

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA23-0729

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BENJAMIN ANDERSON,

Petitioner and Appellee,

and

KRISTIN COOPER,

f/k/a KRISTIN ANDERSON

Respondent and Appellant.

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**APPELLANT’S REPLY BRIEF**

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On Appeal from the Montana Sixth Judicial District Court, Park County

Cause No. DR17-68

The Honorable Brenda R. Gilbert, presiding.

APPEARANCES:

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## REPLY

### **A. The court’s findings were conclusory, erroneous and disregarded the investigations of the various professionals.**

Any infringement on the fundamental right to parent is reviewed using the strict scrutiny standard. *AJB v. Mont. Eighteenth Jud. Dist. Ct.*, 2023 MT 7, ¶28, 411 Mont. 201, 523 P.2d 519 (citations omitted). While this Court defers to the district court, “...the discretion must be guided by the rules and principles of law...” which much be properly applied. *Manywounds v. 20<sup>th</sup> Judicial District Court*, OP23-0629, p. 12.

Kristin argued that the findings were conclusory, erroneous, and based on draft orders prepared by Ms. Swandal. CR184, 187.<sup>1</sup> Often, the orders referred to prior orders to support its findings, compounding the errors. (i.e. CR619:FOF7, 12, 33, 34, 62, 74, 81, 83, 107, etc.). Some findings do not appear to have any basis in the record<sup>2</sup>.

Of primary concern was the finding in June 2023 that Kristin sexually abused FA (CR619:FOF98-118). Markedly, the court earlier found that there was no evidence to support that Kristin sexually abused FA. CR436:3.

For example, the court referenced an allegation that Kristin cut up FA’s clothes and made her ‘suck her boobies.’ CR619:FOF102. That report was unsubstantiated by

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<sup>1</sup> Most proposed orders are not assigned a court record number.

<sup>2</sup> Counsel could not locate testimony that Kristin made FA suck on her to go to the park. CR619:111.

CPS; however, the court did not acknowledge that in its order. CR258. Similarly, in February 2022, Kristin's time was suspended, based on a report by Ms. Gentry. As with the 'clothes cutting' report, that report was investigated, a forensic interview conducted, and no finding of abuse was made. Again, the court omitted that fact in its findings. CR393, 416. CR619:FOF105-107.

There have been (no less) than ten (10) requests/motions filed by Ben/Ms. Gentry to suspend or restrict Kristin's time, none of which were substantiated, nor was there probable cause to support a criminal charge. CR100, 230, 258, 381, 393, 415, 416, 418, 419, 420, 450, 469, 478, 543, 563, 650. The alleged statements were filtered primarily through Ms. Gentry, Ben/Erin, over the objection of counsel.<sup>3</sup> See CR244, 249. The only professional that believed FA 'should be treated as a victim' was Dr. Hansen, who conducted a forensic medical examination that yielded no physical findings. Nonsensically, she based her opinion on the statements made by Ben/Erin in front of FA, and a brief conversation with Det. Lloyd, but acknowledged she was not qualified to conduct a forensic interview. TR455:9-11, 456-457, 461. Notably, Det. Lloyd did not file charges based on concern related to coaching FA. Ultimately, Dr. Baxter, stated she did not believe Kristin had abused FA, nor did her testimony or she state that she was concerned that Kristin was grooming FA. CR478, TR107:3-9.

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<sup>3</sup> It has been alleged that Ms. VanAntwerp made a report to CPS, but that cannot be confirmed by the record.

Kristin did not minimize her substance ‘abuse.’ Except for February 2020, at no time thereafter did FA test positive for any substance, despite numerous reports by Ben/Ms. Gentry alleging ongoing drug use in front of FA. Notably, even though Ben had a negative hair test for FA which coincided with a report by Ms. Gentry of marijuana use and taking FA to a dispensary he did not inform the court that FA tested clean. While Dr. Baxter did recommend that Kristin cease marijuana use based on a propensity for abuse, she acknowledged that Kristin did not abuse any other substance, weighing against her ‘propensity’ to abuse drugs or alcohol. TR241:14-242:19.

The court disregarded the numerous professionals that evaluated and treated Kristin, including Dr. Murphey, Dr. Page, Dr. Baxter, Lori Morgan, LAC, and Becky Berglund, MA, MS, HSC, LCPC. Instead the court’s opinion relied heavily on the opinions of Ms. Gentry who had was recently licensed admitted that she did not specialize in sexual abuse, and who had not evaluated Kristin. With respect to Dr. Murphey, contrary to Ben’s representation, Dr. Murphey did review the court order requiring the evaluation, and received a written statement from Ben prior to conducting his evaluation. CR229. Notably, Ben maliciously lied in his statement alleging she lied about a rape and had a bucket list of FA’s friends.

**B. The finding of contempt against Kristin and attorneys’ fees award to Ben was in error.**

Respectfully, it is difficult to imagine a world where a mother is punished for hugging her child, volunteering at her school too frequently, failing to drive on horrible roads, and not returning a child on a day that she believed was her 'regular parenting time.'

Ben frequently filed 'notices' then files motions for contempt on the same issues later. CR476, 477. On November 9, 2022, Ben filed a motion contempt, making the allegations that he made in his notice, adding that Kristin did not return FA to Big Sky on time. CR482. Kristin responded again. CR492. Ben then supplemented his motions/notices. CR509, 530. As is also a frequent practice in this case, Ben's motion contained no legal argument for the award of fees.

Subsequent to the ballet hug, the court issued an order stating, in part, that neither parent attend FA's activities during the other parent's time, that neither party volunteer more than twice per week on specified days, and that the parties keep distance from the other during FA's parenting time. CR491. Ironically, Ben did not volunteer at the school, he just didn't want Kristin to.

Ben did not contest that he did not make any legal argument for attorney's fees to be awarded. Attorneys fee may be awarded only when a contract or statute provides for their recovery. *Blue Ridge Homes, Inc. v. Thein*, 2008 MT 264, ¶78, 345 Mont. 125, 191 P.3d 374. Without proper analysis, the court granted fees. Kristn objected. Attorney's fees are not provided for in the orders, and no statue applied.

Further, there was no testimony or evidence regarding the parties' financial positions. It would be unjust to award Ben attorney's fees. See *Estate of Bayers*, 2001 MT 49, 304 Mont. 296, 21 P.3d 3. Similarly, the court's finding that Kristin should pay attorney's fees and costs for failing to pay the parenting coordinator as ordered should be reversed. CR739, 754. While Ben argued that Kristin did not contest the award, that is incorrect; Kristin objected to the award in its entirety because it was unwarranted and baseless. The court should not punish Kristin for not having money, by making her pay more money. CR754. The awards of attorney's fees was improper and should be reversed.

**C. The court abused its discretion by directing Kristin's medical care, and particularly when doing so created an impossibility.**

Ben argued that the district court had the authority to direct that Kristin see a psychologist for therapy, and that because the court later allowed that Kristin to select the psychologist, rather than her selected provider, the invasion was acceptable. Without support, Ben asserted that the parenting coordinator recommended two psychologists that were available. Kristin contacted numerous psychologists, including those recommended by the PC. They were not available. CR760, 812.

Kristin submitted to a psychological evaluation in April 2020. CR187:16. The evaluation did not reveal any concerns, particularly none related to her ability to safely parent. CR229. A week later, predictably, Ben filed an ex parte motion to suspend Kristin's parenting time based on statements alleged to have been made by FA to Ms.

Gentry who had met with FA in person for the first time. CR231:EX1. Ben asserted that Jasmine VanAntwerp, FA's prior counselor recommended that Kristin undergo a neuropsychological evaluation, which she had not. CR230, 232<sup>4</sup>. The court suspended Kristin's parenting time, setting a hearing well outside the statutory requirement and ordered she obtain a neuropsychological evaluation. CR231 and see 40-4-217 and 220.. Then, based on the recommendation of Ms. Gentry, not Dr. Murphey, the court required Kristin to engage in counseling. CR187:17:IV and V. Kristin complied and informed the court that she would see Dr. Murphey. Ms. Gentry objected because she didn't believe she could work with Dr. Murphey because he did not agree with her. The court ordered Kristin to choose a counselor from a list provided by Ms. Gentry. CR345. Kristin chose Becky Berglund, MA, MS, HSC, LCPC. CR346.

Having personally observed Kristin, Ms. Berglund disagreed with Ms. Gentry, and has not found Kristin to be suffering from a mental health condition, other than grief and anxiety. Ms. Berglund's opinions of Kristin and Ms. Gentry's lack of objectivity were repeatedly shared with the court. She has also shared her opinion regarding the damage being done to FA. TR67:18-21, 300:1-13, 302:19-23, 303-304:1-21 (not exclusively) and CR384:A. The court stopped Ms. Berglund from further speaking about Ms. Gentry because she didn't want there to be 'ill will,' preventing her from making a record. TR304:18-305:1-5.

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<sup>4</sup> As has been the practice of Ben in this case, he failed to follow the law and contact Kristin prior to filing the ex parte motion. Montana Uniform Dist. Ct. Rule 2.

Dr. Baxter did not diagnose Kristin with mental illness. CR478:29. Further, due to ongoing sexual abuse allegations, Kristin voluntarily submitted to a psychosexual evaluation with Dr. Paige. As with Dr. Murphey and Dr. Baxter, and Ms. Berglund, Dr. Paige did not have concerns about Kristin's psychological health, or concerns about her abusing FA. The court ordered that it would select a psychologist that Kristin was required to see for six months before she could have unsupervised time. CR619:43(S)(V). Thereafter, despite repeated requests, the court failed to act, delaying reunification. CR636, 655:3(28), 648:2(8). Then, on August 23, 2023, the court ordered Kristin to select a psychologist. Kristin tried to comply; the only psychologist she was able to find, did not accept her insurance. CR707, 760.

Ben's response failed to address any of Kristin's legal arguments. Kristin has a right to privacy guaranteed by the Montana and United States Constitutions includes the right of an individual to select a qualified provider. Mont. Const. Art. II, Sec. 10 and U.S. Const. Amend IV. As in *Weems* "[t]he Montana Constitution protects not only a patient's right to seek and obtain lawful medical procedures, but also the patient's right to choose the health care provider who performs the procedure[,] when that provider is licensed and competent." *Weems v. State*, 2023 MT 82, ¶6, 412 Mont. 132, 529 P.3d 798.

Ms. Berglund is licensed and qualified. The court order that she see a psychologist is a violation of her right to privacy, and has not been possible. CR760.

The court created an impossibility, or at least, an impracticality, which Kristin has not been able to overcome. See *Cape-France Enters v. In re Estate of Peed*, 2001 MT 139, 305 Mont. 513, 29 P.3d 1011.

The court's complete disregard for the professional opinions of Dr. Murphey, Ms. Morgan, Dr. Baxter, Dr. Page and Ms. Berglund, was an abuse of discretion.

**D. The court cannot prohibit Kristin's medical marijuana use.**

Without addressing any of the legal arguments, Ben argued the court had broad discretion to prohibit Kristin from the use of medical marijuana. In short, Ben argued: 1) Kristin no longer needed medical marijuana; 2) Kristin was diagnosed with cannabis use disorder; 3) FA tested positive for THC after being exposed in Kristin's care; and 4) Kristin had driven FA while under the influence of marijuana.

Kristin has had her medical marijuana card for years, primarily for anxiety and PTSD, but also for a severe foot injury she suffered, and other medical conditions protected by her right to privacy. 4/25/20 TR:156:14-157:1. Mont. Const. Art. II, Sec. 10. Ben was aware that she had her card, and when they separated, he agreed that she would be the primary caregiver to FA. CR2, 43. Ben claimed he no longer smoked marijuana, but never gave a timeframe. CR478:29. Notably, although Kristin took a hair test in February 2020, Ben only later submitted to a urine test, which would not 'look back' as long as a hair test. CR116.

It is undisputed that Kristin still suffers from anxiety. Ms. Berglund testified about Kristin's anxiety, which has been exacerbated by the proceedings and separations from FA. TR61:10-25, Dr. Baxter acknowledged that Kristin suffers from anxiety. TR156:14-25, 306:12-22. 241:14-242:19. Dr. Baxter's recommendation that Kristin abstain from marijuana, was not based on a report that FA had been exposed to drugs (after 2020). She testified – twice - that her recommendation was based on her concern that Kristin's marijuana use had become a problematic subject of reports. TR120:8-12, 157-159. For example, despite allegations by Ms. Gentry that Kristin took FA to a dispensary (TR27:3-12) (which she could not enter) and vaped marijuana in front of FA, FA never tested positive for any drug, after February 2020 – despite Ben having FA's hair tested on multiple occasions<sup>5</sup> and repeated accusations. TR157-159, 453:15-454, and see CR210, 468, 471. Further, Dr. Baxter acknowledged that to the extent that Kristin was 'prone' to addiction, she had not shown addictive tendencies with other substances, and significantly had followed court orders to not expose FA. TR241:14-242:19,157-159.

Kristin submitted to a chemical dependency evaluation with Lori Morgan, LAC. In April 2020, Ms. Morgan labeled Kristin's marijuana use 'severe' but acknowledged it "didn't take much" as a person need only exhibit 6 out of 11 criteria. TR82:15-25. She recommended outpatient treatment (the lowest level). Kristin

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<sup>5</sup> Kristin obtained drug tests Ben had conducted on FA, but did not provide to Dr. Baxter or the court.

completed that program. CR211. Ms. Morgan testified-twice-that she did not believe that it affected Kristin's ability to safely parent. TR81:16-24, TR86:12-15.

Unsupported by objective evidence, Ben asserted that Kristin drove with FA while under the influence. Resp. 35-36. Kristin also alleged that she was concerned that Ben smoked marijuana and drank before driving, and relayed that concern to Dr. Baxter. TR223:2-12. Curiously, this is the first time Ben has made this assertion, implying that the court made the finding in the June 2023 order. Resp. 35-36, CR187:12, See CR619:¶68. While Ms. Steele alluded that Kristin drove with FA after using cocaine in October 2019, notably, her testimony came after her unsuccessful attempt to get an order of protection, and false claim that Kristin trespassed (which was dismissed). TR:124, CR372. Further, Kristin testified that she and her counsel heard Ms. Steele tell Ms. Swandal before the hearing started that she could not truthfully testify to all allegations in her affidavit. TR44:13-25, 135:13-136:8.

Kristin recognizes that medical marijuana has its critics, and does not question that the court's authority to restrict her use during parenting time. However, Kristin cannot be penalized for her legal use as set forth in Section 16-12-515(2)(b), MCA, and "... an outright ban on the "medical use" of marijuana as contemplated by the MMA exceeds the statutory authority of the District Court." *State v. Nelson*, 2008 MT 359,¶33, 346 Mont. 366, 195 P.3d 826. The court's order that Kristin not use legal medical marijuana was made in error and was an abuse of the court's discretion.

**E. The Hon. Brenda Gilbert should be removed as the presiding judge.**

There are no ‘attenuated professional parallels’ between Judge Gilbert and Ms. Swandal. There are relationships. While the firms have changed names, the fact remains that there has been a longstanding relationship between Ms. Swandal and Judge Gilbert. Ms. Swandal does not deny that her Grandmother and Judge Gilbert worked together for over fourteen (14) years, starting in the 1980s through 1994. Resp. 27. Ms. Swandal’s father, Ret. Hon. Wm. Nels Swandal, worked for that firm from 1981-1982. Ms. Swandal worked for Judge Gilbert at the firm in 2011-2012. Ms. Swandal currently works in the ‘rebranded’ firm with her father. Judge Gilbert later assumed the bench, succeeding Hon. Nels Swandal in 2012. There are no similarities with other families in Park County, despite Ms. Swandal’s unsupported statement that “many other members of the local bar have similar professional connections with one another and/or with members of the judiciary.” Resp.37.

Contrary to Ms. Swandal’s representation, *Hedstrom v. Peters*, 2022 MT 140N, is not the only case where judicial bias involving Judge Gilbert and Ms. Swandal has been alleged. It is irrelevant that this Court found that the appeal in *Hedstrom v. Peters*, 2022 MT 140N, was baseless, as the issue of bias was not specifically addressed and the dismissal was primarily based on egregious facts. The issue was also addressed in *Bates v. Miller*, PR20-0011. It is also irrelevant that the undersigned

did not move to recuse Judge Gilbert from *Marriage of Dakolios*. The conflict was addressed with Ms. Swandal, who refused to withdraw from the case, despite the fact that her law partner and father previously presided over the case. In retrospect, a motion to recuse should have been filed, as the client believed there was clear bias.

Even if the court determines that the relationship between Ms. Swandal and Judge Gilbert is not a concern, more troubling was the court's bias against Kristin related to her parenting choices and handling of Kristin's pro se motion to recuse Judge Gilbert.

The court and Ms. Gentry showed personal bias with regard to Kristin's parenting choices, and personal relationships. While Kristin denied continuing to nurse FA, and had appropriately weaned FA, she was repeatedly forced to respond to allegations that she was making FA 'suck her boobies.' Curiously, CPS noted that "[Ms. Gentry] felt that BMR being a lesbian could have relevance to the report/disclosure," clearly implying that Kristin's sexuality made her more disposed to abuse FA. CR248:15.

When Kristin spoke with FA during a visit about transgenderism, in benign terms, (it was PRIDE month, and FA was wearing rainbow shoes), Ben expressed his disagreement with the discussion, although he admitted that he hadn't watched the video (a recorded visit) and acknowledged that the discussion was not about sex. However, as clarified by his counsel, Ben's issue was with Kristin "...explaining to a

six-year-old what transgender are and explaining what it means,” telegraphing bias. TR575-577 (emphasis added).

Similarly, the court and Ms. Gentry personally disagreed with Kristin’s choice to educate FA on body parts. Ms. Berglund testified that she and Kristin discussed the subject, and felt it was important that FA have specific language. TR58:13-59, 302. Ms. Berglund testified that she reviewed the books, and found them to be appropriate, as did Dr. Baxter. TR58-60:1-3, 181:4-21. Kristin testified it was her job as a parent to have ‘uncomfortable’ talks. TR83:7-84:1-4, 87:20-91:1-13. In response, Judge Gilbert focused on Kristin having made an unfortunate hand gesture, rather than her reasoning for having discussions with FA. TR90:15-91:1-11. Similarly, Ms. Gentry testified as to her personal belief that Kristin should not educate FA about body parts, even though she did not review the books that Kristin provided. TR9-10.

The court’s June 2023 order stated that in 2020 Judge Gilbert found that Kristin nursed FA and used marijuana on a daily basis, despite a lack of evidence. CR187:3-8. Judge Gilbert was critical of Kristin for pacifying FA using her nipple when she was three years old, a parenting choice, which the Judge found ‘inappropriate.’ CR619:FOF84. Although the court stated that reports were directly from FA, the report came from Ms. Gentry, who acknowledge that she was unqualified to make an assessment regarding sexual abuse, and who other professionals involved believed her

to be biased. CR344, 619:FOF25, TR473:1-13. Moreover, Dr. Baxter specifically testified that she did not believe that FA was being sexually abused. CR107:3-9.

On February 21, 2021, Kristin moved to recuse Judge Gilbert on the basis of bias and her discovery of the relationship with Ms. Swandal. CR281<sup>6</sup>. Prior to filing the motion, in December 2020, Kristin's time was suspended. CR230, 231. Despite part of Ben's motion being verifiably untrue (he asserted that Jasmine VanAntwerp recommended a neuropsychological evaluation for Kristin, which she had not) the court did not modify the order. CR232, 234. Also, initially, the court set the hearing outside the statutory deadline. CR231, 236, Section 40-4-220(2)(b), MCA. After the December 18 hearing, the court allowed Kristin to have supervised time and ordered a forensic interview of FA. CR246, 247. The forensic interview did not substantiate abuse, so on January 8, 2021, Kristin provided notice that the investigation was closed, noting it was the ninth (9<sup>th</sup>) CPS report filed by Ben that had been unsubstantiated. CR262. Kristin's counsel then resigned and Judge Gilbert took no action until February 1, 2021, and set a status hearing for February 24, 2021, holding Kristin's motion in abeyance. CR274. Kristin filed a motion to recuse Judge Gilbert. CR281.

While the motion to recuse was pending, on February 23, 2021, Judge Gilbert held a hearing on an order of protection filed by Erin Bills, Ben's then fiancée<sup>7</sup>. The following day, the court held the 'status hearing' in this case and called Ms. Gentry to the stand. The court did not allow cross examination or testimony from Kristin. At the commencement of the hearing, the following exchange occurred:

COURT: ... We're here for just a status conference, and we have a lot of pending motions, and this is what I have to say about that. I'm not going to recite all the motions that are pending, but there's a pending motion for change of venue, and there's a pending motion for recusal of the Judge. There are lots of other motions and notices that have been filed, since those, but the filing of those two motions is going to cause me to put any decisions in this case on hold until the motion for recusal, in particular, can be heard. Because Ms. Cooper wants to regain her parental schedule that she had with Freyja, before, and that takes us knowing where Freyja is at with counseling, I decided to go ahead with this status conference, because the purpose of it is for everybody to report what's going on for the record. So, there will be a record made of that, I won't be able to make any decisions until the motion for recusal is addressed. That's going to have to be sent up to the Supreme Court, by law, and then the Supreme Court reviews it and decides what they're going to do. So, that's kind of out of my hands, and it's out of my hands to make any rulings in this case until that motion for recusal has been decided.

In order to keep matters moving along, I am going to let the status of this case be put on the record, today. So, I guess that I'm going to begin with Ms. Gentry, because she probably doesn't have to be here for the entire thing, if she doesn't wish, but, Ms. Gentry, if you could come up and be sworn, I'd ask for you to give us an update on how things are going with your work with [FA].

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<sup>7</sup>The petition filed by Ms. Bills was not filed in the proper county. That matter is currently on appeal. See Sup. Ct. Cause No. DA 24-34.

2.24.21 TR3:9-25, 4:1-6. Then, at the conclusion of the hearing, the court stated:

COURT:            Alright. So, that gives me, gives everybody more information, hopefully, then they came here with. As I said, I'm stymied in terms of what I can do until I can get something from the Supreme Court as to their decision on the motion for disqualifying me from making decisions on the case.

KRISTIN:           Can we get an interim ex parte order?

COURT:            I can't sign any orders. You've moved to disqualify me, so I'm stuck not being able to do anything, but, now, we have this information reported on the record, I will go ahead and turn over the motion that Ms. Cooper made for disqualification to the Supreme Court so they can do what they will with that, and then some other judge, or me, depending on how that turns out, can go forward with this information and more information to move matters forward...

The court never sent the motion to recuse to the Supreme Court. Section 3-1-805, MCA. The court held that motion and told Kristin that she could not reinstate her parenting time while it was pending. As a result, desperate to be reunited with FA, Kristin withdrew her motion. CR297.

“Judges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.” In this case, as in *Williams v. Legg*, “[u]nder the facts of this case, an objective and disinterested onlooker would have a reasonable factual basis for

doubting the challenged judge's impartiality. Good cause exists for disqualification under Section 3-1-805, MCA." See *Williams v. Legg*, 2002 ML 997, ¶35, 2002 Mont. Dist. LEXIS 3371. Kristin respectfully requests that this Court remand this case, with a new judge presiding.

**F. This Court should deny Ben's request for attorneys fees and costs on appeal.**

Ben has requested attorney's fees and costs of this appeal, arguing that Kristin did not have reasonable grounds on which to appeal and should be sanctioned. He further argued that the Court can award fees and costs where there is "significant disdain for the integrity of the judicial process." *Tipp v. Skjelset*, 1998 MT 263, ¶24, 29, 291 Mont. 288, 967 P.2d 787. While it is true that M.R. App. P. 19(5) allows the Court to grant a sanctions, if the appeal is frivolous, vexatious, or taken without substantial reasonable grounds, that is not the case here.

Ben cited *Lee v. Lee*, 2000 MT 67, 996 P.2d 389, 299 Mont. 78, in support of his assertion that Kristin should pay his legal fees. His reliance on *Lee* is misplaced. In *Lee*, the wife sold a horse and trailer that was awarded to the husband in the dissolution. While that was sufficient for her to be held in contempt, she compounded her problems and lied and had already sold the property and kept the proceeds. The Supreme Court found her actions showed a lack of "...respect

for the integrity of the judicial process...” and that her appeal of the contempt was “...without sufficient reasonable grounds.” *Lee* at ¶ 70.

Even if the court were to find that the district court’s ruling should stand, this Court should not disregard that Dr. Murphey, Dr. Paige, Dr. Baxter and Ms. Berglund consistently testified that Kristin did not suffer from mental health issues, and particularly, that she did not have any proclivities towards abusing children. Both law enforcement and child protective investigations did not yield any findings of abuse. CR216, 266, 416, 419. Kristin’s appeal was made in good faith. See *In re Chamberlin*, 2011 MT 253, ¶26, 362 Mont. 226, 230, 262 P.3d 1097, 1100.

Dr. Donna Zook testified that Ms. Gentry violated her ethical rules by providing counseling and making recommendations to the court regarding FA’s contact with Kristin. TR430. More importantly, having reviewed pleadings, videos and the investigation into the abuse allegations made in January 2022 by Ben/Erin/Ms. Gentry, she testified to her many concerns regarding possible coaching and videotaping. TR421-423, 425. She testified that Ms. Gentry/Ben/Erin questioning FA could influence FA, and that the video she reviewed of Ben/Erin questioning FA appeared scripted. TR292-293, 421-425, 430:19-25, 438. She questioned why Ms. Gentry would discuss good touch/bad touch with FA, which she did during her first in person session with FA in December 2020. TR428:14-25. Not coincidentally, Ms. Gentry reported abuse allegations immediately

thereafter. CR230, 233, TR484:25-485:1-3. Ultimately, Dr. Zook questioned Ms. Gentry's neutrality, and her allegiance with Ben TR 429-430.

Dr. Baxter did not believe that Kristin's parenting time should be suspended. CR478. Even after Kristin made the unfortunate hand gesture, which Dr. Baxter addressed, she did not believe warranted suspension. TR183-184. Dr. Baxter testified she did not believe Kristin suffered from mental illness or had proclivities towards sexual abuse of minors. TR107:1-14, 168:21-169:11. Specifically, she stated, "...I do not believe she is being sexually abused." TR107:6-9.

Ben cited *Tipp v. Skjelset*, 1998 MT 263, 291 Mont. 288, 967 P.2d 787 in support of his position that Kristin has shown "disdain for the integrity of the judicial process." In that case, the court did order fees. However, the award was based on the party's dilatory actions and transfer of ownership of property to avoid district court jurisdiction over that property. Kristin has not shown disdain, but has questioned rulings which contradict expert opinions, and which disregarded that law enforcement and DPHHS/CPS investigations. Resp. 41, CR619:FOF59. Kristin has been civil and respectful. Ironically, when Kristin showed the court proof that Ben lied to law enforcement and the court, alleging that Kristin was engaged in sex trafficking, rather than question Ben's veracity and motive, the court struck the information, erroneously ruling that Kristin violated CCJI. CR686, 702, 708, 716, 719, 725, 737.

Kristin has not multiplied the proceedings, now or prior to the orders from which she is currently appealing<sup>8</sup>. An award of attorney's fees and costs is not justified or appropriate under the circumstances of this case.

### **CONCLUSION**

There are many issues warranting review from this Court. Most importantly, the separation of FA and Kristin should not have occurred. The court's suspicion that Kristin had an undiagnosed mental health condition was insufficient to warrant the separations of a daughter and her mother. There was not a single substantiated report of abuse by Kristin. However, instead of questioning Ben's motives in making various allegations, the court allowed Ben to build a false narrative. The court's decision to disregard testimony and evidence that contradicted the narrative was an abuse of discretion. This case should be reversed and remanded, setting aside orders restricting Kristin's parenting time, finding of contempt and award of fees, with a new judge presiding.

Respectfully submitted this 3<sup>RD</sup> day of October 2024.

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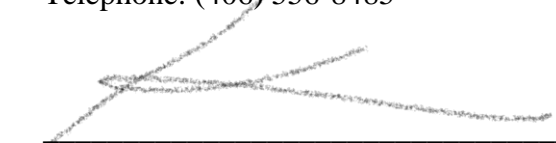
Kirsten Mull Core,  
Attorney for Appellant/Respondent

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16 and 22 of the Montana Rules of Appellate Procedure, I certify that this Reply is printed with a proportionally spaced Times New Roman text typeface of 14 points, is double spaced, and the word count calculated by Word for Windows is not more than 5000 words, excluding Certificate of Service and Certificate of Compliance.

DATED this October 4, 2024

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Kirsten Mull Core

## **CERTIFICATE OF SERVICE**

I, Kirsten Mull Core, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 10-04-2024:

Rebecca Robyn Swandal (Attorney)  
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Electronically Signed By: Kirsten Mull Core  
Dated: 10-04-2024