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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0382

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0382

IN THE MATTER OF THE PARENTING OF:

A.H.S., a minor child;

CHAD SENECHAL,

Petitioner Appellee,

And

MAIRA HORTA MOSS,

Respondent Appellant

FILED

NOV 18 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S OPENING BRIEF

On Appeal from the Montana First Judicial District Court, Lewis and Clark
County, Cause No. DDR 2022-528, The Honorable Christopher D. Abbott

APPEARANCES

MAIRA HORTA MOSS
846 11th Avenue
Helena, MT 59601
Phone: (442)877-2313
Email: therapy@mairahorta.com

Appellant Pro Se

SARA S. BERG
Laird Cowley, PLLC
40 W. 14th Street, Suite 4A
Helena, MT 59601
sberg@lairdcowley.com 215

Attorney for Appellee

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STATEMENT OF THE CASE

This appeal arises from a child custody proceeding in the First Judicial District Court, Lewis and Clark County, which issued Findings Of Fact, Conclusions Of Law And Order Adopting Final Parenting Plan on May 22, 2024, notwithstanding an unresolved UCCJEA jurisdictional conflict with California. On May 21, 2024, the California Court of Appeals reversed and remanded a prior order of the San Diego County Superior Court which had ceded UCCJEA jurisdiction to Montana.

Despite granting Appellant's motion to take judicial notice of the California appellate ruling, the District Court's final orders incorrectly stated that the California appeal was still pending. Further, the Court improperly asserted jurisdiction based on an outdated order issued after the initiation of the appeal but before the California appellate decision, completely disregarding the appellate court's ruling.

Further, the court imposed overly broad travel restrictions on Maira, tied to the pending resolution of the California litigation, which significantly curtailed her and A.H.S.'s ability to maintain essential family and cultural connections in California and Brazil. Lastly, the District Court failed to adequately consider evidence of domestic violence against Maira in its assessment of the child's best interests.

ISSUES PRESENTED

- I. **Whether The District Court Erred In Asserting Jurisdiction And Issuing Final Custody Orders Without Proper Consideration Of The California Court Of Appeal's Ruling.**

- II. **Whether The District Court's Imposition Of Excessive Travel Restrictions Contradicts A.H.S.'S Best Interests And Unconstitutionally Restricts Maira's Right To Travel.**

- III. **Whether The District Court Err In Failing To Adequately Consider Evidence Of Domestic Violence When Determining The Best Interests Of A.H.S.**

STATEMENT OF FACTS

Background and Family Information

Appellant Maira Horta Moss ("Maira") and Appellee Chad Senechal ("Chad") are the natural parents of A.H.S, born February 20, 2018 - presently six years old. A.H.S was born in San Diego and lived there continuously with both Maira and Chad until April 2020, a period of 2 years and 9 months. (Dkt. 171 at 2).

Maira and A.H.S. are dual citizens of Brazil and the United States, both speak English, Portuguese and Spanish and A.H.S. has been raised with a strong connection to her Brazilian culture. (Id.; Dkt. 32 at 5). Maira has resided in San Diego since 1996, where she earned her master's degree and became a Licensed Clinical Therapist, establishing her specialized marriage and family counseling practice in San Diego. Maira's business is also part of a collaboration with the

Brazilian Embassy as a Latin Cultural Specialist advocating for minority populations in San Diego. (Dkt. 32 at 5; 5/1/24 Tr. at 16:4-7). Currently, Maira provides counseling services to her clients in California primarily through telehealth. Maira also has an inactive license in Montana which prohibits her from working as a therapist in Montana. (Dkt. 171 at 2; 5/1/24 Tr. at 56:3-7). Chad, originally from Montana, relocated to San Diego in 2010. He has worked in cybersecurity, previously for San Diego-based Cypher Analytics, and as of September 23, 2024, has with Eviden, a subsidiary of the multinational company Atos. His role with Eviden includes occasional travel, both domestic and international. (Dkt. 171 at 4; 4/17/24 Tr. at 100:2-24).

Temporary Relocation to Montana

In April 2020, the family temporarily moved to Clancy, Montana, to stay with Chad's parents as a precaution against the COVID-19 pandemic, retaining their San Diego residence until November 2020. (Dkt. 32 at 2-3).

For the next two years, Maira and A.H.S. divided their time between Brazil and Montana. At the time of Chad's filing of the petition for parenting plan and ex parte motion for interim parenting plan, A.H.S. had only resided in Montana for a period of *roughly four months* - from April 23, 2023 to September 4, 2022. (Dkt. 171 at 2.).

The parties purchased an investment property in Helena, Montana, in September 2020 and resided there from February 21, 2021, until November 12, 2021, after which Maira and A.H.S. went to Brazil for the winter for about 5 ½ months, where A.H.S. attended school. Maira and A.H.S. returned to Montana on April 23, 2022, and stayed in the home to help finalize renovations until the property was sold in September 2022. (1/17/24 Tr. at 19:15-25;22:5-11).

End of Relationship and Domestic Violence

The parties' relationship officially ended September 3, 2022. At that time, Maira and Chad had rented an Airbnb and were in the process of selling their house in Helena with a plan of moving back to San Diego. (Dkt. 171 at 2). On that day, the Helena Police Department (HPD) was dispatched to a domestic disturbance. According to HPD Officer Nick Ransom, Maira reported that she and Chad had a disagreement over finances when Chad became angry and punched a wall or railing near Maira's head multiple times, causing her to fear injury. (4/17/24 Tr. at 133:1-9). A.H.S. was present in the house during the incident. (Dkt. 171 at 2).

Safety Measures and Legal Proceedings in California

On September 4th, Maira and A.H.S. left the State of Montana and flew to San Diego, California. After Maira arrived in San Diego, she received a text message from Chad, threatening to report her to the police for kidnapping and have her jailed. (Dkt 32 at 17).

On September 7, 2022, Maira filed a Request for Domestic Violence Restraining Order (“DVRO Request”) and Child Custody and Visitation Orders in San Diego Superior Court Case No.22FDV04321C, seeking a protection order for herself and A.H.S. from Chad. Maira testified that following her arrival in San Diego, Chad engaged in stalking behavior, contacting mutual friends and inserting himself in her HIPAA protected work phone account even after he agreed to remove himself from her account. The San Diego court granted a temporary restraining order on September 7, 2022 and set the matter for hearing on September 21, 2022. The SD Court also issued a second restraining order. (1/17/24 Tr. at 54:5-7,56:5-8. 1/17/24 Trial Exhibit W).

Chad’s Filings in Montana

The following day, on September 8, 2022, Chad filed a petition for parenting plan and an *ex parte* motion for emergency interim parenting plan in the Montana First Judicial District Court for Lewis & Clark in which he asserted that A.H.S. had continuously resided in Montana from September 2020 to August 2022. (Dkt.1 at 2). The petition alleged that Maira had taken the child out of state and cut off contact with him. Chad made no mention of the precipitating domestic violence assault, or of the parties’ long-standing plan to return to San Diego or the fact they had no place to stay in Helena and their belonging were in possession of the movers already. (Dkt. 2 at 1; Dkt. 171 at 3). Chad’s *ex parte* motion misrepresented the timeline of the

minor child's stays in Montana and Brazil from April 2020 until September 2022, falsely suggesting that the child had primarily resided in Montana for at least 6 months before filing the motion. (Id.).

On September 9, 2022, the Montana court approved Chad's *ex parte* motion and interim parenting plan without input from or service on Maira, severely restricting her parenting time to two, four-hour evening visits a week, monitored by Chad's family members. The order also mandated that Maira return A.H.S. to the child's "*home state* of Montana" within 14 days and surrender the child's passports to Chad. (Dkts. 5 and 6 at 2-3; Dkt. 171 at 3).

Domestic Violence Charges Against Chad

On September 23, 2022, HPD determined there was probable cause to charge Chad with partner family member assault (PFMA) for causing reasonable apprehension of bodily injury, a misdemeanor criminal offense defined in Mont. Code Ann. 45-5-2-6(a)(a), in Case Number TK-520-2022-0001699. (Dkt 171 at 3). A no contact order followed. (Dkt. 28 at 3; and 1/17/24 Trial Exhibit W).

On February 1, 2023, Chad entered into a Deferred Prosecution Agreement. Under the terms of the agreement, the charges against Chad were dismissed a year later. (Dkt. 171 at 3; 5/1/24 Tr. at 43:1-8, Exhibit L). Nevertheless, while still under a no contact order, Chad sent a stuffed toy to A.H.S. in California with a tracking device hidden inside, violating the California law. (Dkt. 32 at 19).

Ongoing Jurisdictional Disputes

Chad moved to quash service of Maira's California filings, asserting a lack of jurisdiction. Maira opposed, emphasizing UCCJEA requirements. On October 17, 2022, Maira filed a supplemental memorandum of points and authorities which argued that both CA Family Code §3425, subdivision (a) and CA Family Code §217 require evidentiary hearings in UCCJEA matters. (Dkt 169, Ex. A at).

California Cedes Jurisdiction to Montana Without Adhering to UCCJEA Requirements or California Family Code §217

On October 18, 2022, the parties appeared for a UCCJEA telephone communication between the California court and the Montana Court. (Dkt 171 at 3-4). Subsequently, based solely on Chad's Petition asserting the child had resided in Montana from April 2020 until August 2022 with temporary absences to Brazil, the Montana court offered its view that Montana had home state jurisdiction. (Dkt. 169, Ex. A at 4-6). Maira asserted that Chad had misrepresented the time the child spent in Montana and that Brail was not a temporary absence and there was no home state under the UCCJEA. (Id).

On October 21, 2022, in its later findings and order, the San Diego court found that Montana was the "most appropriate state to exercise UCCJEA Jurisdiction, finding the child has not resided in CA since March 2020. It further denied Maira's request for an evidentiary hearing pursuant to CA Family Code § 217. The court also ruled that it did not have personal jurisdiction over Chad, nor were his actions

in California sufficient to give California jurisdiction as to domestic violence. As such, Chad's Motion to Quash with respect to the DV action was granted on October 21, 2022. (Dkt. 169, Ex. A at 5-7).

Notice of Appeal In California and Motion for Stay

On December 15, 2022, Maira timely filed a Notice of Appeal from the October 21, 2022 Minute Order and on January 10, 2023, Maira filed an ex parte application and supporting documents requesting a stay of the San Diego court orders. These included a Notice of Lodgment and Request for Judicial Notice of documents related to the criminal domestic violence action which charged Chad with partner assault in Montana arising from the September 3, 2023 incident. (Id. at 6-9).

Chad Files a Motion For Criminal Contempt, Order to Show Cause and Issuance of a Warrant

On January 6, 2023, Chad filed a Motion for Contempt, Order to Show Cause and Issuance of Warrant against Maira in Montana. (Dkt. 18). The Court set a hearing on the Motion for January 24, 2023. Maira was not served with the filings and was not present at the hearing. The court then, issued a default hearing set for January 31, 2023. (Dkt. 19).

Subsequent Litigation in Montana

On January 26, 2023, Maira retained Attorney Sean P. Bracken who promptly entered an appearance and Notice and Acknowledgment of Service and Waiver acknowledging receipt of Chad's summons and petition for parenting plan. (Dkt.

22). The Default Hearing set for January 31, 2023 was vacated and the time for Maira to Answer the Petition was extended to February 15, 2023. (Dkt. 23).

On February 6, 2023, despite Maira not having a chance to respond to the September 8, 2022 petition for parenting plan, Chad filed a Motion for Contempt Re: Court's Order of September 9, 2022. (Dkt. 25).

On February 14, 2023, Maira filed a Motion for Substitute Judge and Dismissal Under Rule 12(b)(1),(2), and (3) and accompanying memorandum and affidavit in support. In her filing, Maira contended that the Montana court did not have proper jurisdiction over the custody matter, referencing previous rulings under the UCCJEA. (Dkt.28-32). On February 24, 2023, Chad filed his Objection to Maira's Motion for Substitute Judge and to Dismiss (Dkts. 33-35).

On February 27, 2023, Maira filed an Opposition to Motion for Contempt outlining Chad's continued and increasingly harmful and abusive behavior, which inflicted severe emotional and psychological distress on both her and the child. (Dkt. 34). Chad filed a Reply in support of his contempt on March 7, 2023 (Dkt 37).

On March 15, 2023, Chad also filed a notice of issue notifying the Montana Court of the parties' recent filings and apprising it of the temporary restraining order proceedings in California against him set for hearing on May 24, 2023, a pending motion to stay enforcement of the Montana Court's jurisdiction under the UCCJEA and an attempt to block the registration of the Montana Court orders in California.

(Dkt. 40). On March 17, 2023, the Court granted Maira's substitution motion and Judge Michael F. McMahon was substituted by Judge Christopher Abbott. (Dkts. 41-42).

Montana Court Reaffirms Jurisdiction and Orders Maira to Return A.H.S. and Show Cause Why She Should Not Be Held in Contempt

On May 18, 2023, the Montana Court denied Maira's motion to dismiss, and reaffirmed its jurisdiction under both UCCJEA and Montana law over the case. The Court further directed Maira to comply with specific mandates, including returning A.H.S. to Montana within 21 days of the order and placing her in Chad's care upon arrival. Additionally, the Court ordered Maira to appear in person and show cause as to why she should not be held in contempt. The Court also reaffirmed that the September 9, 2022 Order and Interim Parenting Plan would remain in full effect. (Dkt 51).

On May 31, 2023, Maira filed her Answer to the Petition for Parenting Plan disputing Chad's assertions and emphasizing her role as the primary caregiver highlighting concerns related to the child's safety and well-being. She also raised issues regarding Chad's domestic violence and the appropriateness of his proposed parenting plan in line with A.H.S.'s best interests. (Dkt. 53).

Chad Implements A Travel Ban On A.H.S.

On June 16, 2023, Maira submitted a status report to the Montana Court, informing it that she had taken all necessary steps to comply with the court's May

18, 2023, Order. However, Chad had imposed a travel ban on the child through TSA, which prevented her from boarding the flight out of California. This prevented A.H.S. from boarding the flight and subjected her to multiple distressing experiences at the airport. (Dkt. 56).

A.H.S. Returns to Montana

On June 24, 2023, once Chad's travel ban was removed, Maira returned A.H.S. to Chad in Montana. On July 17, 2023, she executed an affidavit notifying the Court that she had returned A.H.S. to Montana. (Dkt. 171 at 4; Dkt 63).

Maira Files Writ of Supervisory Control with Montana Supreme Court For Criminal Contempt Proceedings Against Her

On July 12, 2023, Maira filed a notice of writ of supervisory control and requested a stay of the July 21, 2023, criminal contempt hearing. She argued that the District Court erred by proceeding, as the State of Montana must prosecute a Title 3 indirect criminal contempt under Title 45, MCA, thereby violating her due process rights (Dkt. 62).

On July 20, 2023, the Montana Supreme Court granted Maira's Writ and dismissed the contempt proceeding. Subsequently, the district court vacated the show cause hearing. (Dkts.72-73). The district court set a final merit hearing for April 17, 2024. (Dkt. 171 at 4).

Maira Files Verified motion to Amend Interim Parenting Plan Pending Final Merits Hearing

On December 8, 2023, Maira filed a Verified Motion to Amend the Interim Parenting Plan and Request for Expedited Hearing, supported by her Affidavit and Proposed Parenting Plan. She cited concerns about the harm to the child's physical and emotional well-being due to the current limited time with her mother, Chad's failure to comply with the parenting time, and his deliberate gatekeeping tactics aimed at alienating the child from Maira and the maternal side of the family. (Dkts. 89 at p. 3-4, 90 and 91).

On December 22, 2023, Chad filed his Response opposing Maira's request to amend the Interim Parenting Plan, arguing that the existing supervision requirements were necessary to prevent her from absconding and that the issues had already been addressed in a May 2022 order. (Dkt. 104). Maira filed her Reply on January 6, 2024. (Dkt. 110).

On January 4, 2024, Maira filed a Petition for Contempt due to Chad's ongoing noncompliance with the parenting plan. She reported that from August of 2023 to January of 2024, Chad had interfered with her limited parenting time on at least 38 occasions, resulting in a total of 77 hours of missed parenting time and imposed other unilateral restrictions, such as, Professional Supervision of someone of his liking. He also interfered with telephone contact on at least 20 occasions over that same period.(Dkt. 107).

On January 8, 2024, the Court issued an order on Maira's Petition for Modification of Interim Parenting Time ruling that that the Court's May 18, 2023 order focused only on jurisdictional and forum issues and that Maira was entitled to be heard on the merits of the interim parenting plan. A hearing was scheduled for January 17, 2024. (Dkt. 111).

Interim Parenting Plan Ruling

The interim parenting plan hearing took place on January 17 and February 5, 2024. Following these hearings, the Court entered an amended interim parenting plan that afforded Maira unsupervised parenting time every other weekend and three-hours of mid-week parenting time. (Dkt. 133; Dkt. 171 at 4).

Final Merits Hearing

On April 17, 2024 and May 1, 2024, the final merits hearing occurred. At both hearings Maira appeared in person, representing herself and Chad appeared in person with his counsel. The Court heard testimony from Chad, Officer Ransom, A.H.S.'s therapists Kathleen Shea and Deisy Boscán and Maira. The Court also took judicial notice of the prior proceedings, findings of fact, and testimony in this matter. (Dkt. 171 at 2).

California Litigation and Court of Appeals Ruling

During the May 1, 2024 final merits proceeding, the Court inquired into the status of the litigation in California and specifically the appeal and was advised by

the parties of the oral argument scheduled for May 15, 2023. (5/1/24 Tr. at 60:19-25 and 61:1-14).

On May 21, 2024, the Court of appeals issued its order and opinion reversing the San Diego Superior Court's decision holding that it had not adequately addressed the UCCJEA jurisdictional issues and failed to afford Maira an evidentiary hearing. The appellate court ruled that the necessary statutory factors, such as home state jurisdiction or whether California was an inconvenient forum and whether Montana was the more appropriate jurisdiction, had not been fully considered. The case was remanded with instructions for the lower court to reassess jurisdiction and allow Maira to present evidence, including renewing her request for an evidentiary hearing. On that same day, Maira filed an unopposed motion to take judicial notice of the CA Court of Appeal's ruling with the District Court, along with a brief in support and a copy of the ruling. (Dkts. 168-169).

On May 22 2024 the Court granted Maira's request to take judicial notice of the California Courts ruling. (Dkt. 172).

Final Orders

On May 22, 2023, the District Court issued its Findings of Fact, Conclusions of Law, and Final Parenting Plan. The plan established equal parenting time and joint legal custody between Maira and Chad. It designated Chad as the custodian of A.H.S.'s travel documents, imposed restrictive travel limitations, and provided

minimal vacation time that did not accommodate international travel for A.H.S. to visit Brazil. Additionally, the plan allowed Chad to claim the Child for tax purposes for two consecutive years and to have A.H.S. for Christmas two years in a row. (Dkts. 170, 171). Although the court took judicial notice of the California Court of Appeal's ruling—it did not address or incorporate this ruling into its order. (Dkt. 172). Nor did the District Court make its own jurisdictional analysis or reassessment of jurisdiction other than to hold that this Court has previously determined that the State of Montana has jurisdiction to make an initial child custody determination for reasons stated in the Court's May 18, 2023 Order. (Dkt. 171 at 10).

The final parenting plan also imposes travel restrictions prohibiting any out-of-state or international travel until all litigation related to A.H.S. or jurisdictional matters over parenting are resolved in California, or until written permission is obtained from the other parent. (Dkt. 170 at 4-5).

Additionally, the court's best interest analysis noted that A.H.S. had not experienced direct physical abuse despite Chad's history of domestic violence directed at Maira and while A.H.S. was present. (Dkt. 171 at 11).

Post Judgement Filings

On June 10, 2024, Chad filed a Notice of Filing with the District Court providing notice of his Petition for Rehearing filed in the Fourth Appellate District of the California Court of Appeals. (Dkt. 175)

On June 18, 2024, Maira filed a Notice of Filing with the California Court of Appeal's June 11, 2024 Order Modifying Opinion and Denying Chad's Petition for Rehearing. (Dkt. 176).

On June 20, 2024, Maira filed the notice of appeal of the Montana's District Court's Entry of Final Judgment entered on May 22, 2024. (Dkt.178).

SUMMARY OF THE ARGUMENT

The District Court committed reversible error by asserting jurisdiction over the custody proceedings for A.H.S. without properly considering the California Court of Appeal's May 21, 2024, decision, which explicitly reversed the San Diego Superior Court's prior UCCJEA jurisdictional ruling. Despite taking judicial notice of this critical appellate decision, the District Court inaccurately claimed that the California appeal was still pending and failed to conduct a mandatory reassessment of jurisdiction as required by the UCCJEA and Montana law. Instead, the District Court relied on an outdated May 18, 2023, order that did not account for the subsequent appellate findings, undermining the statutory purpose of the UCCJEA to prevent conflicting custody orders and promote interstate judicial cooperation.

The District Court further erred by imposing overly broad and punitive travel restrictions on Maira, severely limiting her and A.H.S.'s ability to maintain vital connections with their extended family in California and Brazil until the conclusion of the California litigation, which could take years given the current pace.

Additionally, the court failed to adequately consider the impact of physical abuse or threat of physical abuse by Chad against Maira in its best interest analysis pursuant to . Despite substantial evidence of Chad’s history of abuse toward Maira and the psychological harm A.H.S. may suffer from witnessing such abuse, the court focused narrowly on the absence of direct physical violence toward the child, neglecting to weigh this critical factor against Chad’s suitability. Montana law mandates that courts comprehensively evaluate the impact of domestic violence on a child’s well-being, but this incomplete analysis fell short of those legal standards. These cumulative errors—both in jurisdictional determination and the failure to account for essential considerations—warrant vacating or remanding the final parenting plan for proper proceedings that adhere to the UCCJEA and Montana law.

STANDARDS OF REVIEW

A district court's determination of subject matter jurisdiction under the UCCJEA is reviewed *de novo*. *In re Marriage of Fernandez-Abin*, 191 Cal.App.4th 1015, 1042 (2011). When jurisdictional errors are alleged due to misinterpretation of the UCCJEA, *de novo* review ensures proper application of statutory and jurisdictional guidelines. Legal questions are reviewed *de novo*, without deference to the lower court’s conclusions. *Bessette v. Bessette*, 2019 MT 35, ¶ 13, 394 Mont. 262, 434 P.3d 894; *Guest v. Mannelin (In re M.M.G.)*, DA 22-0725, ¶ 4 (Mont. 2023). A district court’s interpretation and application of statutes are reviewed for correctness. *In re*

Myrland, 2010 MT 286, ¶ 11, 359 Mont. 1, 248 P.3d 290. *In re Sampley*, 379 Mont. 131, 133 (Mont. 2015)

The Court reviews a district court's findings related to parenting plans to determine if they are clearly erroneous. *In re Marriage of Williams*, 2018 MT 221, ¶ 5, 392 Mont. 484, 425 P.3d 1277, A finding is clearly erroneous if it lacks substantial evidence, the court misapprehended the evidence, or the record convinces us a mistake has been made. We review conclusions of law for correctness. *In re Parenting of C.J.*, 2016 MT 93, ¶ 12, 383 Mont. 197, 369 P.3d 1028; *In re the Parenting of M.C.*, 2015 MT 57, ¶ 10, 378 Mont. 305, 343 P.3d 569.

District courts have broad discretion in parenting matters and must determine parenting plans based on the child's best interests, as required by § 40-4-212(1), MCA. *Tubaugh v. Jackson (In re C.J.)*, 2016 MT 93, ¶ 14, 383 Mont. 197, 369 P.3d 1028. Consequently, unless findings are clearly erroneous, we will not disturb a district court's decision unless there is a clear abuse of discretion. *Clark v. O'Neill (In re R.T.C.)*, DA 21-0333, ¶ 6 (Mont. 2022); *In re C.J.*, ¶ 13. Each case must be assessed individually, considering its unique circumstances. *In re Marriage of Hutchins*, ¶ 7 (citing *In re Marriage of Spawn*, 2011 MT 284, ¶ 9, 362 Mont. 457, 269 P.3d 887).

ARGUMENT

- I. **The District Court Erred in Asserting Jurisdiction Over Final Custody Proceedings Without Properly Considering the California Court of Appeal's Reversal and the Requirements of the UCCJEA.**

On May 22, 2024, the Montana Court issued its Findings of Fact, and Conclusions of Law, and Final Parenting Plan Orders. (See Dkts 170 and 171). Despite having taken judicial notice of the California Court of Appeal’s May 21, 2024, opinion—which explicitly reversed the San Diego Superior Court’s prior UCCJEA jurisdictional ruling and remanded the matter for reassessment of jurisdiction, the District Court failed to incorporate this critical development into its jurisdictional determination. Instead, the District Court erroneously and inaccurately stated that the California appeal was still pending, a finding that is wholly unsupported by the record and constitutes clear error. (Dkt. 171 at 4). This blatant disregard of the appellate court’s directive not only mischaracterized the status of the case but also undermined the statutory framework of the UCCJEA. Even more egregiously, the court compounded its error by failing to reassess jurisdiction in light of this significant appellate reversal. Rather than conducting the comprehensive analysis required by the UCCJEA, the District Court merely reiterated its previous conclusion from the outdated May 18, 2023 Order, which did not account for the appellate court’s findings or necessary assessment. (Id. at 10).

A. The District Court’s Failure to Reassess Jurisdiction Under the UCCJEA Violated Its Statutory Obligation for Interstate Judicial Coordination

The Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) or the (“Act”), as outlined in Montana at Mont. Code Ann. §§ 40-7-201-202,

establishes a uniform framework for determining jurisdiction in interstate child custody disputes. The UCCJEA's primary purpose is to avoid conflicting orders and promote cooperation between states, ensuring jurisdictional decisions are made in the state best suited to address the child's welfare.

This cooperation is especially vital in this case because California was the state to exercise jurisdiction, having granted Maira's request for Domestic Violence Prevention Orders (DVPO) and initial custody orders on September 7, 2022. Moreover, A.H.S. has significant and meaningful connections to California, having spent nearly the first three years of her life there, where she developed relationships with extended family and a robust bicultural support network.

Despite these substantial ties and without adhering to UCCJEA required analysis, the San Diego Superior Court issued orders on October 21, 2022, designating Montana as the minor child's "home state" under the UCCJEA and dismissing Maira's requests for DVPOs and custody orders. The court further denied Maira's multiple requests for an evidentiary hearing pursuant to California Fam. code ¶217 and California Rules of Court 5.113, to address disputed facts related to custody and UCCJEA jurisdiction. (Dkt. 168, Ex. A).

The California Court of Appeal's subsequent reversal found that the San Diego Superior Court had failed to properly address the UCCJEA jurisdictional issues. The appellate court emphasized that the lower court had not adequately

considered essential statutory factors, such as home state jurisdiction, nor had it properly evaluated whether California or Montana was the more appropriate forum. The denial of Maira's requests for an evidentiary hearing compounded these errors. (Id.). The case was remanded for a comprehensive reassessment, making it incumbent upon the Montana District Court to address this directive before issuing final custody orders. Ignoring this appellate ruling contravenes the UCCJEA's mandate, which requires that jurisdictional decisions be reassessed in light of significant new developments.

B. The District Court's Disregard of the California Court of Appeal's Ruling Undermined Its Jurisdictional Authority

Under the UCCJEA, Montana is bound by jurisdictional determinations made by California, given that both states have enacted the Act. The UCCJEA mandates cooperation and obliges states to respect jurisdictional rulings from other states in child custody cases to avoid jurisdictional conflicts and ensure decisions are made where the child has the strongest connection. Despite this requirement, the Montana District Court failed to undertake a new jurisdictional analysis following the California appellate court's reversal.

Montana courts have consistently underscored the critical importance of prioritizing a child's home state when making jurisdictional determinations and have emphasized the necessity for meaningful inter-jurisdictional coordination. In *Smalling v. Klubben*, 2018 MT 217, ¶¶ 15-16, 392 Mont. 426, 425 P.3d 703, the

Montana Supreme Court upheld the necessity of proper communication and cooperation between Montana and Minnesota courts to resolve a jurisdictional conflict in compliance with the UCCJEA, highlighting effective and timely inter-court collaboration.

By contrast, in the case at bar, the Montana District Court failed to engage in the requisite inter-jurisdictional communication with the San Diego Superior Court and relied on outdated jurisdictional findings without addressing new rulings from the California appellate court. Unlike the coordinated approach taken in *Smalling*, the court here neglected to reassess jurisdiction in light of updated information, compromising its adherence to UCCJEA standards.

Similarly, in *In re Parenting of L.D.C.*, 2022 MT 161, ¶¶ 18-19, 410 Mont. 473, 508 P.3d 135, the Montana Supreme Court reiterated the need for a comprehensive and current jurisdictional analysis, especially when significant new information arises that could alter jurisdiction. This case underscores the requirement for courts to ensure that jurisdictional findings remain updated and reflect all pertinent developments. In the present case, the District Court's failure to incorporate new rulings from the California appellate court represents a clear departure from these established legal standards.

C. The May 18, 2023 Montana Jurisdictional Order Is Inadequate and Obsolete in Light of the CA Appellate Reversal

The Montana District Court's reliance on the May 18, 2023 order, which concluded that Montana was the more appropriate forum, is inadequate given the subsequent California appellate court ruling. This order predated the appellate reversal and thus failed to account for critical jurisdictional errors identified by the California Court of Appeal. The UCCJEA requires that jurisdictional decisions be reassessed when new rulings affect the original basis for jurisdiction. The Montana court's failure to do so contradicts the UCCJEA's statutory requirements and Montana precedent.

The necessity of a comprehensive reassessment is reinforced by *In re Marriage of Sampley*, 2015 MT 121, ¶¶ 6–8, 379 Mont. 131, 347 P.3d 1281, where the Montana Supreme Court highlighted the duty of courts to revisit jurisdictional determinations under the UCCJEA when new evidence or significant rulings arise. In *Sampley*, a conflict emerged over whether Montana or another state was the more appropriate forum for custody proceedings, prompting the court to emphasize that jurisdictional decisions must be updated to reflect the current and most relevant facts. The court ruled that failing to consider recent developments—such as changes in the child's connections to each state—violated the principles of the UCCJEA and compromised the fairness of the custody determination.

This case is directly relevant here because the Montana District Court similarly failed to reassess jurisdiction after the California Court of Appeal's May

21, 2024, reversal, which constituted a significant change affecting the jurisdictional analysis. Instead of conducting a new evaluation, the Montana court relied on its outdated May 18, 2023, order, claiming that Montana had previously determined jurisdiction. This perfunctory reliance on an obsolete ruling disregard the requirement for ongoing, updated jurisdictional analysis as mandated by the UCCJEA and Montana law, just as the failure in *Sampley* undermined the legitimacy of the custody determination.

Additionally, the Montana Supreme Court in *In re T.W.F.*, 2009 MT 207, ¶ 17, 351 Mont. 233, 210 P.3d 174, reaffirmed that jurisdictional decisions require an independent and comprehensive analysis, especially when new and substantial information arises. This case supports the argument that the Montana court should have reevaluated its jurisdiction following the California appellate court's reversal.

Similarly, in *In re B.K.*, 2020 MT 123, the Montana Supreme Court reiterated the importance of adhering to UCCJEA requirements and ensuring that jurisdictional rulings are grounded in current, comprehensive facts. The *B.K.* case involved a custody dispute where the Montana court initially asserted jurisdiction but was later required to reassess its ruling after new developments emerged in another state. The court in *B.K.* emphasized that any failure to perform a fresh jurisdictional analysis undermines the integrity of the custody determination and risks creating jurisdictional conflicts. Here, the Montana District Court's failure to reassess

jurisdiction, even after taking judicial notice of the California appellate ruling (Dkt. 172), disregards Montana's obligation under Mont. Code Ann. §§ 40-7-201 and -202. The mischaracterization of the appeal status, asserting that it was still pending, compounds the error and highlights the flawed nature of the jurisdictional analysis.

D. The District Court's Insufficient Jurisdictional Analysis and What it Should Have Been Done

The District Court's assertion that it had "previously determined" Montana's jurisdiction without reassessing this conclusion following the California appellate reversal demonstrates a flawed and legally deficient approach.

To comply with the UCCJEA and Montana law, the Court should have first undertaken a comprehensive reassessment of jurisdiction, examining whether California retained home state jurisdiction over A.H.S. This analysis should have accounted for A.H.S.'s significant ties to California, the substantial evidence available there concerning her care, and her established relationships with extended family and cultural support networks.

Furthermore, the court was obligated to engage in direct communication with the California court to discuss the appellate ruling, as required by Mont. Code Ann. § 40-7-201. This collaboration would have helped prevent continuing jurisdictional conflicts and ensured the custody decision aligned with the child's best interests.

Moreover, the court should have actively engaged in direct communication with the California court prior to issuing its findings of fact and conclusions of law

a final parenting plan. Open judicial dialogue would have aligned the actions of both states, ensuring that any jurisdictional determination respected the appellate ruling from California.

Given the complexity of the jurisdictional issues and the conflicting claims between California and Montana, the court should have also held an evidentiary hearing. This hearing would have allowed all parties to present detailed evidence and arguments concerning A.H.S.'s ties to each state and the appropriateness of each forum. As emphasized in *In re B.K.*, 2020 MT 123, a thorough and evidence-based analysis is crucial for making informed jurisdictional decisions.

Additionally, the Montana court should have stayed its final ruling to prevent the issuance of conflicting custody orders, thereby upholding the UCCJEA's primary goal of ensuring that custody matters are resolved in the most appropriate forum. At the very least, the court could have delayed its ruling until the required UCCJEA communication between California and Montana took place and the courts had reached an agreement on how to proceed. This would have ensured proper coordination and compliance with jurisdictional standards, avoiding unnecessary confusion and preserving the integrity of the custody determination process.

By neglecting to take these necessary steps, the Montana District Court compromised the legitimacy of its jurisdictional determination. Its reliance on outdated findings and mischaracterization of the California appellate ruling as "still

pending” underscore the need to vacate or remand the final orders for a jurisdictional analysis that complies with the UCCJEA and Montana law.

II. The District Court’s Imposition of Excessive Travel Restrictions Contradict A.H.S.’s Best Interests and Unlawfully Restrict Maira’s Right to Travel

A. Maira’s Fundamental Right to Travel

Maira’s constitutional right to travel, encompassing the freedom to move between states and internationally, is firmly protected under both the U.S. and Montana Constitutions. The U.S. Constitution, through the Privileges and Immunities Clause of Article IV, Section 2, the Commerce Clause, and the Due Process Clause of the Fourteenth Amendment, implicitly safeguards this right (*Saenz v. Roe*, 526 U.S. 489, 500-504 (1999)). Restrictions penalizing the exercise of this right must be justified by a compelling state interest and be narrowly tailored. Similarly, the Montana Constitution ensures individual liberty and the right to travel under Article II, Sections 3 and 17, guaranteeing life’s necessities and due process. The U.S. Supreme Court mandates that travel restrictions be narrowly tailored and supported by compelling evidence necessary to protect a child’s welfare. In *Shapiro v. Thompson*, 394 U.S. 618 (1969), overruled on other grounds by *Edelman v. Jordan*, 415 U.S. 651 (1974), the Court required that such restrictions serve a compelling state interest. Montana law reinforces this principle, emphasizing that parental rights may only be restricted with substantial justification. In *In re Marriage*

of *Robinson*, 2002 MT 207, ¶ 20, the Montana Supreme Court highlighted the need for careful imposition of travel restrictions.

Under Montana precedent, any parent seeking to limit the other's right to travel with their child must provide "legitimate, case-specific reasons and evidence" rather than relying on generalized fears (*Collie v. Pirkle (In re Parenting of M.C.)*, 343 P.3d 569, 572 (Mont. 2015)). *In re Parenting of N.P.*, 330 Mont. 293, 297 (2006), and *Dunn v. Blumstein*, 405 U.S. 330, 339 (1972), both stress that speculative risks are insufficient, and any restriction on constitutional rights must be evidence-based and use the least restrictive means to address concerns.

B. Chad's Request For Travel Restrictions Lack Case-Specific Evidence

Chad's request for travel restrictions fails to meet the stringent requirements established by Montana law. His concerns are based on speculative fears, not on concrete, case-specific evidence that justifies limiting Maira's right to travel.

During the April 17, 2024, hearing, Chad expressed fears that Maira might abscond with A.H.S., specifically if allowed to travel to Brazil. He cited Maira's return to San Diego in September 2022 and the ongoing California litigation as reasons for his apprehension (4/17/24 Tr. at 45). Chad also mentioned that the risk of international travel, particularly to Brazil, was concerning because it posed a "huge risk" with serious consequences for his relationship with A.H.S. (Id. at 145-150). Despite these assertions, Chad did not provide evidence linking Maira's travel

history or behavior to an actual risk to A.H.S. His claims were speculative, and he failed to present case-specific proof that would meet the standard required by *Collie v. Pirkle*.

Notably, even Chad's proposed parenting plan does not impose a complete ban on out-of-state travel. Instead, it requires Maira to obtain his written prior consent before traveling outside of Montana, effectively giving him the ability to control and potentially deny her travel requests as he sees fit. (Dkt. 145 at 9).

Furthermore, Chad's plan only seeks court approval for international travel, indicating that his primary concerns relate to international trips rather than domestic travel per se. This distinction highlights the lack of justification for the District Court's blanket restrictions, which are far more severe and restrictive than what Chad himself proposed.

Maira's testimony, as documented in the record, offers a starkly different account from Chad's portrayal of her return to San Diego in September 2022. The evidence reveals that her decision was not an effort to undermine Chad's relationship with A.H.S., but rather a necessary and protective action driven by concerns for safety and well-being. Maira testified that she and Chad had always agreed their stay in Montana was meant to be temporary, contingent on the COVID pandemic subsiding. Once it was safe to do so, they planned to return to California. Consistent with this plan, they sold their home in Montana in September 2022, packed up their

belongings, and even hosted a “moving back to San Diego” party earlier that summer (5/1/24 Tr. at 44:6-12; 1/17/24, Trial Ex.O).

The record supports Maira’s assertion that her departure was prompted by a serious domestic violence incident on September 3, 2022. According to the testimony, Chad assaulted Maira, causing her to fear for her safety and that of A.H.S. The Helena Police Department found probable cause to charge Chad with partner or family member assault and issued a no-contact order to protect Maira and her child (5/1/24 Tr. at 43:20-25; 44:13-19). Acting out of legitimate fear, Maira took immediate steps to protect herself and A.H.S., including securing a Domestic Violence Protective Order (DVPO) from the San Diego Court on September 7, 2022 (Id. at 44:4-8).

Maira’s actions were reasonable and protective, not reckless or disruptive. As she testified, these decisions were rooted in her need to ensure safety in the face of an immediate threat, not an attempt to deprive Chad of his parental rights (Id. at 44:13-19). The evidence and police findings corroborate Maira’s version of events, underscoring the validity of her fear and discrediting Chad’s abduction claims. Moreover, Chad testified “I did not visit my daughter because there was restraining orders filed by you. There was ongoing litigation too which I was specially appearing because California didn't have jurisdiction over me and per the advice of my counsel

if I were to be served in California, it would make a difference on how I had to appear to those proceedings.” (1/17/2024 Tr. at 203:10-25).

Furthermore, Maira’s testimony effectively rebuts Chad’s generalized concerns that she would not return if permitted to travel internationally. She emphasized that she has been residing in the U.S. since 1996, has deep-rooted connections to the United States, and operates a business in California that necessitates her regular presence (4/17/24 Tr. at 32-33). She also highlighted her consistent history of returning from Brazil after visiting family, demonstrating her adherence to court orders. Additionally, Maira pointed out that both the United States and Brazil are signatories to the Hague Convention, which provides a robust legal framework for enforcing custody agreements and addressing child abduction internationally, further undermining Chad’s fears (Id. at 33).

C. The District Court’s Findings Acknowledge No Risk of Absconding but Raise Concerns About California Litigation

As the record demonstrates, the District Court had already considered and dismissed concerns about Maira absconding with A.H.S. in its earlier findings from the January 2024 order amending the interim parenting plan (Dkt. 129). In that order, the Court explicitly concluded there was “no credible evidence” indicating that Maira presented a genuine risk of fleeing with the child. The Court stated:

“Despite Chad’s concerns, there is no substantial evidence indicating that Maira presents a legitimate risk of absconding with A.H.S. The record establishes that Maira has strong and enduring ties to the United States,

including her citizenship, long-term residence, and business commitments in California” (Dkt. 129 at 14, ¶3).

The Court further emphasized:

“The concerns raised by Chad regarding Maira absconding are largely speculative. There is no documented history or credible evidence that would support an ongoing risk of Maira fleeing with the child. The court finds Chad’s fears sincere but objectively unfounded based on Maira’s demonstrated conduct” (Id. at ¶1).

These earlier findings are pivotal because they confirm that Maira’s established ties to the United States—such as her long-term residency, U.S. citizenship since 2002, and her business operations in California—provide substantial evidence of her stability and intent to remain in the country. The Court recognized Maira’s consistent adherence to legal requirements and concluded that Chad’s concerns lacked the necessary case-specific proof to justify severe restrictions.

However, the Court’s conclusions in its May 22, 2024, order reveal a shift in focus. While the Court acknowledged that Maira’s behavior since returning to Montana demonstrated compliance and a lack of intent to abscond, it also expressed lingering concerns about the ongoing California jurisdictional litigation.

The Court stated:

“The Court has been persuaded by Maira’s conduct since returning to Montana that she is unlikely to repeat what happened in September 2022—as long as the Court’s authority over her is settled.” (Dkt. 171 at 13)

Yet, despite these concerns being explicitly tied to the jurisdictional litigation in California, the Court imposed a blanket ban on all interstate and international travel. This restriction is overly broad and not narrowly tailored to address the Court's stated concerns. The orders specifically reference the risk associated with California, not with other states or countries. Prohibiting Maira and A.H.S. from traveling anywhere outside of Montana effectively traps them within the state, severely limiting A.H.S.'s opportunities for cultural and familial engagement and failing to serve her best interests.

The Court could have reasonably restricted only travel to California if it truly believed that the pending litigation there presented a risk, while still allowing Maira and A.H.S. to travel to other states and internationally. The Court's blanket restrictions are unsupported by substantial evidence and fail to align with constitutional and statutory requirements for narrowly tailored measures. By relying on speculative concerns about potential legal actions in California, rather than concrete evidence of harm, the Court's decision fails to balance parental rights and the child's welfare, as required by *Troxel v. Granville*, 530 U.S. 57 (2000), and *Collie v. Pirkle*. The severe travel restrictions are thus clearly erroneous, lacking the necessary foundation of case-specific proof, and represent an unjustifiable infringement on Maira's fundamental rights.

D. Inequity and Disproportionate Impact of the Travel Restriction

The travel restriction is nominally imposed on both parents, but it disproportionately impacts Maira and A.H.S. Chad grew up in Montana, and almost all of his family reside in the state. He has no substantial connections to other states or international destinations, other than San Diego, making the restriction largely inconsequential for him. Conversely, Maira's family, including A.H.S.'s elderly maternal grandparents, aunts, uncles, cousins and extended family live either in Brazil or San Diego. Many of these relatives are unable to travel internationally due to age and health constraints. While Chad lives with his parents, and his relatives can easily visit him in Montana, Maira's relatives cannot, making the travel restriction severely detrimental to maintaining A.H.S.'s relationships with her maternal family and extended family.

E. Harmful Impact on A.H.S.'s Cultural and Familial Connections Against Her Best Interests

Montana law mandates that when a parent's fundamental right to travel is implicated, the court must reconcile both parents' interests with the child's best interests. As established in *Cole v. Cole*, 224 Mont. 207, 213, 729 P.2d 1276, 1280 (1986), the court must strike a balance between these competing interests. Moreover, in *In re Parenting of L.D.C.*, 2022 MT 161, the Montana Supreme Court emphasized that any restrictions on a child's familial relationships require compelling justification.

When the prerequisite for travel (the conclusion of California litigation) is resolved, the court's final parenting plan includes only a minimal provision addressing parental holiday schedules and summer vacation time compared to Maira's requests. The Parenting Plan gives each parent three non-consecutive summer weeks with A.H.S. and alternates half of Thanksgiving and Christmas annually. However, this setup grants Chad two consecutive Christmas and New Year's holidays with A.H.S., as he also had her last year. (Dkt. 170 at 3-5) It also fails to serve A.H.S.'s interests in maintaining meaningful connections with her family and extended relatives in Brazil and San Diego.

During the April 17, 2024 hearing, Maira illustrated the deep significance of preserving A.H.S.'s bicultural connections and upbringing. She testified that A.H.S. grew up in a multilingual environment, speaking Portuguese as her first language, and shares profound bonds with her maternal family, including her terminally ill grandfather. (4/17/24 Tr. at 193-195, 196, 22, 156-158). Preventing these visits deprives A.H.S. of formative experiences vital to her cultural identity, language and sense of belonging.

Supporting this, Dr. Deisy Boscan, a therapist who has treated A.H.S., underscored the psychological and emotional harm that could arise from severing these familial connections. Dr. Boscan testified that relationships with her maternal family and the bicultural community in San Diego and Brazil are critical to A.H.S.'s

well-being and that the loss of these ties would cause significant distress. (4/17/24 Tr. at 177-212). This expert testimony highlights the irreplaceable nature of these bonds and the unique cultural richness they provide, which the travel restrictions jeopardize.

In evaluating best interest factor under § 40-4-212(1)(c) MCA, the court prioritized A.H.S.'s connections to her paternal relatives in rural Montana while marginalizing her equally significant maternal relationships. Although the court recognized A.H.S.'s connections to family and friends in San Diego and Brazil and suggested that "future" opportunities for cultural exposure and visits with her maternal relatives could be considered (Dkt. 171 at 11), it failed to address the pressing need for immediate contact with them. This finding neglects the significant impact of losing these cultural and familial ties, disregards her grandfather's terminal illness, and fails to account for the two-year gap since her last visit. Consequently, the court disregarded the irreplaceable cultural experiences crucial to A.H.S.'s development.

Maira's testimony emphasized the necessity of alternating holidays, such as every other Christmas and New Year's, to facilitate meaningful travel to Brazil for family reunions and cultural immersion only taking place that time of year. She also proposed 35 consecutive days of summer vacation, explaining that extended visits are necessary to accommodate the lengthy, costly travel and the substantial time

zone adjustment required for Brazil. (5/1/24 Tr. at 52:1-11). Chads proposed 14-day vacation, she argued, would be exhausting and fail to sustain meaningful connections with her maternal family (5/1/24 Tr. at 28:11-25; 29:1-25; 30:1-10). She further stressed that A.H.S. had not visited Brazil in two years and urgently needed to reconnect with her maternal family, detailing how past trips always required at least 30 days to meet logistical needs and to be meaningful and culturally enriching, (Id; 31:1-10), an essential aspect overlooked by the court's restrictive three-week allowance.

The travel restrictions imposed by the court violate established Montana law by failing to properly balance parental rights with the child's best interests. In *Cole v. Cole*, 224 Mont. 207, 213, 729 P.2d 1276, 1280 (1986), the Montana Supreme Court emphasized that courts must conduct a thorough balancing test that considers the impact on both the parents' fundamental rights and the child's welfare. By not adequately weighing these competing interests, the court deviated from *Cole's* mandate, which requires an assessment of the child's holistic and immediate needs rather than deferring essential familial connections to an uncertain future timeframe.

Furthermore, the court's imposition of travel restrictions failed to satisfy the "compelling justification" standard established in *In re Parenting of L.D.C.*, 2022 MT 161, ¶¶ 15-22, 409 Mont. 439, 516 P.3d 631. The Montana Supreme Court

in *Parenting of L.D.C.* clarified that any limitation on a child's relationships must be substantiated with significant, case-specific evidence. Yet, in this case, the court provided no such justification. Instead, it imposed restrictions that severely impacted A.H.S. by prioritizing her paternal ties in rural Montana over equally important connections with her maternal family.

By giving undue weight to paternal relationships and marginalizing the well-supported concerns of Maira and Dr. Boscán, the court failed to acknowledge A.H.S.'s unique cultural and emotional needs. This approach is inconsistent with Montana law, which underscores the critical value of preserving a child's diverse and formative familial relationships. The court also overlooked the negative developmental consequences of losing these cultural experiences highlighted by Dr. Boscán (4/17/24 Tr. at 177-212).

Ultimately, this disregard for substantial, case-specific evidence undermines A.H.S.'s best interests and reflects an abuse of discretion by the District Court.

F. Less Restrictive Means to Address Chad's Concerns

The Court's imposition of a blanket travel restriction was overly punitive, violating Maira's constitutional rights and depriving A.H.S. of essential familial and cultural connections. The record and parenting plan provisions demonstrate that the Court had numerous, less restrictive options to address Chad's concerns while upholding Maira's liberties and the child's best interests.

First, the Court could have required Maira to seek specific court approval for international travel. This would have allowed her to present detailed plans and evidence showing how the travel would benefit A.H.S., especially given the terminal illness of her maternal grandfather, a crucial figure in her life. Denying A.H.S. the chance to see him during his final days causes irreparable emotional and developmental harm. A compassionate, case-by-case judicial review would have provided necessary oversight without long-term detriment to A.H.S.

Additionally, financial safeguards, such as a bond or financial security, could have allayed any fears of abduction. This would have reassured Chad without infringing on Maira's right to travel. Posting a bond would have balanced the need for security with the protection of Maira's freedoms.

The Court's primary concern was Maira's travel to California due to ongoing jurisdictional litigation. A narrowly tailored restriction focused solely on California would have addressed this issue without barring Maira and A.H.S. from traveling elsewhere. Banning them from visiting other states without valid cause severely restricts their ability to participate in meaningful family and cultural experiences nationwide, undermining A.H.S.'s well-being.

Notably, these blanket restrictions exceed even Chad's proposed terms. He requested prior written consent for domestic travel and court approval only for international trips (Dkt. 145 at 9). He did not suggest an absolute prohibition on out-

of-state travel. By enforcing restrictions far more severe than Chad requested, the Court acted unnecessarily and punitively, placing an undue burden on Maira and A.H.S.

III. The District Court Erred in Failing to Consider Domestic Violence Evidence in Its Best Interest Analysis

The District Court erred by failing to consider critical evidence of Chad's history of domestic violence in its best interest analysis for A.H.S. Montana law explicitly mandates that courts consider a history of abuse when evaluating a child's welfare. Under Montana Code Annotated § 40-4-212(1)(f), courts must consider "*physical abuse or threat of physical abuse by one parent against the other parent or the child*" and evaluate the psychological impact of such exposure.

In *Ward v. Van Dyke (In re A.P.V.W)*, the Montana Supreme Court reinforced the necessity of considering domestic violence, emphasizing that exposure to abuse—even if indirect—can have lasting emotional repercussions for children, (2022 MT 159, ¶¶ 4-5). Similarly, *In re Parenting of P.H.R.*, 2021 MT 5, underscored the harmful environment created when a child witnesses abuse, highlighting that the emotional and psychological consequences of such exposure are substantial and enduring. Despite compelling evidence of Chad's violent conduct, the District Court focused narrowly on the absence of direct physical harm to A.H.S., disregarding the broader psychological effects on the child from witnessing threats or acts of violence against Maira.

A. Evidence Detailing Chad's Pattern of Abuse and Its Harmful Impact on A.H.S.

Maira's testimony provided further insight into Chad's abusive behavior, which the District Court inadequately weighed. She described the incident on September 3, 2022, at an Airbnb, where Chad became so enraged that he locked her inside and took the vehicle key away, verbally assaulted her, and left her in a state of severe fear. She immediately sought assistance from law enforcement. (4/17/24 Tr. at I46, Lines 1-25; Page 47, Lines 1-25). Maira also recounted Chad's frequent outbursts of verbal and emotional abuse by Chad, often occurring in front of A.H.S. In one troubling incident, A.H.S. was seen making gestures that mimicked self-strangulation. When asked about her behavior, she confided in a teacher, expressing her fear that Chad might "choke Mommy." The child's disclosure, indicating a deep awareness of Chad's abusive behavior, led the teacher to file a formal report with the Department of Public Health and Human Services (DPHHS). (See DPHHS Report, 5/1/24, Trial Ex. F). This report provides a crucial perspective on the impact of Chad's violence on A.H.S. It reveals that the child's exposure to abuse has resulted in significant emotional distress, manifesting in a fear for her mother's safety and confusion over her father's aggression.

Moreover, Dr. Boscan testified about the declining Mental Health State of A.H.S. stating that she appeared anxious, angry and irritable and appeared to have

regressed significantly since she treated A.H.S. in June of 2023. (4/17/24 Tr. at 182-83).

B. Officer Ransom's Corroborative Testimony

Officer Nick Ransom provided critical testimony that corroborates Maira's accounts of Chad's abusive behavior. Officer Ransom testified about responding to a domestic disturbance call on September 3, 2022, where he found Maira visibly distressed. He recounted Maira's report that she and Chad had a disagreement over finances, during which Chad became enraged, punching a wall or railing multiple times near her head. Maira told Officer Ransom that Chad's actions caused her to fear imminent injury, especially given his inability to control his anger. Officer Ransom confirmed that he worked with Maira and the Domestic Violence Organization, the Friendship Center, to create a safety plan, emphasizing the severity of the situation and Maira's justified fear for her safety and that of A.H.S. (4/17/24 Tr.131:11-25; 132:1-25).

Moreover, Officer Ransom noted that he had probable cause to charge Chad with Partner Family Member Assault, (PFMA). He also described hearing a phone conversation between Maira and Chad in which Chad's anger and use of profanities were apparent, reflecting his ongoing aggressive and intimidating behavior (4/17/24 Tr. at 134:3-21).

In fact, on September 23, 2022, HPD determined there was probable cause to charge Chad with partner family member assault (PFMA) for causing reasonable apprehension of bodily injury, a misdemeanor criminal offense defined in Mont. Code Ann. 45-5-2-6(a)(a), in Case Number TK-520-2022-0001699. (Dkt 171 at 3). A no contact order followed. (Dkt. 28 at 3; and 1/17/24 Trial Exhibit W).

On February 1, 2023, Chad entered into a Deferred Prosecution Agreement. Under the terms of the agreement, the charges against Chad were dismissed a year later. (Dkt. 171 at 3; 5/1/24 Tr. at 43:1-8, Exhibit L). Nevertheless, while under a MT no contact order, Chad sent a stuffed toy to A.H.S. in California with a tracking device hidden inside, violating the California DVPO's prohibition against coercive control, monitoring the other party's movements, and cyberstalking. (Dkt. 32 at 19).

C. Misapplication of Law

Montana case law, including *In re Parenting of B.L.W.*, 2021 MT 123, ¶¶ 18–20, emphasizes that even indirect exposure to domestic violence warrants comprehensive judicial scrutiny. The District Court's failure to consider these impacts violated § 40-4-212(1)(f), disregarding the child's psychological safety and undermining the statute's protective intent.

Despite its acknowledgment of Chad's troubling behavior (Dkt. at 14), the Court imposed no measures, such as anger management or therapy, to mitigate the risk. Given the evidence and Maira's testimony about fearing for her life, which

justified the PFMA charges, and returning to San Diego when she did, the Court's failure to enforce protective measures leaves A.H.S. exposed to further psychological harm and Maira to possible physical or threat of physical harm.

The Court's failure to implement such protective measures not only undermines the statutory intent but also exposes A.H.S. to further psychological harm.

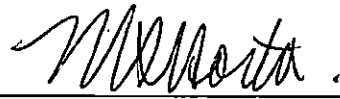
The Court's finding that there was no abuse to A.H.S. is clearly erroneous and not supported by the record. Although the Court acknowledged that Chad "*misbehaved*" toward Maira, it improperly minimized the significance of his actions, which included physical abuse or threats of physical abuse directed at Maira and similar aggressive behavior witnessed by A.H.S. The Court was required under Montana Code Annotated § 40-4-212(1)(f) to consider "physical abuse or threat of physical abuse by one parent against the other parent or the child," but instead, it narrowly focused only on the absence of physical abuse to the child, disregarding the broader statutory requirement. By doing so, the Court failed to adequately address the serious impact of Chad's conduct, ultimately leaving A.H.S. vulnerable to continued psychological harm and failing to uphold Montana's best interest standard.

CONCLUSION

WHEREFORE, for the foregoing reasons, Maira respectfully requests that this Court vacate the District Court's judgment and remand the case with instructions

to conduct a proper analysis under the UCCJEA and Montana law. Maira further asks that the Court vacate the final parenting plan, implement a modified interim parenting plan pending a proper jurisdictional review, and direct the District Court to proceed in a manner consistent with the statutory and constitutional standards outlined in this brief.

RESPECTFULLY submitted this 17th day of November, 2024.




Maira Horta Moss, Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that this Appellant's Opening Brief is printed with proportionately spaced Time New Roman typeface of 14 points; is double spaced except for lengthy quotations or footnotes, and does not exceed 10,000 words, excluding the Table of Contents, the Table of Authorities, Certificate of Service, and Certificate of Compliance, as calculated by my Microsoft Word software.

Dated this 17th day of November , 2024.



Maira Horta Moss, Appellant

CERTIFICATE OF SERVICE

I, Maira Horta Moss, hereby certify that I have filed this brief with the Clerk of the Montana Supreme Court and served a true and accurate copy of the foregoing Appellant's Opening Brief to the following on this 18th day of November 2024 on attorney for Appellee via email:

Sara S. Berg
LAIRD COWLEY, PLLC
40 W. 14th Street, Suite 4A
Helena, MT 59061



Maira Horta Moss