montana for this hearing.*

(Order Setting [Hearing], ROA No. 49 (emphasis added).) The district court did not adjudicate the terms of the interim parenting plan. Still, it did adjudicate the

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> (l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).
> (m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.

delivery of M.M. to Montana immediately, as requested in Hollister's motion. The order setting hearing foreshadows an intent to award Hollister immediate visitation "due to the length of time since [Hollister] has seen the minor child." (Order Setting [Hearing], ROA No. 49.)

Ultimately, whatever implication may be drawn about the district court's unstated intention, there is no doubt that the district court ordered the child to be brought to Montana from Wisconsin. This order constitutes mandatory injunctive relief unsupported by findings of fact or conclusions of law.

II. The failure to enter findings of fact and conclusions of law on the mandatory injunction ordering that M.M. be brought from Wisconsin to Montana is reversible error.

In this case, the district court imposed the burden upon Mathews of bringing six-year-old M.M. to Montana for a hearing on short notice. It gave no purpose in doing so. The court indicated no intent to speak to the child, either *in camera* or open court, much less have her testify. No one has listed her as a witness. The court offered no factual or legal rationale for requiring the child to be transported the 1,500 miles to Montana from Wisconsin to be present at a hearing—other than what is implied: to award immediate custody to Hollister. In particular, the district court offered no legal reasoning to support a conclusion that its order protected,

served, or otherwise was in M.M.'s "best interest." Yet, the "best interest of the child" is the touchstone of child custody decision-making. *Woerner v. Woerner*, 2014 MT 134, ¶¶ 19-20, 375 Mont. 153, 325 P.3d 1244.

In determining an interim parenting plan, a district court need not make specific findings on each relevant statutory factor—but must make findings sufficient for this Court, on appeal, to determine whether the district court considered the statutory factors and ruled based on the child's best interests. *Woerner*, ¶¶ 19-20 (citing *Guffin v. Plaisted-Harman*, 2009 MT 169, ¶¶ 12-13, 350 Mont. 489, 209 P.3d 225); *see, ManyWounds v. 20th Jud. Dist. Ct., Lake Cnty. Christopher*, No. O.P. 23-0629, 2024 WL 35979, at *8 (Mont. January 2, 2024). In this context, a district court's findings must, "at a minimum, 'express the essential and determining facts upon which it rests its conclusions.'" *Id.* at ¶ 15 (quoting case law). This requirement is essential because otherwise, a reviewing court on appeal has nothing to rest an appellate decision upon. For example, without findings of fact and conclusions of law, this Court cannot review whether the district court imposed mandatory injunction as punishment for one party or reward for the other. See, *Woerner*, ¶¶ 19-20; *Guffin*, ¶¶ 12-13.

The district court's failure to enter findings of fact or conclusions of law violated a primary principal governing parenting plan jurisprudence and practice. The failure is prejudicial error and is grounds for reversal. C.f., *Snavely v. St. John ex rel. Estate of Snavely*, 2006 MT 175, ¶ 10, 333 Mont. 16, 140 P.3d 492 (injunctions must be supported by findings of fact and conclusions of law).

Furthermore, outside of a parenting plan decision, Title 40, chapter 4, part 1, MCA, does not provide a court with authority to order a child to be brought from one state to another. Instead, only three forms of relief are available: initial parenting plans, amended parenting plans, and temporary interim plans incident to a concurrently filed request for an initial parenting plan. See, Mont. Code Ann. §§ 40-4-211(1), -212, -213, -219, -220; *In re Marriage of Kovash*, 260 Mont. 44, 50, 858 P.2d 351, 355 (1993). Section 40-4-220(2), Mont. Code Ann., sets forth the process and requirements for an *ex parte* parenting plan in a situation such as this, in which no previous parenting plan has been ordered:

> (a) A party seeking an interim parenting plan may request that the court grant a temporary order providing for living arrangements for the child ex parte. The party shall make the request in the moving papers and shall submit an affidavit showing that:
>
> (i) no previous parenting plan has been ordered by a court and it would be in the child's best interest under the standards of 40- 4-212 if

> temporary living arrangements for the child were as proposed by the moving party; or
>
> (ii) although a previous parenting plan has been ordered, an emergency situation has arisen in the child's present environment that endangers the child's physical, mental, or emotional health and an immediate change in the parenting plan is necessary to protect the child.
>
> (b) lf the court finds from the affidavits submitted by the moving party that the interim parenting plan proposed by the moving party would be in the child's best interest under the standards of 40-4-212 and that the child's present environment endangers the child's physical, mental, or emotional health and the child would be protected by the interim parenting plan, the court shall make an order implementing the interim parenting plan proposed by the moving party. The court shall require all parties to appear and show cause within 21 days from the execution of the interim parenting plan why the interim parenting plan should not remain in effect until further order of court.

The statutory scheme gives no express authority to order mandatory relief of any other kind. Specifically, nowhere does it authorize a court to order mandatory injunctive relief requiring a party to transport a child across interstate lines to attend a hearing on an *ex parte* motion.

On the other hand, Montana statutes do provide for preliminary equitable relief as circumstances may warrant. Mont. Code Ann. § 27-19-201. Still, in imposing injunctive relief in any context, a district court must, under Mont. R. Civ. P. 52(a), issue findings of fact and conclusions of law to justify a preliminary

injunction. As Rule 52(a)(2) reads: "In granting or refusing an interlocutory injunction, the court must . . . state the findings and conclusions that support its action." In this, there is no discretion. *Snavely*, ¶ 10. "[F]or purposes of MONT. R. CIV. P. 52(a), it is 'is well settled that findings of fact and conclusions of law must accompany preliminary injunctions.'" *Id.* (citing *Ensley v. Murphy* (1983), 202 Mont. 406, 408, 658 P.2d 418, 419; *Traders State Bank of Poplar v. Mann* (1993), 258 Mont. 226, 245, 852 P.2d 604, 616 (overruled on other grounds *Turner v. Mountain Engineering and Const., Inc.* (1996), 276 Mont. 55, 62, 915 P.2d 799, 803)). A failure by a district court to make findings of fact or conclusions of law in granting a preliminary injunction "will result in this Court's order to vacate the preliminary injunction and our remand to the District Court for reconsideration following the entry of its findings of fact and conclusions of law." *Id.* (citing *Continental Realty, Inc. v. Gerry* (1991), 251 Mont. 150, 153, 822 P.2d 1083, 1086; *Traders State Bank of Poplar*, 258 Mont. at 245, 852 P.2d at 616; *Ensley*, 202 Mont. at 408, 658 P.2d at 419).

These standards apply to both prohibitive injunctions and, as here, mandatory injunctive relief. The principles upon which "mandatory and prohibitory injunctions are granted do not materially differ." *City of Whitefish v.*

Troy Town Pump, 2001 MT 58, ¶ 21, 304 Mont. 346, 21 P.3d 1026 (citation omitted; internal quotations omitted). *See, Montana Democratic Party v. Jacobsen*, 2022 MT 184, 410 Mont. 114, 126, 518 P.3d 58, 65, abrogated by *Montana Democratic Party v. Jacobsen*, 2024 MT 66, 416 Mont. 44, 545 P.3d 107. The district court in this case was required to apply the same approach regardless of the type of injunction sought or granted.

Mathews concedes that a court need not formally label its rationale as "findings of fact and conclusions of law" to satisfy the standard. *Snavely*, ¶ 11. Nevertheless:

> The litmus test is whether a district court's order sets forth reasoning, based upon its findings of fact and conclusions of law, in a manner sufficient to allow informed appellate review. If a trial judge's findings and conclusions are clear to this Court, failure to state them in the recommended form is not substantial error.

Id. (citations omitted). Thus, it is not "this Court's task" to review the record to make its own findings. *Id.*

Ultimately, the finding of facts required by Rule 52(a) serves as a recordation of the essential and determining facts upon which the conclusions of law are rested, "and without which the District Court's judgment lacks support." *Snavely*, ¶ 16. "The purpose of requiring findings of fact is three-fold: (1) as an aid in the trial

judge's process of adjudication; (2) for purposes of res judicata and estoppel by judgment; and (3) as an aid to the appellate court on review." *Id.*

Here, the district court's mandatory injunction order imposes a heavy burden on one party and the child, M.M., to travel to Montana and subpoena expert witnesses with approximately one week's short notice. Notably, the court's mandatory injunction, granting Hollister's relief, was issued one day before a scheduled settlement conference. Yet, the district court made no finding that such an imposition is in the best interest of M.M. No findings of fact whatsoever, not even by default or implications. Its failure to set forth its legal reasoning in a manner sufficient for appellate review should result in a reversal of the preliminary injunction order and a remand of the question "for reconsideration following the entry of its findings of fact and conclusions of law." *Snavely*, ¶ 10.

CONCLUSION

Accordingly, the Court is requested to reverse the district court's order granting Hollister's *ex parte* motion for mandatory injunctive relief and remand with instructions to comply with Rule 52(a) by issuing findings of fact and conclusions of law when issuing injunctive relief.

DATED this 29th day of July 2024.

Respectfully Submitted,
RHOADES & ERICKSON PLLC

By: /s/ Quentin M. Rhoades
Quentin M. Rhoades
Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 14(9), I certify that Appellant's Opening Brief is printed with proportionately spaced Equity text typeface of 14 point and double spaced, except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word is less than 10,000 words, excluding this certificate of compliance.

By: /s/ Quentin M. Rhoades
Quentin M. Rhoades
Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Quentin M. Rhoades, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 07-29-2024:

Thomas H. Stanton (Attorney)
222 East Pine
PO Box 9410
Missoula MT 59807
Representing: Jason Hollister
Service Method: eService

Margaret Sullivan Rose (Attorney)
1288 N. 14th. Ave.
Unit 104
Bozeman MT 59715
Representing: Heather Mathews
Service Method: eService

Electronically signed by Anna Benediktson on behalf of Quentin M. Rhoades
Dated: 07-29-2024