

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 24-0489

IN RE THE GRANDPARENT-GRANDCHILD
VISITATION OF:

A.L.U,

SHARLINE BLUEMEL,

Petitioner/Appellee,

and

ASHLEY UHRICH and VIJAY UHRICH,

Respondents/Appellants.

APPELLEE'S RESPONSE BRIEF

Appealed from the Twentieth Judicial District of the
State of Montana, in and for the County of Lake

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CASES

In re Grandparent/Grandchild Contact of C.A.G.,
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STATUTES

§ 40-9-102(4), MCA6, 7

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court's interpretation and application of § 40-9-102(4), MCA, in its *Findings of Fact, Conclusions of Law and Order* is correct.

STATEMENT OF THE CASE

This is a tragic case borne out of the heinous murder of Petitioner/Appellee Sharline Bluemel's ("Sharline") daughter by Respondents/Appellants Ashley Uhrich's ("Ashley") and Vijay Uhrich's (collectively "Uhrichs") son, and compounded by Uhrichs' disregard for Sharline's desire to see her granddaughter, A.L.U.

On March 14, 2020, A.L.U. was born to Sharline's daughter Rozlyn Bluemel ("Rozlyn") and Uhrichs' son Tyler Uhrich ("Tyler"). Two years later, Tyler murdered Rozlyn execution-style in the woods near Polson, Montana, leaving A.L.U. at the crime scene to witness the aftermath. Immediately thereafter, Lake County Child and Family Services became involved to determine proper placement for A.L.U. now that her parents were either dead or incarcerated. Given the understandable extreme emotional state Sharline was in after learning her daughter was murdered, Sharline agreed to allow A.L.U. to temporarily reside with Uhrichs while Child and Family Services worked on the case. Sharline believed that despite A.L.U. residing with Uhrichs, her only granddaughter would forever remain in her life.

Instead, Uhrichs surreptitiously adopted A.L.U. and at the first opportunity cut off A.L.U. from her maternal side of the family. Sharline held out hope that Uhrichs would one day allow A.L.U. to be a part of her life. Uhrichs instead rejected every single attempt Sharline made to see her granddaughter, and told the District Court that Sharline would never see A.L.U. unless by court order. Uhrichs prohibited any interaction between A.L.U. and her maternal relatives. The District Court correctly found that Uhrichs' objections are based on personal animus toward Sharline, rather than A.L.U.'s best interest.

STATEMENT OF THE FACTS

On March 14, 2020, A.L.U. was born to Rozlyn and Tyler in Lake County, Montana. (D.C. Doc. 29 – *Findings of Fact, Conclusions of Law and Order*, July 19, 2024, at Findings of Fact No. 3) See *Appendix A*. Rozlyn is Sharline's daughter; Tyler is Vijay Uhrich's and Ashley Uhrich's son. *Id.*, at Findings of Fact Nos. 1 and 2.

After A.L.U.'s birth, Sharline saw Rozlyn and A.L.U. frequently. *Hearing Transcript* dated June 28, 2024 (“*Trans.*”) 72:10–73:12. Sharline would meet Rozlyn and A.L.U. for errands, or Rozlyn would bring A.L.U. to Sharline's home. *Trans.* 73:16–74:5. Sharline would hold A.L.U. and generally provide loving and affectionate care. *Id.* Often, Sharline would have to meet Rozlyn and A.L.U. secretly

out of Rozlyn's fear of violence from Tyler because Tyler did not like Sharline having contact with A.L.U. *Trans.* 77:5–17.

On May 10, 2022, Tyler murdered Rozlyn in Lake County, Montana. *Appendix A* at Findings of Fact No. 4. Tyler was subsequently charged with and, in October 2022, pled guilty to deliberate homicide in the Montana Twentieth Judicial District Court, Lake County, Cause No. DC-22-125. *Id.* In February 2023, Tyler was sentenced to 80 years at Montana State Prison. *Id.* Following his guilty plea, Tyler's parental rights were terminated. *Id.*

Following Rozlyn's death, Lake County Child and Family Services became involved to determine where A.L.U. would reside. *Trans.* 78:2–7. Given Sharline's understandable emotional state in the aftermath of her daughter's murder, Sharline consented to placement of A.L.U. with the Uhrichs. *Trans.* 78:23–79:7. But given the subsequent series of events, Sharline regrets not fighting harder to keep A.L.U. in her care. *Trans.* 79:15–21.

For the next year, Sharline had frequent visitation with A.L.U. At first, Sharline's visits were supervised. *Trans.* 78:2–7. After a couple of supervised visits, Sharline's visits increased to four-hour unsupervised visits every Friday. *Id.*

During Sharline's visits, her other daughter and A.L.U.'s aunt, Madison Bluemel, was almost always present. *Trans.* 26:16–20. Sharline would engage A.L.U. in age-appropriate activities, such as playing with pets, bug hunting,

snacking, sledding, tag, and other children's games. *Trans.* 83:3–11. She never drank or used drugs in front of A.L.U. *Trans.* 84:4–9. A.L.U. appeared to enjoy her visits very much. *Trans.* 83:16–17.

On June 15, 2023, Uhrichs surreptitiously adopted A.L.U. without providing notice to Sharline. *Trans.* 89:23–90:7. Uhrichs then immediately ceased Sharline's visitations. *Trans.* 89:5–8.

On July 19, 2023, Sharline filed a *Petition for Grandparent Visitation*. (D.C. Doc. 1) See *Appendix B*. On June 28, 2024, the parties attended the trial in this matter. Sharline presented evidence of her loving relationship with A.L.U., the sorts of activities she engaged in during her visitation, and what she would plan on doing with A.L.U. if the District Court granted visitation. *See generally Trans.* 65:1–94:6. Sharline did not contest that Uhrichs were otherwise fit adoptive parents to A.L.U.; indeed, she acknowledged that Uhrichs were great parents to A.L.U. *Trans.* 78:23–79:13. Sharline simply wanted an opportunity for reasonable visitation with her only granddaughter.

Uhrichs, alternatively, presented a sundry list of general grievances against Sharline. The parties hereto have had a sordid past over the last decade, principally related to Ashley's affair with Sharline's ex-husband. *Trans.* 131:8–12. The District Court found that most of the Uhrichs' complaints regarding Sharline were either unfounded, irrelevant, or personal grudges against Sharline. *Appendix A* at Findings

of Fact No. 16. The District Court granted Sharline’s *Petition* on the basis that reasonable visitation was in A.L.U.’s best interests and permitted four-hour supervised visits every two months. *Appendix A* at 5–6.

STATEMENT OF THE STANDARD OF REVIEW

The Montana Supreme Court reviews a district court’s findings of fact regarding parenting plans and related agreements for clear error. *In re L.M.A.R.*, 2024 MT 148, ¶ 8, 417 Mont. 212, 552 P.3d 678 (internal citations omitted). “A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if our review of the record convinces us that the district court made a mistake.” *Id.*

This Court reviews a district court’s interpretation and application of statutes for correctness. *Id.*

SUMMARY OF ARGUMENT

The District Court’s *Order* is supported by Montana law. In its *Order*, Conclusions of Law No. 2 makes reference to the language of § 40-9-102(4), MCA, the applicable statutory provision. The District Court found that Sharline had presented clear and convincing evidence that reasonable visitation was in A.L.U.’s best interest, and that there was evidence to rebut the presumption of deference to Uhrichs’ desires.

Likewise, the record supports the District Court’s finding that it is in A.L.U.’s best interest to have visitation with Sharline. Given the tragic history, it is in A.L.U.’s best interest to maintain contact with her maternal family. *See In re Grandparent/Grandchild Contact of G.A.G.*, 2014 MT 290, ¶ 17, 376 Mont. 540, 337 P.3d 751. Sharline would likely still see A.L.U. if Uhrichs’ son did not murder Rozlyn. Finally, A.L.U.’s visitation is reasonable in light of Sharline’s history of visitation, and any objections are addressed by her visits being supervised and at neutral locations. The District Court’s *Order* should be affirmed.

ARGUMENT

I. The District Court correctly applied § 40-9-102, MCA, with ¶ 2 of its *Conclusions of Law*.

Uhrichs’ arguments on appeal are that the District Court “failed to interpret and apply the grandparent contact statute”, § 40-9-102, MCA. *Appellant’s Opening Br.* at 9. Uhrichs suggest that the District Court “substituted its own judgment in place of [Respondents]” over Uhrichs’ objections to Sharline’s request for visitation with A.L.U. *Id.* at 4. In support of Uhrichs’ argument, they assert that the District Court “failed to even cite the grandparent statute.” *Id.* at 10.

The parties agree that the correct statutory provision is § 40-9-102(4), MCA, because Sharline does not contest that Uhrichs are fit adoptive parents. *Appendix A* at Findings of Fact No. 11. Thus, the applicable statutory language is as follows:

40-9-102 Grandparent-grandchild Contact.

...

(4) Grandparent-grandchild contact granted under this section over the objections of a fit parent may be granted only upon a finding by the court, based upon clear and convincing evidence, that the contact with the grandparent would be in the best interest of the child and that the presumption in favor of the parent's wishes has been rebutted.

The District Court's second *Conclusion of Law* correctly applies the applicable statute:

The Court determines there is clear and convincing evidence that some visitation between A.L.U. and her maternal grandmother Sharline under the circumstances of this case is in A.L.U.'s best interests and rebuts the presumption in favor of following the desires of the adoptive parents, the Uhrichs.

Appendix A at Conclusions of Law No. 2.

Regardless of whether the District Court actually cites to the relevant subsection of § 40-9-102, it considered the statute when reaching its second *Conclusion of Law*. From the evidence presented at the trial in this matter, the District Court found reasonable visitation between Sharline and A.L.U. was in the child's best interest, and Sharline had successfully rebutted the presumption in favor of Uhrichs' wishes. The District Court's *Order* should be affirmed.

II. There was substantial evidence to support the District Court's *Findings of Fact* that reasonable visitation with Sharline is in A.L.U.'s best interests.

As was the theme at trial, Uhrichs re-argue that they do not believe any visitation between Sharline and A.L.U. is in the child's best interest. Uhrichs reargue

their reasons in pages 8-10 of their *Opening Brief* why they object to any visitation between Sharline and A.L.U.

There is substantial evidence in the record to support the District Court's finding that reasonable visitation with Sharline is in A.L.U.'s best interest. When a child's only link to one parent's side of the family is through a grandparent, visitation with that grandparent is in the child's best interest. *In re Grandparent/Grandchild Contact of C.A.G.*, 2014 MT 290, ¶ 17, 376 Mont. 540, 337 P.3d 751. In *In re Grandparent/Grandchild Contact of C.A.G.*, the minor children's father unexpectedly died during divorce proceedings with the natural mother. *Id.* While the father and mother were alive, the paternal grandmother had regular and frequent contact with the minor children at the children's home. *Id.* ¶ 7. Understandably, during the divorce proceedings the natural mother and paternal grandmother's relationship deteriorated, to a point where the natural mother blocked paternal grandmother's phone number and relocated without notifying grandmother. *Id.* ¶ 8. Paternal grandmother petitioned the district court for grandparent visitation, which the district court granted. *Id.* ¶ 1. The district court awarded contact and visits in Billings, and yearly extended visits at grandmother's home in Washington State, the latter of which had not previously occurred while the mother and father were married. *Id.* ¶ 15. The natural mother appealed.

On appeal, the Montana Supreme Court affirmed paternal grandmother's contact and visitation rights in Billings, but reversed the district court for granting extended visits. *Id.* ¶ 20. In light of father's untimely death, it was in the best interests of the children to award grandmother visits in Billings because she was the only link to the children's father's family. *Id.* ¶ 17. In addition, prior to the natural father's death, grandmother had a long-term relationship with the children that was "positive and warm." *Id.* ¶¶ 7, 18. Moreover, but for natural mother blocking grandmother and failing to inform her of natural mother's new address, grandmother would likely have maintained contact and been allowed to continue seeing the children. *Id.* ¶ 18. To the extent any "breakdown" in communication occurred, it was caused by the natural mother. *Id.* ¶ 18. Thus, this Court affirmed the phone communication and visits in Billings.

However, this Court reversed the district court's award of extended visits in Washington State because paternal grandmother failed to present sufficient evidence to rebut the presumption in favor of natural mother's wishes. *Id.* ¶ 19. The natural mother offered "reasoned" objections to such visits that were not rebutted by grandmother. *Id.* More important, there was no evidence in the record that the children previously enjoyed extended visits at grandmother's home. *Id.* Thus, the district court's order was in error.

A strikingly similar situation is present. Here, prior to Rozlyn's murder, Sharline enjoyed a warm and positive relationship with A.L.U. She had frequent, weekly visitation. And unlike the natural mother in *C.A.G.*, Uhrichs have not offered any "reasoned" objections. Indeed, the District Court considered Uhrichs' objections at trial and found that they were unsupported, as was the case of the A.L.U.'s alleged adverse medical reactions, or "unreliable hearsay, irrelevant to the alleged conduct many years in the past, and based on personal grudges that should not be the basis to deny A.L.U." visitation with Sharline. *Id.*, Findings of Fact No. 12, 16. Further, like in *C.A.G.*, but for the actions of Uhrichs' son, Sharline would likely still enjoy visits with A.L.U. It is in A.L.U.'s best interest to maintain contact with her maternal side of the family.

Further, the visitation schedule is reasonable given Sharline's history of visitation with A.L.U. The District Court awarded four-hour supervised visits once every two months. *Appendix A* at 5–6. Previously, A.L.U. enjoyed weekly unsupervised contact with Sharline. After Rozlyn's murder when CFS got involved, the vast majority were four-hour visits. The District Court's visitation schedule is consistent with her CFS-scheduled visits, unlike in *C.A.G.* where the grandmother's extended visits had never previously occurred. *C.A.G.*, ¶ 19.

To the extent there is any support to Uhrichs’ objections—which Sharline maintains there is not—those concerns are ameliorated by Sharline’s visits being supervised. The evidence in the record supports the reasonable visitation schedule.

CONCLUSION

This Court should affirm the District Court’s July 19, 2024 *Findings of Fact, Conclusions of Law and Order*.

DATED this 17th day of January, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27, M.R.App.P., I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Word, is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

DATED this 17th day of January, 2025.

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CERTIFICATE OF SERVICE

The undersigned does hereby certified that on the 17th day of January, 2025, a true and correct copy of the foregoing document was served upon the person named below, at the addresses set out below their names, either by mailing, hand delivery, or otherwise, as indicated below.

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/s/ Kevin H. Ness

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CERTIFICATE OF SERVICE

I, Kevin Howard Ness, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 01-17-2025:

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