IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA-24-0062

IN RE THE PARENTING OF E.C.F. AND E.H.F.,

ELIZABETH FARNHAM,
Petitioner and Appellee,

v.

ERIK FARNHAM,
Respondent and Appellant.

APPELLANT'S REPLY BRIEF

On Appeal from the Fourth Judicial District Court, Missoula County
Cause No. DR-32-2017-712
Before the Hon. Robert L. Deschamps III and Standing Master Gail Bourguignon

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Before this Court, in essence, is an appeal based entirely on the District Court's abuse of discretion. The Appellee's brief focuses on dates and status of a represented party versus a *pro se* party and stands for the proposition that the Court may, in essence, enter a default judgment without considering any evidence. The Appellee has honed in on the Appellant's point that this Court has required that parties have an opportunity to cross examine a guardian ad litem ("GAL") and contest findings. *Jacobsen v. Thomas,* 2004 MT 273, ¶ 32, 323 Mont. 183, 192, 100 P.3d 106, 111. While the Appellant maintains that this is a reversable error and abuse of discretion, the point in this case is that the District Court entered a default judgment and denied the Appellant the opportunity to put forth **any** testimony or evidence at the domestic relations trial on August 25, 2023.

Having taken no testimony at the trial, the District Court ignored pleadings from both the Appellant and the Appellee in Dockets 177 and 183 that clearly denoted the parties' older child was openly defying the Court's order and that a reduction in the Appellant's parenting time was contrary to the best interests of the minor children. A 50/50 parenting arrangement was and is appropriate. This record is clear that the District Court made no findings of fact related to the best interest of the children but focused on "Respondent failed to file written

objections," albeit the District Court knew he objected. *See* Doc. 179 and transcript of August 25, 2023 trial.

The Appellee further argues that relief in this case under Mont R. Civ. P. 60(b) may only be afforded through subsection 6. This is simply not the case. Rule 60(b)(1) allows the court to reconsider for "mistake, inadvertence, surprise, or excusable neglect." In this matter, the District Court presumably based its entire judgment on the assumption that the GAL's recommendations were accurate. Subsequent pleadings by both parties plainly demonstrated that this assumption was patently false. Further, the District Court openly admitted that it anticipated the Appellant would not agree with the GAL's report and that the Court knew that it would not sit well with him. Nonetheless, the Court refused to hear the Appellant's objections in August 2023 to punish him or his attorney, and ignored facts presented in subsequent pleadings by both parties and upheld its default judgment. The Appellant believes this was an abuse of discretion.

Rule 60(b)(2) also allows a Court to review its previous judgment or "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Rule 59(b) requires a party to move for a new trial within 28 days. In the present case, trial was held, if you can call it that, on August 25, 2023. New information came to light through the experiences and pleadings and evidence in the pleadings of both parties over

the following four months which certainly could have been grounds for the District Court to reconsider the case and take testimony and evidence.

Finally, as the Appellant correctly points out, the Court also has discretion under Rule 60(b)(6) to set aside its judgment for any other reason that justifies relief. Here again the District Court ignored pleadings and allegations by both parties which clearly indicated that the Court's assumption that entering a default against the Appellant would create finality and that the GAL's assumption that the parties' minor children stating that they wanted a 50/50 parenting arrangement was not actually their desire. The parties' older child, to the best of counsel's knowledge, continues to defy the Court's order and seems to go home on the bus to whichever home he sees fit on any given day. Given the procedural posture and the Court's underlying decision, should the Appellant seek to amend the parenting plan prospectively, he would be required to have a substantial change in circumstances. Arguably the District Court could assert that the facts alleged in Dockets 177 and 183 were known to the Court at the time it made its *Revised Amended Parenting Plan* on January 9, 2024, thus forestalling any further evidentiary inquiry into the situation. *See* Doc. 190.

The Appellee's discussion of a stipulation is a further red herring. It is absolutely true that both parties disagreed with many provisions set forth in the GAL report and they stipulated to the points which they agreed were contrary to

their children's best interest. That being said, the crux of the *Motion to Amend Parenting Plan* filed by the Appellant (Doc. 139) was the change to the parenting schedule.

CONCLUSION

The matter before this Court was decided by the District Court without an evidentiary hearing. The Court's decision on August 25, 2023 was arguably abuse of discretion. The Court's blatant denial to consider serious issues with the parenting plan evidenced in pleadings by both parties is a clear abuse of discretion from the Appellant's perspective.

The Appellant respectfully requests this Court to remand with instructions to hold an evidentiary hearing and establish a new parenting plan which considers the current circumstances and the best interest of the minor children.

DATED this 24th day of September, 2024.

By: /s/ Bradley J. Jones
Bradley J. Jones
Attorney for Appellant/Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11(4)(a), I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double spaced (except that footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of one inch; and that the word count calculated by Microsoft Word is 865, excluding the Table of Contents, Table of Authorities, and Certificate of Compliance.

DATED this 24th day of September, 2024.

By: /s/ *Bradley J. Jones*
Bradley J. Jones
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CERTIFICATE OF SERVICE

This is to certify that the foregoing instrument has been served via the Court's ECF filing system in compliance with Rule 25(b) and (c) of the Mont R. App. P. 5, on September 24, 2024, on all registered counsel of record, and has been transmitted to the Clerk of the Court.

DATED this 24th day of September, 2024.

By: /s/ *Bradley J. Jones*
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Bradley J. Jones, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 09-24-2024:

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