

No. DA 24-0456

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IN RE THE MARRIAGE OF:

GAYLE P CHRISTENSEN,

Petitioner and Appellee,

v.

CHRIS A. CHRISTENSEN,

Respondent and Appellant.

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**OPENING BRIEF OF APPELLANT**

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On Appeal from the Montana Twenty First Judicial District Court,  
Ravalli County, the Honorable Howard Recht, Presiding

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APPEARANCES:

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AND APPELLANT

ATTORNEY FOR PETITIONER  
AND APPELLANT

## **TABLE OF AUTHORITIES**

*In re the Marriage of Tummarello*. 2012 MT 18, ¶ 21

*In re the Marriage of Hochhalter*, 2001 MT 268, ¶ 17

*In re the Marriage of Geror*, 2000 MT 60, ¶ 14

## **STATEMENT OF THE ISSUES**

Whether the District Court clearly erred in concluding that the date selected by the State of Montana to incarcerate Dr. Christensen was the date parties' marriage ended, where the Petitioner had months later expressed her love for Dr. Christensen and her desire to continue the marriage.

## **STATEMENT OF THE CASE**

Petitioner, Gayle Christensen, filed for divorce on May 1, 2023. Trial was held on June 27, 2024, and a timely notice of appeal was filed on August 2, 2024, after the Court's entry of judgment on July 3, 2024.

## **STATEMENT OF THE RELEVANT FACTS**

Chris Christensen and Gayle Power were married in California in 1975. Chris was a newly-minted doctor who had just finished his first year of residency. Gayle was a physical therapist. After the wedding the couple moved around a bit

before settling in California and later Idaho. Chris always had a private medical practice in the places they lived, which Gayle owned jointly with him. She also helped in the practices providing various degrees of administrative help, depending on the needs of the couple's three kids. (TR 100-102).

In 2014 the medical practice was searched by law enforcement investigating prescribing practices, effectively shutting the practice down. Chris began to collect social security as he turned 65 that year, and Gayle continued to work as a physical therapist. Several years later Chris was charged with a number of felony crimes and went to trial. He lost at trial, +but was allowed to remain free pending appeal. This Court dismissed the two most serious charges, but affirmed the remainder, and Dr. Christensen went into custody in March 2021. (TR 117-119).

Not surprisingly, the couple's relationship began to deteriorate almost immediately. By September of 2022 Gayle sent a letter to Chris saying that although they were having troubles, she still loved him and even wanted to renew their vows when he got out. (TR 123-124). When asked if she really meant it, would she still try to make the marriage work when he got out, her response was "possibly. I don't know. I can't tell you or sure because his attitude was still very negative." (TR 124-125).

Later, on March 27, 2023 Chris wrote a document that made reference to "our pending divorce." (TR 125). That was about a month before Gayle filed.

In its Order, the Court concluded that the couple separated on the day Dr. Christensen went to prison, March 26, 2021. *Decree* at 2.

### **SUMMARY OF THE ARGUMENT**

It is hard to know which date this couple's marriage actually ended. It could be the date the decree was entered, it could be the date Gayle filed the petition. It could be an earlier date since Dr. Christensen's statement referring to the couple's "impending divorce" suggests the couple had reached that conclusion by that date. The one date that it really can't be is the one the Court picked, the day the State decided would be the date the husband goes into custody.

It matters in this case because the Court has determined that Dr. Christensen, despite being incarcerated and without a means to earn income, is responsible for his own expenses, including half of the mortgage payments on the couple's house, from the date of separation. By logic, a marriage cannot be over simply because the State has chosen to incarcerate someone as of that date. Incarceration, while hardly good for marriage, does not require that a marriage ends. Only the couple can determine that, and any conclusion the Court reaches about that date must be grounded in the couple's wishes and expressions, not the State's.

## **STANDARD OF REVIEW**

The standard of review, while nuanced, has been succinctly and thoroughly described by this Court:

“We review a district court's factual findings pertaining to the division of marital assets and a parenting plan to determine if they are clearly erroneous. [\*In re Marriage of Thorner\*, 2008 MT 270, ¶ 20, 345 Mont. 194, 190 P.3d 1063](#). "A finding is clearly erroneous if it is not supported by substantial evidence, the district court misapprehended the effect of the evidence or our review of the evidence convinces us that the district court made a mistake." [\*In re Marriage of Crilly\*, 2005 MT 311, ¶ 10, 329 Mont. 479, 124 P.3d 1151](#). If the court's findings are not clearly erroneous, we will reverse only if the district court abused its discretion. *Crilly*, ¶ 10. Likewise, we will not overturn a district court's child support award absent an abuse of discretion. [\*In re Marriage of Graham\*, 2008 MT 435, ¶ 8, 347 Mont. 483, 199 P.3d 211](#). "[T]he test for an abuse of discretion is whether the district court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in a substantial injustice." [\*In re Marriage of Jackson\*, 2008 MT 25, ¶ 9, 341 Mont. 227, 177 P.3d 474](#).”

*In re the Marriage of Tummarello*. 2012 MT 18, ¶ 21

## **ARGUMENT**

As a general rule, "the value of the marital estate should be determined at or near the time of dissolution." *In re the Marriage of Hochhalter*, 2001 MT 268, ¶ 17. If the Court adheres to that date, the marriage is over as of July 3, 2024. This is the date this Court should use. This couple has been intertwined in their lives for nearly their entire lives. They have moved to different locales, raised children, started and ran a business together, and supported one another, including financially. When one member of the couple could not work, say for staying home

to raise children, which they both did, the other would bring in money. When Chris was imprisoned Gayle picked up the expenses, just as Chris paid the expenses when Gayle was not working. The date of dissolution is the appropriate date and is the one the Court should adopt.

This Court has also held that sometimes the date of separation is the correct date to use. “Generally, valuing property near the time of dissolution results in equitable apportionment, but in unique circumstances the district court should value property at a different time.” *In re the Marriage of Geror*, 2000 MT 60, ¶ 14. Arguably, incarceration creates such a unique circumstance, but that still leaves the determination the date the marriage has effectively ended. That is a conclusion that must be based on the particular circumstances of the particular marriage. Otherwise, every person sent to prison will also be legally separating that day, an absurdity.

In this case, then, which date? Gayle testified that things got bad after Chris was incarcerated. But, she also was willing to keep working on it as of September 2022. Therefore, the date of separation is between October 2022 when she sent that letter, and March 27, 2024 when Dr. Chris mentioned an “impending divorce.” It is impossible to know, and remand won’t make it easier or clearer. This Court should therefore choose the date that makes it most clear that the couple was finished – the day the petition was filed. That is the day there can be no doubt that

at least one party is done. That is the day that can be clearly determined as the Court itself has the record. That is the day that will rest responsibility where it belongs – with the parties. Marriage is a public announcement. Divorce should be the same, and should be memorialized only with care. The date of filing does that.

### **CONCLUSION**

This Court should find the District Court clearly erred in choosing a date of separation that did not reflect the reality of the marriage itself, and instead mark the date of their separation as the date of filing the petition instead.

Respectfully submitted this 30<sup>th</sup> day of January, 2025

JOSHUA VAN DE WETERING

By:

/s/ Joshua Van de Wetering  
Joshua Van de Wetering

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1495\_, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Josh Van de Wetering

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 30<sup>th</sup> day of January 2025, a true and correct copy of the foregoing document was served via hand-delivery to the following:

Andre Gurr, counsel for Petitioner/Appellee  
By efileing

          /s/ Josh Van de Wetering            
Van de Wetering Law Offices

## **CERTIFICATE OF SERVICE**

I, Joshua Schorr Van de Wetering, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-30-2025:

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Dated: 01-30-2025