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Case Number: DA 24-0373

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 24-0373

EVERETT P. WALKER

Appellant/Respondent,

and

ALESHA R. BOYNE,

Appellee/Petitioner

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APPELLANT'S OPENING BRIEF

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STATEMENT OF THE ISSUES

Appellant appeals one issue:

- I. Whether the Final Parenting Plan adopted by the District Court was clearly erroneous because it misconstrued the evidence in finding a significant reduction in the father's parenting time is in the best interests of the minor children.

STATEMENT OF THE CASE

This case involves the determination of a parenting plan for the minor children, E.J.W. (age 8) and H.G.W. (age 7), who are the children of Alesha R. Boyne ("Alesha") and Everett P. Walker ("Everett"). Everett appeals the District Court's April 3, 2024, *Findings of Fact, Conclusions of Law, and Order for Final Parenting Plan*, which modified the minor children of Alesha R. Boyne and Everett P. Walker. The original parenting plan, established in January 2022, provided for equal parenting time, with weekly alternations between the parents. At that time, both parties agreed that such an arrangement was in the best interests of their children.

Under the new schedule, Everett's time with his children is limited to every other weekend during the school year and alternating weeks during the summer. This means that during the school year, Everett now has the children for significantly fewer days, with more extended gaps between his time with them.

STATEMENT OF FACTS

This case concerns the determination of a parenting plan for the minor children, E.J.W. (age 8) and H.G.W. (age 7), who are the children of Alesha R. Boyne ("Alesha") and Everett P. Walker ("Everett"). Following their separation, the parties agreed to a Parenting Plan in January 2022, which provided for equal parenting time, with weekly alternations between the parents. Both parents initially agreed that this arrangement was in the best interests of their children. Over the subsequent two years, the children adjusted well to this schedule, which corresponded with improvements in their behavior and emotional health following their ADHD diagnosis and treatment. FOF, 12, 15.

On April 3, 2024, the District Court issued *Findings of Fact, Conclusions of Law, and an Order for Final Parenting Plan* that modified the prior arrangement. The new schedule reduced Everett's parenting time to every other weekend during the school year and alternating weeks during the summer. *Amended Final Parenting Plan*, pg. 4. This change resulted in a reduction of Everett's time with his children and introduced longer gaps between his periods of contact with them.

During the trial, both Alesha and Everett provided testimony regarding the children's progress under the existing plan. Alesha testified

that the children had made significant behavioral improvements since beginning their ADHD medication, noting that they were better able to complete schoolwork, form peer relationships, and manage their emotions. Transcript, p. 4. Everett similarly emphasized the benefits of the children's treatment and highlighted the importance of consistent medication administration and stable routines. Transcript, pp. 41-42.

Despite the positive aspects of the existing arrangement, Alesha raised concerns about occasional behavioral issues the children exhibited at school during weeks they were with Everett. Transcript, pp. 3-4. However, these concerns were not corroborated by independent testimony from the children's teachers. Everett suggested that these issues might be linked to inconsistencies in medication administration during transitions between homes, rather than deficiencies in the parenting schedule itself. Transcript, p. 42. Testimony from Vicki Marie Rectenwald supported Everett's involvement as a nurturing and attentive father, emphasizing the positive environment he provided for his children. Transcript, p. 57.

SUMMARY OF ARGUMENT

The District Court erred in modifying the Parenting Plan by significantly reducing Everett's parenting time. The modification was

based on insufficient evidence that equal parenting arrangement was not in the children's best interests. FOF 25. Transcript, pg. 41, 42.

The testimony provided by both parties highlights the children's improvements with medication and the positive impact of the existing equal parenting schedule. Everett's concerns about inconsistent medication administration during transitions between homes were not adequately addressed by the Court. Transcript, pp. 42, 60-61. Moreover, the Court failed to consider Everett's proposals for improving co-parenting communication and ensuring consistent care, which would have mitigated any concerns about the children's well-being. Transcript, pg. 35, 50.

Everett has consistently demonstrated his commitment to the well-being of his children, acknowledging the importance of their ADHD treatment and actively participating in their care

Given the lack of substantial evidence to support the modification, the Court's decision should be reversed, and the matter should be remanded to the Court for proper consideration of the best interests of the minor children.

STANDARD OF REVIEW

A district court must determine child custody matters based on the best interests of the child, considering statutory factors such as the parents' wishes, the child's relationship with each parent, continuity and stability of care, and frequent and continuing contact with both parents. Mont. Code Ann. § 40-4-212(1); *In re Marriage of Fishbaugh*, 2002 MT 175, ¶ 20, 310 Mont. 519, 52 P.3d 395. The court must consider these factors, but it is not required to make specific findings on each one. *Id.*, ¶ 20.

The Supreme Court reviews findings of fact under the "clearly erroneous" standard, applying a three-part test: first, whether the findings are supported by substantial evidence; second, whether the trial court misapprehended the effect of the evidence; and third, whether a review of the record leaves the Court with a firm conviction that a mistake has been made. *Kafka v. Mont. Dep't of Fish, Wildlife & Parks*, 2008 MT 460, ¶ 28, 348 Mont. 80, 201 P.3d 8 (citing *Interstate Prod. Credit Ass'n v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991)). Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion, consisting of more than a scintilla but possibly less

than a preponderance. *Strom v. Logan*, 2001 MT 30, ¶ 23, 304 Mont. 176, 18 P.3d 1024

ARGUMENT

- I. **The Parenting Plan adopted by the Court was clearly erroneous because the Court lacked substantial evidence to support the finding that such a significant reduction in Everett's Parenting Time was in the best interests of the child.**

The Parenting Plan adopted by the District Court resulted in a significant reduction in Everett's parenting time; from every other week during the school year, to every other weekend, and from 3:00 to 7:00 pm on Tuesdays. The summer schedule remains every other week.

However, the District Court's Parenting Plan modification constitutes a significant deviation from an arrangement that had consistently supported the children's development. Over the course of two years, the equal parenting schedule corresponded with marked improvements in the children's behavior and emotional health following their ADHD diagnosis and treatment. (FOF 13, 15; Transcript, pp. 4, 41). Thus, the Court lacked substantial evidence to supports its finding that new parenting plan was in the children's best interests according to the factors set forth in Mont. Code Ann. §40-4-212(a)-(g).

This Court has rejected the tender years presumption favoring the mother. *Czapranski v. Czapranski*, 2003 MT 14 P26, 63 P.3d 499, 314 Mont. 55, citing *Markegard*, 189 Mont. 374, 377, 616 P.2d 323, 325; *Bier v. Sherrard*, 191 Mont. 215, 220, 623 P.2d 550, 553. Parents have a constitutionally protected right to parent. See Mont. Code Ann. § 40-4-227. A father has a right to regular and ongoing parental contact with his child and the child has a right to a relationship with their father. *Northcutt v. McLaughlin (In re G.M.N.)*, 394 Mont. 112, 433 P.3d 715, 2019 MT 18. This Court stated the following in *Solem v. Solem*, 400 Mont. 186, 192, 464 P.3d 981, 984-985, 2020 MT 141, P 10:

Both parents generally have co-equal fundamental constitutional rights to co-parent their children to the extent reasonably possible under the circumstances. *Troxel v. Granville*, 530 U.S. 57, 65-67, 120 S. Ct. 2054, 2059-61, 147 L.Ed.2d 49 (2000); (additional citations omitted). Sections 40-4-212, -217, and -219(1), MCA, collectively embody and effect Montana's compelling interest in furthering and protecting the best interests of children by facilitating "the maximum opportunit[y] for the love, guidance[,] and support of both" parents to the extent reasonably possible under the circumstances. *In re M.C.*, 2015 MT 57, P 13, 378 Mont. 305, 343 P.3d, 569 (additional citations omitted).

A. The Court misapprehended the evidence regarding the continuity and stability of Care and the mental and physical health of the children.

Two key factors the Court must consider when determining a parenting plan that best serves the interests of the children are the “mental and physical health of all individuals involved”, and the “continuity and stability of care.” Montana Code Ann. § 40-4-212(e) and (h). Here, due to the children’s ADHD diagnosis, the issues are intertwined and thus will be analyzed together.

Testimony during the trial clearly showed that the children had experienced significant behavioral improvements over the past two years while spending equal time with both parents. These improvements were directly tied to their ADHD diagnosis and subsequent treatment—a fact corroborated by both Alesha and Everett. Alesha testified to the positive changes, stating:

I took the reins on getting them ADHD diagnoses and medicine for that, and since then they are able to complete their schoolwork. They are able to make friends and peer relationships that they couldn't do previously. They have also been less physical. They -- they hit. They -- they used to choke each other. They were very violent.

Transcript, p. 4.

Everett echoed this testimony, emphasizing the benefits of the ADHD treatment:

The boys are both on medication and are seeing improvement. That's a huge, huge benefit. I don't want them to suffer. I don't want them to be dealing with all -- there's a lot of joking about, Oh, I'm ADHD, I'm kind of scatterbrained, but there's a really dark side of it as well. The constant self-doubt, the inability to fit in, the emotional outbursts. Those are all the really negative and dark side of it. And so I'm entirely grateful, and I cooperated with Alesha and with the school as far as getting the assessments done at the school, that were then given so their therapist so that they could get the diagnosis and the medication.

Transcript, pp. 41-42.

Despite this testimony, the Court significantly reduced Everett's parenting time. The likely basis for this reduction appears to be Alesha's testimony regarding occasional behavioral issues the children exhibited at school while under Everett's care. However, no teachers testified to corroborate these claims. More critically, the testimony reveals that the behavioral issues stemmed not from the parenting schedule, but from Alesha's failure to send the children to Everett's with their prescribed medication. Everett explained the consequences of this oversight stating, "We're not giving the boys the medication at the same time. It takes longer for the medication to have an effect, and it can impact their sleep schedule, making them stay up later in the evening." Transcript, p.).

Everett recalled a specific behavioral incident that was an issue at the hearing:

And then this last time, a few weeks back, the boys came home without their ADHD medication, which is -- that's tough. From having that stable platform to stand on, then to not, it's really hard. Harry was having breakdown crying fits, just unable to regulate. So we had to spend a lot of time just him cuddled up in my lap, just trying to console him and keep him from, you know, getting so wild that he ends up hurting himself or keeping him from trying to hit his brother. And that was that was pretty stressful."

Transcript, pp. 63, 15-25.

This account was corroborated by the children's former babysitter, Vicki Marie Rectenwald, who testified: "Like last time when I came to visit, they weren't -- they didn't have their meds because I guess they were sent back without them. So, I mean, [HGW] was struggling, like, for several days while I was there because she didn't send his meds with him for his ADHD." Transcript, pp. 60-61.

The failure to provide consistent medication directly undermines the stability and continuity that the children need for their mental and physical well-being. This is especially true for children with ADHD, who rely heavily on routine and medical treatment to manage their condition. By reducing Everett's parenting time—despite evidence that the equal parenting arrangement had been working well and was critical to the children's improved behavior—the Court disrupted a stable and effective system that had been serving the children's best interests.

The testimony and evidence presented at trial strongly suggest that the decision to modify the parenting plan did not adequately consider the intertwined factors of mental health and stability. The children's behavioral issues were clearly linked to lapses in medication management rather than any deficiency in the parenting schedule itself. Therefore, the reduction in Everett's parenting time was not only unwarranted but also potentially detrimental to the children's ongoing progress and well-being.

The Court's decision to reduce Everett's involvement in his children's lives overlooks the critical importance of continuity in their care, particularly in light of their ADHD diagnosis. The existing equal parenting schedule provided the stability necessary for the children to thrive, both emotionally and academically. In light of the testimony and evidence, the decision to alter this arrangement appears to have been based on a misinterpretation of the facts, failing to serve the best interests of the children as required by Montana law.

II. The Court did not properly consider the interaction and interrelationship of the children with Everett.

Under Mont. Code Ann. § 40-4-212(1)(c), the Court must consider the interaction and interrelationship of the child with the child's parents

when determining the best interests of the child. The quality of the relationship between the children and their parents is a critical factor that directly impacts the children's emotional and psychological well-being.

In this case, the evidence strongly supports that Everett has a deep, positive, and nurturing relationship with his children. Despite this, the Court's decision to significantly reduce Everett's parenting time did not adequately weigh the importance of maintaining and fostering this relationship.

Everett has consistently demonstrated his commitment to his children and has actively participated in their lives under the equal parenting schedule. This arrangement has allowed him to build and maintain a strong bond with both E.J.W. and H.G.W., providing them with the emotional support and stability they need.

Vicki Marie Rechtenwald, a witness who testified on behalf of Everett, confirmed that Everett provides a stable and nurturing environment for the children.

Everett has always been a really good dad to the boys. I've never seen anything to cause any, you know, concern or anything. He's always been very good about -- with discipline and spending time with them and everything.
Transcript, p. 59, 6-10.

Despite this evidence, the Court's modification of the parenting plan dramatically reduces Everett's time with the children, effectively diminishing the frequency and quality of their interactions. This reduction is not in the children's best interests, as it undermines the relationship that has been carefully cultivated under the previous equal parenting arrangement.

By limiting Everett's parenting time to every other weekend during the school year and alternating weeks during the summer, the Court has significantly disrupted the children's routine and the consistency of their interactions with their father. This reduction in time not only weakens the bond between Everett and his children but also risks creating emotional and psychological instability. Everett testified as to the negative impact changes to the parenting plan have had on children's behavior:

[EJW] specifically has been very upset about the last change that was made, the interim change. He -- this past Friday when he left my house and was -- he was at school, and the end of the day -- we changed it to switch off after school on Fridays. He's been upset that we don't have our Friday nights together, and it shows up in school. He has outbursts. He's talked to me about he doesn't like that we don't have our Friday nights together.

Transcript p. 48-49, 19-25, 1-2.

The children's relationship with Everett has been a cornerstone of their emotional well-being. Regular and meaningful contact with both

parents is essential for the children's development, and the statutory presumption under Mont. Code Ann. § 40-4-212(1)(l) supports the importance of frequent and continuing contact with both parents unless it is shown to be detrimental to the child's best interests. In this case, no such evidence was presented to justify the significant reduction in contact with Everett.

The Court's failure to properly consider the interaction and interrelationship between the children and Everett represents a critical oversight. The decision to reduce Everett's parenting time was made without fully appreciating the negative impact this could have on the children's relationship with their father.

The Court is required to consider the best interests of the child, including the importance of maintaining strong, positive relationships with both parents. The statutory factors under Mont. Code Ann. § 40-4-212(1) make it clear that these relationships are fundamental to the child's well-being. The Court's decision in this case runs counter to the principle of ensuring that children maintain a healthy and supportive relationship with both parents.

The Court's modification of the parenting plan fails to properly account for the crucial relationship between Everett and his children. This

relationship, supported by the evidence and testimony provided, is vital to the children's emotional health and development. The Court's decision to reduce Everett's parenting time undermines this relationship, ultimately working against the children's best interests. The original equal parenting schedule should be reinstated to preserve and strengthen the bond between Everett and his children, which is central to their well-being.

CONCLUSION

In light of the evidence and testimony presented, it is clear that the Court's decision to significantly reduce Everett's parenting time was not supported by substantial evidence and failed to properly consider the critical factors of continuity, stability, and the mental and physical health of the children. The equal parenting schedule that had been in place for two years provided the children with a stable and nurturing environment, essential for their well-being, particularly given their ADHD diagnosis. The behavioral issues cited by the Court as justification for the reduction in Everett's parenting time were directly linked to lapses in medication management, not the parenting schedule itself. By disrupting this stable arrangement, the Court overlooked the importance of maintaining the continuity and stability that had been key to the children's improvements.

Furthermore, the Court did not adequately weigh the importance of the children's relationship with Everett, a relationship that has been a cornerstone of their emotional well-being. The testimony provided by both Everett and Vicki Marie Rectenwald underscored the positive and nurturing environment Everett has consistently provided for his children. The reduction in Everett's parenting time not only weakens the bond between him and his children but also risks causing emotional and psychological instability. The Court's decision to modify the parenting plan runs counter to the principle of ensuring that children maintain strong, positive relationships with both parents. Therefore, the original equal parenting schedule should be reinstated to preserve the children's emotional health and continue fostering their development in a stable and supportive environment.

DATED this 16th day of August 2024.

By: 
EVERETT P. WALKER

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this *Appellant's Opening Brief* is printed with a proportionately double-spaced Times New Roman text typeface of 14 points (exclusive of footnotes) and that the word count calculated by Microsoft Word Professional Edition is not more than 10,000 words excluding *Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.*

DATED this 16th day of August 2024.

By: _____


EVERETT P. WALKER

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing *Appellant's Opening Brief* with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing *Appellant's Opening Brief* upon each attorney of record, and each party not represented by an attorney as follows:

Alesha R. Boyne
1900 Maurice Avenue, 317A
Missoula, MT 59801

DATED this 16th day of August 2024.

