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IN THE SUPREME COURT OF THE STATE OF MONTANA

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 24-0382

No. DA 24-0382

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IN THE MATTER OF THE PARENTING OF:

A.H.S., a minor child;

CHAD SENECHAL,

Petitioner Appellee,

And

MAIRA HORTA MOSS,

Respondent Appellant

FILED

JAN 14 2025

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

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**APPELLANT'S REPLY BRIEF**

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

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## **I. INTRODUCTION**

Chad's opposition brief seeks to defend a series of legally flawed rulings by the District Court. His arguments selectively apply the UCCJEA and Montana law while disregarding well-established principles requiring courts to reassess custody jurisdiction when new appellate rulings arise.

Additionally, Chad's defense of the District Court's travel restrictions further disregards Maira's constitutional right to travel and the child's best interests. These restrictions disproportionately burden Maira, severing the child's critical familial and cultural ties without serving any legitimate purpose.

Finally, Chad fails to address the District Court's refusal to meaningfully consider credible evidence of his domestic violence. The court's narrow focus on the absence of direct harm to the child overlooks well-documented abuse and its psychological impact on the child. The District Court's flawed jurisdiction determination, punitive travel restrictions, and failure to weigh this evidence amount to clear abuses of discretion requiring correction.

## **II. INACCURACIES IN APPELLEE'S STATEMENT OF FACTS**

Chad's Statement of Facts omits key details and presents a distorted narrative of the timeline and jurisdictional issues in this case. His account fails to acknowledge critical facts, including Maira's initial custody filings in California on September 7, 2022—prior to Chad filing his competing motion in Montana on September 8,

2022—and the temporary nature of the family’s relocation to Montana. The omission of these and other key facts creates a misleading foundation for his arguments. In contrast, Maira’s Statement of Facts in the Opening Brief provides a comprehensive and accurate account of the relevant facts, including the child’s significant time residing in Brazil from April 2020 to April 2022, Chad’s perpetration of domestic violence, and the subsequent California appellate rulings that reopened the jurisdictional analysis. (Opening Brief, pp. 10-15, 20-22). Correcting these misstatements is essential to ensure the Court has a clear and accurate understanding of the record.

### **III. ARGUMENT**

Chad mischaracterizes Maira’s appeal as an attempt to relitigate facts, when it is, in fact, a challenge to the District Court’s abuse of discretion in failing to reassess jurisdiction after significant legal developments. (Opposition Brief, p. 17.) Maira’s arguments are firmly rooted in the UCCJEA’s mandate for interstate judicial cooperation and address the District Court’s failure to comply with that mandate. (Opening Brief, pp. 16-21, 23-25, 45.)

Contrary to Chad’s claims, Maira did not consent to Montana’s jurisdiction. (Opposition Brief, p. 22.) Her participation in the Montana proceedings was necessary to protect her parental rights while awaiting the California appellate outcome. The UCCJEA does not permit jurisdiction to remain binding after a sister

state has issued a contrary ruling. Maira’s appeal seeks to enforce the UCCJEA and prevent conflicting custody orders—not to dispute factual findings.

**1) The District Court’s Custody Jurisdiction Determination Was Unsupported by Substantial Credible Evidence and Constitutes an Abuse of Discretion and Clear Error Under the UCCJEA**

The District Court’s jurisdictional determination was based on outdated facts and failed to account for critical legal developments, most notably the California Court of Appeal’s reversal of the San Diego Superior Court’s relinquishment of jurisdiction. By refusing to reassess jurisdiction in light of these developments, the District Court violated Montana law and the UCCJEA, which require ongoing coordination with sister states to prevent conflicting custody orders. This failure to comply with the UCCJEA’s mandate resulted in the very jurisdictional conflict the statute was designed to avoid, rendering Montana’s continued assertion of jurisdiction legally untenable and a clear abuse of discretion.

**a. The District Court’s Jurisdictional Determination Failed to Comply with the UCCJEA and Montana Law**

Chad’s argument that the District Court’s custody jurisdiction was properly established under the UCCJEA and supported by substantial credible evidence (Opposition, p. 18), fails to account for the record’s clear inaccuracies and the District Court’s reliance on outdated and incomplete information. The District Court’s May 22, 2024, jurisdictional determination was based on its earlier May 18,

2023, Order, which preceded critical rulings by the California Court of Appeal that reversed California's relinquishment of jurisdiction. The District Court's determination also relied on the findings from the October 2022 UCCJEA conference, where both courts agreed that neither Montana nor California was the child's "home state." However, this reliance became legally unsound following the California appellate court's May 21, 2024, reversal. (Dkt. 51, pp. 8-9; Dkt. 168).

Despite being notified of the California appellate ruling and taking judicial notice (Dkt. 172), the District Court failed to reassess its jurisdiction as mandated by Montana law and the UCCJEA. Mont. Code Ann. § 40-7-201 requires courts to give full faith and credit to custody decrees from other states, especially those issued by appellate courts. The District Court's refusal to follow this mandate created the exact jurisdictional conflict the UCCJEA aims to prevent.

Montana courts have long emphasized the need for jurisdictional reassessment when new facts or legal developments arise. In *In re J.D.*, 2021 MT 102, ¶ 25, the Montana Supreme Court held that courts must defer to a sister state's jurisdiction when a higher court in that state issues a ruling affecting jurisdiction. Similarly, *In re Parenting of L.D.C.*, 2022 MT 161, ¶¶ 18-19, stressed the importance of incorporating new legal developments into jurisdictional analysis. The District Court's failure to do so here represents a clear departure from these established legal standards.

Chad's reliance on *In re Marriage of Sampley*, 2015 MT 121, and *In re B.K.*, 2018 MT 217, is misplaced. These cases address factual findings by district courts, but they do not excuse a court from disregarding binding legal developments from sister states. Jurisdictional questions are legal conclusions, reviewed *de novo* for correctness. See *In re Parenting of J.M.A.*, 2014 MT 83, ¶ 10. Chad's attempt to frame this issue as a factual dispute misses the core legal error: the District Court's refusal to reassess jurisdiction after California reopened its proceedings.

The District Court compounded this error by inaccurately stating that the California appeal was still pending, even though the California Court of Appeal issued a final ruling on May 21, 2024. (Dkt. 171, p. 4). This demonstrates a failure to account for significant legal developments that directly impacted Montana's jurisdictional claim.

Maira's Opening Brief correctly identifies this legal error and applies well-established UCCJEA principles to argue that the District Court's continued assertion of jurisdiction was improper. The UCCJEA mandates coordination between states to prevent conflicting custody orders, and Montana courts must defer to sister state rulings when new jurisdictional findings arise. See *Smalling v. Klubben*, 2018 MT 217, ¶¶ 14-16.

Chad's case law citations do not support his argument but instead reinforce Maira's position that the District Court's refusal to reassess jurisdiction violated

Montana law and the UCCJEA. Therefore, the District Court's jurisdictional determination was legally invalid, and its continued assertion of jurisdiction constitutes a clear abuse of discretion that must be corrected.

**b. The Montana District Court's Custody Jurisdiction Determination Is Neither Binding nor Exclusive**

Chad's argument that Montana's jurisdictional determination is binding and exclusive under Mont. Code Ann. § 40-7-202 is legally flawed and utterly disregards the UCCJEA's core mandates. He ignores both the statutory duty to reassess jurisdiction when new legal developments arise and the clear legal impact of the California Court of Appeal's reversal of its relinquishment of jurisdiction. His position is not only incorrect but also dangerous—it promotes jurisdictional conflicts that the UCCJEA explicitly seeks to prevent.

Under the UCCJEA, exclusive, continuing jurisdiction is never guaranteed to be permanent. It must be reassessed when new developments could impact the original determination. The California Court of Appeal's May 21, 2024 reversal, which vacated the San Diego Superior Court's relinquishment of jurisdiction, constitutes a significant legal development that required Montana to immediately pause its proceedings and communicate with California. Yet, Montana failed to do so, in blatant violation of Mont. Code Ann. § 40-7-108, which imposes a continuing duty on courts to coordinate with sister states during pending jurisdictional disputes.

Chad's assertion that Montana's jurisdiction remains valid disregards the UCCJEA's primary purpose: preventing conflicting custody orders across state lines. See *In re Parenting of L.D.C.*, 2022 MT 161, ¶¶ 18-19. The California appellate court's reversal directly reopened the jurisdictional issue, requiring reassessment of whether California retained jurisdiction based on the child's significant connections and the availability of evidence at the time of the competing filings in September 2022. Instead of complying with the UCCJEA's requirement to coordinate with California, Montana recklessly continued issuing orders, creating exactly the kind of jurisdictional chaos the UCCJEA seeks to prevent.

Chad's argument also assumes that Montana's jurisdiction became permanently binding after its May 18, 2023 Order, despite clear statutory requirements to reassess jurisdiction when new legal rulings arise. The Montana Supreme Court has long recognized that jurisdictional determinations must reflect current facts and legal developments to avoid instability in child custody matters. See *In re J.D.*, 2021 MT 102, ¶ 25. Montana's refusal to incorporate the California appellate reversal into its analysis ignored both facts and law, creating legal and practical instability for A.H.S., who is now subject to conflicting custody orders between two states.

Montana's ongoing assertion of jurisdiction without reassessment is not just legally improper; it's a flagrant violation of the UCCJEA's statutory requirements. The UCCJEA explicitly mandates that courts must stay proceedings and communicate

with sister states when there is a pending jurisdictional question. See Mont. Code Ann. § 40-7-108. The California Court of Appeal's reversal reopened the jurisdictional question, triggering Montana's obligation to coordinate with California. By continuing to issue orders without reassessing jurisdiction or pausing its proceedings, the Montana District Court disregarded the UCCJEA's fundamental mandate for interstate judicial cooperation.

Moreover, Chad's argument that none of the statutory conditions for terminating exclusive jurisdiction under Mont. Code Ann. § 40-7-202 have been met is legally untenable. Section 40-7-202(1)(a) provides that a state's jurisdiction terminates when neither the child nor a parent maintains a significant connection to the state, and substantial evidence regarding the child's care is no longer available within the state. The California appellate court's reversal reopened the jurisdictional issue precisely because California may retain jurisdiction based on the child's significant connections to California, not Montana, at the time of the original filings. Chad's reliance on outdated facts and incomplete information from the October 2022 UCCJEA conference is unpersuasive. The conference findings, which concluded that neither state was the child's "home state," became legally irrelevant once California's appellate ruling reopened the jurisdictional question.

Chad's insistence that Montana's jurisdiction remains binding despite the California appellate reversal shows a willful disregard for the UCCJEA's requirements to avoid

conflicting custody orders. His argument relies on an outdated, flawed assumption that Montana's jurisdiction became permanently binding, ignoring the core UCCJEA principle that courts must continually reassess jurisdiction when new facts or legal rulings arise. Montana's ongoing assertion of jurisdiction is precisely the type of jurisdictional conflict that the UCCJEA was designed to prevent.

Therefore, Montana's failure to reassess its jurisdictional claim and coordinate with California constitutes a clear legal error and abuse of discretion.

**c. The California Court Of Appeal's Orders Impact The Fundamental Question Of Which State Has Continuing Jurisdiction**

Chad's claim that the California Court of Appeal's May 21, 2024, and June 11, 2024, orders have no bearing on Montana's jurisdiction is both legally baseless and factually incorrect. (Opposition, pp. 20-21). These rulings reopened California's jurisdiction under the UCCJEA, directly affecting Montana's ability to assert exclusive, continuing jurisdiction. (Opening Brief at 4-5; Dkt. 168, pp. 5-29). Mont. Code Ann. § 40-7-108 required Montana to pause proceedings and communicate with California to avoid conflicting custody orders, and the District Court's failure to do so constitutes a legal error that undermines the UCCJEA's core purpose.

Chad's argument that the appellate orders were "limited in scope" is a deliberate mischaracterization. The May 21, 2024, order vacated California's prior relinquishment of jurisdiction and remanded the case for reassessment under the

UCCJEA, focusing on California’s jurisdiction at the time of the initial filings—not subsequent custody orders issued by Montana. (Dkt. 168, pp. 5-29). The June 11, 2024, supplemental order reaffirmed this directive and clarified that the child’s significant connections and substantial evidence in California must be considered. (Dkt. 176, pp. 3-5; Opening Brief, pp. 12-13, 20-22).

Contrary to Chad’s assertions, these appellate orders required Montana to defer to California’s reassessment process to prevent conflicting custody orders. Chad’s reliance on Montana’s post-appeal orders ignores that Mont. Code Ann. § 40-7-201 mandates jurisdiction be based on facts at the time of the initial filings, not later developments.

Chad’s assertion that the California appellate court did not find that California retained jurisdiction is irrelevant. The UCCJEA does not require a definitive ruling to trigger reassessment; it mandates reassessment whenever new legal developments arise. See *In re Parenting of L.D.C.*, 2022 MT 161, ¶¶ 18-19. The appellate rulings reopened the jurisdictional issue, requiring Montana to halt proceedings and coordinate with California.

Chad’s suggestion that California will likely defer to Montana’s jurisdiction is speculative and unsupported by the record. The appellate orders demand a full jurisdictional reassessment, focusing on the child’s connections and available

evidence in California at the time of the competing filings. (Dkt. 176, p. 4).

There is no basis to assume that California will automatically defer to Montana.

Chad's reliance on California's upcoming October 2025 hearing to dismiss Maira's appeal is premature and misleading. The appellate court clearly stated that the jurisdictional analysis must be based on facts at the time of the original filings—not on later orders from Montana. Any assumption that California will defer to Montana contradicts the UCCJEA's mandate for comprehensive jurisdictional reassessments. See *In re Marriage of Fernandez-Abin*, 191 Cal. App. 4th 1015, 1028 (2011).

Finally, Chad's argument that he can raise Montana's jurisdictional orders in California proceedings does not excuse Montana's failure to reassess jurisdiction. The appellate court's acknowledgment of Chad's right to raise arguments does not relieve Montana of its duty to stay its proceedings and prevent conflicting custody orders across state lines.

The District Court's actions must be corrected to ensure compliance with the statutory framework designed to prevent instability and confusion in custody proceedings.

**d. Chad's Assertion That Maira Consented to Montana's Jurisdiction Is Misleading and Unsupported**

Chad’s claim that Maira “consented” to Montana’s jurisdiction (Opposition, p. 22) is both misleading and unsupported by the facts. Her participation in Montana proceedings was not voluntary consent but a necessary step to protect her parental rights while awaiting the California appellate outcome. The UCCJEA does not equate participation under such circumstances with jurisdictional consent. See *In re Marriage of Nurie*, 176 Cal. App. 4th 478, 493 (2009).

Chad selectively cites Maira’s Verified Motion to Amend Parenting Plan (Dkt. 89, p. 2), her testimony during the January 17, 2024, hearing (Dkt. 154, p. 121), and her parenting plan proposals as evidence of consent. However, these filings were made to safeguard her parental rights under court orders—not to concede jurisdiction. Courts recognize that complying with court orders does not waive jurisdictional objections. See *Troxel v. Granville*, 530 U.S. 57 (2000).

Chad also ignores that Maira initiated custody proceedings in California on September 7, 2022, before Chad filed in Montana on September 8, 2022, and consistently objected to Montana’s jurisdiction in both courts. Her objections remain valid under the UCCJEA, which does not require parents to abandon their rights while a jurisdictional dispute is pending. See *In re Marriage of Fernandez-Abin*, 191 Cal. App. 4th 1015, 1028 (2011).

Furthermore, Chad’s failure to disclose critical facts—such as the child’s residence in Brazil prior to his filings, his perpetration of domestic violence and the

temporary nature of the parties' relocation to Montana—led to an incomplete jurisdictional analysis by the District Court. Maira's actions to protect her relationship with her child do not constitute consent to jurisdiction.

In sum, Chad's argument distorts the record and ignores Maira's continuous objections. The UCCJEA's purpose is to avoid conflicting custody orders, and Maira's participation in proceedings does not nullify her challenge to Montana's jurisdiction.

**e. Chad's Argument Mischaracterizes the Legal Impact of the California Appellate Rulings and Misapplies Rule 8.272 and Rule 61, M.R.Civ.P.**

Chad's assertion that the District Court's error in characterizing the California appellate matter as "pending" is immaterial and does not warrant reconsideration is legally flawed. His reliance on California Rule of Court 8.272 and Rule 61, M.R.Civ.P. conflates procedural finality with the substantive legal effect of the appellate decision. The California Court of Appeal's ruling on May 21, 2024, was binding upon issuance, long before the remittitur was issued on July 31, 2024. The Montana District Court had a duty to immediately pause its proceedings and reassess jurisdiction under Mont.

Code Ann. § 40-7-108, which requires courts to avoid issuing conflicting custody orders.

California courts have consistently held that appellate rulings become effective upon issuance, not upon remittitur. In *In re Natasha A.*, the California Court of Appeal emphasized that appellate decisions are immediately binding once the trial court is notified and that trial courts must act accordingly, even if the remittitur has not issued. See *In re Natasha A.*, 193 Cal. App. 4th 1408, 1415 (2011). The Montana District Court's failure to recognize the binding effect of the California appellate ruling and its continued issuance of custody orders created the precise jurisdictional chaos the UCCJEA seeks to prevent.

Chad's argument that the ruling wasn't "final" until remittitur is both irrelevant and misleading. Rule 8.272 governs procedural finality for further appellate review but does not diminish the immediate legal effect of an appellate court's ruling. The substantive legal impact of the May 21, 2024, ruling was that California's relinquishment of jurisdiction was vacated, triggering Montana's statutory obligation under the UCCJEA to pause proceedings and communicate with California. See Mont. Code Ann. § 40-7-108. Montana's refusal to do so constitutes a significant legal error that directly impacted Maira's rights by subjecting her to conflicting custody orders across two states.

Chad's reliance on Rule 61, M.R.Civ.P., to argue that the District Court's error was "harmless" is equally misplaced. Jurisdictional errors are never harmless. Jurisdiction is a threshold issue that impacts a court's authority to issue binding

custody orders. The Montana Supreme Court has repeatedly held that jurisdictional determinations must reflect current facts and legal developments. See *In re Parenting of L.D.C.*, 2022 MT 161, ¶¶ 18-19.

The District Court's refusal to reassess jurisdiction after being notified of the California appellate reversal is material and harmful. It subjected Maira to conflicting custody orders and created legal instability for the child. Chad's attempt to dismiss this as "forum shopping" mischaracterizes Maira's efforts to enforce the UCCJEA's mandate for interstate judicial cooperation. The California appellate ruling reopened the jurisdictional analysis, and Montana was required to respect that process.

In *Sampley*, the Montana Supreme Court made clear that the UCCJEA is designed to prevent "jurisdictional disputes that create instability in child custody matters". See *Sampley*, 2015 MT 121, ¶¶ 23-24. The District Court's refusal to reassess jurisdiction after California's appellate ruling created precisely the type of instability the UCCJEA was intended to avoid.

**2) The District Court's Travel Restriction Constitutes an Abuse of Discretion, Disproportionately Impacting Maira and Failing to Serve A.H.S.'s Best Interests**

The District Court's inclusion of a travel restriction in the Final Parenting Plan is overly broad, unsupported by substantial evidence, and unjustifiably infringes on Maira's constitutional right to travel and A.H.S.'s ability to maintain

critical familial and cultural connections. Chad's assertion that the travel provision impacts both parents equally is misleading. In reality, the restriction disproportionately burdens Maira by preventing her from traveling out of Montana with A.H.S., effectively cutting the child off from her extended family in Brazil and California. The District Court failed to provide an evidence-based justification for this restriction, relying instead on outdated concerns about past conduct. The restriction is not narrowly tailored to address any current risk to the child's well-being and serves only to punish Maira under the guise of promoting stability. This constitutes a clear abuse of discretion that this Court must correct.

**a. Chad Mischaracterizes the Travel Restriction as Temporary and Equally Burdensome to Both Parents**

Chad portrays the travel restriction as a "temporary" measure that impacts both parents equally. (Opposition Brief, p. 22-23). This is a gross misrepresentation. The restriction disproportionately burdens Maira, the dual-citizen parent with deep cultural and familial ties outside Montana, while Chad's entire life—family, work, and community—remains firmly rooted in Montana. The restriction effectively isolates A.H.S. from her Brazilian heritage, severing ties with her extended family in Brazil and California, and undermines both Maira's constitutional right to travel and A.H.S.'s right to maintain essential family connections and cultural identity.

The District Court imposed a blanket travel restriction without any evidence that out-of-state travel poses a risk to A.H.S. Broad, arbitrary bans are legally

unsustainable. See *In re C.J.*, 2016 MT 93, ¶ 21, 383 Mont. 197, 369 P.3d 1028. Here, the court failed to provide any specific, evidence-based rationale for such a severe restriction, making it an abuse of discretion under Montana law.

Chad's claim that the restriction is "temporary" is speculative and misleading. The restriction remains in place until the resolution of ongoing jurisdictional disputes—litigation that has no clear timeline for conclusion. In effect, Maira and A.H.S. could remain confined to Montana for years.

Moreover, courts have repeatedly held that restrictions on travel must be narrowly tailored to address specific concerns, not imposed as broad precautions. See *In re C.J.*, ¶ 21. The District Court's blanket restriction lacks any legitimate, evidence-based justification and is therefore legally unsupportable.

Even more troubling, Chad ignores the District Court's own findings that out-of-state and international travel would benefit A.H.S. by preserving her cultural connections. (Dkt. 171, p. 11). The contradiction between the court's acknowledgment of these benefits and its punitive travel ban underscores the arbitrary nature of the restriction. It is a clear abuse of discretion that must be corrected to protect Maira's constitutional rights and promote A.H.S.'s best interests.

**b. Chad's Argument That The Travel Restriction Only Applies to the Child and Not Maira is a Misleading**

While phrased as applying to the child, the restriction directly burdens Maira's

ability to travel, infringing on her constitutional right to travel with her child, a right essential to maintaining their parent-child relationship. See *Troxel v. Granville*, 530 U.S. 57 (2000).

The restriction blocks Maira from traveling with A.H.S. to visit family, participate in cultural events, or maintain her Brazilian ties, severing the child from critical connections to her bicultural identity and extended family in California and Brazil, including her terminally ill grandfather. Such broad restrictions are unconstitutional unless narrowly tailored to address specific concerns, which the District Court failed to do. See *In re C.J.*, 2016 MT 93, ¶ 21, 383 Mont. 197, 369 P.3d 1028.

Chad ignores that the District Court found that out-of-state and international travel would serve A.H.S.'s best interests by preserving cultural connections. (Dkt. 171, p. 11). Yet, the court imposed a contradictory travel ban that isolates A.H.S. from Maira's support system abroad.

The restriction disproportionately impacts Maira, as Chad's entire support network remains in Montana, while Maira's family, livelihood, and cultural ties are outside the state. Chad's attempt to dismiss this as a restriction on A.H.S. alone ignores its severe impact on both Maira's rights and the child's well-being, making it an unjustified and unconstitutional abuse of discretion under Montana law.

**c. Chad's Claim That Maira's Past Conduct Justifies the Travel Ban Is Baseless and Pretextual**

Chad relies heavily on the narrative that Maira deprived him of contact with A.H.S. between September 2022 and July 2023. However, this oversimplifies the factual context. Maira's actions were taken in response to domestic violence and to protect the child's well-being, a fact supported by the record. (Opening Brief, p. 12-15). Chad's attempt to label her protective actions as misconduct is misleading and legally irrelevant to the imposition of a travel restriction.

Courts have consistently held that restrictions on parental rights must be based on current evidence of harm, not past actions taken in a different context. See *In re Parenting of M.C.*, 2015 MT 57, ¶ 14, 378 Mont. 305, 343 P.3d 569. There is no current evidence to suggest that Maira poses a flight risk or that out-of-state travel would harm the child. The travel restriction is, therefore, unnecessary and punitive.

**3) The District Court's Failure to Adequately Weigh Evidence of Domestic Violence Constitutes A Clear Abuse of Discretion**

Chad's assertion that the District Court appropriately considered the best interest factors under Mont. Code Ann. § 40-4-212 and engaged in sufficient fact-finding is both legally flawed and unsupported by the record. Contrary to Chad's claims, the District Court failed to give appropriate weight to Maira's substantial and credible evidence of Chad's history of domestic violence and its impact on both Maira and A.H.S. The court's decision to downplay or outright dismiss these serious concerns

undermines the core purpose of the best interest standard—to protect the child’s health, safety, and welfare. The District Court’s inadequate consideration of Maira’s evidence and failure to fully account for the impact of domestic violence constitutes a clear abuse of discretion that this Court must correct.

**a. The District Court Erred by Failing to Properly Weigh Credible Evidence of Domestic Violence**

Chad argues that the District Court appropriately weighed all evidence and made findings based on substantial credible evidence. However, this assertion ignores the fact that the District Court disregarded compelling testimony and evidence that Chad perpetrated domestic violence against Maira, which directly impacts the best interest of A.H.S. (Opening Brief, pp. 40-43). Maira testified to numerous instances of controlling and abusive behavior by Chad, including physical violence and intimidation in the presence of the child. (Id.; see also 1/17/24 Tr. at 69:12-21, 71:5-13). The District Court’s decision to dismiss these incidents as irrelevant to Chad’s parenting abilities is legally incorrect and inconsistent with the statutory best interest factors, which require courts to consider the impact of parental conflict and domestic violence on the child’s welfare. Mont. Code Ann. § 40-4-212(1)(f), (l).

Moreover, Maira’s testimony was not the only evidence of Chad’s violent behavior. The court heard testimony from credible third-party witnesses, including Police officer Ransom who responded to a domestic violence call involving the parties. (Opening Brief, p. 42; 1/17/24 Tr. at 129:7-21). Despite this, the District

Court summarily dismissed the evidence, stating that there was “no evidence of any abuse directed at the child.” (Dkt. 170, p. 8, ¶ 36). This narrow focus on direct harm to the child ignores well-established case law recognizing that exposure to domestic violence—even when not directly aimed at the child—has significant, long-term negative effects on a child’s emotional well-being. *See In re Marriage of Valdez*, 2020 MT 71, ¶ 23, 399 Mont. 530, 461 P.3d 834 (holding that a parent’s history of domestic violence is a critical factor in custody determinations as it directly affects the child’s well-being).

**b. The District Court Misapplied the Best Interest Factors by Prioritizing Equal Parenting Time Over Child Safety**

The District Court’s ultimate conclusion—that there was “no evidence that Chad is anything but a patient, safe, and loving parent” (Dkt. 170, p. 8, ¶ 36)—is factually unsupported and reflects a misapplication of the best interest factors. Courts must prioritize the child’s safety and welfare above all other considerations. *See In re Parenting of S.J.S.*, 2017 MT 234, ¶ 19, 388 Mont. 415, 401 P.3d 213. The District Court’s emphasis on maintaining equal parenting time, without adequately addressing the impact of Chad’s history of domestic violence, disregarded this fundamental principle. The Montana Supreme Court has consistently held that custody determinations must be based on evidence that ensures the child’s safety and emotional well-being, even if it results in unequal parenting time. *Smalling v. Klubben*, 2018 MT 217, ¶¶ 16-18, 393 Mont. 374, 429 P.3d 636.

Chad attempts to defend the District Court's decision by asserting that the court heard testimony from "credible witnesses" and weighed conflicting evidence appropriately. (Opposition, p. 23). However, it is not sufficient for a court to merely hear conflicting evidence; it must make findings that are supported by substantial evidence in the record and grounded in the child's best interests. Here, the District Court's findings were based on an incomplete and selective assessment of the evidence, ignoring key testimony that demonstrated a pattern of abuse by Chad. This failure to account for the full scope of the evidence constitutes clear error and an abuse of discretion.

**c. Chad's Attempt to Minimize the Impact of Domestic Violence Ignores Legal Precedent**

Chad's argument that the District Court "appropriately considered" Maira's concerns about domestic violence is contradicted by legal precedent. Montana courts have repeatedly emphasized that the impact of domestic violence cannot be minimized in custody cases. Exposure to domestic violence creates an unsafe and unstable environment for a child, regardless of whether the child is the direct target of abuse. See *In re Parenting of D.A.H.*, 2009 MT 486, ¶¶ 31-32, 354 Mont. 480, 227 P.3d 993.

The Montana Supreme Court has made clear that a district court's findings must be based on substantial credible evidence. *In re Marriage of Guffin*, 2009 MT 169, ¶ 27, 350 Mont. 489, 209 P.3d 225. The District Court's findings regarding

Chad's behavior, as well as its decision to impose a travel restriction, were not supported by substantial evidence in the record. Instead, the court ignored or dismissed key evidence, including police reports, testimony from Maira and third-party witnesses, and Chad's own statements, all of which demonstrated a pattern of abusive behavior.


The District Court's failure to give appropriate weight to this evidence constitutes a clear abuse of discretion. The Montana Supreme Court has held that appellate courts must correct custody determinations that are based on findings unsupported by the record. *In re Parenting of J.M.A.*, 2014 MT 83, ¶ 11, 374 Mont. 329, 321 P.3d 956

#### IV. CONCLUSION

For the foregoing reasons, Maira Horta Moss respectfully requests that this Court:

1. Vacate the District Court's Final Orders and remand the case<sup>a</sup> with instructions to conduct a proper jurisdictional analysis under the UCCJEA and Montana law, including engaging in direct communication with the California courts to coordinate and resolve the jurisdictional conflict.
2. Vacate the Final Parenting Plan, implement a modified Interim Parenting Plan pending completion of the jurisdictional review, and
3. Instruct the District Court to apply the statutory best interest factors and properly evaluate the evidence of domestic violence in accordance with Montana law.

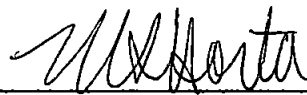
RESPECTFULLY submitted this 14th day of January 2025.

  
Maira Horta Moss, Appellant

**CERTIFICATE OF COMPLIANCE**

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that this Appellant's Reply 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 5,000 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 14<sup>th</sup> day of January, 2025.

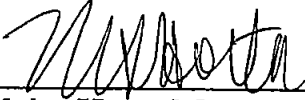


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Maira Horta Moss, Appellant

## CERTIFICATE OF SERVICE

I, Maira Horta Moss, hereby certify that I have filed this Reply 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 14<sup>th</sup> day of January 2025 on attorney for Appellee via email:

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