IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause DA 25-0038

IN RE THE MARRIAGE OF,

KYLE SPENCER JACKSON,

Appellee and Petitioner,

vs.

HEIDI JACKSON,

Appellant and Respondent.

APPELLANT'S OPENING BRIEF

From the Montana Fifth Judicial District Court, Jefferson County
District Court Case DR-22-2017-32
Honorable Luke Berger, Presiding

APPEARANCES:

Brian J. Miller
Morrison, Sherwood, Wilson, and Deola PLLP
401 North Last Chance Gulch
P.O. Box 557
Helena MT 59624-0557
(406) 442-3261
bmiller@mswdlaw.com

Attorneys for Appellant and Respondent

Sarah Corbally
Attorney at Law
The Law Office of Sarah Corbally, PLLC
P.O. Box 1069
Helena, Montana 59624
(406) 457-5475
mail@corballylaw.com

Attorneys for Petitioner/Appellee

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Issue

Did the District Court abuse its discretion in denying Appellant Heidi Dorrington the opportunity to conduct discovery and have an evidentiary hearing on her motion for modification of child support, when it was undisputed that her income had dropped 65% from the time child support was entered in 2018, she was unable to access information regarding Appellee Kyle Jackson's current income to accurately calculate child support, she presented substantial evidence showing serious injuries and health conditions that likely impacted her employment prospects, and she alleged the healthcare needs of the parties' special needs child were not being adequately met?

Statement of the case

Appellant Heidi Dorrington and Appellee Kyle Jackson were divorced in 2018. (Doc. 145). On December 20, 2024, Heidi filed a motion to conduct discovery and hold an evidentiary hearing on a motion for a modification of child support. (Doc. 207).[1] The motion was denied by the Court on January 13, 2025. (Doc. 209). This appeal timely followed.

Statement of the facts

Heidi and Kyle were divorced by Court decree on December 31, 2018. (Doc.145).

Heidi was awarded spousal maintenance in the amount of $ 5,000.00 per month for five years beginning in December of 2018. (Doc. 145, pg. 26, ¶ 57). At

[1] For some reason, the initial filing in the Court's electronic system seemed to have disappeared after filing and the motion was refiled on January 8, 2025, at Doc. 207. However, Appellee Kyle Jackson saw the motion before it disappeared from the system and had filed a response on January 2, 2025, at Doc. 203. Appellant's Reply Brief in support of the motion was filed on January 6, 2025, at Doc. 206.

the time of the 2018 Order, the Court imputed an income to Heidi of $ 31,200 per year, with an hourly wage at $ 8.30/hour. (Doc. 145, pg. 7, ¶¶ 29-30). The Court found Heidi in "good health and capable of working fulltime." (*Id.*) For her child support calculations, Heidi's income was calculated at being $ 91,200.00—a figure which included the imputed income plus $ 60,000 per year in maintenance. (Doc. 145, Ex. A, pg. 1.) In the child support calculations, Kyle's income was calculated as being $ 481,484.00. *Id.* Kyle also received a tax deduction for his payment of child support which offset his available income for support. (Doc. 145, pg. 7, ¶ 30.) The obligation for each child per month was calculated at $ 421.00. (Doc. 145, Exhibit A, pg. 2.)

The parties have six children, three of them are in college and no longer subject to the parenting plan. (Doc. 137 (stipulated parenting plan)). The other three are shared by the parties on a 50-50 basis. *Id.* The total amount of child support owed by Kyle to Heidi each month for the three children, based on the 2018 calculations, is $ 1263.00. (Doc. 206, *Affidavit of Heidi Dorrington*, ¶ 5.) Kyle routinely shorts Heidi the payments he is obligated to make, however. (*Id.*) For example, in July, August, September, and October of 2024, Kyle only paid Heidi $ 1,083.00 per month. (Doc. 206, *Affidavit of Heidi Dorrington*, ¶ 5, Exhibit B.) Kyle has never sought a modification of child support to pay a lesser amount than he was ordered to do in 2018.

Heidi was in a serious motor vehicle accident only 7 months after she was divorced from Kyle. (Doc. 206, *Affidavit of Heidi Dorrington*, ¶ 1). The accident placed severe setbacks on her ability to function and find employment, resulting in her being unable to work for two years. (Doc. 206, *Affidavit of Heidi Dorrington*, ¶ 2). She received a settlement from the accident which she spent in order to live. *Id.* In 2022, Heidi contracted COVID-19 and had a cascade of long-term symptoms, including auto immune problems which continue to plague her. (*Id.* ¶, 3).

In support of her motion, Heidi submitted a letter from her physician, Dr. O'Connell-Mayernik, of St. Peter's Health. (Doc. 206, *Affidavit of Heidi Dorrington*, Exhibit A). In the letter, Dr. O'Connell-Mayernik wrote as follows,

> I am writing to provide information on Heidi Dorrington who has been under the care of our medical team for the past 4 years. Heidi has experienced significant challenges due to a combination of a brain injury from an auto accident and autoimmune disease issues, which have a had a profound impact on her life. These impairments have made it challenging for Heidi in various ways. In addition, there was a serious incident resulting in two hospitalizations in Great Falls and Salt Lake which required extensive rehabilitation. Medical care is ongoing. Additionally, the autoimmune disease has further complicated her medical condition, leading to frequent flare-ups and exacerbating her symptoms.

(*Id.*)

Heidi filed a motion seeking an evidentiary hearing and the opportunity to conduct discovery on Kyle's income so that child support could be modified. In her moving papers, she noted that with the cessation of maintenance payments, her income had dropped 65% from the amounts of $ 91,200 that was used to calculate

support in 2018. (Doc. 208, *Affidavit of Heidi Dorrington*, ¶ 2). Heidi noted that she was starting a job at the Legislature making $ 24/hour. (*Id.*, ¶ 4). In the 2018 Order, the Court imputed an income to her of $ 8.30/hour. (Doc. 145, pg. 7, ¶¶ 29).

Heidi explained her current employment situation to the Court. "As far as current job prospects," Heidi averred, "I am getting out into the job force now but have had serious and substantial setbacks due to health issues and the accident which were beyond my control. As far as my current real estate income, it is non-existent. I did have a listing for a house as Kyle noted which was my first listing, but as the market has slowed down substantially, I have not made any income from real estate, and that listing has been terminated. I am happy to provide Kyle whatever proof he needs of these facts." (Doc. 208, *Affidavit of Heidi Dorrington*, ¶ 8).

Heidi specifically requested discovery so that she could obtain information about Kyle's financial information to present at an evidentiary hearing. (Doc. 208, *Affidavit of Heidi Dorrington*, ¶ 5). Heidi had good cause to believe that Kyle's income had increased from 2018. (Doc. 206, *Affidavit of Heidi Dorrington*, ¶ 9). She explained that Kyle has an orthodontic practice which has been growing since 2018. *Id.* "I simply want an accurate accounting of what his income really is," Heidi stated. *Id.*

Heidi presented the proof she had access to in order to demonstrate that Kyle enjoys a robust and flourishing income. Heidi noted that Kyle lives in a house that

is valued at over $ 1 million dollars and had recently purchased a speedboat that was worth over $ 150,000. (Doc. 206, *Affidavit of Heidi Dorrington*, ¶¶ 10-11). Heidi even provided a picture of the speedboat that Kyle had purchased. (Doc. 206, *Affidavit of Heidi Dorrington*, Exhibit C). Heidi was also aware that Kyle's finances were not straightforward and that he handled a lot of cash in his orthodontic practice. (*Id.*, ¶ 13).

In its 2018 order, the District Court found that Kyle engaged in conduct which obfuscated the disposition of certain martial assets, concluding that Kyle "used family members to limit certain expenses[;] day light on this from the beginning would have resulted in a clearer picture at the end." (*Doc. 194*, pg. 7, lines 1-2.) The Court also acknowledged that Kyle's conduct forced Heidi into a situation where she had to expend significant resources and time to get a clear picture of the financial impact of Kyle's actions. As stated by the Court on pages 7 through 8 of Doc. 194,

> While the Court is not convinced Kyle should be held in contempt for the way he sold the Arizona property and distributed funds, the Court is only convinced of this because of the amount of work done by Heidi's attorney to obtain this information. It was certainly not Heidi's fault she did not receive the proper information. While Kyle may have provided information it was not transferred appropriately to Heidi. The lack of communication through this process was the reason we are in this situation now.
>
> Additionally, while Kyle's use of his family and sale of the property is not directly contemptuous the Court only arrives at this after seeing the provided information. From an initial view Heidi was correct to be

> suspect of the situation, as was the Court when it learned of the initial facts. Only through further investigation and information was the Court convinced otherwise.

Heidi's desire to conduct discovery on Kyle's finances in order to arrive at a proper calculation of his income is grounded on her prior experience which was validated by the District Court's own findings in 2018.

Finally, in her motion Heidi raised concerns over whether the health insurance needs of the parties' special needs child were being adequately addressed. As stated by Heidi, "[a]lso, the children's health insurance needs to be addressed. The children are not insured by Kyle through an appropriate healthcare plan at present. We have a child with special needs who needs appropriate health insurance. This issue also needs to be settled and addressed." (Doc. 206, *Affidavit of Heidi Dorrington*, ¶¶ 10-11).

In Kyle's opposition to the motion, he did not dispute that Heidi's income had dropped by 65%, but noted that she had been remarried and claimed that "Heidi has had enough time to build the skills necessary to earn sufficient income to replace these maintenance payments, and the Court can reasonably impute the same amount of income to Heidi at this time that it used in the initial child support payments." (Doc. 203, pg. 2). Even though Kyle was well aware of Heidi's accident and health challenges, he made no mention of these factors at all. Kyle provided no facts justifying an imputed income to Heidi of $ 91,200 per year. Additionally, Kyle

baselessly accused Heidi of having "vengeful motives" in seeking a modification support and asked the Court to award him attorney fees and costs for having to respond to the motion and claimed that her request constituted an "abuse of the judicial process." (Doc. 203, pg. 4). It is worth noting that these claims of "vengeance" come from a man who routinely shorts the child support amounts he is ordered to pay.

In its Order denying the motion, the Court acknowledged that Heidi claimed the imputed income amount of $ 91,200.00 was "no longer realistic or appropriate", and that Heidi requested discovery to become appraised of Kyle's current income. (Doc. 209, pg. 1).

Although the Court did not hold an evidentiary hearing in this matter, it nonetheless came to the following factual conclusions about the propriety of continuing to impute $ 91,200 in income to Heidi,

> Yes, it is true Heidi's income has decreased as she no longer receives the $60,000.00 in maintenance, but this was always a foregone conclusion. The Court set the amount 5 years in advance to give Heidi additional time to start her career and prepare for any changes. While it is true Heidi was in a car accident and has been delayed in her career, it is also known by this Court she was remarried and is now going through a dissolution in that marriage. This is not said to impugn Heidi in anyway, but to note circumstances outside of Kyle's control have dictated Heidi's career path moving forward.

(Doc. 209, pg. 2-3).

On the subject of Kyle's income and the need for discovery, the Court made the following findings in the absence of discovery or an evidentiary hearing,

> It is also undisputed Kyle has not changed jobs and while Heidi may speculate as to an increase in income, there is no concrete evidence to this. Just as Heidi could speculate he is making more, it is easily as realistic Kyle is "stretching his financial situation" as was evidenced previously during his marriage to Heidi. This is not to say he is doing anything illegal, but this pattern of expenses has not changed. It is not as if Kyle lived a frugal life before and is now acting substantially different. From the Court's view nothing with Kyle has changed.

(Doc. 209, pg. 3).

Lastly, the Court relied heavily on the claim that Heidi's motion needed to be denied because she had failed to provide evidence showing that the needs of the children had changed.

> Most importantly though nothing has been alleged regarding the need of the children. Child Support is not to be used as spousal support. Heidi's motion is predicated on her decrease in income from 6 years ago but has nothing to do with the needs of the children. There has been no showing there has been any change in the needs of the children making the previous Order unconscionable.
>
> Based off the information before the Court there is no change to either the children of Kyle's circumstances necessitating a change.

(Doc. 209, pg. 3).

It is from this Order that Heidi now appeals seeking the opportunity to conduct discovery on Kyle's income and hold an evidentiary hearing before the motion for child support is formally denied or granted.

Standard of review

"We review a district court's ruling on a motion for modification of child support for an abuse of discretion. We also apply the abuse of discretion standard to a district court's decision not to hold an evidentiary hearing. A court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice." *Brown v. Brown*, 2016 MT 299, ¶ 11 (citations omitted). "Webster's Ninth New Collegiate Dictionary defines 'arbitrary' to mean 'existing or coming about seemingly at random or by chance or as a capricious and unreasonable act of will;' similarly, 'capricious' is defined as 'characterized by a sudden, impulsive and seemingly unmotivated notion or action.' Thus, a review by a district court or this Court of an action under the 'arbitrary and capricious' standard does not permit a reversal merely because the record contains inconsistent evidence or evidence which might support a different result. Rather, the decision being challenged must appear to be random, unreasonable or seemingly unmotivated, based on the existing record." *Silva v. City of Columbia Falls*, 258 Mont. 329, 335 (1993).

Summary of argument

The District Court's denial of the request for discovery and an evidentiary hearing on Heidi's motion for a modification of child support constitutes an abuse of discretion for several reasons. First, it is undisputed that Heidi's income had

dropped 65% since 2018 and that she had suffered serious health setbacks that impacted her employability (also, Kyle received an offset against his income in 2018 for maintenance payments, which he clearly no longer makes). Thus, it is arbitrary and capricious to continue to assume, without any evidence at all, that the imputed income amount of $ 91,200 is still in line with the appropriate legal standards. This is particularly true because in 2018, the Court found that Heidi was in "good health" and on that ground only imputed $ 31,200.00 income to her at $ 8.30 per hour. In 2025, the Court knew that Heidi had not been in good health since 7 months after the 2018 dissolution and had absolutely no legal or evidentiary basis to impute $ 91,200.00 in income to her (which would require findings supporting an imputation of income at approximately $ 43 per hour). The finding in this regard is arbitrary and capricious.

Second, the Court's conclusion that Heidi failed to show a change in Kyle's financial circumstances and that Heidi is "speculating" as to Kyle's increase in income is also arbitrary and capricious because the Court denied Heidi the opportunity to conduct discovery to uncover those facts in the first place. Heidi did present evidence that Kyle lives in a house that is worth over $ 1 million dollars and that he purchased a speedboat worth over $ 150,000.00. But Heidi does not have access to Kyle's bank records, tax returns, and financial statements. Thus, it is

arbitrary and capricious for the District Court to fault Heidi for failing to provide the information that it refused to allow her to access in the first place.

Third, the District Court's decision is arbitrary and capricious because it ignores the fact that a drastic change in financial status of a party is sufficient, in and of itself, to trigger a reexamination of child support. The child support calculations are designed to ensure that the needs of the children are met by child support calculations which adhere to them. Accordingly, calculations which are based on income assumptions that are wildly out of whack with the actual parties' income carry at least some sort of presumption that the current support arrangements are inadequate to meet the needs of the children and need to be reexamined for the sake of the support of the children. This should be a cause of concern for any district court to ensure that the children's support needs are being met. It was arbitrary and capricious for the Court to conclude that the 2018 calculations were still serving the needs of the children and adhering to the child support guidelines when the income of the parties had changed so greatly.

Fourth, the District Court arbitrarily and capriciously faulted Heidi for failing to allege that the needs of the children had changed. Heidi did in fact allege that the health insurance needs of the parties' special needs' child were not being adequately addressed. But beyond that, there is no legal requirement for a particular showing of the changed needs of the children in order to seek a modification child support.

The case law from this Court has made it abundantly clear that a significant change in the financial status of either party is more than sufficient to move the case forward and that the District Court should always be looking to make sure the needs of the children are adequately met above all else.

The District Court's order has worked a substantial injustice to the children in this case and must be reversed. The 2018 child support calculations are clearly unconscionable at this point in time. What they should be adjusted to is another matter entirely, which can only be resolved after a period of discovery and a proper evidentiary hearing.

At the end of its Order, the District Court made the offhand remark that "Child support is not to be used as spousal support," somehow implying that Heidi was simply seeking to replace the missing spousal support payments through child support. This suggestion is unfair and unjust and has no support whatsoever. If the District Court wants to impute some income to Heidi, it needs to be fair, based on facts and the law, and not based on not arbitrary speculation—particularly arbitrary speculation based on the Court's views of Heidi's alleged motives. The District Court also needs to take serious account of the health challenges that Heidi has gone through and how those impact her financial status as well. But the District Court in this case assumed that the arbitrary amount of $ 91,200 in income ($ 60,000

of which was based on an analysis for an award of maintenance which has nothing to do with the analysis for imputed income) should still be imputed to Heidi.

In any event, sufficient facts have been alleged to allow discovery on these matters and hold an evidentiary hearing before a final decision is made. And when that decision is made, it cannot be arbitrary and capricious, but rather legally and factually justified. For these reasons, Heidi seeks the reversal of the District Court's decision and a remand to allow her to conduct discovery and have an evidentiary hearing on her motion to modify child support, ensuring that any final order fully complies with the applicable law and is based on justified factual findings—not arbitrary and unfair speculation on Heidi's motives.

Argument

A. The District Court's conclusion that Heidi should be imputed income in the amount of $ 91,200 is arbitrary and capricious

In determining child support, a district court must follow the child support guidelines unless "clear and convincing evidence is produced demonstrating that the application of the guidelines is unjust to the child or to any of the parties, or is inappropriate to that particular case." *In re Marriage of Carter-Scanlon*, 2014 MT 97, ¶ 27 (citing Section 40-4-204(3)(a), MCA). Imputed income is only appropriate "when the parent is unemployed, underemployed, fails to produce sufficient proof of income, has an unknown employment status, or is a student." *Carter-Scanlon*, ¶

27 (citing Admin. R. M. 37.62.106 (1)-(2)). These determinations must be based on factual findings, not arbitrary speculation in the absence of evidence. *See Carter-Scanlon*, ¶ 28 (analyzing the rationale relied upon by the district court in deciding to impute income in that case).

Lastly, if income is going to be imputed, it cannot be done arbitrarily, but must "based on the parent's recent work history, the parent's occupational and professional qualifications, and existing job opportunities and associated earning levels in the community or local trade area." *Carter-Scanlon*, ¶ 27 (citing Admin. R. M. 37.62.103(15)); *See also*, *In re Marriage of Bee*, 2002 MT 49, ¶¶ 21-24 (discussing the analysis the district court must go through in order to impute income to a parent).

In 2018, the District Court imputed an income to Heidi of only $ 32,100, based on her "good health" and employment prospects at that time at $ 8.30/hour. Now, Heidi has a job at the Legislature making $ 24/hour, which is four times what was imputed to her in 2018. Extrapolating this hour wage into a yearly salary yields a number of $ 49,920. Heidi submitted back of the napkin child support calculations showing that if an income of $ 45,000 was imputed, and the 2018 income figures for Kyle were used, it would result in a child support obligation of $ 6,684.00 for the three children. (Doc. 206, Exhibit 1). Given that Heidi had not been in "good health" since 7 months after the 2018 dissolution, imputing an income of $ 24/hour

would be reasonable—imputing an income of $ 43/hour and $ 91,200 per year, however, is not.

In its 2018 Order, the District Court did not make any factually supported determination that Heidi could be reasonably imputed $ 91,200 in income in 2018 or at any point in the future. In fact, in 2018, the District Court only imputed an hourly wage to Heidi of $ 8.30/hour. In order to impute an income of Heidi in 2025 of $ 91,2000, it would have had to had reliable facts upon which it could impute an hourly wage of $ 43.00/hour. But there is no such evidence to support such a finding. Moreover, Heidi submitted substantial, credible evidence that she had serious health issues which impacted her employability. Thus, it is questionable whether she is underemployed at all.

As the District Court itself recognized, child support is not spousal support. That is true. And it means that the $ 60,000 in yearly maintenance calculation has absolutely no bearing whatsoever on the question of imputed income because the imputation of income under the Child Support administrative regulations is based on a completely different type of legal analysis as well as different facts. It was arbitrary and capricious for the District Court to conclude that because it awarded Heidi $ 60,000 per year in spousal income in 2018, that it was subsequently justified in imputing a total of $ 91,200 per year in income to Heidi in 2025 without any supporting evidence or analysis.

B. The District Court's refusal to allow discovery into Kyle's income is arbitrary and capricious

"[A]n arbitrary act is one that is made without consideration or regard for facts, circumstances, fixed rules, or procedures." *Mont. Cannabis Indus. Assn. v. State*, 2016 MT 44, ¶ 108 (McKinnon, J., dissenting) (citing *Black's Law Dictionary,* pg. 125). On the issue of Kyle's income, the District Court found that "while Heidi may speculate as to an increase in income, there is no concrete evidence to this." (Doc. 209, pg. 3). That is true, but Heidi provided the best evidence she had on this point in the absence of discovery. Moreover, it is precisely why Heidi requested discovery in the first place, so that she could gain access to that information to determine if Kyle's income had increased from where it was in 2018. Heidi requested the opportunity to gather the very "concrete evidence" which the District Court then faulted her for failing to provide; this is a "random", unreasonable decision which cannot be justified.

The Court also engaged in speculation about whether Kyle's pattern of expenses had changed from where they were in 2018, or whether he was living frugally. (Doc. 209, pg. 3). It is unclear upon what basis the Court arrived at such conclusions since Kyle himself never mentioned them, and Heidi simply provided evidence that Kyle lived in a house worth over $ 1 million dollars and had recently purchased a speedboat worth at least $ 150,000.00. Again, this is something that has to be hashed out in discovery after an evidentiary hearing.

In any event, it was arbitrary and capricious for the District Court to fault Heidi for not providing concrete evidence of Kyle's change in income, when the District Court denied Heidi access to such information. Moreover, it was arbitrary and capricious to speculate on the differences in Kyle's spending habits between 2018 and 2025, in the absence of any evidence on this matter at all. The District Court's decision here seems random and "made without consideration or regard for facts, circumstances, fixed rules, or procedures." *Mont. Cannabis Indus. Assn. v. State*, supra.

C. The District Court's conclusion that Heidi cannot seek a modification of child support for failure of proof on the needs of the children is arbitrary and capricious because a significant change in financial status is more than sufficient to trigger a modification of child support

This Court has never held that a party seeking a modification of child support must present any particular evidence regarding whether the needs of the children had changed since the initial order of support was entered. In *Rome v. Rome*, 190 Mont. 495 (1981), a case cited by the District Court itself in its 2018 dissolution order, the Montana Supreme Court said,

> Child support must reflect a balance among the needs of the parties involved and the ability of the parents to pay. Section 40-4-204, MCA. **Normally, a substantial change in the financial condition of the parent or child has been recognized as grounds for modification of a previously-entered child support order.** Gianotti v. McCracken (1977), 174 Mont. 209, 215, 569 P.2d 929, 932; Harding v. Harding (1978), 59 Ill.App.3d 25, 374 N.E.2d 1304; Annot., 89 ALR2d 7, § 3.

Rome, 190 Mont. at 497 (emphasis supplied).

The Court's case law since 1981 has confirmed this view. "In order to demonstrate changed circumstances, a party must provide specific evidence of changed economic circumstances **or** actual increased need." *Midence v. Hampton* (*In re Marriage of Midence*), 2006 MT 294, ¶ 13 (citing *In re Marriage of Kummer*, 2002 MT 168, ¶ 18) (emphasis supplied); *see also, Phennicie v. Phennicie*, 185 Mont. 120, 126 (1979) (substantial improvement in husband's financial circumstances held to be sufficient to modify child support).

Neither the District Court, nor Kyle, cited any cases showing that Heidi was required to present any particular quantum of proof regarding the needs of the children to seek a modification of child support. Moreover, Heidi did allege that the health insurance needs of the parties' special needs child were not being adequately met. This allegation—which is not even refuted by Kyle—should be more than enough to trigger the District Court to allow this case to go forward so that it could be sure the needs of the parties' special needs child were being met.

In *In Re Marriage of West*, 212 Mont. 374 (1984), this Court reversed a district court's denial of a modification of child support in the following terms. "The financial disparity between the financial needs and resources of the mother and father, occurring since the entry of the existing child support order in 1979, surely proves the inability of the mother to provide for the support of the children and the

ability of the father to do so." *In re Marriage of West*, 212 Mont. at 377. This Court faulted the district court in that case for denying the modification before it made sure that the needs of the children were being met.

> The court considered their resources and found that the children have no assets, no independent sources of income and no other means by which to provide for their own sustenance. However, the trial court made no findings on the needs of the children. Unfortunately, the only evidence on their needs is an uncontroverted statement by the mother that as the children have gotten older, their needs and wants have increased. Nonetheless, the trial court should not have disregarded this statement, as it did establish the mother's threshold evidentiary burden of proving that the needs of the children have increased. At this point if the parties did not present further evidence, the trial court nonetheless should have inquired further into the children's needs. Based on the evidence obtained, the trial court should have entered findings and conclusions on the financial needs of the children, a determination that is essential when considering a petition for modification of child support.

In re Marriage of West, 212 Mont. at 377.

Child support calculations are designed to ensure that the needs of the children are being met. But they can only accomplish that goal if the calculations are based on accurate income numbers; if the income is off, the needs of the children are likely not being met. This is why a variance from the support must be justified by sufficient evidence and analysis. As stated in *Shelhamer v. Hodges*, 2016 MT 29, ¶ 9,

> CSED is required to adopt uniform child support guidelines to determine minimum child support amounts. Section 40-5-209(1), MCA. The guidelines are used to establish "a standard to be used by the district courts, child support enforcement agencies, attorneys and parents in determining child support obligations." Admin. R. M.

37.62.101(1) (1998). The underlying principle and stated purpose of the guidelines is as follows:

> These guidelines are based on the principle that it is the first priority of parents to meet the needs of the child according to the financial ability of the parents. . . . [A] child's standard of living should not, to the degree possible, be adversely affected because a child's parents are not living in the same household. Admin. R. M. 37.62.101(2) (1998).

Thus, given the fact that child support in 2025 was based on income calculations for Heidi which were at least 65% off, there is absolutely no requirement for Heidi to make any further showing regarding the needs of the children in order to move the process to the next step and obtain discovery and an evidentiary hearing before a final decision is made. Moreover, the District Court should be concerned that the needs of the children are not being met when the financial assumptions on which calculations were based are so wildly out of whack.

It was arbitrary and capricious for the District Court to deny the motion on the grounds that Heidi failed to present evidence of the changed needs of the children, when she did allege that the health insurance needs of the parties' special needs child was not being met, and it was undisputed that her income in 2025 was at least 65% less than it was in 2018.

D. The 2018 Child Support calculations are unconscionable; the District Court's decision has resulted in substantial injustice to the parties' children who deserve to be adequately supported

As the Court stated in *Mooney v. Brennan*, 257 Mont. 197 (1993),

> In the past, we have declined to adopt, or rely upon, a solitary definition for the term 'unconscionable' as used in § 40-4-208, MCA. *Green v. Green* (1978), 176 Mont. 532, 539, 579 P.2d 1235, 1238-39. Rather, our interpretation of the term hinges upon a case-by-case analysis after scrutinizing the underlying facts. *In re the Marriage of McNeff* (1983), 207 Mont. 297, 300, 673 P.2d 473, 475. As we have said, 'we know when we are shocked.' *Green*, 579 P.2d at 1239

Mooney, 257 Mont. at 201.

Here, the District Court knew several things when it denied Heidi the opportunity to conduct discovery of Kyle's income and have an evidentiary hearing on Heidi's motion for child support:

- Heidi's income had dropped 65% since the 2018 calculations;
- The District Court imputed an income of $ 8.30 per hour to Heidi in 2018 and had no information or evidence before it that Heidi should be imputed an hourly income of $ 43 per hour (or any other greater figure other than the $ 24 per hour that Heidi stated she was currently making);
- Heidi alleged the health insurance needs of the parties' special needs child were not being adequately met;
- Kyle had engaged in improper conduct during the 2018 proceedings with respect to the disposition of certain marital assets;
- Kyle handles a lot of cash in his orthodontic practice;

- Kyle lives in a home valued at over $ 1 million dollars and recently purchased a speedboat worth at least $ 150,000;
- Heidi suffered a serious traumatic brain injury in a motor vehicle accident 7 months after her divorce from Kyle;
- Heidi suffered a serious autoimmune disease in 2022;
- Heidi's treating physician submitted a letter indicating that she experienced "significant challenges due to a combination of a brain injury from an auto accident and autoimmune disease issues, which have a had a profound impact on her life. These impairments have made it challenging for Heidi in various ways. In addition, there was a serious incident resulting in two hospitalizations in Great Falls and Salt Lake which required extensive rehabilitation. Medical care is ongoing. Additionally, the autoimmune disease has further complicated her medical condition, leading to frequent flare-ups and exacerbating her symptoms"; and
- Kyle routinely shorts Heidi on the child support payments he is required to make.

Recalling that all Heidi was only requesting was the opportunity to conduct discovery and simply be heard by the District Court on this issue, its denial to Heidi of this opportunity must be deemed arbitrary and capricious, leading to a result

which is unconscionable as it leaves the highly suspect 2018 child support calculations unaltered and unexamined.

In its 2018 Order, the District Court cited to the very case law on the issue of child support which its 2025 Order now undermines to the detriment of the children. "Child support must reflect a balance among the needs of the parties involved and the ability of the parents to pay," the Court wrote in the 2018 Order citing to *Rome*. (Doc. 145, pg. 28, ¶ 8). The Court also cited to Mont. Admin. R. 37.62.101(2), which states that the children's "standard of living should not, to the extent possible, be adversely affected because a child's parents are not living in the same household." (Doc. 145, pg. 28, ¶ 10). The law in his area has not changed since 2018.

Heidi does not understand where or how the District Court got the idea that she was seeking an increase in child support to make up for lost maintenance. The only reason she is seeking a modification of child support is because the amount does not accurately reflect the incomes of the parties, and it is now unconscionable as a matter of law. If Heidi had not been seriously injured and was making $ 91,200.00 per year, she would have never sought any modification for support. The only reason Heidi is doing this is for her children and no other reason at all.

Whether Heidi should be imputed an income in 2025 which was above the $ 31,200 she was imputed in 2018 is certainly a fair question which Heidi expects will be addressed in discovery and at a hearing. She is more than willing to agree to an

imputed income of $ 24/hour. But before the District Court can make such a decision, it has to consider the administrative regulations, as well as the facts, as demonstrated by the case of *Carter-Scanlon* cited above. The District Court must also be fair to the children by taking into account Heidi's very serious health challenges which will be adequately documented by any required medical evidence.

As noted above, Heidi submitted some back of the napkin calculations on the issue of child support. Even if the Court were to use the same income that Kyle had in 2018 (which was $ 481,484) and impute to Heidi an income of $ 45,000, the monthly obligation of child support would be $ 6,684 for all three children. (Doc. 206, Exhibit 1). This should be taken as a strong signal that something is way off in the child support payments and that the needs of the children are not being met by the$ 1236 per month which Kyle is supposed to pay but which he routinely shorts for no just cause at all.

This arrangement is depriving the children of the standard of living that the law says they should be enjoying. This is an injustice to the children which this Court should remedy by reversing this District Court order.

Conclusion

The purpose of child support is to ensure that the standard of living enjoyed by the children is not negatively impacted solely because the children now split their time between different households. If one parent makes more than the other, and the

parties share the children equally, then an amount of child support shall be owed which is commensurate with the income the party has available for support.

As the District Court correctly noted, maintenance and child support are two different things. For this reason, it makes no sense why the District Court relied on maintenance figures to impute income, when the legal standards and factual analysis for these two things are so radically different. Moreover, the District Court knew that Heidi had suffered serious health issues since shortly after the 2018 divorce, and did not have any evidence at all to conclude that it was reasonable to impute income of $ 91,200 to Heidi in 2025. In fact, while Kyle asked that the figure be imputed, he himself provided no evidence or justification for arriving at such a determination.

For the reasons stated in this brief, the District Court's denial of the request for discovery and an evidentiary hearing was arbitrary and capricious and constitutes an abuse of discretion. It works a substantial injustice to the children who are being deprived of the resources of their parents simply because Heidi has had serious health issues and does not make as much money as Kyle. On top of that, Kyle routinely shorts the paltry sum of child support he is ordered to pay and does not ensure the parties' special needs child has adequate health insurance, while nevertheless having sufficient disposal income to purchase a boat with $ 150,000.00 and live in a house worth over $ 1 million dollars. This injustice to the children should simply not be allowed to stand any longer.

For these reasons, the District Court's decision should be REVERSED, and this matter REMANDED for proceedings consistent with the Court's Decision in this matter.

DATED this 24th day of February, 2025.

By: /s/ Brian Miller
Brian Miller
MORRISON SHERWOOD WILSON DEOLA PLLP
Attorney for Defendants/Third Party Appellant/Respondent

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

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BY: /s/ Brian J. Miller
Brian J. Miller
Attorney for Appellant/Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2025, I have filed a true and accurate copy of the foregoing APPELLANTS OPENING BRIEF with the Clerk of the Montana Supreme Court; and that I have served via the Court's electronic filing system true and accurate copies of the foregoing upon each attorney of record.

BY: /s/ Brian J. Miller
Brian J. Miller
Attorney for Appellant/Respondent

CERTIFICATE OF SERVICE

I, Brian James Miller, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 02-25-2025:

Sarah Corbally (Attorney)
2601 E. Broadway St.
Helena MT 59601
Representing: Kyle Spencer Jackson
Service Method: eService

Electronically signed by Chris Gaub on behalf of Brian James Miller
Dated: 02-25-2025