

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. _____

IN THE MATTER OF THE
PARENTING OF THE MINOR
CHILD OF:

KARISSA LYNN COGAR,

Respondent and Petitioner (for Writ)

vs.

MONTANA SECOND JUDICIAL DISTRICT COURT
HONORABLE ROBERT J. WHELAN

Respondent.

Montana Second Judicial District Court, Silver Bow County
Cause No. DR-47-2016-216
The Honorable Robert J. Whelan Presiding

PETITION FOR WRIT OF SUPERVISORY CONTROL

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INTRODUCTION

This matter is before the District Court initially on Respondent's Motion to Amend Parenting Plan filed on December 19, 2023 due to changes in circumstances for the Petitioner, Mark Gibbons (hereinafter "Gibbons"), the Respondent, Karissa Cogar (hereinafter "Cogar"), and the minor child, T.G.C. [Dkt. 60.]

Following Gibbons' Response to her Motion to Amend filed *pro se* [Dkt. 61], Cogar filed a Motion for Scheduling Conference on January 4, 2024 [Dkt. 64], to which Gibbons filed an objection on January 18, 2024 [Dkt. 64]. No Scheduling Conference was set by the District Court.

Cogar then filed a Notice of Issue on the Pending Motion to Amend and Second Request for a Scheduling Conference on May 17, 2024 [Dkt. 65]. No Scheduling Conference was set by the District Court.

Three months later Gibbons filed a Motion for Review and Change of Back Owing Child Support on August 30, 2024 [Dkt. 66], to which Cogar timely responded on September 5, 2024 [Dkt. 67]. Cogar additionally filed a Motion for Temporary Parenting Order and Order to Show Cause on September 5, 2024 [Dkt. 68], along with her supporting Affidavit [Dkt. 69] alleging, among other things, that Gibbons is not cooperative regarding the parties' minor child's physical and mental healthcare and refuses to administer T.G.C.'s medication for asthma; that Gibbons refuses to allow T.G.C. to be in Cogar's care when he is unavailable for his parenting time, even leaving T.G.C. with Cogar's mother who has been abusive to Cogar and her children

after she advised Gibbons that there was a CPS report and investigation against Cogar's mother. (See Affidavit of Karissa Cogar attached as **Exhibit 1**.)

Respondent's Motion for Temporary Parenting Order and Order to Show Cause was fully briefed on September 27, 2024, has still not been ruled on by the District Court, nor any has a Show Cause Hearing or Scheduling Conference been set.

After continued issues involving Cogar's mother and T.G.C. and Cogar's concerns for T.G.C.'s physical safety, Cogar filed a Second Motion for Temporary Parenting Order and Order to Show Cause on November 4, 2024 [Dkt. 73] along with her Affidavit in Support [Dkt. 74] setting out her concerns for the minor child. (See Affidavit of Karissa Cogar in Support of Second Motion to Temporary Parenting Order attached as **Exhibit 2**.) Gibbons failed to file a response to Cogar's Second Motion for Temporary Parenting Order and Order to Show Cause in the time allowed for his response.

Cogar filed a Notice of Issue on Pending Motions and Third Request for a Scheduling Conference on January 7, 2025 [Dkt. 75] with no response from Gibbons. To date the District Court has failed to set either a Show Cause Hearing or a Scheduling Conference to address Cogar's concerns for her son who is only 8 years old. Meanwhile Gibbons continues to put the minor child at risk.

QUESTION PRESENTED

Should this Court exercise supervisory control and direct the District Court to set a Show Cause Hearing on Cogar's Motions for Temporary Parenting Order and

Order to Show cause or, at the very least, to set a Scheduling Conference?

STATEMENT OF THE FACTS

Cogar hereby incorporates the Introduction above into this Statement of the Facts.

ARGUMENT

This Court has supervisory control over Montana courts and may, on a case-by-case basis, supervise another court through a writ of supervisory control. Mont. Const. Art. VII, § 2(2); Mont. R. App. P. 14(3). Supervisory control is appropriate when the normal appeal process is inadequate; when the case involves purely legal questions; and when one or more of the following exists: (1) the lower court is proceeding under a mistake of law and is causing a gross injustice, (2) constitutional issues of state-wide importance are involved, or (3) the lower court has granted or denied a motion for substitution of judge in a criminal case. *Tipton v. Mont. Thirteenth Judicial Dist. Ct.*, 2018 MT 164, ¶ 9, 392 Mont. 59, 421 P.3d 780. By ignoring Cogar's motions and failing to set a Show Cause Hearing or, at the very least, a Scheduling Conference, the District Court is causing a gross injustice to the minor child.

- I. M.C.A. §40-4-216 (1) on hearings states "Parenting plan proceedings **must** receive priority in being set for hearing." In this case, the Respondent, Karissa Cogar's filed her initial moving papers to amend the parenting plan more than a year ago and filed subsequent requests for a scheduling

conference with the Court. Then, following almost nine months of no response from the District Court and concerns for the safety and welfare of her minor child, Cogar moved the Court for an emergency temporary parenting plan and order to show cause. Five months have passed since her first motion for emergency temporary parenting plan with no hearing set. She then filed a second emergency motion for temporary parenting plan and order to show cause and after three months since that filing no hearing has been set. The District Court has failed to give this parenting plan proceeding “priority” in being set for hearing.

II. M.C.A. §40-4-213(1) provides that a party to a parenting plan may move for an interim parenting plan by motion supported by an affidavit, which the Respondent provided the Court in both filings for an emergency temporary parenting plan. The District Court could adopt an interim parenting plan under the standards of M.C.A. § 40-4-212 either after a hearing or before a hearing. In this case the District Court has failed to either adopt the interim parenting plan before a hearing or set a hearing to determine whether an interim parenting plan is needed.

III. M.C.A. §40-4-212 provides that the Court shall determine the parenting plan in accordance with the best interest of the child considering all relevant parenting factors. In this case, the Court has failed to consider:

- the wishes of the child’s parent or parents.

- the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest. (Emphasis added.)
- physical abuse or threat of physical abuse by one parent against the child.
- developmental needs of the child.
- whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. (Emphasis added.)

In this case, the District Court has allowed a situation to exist and continue that may not be in the best interests of the parties' minor child, T.G.C. by not setting a hearing to Show Cause, if any, why Cogar's request for an emergency temporary parenting order should not be entered and made permanent.

This is a case where "priority" for a hearing is certainly required.

CONCLUSION

This issue before the Court is whether the District Court should be directed to set a Show Cause Hearing on Respondent Karissa Cogar's pending Motion to Amend Parenting Plan, first Motion for Temporary Parenting Order and Order to Show Cause, and second Motion for Temporary Parenting Order and Order to Show Cause. This matter has been before the District Court for over a year and the best interests

of the minor child are not being addressed by the District Court as a “priority.”

RESPECTFULLY SUBMITTED this 7th day of February, 2025.

By /s/ Dave Vicevich
DAVID L. VICEVICH
Attorney for Respondent Karissa Cogar

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate procedure, I certify that this brief is printed with a proportionately spaced Times New Roman non-script text typeface of 14 points; is double spaced except for quoted and indented material; and the word count calculated by Microsoft Word totals 1,235 words, excluding table of contents, table of authorities, certificate of service, and certificate of compliance.

DATED this 7th day of February, 2025.

/s/ David L. Vicevich

DAVID L. VICEVICH

Attorney for Respondent Karissa Cogar

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of February, 2025, a true and correct copy of the foregoing PETITION FOR WRIT OF SUPERVISORY CONTROL was served on all interested parties through the Montana E-File system and/or by U.S. Mail as follows:

Mark Gibbons Jr.
75 Hunters Court
Anaconda, Montana 59711
Pro Se

By /s/ Kimberly LaPalm
Kimberly LaPalm, Paralegal
For VICEVICH LAW

TABLE OF EXHIBITS

Exhibit 1: Affidavit of Karissa Cogar in Support of Motion for Temporary Order

Exhibit 2: Affidavit of Karissa Cogar in Support of Second Motion for Temporary Order

CERTIFICATE OF SERVICE

I, David L. Vicevich, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Affidavit in Support to the following on 11-04-2024:

Pro Se - Self Help (Attorney)
Representing: Mark Richard Gibbons
Service Method: First Class Mail

David L. Vicevich (Attorney)
3738 Harrison Ave.
Butte MT 59701
Service Method: eService
E-mail Address: dlvicevich@gmail.com

Electronically Signed By: David L. Vicevich
Dated: 11-04-2024

CERTIFICATE OF SERVICE

I, David L. Vicevich, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 02-07-2025:

Mark Gibbons (Respondent)
75 Hunters Court
Anaconda MT 59701
Representing: Self-Represented
Service Method: Conventional

Electronically Signed By: David L. Vicevich
Dated: 02-07-2025