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 and Appellee,

AND

MAIRA HORTA MOSS,

Respondent and Appellant.

APPELLEE'S RESPONSE BRIEF

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF THE ISSUES

1) Whether the District Court clearly abused its discretion in exercising jurisdiction over the parties' custody matter?

2) Whether the District Court clearly abused its discretion in temporarily limiting A.H.S.'s travel with either of her parents outside the State of Montana?

3) Whether the District Court clearly abused its discretion in its role of fact-finding and weighing evidence pertaining to the statutory best interest of the child factors?

STATEMENT OF THE CASE

This appeal arises from a custody proceeding initiated by Appellee Chad Senechal ("Chad") on September 8, 2022, in the Montana First Judicial District Court (herein "District Court"), concerning the parties' minor child, A.H.S. (herein "A.H.S." or "the child"). (*See* District Court Docs [Dkt.] 1-4.) Appellant Maira Horta Moss ("Maira") now appeals the Final Parenting Plan issued by the District Court on May 22, 2024, which grants the parties equal parenting time and equal decision-making authority. (Dkt. 170.)

Days prior to Chad's initial filing on September 8, 2022, Maira absconded from Montana with A.H.S., without Chad's knowledge or consent, and traveled to San Diego, California. (*See, e.g.* Dkt. 4.) From California, Maira initiated concurrent

protective and custody proceedings in the Superior Court of San Diego (herein "California Court"). (*See, e.g.,* Dkt. 7.)

On October 18, 2022, and due to the parallel custody actions, the District Court and California Court held a conference pursuant to the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA"), codified in Montana Code Annotated §§ 40-7-101 to -317. Following the UCCJEA conference, the California Court declined jurisdiction and dismissed Maira's filings. (*See, e.g.,* Dkt. 41, page 2; Dkt. 51, page 4.) Still, Maira continued litigating the jurisdiction questions in both states.

On May 15, 2023, the District Court rejected Maira's motion to dismiss and confirmed Montana's proper jurisdiction over the matter. (Dkt. 51, pages 2-9.) However, Maira continued to disobey the District Court's order from September 9, 2022, directing her to return the child to Montana. (Dkt. 5.) On June 24, 2023, and after nearly ten months of separation, Chad and A.H.S. were reunited. (*See, e.g.* Dkt. 171, page 4.)

Upon Maira's motion, the District Court conducted a two-part hearing to establish an interim parenting plan on January 17 and February 5, 2024. (*See e.g., id.*) The District Court conducted another two-part hearing for the purpose of establishing a Final Parenting Plan on April 17 and May 1, 2024, during which both parties appeared, acknowledged the Court's jurisdiction over the matter, and

presented numerous witnesses and exhibits. (Dkt. 170-171.) Each party also filed proposed parenting plans with the District Court in advance of the final hearing. (Dkt. 157, 158.)

On May 22, 2024, and following two days of witness testimony, the District Court issued Findings of Fact, Conclusions of Law, and Order Adopting Final Parenting Plan. (Dkt. 170-171.) In the Final Parenting Plan, the District Court granted equal parenting time and did not adopt either of the parties' proposed plans verbatim. (*See* Dkt. 157, 158.) Maira now appeals.

STATEMENT OF THE FACTS

Maira and Chad are the parents to one minor child, A.H.S., presently six years old. (Dkt. 171, page 2.) Maira's country of origin is Brazil, and she holds dual citizenship with the United States and Brazil; likewise, A.H.S. also enjoys dual citizenship, and both Maira and A.H.S. hold American and Brazilian passports. (*Id.*) During A.H.S.'s lifetime, she has resided with her parents in California and Montana, and also visited Brazil. (*Id.*)

A.H.S. was born in February 2018, in San Diego, California, and resided there with both parents through March 2020. (*Id*.) In April 2020, all three moved to Helena, Montana, where Chad's parents and other close family reside. (*Id.* page 7.) From April 2020 to September 2022, the parties resided in Helena; during that

period, they visited Brazil twice, with each trip lasting approximately five months. (*Id.* page 2.)

Specifically relevant to this appeal are the six months prior to the commencement of these parenting proceedings on September 8, 2022, or March 2022 to September 2022. For the more-than four months period of April 23 to September 4, 2022, the parties and child resided continuously in Helena. For the approximate 1.5 months between March and April 23, 2022, the parties visited Brazil. (*Id.*)

By early September 2022, Chad and Maira had ended their relationship, and they agreed to sell their home. (*Id.*) On September 3, 2022, and outside the presence of A.H.S., the parties argued regarding finances. Maira called the Helena Police Department, and an officer was dispatched to assist. (*Id.*)

On September 4, 2022, and without notice to or consent from Chad, Maira left the state with A.H.S. and traveled to San Diego, California. (*See, e.g.* Dkt. 4, page 2; 171, page 3.) From that point, Maira cut off all contact with Chad, thereby denying him any contact with A.H.S. and leaving him in fear of whether Maira had already departed the United States with the child to relocate in Brazil. (*See, e.g.* Dkt. 4.)

On September 8, 2022, Chad initiated this parenting action with the First Judicial District Court in Lewis and Clark County. Chad's filings included an *ex*

parte Motion for Emergency Interim Parenting Plan. (Dkt. 1-4). On September 9, 2022, District Court Judge Michael McMahon granted Chad's Interim Parenting Plan, and further ordered Maira to immediately return A.H.S. to her home in Montana and surrender A.H.S.'s passport to Chad. (Dkt. 5.) Notably, although Maira had been effectively notified of Chad's filings by October 2022, if not earlier, she evaded personal service for several additional months. (*See, e.g.* Dkt. 41, pages 2-3).

Just days after absconding with the child to California, Maira attempted to establish custody jurisdiction in California by filing concurrent protection and custody proceedings. (*See, e.g.,* Dkt. 7.) Several months of extensive litigation in both states ensued, during which Maira remained noncompliant with District Court's order to return the child to her home in Montana. (*See, e.g.* Dkt. 5.) Not only did Maira deny any and all parenting time between A.H.S. and Chad for that entire period, but she also refused Chad any contact or information regarding the child at all.

On October 18, 2022, the District Court and California Court conducted a UCCJEA conference concerning the duplicate jurisdiction over custody matters, during which both parties received the opportunity to be heard, and after which the California Court declined jurisdiction and dismissed Maira's actions. (*See, e.g.,* Dkt. 41, page 2; 51, page 4.)

On January 24, 2023, and nearly five months after Chad filed his petition, Maira retained counsel in Montana, and accepted service. (Dkt. 22). Numerous filings from both parties followed, including Chad's Motion for Contempt concerning the District Court's September *ex parte* order on interim parenting (Dkt. 25), and Maira's Motion for Substitution of Judge and Dismissal. (Dkt. 27).

Around the same time, Chad entered into a Deferred Prosecution Agreement with the City of Helena concerning the September 3, 2022 argument. The related misdemeanor charge was later dismissed pursuant to that agreement. (*See, e.g.* Dkt. 171, page 3.) Meanwhile, Maira continued to disobey the District Court's order and remained in California with A.H.S. (*See* Dkt. 5.)

On March 17, 2023, the District Court issued an order granting the Motion for Substitution filed by Maira. Notably, Judge McMahon stated that such approval was made "for the sake of judicial economy and to serve A.H.S.'s best interests" and furthermore, emphasized that the significant delays due to Maira's monthslong evasion of personal service were contrary to A.H.S.'s best interests in having systematic and continuous contact with both parents. (Dkt. 41.)

On May 18, 2023, newly presiding District Court Judge Christoper Abbott addressed the pending Motion for Contempt and Motion to Dismiss. First, Judge Abbott rejected Maira's Motion to Dismiss and confirmed Montana's proper custody jurisdiction. (Dkt. 51, pages 2-9.) The District Court further determined that neither

Montana nor California was A.H.S.'s "home state" pursuant to the relevant UCCJEA definition, based on the parties having divided time between Montana and Brazil.[1] Further, the District Court determined that Montana appropriately exercised jurisdiction pursuant to Montana Code Annotated § 40-4-211(1)(b), based on A.H.S.'s best interests as specifically tied to her significant connections and substantial evidence existing within Montana. (Dkt. 51, pages 2-9.)

Next, the District Court rejected Maira's contention that Montana should decline jurisdiction based on being an inconvenient forum, and instead conducted an analysis of further supporting thee determination under the framework of Montana Code Annotated § 40-4-108. (Dkt. 51, pages 5-9.) Finally, the District Court addressed Chad's Motion for Contempt, finding that Maira remained in defiance of the Court's prior orders issued since September 9, 2022, ordering her to return A.H.S. safely to Montana and Chad's care within 21 days, and setting a Show Cause Hearing. (*Id.,* page 9-10.)

On June 24, 2023, Chad and A.H.S. were reunited after nearly ten months of separation, and following additional difficulties including Chad having to make two separate trips to California to retrieve A.H.S. (*See, e.g.,* Dkt. 171, page 4.) On July 17, 2023, Maira notified the District Court that the child had been returned to

[1] Although not relevant to the present appeal, Chad maintains that from 2020 through 2022, the child resided solely in Montana and only visited Brazil, and thus Montana indeed met the "home state" definition pursuant to the UCCJEA.

Montana. (Dkt. 63.) Thereafter, both parties exercised parenting time under the initial Interim Parenting Plan, which included supervision requirements imposed on to Maira due her nearly ten months in violation of previous orders. (Dkt. 5-6.)

In the fall of 2023, Maira remained represented by counsel in Montana, and through that counsel, agreed to a Scheduling Order setting the hearing on the Final Parenting Plan for April of 2024. As of November of 2023, Maira no longer represented by counsel, and now representing herself, continued to avail herself to the Montana District Court, including her assertion of Montana's "exclusive and continuing jurisdiction" within her requests for hearing on the Interim Parenting Plan to allow for her to exercise unsupervised parenting time with A.H.S. (Dkt. 89, page 2.)

The District Court conducted a two-part hearing on Maira's Motion for an Interim Parenting Plan on January 17 and February 5, 2024. (*See e.g.,* Dkt. 129, 133.) Notably, that when directly asked whether she acknowledged Montana's jurisdiction over A.H.S., Maira confirmed, "Correct." (Dkt. 154, page 121, corresponding to Transcript January 17, 2024, 73: 12-14). During the January 17, 2024, hearing, the District Court heard testimony from five witnesses, including both parties and A.H.S.'s therapist, Kathy Shea (herein "Kathy Shea"). Kathy Shea emphasized the importance of predictability and consistency for A.H.S., not only relative to her age and stage of development, but also in consideration of the major and abrupt changes

she had experienced during the previous 18 months. (*See* Dkt. 154, pages 174, 181, 184, and 186, corresponding to Transcript January 17, 2024, 126:11-21; 133:5-25; 136:18-23; and 138:3-19). Kathy Shea also confirmed that she lacked any safety concerns regarding either parent. (Dkt. 154, page 184, corresponding to Transcript January 17, 2024, 136:18-23).

Following the January 17, 2024, hearing, the District Court addressed the best interest factors set forth in Montana Code Annotated § 40-4-212 and ordered related amendments to the temporary plan. (Dkt. 129.) Substantial weight was afforded to Kathy Shea's testimony as it related to A.H.S.'s interests including continuity and stability of care, developmental needs, and frequent and continuing contact with both parents. (*Id.,* pages 4-6.) The District Court also confirmed that it lacked information to conclude that either parent presented safety concerns; further, that it lacked sufficient information to make findings regarding Maira's disputed allegations of domestic violence. (*Id.*)

Following the February 5, 2024, hearing on the Interim Parenting Plan, the District Court similarly summarized the information gathered and confirmed that Kathy Shea's emphasis on the stability and continuity of A.H.S.'s care would continue to receive substantial weight. (Dkt. 133.)

On April 17 and May 1, 2024, the District Court conducted yet another two-part hearing for the purpose of establishing a Final Parenting Plan, during which

both parties appeared, acknowledged the Court's jurisdiction over the matter, and presented numerous witnesses and exhibits. (Dkt. 170, 171.) Chad and Maira each submitted proposed parenting plans, which both included a long-term residential schedule based on equal parenting time. (Dkt. 157, 158.)

Witness testimony relevant to this appeal include Chad's statements describing his concerns regarding A.H.S. having extended periods of travel or out-of-state travel with either parent, including the disruption and separation A.H.S. would experience anew, and Chad's own reservations related to Maira's ongoing litigation of jurisdictional questions. (*See, e.g.* Transcript April 17, 2024, 21:13-23; 38:23-25; 39:13; *see generally,* pages 43-53.) Chad also confirmed that any short-term travel limitations should apply to both parents equally. (*See, id.* 123:33-124:6.)

Maira received significant time for her testimony as well as some "leeway" with respect to navigating applicable evidentiary rules. (*See, e.g.* Transcript May 1, 2024, 12:3-14.) Chad answered Maira's questions during her cross-examination of him, including numerous questions regarding their argument on September 3, 2022. (*See, generally,* Transcript April 17, 2024, pages 106-109.)

In addition to Chad and Maira, witnesses included Helena Police Department Officer Nick Ransom ("Officer Ransom") and Kathy Shea. Officer Ransom testified to his recollection of events on September 3, 2022. (*See, generally,* Transcript April 17, 2024, pages 130-143; 157-158.) Officer Ransom confirmed that Chad

cooperated throughout his related investigation, and that upon their initial contact, Chad indicated that he was not aware of what was being referred to and disagreed that certain details of the event had occurred. (Transcript April 17, 2024, 150:3-25.) Kathy Shea's testimony included an update that A.H.S. was thriving with the ongoing stabilization of her schedule and time with both parents. (*Id.* at 160). Again, Kathy Shea confirmed that she had no concerns about either parent. (*Id.* 164:4-12.)

On May 22, 2024, following the two days of extensive witness testimony, the District Court issued Findings of Fact, Conclusions of Law, and Order Adopting Final Parenting Plan, along with a Final Parenting Plan. (Dkt. 170-171.) The District Court outlined 48 findings of fact and several conclusions of law, including the following findings relevant to this appeal:

1. From February 2018 to March 2020, A.H.S. lived with Maira and Chad in California. For the next three years, they divided their time between Brazil and Montana. At the time of the filing of the petition for a parenting plan in this matter, Maira, A.H.S., and Chad had resided in Montana continuously from April 23, 2022, to September 4, 2022, a period of roughly four months. (Dkt. 171 at ¶ 2);

2. On September 4, Maira left the State of Montana with A.H.S. and went to San Diego, California. (*Id.* at ¶ 7);

3. On September 8, Chad filed a petition for a parenting plan and an *ex parte* motion for an emergency interim parenting plan. The next day, this Court granted the motion, adopted the proposed interim parenting plan, and ordered Maira to return A.H.S. to Montana within fourteen days and surrender A.H.S.'s passports to Chad. (*Id.* at ¶ 8);

4. Maira remained with A.H.S. in California while she attempted to convince courts in California to take jurisdiction over A.H.S. She

obtained a temporary restraining order against Chad in California Superior Court. (*Id.* at ¶ 9);

5. After extensive litigation, this Court on May 18, 2023, issued an order finding Montana had jurisdiction to enter an initial child custody determination and rejecting Maira's attempts to persuade the Court to decline jurisdiction in favor of California. The Court ordered Maira to return A.H.S. to Montana and place her in Chad's care within twenty-one days, and set a show cause hearing on Chad's contempt petition. (*Id.* at ¶ 10);

6. Maira returned A.H.S. to Montana and surrendered her to Chad's care on June 24, 2023. On July 17, 2023, Maira executed an affidavit notifying the Court that she had returned A.H.S. to Montana. (*Id.* at ¶ 11);

7. The Court subsequently vacated the contempt show cause hearing and set a final merits hearing for April 17, 2024. At Maira's request, the Court set an interim parenting plan hearing for January 17, 2024. (*Id.* at ¶ 12);

8. The interim parenting plan hearing took place on January 17 and February 5. 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.) That is the parenting plan currently in effect. (*Id.* at ¶ 13);

9. Maira continues to litigate the jurisdictional question in California courts. At present, her case is pending before the Fourth District California Court of Appeal, and oral argument is set for May 15, 2024. (*Id.* at ¶ 14);

10. Maira has stated that she presently intends to remain in the Helena area for now to parent A.H.S. Maira's testimony is credible in this respect. (*Id.* at ¶ 23);

11. Both parents played a role in caring for A.H.S. while they were together. Since September 2022, A.H.S. has been subjected to radically different parenting arrangements, living exclusively with Maira from September 2022 to July 2023, and then exclusively with Chad until

February 2024, when the Court first allowed Maira unsupervised overnight parenting time. (*Id.* at ¶ 27);

12. Neither parent abuses alcohol or drugs, and there was no evidence suggesting either is an unsafe, abusive, or neglectful parent. Both parents are attentive to A.H.S.'s needs. Maira's contact with A.H.S. was initially limited only for two reasons: (1) concern that Maira might take A.H.S. back to California in defiance of the Court's orders; and (2) concern about further major abrupt transitions in A.H.S.'s life. (*Id.* at ¶ 28);

13. Chad's extended family is primarily in the Helena area. Maira has family and friends in San Diego and an extensive family in Brazil. It is in A.H.S.'s best interests to have an opportunity to visit family in Brazil, balanced with the Court's need to ensure the events of September 2022 – June 2023 are not repeated. (*Id.* at ¶ 31);

14. A.H.S. is closely bonded with and attached to both parents. (*Id.* at ¶ 34);

15. Kathleen Shea has been seeing A.H.S. for therapy since August 2023. She has consistently stated that she has no concerns with either Chad or Maira's ability to safely parent A.H.S. (*Id.* at ¶ 36); and

16. Shea has consistently testified in several hearings that involvement of both parents in a child's life is beneficial where there is a secure attachment. A.H.S. is securely attached to both parents. Shea has also consistently testified that A.H.S. needs predictability, structure, and routine (*Id.* at ¶ 37).

(Dkt. 171, pages 2-10.)

In the Final Parenting Plan, the District Court established an equal 50/50 residential schedule as both parties proposed; however, the District Court did not adopt either party's proposal in its entirety. (*See* Dkt. 157, 158.)

Also on May 22, 2024, the District Court permitted Maira's request for judicial notice of an order issued by the Court of Appeal, Fourth Appellate District,

Division One for the State of California ("Court of Appeal") on May 21, 2024. (*See, e.g.* Dkt. 168, pages 5-29.) On June 11, 2024, the Court of Appeal issued a related Order Modifying Opinion and Denying Rehearing; No Change in Judgment. (Dkt. 176, pages 3-5.) The modified order confirmed a remand of the lower California Court's prior order for further proceedings. (*Id.,* page 4.) Notably, the California appellate orders expressed no opinion concerning the District Court's determination of jurisdiction, nor was the District Court's May 18, 2023, order part of the California appellate record. (*See, e.g.*, Dkt. 176, pages 3-4.)

Maira now appeals the District Court's Final Parenting Plan issued May 22, 2024, in which Chad and Maira were ordered to have equal parenting time and share parental decision-making. She argues the District Court erred in asserting custody jurisdiction, in applying a temporary travel provision in the parties' Final Parenting Plan, and in its assessment of the statutory best interest of the child factors.

STANDARD OF REVIEW

Because district courts hold "a superior position to weigh the evidence" the Court will not overturn a child custody determination absent "a clear abuse of discretion." *Czapranski v. Czapranski*, 2003 MT 14, ¶ 10, 314 Mont. 55, 58–59, 63 P.3d 499, 502. District courts are afforded broad discretion in parenting plan determinations, and the Court presumes that the court carefully considered the evidence and made the correct decision. *Woerner v. Woerner,* 2014 MT 134, ¶ 12,

375 Mont. 153, 156, 325 P.3d 1244, 1247. This Court's review of a district court's parenting plan determinations asks whether there exists a mistake of law or a clearly erroneous finding of fact so egregious that it "amount[s] to a clear abuse of discretion." *Guffin v. Plaisted-Harman*, 2010 MT 100, ¶ 20, 356 Mont. 218, 232 P.3d 888.

In the Court's abuse of discretion analysis, a district court's conclusions of law are reviewed for correctness. *In re Marriage of Gochanour*, 2000 MT 156, ¶ 16, 300 Mont. 155, 159, 4 P.3d 643, 646. The Court's review of a district court's findings of fact for clear error asks whether findings are "not supported by substantial evidence, the court misapprehends the effect of the evidence, or this Court's review of the record convinces it that a mistake has been made." *In re Custody of Arneson-Nelson*, 2001 MT 242, ¶ 15, 307 Mont. 60, 64, 36 P.3d 874, 877. In other words, a clear abuse of discretion may occur if the district court acts "arbitrarily without employment of conscientious judgment or exceed[s] the bounds of reason resulting in substantial injustice." *Guffin* at ¶ 20.

SUMMARY OF ARGUMENT

There is no basis for reversing any provision of the District Court's Final Parenting Plan.

First, the District Court properly established jurisdiction over the parties' parenting matter pursuant to the Uniform Child Custody and Jurisdiction

Enforcement Act (UCCJEA) and Montana Code Annotated § 40-4-211(1). That initial jurisdiction determination is binding, continuous, and exclusive. Although Maira's California litigation is indeed ongoing, she repeatedly misrepresents the holding of the Court of Appeal's orders issued on May 21 and June 11, 2024. Nowhere in those orders does the California Court of Appeal issue any directive upon the Montana District Court, and nothing in the orders serves to undermine or change Montana's proper jurisdiction determination. Further contrary to Maira's contentions, the Montana District Court's characterization of the California matter as "pending" is accurate and does not constitute any error, nor did it create any harm which would merit revisit.

Second, no clear abuse of discretion exists, as the District Court issued the parties' Final Parenting Plan following multiple hearings and extensive witness testimony. The record is replete with information from both sides, including real time testimony heard over the course of two days, in addition to two days of testimony heard only months before regarding an interim plan. The District Court carefully considered the evidence and established the facts per its role as fact finder. To those facts, the District Court assigned weight and appropriately applied Montana Law, including the statutory best interest factors. Accordingly, the District Court issued a Final Parenting Plan awarding equal parenting time to Chad and Maira and adopting neither of the party's proposed parenting plans verbatim.

No abuse of discretion exists, and Maira's appeal instead represents an attempt to relitigate this matter.

ARGUMENT

As addressed below, each of Maira's arguments fails to demonstrate any abuse of discretion; instead, Maira's appeal constitutes an attempt to relitigate the District Court's findings with which she disagrees.

1) The District Court's determination of custody jurisdiction is supported by substantial credible evidence and proper application of the UCCJEA and Montana law, and no abuse of discretion occurred.

Maira's now yearslong challenge of Montana's jurisdiction continues to fail, despite her misrepresentations concerning the Court of Appeal's orders issued on May 21 and June 11, 2024. The District Court properly established custody jurisdiction pursuant to the UCCJEA and Montana law. Upon that initial determination, Montana's jurisdiction became binding, exclusive, and continuous. Maira directly acknowledged Montana's jurisdiction. (*See, e.g.* Dkt. 89, page 2; Dkt. 154, page 121, corresponding to Transcript January 17, 2024, 73: 12-14.) Maira continues to consent to the same by repeatedly availing herself of the District Court and exercising her equal parenting time according to its order. Contrary to Maira's repeated mischaracterizations, the pending California litigation has no bearing on Montana's jurisdiction determination, nor does her alleged "error" create any harm which would merit revisiting.

a. The District Court properly established custody jurisdiction pursuant to the UCCJEA and Montana law.

As outlined above, this parenting dispute required an initial determination of jurisdiction pursuant to the UCCJEA due to the parties' competing filings in Montana and California. The District Court's determination of whether it has subject matter jurisdiction is a conclusion of law reviewed for correctness. *In re Marriage of Sampley*, 2015 MT 121, ¶ 6, 379 Mont. 131, 347 P.3d 1281. The Court's review of a district court's findings in support of jurisdiction questions does not involve the reweighing of conflicting evidence or substituting its judgment regarding the strength of the evidence for that of the district court. *In re B.K.,* 2018 MT 217, ¶ 17, 392 Mont. 426, 435, 425 P.3d 703, 709. Rather, the Court analyzes whether the district court's findings of fact are "sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and whether they are supported by the evidence presented." *B.K.* at ¶ 17. Even when there is conflicting evidence, a district court's determinations will be upheld "where substantial credible evidence upholds its findings of fact and conclusions of law." *Id.*

Here, the District Court appropriately established jurisdiction over this custody matter pursuant to the UCCJEA and Montana Code Annotated § 40-7-211(1). First, the District Court and California Court conducted a proper UCCJEA conference based on the parties having initiated parallel custody proceedings in Montana and California. That UCCJEA conference, held on October 18, 2022, was

attended by both parties and their counsel, and afforded both parties the opportunity to be heard.

Furthermore, both parties agreed that A.H.S. had not resided in California for well over two years, and that during the six months preceding the parties' filings, the child resided in Montana and spent time in Brazil. Accordingly, the District Court determined that neither state represented A.H.S.'s "home state" as defined in the UCCJEA, Montana Code Annotated § 40-7-103(7). Appropriately, the California Court declined jurisdiction and dismissed Maira's proceedings. Maira continued to challenge jurisdiction in both courts and moreover, continued to defy the District Court's order to return A.H.S. to Montana.

On May 18, 2023, the District Court rejected Maira's request for dismissal and established Montana's proper jurisdiction pursuant to the determination that neither state amounted to A.H.S.'s "home state" pursuant to the UCCJEA. Jurisdiction was instead established upon the child's best interests, as specifically tied to her significant connections and substantial evidence existing within Montana. Mont. Code Ann. § 40-4-211(1)(b). Furthermore, the District Court rejected Maira's alternative contention that Montana should decline jurisdiction pursuant to Montana Code Annotated § 40-7-108; instead, the District Court outlined the factors demonstrating that Montana was not an inconvenient forum.

b. Montana's custody jurisdiction determination is binding, exclusive, and continuous.

The UCCJEA directs that after having made a custody jurisdiction determination consistent with Montana Code Annotated § 40-7-201, the Montana court has "exclusive, continuing jurisdiction" over that determination. Mont. Code Ann. § 40-7-202. Exclusive, continuing jurisdiction is maintained, unless:

> (a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or
>
> (b) a court of this state or a court of another state determines that neither the child, a parent, nor any person acting as a parent presently resides in this state.
>
> *Id.*

Despite Maira's misplaced contentions otherwise, none of the above determinations have occurred. The District Court maintains exclusive, continuing jurisdiction over this matter.

c. The California Court of Appeal's orders issued May 21 and June 11, 2024, have no bearing on Montana's binding, continuous, and exclusive jurisdiction.

Maira incorrectly asserts that the Court of Appeal's order issued on May 21, 2024 (Dkt. 168, pages 5-29), and subsequently modified by the order issued June 11, 2024 (Dkt. 176, pages 3-5), mandates the District Court to reassess its initial jurisdiction determination. Maira's arguments fail in several respects.

First, the Court of Appeal's opinion is very limited in its scope. It does not undermine the Montana jurisdictional order in anyway, nor does it imply that California should have jurisdiction. In fact, the Court of Appeal was unwilling to consider the District Court's binding determination of custody jurisdiction because that determination was not a part of the appellate record before it. To that point, the Court of Appeal expressly acknowledged that Chad had the right to bring up that determination in proceedings on remand, and to argue whether these post-appeal filings in the Montana court established the Montana court's exclusive UCCJEA jurisdiction, thereby mooting further California proceedings. (Dkt. 176, page 4.)

Second, the Court of Appeal did not make any finding that California rather than Montana should have UCCJEA jurisdiction; rather, it remanded the matter for further proceedings during which Maira may ask the trial court to consider the issue of UCCJEA jurisdiction.[1]

[2] The California Court hearing, scheduled for October 2025, will involve an examination of court documents and other information supplied by the parties under California Family Code section 3426, pursuant to which it may determine to initiate additional communication with Montana concerning jurisdiction, or it may determine that Montana is a more appropriate forum, and dismiss the proceeding. Accordingly, Chad expects that when this October 2025 jurisdictional hearing occurs, the California Court will dismiss its action in deference to Montana's subsequent assertion of exclusive continuing jurisdiction.

d. Maira repeatedly consented to and availed herself of the District Court's jurisdiction, including presently exercising equal parenting time per the Final Parenting Plan as ordered by the District Court.

Following the District Court's May 18, 2023, order, Maira repeatedly consented to and availed herself of the District Court's jurisdiction. For example, Maira filed a Verified Motion to Amend Parenting Plan and Request for Expedited Hearing which included a recitation of Montana's exclusive and continuing jurisdiction. (Dkt. 89, page 2.) During Maira's cross-examination during the January 17, 2024, hearing on interim parenting, she directly acknowledged Montana's jurisdiction. (Dkt. 154, page 121, corresponding to Transcript January 17, 2024, 73:12-14.) Maira otherwise appeared and testified before the District Court on multiple occasions. She proposed multiple versions of parenting plans, all contemplating both parties' parenting time based in Helena, and under the jurisdiction of the District Court. The District Court granted Interim and Final Parenting Plans under which both Maira and Chad have exercised parenting time for nearly 18 months.

e. Maira's claims concerning an alleged "error" are incorrect, nor would such error create a harm which would merit revisiting.

Finally, Maira incorrectly claims that the District Court's characterization of the California appellate matter as "pending" amounts to a clear error. Pursuant to the applicable California Rules of Court, the California matter in fact remained pending on the date the District Court issued the Final Parenting Plan and related

orders.[1] Further, for an error to serve as the basis for reversal, it must be so significant as to materially affect the substantial rights of the complaining party. Rule 61, M.R.Civ.P.; *Zeke's Distrib. Co. v. Brown-Forman Corp.,* 239 Mont. 272, 278, 779 P.2d 908, 912 (1989). Nowhere in Maira's appeal does she address how such alleged error would result in any harm requiring it to be corrected in the interest of justice, nor does such basis exist. As outlined above, the Court of Appeal's order, regardless of its precise status or the date of any related oral argument, is simply of no consequence to the District Court's findings, conclusions, and orders.

For the reasons outlined above, Maira's challenge to the District Court's jurisdiction fails. Furthermore, Maira's ongoing efforts to undermine Montana's jurisdiction determination serve to underscore the central purpose of the UCCJEA, as imputed from its earlier version, the Uniform Child Custody Jurisdiction Act ("UCCJA"), which is to prevent conflicting exercise of custody jurisdiction and related problems of "forum shopping, self-help, and re-litigation of custody matters in never ending disputes." *Sampley* at ¶ 23-24.

[1] Per California Rules of Court, Rule 8.272, available at https://courts.ca.gov/cms/rules/index/eight/rule8_272, the California Court of Appeal's decision issued May 21, 2024, did not become final until the applicable time for review had expired and remittitur issued, which did not occur until July 31, 2024.

2) The District Court did not clearly abuse its discretion in including a temporary travel provision into the Parenting Plan.

Next, Maira's fails to demonstrate any abuse of discretion regarding the District Court's inclusion of a temporary travel provision applicable to A.H.S. in the Final Parenting Plan. Instead, Maira misrepresents the terms of the travel provision and fails to acknowledge that the provision applies only to A.H.S. and therefore impacts both parents equally. Most notably, she disregards the serious concerns related to her own conduct, to which the District Court specifically pointed in support of the temporary travel provision.

a. The subject travel provision, applicable only to A.H.S., supports the child's heightened need for stability and continuity of care, and the prioritization of frequent, continuous contact with both parents.

First, Maira misrepresents that she is restricted from traveling; this is incorrect. The referenced restriction provides:

> Travel outside the State. For the remainder of 2024 or until all litigation related to A.H.S. or jurisdiction over parenting remains pending in the State of California, whichever is later, neither parent may take A.H.S. out of the state or the United States without the advance written permission of the other parent. In 2025, if all litigation related to A.H.S. is concluded, then either parent may travel out of state or internationally with A.H.S. during their parenting time (including the three weeks of vacation) upon giving reasonable advance notice to other parent. The traveling parent must provide the other parent in advance with a detailed itinerary and contact information for A.H.S. at all times.
>
> (Dkt. 170, pages 4-5.)

As made clear above, this temporary provision applies only to the parties' child; therefore, both parents are temporarily limited from traveling out-of-state with A.H.S. Although Maira contends that such provision is contrary to A.H.S.'s best interest, the opposite is true.

Throughout this matter, the District Court afforded substantial weight to the testimony of the A.H.S.'s therapist, Kathy Shea, who repeatedly emphasized the child's heightened need for stability and continuity of her care and significant time with both parents, after having experience the disruption of care and denial of contact with Chad due to Maira's conduct. Here, the temporary travel provision further protects and supports the A.H.S.'s ongoing needs and best interests.

b. The temporary provision impacts both Chad and Maira equally and is necessary to prevent unnecessary complications while this ongoing matter reaches a conclusion in both Montana and California.

Both Chad and Maira are free to travel, although, both parents are temporarily limited from traveling out-of-state with A.H.S. Chad provided detailed testimony explaining that Maira's past conduct, including nearly ten months of disobeying the District Court's orders and depriving the child of contact with her father, understandably creates significant concerns that additional out-of-state travel with the child could unnecessarily complicate Maira's ongoing, voluntary litigation of jurisdictional questions. As such, a temporary travel limitation is both appropriately

narrow and necessary to prevent any potential for repeated efforts to further extend this matter while it progresses toward a conclusion in both states.

c. Maira minimizes her own conduct and the related concerns underlying the District Court's decision to implement such provision.

For parenting plans involving travel questions, a district court is faced with the difficult task of balancing a parent's fundamental constitutional right to travel, with the compelling state interest of advancing the best interest of a child. *In re C.J.*, 2016 MT 93, ¶ 21, 383 Mont. 197, 203, 369 P.3d 1028, 1033. Such determinations must be based on legitimate case-specific reasons and evidence that such restriction is in the child's best interest, rather than general discussion about the effects of relocation on children of separation or divorce. *In re the Parenting of M.C.,* 2015 MT 57, ¶ 14, 378 Mont. 305, 343 P.3d 569.

Here, the District Court carefully balanced the factors supporting the constitutional right to travel, with the compelling state interest of advancing the best interest of a child. For example, the District Court clearly recognized that future opportunities for A.H.S. to travel out-of-state and internationally would support her best interest and her bicultural heritage. More importantly, the District Court recognized and prioritized A.H.S.'s heightened and ongoing need for stability and continuity, and for consistent, frequent time with both parents, after she had recently been deprived of the same. (*See, e.g.,* Dkt. 171, page 7 ¶ 30-31; page 11 ¶ c; page 13, ¶ m.)

The District Court specifically referenced the period of September 2022 to July 2023, during which Maira's own conduct created significant disruption, confusion, and unpredictability for A.H.S., via the extended separation from her father with whom she is securely bonded and attached. (*See, e.g. id.* at pages 3-4, ¶ 8-11; page 7 ¶ 31, page 12, ¶ g.) Although Maira attempts to downplay the numerous harmful consequences of her conduct, the District Court appropriately and necessarily considered this relevant case history.

Consequently, the District Court appropriately weighed the significant interests of both parents and A.H.S., and the inclusion of a temporary travel provision in the Final Parenting Plan was not a clear abuse of discretion.

In summary, Maira's challenge to the temporary travel provision fails as she bases her arguments on a misrepresentation of the provision itself, and because she chooses to ignore the substantial, compelling factor supporting such provision, which is her own history of significant noncompliance and the related harms she caused to A.H.S.

3) The District Court appropriately considered the statutory best interest of the child factors, and there is no clear abuse of discretion.

Finally, Maira's argument concerning the District Court having inadequately considered her allegations of domestic violence fails, because she essentially asks this Court to step outside the scope and purpose of an appellate review and instead reweigh the evidence.

In parenting cases, a district court must make custody determinations "in accordance with the best interests of the child, taking into consideration a variety of statutory factors including, but not limited to, the parents' wishes, the interaction and interrelationship of the child with the child's parents, continuity and stability of care, and whether the child has frequent and continuing contact with both parents." Section 40–4–212(1), MCA; *Czapranski* at ¶ 11. A district court is not required to weigh any single factor more heavily than the others; rather, "each custody determination must be decided on a case-by-case basis and different factors will be relevant in making such determinations." *Id.* at ¶ 44.

It is the district court's role to determine witness credibility and assign weight to their respective testimony. *C.J.* at ¶ 19. It is not the appellate court's function to reweigh conflicting evidence or substitute its judgment regarding the strength of the evidence for that of the district court. *B.K.* at 17. When reviewing a parenting plan this Court does not ask whether it "would have reached the same decision," instead this Court asks whether "substantial evidence in the record supports the court's findings regardless of whether the evidence could support a different outcome as well." *Woerner* at ¶ 29.

Here, the District Court conducted extensive fact-finding, including substantial time allotted to Maira for testimony and examination on issues regarding her concerns about Chad's behavior. Similarly, the District Court heard Chad's

testimony, as well as the testimony of additional credible witnesses, including Officer Ransom and Kathy Shea.

In consideration of the extensive information and testimony gathered, the District Court made several relevant findings of fact pertaining to both parties' safety-related concerns. (*See, e.g.,* Findings, Conclusions, and Order, District Court Doc. 170, page 2-3 ¶ 5-6; page 6 ¶ 28; page 7, ¶ 31; and page 8 ¶ 36; and page 10 ¶ 48.) The District Court then assigned weight to those findings, gave recognition to Maira's concerns regarding parental conflict, and confirmed that "fighting and violence between parents is harmful to children." (*Id.* page 11-12, ¶ e.) The District Court ultimately concluded that there was no evidence of any abuse directed at the child, and that there was "no evidence that Chad is anything but a patient, safe, and loving parent towards A.H.S. or that he should receive less than equal parenting time because of this prior incident." (*Id.*)

Clearly, the record demonstrates that the District Court engaged in extensive fact-finding, appropriately determined the relevant strength of the evidence presented, considered the facts within the best interest statutory framework, and determined that a Final Parenting Plan with an equal residential schedule most appropriately supported A.H.S. No abuse of discretion occurred, and Maira is not entitled to rehearing on determinations with which she disagrees.

CONCLUSION

Based on the foregoing, Maira's Appeal should be denied as to each issue, and the District Court's decisions regarding the Parenting Plan should be affirmed.

DATED this 19th day of December, 2024.

LAIRD COWLEY, PLLC

By: */s/ Sara S. Berg*
Sara S. Berg
Attorneys for Chad Senechal

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4), Mont.R.App.P., I certify that APPELLEE'S RESPONSE BRIEF is double spaced, is a proportionately spaced 14 point Times New Roman typeface, and contains 6,904 words not including the Certificate of Compliance, Certificate of Service, Table of Contents or the Table of Authorities.

/s/ Sara S. Berg

CERTIFICATE OF SERVICE

I, Sara S. Berg, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-19-2024:

Maira Horta Moss (Appellant)
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Service Method: E-mail Delivery

Electronically signed by Amber G Carlson on behalf of Sara S. Berg
Dated: 12-19-2024