DA 23-0692

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 216

MIRIAM PENADO,

Petitioner and Appellant,

v.

DANIEL HUNTER,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DR-23-519A
Honorable Peter B. Ohman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Kevin E. Vainio, Attorney at Law, Butte, Montana

For Appellee:

Charles P. Bowen, Attorney at Law, Bozeman, Montana

Submitted on Briefs: August 28, 2024

Decided: September 24, 2024

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Miriam Penado appeals the Eighteenth Judicial District Court's order of protection after it denied her appeal from the Butte-Silver Bow County Justice Court and allowed removal of the Justice Court's temporary order of protection. Penado argues that the Justice Court improperly removed the case to the Gallatin County District Court after Respondent Daniel Hunter filed a parenting plan action. She seeks reinstatement of the Justice Court's temporary order and remand to Butte-Silver Bow County. We consider whether the District Court properly allowed removal of the temporary order of protection case before the Justice Court held a hearing and without giving Penado any opportunity to respond. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On August 16, 2023, Penado petitioned for a temporary order of protection for herself and her two minor children in Butte-Silver Bow County Justice Court against Hunter, the children's father. The same day, the Justice Court issued a temporary ex parte order of protection that prohibited Hunter from having any contact with Penado or the two minor children and set a hearing for September 7, 2023.

¶3 After Penado filed for the temporary order of protection, Hunter filed a parenting plan petition in the Eighteenth Judicial District Court, Gallatin County. Hunter then filed in Butte-Silver Bow County Justice Court a motion to remove the case to Gallatin County District Court and to vacate the Justice Court hearing. He cited a state statute that provides, "If one of the parties to an order of protection . . . files a parenting action after the order of

protection is filed but before the hearing is conducted, the hearing must be conducted in the court in which the order of protection was filed. *Either party may appeal or remove the matter to the district court prior to or after the hearing.*" Section 40-15-301(3), MCA (emphasis added).

¶4 On September 5, 2023, the Justice Court issued two orders ("the September 5 orders"). One order transferred the temporary order of protection case to the Gallatin County District Court under the parenting plan action and certified all pleadings to the Gallatin County District Court Clerk. The other order vacated the September 7 hearing. The same day, the Gallatin County District Court referred the case to a standing master. The standing master promptly set a hearing on the order of protection and kept the temporary order of protection in place pending the hearing.

¶5 After the case was removed, Penado filed a motion in the Butte-Silver Bow County Justice Court to vacate the September 5 orders. The Justice Court denied this motion, stating that § 40-15-301, MCA, allowed either party to remove the case to the district court.[1] Penado appealed this denial to the Gallatin County District Court. After briefing from both sides, the District Court denied Penado's appeal. The court reasoned that any appeal from the Butte-Silver Bow County Justice Court must be to the Butte-Silver Bow County District Court. Additionally, the court found that Hunter properly removed the temporary order of protection case under § 40-15-301(3), MCA.

[1] Penado's motion to vacate, brief in support of the motion, and the Justice Court's order were not in the record certified to the Gallatin County District Court because they were filed in the Justice Court after Hunter filed his notice of removal. Penado attached the motion, supporting brief, and order as exhibits in a reply brief before the Gallatin County District Court.

¶6 At the order of protection hearing, the District Court granted a one-year order of protection covering Penado until October 30, 2024, and allowed Hunter visitation with the children every other weekend.

¶7 Penado appeals the District Court's final order of protection, requests that this Court reverse the Justice Court's September 5 orders, and seeks reversal of "all orders filed in Gallatin County District Court" in the order of protection proceedings, including the standing master's order denying her appeal from the Butte-Silver Bow County Justice Court.

STANDARDS OF REVIEW

¶8 "Whether a court has subject matter jurisdiction is a question of law. We review a district court's conclusions of law to determine whether they are correct." *Boe v. Ct. Adm'r for the Mont. Jud. Branch of Pers. Plan & Policies*, 2007 MT 7, ¶ 5, 335 Mont. 228, 150 P.3d 927 (citation omitted).

¶9 We review de novo a court's interpretation and application of a statute. *Dick Irvin Inc. v. State*, 2013 MT 272, ¶ 18, 372 Mont. 58, 310 P.3d 524. "Interpretation and construction of a rule of procedure, like interpretation and construction of a statute, is a matter of law, which we review de novo, determining whether the court's interpretation and construction of the rule is correct." *Miller v. Eighteenth Jud. Dist. Ct.*, 2007 MT 149, ¶ 22, 337 Mont. 488, 162 P.3d 121.

DISCUSSION

¶10 Section 40-15-301, MCA, governs jurisdiction and venue for temporary orders of protection. City, municipal, justice, and district courts "have concurrent jurisdiction to

hear and issue temporary orders of protection." Section 40-15-301(1), MCA. Venue is proper "where the petitioner currently or temporarily resides, the county where the respondent resides, or the county where the abuse occurred." Section 40-15-301(4), MCA. Section 40-15-301(2) and (3), MCA, addresses venue when the parties have related family law matters, such as a dissolution or parenting action. Subsection (2) applies when a party files for a temporary order of protection after a dissolution or parenting plan *already exists* in a district court. Subsection (3)—the statute at issue here—applies when one party files for a temporary order of protection, *after which* either party files for a dissolution or parenting plan. It states in full:

> If one of the parties to an order of protection files for dissolution of marriage or files a parenting action after the order of protection is filed but before the hearing is conducted, the hearing must be conducted in the court in which the order of protection was filed. Either party may appeal or remove the matter to the district court prior to or after the hearing. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, the district court shall conduct a hearing within 45 days of receipt of the pleadings. The hearing may be continued at the request of either party for good cause or by the court. If the hearing is continued, the order of protection must remain in effect until the court conducts the hearing.

Section 40-15-301(3), MCA. The statute that follows states that when a justice court issues a temporary order of protection under § 40-15-201, MCA, the case "may be removed to district court upon filing a notice of removal." Section 40-15-302(2), MCA.

¶11 Penado emphasizes the first sentence in § 40-15-301(3), MCA ("the hearing *must* be conducted in the court in which the order of protection was filed" (emphasis added)). Because Hunter filed the parenting plan action in Gallatin County District Court after Penado filed for the temporary order of protection but before the hearing occurred, Penado

argues that the statute required the hearing to occur in Butte-Silver Bow County Justice Court. She points to the purpose of Title 40, chapter 15, MCA, to promote the safety and protection of all survivors of partner or family violence. Allowing an opposing party to bring a survivor back into the county she fled instead of conducting the hearing in the county where she sought safety, Penado maintains, would be inconsistent with the purpose of this section.

¶12 Hunter contends that he followed the proper procedures under § 40-15-301(3), MCA, to remove the temporary order of protection case to the Gallatin County District Court, where the parenting plan action was pending. He argues that Penado's singular focus on one sentence ignores the plain meaning of the statute's remainder. Hunter reasons that, viewed as a whole, § 40-15-301, MCA, addresses the different circumstances parties may encounter when there is a simultaneous order of protection and dissolution or parenting action. He asserts that the intent is to bring all issues in front of the district court where the dissolution or parenting plan action is pending to avoid potential conflict between orders that affect the same parties and their children.

¶13 In interpreting statutes, our role "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Section 1-2-101, MCA. "This Court construes a statute by reading and interpreting the statute as a whole, 'without isolating specific terms from the context in which they are used by the Legislature.'" *State v. Triplett*, 2008 MT 360, ¶ 25, 346 Mont. 383, 195 P.3d 819 (quoting *Mont. Sports Shooting*

Ass'n, Inc. v. State, Mont. Dept. of Fish, Wildlife and Parks, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003). "Statutory construction is a holistic endeavor and must account for the statute's text, language, structure and object." *Triplett*, ¶ 25 (quoting *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426) (internal quotations omitted).

¶14 In *In re Marriage of Lundstrom*, this Court held that "Section 40-15-301(3), MCA, provides that either party to a protective order 'may appeal or remove the matter to the district court' before or after a hearing on the protective order. A district court may not take jurisdiction of a justice court case on its own initiative, however, under the plain language of § 40-15-301(1)-(3), MCA." *In re Marriage of Lundstrom*, 2007 MT 304, ¶ 14, 340 Mont. 83, 172 P.3d 588. *Lundstrom* makes clear that, under § 40-15-301(3), MCA, if a parenting plan or dissolution action is filed in a district court after the temporary order of protection action is filed in a justice court, the district court cannot assert jurisdiction over the case of its own initiative before the hearing. The plain language of the statute, however, allows either party to remove the matter to district court either *before or after the hearing*. Section 40-15-301(3), MCA.

¶15 Penado's argument that one sentence in § 40-15-301(3), MCA, mandates the hearing be held in the justice court contradicts the standard that we read the statute as a whole. *Triplett*, ¶ 25. She contends that "only in the case where the dissolution or parenting action was filed before the entry of the order of protection may the matter be removed from the initial court to the district court by 'either party.'" But this reading completely overlooks that subsection (2) of the statute specifically pertains to orders of protection filed after a dissolution or parenting plan action. In such cases, the limited

jurisdiction judge is required to "immediately certify the pleadings to the original district court after signing an order of protection under this subsection." The district court conducts the hearing unless both parties and both courts agree otherwise. Section 40-15-301(2), MCA. Second, Penado's interpretation would render all but the first sentence of § 40-15-301(3), MCA, inconsequential. Read holistically, § 40-15-301, MCA, plainly calls for the court handling the parenting plan, in most cases, to entertain any requests for an order of protection.

¶16 This interpretation gives effect to the statutory purpose. The statute provides an expansive range of courts in which a domestic violence survivor may seek safety by a temporary order of protection and prevents the expiration or time lapse of such orders. Section 40-15-301(2), MCA, allows that, despite an ongoing dissolution or parenting plan in one county, a survivor may seek an order of protection in a different county if they fled the original county to escape the abuse. The statute's purposes were satisfied here. Penado was able to obtain a temporary order of protection in Butte-Silver Bow County Justice Court after leaving Gallatin County with her children, and that order remained in effect when the case transferred to Gallatin County District Court.

¶17 Penado insists that the removal nonetheless was improper because she had no opportunity to respond to Hunter's notice. She contends that removal before she could object violated her constitutional due process rights, rendering the September 5 orders void. In the alternative, she argues that the orders are voidable under Montana Uniform Rules for the Justice and City Courts (MURJCC) 6(c) and 6(e), which allowed her ten days to file a response.

¶18 Hunter responds that Rule 14(d) the Uniform Municipal Court Rules of Appeal to District Court (U.M.C.R.App.) applies here. Rule 14(d) states that "[n]o briefs shall be required upon filing a notice of appeal or notice of removal pursuant to . . . [§] 40-15-302, MCA, except upon order of the district court." He argues that he properly followed the removal procedures under § 40-15-302, MCA, which allows for removal to district court from a justice court's temporary order of protection and contains no provision requiring a response brief. He further contends that using the word "motion" in the title of his filing ("Motion to Remove Action to the District Court") does not change "the essence of his pleadings" or make MURJCC 6 applicable because of U.M.C.R.App. 14(d) and the clear statutory provisions for removal under §§ 40-15-302(2) and -301(3), MCA.

¶19 Hunter's interpretation is correct. MURJCC 6 provides general procedures for motions in justice court. U.M.C.R.App. 14(d), which applies to the Butte-Silver Bow County Justice Court as a court of record (§ 3-10-115(4), MCA), specifically addresses § 40-15-302, MCA, notices of removal. It clarifies that there is no right to respond to a notice of removal under § 40-15-302, MCA, unless the district court orders briefing. The District Court here did not do so. Rule 6 does not apply in this instance, the September 5 orders were not premature, and the orders thus are not voidable.

¶20 Turning to Penado's due process argument, "we will not consider unsupported issues or arguments." *In re Marriage of McMichael*, 2006 MT 237, ¶ 12, 333 Mont. 517, 143 P.3d 439. Penado cites only the broad requirements that due process entails notice and opportunity to be heard. She cites no authority supporting why due process requirements

create a right to respond to a removal notice in this instance. She was afforded the processes contemplated by the statutes, under which she had notice of and the opportunity to participate in the order of protection hearing in Gallatin County. The District Court entered an order of protection in her favor for a period of one year. We decline to address the due process argument further.[2]

¶21 Finally, having held that removal to Gallatin County District Court was proper, we find it unnecessary to consider Penado's argument that the Gallatin County District Court erred in denying her appeal on the basis that Penado should have appealed the Justice Court's order to the Butte-Silver Bow County District Court.

CONCLUSION

¶22 The District Court properly accepted the order of protection matter upon the filing of Hunter's notice of removal. We affirm its November 2, 2023 final Order of Protection.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE

[2] We decline further to consider additional arguments Penado raises in her reply brief. M. R. App. P. 12(3) "provides that an appellant's reply brief must be confined to new matter raised in the respondent's brief; thus, an appellant may not raise new issues in a reply brief." *Pengra v. State*, 2000 MT 291, ¶ 13, 302 Mont. 276, 14 P.3d 499.