IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0549

JOSEPH RYAN BOESHANS,

Appellant,

v.

HEIDI MARIE BOESHANS

Appellee.

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. STATEMENT OF THE ISSUE(S) PRESENTED FOR APPEAL

1. Did the district court err in establishing an inscrutable parenting plan requiring Appellant to complete a list of tasks supervised by a single government office before he could exercise any parenting time with his minor child, resulting in a *de facto* termination of the Appellant's parental rights?

2. Did the district court err when it found that Appellant failed to complete required financial disclosures despite the Appellant completing and filing such disclosures while acting *pro se*?

3. Did the district court err in allowing Appellee to assume control of the engineering business purchased by the parties despite Appellee being unqualified to run the business under Montana's professional corporation statutes?

II. STATEMENT OF THE CASE

This is a case that involves a dissolution of a marriage that began on October 18, 2020. Findings of Fact, Conclusions of Law, and Decree, Doc. 105 (hereinafter "FOF"), ¶ 5. The parties separated on or about June 28, 2023. (FOF, ¶ 9.) Appellee filed for dissolution on August 8, 2023. (FOF, ¶ 10.) From the outset, this case has been unusually contentious, even for a contested family law case. At the outset of the case, the Appellee filed a proposed parenting plan proposing no parenting time for Appellant unless agreed to by Appellee. (Doc 3.)

At the conclusion of the case, the district court created a parenting plan for

the parties' minor child that immediately bars the Appellant from visitation. (Final Parenting Plan and Orders, Doc. 106 (hereinafter "Parenting Plan") ¶ 4(b)). The district court also immediately removed the Appellant from his own business even though the Appellant is a professional engineer and the only professional engineer who is an officer, shareholder, or director of the business. (FOF, ¶ 84.) The district court did little analysis of the business, misidentifying the business entity as "Boesh Engineering, PLLC," which does not exist. (FOF, ¶ 3.) The Appellee testified throughout trial that she was competent to run the parties' joint business although she also misidentified the business as "Boesh Engineering, PLLC" in her Proposed Findings of Fact and Conclusions of Law. (Doc 96, ¶ 2.) The actual name of the business is J.R. Boeshans Engineering, PLLC.

The district court issued a parenting plan in which the Petitioner is denied ***any*** visitation with his child. (Parenting Plan, ¶ 4(b).) In reviewing the parenting plan, it is unclear what the Petitioner needs to do to obtain any visitation or custody for the parties' child and the district court does not provide a timeline about how long it will take to issue an order declaring the another "phase" of the parenting plan has begun. *Id*.

The district court displayed a particular animus for the Appellant, an example of which is located in Footnote 30 of the FOF, in which the district court threatened to incarcerate Appellant as a punishment without first analyzing the appropriate remedies for civil contempt, which generally do not include incarceration unless the

incarceration is necessary to ensure compliance with a court order. (FOF, Fn. 30.)

III. STATEMENT OF FACTS

The parties were married on October 18, 2020. (FOF, ¶ 5.) The parties separated on June 28, 2023. (FOF, ¶ 9.) The parties were together as husband and wife for two months in 2020, 24 months in 2020 and 2022 and six months in 2023, for a total of 32 months. (FOF, ¶ 46.) The parties had one child together, E.H.B., who was born on August 21, 2022. (FOF, ¶ 6.)

Appellant is a veteran with significant experience in materials engineering (FOF, ¶ 3.) The district court determined that Appellant can earn approximately $85,000 as a civil engineer. (FOF, ¶ 41.) The district court further determined that the average salary range for a civil engineer in the Yellowstone County area is between $85,000-$185,000 per year. (FOF, Fn. 12.) Nevertheless, the district court found that the Appellant violated a court order by increasing his salary to the average range of engineers in Yellowstone County and the salary that Appellant should be earning. (FOF, ¶ 77.)

In February 2023, the parties purchased an engineering firm (hereinafter "Boesh") from Appellant's father in an arms-length transaction for the full value of the business. (FOF, ¶ 18.) During the marriage, Appellee worked part-time as a secretary/treasurer for Boesh and a local bank. (FOF, ¶¶ 2, 56.) At the time that the district court made its findings, Appellee was in the process of obtaining her business degree. (FOF, ¶ 19.) Appellee does not have experience in engineering and is not an

engineer. (FOF, ¶ 71.) During their brief marriage, Appellant worked outside the home as an engineer, often for long hours and in locations around Montana and the surrounding states on large engineering projects. At Boesh, he was the company's sole engineer. (FOF, ¶ 63.)

IV. STANDARD OF REVIEW

This Court reviews a district court's findings of fact supporting a parenting plan to determine whether they are clearly erroneous. *In re the Parenting of M.C.*, 2015 MT 57, ¶ 10, 378 Mont. 305, 343 P.3d 569. 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 a review of the record convinces this Court that the district court made a mistake. *Id.* This Court review a district court's conclusions of law to determine if they are correct. *Id.*

A district court abuses its discretion if it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re the Marriage of Woerner*, 2014 MT 134, ¶ 12, 375 Mont. 153, 325 P.3d 1244 (quoting *In re Marriage of Crowley*, 2014 MT 42, ¶ 44, 374 Mont. 48, 318 P.3d 1031).

A district court is vested with broad discretion to apportion the marital estate in a manner equitable to each party under the circumstances. *In re Funk,* 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39 (citing § 40-4-202, MCA). This Court reviews a district court's division of marital property to determine whether the court's findings

of fact are clearly erroneous and its conclusions of law are correct. *Id*. Absent clearly erroneous findings, the Court will affirm a district court's division of property there is an abuse of discretion. *Funk,* ¶ 6. As this Court has stated, each case must be examined individually, with an eye to its circumstances. *In re Marriage of Spawn,* 2011 MT 284, ¶ 9, 362 Mont. 457, 269 P.3d 887.

V. SUMMARY OF THE ARGUMENT

From the outset of this case, the Appellee has sought to destroy the Appellant's parent-child relationship between the parties' child and take the business that the parties purchased five months before the filing of this case, and she succeeded in achieving both of those goals. The district court violated the Appellant's constitutional rights by immediately barring the Appellant from parenting the parties' child in a parenting plan in which it is impossible to understand what the Appellant must do to parent the parties' child, and what timeline(s) the district court will follow if the Appellant complies with the restrictions in the parenting plan. The district court also committed reversible error in finding that Appellant did not submit his financial disclosures despite acknowledging receipt of the disclosures.

The district court immediately removed the Appellant from the parties' joint business. Pursuant to Montana law found in Montana's professional corporation statutes, at least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons

with respect to the corporation. Appellant was the only engineer and only director or officer of the parties' corporation qualified to render professional services with respect to the corporation. When the district court removed Appellant from the parties' joint business, only the Appellee remained as an officer or director of the corporation, and the district court's decision placing her in exclusive ownership of the corporation was an abuse of discretion and violates Montana law.

VI. ARGUMENT

A. The District Court violated Appellant's constitutional right to parent his child and abused its discretion by creating a parenting plan that is impossible to understand and permanently deprives Appellant of his parental rights.

The right of a natural parent to parent one's child is a constitutionally protected, fundamental liberty interest. *Steab v. Luna,* 2010 MT 125, ¶ 22, 356 Mont. 372, 233 P.3d 351. The U.S. Supreme Court has said that a parent's interest in custody of a child "is perhaps the oldest of the [recognized] fundamental liberty interests." *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 2060, 147 L.Ed.2d 49 (2000). Furthermore, it is established public policy that it is in the best interest of a natural parent child to parent a child. Mont. Code Ann. § 40-4-227(2)(a). This Court reviews a district court's findings of fact supporting a parenting plan to determine whether they are clearly erroneous. *In re the Parenting of M.C.*, 2015 MT 57, ¶ 10, 378 Mont. 305, 343 P.3d 569. 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 a review of the record convinces this Court that the district court made a mistake. *Id.* This Court reviews a district court's conclusions of law to determine if they are correct. *Id.*

The district court eliminated Appellant's immediate visitation with the parties' child in its parenting plan:

> Joseph shall have visitation in four consecutive phases with the parties' child as follows. However, Phase One does not begin until the Court receives notice from the evaluator(s) that Joseph obtained his [sic] through the Thirteenth Judicial District Court's Family Relations Department that is concurrently ordered in the Decree. Pending that confirmation, Joseph is barred from parenting the child. 4b of parenting plan. The Court will issue a separate Order available for each party when Phase One begins.

(Parenting Plan, ¶ 4(b).)

The termination of parental rights – or, in the district court's parlance, the "barring" or one party from parenting a child - implicates a fundamental liberty interest. Section ¶ 4(b) of the Parenting Plan does not make any sense and is clearly erroneous. There is no other reasonable interpretation of the Parenting Plan other than that the district court committed a mistake.

The district court's parenting plan is inscrutable. It is unclear what the Appellant is supposed to obtain, only that he is supposed to obtain "his [sic] through the Thirteenth Judicial District Court's Family Relations Department." The Appellant should be afforded the opportunity to understand what he needs to obtain from the "Thirteenth Judicial District Court's Family Relations Department" to parent his child. Apparently, when the district court is satisfied with the Appellant's compliance

with another government agency, it "will issue a separate Order available for each party when Phase One begins" but the Parenting Plan does not provide a timeline for how and when that determination will be made by the district court.

In other words, the Appellant can only parent his child when he obtains something from another arm of the district court, the "Thirteenth Judicial District Court's Family Relations Department," and the district court will only issue an order beginning the Appellant's visitation at a time unknown to either party that could be days, weeks, or years from whenever the Appellant completes whatever task(s) he needs to complete after he obtains "his [sic] through the."

The district court's order is impermissibly and unconstitutionally unclear, a mistake, and an abuse of discretion. The Appellant does not know precisely what he needs to obtain to begin visitation with his child. There is no timeline provided by the district court regarding when visitation will begin even if Appellant provides what both the district court and the "Thirteenth Judicial District Court's Family Relations Department" want from him, or if it will begin at all.

B. The district court committed reversible error when it erroneously found that Appellant failed to complete required financial disclosures when the Appellant completed and filed final declarations of disclosure before trial while acting *pro se*.

This Court reviews conclusions of law for correctness. *In re D.E.*, 2018 MT 196, ¶ 21, 392 Mont. 297, 423 P.3d 586. In dissolution actions, a party must serve final declarations of disclosure upon the opposing party. Mont. Code Ann. § 40-4-

253(1) through (5). The "failure of a party to disclose an asset or liability on the final declaration of disclosure is presumed to be grounds for the court, without taking into account the equitable division of the marital estate, to award the undisclosed asset to the opposing party or the undisclosed liability to the noncomplying party." Mont. Code Ann. § 40-4-253(4).

In its Findings, the district court concluded that the Appellant had not provided important financial disclosures. (FOF, ¶ 39.) This is directly contradicted by the district court record. (Doc. 102.) The Appellant, though acting *pro se*, filed financial disclosures.

The fact that the Appellant completed his financial disclosures, and the district court nevertheless found that he did not, weighed heavily against him in the district court's FOF. (see, e.g., FOF ¶¶ 39, 89, Fn. 19, Fn. 23.) This erroneous finding calls into question several other issues relevant to the district court's consideration of the evidence—including the timing of the district court's creation of the FOF and the evidence provided by the parties.

C. The district court err in allowing the Appellee to assume control of the Appellant's business despite Appellee being unqualified and unable to run the business under Montana's professional corporation statutes?

Professional corporations, such as corporations involving attorneys, doctors, or engineers, are regulated pursuant to the Montana Professional Corporations Act. Mont. Code Ann. §§ 30-4-101, et. seq. Pursuant to Mont. Code Ann. § 35-4-207 "at

least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation."

The district court did little analysis of the business, misidentifying the business entity as "Boesh Engineering, PLLC," which does not exist. (FOF, ¶ 3.) The Appellee testified throughout trial that she was competent to run the parties' joint business although she also misidentified the business as "Boesh Engineering, PLLC" in her Proposed Findings of Fact and Conclusions of Law. (Doc 96, ¶ 2.) The actual name of the business is J.R. Boeshans Engineering, PLLC.

Boesh is a professional corporation formed pursuant to the Montana Professional Corporations Act as a PLLC. Under the plan terms of the Montana Professional Corporations Act, the Appellee is unqualified to own Boesh because she is the only director or officer of Boesh and she is not least one-half of the combined directors and officers of a professional corporation." The Appellee, being a disqualified person, must follow a complex procedure for distribution of the shares to the Appellant or another disqualified person that she has not yet done. Mont. Code Ann. § 35-4-311(1) through (11).

The district court could have permissibly divided the marital estate in many ways that would not violate the Montana Professional Corporations Act. The district court could have awarded the full value of Boesh to the Appellee, ordered it sold, or transferred more assets to the Appellee. However, the district court's transfer of the

professional corporation to a disqualified person should be reversed. Not doing so would set a precedent allowing law firms, physician practices, and accounting firms, to be sold or transferred to anyone with no analysis of the consequences for the individuals served by professional corporations owned by individuals who are unqualified to provide professional services.

CONCLUSION

In a few short months between February and August, 2023, Appellee accomplished her goal of taking the engineering business from Appellant that his family worked decades to build. She did so even though she is not qualified by statute to own the business by herself because she is not a professional engineer. In a few short years between 2020 and 2023, Appellee accomplished her goal of taking the parties' child completely away from Appellant. The district court's animus against Appellant was so significant that it made inaccurate findings and conclusions solely for the goal of bolstering its decision and dispossessing Appellant of his child and livelihood. And finally, the district court created a parenting plan with no timelines for when the Appellant can parent his child and presents inscrutable hurdles to establishing the plan through a third party. For the reasons cited above, the Appellant respectfully requests that this matter be reversed and remanded to the district court.

RESPECTFULLY SUBMITTED this 4th day of February, 2025.

/S/ MICHAEL C. DOGGETT
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, 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 Microsoft Word 2024 is 2,789, not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

RESPECTFULLY SUBMITTED this 4th day of February, 2025.

BY: /S/MICHAEL C. DOGGETT

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CERTIFICATE OF SERVICE

I, Michael Connor Doggett, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 02-04-2025:

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