IN THE SUPREME COURT OF THE STATE OF MONTANA

DA-2024-_____

KAREN LYNN MAYBEE,

Petitioner,

and,

SCOTT BRYON MAYBEE

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

Original Proceeding Arising from the Montana Eighteenth Judicial District Court, Gallatin County, In Re the Marriage of: Karen L. Maybee and Scott B. Maybee, Cause No.: DR-21-349C, Honorable John C. Brown, District Court Judge.

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I. INTRODUCTION

Pursuant to Mont. R. App. P. 14(3), Petitioner, Karen L. Maybee, requests the Court to issue a writ of supervisory control over the Montana Eighteenth Judicial Court directing it to lift the stay in *In re Marriage of Maybee,* Cause No. DR-21-349C because (1) the district court's Order Staying Proceedings (December 6, 2023) and (2) the district court's Order Reserving Ruling (April 25, 2024), were issued under a mistake of law.

The Eighteenth Judicial District Court of Gallatin County has failed to issue orders on ten (10) pending motions,[1] instead staying all proceedings indefinitely preventing the matter from moving forward due to Respondent's challenge of subject matter jurisdiction in tribal court. Meanwhile, Respondent has depleted over $1.5MM from the parties' joint account - exclusive of business and cash expenditures - since separation with no apparent end in sight. The stay of the dissolution proceedings was a mistake of law causing gross injustice to Petitioner requiring swift and immediate intervention.

[1] Petitioner's Motion to Compel and Request for Attorney Fees (Dkt #86); Petitioner's Motion for Contempt, Sanctions and Request for Hearing (Dkt #87); Petitioner's Motion to Strike Late Expert Witness Disclosure (Dkt #108); Respondent's Motion for Scheduling Order (Dkt #109); Respondent's Motion to Exclude Witness and Testimony (Dkt #119); Petitioner's Motion to Set Aside Order Staying Proceedings (Dkt #145); Respondent's Motion to Enforce Foreign Judgment and Dismiss Subject Matter Jurisdiction (Dkt #144); Petitioner's Motion for Possession of Property and Expedited Ruling (Dkt #155); Respondent's Motion to Quash Subpoena (Dkt #160); Petitioner's Motion to Compel Unredacted Financial Statements (Dkt #176)

I. RELEVANT FACTUAL AND PROCEDURAL HISTORY

The parties were married on October 26, 2001 in St. Maarten. There were two (2) children born of the marriage. The oldest child has since aged out leaving one minor child (age 17). Scott is an enrolled member of the Seneca Nation of Indians ("Nation"), owns real property within the Nation, and is a business partner with fellow enrolled Senecas doing business both within and beyond the Nation territory. Karen and the children are non-Indian. Karen and Scott have resided in Montana since 2011.

On September 17, 2021, Karen filed for an Order of Protection and Dissolution of Marriage in the Montana Eighteenth Judicial District Court, Gallatin County. The District Court issued an Automatic Economic Restraining Order (hereinafter "AERO") pursuant to MCA § 40-4-126. On October 22, 2021, Scott filed his Response to Petition for Dissolution, admitting to personal and subject matter jurisdiction, and agreed to the entry of an Order of Protection. Both Karen and Scott have been represented by counsel throughout these proceedings.

On October 30, 2023, more than two (2) years later, Scott filed a Petition Requesting Relief from Foreign Court Interference in the Peacemakers Court of the Seneca Nation of Indians.[2] *See attached* **Exhibit 1**. Scott alleges that he initiated the action in Peacemakers Court to "safeguard [his] rights to [his] real property and

[2] *Scott B. Maybee v. Karen L. Maybee*, Civil Action No. 1201-23-1, Seneca Nation of Indians Peacemakers Court.

business interest located within the Nation […].” *Id.* He further alleges that the dissolution proceedings in Montana threaten to interfere with the sovereign authority of the Nation […] to determine the ownership and valuation of Nation land and business interests formed under Nation law and located within the Nation. *Id.* ¶ 15. Specifically, he requests a declaratory ruling from the Peacemakers Court of the Seneca Nation of Indians that it has sole and exclusive jurisdiction to adjudicate and determine the value of certain assets and income streams that are currently being considered in this dissolution action. *Id.* To be clear, Karen has never sought ownership, possession or control of any tribal property and/or business interests in the dissolution action. But Karen has requested that the value of tribal property or business interests be *considered* in determining an equitable distribution of the marital estate.

On November 8, 2023, Scott filed a Motion to Stay Proceedings with the Montana District Court due to “*potential* issues of tribal sovereignty, the doctrine of comity, and the *possibility* of conflicting judgments subjecting both parties to conflicting orders and mandates,” (emphasis added). *See* Resp. Mot. to Stay Proceedings, p. 2. Scott neither expounds upon these assertions or their constitutions of “good cause” nor provides any relevant legal authority to support these claims. *See* Pet. Resp. to Mot. to Stay Proceedings, p. 4.

On December 6, 2023, Peacemakers Court issued an Order to Show Cause. The same day, the Montana District Court issued the Order Staying Proceedings as a matter of "judicial efficiency," ordering that "the parties' dissolution proceedings are stayed until the Peacemakers Court […] issues a declaratory judgment stating its jurisdiction, or lack thereof, *over this dissolution*," (emphasis added). **There is no dissolution action pending in in Peacemakers Court.**

A hearing was held on January 23, 2024 in Peacemakers Court on Scott's Petition. Karen did not personally attend the hearing; however, her New York counsel, Charles Ritter, attended.[3] Scott personally attended the hearing, represented by his New York counsel, Mike Williams and Robert Odawi Porter.[4] During the hearing, Scott presented testimony without providing any supporting documents or evidence. *See attached* **Exhibit 2** (SNI Hearing Transcript). Scott also admitted that (1) any income derived from his businesses during the marriage constituted marital income and/or property, and (2) that issues of parenting, child support, spousal support, and distribution of all "non-tribal" property should be adjudicated by the Montana District Court.

On January 29, 2024, Peacemakers Court issued a Declaratory Judgment ordering that issues of parenting, child support, spousal support, and "non-tribal"

[3] Karen was forced to hire New York counsel, Charles Ritter, to defend against the action Scott initiated in Peacemakers Court, which has now cost Karen an additional $80,000 in legal fees.
[4] Robert Odawi Porter is also Scott's personal friend involved in the formation of his businesses and has been disclosed as an "expert witness" in the Montana dissolution matter.

property were properly pending before the Montana District Court and should proceed.[5] *See attached* **Exhibit 3**. **And yet, the case is still stayed.**

On February 27, 2024, Karen appealed the Declaratory Judgment with the Peacemakers Court of Appeals on the grounds of violation of due process, lack of discovery and sufficient hearing, improper determination of marital assets, and lack of jurisdiction. *See attached* **Exhibit 4** (Notice of Appeal). The appeal does not challenge the Peacemakers Court's determination that issues of parenting, child support, spousal support, and non-tribal property are properly before the Montana District Court.

On March 1, 2024, Scott filed his Motion to Enforce a Foreign Judgment and Dismiss Subject Matter Jurisdiction in the Montana dissolution action (Dkt # 144). That same day, pursuant to M. R. Civ. P. 60(b)(3), Karen timely filed her Motion to Set Aside Order Staying Proceedings (Dkt # 145) arguing that proceedings should have never been stayed due to Scott's fraudulent representations to the Montana District Court.

On April 25, 2024, the Montana District Court issued an Order Reserving Ruling (Dkt #154) on Petitioner's Motion to Set Aside Order Staying Proceedings and Respondent's Motion to Enforce a Foreign Judgment and Dismiss Subject

[5] Notably, the Declaratory Judgment is not a final foreign order that was ever properly registered in the Montana District Court.

Matter Jurisdiction "until the Peacemakers [sic] appeal is finalized" and vacating all previously scheduled hearings. Karen has been begging the Court for a hearing for over three (3) years, only to be silenced by a stay that was issued based on a mistake of law. The prolonged inaction by the Montana District Court also violates Karen's constitutional right to speedy justice and access to the Courts and requires swift and immediate intervention. *See* Mont. Const. art II §16.

II. SUMMARY OF THE ARGUMENT

Karen asks this Court to exercise its supervisory control pursuant to Montana Rule of Appellate Procedure Rule 14(3)(a) regarding the Order Staying Proceedings (December 6, 2023) and Order Reserving Ruling (April 25, 2024).

Supervisory control is appropriate when a district court is "proceeding under a mistake of law and is causing a gross injustice." Mont. R. App. P. 14(3)(a). Here, the Montana District Court is proceeding under a mistake of law in two instances: (1) ordering a stay of proceedings without the proper registration of a final order from a foreign court, and (2) reserving ruling on all pending motions and continuing the stay for an indeterminate period, **despite the Peacemakers Court conceding it does not have jurisdiction over the dissolution**. Supervisory control is necessary because, absent immediate intervention, Karen will suffer further significant and irreversible harm, rendering ordinary appeal inadequate.

Here, the dissolution involves two Montana residents who have accumulated considerable marital assets to be equitably divided according to Montana law. Mont. Code Ann. § 40-4-202 governs the equitable apportionment of marital property, assets, and debt in dissolution proceedings. *In re Funk* (2012), 270 P.3d 39, 363 Mont. 352, 2012 MT 14. Furthermore, consideration of tribal property is correctly set out in *In re Marriage of Seyler*, 2002 Wash. App. LEXIS 2549, which is that "a court may still take into consideration the existence and value of [tribal] property in making its distribution of the marital estate." (citing *In re Marriage of Landauer*, 95 Wash. App. 579, 586, 975 P.2d 577 (1999)).

As a non-Native, Karen cannot own or claim ownership interest in Scott's tribal property or business interests; however, the Montana District Court must consider their value in determining an equitable distribution of the marital estate. *In re Funk,* 2012 MT 4, 363 Mont. 352, 270 P.3d 39. Accordingly, Karen is properly requesting that Scott's tribal land and/or business interests be *considered* for valuation purposes to achieve an equitable apportionment of the marital estate.

Given that the district court is proceeding (or rather, failing to proceed) under a clear mistake of law, a writ of supervisory control must be issued. Further, the gross injustice being caused to Karen requires immediate intervention because Scott continues to dissipate the marital estate at an extraordinary rate in direct violation of

the AERO. If the Court fails to act now, there will hardly exist a marital estate left to divide.

III. ARGUMENT

Supervisory control is necessary because the district court is proceeding under a mistake of law causing a gross injustice to Karen.

Here, the questions requiring a writ are questions of law. The first question is whether the district court's Order Staying Proceedings, which was based on nothing more than mere notice that a separate action was filed in a foreign court, was a mistake a law. The second question is whether the Order Reserving Ruling, which stayed all proceedings for an indeterminate period, despite the foreign court having no jurisdiction over the dissolution action, was a mistake of law. The answer to both questions is: Yes.

Both orders have resulted in extraordinary harm to Karen, requiring swift and immediate intervention.

A. Standards Governing Supervisory Control.

The Montana Supreme Court has general supervisory control over all other courts and may supervise another court by way of a writ of supervisory control. Mont. Const. art. VII §2(2); Mont. R. App. P. 14(3). *Lamb v. Dist. Court of the Fourth Judicial Dist. of Mont.*, 2010 MT 141, ¶ 1, 356 Mont. 534, 535, 234 P.3d 893, 893. Supervisory control is appropriate where the district court is proceeding

under a mistake of law, and in so doing is causing a gross injustice." *Potter v. District Court* (1994), 266 Mont. 384, 880 P.2d 1319.

Supervisory control is considered an extraordinary remedy. Thus, the Supreme Court of Montana exercises supervisory control on a case-by-case basis and only (1) when urgency or emergency factors exist making the normal appeal process inadequate; (2) when the case involves purely legal questions; and (3) when one or more of the following circumstances exist: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of statewide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. Mont. R. App. P. 14(3)(a)-(c).

An order staying proceedings is not an appealable order. *See* Mont. R. App. P. 6(3); *Lamb*, 2010 MT 141, ¶11. Further, stays imposed by the district court for an indeterminate amount of time (i.e., where the stay is contingent on the resolution of an underlying or related claim or action) are prejudicial where the petitioner has been placed "at significant disadvantage in litigating the merits of the case." *Id.*

B. The District Court's Order Staying Proceedings Was A Mistake Of Law.

Here, the question requiring a writ is a pure question of law and urgent factors exist that warrant swift resolution. The District Court is proceeding under mistakes of law causing gross injustice to Petitioner, necessitating supervisory control.

i. The District Court's Failure to Enforce Scott's Judicial Admission to Personal and Subject Matter Jurisdiction of the Montana District Court was a Mistake of Law.

Here, the district court improperly stayed the dissolution proceedings on December 6, 2023 based on mere notice that Scott had filed a petition in Peacemakers Court, wherein he requested a declaratory ruling that Peacemakers Court has sole and exclusive jurisdiction to adjudicate and determine value of certain alleged "nation-sourced" assets and income streams that are currently being considered in the dissolution matter.

First and foremost, "parties are bound by the admissions in their pleadings." *In re Marriage of Baker,* 2010 MT 124, ¶28, 356 Mont. 363, 369, 234 P.3d 70, 74 (internal citation omitted); *see also Grimsley v. Estate of Spencer*, 206 Mont. 184, 199, 670 P.2d 85, 93 (1983) ("That a party is bound by his pleadings needs no further elucidation."); *Fay v. A. A. Oil Corp.*, 129 Mont. 300, 323, 285 P.2d 578, 590 (1955) ("The rule is that parties are bound by and estopped to controvert admissions in their pleadings."). In the instant matter, Scott waited over two (2) years to file a petition in tribal court wherein he raised "*potential* issues of tribal sovereignty, the doctrine of comity, and the *possibility* of conflicting judgments […]." The Montana District Court even noted that Scott's newly raised theory that the tribal court should have subject matter jurisdiction over certain property "should have been brought to the

Court's attention when [Scott] filed his Answer to the Petition." *See* Order Staying Proceedings, p.1.

Further, and contrary to Scott's claims, his tribal businesses do *not* operate solely "within" the Nation territory, thereby subjecting them to the jurisdiction of state and federal courts (e.g., Oregon, Maine, Idaho, New York, and Nevada). *See State v. Maybee*, 235 Or. App. 292, 232 P.3d 970 (2010); *HHS v. Maybee*, 2009 ME 15, 965 A.2d 55; *State v. Maybee*, 148 Idaho 520, 224 P.3d 1109 (2010); *Maybee v. Idaho,* 562 U.S. 835, 131 S. Ct. 150 (2010)(cert. denied); *Day Wholesale, Inc. v. State of N.Y.*, 2008 NY Slip Op 4179, 51 A.D.3d 383, 856 N.Y.S.2d 808 (App. Div.), *Nev. Ex rel. Masto,* 2010 Nev. Dist. LEXIS 2. Further, Scott's businesses are registered in other states, such as New York and Delaware, but the Montana District Court has apparently ignored this factual information.

Despite Scott's judicial admission that (a) the Montana District Court has subject matter jurisdiction of the dissolution and (b) prior rulings from several state and federal courts affirming jurisdiction over Scott's tribal businesses, the Montana District Court issued the stay "until the Peacemakers Court … issues a declaratory judgment stating its jurisdiction, or lack thereof, *over this dissolution*." Yet Peacemakers Court agrees it does not have jurisdiction over the dissolution. There is no question that the district court stayed all proceeding under a mistake of law.

ii. *The Court Order Staying Proceedings based on Mere Notice That Scott Initiated an Action in Peacemakers Court was a Mistake of Law.*

It is well-settled that tribal courts do not have superior authority over state district courts. "No legal judgment has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. Because states and Indian tribes coexist as sovereign governments, they have no direct power to enforce their judgments in each other's jurisdictions." *Anderson v. Engelke,* 1998 MT 24, ¶ 1, 287 Mont. 283, 285, 954 P.2d 1106, 1107 (internal citation omitted). Further, judgments of foreign nations cannot be registered under the Uniform Enforcement of Foreign Judgments Act (the "Act"). The Montana Supreme Court treats tribal court judgments as decisions of foreign nations, which means such judgments are not subject to the simplified registration procedures of the Act. *Sioux v. Aisenbrey,* 2008 Mont. Dist. LEXIS 634, ¶2. Addressing this exact issue, the Montana Attorney General has ruled that "a judgment, decree, or order of an Indian Tribal Court may not be filed as a foreign judgment under the provisions of the Act, except in the case of an Indian child custody proceeding." *See 44 Opin. A.G. 15 (1991).* Absent the institution of a special proceeding to register and enforce a foreign judgment pursuant to MCA § 26-3-205, the district court cannot recognize the same. Here, no final foreign order has ever been registered in in the Montana District Court. Thus, the district court's reliance on a non-final, foreign order in issuing a stay of all proceedings for an indefinite period was a clear mistake of law.

C. The District Court's Orders Staying All Proceedings Has Caused a Gross Injustice and Irreparable Harm to Petitioner.

The District Court's Orders are wholly inconsistent with well-established legal precedent regarding judicial admissions and registration of foreign orders. Again, the court does not cite any statute or procedure to support its reasoning other than "judicial economy." This was a clear mistake of law, and the gross injustice being caused to Karen is significant in two distinct ways.

i. A stay of all proceedings was an abuse of discretion causing undue prejudice to Karen by preventing discovery of certain financial and business information necessary to prove her claims.

The stay of "all" proceedings means that Karen is prevented from developing her claims relating to spousal maintenance and an equitable distribution of the marital estate through discovery, cannot file motions to begin narrowing the issues for trial, and cannot take any further steps towards resolution. *See Lamb,* 2010 MT 141, ¶11. Simply put, staying discovery places Karen at a significant disadvantage insofar as it prevents her from developing her case while simultaneously allowing Scott to continue with his pattern of withholding personal and business financial activities. *See State ex rel. Burlington N. R.R. v. Eighth Judicial Dist. Court,* 239 Mont. 207, 211-12, 779 P.2d 885, 888-89 (1989).

This Court has found exercise of supervisory control necessary and proper where the ruling at issue dramatically affects the costs and scope of trial preparation and presentation, and also significantly alters the dynamics of settlement

negotiations. *See Stokes v. Mont. Thirteenth Judicial Dist. Court* (*Stokes I)*, 2011 MT 182, ¶¶ 6-8, 361 Mont. 279, 259 P.3d 754; *Truman*, ¶ 15; *Plumb v. Mont. Fourth Judicial Dist. Court*, 279 Mont. 363, 370, 927 P.2d 1011, 1015-16 (1996) (superseded on other grounds). As in *Stokes I*, *Truman*, and *Plumb*, judicial economy and the avoidance of unnecessary procedural complication warrant the exercise of supervisory control to avoid substantial injustice in the form of undue cost and delay.

As a non-Indian, Karen cannot have ownership, possession, or control over any real property or business interests located on or within the Seneca Nation. However, the Montana District Court can and must consider the value of Scott's tribal property and business interests when determining an equitable distribution of the marital estate. *In re Funk,* 270 P.3d 39.

Throughout these proceedings, Scott has gone to extraordinary lengths to prevent the disclosure of certain property and business interests and/or income by claiming they are "nation-sourced" or "native-owned." By way of example, Scott failed to disclose a very lucrative marijuana retail business, Two Row Enterprises (TRE), that began in July 2023.[6] Karen only learned of this business when a former employee and whistleblower came forward. Based on the information obtained pursuant to subpoena, TRE earns an estimated $4MM per year in unreported cash income. Upon this discovery, Scott's (now former) lawyer, Robert Odawi Porter,

[6] Two Row Enterprises is a subsidiary of Red Oak Group, LLC, of which Scott Maybee is a 33.3% owner.

sent threatening letters to Karen's counsel demanding the return and destruction of information legally obtained pursuant to subpoena. *See attached* **Exhibit 5**. This is merely one example of Scott's tactics of bullying Karen into financial submission while siphoning off the marital estate. Absent immediate intervention, Scott will continue diverting marital assets into his "native-owned" property or businesses in attempt to shield his assets from the discovery process or from being considered at all in the dissolution proceedings.

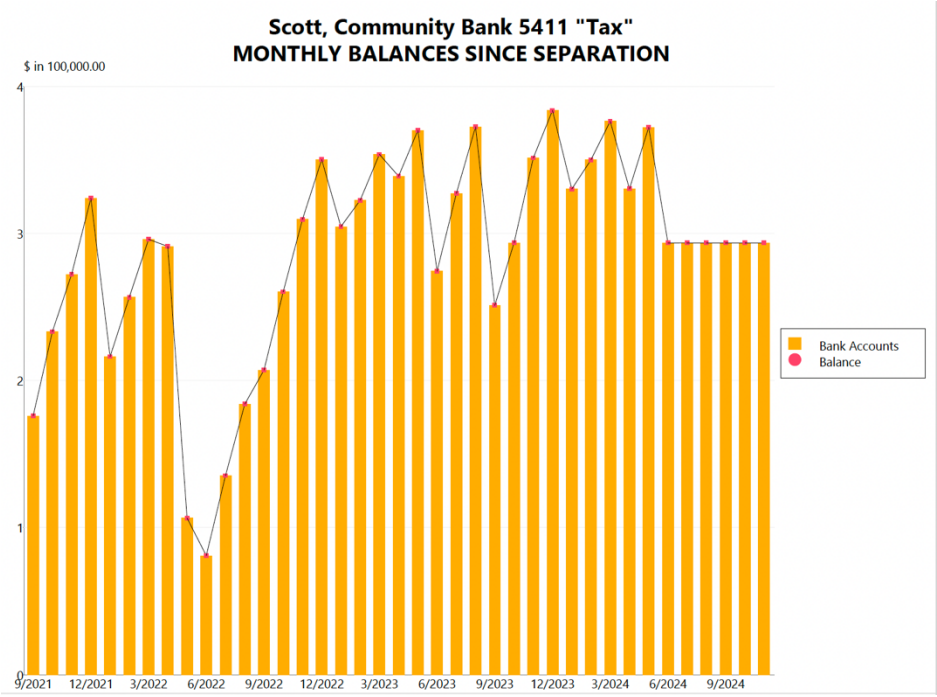
ii. The Order Staying Proceedings and Order Reserving Ruling has resulted in extraordinary irreparable financial harm to Karen and the children.

The Order Staying Proceedings and Order Reserving Ruling on all pending motions leaves Scott's behavior unchecked and without consequence. The stalemate caused by the stay has resulted in an obscene amount of financial harm rarely seen by Montana courts in dissolution actions. Multiple motions are pending, but the Court has failed to issue <u>any</u> dispositive rulings or hold <u>any</u> hearings in over three (3) years. In that time, Scott has spent over $1.5MM from the Joint Account <u>on himself</u>, and his spending only continues to increase. If the stay is not lifted immediately, Karen will suffer permanent and irreparable financial harm through Scott's continued dissipation of the marital estate.

An in-depth review of the parties' financials clearly demonstrates that (1) Scott has intentionally obfuscated his finances for well over a decade, and (2) Scott

has been engaged in a pattern of divesting significant assets away from the marital estate without proper compensation. While the former may have criminal implications (i.e., tax fraud), the latter concerns multiple violations of MCA § 40-4-126 without consequence.

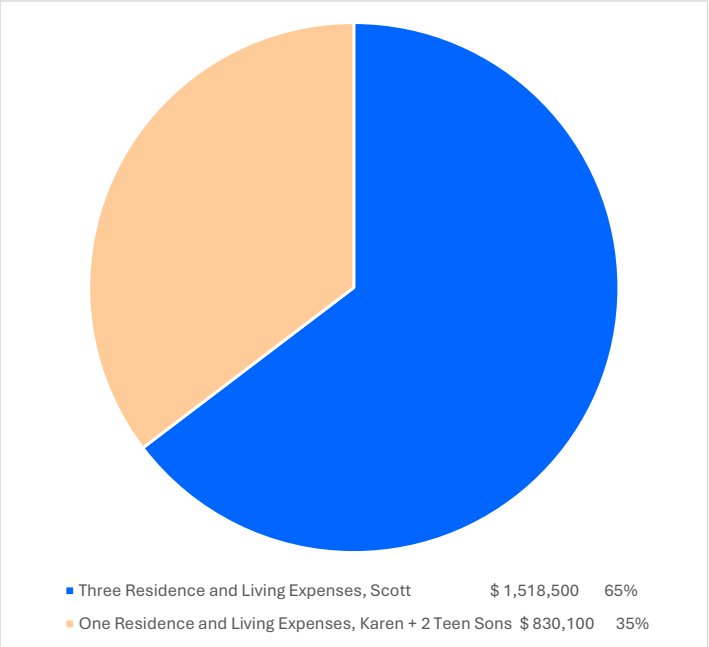
Prior to separation in September 2021, the parties' First Security Bank Joint Account x5419 (hereinafter "Joint Account") maintained an average balance of $150,000, with deposits from business activity averaging $100,000 per month to cover family expenses. Since separation, deposits into the Joint Account have averaged less than $50,000 per month, with expenditures now averaging $122,000 per month. Meanwhile, Scott's deposits into his separate "Tax Account" with Community Bank in New York have increased substantially since separation with an average balance of $300,000. **Karen has no access to these funds**.



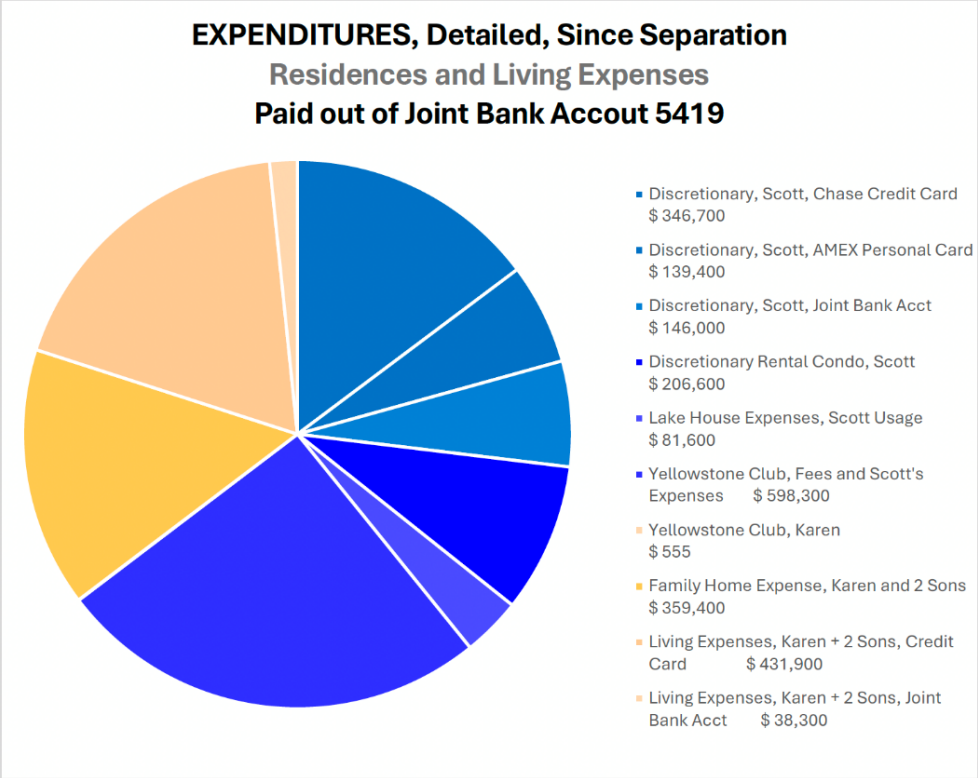
Immediately prior to the separation, Scott did an *interest-only,* cash-out refinance of two (2) of the parties' Montana properties totaling $1,711,937.00, which was deposited into the Joint Account. Of those funds, $406,727 (or 24% of the borrowed funds) has gone to paying interest on the loans themselves, and over 60% of spending has been funded by (a) the borrowed home equity and (b) $24,500 in monthly transfers from investment accounts. **The borrowed equity is now fully depleted.**

A further analysis shows an estimated $2,348,600.00 in expenditures from the Joint Account since separation. Of that, $1,518,500 (or 65%) is attributable to Scott alone; whereas $830,100.00 (or 35%) is attributable to Karen and the children, combined, as shown below:

SPENDING FROM JOINT BANK ACCOUNT *5419 SINCE SEPARATION
09.15.2021 – 11.22.2024
RESIDENCES AND DISCRETIONARY LIVING EXPENSES
Scott vs. Karen + 2 Teen Sons



Broken down further, the expenditures are as follows:



Scott continues to live a playboy lifestyle funded by the marital estate; meanwhile the Montana District Court does nothing. Should the Montana District Court fail to act, Karen will have no accessible funds to support herself or the parties' two (2) children and Scott will continue to engage in conduct causing irreparable and irreversible harm to them. **A writ is the only available remedy left for Karen and her children.**

IV. CONCLUSION

Karen is not asking this Court to weigh in on the merits. Instead, she only asks this Court to order the Montana District Court to take the case out of stay and allow the case to move forward.

Here, an exercise of supervisory control is necessary and proper because the Montana District Court is proceeding under a mistake of law which, if left uncorrected, will continue to cause a gross injustice and irreparable harm to Karen.

Dated this 30th day of December 2024.

Pabst Law Firm

By: Caitlin Pabst

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11(4)(d) and 14(9)(b) of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count is not more than 4,000 words, excluding table of contents, table of citations, certificate of service, certificate of compliance and any appendix containing statutes, rules, regulations and other pertinent authorities.

Dated this 30th day of December 2024.

Pabst Law Firm

By: 

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CERTIFICATE OF SERVICE

I, Caitlin Terese Pabst, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 12-30-2024:

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Electronically signed by Jen Kurk on behalf of Caitlin Terese Pabst
Dated: 12-30-2024