IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0729

In Re the Marriage of:

BENJAMIN ANDERSON,

Petitioner and Appellee,

and

KRISTIN COOPER,

Respondent and Appellant.

APPELLEE'S RESPONSE BRIEF

On Appeal from the Sixth Judicial District Court, Park County
District Court Cause No. DR 17-68
The Honorable BRENDA R. GILBERT, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes **Page**

Other Authorities **Page**

ISSUES PRESENTED FOR REVIEW

1. Did the District Court abuse its discretion in weighing the respective interests of the parties, considering the best interests of their daughter, and amending their parenting plan accordingly?

2. Did the District Court properly find Kristin in contempt of court and correctly award attorney fees to Ben?

3. Did the District Court correctly order Kristin to receive mental health treatment from a psychologist?

4. Did the District Court correctly order Kristin to refrain from use of marijuana and other drugs?

5. Should Judge Gilbert continue to preside over this case?

STATEMENT OF THE CASE

Appellee Benjamin Anderson (hereinafter "Ben") and Appellant Kristin Cooper (hereinafter "Kristin") were married in 2014. CR 1, 45. Their daughter, F.A., was born in October 2016. *Id.* Ben filed for dissolution on July 10, 2017, and the parties' marriage was dissolved on July 9, 2018. *Id*. Due to F.A.'s young age, Kristin and Ben stipulated to a parenting plan which designated Kristin the primary caregiver until F.A. turned five, at which point she and Ben would share equal parenting time. CR 43.

In the years that followed, the district court was repeatedly forced to impose limitations on Kristin's parenting time due to her erratic behavior (which was highly suggestive of unaddressed mental health issues); her drug use (including while parenting and driving with F.A.); F.A.'s exposure to drugs while in her care; her inappropriate sexual behavior toward F.A.; and her apparent inability to coparent with Ben. However, the district court has granted Kristin innumerable opportunities to resume parenting time with F.A. (including unsupervised, overnight parenting) as long as she complied with certain conditions. In many instances, Kristin refused to comply with these conditions, but the district court *still* showed her leniency, lifting the restrictions on her parenting, only to reimpose them once new incidents occurred.

Parenting hearings were conducted on September 5, 2019; April 1 and 7 and December 18, 2020; February 24, March 10, and September 30, 2021; March 4, 2022; March 7, April 25-26, and October 24, 2023.

On June 6, 2023, the district court issued an order which provided a final parenting schedule for F.A. and which afforded Kristin supervised visitation, to become unsupervised once Kristin refrained from the use of marijuana and other drugs; submitted to drug testing; completed six months of counseling with a licensed psychologist; and completed a parenting class (and once the parties engaged the services of a parenting coordinator). CR 619. Additionally, Kristin was held in contempt of court for her frequent and continual violations of the court's previous

orders and was ordered to pay Ben's attorney fees. It is from this order that Kristin appeals.

Thereafter, however, additional events transpired which are mentioned in Kristin's *Opening Brief.* A hearing on the reasonableness of the attorney fees took place on August 21, 2024, and the fee award was fixed on December 12, 2023. CR 669, 741. In October 2023, a hearing was held regarding Kristin's inappropriate behavior during supervised visitations with F.A., and, on December 12, 2023, an order was issued temporarily suspending these visitations. CR 713, 736. Once again, however the district court granted Kristin the opportunity to resume supervised visitation if she engaged in therapy with a licensed psychologist for eight months and otherwise complied with the court's orders. CR 736.

STATEMENT OF THE FACTS

Benjamin and Kristin were married in 2014. Their daughter, F.A., was born in October 2016. CR 1. In 2017, Ben (who was at the time represented by P. Mars Scott) filed for dissolution in Park County, although he and Kristin both resided in Gallatin County. *Id.* Kristin did not object to venue in Park County. CR 5. The parties' June 13, 2018 *Stipulated Parenting Plan* provides that both "consent to [the Sixth Judicial District Court's]. . . jurisdiction over the legal and physical custody of their child." CR 43, § 4(e). The marriage was dissolved on July 9, 2018. CR 45. In January 2019, Ben retained the undersigned. CR 52. Kristin—who was originally

represented by Matthew Dodd—also changed attorneys in 2019, hiring Caitlin Pabst that August (Kristin's current counsel became involved in this case in 2021). CR 72, 353. In July 2019, the parties stipulated to the modification of their parenting schedule. CR 66. In September 2019, a hearing was conducted regarding the parties' respective financial responsibilities, and an order clarifying the parenting plan was issued. CR 79, 83.

At the end of January 2020, Ben was contacted by Kristin's former girlfriend, Jennifer Steele, who informed Ben that she had grave concerns about Kristin's mental health and drug use. CR 187, ¶3. In response to these allegations, Kristin—through counsel—agreed to undergo drug testing; a chemical dependency evaluation; and a mental health evaluation. *Ibid.* Kristin tested positive for cocaine and marijuana. *Id,* ¶4. F.A. tested positive for marijuana as well, indicating she had been exposed to the drug while in Kristin's care. *Id.*, ¶ 5.

Ben filed an ex parte motion, which resulted in an ex parte order limiting—but not suspending—Kristin's parenting time. CR 100, 101. At the April 1, 2020 hearing on Ben's motion, Ms. Steele testified that she had serious concerns regarding Kristin's ability to safely parent F.A. 4/1 and 4/7/20; 2/24, 3/10, and 9/30/21 and 3/4/22 Transcript (hereinafter "Tr.1"), 40:25-43:7. Specifically, these concerns included:

a) Kristin insisting on engaging in sex with Ms. Steele while F.A. was present in the room (and sometimes even in the same bed) (*Id.*, 30:19-31:5; CR 187, ¶34);

b) Kristin continuing to breastfeed F.A. (who was at that point nearly four years old) strictly to gain additional parenting time (Tr.1, 32:4-33:4), in spite of the fact that she was using drugs;

c) Kristin using drugs (including cocaine, ecstasy, marijuana, and LSD) at the same time she was breastfeeding F.A. (*Id.*, 33:14-38:3);

d) Kristin using drugs while parenting F.A. (including using cocaine at F.A.'s third birthday party) and driving with F.A. while under the influence of cocaine and marijuana (*Id.*, 35:1-36:3; CR 187, ¶12);

e) Kristin storing marijuana within F.A.'s reach (Tr.-1, 36:4-16);

f) Kristin spending upwards of $1,000.00 per month on cocaine and marijuana (*Id.*, 34:14-35:7); and

g) Kristin speaking negatively about Ben in front of F.A. (including wishing that Ben would die (*Id.*, 40:1-20)).

Lori Morgan, MSW, performed a chemical dependency evaluation of Kristin. The district court noted that Kristin's "own testimony" at the April 2020 hearing "revealed that she used cocaine frequently. . .and that she severely underreported her drug use to Ms. Morgan." CR 187, ¶18. Notwithstanding this underreporting, Ms.

Morgan found that Kristin meets the criteria for a diagnosis of "Cannabis Use Disorder—Severe." *Ibid.*

At the hearing, Kristin admitted that she had not yet obtained a mental health evaluation. Tr.1, 147:19-148:16. Kristin also claimed that she was not actually breastfeeding F.A.; rather, she testified, she "allow[ed] F.A. to suck on her nipple to pacify F.A." CR 187, ¶36. Although testimony varied as to how exactly F.A. ended up testing positive for marijuana, the district court noted that Ben had supplied a negative drug test and that Kristin admitted to using marijuana during her parenting time. *Id.*, ¶¶25, 33. "Regardless of how F.A. ended up with marijuana in her system," the court expressed "great concern regarding any child testing positive for drugs" and noted that it "[would] not tolerate a parent who puts a child in this level of danger." *Id.*, ¶33.

Accordingly, Kristin was ordered to undergo addiction treatment, drug testing and a psychological evaluation. *Id.*, ¶¶I-IV. Kristin was granted supervised visitation with F.A. for a period of six months. *Id.*, ¶V. If Kristin *fully* complied with all of the provisions of the order, had no positive drug tests, and "a psychological evaluator. . . expressed no concern over Kristin having unsupervised parenting time," then Kristin would receive unsupervised parenting time with F.A. every other weekend. *Ibid.*

In July of 2020, Jasmine Van Antwerp, LCPC, was appointed to act as F.A.'s counselor. CR 195. Shortly thereafter, Ms. Van Antwerp made a report to CFSD regarding troubling disclosures made by F.A. during their sessions, including that Kristin "makes [F.A.] suck on her boob like a baby," even though F.A. does not want to do so (F.A. lifted her shirt and simulated this action with a doll); that F.A. "has rubbed her vulva in the bathtub" and stated, "That's what I see [my mom] do"; and that F.A. described her vagina as smelling bad and has said she needs to keep it clean." CR 248, p.1.

In November 2020, F.A.'s new therapist, Sara Gentry, LCSW was appointed. CR 221. Kristin did not object to this appointment. *Ibid.* In early December, Ms. Gentry reported additional disclosures to DCFS and the court, including that Kristin makes F.A. "suck her boobies," which F.A. does not like, and that Kristin had been stabbing and cutting up F.A.'s clothes because they were purchased by Ben's now-wife, Erin Bills. CR 233; 248, pp.15, 22. Ben filed another ex parte motion, and a hearing (the third such hearing in this matter) was held on December 18, 2020.[1] CR 249.

Following the hearing, the court issued an interim order limiting Kristin to supervised visitation with F.A. CR 257. However, Kristin opted not to exercise any supervised visitation from December 2020 through November 2021, because she did

[1] Kristin did not order transcripts of this hearing or submit them on appeal.

not wish to use a supervised visitation facility. CR 377; 619, p.104; Tr.1, 209:5-210:6.

In February 2021, Ben filed a contempt motion after Kristin repeatedly made contact with F.A. in violation of the supervised visitation requirement and spoke inappropriately to F.A. during video calls. CR 275. Based on Ms. Gentry's recommendation, Ben asked that Kristin's and F.A.'s video and phone contact also be supervised. *Id.* On February 24, 2021, the court held a status conference at which Ms. Gentry vocalized concerns regarding Kristin's "emotional [instability], exhibit[ion of] irrational behavior, impulsivity, unpredictability, arrogance, grandiosity, and. . .no accountability whatsoever for her behaviors and choices[.]" Tr. 1, 167-278, 170:5-171:1.

On February 25, 2021, Ben's wife Erin was granted an Order of Protection against Kristin due to relentless stalking, harassment, and aggressive behaviors (including Kristin kicking in the door to Erin and Ben's home; entering the home without permission; and repeatedly blocking the driveway with her vehicle), all of which placed Erin "in danger of harm." *See Order of Protection*, 2/25/21, Park County District Court Cause No. DV 21-18, ¶¶ 3-11, E. Notably, many of the incidents which gave rise to the order of protection also violated orders previously entered in the parenting case.

Between February 11 and March 25, 2021, Kristin filed *twelve* separate contempt motions against Ben, all of which were denied. CR 325. Kristin also filed numerous lawsuits against individuals involved in this case, including two suits against Ben[2]; two suits against Ms. Gentry[3]; suits against Erin and Erin's mother (whom she had never met)[4]; a suit against her former attorney[5]; and at least four suits against Jennifer Steele, presumably in retaliation for Ms. Steele's testimony at the 2020 hearing[6]. CR 295; CR 619, ¶14. Kristin also filed baseless disciplinary actions against Ms. Gentry with the Board of Behavioral Health. CR 619, ¶14. As a result of her flurry of baseless filings, Kristin was declared a vexatious litigant. CR 327.

On March 10, 2021, another hearing on pending motions was held (now the *fifth* parenting hearing herein). Tr.1, 186:9. Thereafter, a *third* new parenting order was entered. CR 326. Despite Kristin's failure to comply with the terms of the previous order, the court gave Kristin the opportunity to resume unsupervised contact with F.A. if she completed two months of counseling. *Id.*

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[2] Gallatin County Justice Court Cause No. CV-2021-94 and Gallatin County District Court Cause No. DV-21-144C.

[3] Gallatin County Justice Court Cause No. CV-2021-42-OT and Park County District Court Cause No. DV-21-32.

[4] Gallatin County Justice Court Cause Nos. DV-21-24 and DV-21-25.

[5] Gallatin County Justice Court Cause No. CV-2021-101.

[6] Gallatin County Justice Court Cause Nos. SM-2021-05 and SM-2021-08 and Gallatin County District Court Cause Nos. DV-21-143B and DV-21-145B).

In May 2021, the court expressed concern about Kristin's ongoing harassment of Ms. Gentry (which also included numerous harassing emails and contacting Ms. Gentry's daughter), stating that, if Ms. Gentry were to resign, the Court would be "disinclined" to appoint another reunification counselor, as it believed that "such a resignation would be a result of [Kristin's] choices and actions[.]" CR 345, 352, 619, ¶16. Less than a month later, Ms. Gentry resigned due to Kristin's behavior. *Id.*

On September 30, 2021, the court held its *sixth* parenting hearing herein. CR 363. On November 18, the court issued the *fourth* new parenting order in under two years. CR 377. Despite Kristin's behavior, she was granted the opportunity to resume parenting time with F.A. on a graduated schedule culminating with unsupervised parenting time every other weekend. *Id.* The court also reappointed Ms. Gentry on the condition that Kristin was not allowed to have any direct contact with her. *Id.*

Throughout 2021, Kristin sent F.A. (who was four years old) numerous bizarre and inappropriate items in the mail, including a knife, matches, several types of fuel, aspirin, and age-inappropriate medical supplies. CR 619, ¶18.

In January 2022, Ms. Gentry reported additional troubling disclosures by F.A., including that Kristin told F.A., "I wish your stepmother would die," and ordered her not to speak to Ms. Gentry, effectively halting their therapeutic progress. CR 379, 619, ¶24. Additionally, Kristin had been engaging in inappropriate behavior

during her visits with F.A., including removing F.A.'s clothing and underwear. CR 381; CR 619, ¶105. Further, F.A. was not adjusting well to the new parenting schedule. CR 379; CR 619, ¶24. As such, Ben moved to stop the progression of the graduated parenting schedule; his motion was denied on January 19, 2022. CR 381; 389.

In February 2022, Ms. Gentry reported to the court and DCFS that, during F.A.'s first overnight with Kristin, Kristin forced F.A. to sleep in bed with her and "suck her boobies." CR 393; Tr.1, 470:14-15. F.A. reported she tried to get away from Kristin, but Kristin pulled her back into bed. *Id.* F.A. was five and a half years old at this time. On February 16, 2022, the court suspended Kristin's parenting time and set a hearing for March 4, 2022. CR 392.

At this hearing (which was the *seventh* parenting hearing in this matter), Dr. Juliet Hansen testified regarding the medical and forensic evaluation she had performed of F.A., noting that F.A. disclosed that Kristin "touches F.A.'s private parts" and opining it likely that F.A. had been sexually abused by Kristin. Tr.1, 454:7-8, 448:22-449:3; 451:11-453:7. Dr. Hansen advised that Kristin's parenting time should be suspended because she believed F.A. was not safe in Kristin's care. *Id.*, 453:8-21.

Following the hearing, the court limited Kristin to telephonic contact with F.A. pending the outcome of sexual abuse investigations by DCFS and law

enforcement. CR 412. In late March and early April 2022, Kristin improperly filed an ex parte motion to reinstate her parenting time; a motion for contempt; and an expedited motion for immediate hearing. CR 420; 422; 427; 429. She also initiated in-person contact with F.A. while skiing at Big Sky, in express violation of the order limiting her to telephonic contact. CR 436, p.3.

On April 28, 2022, the court ordered a custody evaluation. Despite its "concerns about [Kristin's] apparent inability or unwillingness to comply" with its orders, "including her recent contact with the child while skiing," the court entered a *fifth* new parenting schedule, which granted Kristin the ability to resume parenting time with F.A. every other weekend. *Id.*, pp.3-5. Kristin was ordered not to use illegal substances; not to ingest marijuana or be under the influence of marijuana at any time while F.A. was in her care; and to continue to submit to drug testing. *Id.*, p.4.

On October 31, 2022, custodial evaluator Dr. Sara Baxter filed her parenting evaluation with the court. CR 478. Dr. Baxter made a number of recommendations, including that F.A. should primarily reside with Ben; that F.A. should begin therapy with a new counselor[7]; and that Kristin should refrain from the use of all drugs, including marijuana. A hearing initially was set for January 19, 2023; however, the

[7] Ms. Gentry ultimately resigned as F.A.'s counselor for the second time and final time due to what the court accurately characterized as a "two year campaign" of harassment. CR 619, Concl. H.

day before, Kristin obtained a continuance (against Ben's objection), with the hearing being reset for April 25 and 26, 2023. CR 505, 525.

On February 21, 2023, Ben filed an ex parte motion to suspend Kristin's parenting time because, on a recorded Skype call, Kristin initiated a conversation about F.A. having sex with another kindergartener. CR 543. During this conversation, Kristin made a hand gesture consisting of her inserting a finger (mimicking a penis) into her fist (mimicking a vagina). *Id.* On February 23, the court issued an order suspending Kristin's parenting time and setting the *eighth* parenting hearing in this matter for March 7, 2023. CR 551.

At this proceeding, Kristin testified that she believes speaking to F.A. about having sex with another kindergartener is appropriate. 3/7, 4/25, 4/26, and 10/24/23 Transcript (hereinafter "Tr.2"), 86:18-22. She also admitted to giving F.A. books about sex and engaging in conversations about sex with F.A. *Id.*, 69:14-19. Kristin's own therapist Becky Berglund (who is not a licensed psychologist) conceded that sexual grooming consists of behaviors in which Kristin has repeatedly engaged, including (1) making inappropriate things seem appropriate; (2) inappropriate talk; (3) speaking flattery; (4) sitting a child on one's lap; and (5) depending on other circumstances, possibly sleeping with a child in bed. *Id.*, 64:2-65:24.

Thereafter, the court found that Kristin had "deliberately sabotaged her parenting time by her conduct, inclusive of that clearly documented on the. . .

recorded video call[.]" CR 557, p.2. If Kristin was willing to engage in such inappropriate conduct "knowing that she is being recorded," the court expressed "grave concerns about what [was] truly happening during [her] unmonitored parenting time." *Ibid*. The court ordered supervised visits between Kristin and F.A. twice per week. *Id*.

On April 25 and 26, 2023, the court held its *ninth* parenting hearing in this matter to address Dr. Baxter's parenting evaluation and other pending matters, including one contempt motion filed by Kristin and another contempt motion filed by Ben in response to numerous violations of the court's orders. CR 476, 482. Thereafter, the court issued detailed, extensive factual findings (totaling 33 pages) and conclusions of law (totaling 12 pages), which provided extensive explanation of its analysis of "the testimony and evidence presented at the hearing, the evaluation of Dr. Baxter, . . . the record in the case," and the factors set forth in § 40-4-212, MCA. CR 619, ¶H. The court found that "F.A. continues to report being sexually abused by Kristin," including "being forced to suck Kristin's breasts, being forced to sleep with Kristin with no bottoms on," "bathing together and showering together," "the two running around the house [together] naked," and "report[ing] multiple times to third parties over the past three years that she has been touched on her vagina by Kristin." *Id.* at ¶¶98-118, 130, N. The court also noted that "Kristin exhibits multiple behaviors that lead [it] to conclude that there is a high likelihood

that she is sexually grooming F.A., and that F.A. is at high risk of this behavior. . . continuing." *Ibid.*

Further, the court noted that it has "ongoing concerns about Kristin's mental health," which were underscored by the fact that her hearing testimony "was irrational, untruthful, and emotionally dysregulated" and included her "yelping" and "panting." *Id.*, ¶¶79, H. The court also voiced concern about Kristin having been "found by multiple professionals to have an ongoing issue with marijuana" and having "been diagnosed with severe dependence upon marijuana," yet continuing to use marijuana, as reflected by her drug test results (which, immediately prior to the April 2023 hearing, indicated the highest concentrations of THC to date). *Id.*, ¶¶67-76, H. Kristin testified that "she has no intention of abstaining from marijuana." *Id.*, ¶¶166, H. In fact, her marijuana levels had continually increased since Dr. Baxter recommended that she abstain from using the drug. *Ibid.*

Accordingly, the court adopted the following recommendations made by Dr. Baxter: (1) the parties utilizing Our Family Wizard for all communication; (2) Kristin refraining from the use of marijuana and other drugs and submitting to drug testing; (3) implementing parallel parenting; (4) appointing a new counselor for F.A.; and (5) engaging a parenting coordinator or guardian ad litem to oversee the therapeutic process. *Id.*, ¶¶X, Y. Additionally, the court ordered Kristin to complete six months of counseling with a licensed psychologist prior to having unsupervised

parenting time. *Id.*, ¶V. Despite concluding that "Kristin has repeatedly violated. . . orders and exhibited behavior to intentionally sabotage her parenting relationship," and that Kristin's "inconsistency and behavior are not in F.A.'s best interest," the court issued its *fifth* new parenting schedule in just over three years, which provided Kristin with yet another opportunity for reunification with F.A. *Id*., ¶¶O, U-W, Y.

The court concluded that Kristin had repeatedly defied its orders by contacting F.A. and volunteering at F.A.'s school outside her parenting time without its permission; attending activities of F.A.'s which had not been authorized by the court; failing to return F.A. to Ben at the end of her parenting time; canceling a medical appointment Ben had scheduled for F.A. during his own parenting time; and sleeping in the same bed as F.A.[8] At the hearing, Kristin admitted that she "did not follow" those orders which "she did not find. . .reasonable," and, moving forward, "will not follow" any orders "that limit her ability to see F.A." *Id.*, ¶79. As such, Kristin was held in contempt and was ordered to reimburse Ben for his attorney fees. *Id.*, ¶B. The court denied Kristin's motion for contempt (the fifteenth such motion she had filed against Ben in this action), finding that it was baseless and not made in good faith, much like the flurry of other groundless motions which preceded it. *Id*., ¶C.

[8] On June 17, 2022, the court issued an order forbidding Kristin from sleeping in the same bed as F.A. CR 455.

On July 27, 2023, Ben was forced to file another motion to terminate Kristin's supervised visitation based upon her inappropriate behavior during these visits, which included changing F.A.'s clothes (including her underwear); removing F.A.'s pants (and then asking the supervisor to delete portions of the recording which depict this); interrogating F.A. about counseling; whispering secrets to F.A. that were not audible to the supervisor or on the recording; speaking inappropriately to F.A. about why the two were being supervised; berating F.A. for "lying" about Kristin's behavior; initiating a conversation about transgender children; asking F.A. if she would like Kristin to get pregnant; complaining that supervised visitation is "stupid"; crying; complaining about Erin and Ben; accusing Erin and Ben of "toxic behavior"; and calling supervised visitation "toxic bullshit." CR 736, pp.1-5.

On October 2, 2023, the court set a hearing for October 17. Kristin moved for a continuance, and the hearing was reset for October 24. On October 16, Kristin unsuccessfully moved for a second continuance. CR 699. At the hearing, Kristin admitted to giving six-year-old F.A. Red Bull (which she refers to as "psycho juice") at 7:00 PM, during her supervised visits. Tr.2, 585:17-587:18. Kristin justified this choice because "Red Bull is not a controlled substance." *Ibid.* Thereafter, the court concluded that Kristin's conduct was wholly contrary to F.A.'s best interest and that "any benefit from [supervised visits with Kristin] is outweighed by the harmful impact to F.A. from Kristin's conduct." CR 736, p.5.

Accordingly, the court issued a ruling suspending supervised visitation until such time as it "received documentation that both Kristin and F.A. have been engaged in counseling for a minimum of three sessions a month for a period of eight months," reiterated that "the requirement of counseling for Kristin shall be with [a] psychologist she selects, per the Court's prior order," and directed Kristin to provide pertinent case documents and recordings of the supervised visitations to her psychologist. *Id.*, pp.5-6.

To date, Kristin has failed to: (1) engage a psychologist; (2) engage a parenting coordinator (other than briefly from December 2023 until April 2024); (3) continue drug testing; (4) refrain from using marijuana; (5) utilize Our Family Wizard as the sole avenue for communication with Ben; (6) comply with the district court's various orders; and (7) refrain from having contact with F.A. CR 788, *Motion for Contempt* dated 8/8/24.

STANDARD OF REVIEW

This Court reviews parenting orders to determine whether the trial court's findings are clearly erroneous. Absent clearly erroneous findings, this Court will not disturb a district court's decision regarding parenting unless there is a clear abuse of discretion. *Woerner v. Woerner*, 2014 MT 134, ¶¶ 11-12, 375 Mont. 153, 325 P.3d 1244. The lower court's conclusions of law are reviewed to determine if they are correct. *In re Parenting of C.J.*, 2016 MT 93, ¶ 12, 383 Mont. 197, 369 P.3d 1028.

Generally speaking, trial courts are in a better position than appellate courts to resolve child custody issues. *In re Custody of Arneson–Nelson*, 2001 MT 242, ¶ 2, 307 Mont. 60, 36 P.3d 874. District courts have broad discretion when considering the parenting of a child, and this Court begins with the presumption that the district court carefully considered the evidence and made the correct decision. *In re Parenting of C.J.*, 2016 MT 93, ¶ 12, 383 Mont. 197, 369 P.3d 1028. Similarly, trial courts are in the best position to weigh evidence, including conflicting evidence, and to judge the relative credibility of witnesses. *In re Marriage of Edwards,* 2015 MT 9, ¶ 18, 378 Mont. 45, 340 P.3d 1237 (quoting *Owen v. Skramovsky*, 2013 MT 348, ¶ 22, 372 Mont. 531, 313 P.3d 205). This Court "will not second-guess a district court's determinations regarding the strength and weight of conflicting testimony." *Ibid.*

A district court's award of attorney fees in a dissolution action is reviewed for abuse of discretion. *Weibert v. Weibert*, 2019 MT 29, ¶ 8, 378 Mont. 135, 343 P.3d 563 (citing *In re Marriage of Dennison*, 2006 MT 56, ¶ 23, 331 Mont. 315, 132 P.3d 535). "A district court has abused its discretion if substantial evidence does not support its award of attorney fees." *Id*.

SUMMARY OF ARGUMENT

The District Court's orders should be upheld on appeal, as its findings of fact are supported by substantial credible evidence; it correctly applied the applicable

law; and it appropriately utilized its substantial discretion to safeguard the best interest of the parties' daughter. Further, the award of attorney fees was warranted and justified given the facts and the history of this case and should therefore be upheld.

ARGUMENT

A. The District Court correctly used its considerable discretion in amending the parties' parenting plan and imposing limitations on Kristin's parenting time.

Kristin argues that the district court's factual findings are "conclusory, oftentimes completely erroneous, and based on the draft order prepared by Ms. Swandal." [9] *App. Br.* at 22. Nonetheless, Kristin fails to cite even one example of an erroneous or unsupported factual finding. To the contrary, the district court's findings of fact are thorough, detailed, well-reasoned, supported by testimony and evidence, and replete with numerous citations to the record.

Kristin minimizes her substance abuse (and associated endangerment of F.A.), arguing that "she only ever tested positive for medical marijuana" after the initial, cocaine-positive drug test and that "not once after the initial test did F.A. test positive" for marijuana. *App. Br.*, 22-23. This dissembling aside, the truth remains

[9] Kristin's own proposed findings and conclusions were almost identical to those she filed in October of 2021 and were therefore largely irrelevant to the topics covered at the April 2023 hearing. *See* CR 370 and 602.5.

that Kristin *did* test positive for cocaine and F.A. *did* test positive for marijuana. CR 187, ¶¶4-5. Kristin admitted on the witness stand to routinely using cocaine and other hard drugs and to using marijuana recreationally. Tr.1, 110:1-2, 126:9-12, 137:22-138:2, 151:20-24. The court heard credible testimony that Kristin used drugs while parenting (including using cocaine at F.A.'s third birthday party); that Kristin drove with F.A. and breastfed F.A. while under the influence; and that Kristin stored her drugs and drug paraphernalia within F.A.'s reach. *Id.* at 35:5-37:16. The court also received evidence that Kristin either cannot or will not curtail her marijuana consumption, even after being court-ordered to do so. Tr.2, 317:23-319:20; April 25 and 26, 2023 Trial Ex. 1. In light of these factors, the district court's rulings are entirely appropriate.

Kristin next characterizes the district court's concerns regarding her mental health as an "egregious[] attack[]," alleging that the court improperly disregarded the testimony of several mental health professionals, including Dr. Murphey; Dr. Page; LAC Lori Morgan; and her therapist, Becky Berglund. *App. Br.*, 23. In reality, the court correctly considered all of the relevant information before it. Kristin agreed to undergo a mental health evaluation in January 2020, but failed to do so until May, when she engaged Dr. James Murphey, who did not review the court order requiring the evaluation or interview anyone else associated with this case and who was

unfamiliar with several of important facts pertaining to the case. Tr.1, 147:19-148:16, 295:19-20.

Kristin also underwent a chemical dependency evaluation with Ms. Morgan, who diagnosed her with severe cannabis use disorder, notwithstanding Kristin's underreporting of her substance use. CR 187, ¶¶17-23; CR 619, ¶¶81, L. Kristin asserts that Ms. Morgan had no concerns about her mental health, but fails to acknowledge that the scope of Ms. Morgan's assessment was strictly related to substance abuse. *Id*.

Kristin also hired Dr. Robert Page to perform a psychosexual evaluation of her, and represented in a pleading that Dr. Page would testify that Kristin is "not a pedophile, is not psychotic, and is a functional adult." CR 582. However, Kristin failed to have Dr. Page testify at the April 2023 hearing and did not produce his report until July 31, 2023, nearly two months after the issuance of the ruling. CR 656. Given these timing issues and given that Ben was never given the opportunity to cross-examine Dr. Page, Kristin cannot fault the district court for affording this report little weight or failing to consider it in its June 6, 2023 order.

Similarly, the court took Becky Berglund's testimony with a grain of salt; although Ms. Berglund testified that she had "no qualms about Kristin having unsupervised contact with F.A.," the court also observed that Ms. Berglund failed to

hold Kristin accountable for her "problematic behavior" and allowed their therapy to become "sidetracked" by Kristin's fixation with Ms. Gentry. CR 619, R.

Finally, it is inaccurate to suggest that Dr. Baxter had no concerns about Kristin's mental health. Her testing of Kristin indicated "impulsivity," "proneness to rule infractions," a "high" and "robust. . .proneness to chemical dependency," and attention-seeking behavior, which prompted her to recommend that F.A. should reside primarily with Ben; that Kristin should abstain from all drugs, including marijuana; and that Kristin's parenting time should remain supervised for the time being. CR 619, ¶¶29, 163-179.

Notably, Kristin's proposed parenting plan largely deviated from Baxter's recommendations. Tr.2 110:24-121:3. The court's order also deviated from some of Dr. Baxter's recommendations, largely because Dr. Baxter remained unconvinced that Kristin had behaved in a sexually inappropriate manner toward F.A. (despite her concession that F.A. was displaying "very concerning. . .sexualized behaviors and aggressive sexual act[ing] out," including attempts to nurse on Ms. Gentry and Ms. Berglund) *Id.*, ¶¶174, K. Essentially, the court explained that, over the years, it had become familiar with a deeper and more detailed "body of testimony" and information which "Dr. Baxter could not access and consider in performing her evaluation." *Id.*, ¶¶162-179. Ultimately, the court concluded that "Kristin needs a significant level of help with her mental health and with her parenting skills if she is

to parent F.A. without supervision" and that "Dr. Baxter's evaluation and recommendations [did] not give adequate consideration to the history of abnormal and problematic parenting behavior on Kristin's part, some of which [was] historical, but much of which [was] recent and continuing." *Id.*, ¶¶P, Q.

The court noted that Dr. Baxter had only spent a few hours with F.A., while counselors Van Antwerp and Gentry had spent over 100 hours with her; that F.A. had been reporting sexual abuse by Kristin for years; that F.A. "continues to report being forced to suck Kristin's breasts and sleep with Kristin"; and that F.A. "has reported multiple times to [numerous] third parties over the past three years that she has been touched on her vagina by Kristin." *Id.*, ¶¶178, N. The court has also had the benefit of reviewing information which came to light after Dr. Baxter's evaluation, including Kristin's inappropriate behavior during supervised visits (such as removing F.A.'s clothing). In light of these factors, the court's departure from Dr. Baxter's recommendations was an appropriate use of its discretion.

In addition to considering the above facts, which pertain to the best interest factors of chemical dependency; the mental and physical health of the parties; and physical abuse or threat thereof, the district court also carefully and thoroughly considered:

a) Kristin and Ben's respective wishes (noting that F.A. was too young to have her wishes considered) (*Id.*, ¶¶H(a) –(b));

b) F.A.'s interaction and interrelationship with her parents, noting that F.A. is bonded with both parents, that Ben provides stable and consistent parenting, and that, "despite her love for F.A., Kristin's parenting. . .includes interactions. . .that are of great concern in terms of [F.A.'s] emotional well-being" (*Id.,* ¶H(c));

c) F.A.'s interaction and interrelationship with others, noting that Erin is closely bonded with F.A. (and was, in fact, characterized by F.A.'s school principal as "the most impactful parent of the three") and that F.A. is close with Ben and Erin's families but not Kristin's family (*Ibid.*);

d) F.A.'s adjustment to home, school, and community, noting that F.A. is adjusted to her home with Ben and Erin, her school, and the Big Sky community, but not Kristin's Bozeman residence (*Id.*, ¶H(d));

e) Continuity and stability of care, noting that Ben provides continuity and stability of care for F.A. and that Ben and Erin's home is "a very ordered and predictable household," whereas Dr. Baxter reported that Kristin "has difficulties around appropriate boundaries in the parenting situation" (*Id.*, ¶H(h) (citing Dr. Baxter's report at 20);

f) F.A.'s developmental needs, noting that "Ben supports F.A. developmentally" and expressing concerns that that Kristin's "inappropriate" behavior (including sabotaging F.A.'s therapy) could be "developmentally harmful" (*Id.*, ¶H(i));

g) Whether the parents have knowingly failed to financially support F.A., noting that Kristin has not paid child support and seems to believe "the financial burden of raising F.A. should fall solely on Ben," (*Id.*, ¶H(k)); and

h) Adverse affects on F.A. resulting from continuous and vexatious parenting amendment actions, reciting the various filings, lawsuits, and administrative complaints which led to Kristin being declared a vexatious litigant and the pleadings which have been filed since, and further noting that "Kristin [has taken] no responsibility for her contribution to the conflict in this case, which is overwhelmingly her doing." *Id.*, ¶¶H(l), (j), and (k).

Based upon careful consideration of the foregoing factors, the district court correctly used its discretion to determine that F.A.'s best interests will be served by residing primarily with Ben, and for Kristin to have overnight parenting time every other weekend *once Kristin follows the treatment protocols ordered by the court. Id.*, ¶W.

District courts have broad discretion when considering the parenting of a child. In reviewing a parenting order, this Court operates under the presumption that the district court carefully considered the evidence and, in doing so, came to the correct conclusions and made the right decision. *In re G.M.N.*, 2019 MT 18, ¶ 11, 394 Mont. 112, 433 P.3d 715; *In re Marriage of McKenna*, 2000 MT 58, ¶ 17, 299 Mont. 13, 996 P.2d 386. If the trial court's findings are supported by substantial

credible evidence, this Court "will not overturn the [district] court in a child custody matter unless [it] determine[s] that there has been a clear abuse of discretion." *Czapranski v. Czapranski*, 2003 MT 14, ¶ 10, 314 Mont. 55, 63 P.3d 499 (citing *In re Marriage of Bukacek*, 274 Mont. 98, 105, 907 P.2d 931, 935 (1995)).

The task currently before this Court is to determine whether substantial credible evidence exists to support the district court's findings, not to determine whether the evidence would support contrary findings. *Rafanelli v. Dale*, 278 Mont. 28, 37, 924 P.2d 242, 248 (1996). As a matter of policy, this Court declines to substitute its judgment for that of the trier of fact, as trial courts are "in a better position than this Court to resolve child custody issues." *In re Marriage of McKenna*, 2000 MT 58, ¶ 18, 299 Mont. 13, 996 P.2d 386 (citing *In re Marriage of Anderson*, 260 Mont. 245, 252, 859 P.2d 451, 454 (1993)).

Trial courts have the ability to use their discretion to weigh conflicting evidence and testimony and to judge the relative credibility of witnesses. *Marriage of Edwards,* ¶18. When faced with testimonial conflicts or discrepancies, it is "exclusively within the province of the trier of fact" to resolve them by weighing evidence and assessing the demeanor and credibility of witnesses. *In re Marriage of Lewis*, 2020 MT 44, ¶ 8, 399 Mont. 58, 458 P.3d 1009; *In re Marriage of Mitchell*, 248 Mont. 105, 108, 809 P.2d 582, 584 (1991); *Swandal Ranch Co. v. Hunt*, 276 Mont. 229, 236, 915 P.2d 840, 844-45 (1996).

That is precisely what the district court did here, particularly when provided with contradictory testimony. It is not this Court's function to reweigh conflicting evidence or substitute its judgment regarding the strength of the evidence for the judgment of the trial court. *In re A.F.*, 2003 MT 254, ¶ 24, 317 Mont. 367, 77 P.3d 266. The "ultimate test for the adequacy of findings of fact is whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and whether they are supported by the evidence presented." *In re Marriage of Wolfe*, 202 Mont. 454, 458, 659 P.2d 259, 261 (1983).

Both elements of this test are met. The district court's written findings provide a thorough and comprehensive basis for its decision, which is supported by the testimony and evidence. The court appropriately used its broad discretion to craft a parenting order which safeguards F.A.'s best interest. It thoughtfully and carefully weighed the evidence and testimony presented to it; based its findings of fact on substantial credible evidence; applied the correct law; and, employing its conscious judgment, determined that it is in F.A.'s best interest to limit Kristin's parenting time until she follows the treatment protocols outlined in the court's orders (the majority of which were recommended by Dr. Baxter). This determination should not be disturbed on appeal.

B. The court correctly held Kristin in contempt and correctly awarded Ben attorney fees.

Kristin admitted that, on October 18, 2022, she went to F.A.'s ballet class and made contact with her and hugged her during Ben's parenting time, which was a violation of the April 28, 2022 order that stated Kristin could attend only *soccer games and school programs* (not ballet classes) and that, when these events occurred during Ben's parenting time, she was required to "make reasonable efforts to distance herself" from Ben, Erin, *and* F.A. CR 436, pp.3-4; CR 482, ¶¶4-8; (Tr.2, 330:25-331:25).

Kristin also admitted that she volunteered in F.A.'s classroom on October 26, 27, 29, and November 2, 7, 15, 17, and December 1, 2022, even though each of these were Ben's parenting days, and there was "no court order" in place "allowing Kristin to volunteer or see F.A. outside of the court-ordered parenting time." CR 619, ¶¶35, 36, 38; Tr.2, 359:4-9. Kristen further admitted that, on November 7, 2022, she failed to return F.A. to Ben at the end of her parenting time, and that she again refused to return F.A. to Ben's care on January 1, 2023, in violation of the December 1, 2022 order delineating the holiday schedule. CR 619, ¶39-42; CR 492.5, ¶¶10-11; Tr.2, 340:22-344:8.

In addition to Kristin's own admissions, Ben testified regarding Kristin's numerous violations of the court's orders. Tr.2, 399:4-406:16. Accordingly, the district court concluded that Kristin had "repeatedly defied [the] court's orders and

should be held in contempt." CR 619, ¶B. The court also awarded Ben's attorney fees and costs related to the motion for contempt. *Ibid*. Kristin now argues that she should not have been held in contempt and that the attorney fee award was erroneous.

A district court "has the responsibility to enforce its own orders," and, accordingly, may exercise its discretionary contempt power as necessary to uphold its dignity and authority. *In re Marriage of Baer*, 1998 MT 20, ¶ 45, 287 Mont. 322, 954 P.2d 1125; *In re Marriage of Winters*, 2004 MT 82, ¶ 41, 320 Mont. 459, 87 P.3d 1005. This is particularly true in family law cases, and especially high-conflict cases like this one, wherein "the best remedy to [e]nsure respect for the law and the orderly progress of relations between family members split by dissolution is to give effect to the contempt powers of the district court." *Milanovich v. Milanovich*, 201 Mont. 332, 336, 655 P.2d 963, 965 (1982); *In re Marriage of Marez and Marshall*, 2014 MT 333, ¶ 32, 377 Mont. 304, 340 P.3d 520.

District courts have the discretion to award attorney fees. *Weibert*, ¶10 (citing *In re Marriage of Brownell*, 263 Mont. 78, 85, 865 P.2d 307, 311 (1993)). A district court "may order a party to pay a reasonable amount for the costs to the other party of maintaining or defending any proceeding under chapters 1 and 4." § 40-4-110, MCA. Given the ongoing and sometimes protracted nature of family law litigation, a district court's ability to make such an award endures throughout "different stages of the proceeding" and extends beyond the entry of judgment. *Weibert*, ¶11. An

attorney fee award made pursuant to this statute must be reasonable, based on necessity, and rooted in competent evidence. *Id*. (citing *In re Marriage of Barnard*, 241 Mont. 147, 154, 785 P.2d 1387, 1391 (1990)). The Supreme Court will not disturb an award of fees if it is supported by substantial evidence. *Weibert*, ¶11.

There is justification for the attorney fee award in light of Kristin's blatant, ongoing refusal to obey the orders of the court, which has had the effect of unreasonably multiplying the proceedings herein. This Court has upheld an award of attorney fees in a scenario where one party "prolonged [the] matter unreasonably and vexatiously" by inciting "numerous briefs, hearings, and legal proceedings." *Estate of Bayers*, 2001 MT 49, ¶16, 304 Mont. 296, 21 P.3d 3; *see also* § 37-61-421, MCA.

Here, the undersigned timely submitted her affidavit of fees and costs. CR 622. Kristin objected, prompting a reasonableness hearing on August 21, 2023.[10] CR 633, 669. On December 12, 2023, the district court entered an order fixing the fee award.[11] CR 741. Notably, despite Kristin's claims of bias, the amount of the award was much

[10] Notably, Kristin failed to provide this transcript on appeal.

[11] On December 12, 2023, Ben was also awarded attorney fees associated with a previous motion to enforce. CR 739. This order is not explicitly discussed in Kristin's *Opening Brief*, and Ben is unsure if it is also encompassed within this appeal. This order—predicated upon Kristin's "failure to comply with the court's order and. . .vexatious and extensive filings in the interim, aimed at doing everything possible to avoid compliance with the court's order,"—is also an appropriate sanction, given the circumstances, and should be upheld. CR 739, p. 1. Further, Kristin did not object to the reasonableness of the amount of this attorney fee award. CR 754.

less than that requested by Ben. *Id.* Based on the foregoing considerations, the district court's award of attorney fees was appropriate, equitable, justified, and a proper use of its discretion, and should therefore be upheld by this Court.

C. District courts have the authority to impose conditions on a parent's exercise of parenting time.

On June 6, 2023, the district court ordered Kristin to see a psychologist twice per month, either "instead of or in addition to" her current counseling. CR 619, ¶S. On December 12, 2023, the court reiterated this order, but extended the duration and frequency of Kristin's treatment to eight months and thrice per month, respectively. CR 736. Kristin argues that this requirement is impossible to fulfill because she cannot find a provider, though she fails to acknowledge that the parenting coordinator recommended two psychologists who were available. Notably, Kristin has not filed a motion requesting relief from or modification of the district court's order.

At any rate, the mental health of all involved parties is one of the best interest factors that must be considered by the district court, and which *was* carefully considered by the court. § 40-4-212(1)(e), MCA. In this case, the district court concluded that Kristin "needs a significant level of help with her mental health and with her parenting skills if she is to parent F.A. without supervision." CR 619, ¶Q. The record reflects numerous incidents which indicate—at best—extremely questionable judgment on Kristin's part. The court reiterated these concerns and

discussed the evidence supporting each. *Id.*, ¶¶77-97, H, R. Ultimately, the court issued an order permitting Kristin to "select a psychologist of her own choosing that is licensed to practice in the State of Montana". CR 671.

This Court has upheld district court decisions suspending a parent's physical contact and visitation rights until after the parent receives mental health therapy, holding that district court has the ability to amend a parenting plan by temporarily suspending a parent's right to contact a child if it finds that doing so would be in the best interests of the child. *In re Custody of Arneson-Nelson*, 2001 MT 242, ¶¶ 17-31, 38, 307 Mont. 60, 36 P.3d 874. Here, the district court appropriately used its considerable discretion to place conditions on Kristin's exercise of unsupervised parenting which are intended to serve F.A.'s best interest.

Kristin argues that she has the right to choose her own mental health provider. Cleary, the district court agrees, as it authorized Kristin to select a psychologist *of her choosing*. Kristin desires to continue seeing her own counselor, Becky Berglund, who is not a psychologist. Again, the court indicated she is free to do so, holding that "Kristin may engage in whatever counseling she chooses," but requiring her to add treatment by a psychologist to her current mental healthcare regimen. CR 619, ¶S. This requirement is perfectly reasonable, especially in light of the fact that Kristin's behavior has continued to devolve under Ms. Berglund's care. The court specifically noted that it is concerned about Ms. Berglund not requiring Kristin to

take accountability and "address her problematic behavior"; that Ms. Berglund apparently has "[no] qualms about Kristin having unsupervised contact with F.A. in light of the concerns the court has about her conduct with F.A. during her parenting time"; and that Ms. Berglund has allowed Kristin's inappropriate fixation on Ms. Gentry to sidetrack their work together. *Id.*, ¶R.

The court did not err in determining that receiving counseling with a psychologist is a necessary safeguard to ensure that Kristin can safely and appropriately parent F.A., especially because her work with Ms. Berglund alone has occasioned little improvement in her behavior. This determination is based on substantial, credible evidence and should be upheld on appeal.

D. The court did not abuse its discretion when it prohibited Kristin from using marijuana in order to have parenting time.

Kristin next argues that, because she holds a medical marijuana card, the district court is prohibited from placing limitations on her marijuana usage. This assertion is illogical. Kristin has previously admitted to recreational marijuana. CR 187, ¶19. Her claims about the medicinal quality of her current marijuana use are extremely suspect; she admitted to Dr. Baxter "that she had previously used [medical] marijuana for foot pain" but that this pain "has since resolved" and that "she used marijuana for PTSD," before admitting that "she did not need to use marijuana anymore" for either of these conditions. CR 619, ¶75.

Holding a medical marijuana card does not give Kristin license to use marijuana in a way that impacts her ability to safely parent F.A. or that puts F.A. in harm's way. Here, the court is not punishing Kristin for possessing a medical marijuana card; rather, it is responding to the very problematic manner in which Kristin chooses to use marijuana. "Chemical dependency. . .or chemical abuse on the part of either parent" is one of the best interest factors the district court is required to consider. §40-4-212(1)(g). Here, Kristin has been diagnosed with the most severe type of cannabis use disorder, despite dramatically underreporting her use to the evaluator. CR 619, ¶74. She was previously "sent to rehab. . .for her marijuana use" and was "convicted of a DUI[12] [for driving] while under the influence of marijuana." *Id.*, ¶67. Kristin has driven F.A. while under the influence of marijuana and other drugs, and F.A. tested positive for THC after being exposed to the drug while in Kristin's care. *Id.*, ¶68.

Based on these concerns, parenting evaluator Dr. Baxter recommended that Kristin abstain from *all* drugs, including marijuana. *Id.* ¶166. In response, Kristin stated that she had no intention of abstaining from marijuana, and, in fact, her THC levels increased following this recommendation; by April of 2023, they had nearly tripled compared to 2020, when Kristin first began regular drug testing. *Id.*, ¶¶166, 71.

[12] *See State v. Cooper*, 2010 MT 11.

A district court has "broad discretion when considering the parenting of a child," and this Court "must presume that the [district] court carefully considered the evidence and made the correct decision." *In re Marriage of Tumarello,* 2012 MT 18, ¶ 34, 363 Mont. 387, 270 P.3d 28. Here, the district court's decision to condition Kristin's parenting on her abstaining from marijuana has ample evidentiary support. The court correctly noted that, "[j]ust because a substance is legal does not mean that it should be used around children—especially in excess." CR 619, ¶70. The court pointed out that it would similarly be "concerned if a parent abused alcohol while parenting; likewise, a parent cannot safely parent a child while abusing marijuana." *Ibid.* Here, Kristin has behaved erratically and actively endangered F.A. by exposing her to marijuana and driving her while under the influence of marijuana and other substances. She has proven that she is not capable of using marijuana (medical or otherwise) in a safe and responsible manner, meaning that *any* marijuana use by Kristin could be detrimental to F.A.'s best interest. As such, the district court correctly used its broad discretion to condition Kristin's parenting time on her abstaining from the use of marijuana and other drugs.

E. Judge Gilbert should continue to preside over this case.

Finally, Kristin alleges bias on the part of the presiding judge. Kristin points to no concrete facts in support of this claim, only her overall dissatisfaction with the district court's rulings and certain attenuated professional parallels between Judge

Gilbert and the undersigned's family.[13] Notably, Kristin's counsel has had other Park County cases against the undersigned's firm wherein she made no allegations of bias.[14]

Kristin claims that she is not the first litigant to allege such bias to this Court. However, the only other time the undersigned is aware of similar allegations being made was in *Hedstrom v. Peters*, 2022 MT 140N, wherein this Court found the appeal to be "entirely unfounded" and "wholly without merit" and therefore awarded the undersigned's client her attorney fees and costs on appeal. *Hedstrom*, ¶ 35. As in *Hedstrom v. Peters*, the present appeal is entirely unfounded; is clearly intended to harass Ben and to needlessly complicate and prolong these proceedings; and has no legitimate factual or legal basis.

Kristin's displeasure with the district court's rulings is not tantamount to evidence of bias against her. Although she argues that the court has "overwhelmingly ruled in Ben's favor," the record reflects that the district court has showed Kristin remarkable leniency, giving her chance after chance to improve her

[13] Judge Gilbert and the undersigned's grandmother worked together in the late 1980s through 1994. The undersigned also worked for Judge Gilbert briefly over a decade ago (from April 2011 to December 2012). Finally, because the undersigned's father previously served as district court judge, he and Judge Gilbert have worked with some of the same court personnel. Livingston is a small community, and many other members of the local bar have similar professional connections with one another and/or with members of the judiciary.

[14] *See e.g. Marriage of Dakolios*, Park Co. Cause No. DR 2008-4.

behavior. The district court has held *eleven* hearings in this case since 2019, and has amended the parenting plan repeatedly at Kristin's request, issuing at least five separate orders granting Kristin the opportunity to reunite and/or gain more parenting time with F.A., notwithstanding her litany of bizarre, troubling, and inappropriate behavior. Even though Kristin spent years repeatedly violating the court's orders; filing barrages of repetitive and baseless pleadings largely aimed at harassing the court into changing its mind (even after being declared a vexatious litigant); and harassing Ben, Erin, their family members, F.A.'s counselors, and the undersigned attorney, the district court did not award Ben attorney fees until 2023 (and then in an amount much less than he requested). This clemency is certainly not evidence of actual bias, as Kristin argues.

Kristin also suggests that the undersigned's appearance in this matter was the catalyst for conflict between her and Ben. This is untrue. In 2019, after the undersigned was hired, the parties were able to stipulate to the modification of their parenting plan. It was only after Ben learned of the severity of Kristin's substance abuse and inappropriate behavior that he was forced to take a firm stance to keep F.A. safe. Again, the evolution of Kristin and Ben's relationship in light of the developments which have unfolded in this case are not indicative of bias or impropriety.

Kristin further alleges that the court adopted Ben's assertions of fact without any evidence. Again, Kristin fails to provide any citations to the record to support her allegations. When faced with contradictory evidence, it is the function of the trial court to compare the strength and weight of conflicting evidence, assess the relative credibility and demeanor of witnesses, review the record as a whole, and make determinations accordingly. *See e.g. In re Marriage of Edwards*, ¶ 18. The district court agreeing with the manner in which Ben framed certain events is not indicative of bias, particularly given that Kristin cites no proof that the court's findings and conclusions were unsupported by the evidence, the record, or by existing law.

Finally, Kristin argues that the court not permitting Kathleen Rock to testify at the October 24, 2023 hearing is evidence of bias. *App. Br.*, 33. However, there, as with every hearing, the court equally divided the allotted time between Kristin and Ben. Just over halfway through the hearing, the court warned Kristin that she had already used 47 of her 60 minutes. Tr.2, 571:4-6. At this point, Kristin's counsel opted to re-cross examine Ben. *Id.,* 573:8-577:17. The court then warned Kristin that she had eight minutes remaining, at which point she called Cole McLaughlin to testify. *Id.*, 578:11-15, 584:25. Kristin later asked to play a video, and was again warned that she had five minutes remaining. *Id.*, 595:11-12. Kristin then tried to call Ms. Rock as a witness; however, the court refused, noting that Kristin had only two minutes of remaining time and that it had another hearing scheduled immediately

thereafter. *Id*., 598:16-23. The court did not commit reversible error when it declined to give Kristin more time, especially with another proceeding about to begin. Requiring the parties to efficiently manage the time allotted to them is evidence of effective courtroom management, not bias. Accordingly, this Court should disregard Kristin's arguments on this subject.

MOTION FOR ATTORNEY FEES ON APPEAL

This Court may "award sanctions to the prevailing party in an appeal. . . determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial reasonable grounds." Rule 19(5), M.R.App.P. Such sanctions "may include costs, attorney fees, or such other monetary or non-monetary penalty as the Supreme Court deems proper under the circumstances." *Ibid.* This Court has previously ordered attorney fees on appeal when it was convinced—from the record and from the presentation of the appeal, that a party acted without respect for the judicial process and that there were no reasonable grounds for the appeal. *Lee v. Lee*, ¶70, 2000 MT 67, 299 Mont. 78, 996 P.2d 389. This Court has also awarded attorney fees on appeal where a party demonstrated "significant disdain for the integrity of the judicial process." *Id.* at ¶ 66 (citing *Tipp v. Skjelset*, 1998 MT 263, ¶¶ 24, 29, 291 Mont. 288, 967 P.2d 787).

Here, there are no reasonable grounds for Kristin's appeal. Each of the district court's detailed, extensive findings were supported by the testimony and evidence

presented at the hearing, as well as by the court file as a whole (and, indeed, Kristin fails to cite to any findings that were not supported by the record). Given the district court's broad discretion in crafting a parenting plan which takes into account the parties' unique circumstances to serve the child's best interests, and given its broad latitude to weigh the testimony and evidence and use its best judgment to gauge the credibility of witnesses, it is clear that Kristin's appeal of this issue has no reasonable basis.

Kristin's utter disdain for the integrity of the judicial process has been evident throughout these proceedings. She holds the attitude that she does not have to comply with court orders she does not agree with. CR 619, ¶161. Even today, Kristin continues to defy the orders of the court. *See e.g.* CR 788. The district court found that "Kristin repeatedly misrepresents the court record to try to change the facts in this case and [has] not [been] honest with the court[.]" CR 619, ¶59. Unfortunately, this trend continues on appeal. Kristin's *Opening Brief* contains numerous factual misrepresentations; limited citations to the record; and vague and conclusory claims. These factors combine to make decoding and responding to the substance of Kristin's legal arguments a difficult and costly task.

Due to the lack of reasonable legal or factual bases for Kristin's appeal and Kristin's obvious disdain for the legal process, Ben respectfully requests that this

Court order Kristin to reimburse him for the fees and costs he incurred in this, his latest of many attempts to enforce and defend the rulings of the district court.

CONCLUSION

Based on the foregoing, Ben respectfully requests that the Court affirm the district court's decision, which was well-reasoned; carefully considered; supported by substantial credible evidence; legally accurate; within the bounds of its broad discretion; and which, most importantly, safeguards the best interest of the parties' minor child.

Further, Ben respectfully requests that Kristin be ordered to reimburse him for the fees and costs he incurred in responding to this appeal, pursuant to Rule. 19(5), M.R.App.P.

Respectfully submitted this 12th of September, 2024.

SWANDAL LAW PLLC

Attorney for the Appellee
Benjamin Anderson

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with Rule 11 of the Montana Rules of Appellate Procedure. The document is double-spaced (other than footnotes and parts of the Table of Contents and Table of Authorities) and printed in Times New Roman, proportionately spaced, in 14-point typeface. The total word count does not exceed 10,000 words, as calculated by this party's word processing system, excluding the tables, certificates, and appendix.

/s/ Rebecca R. Swandal

LIST OF APPENDICES

ORDERS

1. **CR 187—April 27, 2020 Findings of Fact, Conclusions of Law, and Order Following Hearing**
2. **CR 619—June 6, 2023 Findings of Fact, Conclusions of Law, and Order**
3. **CR 736—December 12, 2023 Findings of Fact, Conclusions of Law and Order Regarding Motion to End Supervised Visitation**

TRIAL EXHIBITS

4. **Petitioner's Exhibit 1 Admitted at April 26, 2023 Hearing**

CERTIFICATE OF SERVICE

I, Rebecca Robyn Swandal, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-12-2024:

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