IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0031

CIARA LYNN REHBEIN,

Petitioner and Appellant,

v.

JESSICA MICHELLE PADDOCK,

Respondent and Appellee.

BRIEF OF APPELLANT

On Appeal from the Montana Second Judicial District Court,
Silver Bow County
The Honorable Ray J. Dayton, Presiding

APPEARANCES

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STATEMENT OF THE ISSUES

1. Whether the District Court erred in amending the pleadings after trial to add a request by the Appellee for parental rights under Mont. Code Ann. § 40-4-228.

2. Whether the District Court erred in granting Appellee parental rights under Mont. Code Ann. § 40-4-228.

STATEMENT OF THE CASE

Appellant, Ciara Lynn Rehbein ("Ciara"), brings an appeal to the Montana Supreme Court from the *Findings of Fact, Conclusions of Law, and Decree of Dissolution* (the "Decree") dated December 12, 2024, in which the Honorable Ray J. Dayton of the District Court for the Second District of Montana granted to Appellee, Jessica Michelle Paddock ("Jessica"), parental rights under Mont. Code Ann. § 40-4-228 to two of Ciara's children, A.M.R. and M.J.R.

From the beginning of the dissolution proceeding through the trial, Jessica never requested parental rights to the children under Mont. Code Ann. § 40-4-228, but rather asserted that she was entitled to a presumption of paternity under Mont. Code Ann. § 40-6-105. Ciara addressed the paternity issue in her post-trial brief while emphasizing that this was Jessica's only possible basis for obtaining parental rights, there being no pleading or motion for alternative relief. Jessica did not dispute this in her response brief, but she placed language in her proposed

findings of fact and conclusions of law referencing Mont. Code Ann. § 40-4-228 as an alternative basis for relief. This was the first time any such argument had been made. Ciara objected to this in a reply brief as beyond the scope of the issues before the district court, and she went on to summarize various reasons that Jessica had not met the high burden of proof required by the statute anyway. Among these reasons was Jessica's heavy reliance on "rebuttal" witnesses who all admitted their animosity toward Ciara, and whose testimony created disputed questions *at best* rather than the clear and convincing evidence necessary for granting parental rights under Mont. Code Ann. § 40-4-228.

In its Decree, the district court found that Jessica was not entitled to a presumption of paternity under Mont. Code Ann. § 40-6-105, but that she was entitled to parental rights under Mont. Code Ann. § 40-4-228. The district court amended the pleadings to include this alternative relief on the basis of Mont. R. Civ. P. 15(b)(2), finding that the parties had "consented" to try this issue, but without specifying how they had done so other than by discussing parental rights at all (there is no mention of Mont. Code Ann. § 40-4-228 in the trial transcript). The district court went on to find that Jessica had provided sufficient evidence to support obtaining parental rights to the two children under Mont. Code Ann. § 40-4-228. The district court did not address Ciara's reply arguments, but rather relied on the same hostile witnesses identified in those arguments.

Ciara asserts that the district court committed two serious errors that have deprived her of her fundamental rights. The first error was to grant relief beyond the scope of the issues before the district court and that were sprung on Ciara only after trial and outside the arguments, thereby depriving Ciara of due process of law. The second error was to grant Jessica parental rights as a "nonparent" even though the evidence for such relief was conflicting rather than clear and convincing, thereby depriving Ciara of her rights as the natural mother to her children (not to mention the natural fathers, who have not surrendered their rights).

STATEMENT OF FACTS

A. The Parties And The Dispute

Ciara is a resident of Butte, Montana. Transcript of Proceedings - Final Hearing, Part 2 (hereinafter, "Part 2") at 6:15-20. Jessica is a resident of Butte, Montana. Transcript of Proceedings - Final Hearing, Part 1 (hereinafter, "Part 1") at 10:14-19; 109:4-6; 114:16-18. She currently resides at 1360 Joy Lane in Butte, though she previously resided with Ciara at 2100 South Wyoming Street in Butte. Part 1 at 109:4-20. The parties were previously married to each other but divorced in or about June of 2017. Part 1 at 114:19 – 115:2. Jessica filed for that divorce and expressed that it was because she did not wish to have children with Ciara. Part 1 at 21:1-7. Part 2 at 13:4-16. The parties remarried each other on or about

July 13, 2018. Part 1 at 14:9-14. Part 2 at 24:13-21. They separated in February of 2021. Part 1 at 17:23 – 18:4. The parties separated in February of 2021. Part 1 at 17:23 – 18:4.

On April 14, 2022, Ciara filed the Petition for Dissolution of Marriage Without Minor Children (the "Petition"). Jessica assisted Ciara in preparing the Petition. Part 1 at 110:17-25. Part 2 at 37:17 – 38:4. On May 17, 2022, Jessica filed her Answer and Counter-Petition. The Counter-Petition asserts that there are two minor children of the marriage: A.M.R. (born in 2018) and M.J.R. (born in 2021). The Counter-Petition does not identify a specific legal basis for Jessica to assert rights as a parent, but it requests a Final Parenting Plan with regard to these two children.

On October 19, 2022, Jessica filed a Petition Regarding Parentage and Brief (the "Parenting Petition"). The Parenting Petition argues that Jessica is entitled to a presumption of paternity to A.M.R. (born in 2018) and M.J.R. (born in 2021) on the basis of Mont. Code Ann. § 40-6-105(1)(a) and (d), especially as interpreted through modern jurisprudence concerning the constitutional right of same-sex partners to marry each other.

Ciara gave birth to both A.M.R. and M.J.R. Part 2 at 9:10-7; 13:22 – 14:4; 24:13-16. Jessica is a biological woman and not capable of being the natural father of A.M.R. or M.J.R. Part 1 at 13:1-2; 36:12-20; 126:9-22. A.M.R. and

M.J.R. currently reside with Ciara and her third child, C.L. Part 2 at 6:21 – 7:2. Jessica visits A.M.R. and M.J.R. each week according to the terms of an Interim Parenting Plan that was issued on July 15, 2022, and modified by the parties' agreement thereafter. Part 2 at 47:18-21; 72:10 – 73:25.

Neither party requested maintenance from the other, but both parties requested equitable distribution of their marital property.

B. Facts Regarding A.M.R.

A.M.R. was born on July 29, 2018. Part 2 at 7:20-21. This was shortly after the parties remarried each other on July 13, 2018. Part 1 at 14:9-14. Part 2 at 24:13-21. A.M.R.'s father is Jesus Soto ("Mr. Soto"). Part 1 at 30:22 – 31:7; 221:18 – 222:12. Part 2 at 7:22-23; 8:17-22. A.M.R. was conceived during a relationship between Ciara and Mr. Soto. Part 1 at 30:20 – 31:6; 219:21 – 220:9. Part 2 at 8:17-25.

Before that relationship occurred, Mr. Soto had made sperm donations for Ciara to attempt artificial insemination, also signing an agreement to surrender his parental rights in case the insemination was successful. Part 1 at 23:3-12; 24:10 – 25:25; 214:20 – 215:17; 216:11 – 217:7. Part 2 at 18:4-21. The agreement identifies Jessica as a witness, not as a party or a parent. Part 1 at 26:1-2. Part 2 at 23:14-24. The attempts at artificial insemination failed. Part 1 at 221:1-8. Part 2 at 11:6-10; 233:5-8. Ciara stopped attempting artificial insemination in March of

2017 because of an injury to her reproductive system. Part 2 at 11:11-24; 232:8 – 233:4.

It was not until September of 2017 that Ciara and Mr. Soto began a physical relationship, which is how A.M.R. was conceived. Part 2 at 12:1-23; 13:12-16; 233:5-11. Ciara and Jessica were divorced during this time. Part 2 at 12:24 – 13:3; 231:7-15. Jessica was no longer living with Ciara during this time, while Mr. Soto had moved in with Ciara. Part 2 at 12:6 – 13:3; 231:7-23. Jessica is the one who filed for the divorce because she said she did not want children. Part 2 at 13:4-16. Jessica confirms telling Ciara that she (Jessica) did not want children and that the two of them were divorced when Ciara conceived A.M.R. Part 1 at 21:5 – 22:5.

Mr. Soto asserts that he relinquished his parental rights to A.M.R. by signing the artificial-insemination agreement presented by Ciara and Paddock. Part 1 at 216:11-17. However, Mr. Soto stays in contact with A.M.R. because both parties informed A.M.R. that he is her father; he considers A.M.R. part of his family; and A.M.R. sees him as “the dad figure” (even calling him on Father’s Day). Part 1 at 26:14-23; 233:12 – 234:17; Part 2 at 25:12-25. Both parties also have accompanied A.M.R. to meet Mr. Soto in person where he lives in Odessa, Washington. Part 1 at 27:2-13.

No evidence was introduced to show that Mr. Soto has taken formal, legal steps to surrender his rights to A.M.R., which the district court confirmed in its Decree. Decree, Findings of Fact ¶ 34.

C. Facts Regarding M.J.R.

M.J.R. was born on October 18, 2021. Part 1 at 65:17-18. This was after the parties remarried each other on July 13, 2018. Part 1 at 14:9-14. Part 2 at 24:13-21. M.J.R.'s father is Matthew Allen ("Mr. Allen"), who also obtained a paternity test confirming same. Part 1 at 39:2-8. Part 2 at 8:1-6; 188:23 – 189:5; 196:7 – 197:5. M.J.R. was planned and the product of a sexual relationship between Ciara and Mr. Allen, who never has relinquished his parental rights. Part 1 at 38:12 – 39:8. Part 2 at 9:1-7; 197:6-17.

Jessica accused Mr. Allen of raping Ciara, but both he and Ciara deny this. Part 1 at 156:5 – 157:5; Part 2 at 34:6-13; 195:16-18. Jessica warned Mr. Allen to stay away from her and Ciara. Part 1 at 157:11 – 158:18; Part 2 at 183:14-22. Jessica went so far as to deliver a menacing voicemail to Mr. Allen, who perceived it as a threat and stayed away from Jessica and Ciara. Part 1 at 159:2-5. Part 2 at 191:2 – 195:9; 196:1-6. As a result, Mr. Allen was not present at M.J.R.'s birth or aware of M.J.R.'s existence until six to nine months later. Part 2 at 189:21 – 190:4. During this period, the relationship between Jessica and Ciara was deteriorating (to the point of discussing divorce), and Ciara perceived Jessica

as trying to gain control over M.J.R. by frightening off Mr. Allen. Part 2 at 182:24 – 183:22.

Jessica played an active role in M.J.R.'s birth and life during this period while Mr. Allen was staying away. Part 1 at 40:4 – 42:6. Ever since learning about M.J.R., however, Mr. Allen and his own family have been actively involved in M.J.R.'s life, and Mr. Allen wishes for that to continue by pursuing his rights as a parent. Part 2 at 190:5-11; 199:6 – 200:20; 203:5-12.

D. The Trial

On December 8, 2023 and on July 11 and 12, 2024, the district court held a trial regarding the parties' claims against one another. The main point of contention was the two minor children, A.M.R. and M.J.R.

Consistent with her Parenting Petition, Jessica argued that she was entitled to exercise parental rights by virtue of a presumption of paternity under Mont. Code Ann. § 40-6-105(1)(a) and (d), as shown in a discussion between Jessica's counsel and the district court on the first day of trial:

> Q: So, we do have statutes out there that we briefed in an October 19th uh, briefing and um, opposing counsel has recently briefed this last week that talks about presumption of paternity?
>
> A: Correct.
>
> Q: And obviously you don't have paternity in the classic sense to either of those children?

> A: That's correct, there's no way for two females to put in DNA and have a child.
>
> Q: Absolutely. So, we are cognizant of that and recognize that.
>
> A: That's correct.
>
> Q: And we also um, argue before the court um, that most other states have caught up with the times and um, most states recognize that um, these paternity statutes can be applied, can be applied to same sex marriage if those states and courts allow it?
>
> A: Correct.

Part 1 at 13:1-18.

The district court reserved ruling on whether Jessica could assert parental rights under Mont. Code Ann. § 40-6-105 and conducted the trial on the temporary assumption that she could. Therefore, in order to help the district court create a parenting plan that would serve the best interests of the children if Jessica were treated as a parent, the parties introduced evidence regarding their relationships with the children.

Jessica did not assert rights as a "nonparent" under Mont. Code Ann. § 40-4-228, which was not before the district court and is never mentioned in the trial transcript.

E. The Post-Trial Filings

On October 9, 2024, Ciara filed a post-trial brief in which she explained that Jessica is not entitled to a presumption of paternity under Mont. Code Ann. §

40-6-105(1). Ciara also emphasized that there was no basis for the district court to grant Jessica parental rights as a "nonparent" under Mont. Code Ann. § 40-4-228, for the following reasons:

> Jessica's Counter-Petition and Parenting Petition assert rights *as a parent* based on Mont. Code Ann. § 40-6-105. Jessica has not filed any pleading or motion asserting rights *as a nonparent* based on Mont. Code Ann. § 40-4-228. This means that there is no basis for the Court to grant any such rights. *See Sayler v. Yan Sun*, 2023 MT 175, ¶¶ 49, 53, 413 Mont. 303, 536 P.3d 399 (reversing grant of rights as a nonparent in part because "Surrogate did not properly 'plead' a § 40-4-228 nonparent parental rights claim as required by M. R. Civ. P. 7(a)(1)-(2), 8(a)(1), 12(a)(1), 13(a)(1), and 15(a)(1)-(2)). In *Sayler*, the court went the extra mile to reject the claim of nonparent rights on its merits because the party had filed a motion on that basis, but no such motion has been filed here, which makes consideration of Mont. Code Ann. § 40-4-228 even less appropriate. . . . Jessica's pleadings and arguments all hinge on Mont. Code Ann. § 40-6-105, and they must rise or fall on that basis alone.

Ciara Post-Trial Brief at ¶¶ 29, 30.

On October 22, 2024, Jessica filed a two-page response to Ciara's post-trial brief. Jessica Response Brief. In the response, Jessica states merely that the Court is aware of her stance regarding her right to a presumption of paternity and that the Court should grant her parental rights on that basis. **Jessica's response does not dispute Ciara's point that Mont. Code Ann. § 40-4-228 was not before the district court and could not support a grant of parental rights.** However, Jessica provided the Court with an ex-parte submission of her proposed Findings of Fact and Conclusions of Law ("FFCL"), instead of submitting via the e-filing

portal, a copy of which was only provided after Ciara's undersigned counsel requested the status of Jessica's submission following the expiration of the deadline for submission of same. Jessica's FFCL included alternative grounds to grant her rights as a nonparent under Mont. Code Ann. § 40-4-228. Jessica FFCL, Conclusions of Law at ¶¶ 24-31. This was the first time Jessica ever had raised this issue, which she did outside any pleadings or motions but rather smuggled into her proposed findings for the district court to adopt.

On October 27, 2024, Ciara filed a reply brief explaining that Jessica had not refuted Ciara's points regarding either the paternity statute or the inapplicability of Mont. Code Ann. § 40-4-228. Ciara Reply Brief. Ciara also discussed Jessica's FFCL and objected to its inclusion of Mont. Code Ann. § 40-4-228 as an alternative basis for relief, emphasizing again that it was beyond the scope of the issues before the district court. In an abundance of caution, Ciara went on to explain that Jessica had not met the high burden of proof for obtaining parental rights under that statute anyway, given the conflicting testimony and Jessica's reliance on "rebuttal" witnesses who testified near the end of the trial. Those witnesses were Dixie Holland, Chad Lacey, Jonathan Shepherd, and Janice Basso, all of whom admitted their animosity toward Ciara and made lurid accusations against her of alcoholism and abusiveness. This testimony was blatantly biased and contradicted ample testimony from other witnesses during

the trial. Moreover, Ciara pointed to testimony regarding Jessica's own serious problems with substance abuse, which included sharing marijuana with Ciara's children, driving under the influence of marijuana or alcohol, and causing a car crash.

F. The Decree

On December 12, 2024, the district court issued its Decree. Among other things, the Decree finds the Jessica is not entitled to a presumption of paternity under Mont. Code Ann. § 40-6-105. Decree, Conclusions of Law ¶ 3. Immediately after that, however, the Decree finds that Jessica is entitled to parental rights over A.M.R. and M.J.R. by virtue of Mont. Code Ann. § 40-4-228. Decree, Conclusions of Law ¶¶ 4-27.

Regarding Jessica's failure to plead rights as a "nonparent" under Mont. Code Ann. § 40-4-228, the Decree cites Mont. R. Civ. P. 15(b)(2) and finds that the statute was tried by the parties' express or implied consent, namely because "[t]he case was tried in such a way that it was clear that Jessica was asserting her rights to a parenting plan and her rights to a parental interest in the child [sic]." Decree, Conclusions of Law ¶¶ 18-20.

Regarding the substance of Mont. Code Ann. § 40-4-228, the Decree finds that Jessica proved its criteria by showing that Ciara engaged in conduct contrary to the child-parent relationship; that Jessica established a child-parent relationship

with A.M.R. and M.J.R.; and that it is in the children's best interests to continue that relationship. Decree, Conclusions of Law ¶¶ 4-9, 21-27. For all of these statutory factors, the Decree relies heavily on the testimony of Jessica and the hostile "rebuttal" witnesses Dixie Holland, Chad Lacey, Jonathan Shepherd, and Janice Basso. Decree, Findings of Fact ¶¶ 14, 32, 35-40, 42-45, 47, 48, 53-55, 58-62, 64, 65, 68-71, 73-77, 85-89, 92, 103-105, 110-117, 120, 121, 124. This testimony portrays Jessica in a positive light while characterizing Ciara as neglectful, alcoholic, and abusive. The Decree also cites two of the hostile witnesses – Janice Basso and Jonathan Shepherd – to conclude that Ciara was coaching A.M.R. to alienate her from Jessica. Decree, Findings of Fact ¶ 128. The Decree treats this testimony as informing the testimony of Fredericka Grunhuvd (a social worker) that A.M.R. is confused about Jessica's role in her life and is afraid that Jessica will take her away. Decree, Findings of Fact ¶¶ 125-130. Yet Ms. Grunhuvd expressed no view on alienation and stated that A.M.R. "doesn't identify Jessica as a parent" but rather as "someone special that she goes and visits." Part 2 at 304:9-11. Indeed, Ms. Grunhuvd and another witness explained that Jessica acted as a "grandfather" figure rather than a parent, even to the point of being called (by herself and by the children) a Spanish nickname meaning grandfather. Part 2 at 242:1-18; 303:7-16. Ms. Grunhuvd also specifically said

that A.M.R. was afraid that Jessica would take her away *from her mom*, meaning Ciara, which the Decree also omits. Part 2 at 304:5-7.

The Decree discusses little of the evidence offered by Ciara at trial, and none of the arguments or testimony offered by Ciara in her reply brief concerning Jessica's failure to satisfy Mont. Code Ann. § 40-4-228. The Decree also does not identify or discuss the statutory criteria for the best interests of the children as set forth in Mont. Code Ann. § 40-4-212. Instead, the Decree finds that Jessica's position is "more persuasive." Decree, Findings of Fact ¶ 133.

Regarding the natural father of A.M.R. (Mr. Soto), the Decree describes how he agreed to help Ciara and Jessica become parents by making sperm donations for Ciara to conceive by artificial insemination. Decree, Findings of Fact ¶¶ 16-21. The Decree describes Jessica as highly involved in these efforts and asserts that Ciara was still attempting artificial insemination when she conceived A.M.R. during a physical relationship with Mr. Soto. Decree, Findings of Fact ¶¶ 21, 22. This ignores the testimony of Ciara and her mother (Sherry Tinseth), who stated that Ciara had ceased attempting artificial insemination in March of 2017 because of an injury, and that A.M.R. was conceived months later. Part 2 at 11:11 – 12:23; 232:8 – 233:4. The Decree also ignores that Ciara and Jessica were divorced during this time, when Jessica was no longer living with Ciara and Mr. Soto had moved in with Ciara. Part 2 at 12:6 – 13:3; 231:7-23. In

other words, the Decree incorrectly portrays A.M.R. as the product of a joint plan between Ciara and Jessica. The Decree finds that Mr. Soto stays in contact with A.M.R.; that he regards A.M.R. as part of his family; that A.M.R. sees him as a father figure; and that A.M.R. has traveled to meet Mr. Soto in person. Decree, Findings of Fact ¶ 28. Contrary to this, the Decree goes on to refer to Mr. Soto as a “father” (in quotes and in name only) who has never acted as a parent or held himself out as a parent. Decree, Conclusions of Law ¶ 11. The Decree acknowledges, however, that Mr. Soto has not taken formal, legal steps to surrender his rights to A.M.R. Decree, Findings of Fact ¶ 34.

Furthermore, the district court’s discussion of the birth certificate is entirely irrelevant. See Decree, Findings of Fact ¶¶ 36, 44-47.

First, the birth certificate has no bearing on Jessica’s original and sole argument for paternity under Mont. Code Ann. § 40-6-105(1)(a) and (d). While a birth certificate may be relevant under Mont. Code Ann. § 40-6-105(1)(c), that provision was never raised in this case.

Second, the birth certificate is unrelated to the three factors outlined in Mont. Code Ann. § 40-4-228 or the statutory definition of a "parent-child relationship" under Mont. Code Ann. § 40-4-211. Establishing such a relationship requires tangible support and meaningful involvement in the child's life, rather than reliance on a legal document that merely acknowledges parentage.

Regarding the natural father of M.J.R. (Mr. Allen), the Decree describes how Jessica warned him to stay away because she believed he had raped Ciara (which Ciara and Mr. Allen deny), which is why he was not aware of M.J.R.'s conception until after M.J.R.'s birth. Decree, Findings of Fact ¶¶ 51-58, 62. The Decree then cites testimony (including from hostile witness Chad Lacey) suggesting that Mr. Allen is currently involved in the case merely as a favor to Ciara, and that he initially declined to be involved with M.J.R. upon learning of his existence. Decree, Findings of Fact ¶¶ 63-65. The Decree concludes that even though Mr. Allen might have a genuine interest in M.J.R., Mr. Allen's participation in M.J.R.'s life has been minimal, meaning that granting parental rights to Jessica will not interfere with Mr. Allen's ability to have his rights legally recognized. Decree, Conclusions of Law ¶¶ 12-14. The Decree ignores the testimony of Mr. Allen that ever since learning about M.J.R., he and his family have been actively involved in M.J.R.'s life, and that he wishes for that to continue by pursuing his rights as a parent. Part 2 at 190:5-11; 199:6 – 200:20; 203:5-12. The Decree does acknowledge, though, that Mr. Allen has not relinquished his parental rights. Decree, Findings of Fact ¶ 52.

Regarding both Mr. Soto and Mr. Allen, the Decree states that their status as natural fathers does not present an obstacle to granting Jessica parental rights, as follows: "The necessary existence of biological fathers who were necessary in

the literal creation of A.M.R. and M.J.R. does not defeat [Jessica's] parental interest." Decree, Conclusions of Law ¶ 10.

SUMMARY OF ARGUMENT

This Court has urged caution when amending pleadings after trial and when awarding parental rights to nonparents. The district court acted recklessly on both scores, depriving Ciara of her right to due process of law and her rights as a natural mother to her children.

From the beginning of the proceeding through the end of the trial, Jessica asserted rights only as a "parent" under Mont. Code Ann. § 40-6-105 rather than as a "nonparent" under Mont. Code Ann. § 40-4-228. Ciara pointed this out in her post-trial brief by explaining that Jessica could not assert rights under Mont. Code Ann. § 40-4-228, and Jessica voiced no opposition. Instead, Jessica snuck Mont. Code Ann. § 40-4-228 into her proposed FFCL to the district court. Ciara addressed the impropriety of this in her reply brief and used it as her lone opportunity to address Mont. Code Ann. § 40-4-228 on its merits, yet the district court ignored Ciara's arguments and treated Jessica's proposed findings as facially valid. Ciara never gave express or implied consent to amend the pleadings under Mont. R. Civ. P. 15(b)(2). She was deprived of a full and fair opportunity to litigate this issue, which was not properly before the district court and cannot justify granting rights to Jessica thereunder.

Even if the pleadings were properly amended to include Mont. Code Ann. § 40-4-228, the district court ignored or disregarded the conflicting testimony regarding its criteria, which can be satisfied only by clear and convincing evidence. Ciara explained this in her post-trial reply brief and identified several portions of testimony showing that the statutory criteria are not met. The district court did not bother to address this, but rather adopted Jessica's proposed findings almost wholesale. In so doing, the district court failed to exercise the necessary caution regarding Ciara's (and the two fathers') rights as natural parents, treating those fundamental and constitutional rights as a mere speed bump to granting statutory rights to a third party.

STANDARD OF REVIEW

When considering whether a district court erroneously amended a pleading, the standard of review is "whether the district court abused its discretion." *Country Estates Homeowners Ass'n v. McMillan*, 269 Mont. 131, 133, 887 P.2d 249, 251 (1994).

When a district court has adjudicated rights under Mont. Code Ann. § 40-4-228, the standard of review is as follows:

> We review lower court conclusions and applications of law, including the interpretation and application of statutes, de novo for correctness. . . . In contrast, we review lower court findings of fact . . . only for clear error. . . . A lower court finding of fact is clearly erroneous only if not supported by substantial evidence, the lower court clearly

> misapprehended the effect of the evidence, or, upon our independent review of the record, we are definitely and firmly convinced that the court was otherwise mistaken.

Sayler v. Yan Sun, 2023 MT 175, ¶ 11, 413 Mont. 303, 536 P.3d 399 (citations omitted). *See also In re Parenting of N.M.V.*, 2016 MT 322, ¶ 5, 385 Mont. 479, 385 P.3d 564 ("Ultimately, the language of § 40-4-228(2), MCA, is permissive and a district court's ruling is discretionary. Thus, under these circumstances, we will overturn the district court only if it abused its discretion or if its findings are not supported by substantial credible evidence.").

ARGUMENT

This Court repeatedly has emphasized the need for caution when adjudicating parental rights, not only by confining any relief to the specific issues pleaded, but also by making sure not to award parental rights to nonparents except in the clearest of circumstances. Such caution is necessary to protect procedural as well as substantive constitutional rights. In the present case, the district court threw such caution to the wind by disregarding the limited scope of the pleadings and the conflicting evidence regarding the parties' relationship with the two minor children. In so doing, the district court harmed Ciara's rights to due process of law and to act as the natural mother of her children.

A. The District Court Erroneously Amended The Pleadings After Trial To Entertain Jessica's Request For Parental Rights Under Mont. Code Ann. § 40-4-228

As detailed above herein, Jessica persistently asserted from the beginning of this case and during trial that she sought to be treated as a "parent" to A.M.R. and M.J.R. by virtue of the paternity statute at Mont. Code Ann. § 40-6-105. She never asserted rights as a "nonparent" under Mont. Code Ann. § 40-4-228, even after Ciara reminded the district court of this in a post-trial brief. Indeed, in her recent arguments opposing a stay of the district court's proceedings pending appeal, Jessica *again* characterized her goal as "to realize her parental rights to her children," a characterization consistent with her arguments of being a "parent" under Mont. Code Ann. § 40-6-105 rather than a "nonparent" under Mont. Code Ann. § 40-4-228. Jessica Opp. To Motion For Stay. This helps explain why Jessica has filed a cross-appeal from the district court's finding that she cannot be treated as a parent for purposes of Mont. Code Ann. § 40-6-105, since that is and always has been her stated goal.

On only one occasion did Jessica raise Mont. Code Ann. § 40-4-228 as an alternative basis for relief, and it was not in a pleading or motion. Instead, it was in her proposed FFCL to the district court after trial, and Ciara made sure to object to that as procedurally improper and substantively hollow. For the district

court to entertain (let alone grant) this alternative theory of relief was clearly erroneous and an abuse of discretion.

First, this Court has emphasized that district courts should studiously avoid granting relief outside the scope of the pleadings, especially in parenting matters that concern the rights of parents and the needs of children:

- In a recent decision that Ciara cited to the district court, this Court reversed a grant of rights under Mont. Code Ann. § 40-4-228 because such a theory had not been pleaded. *Sayler*, 2023 MT 175 at ¶¶ 49, 53. The Court went the extra mile to reject this claim on its merits because the requesting party had filed a motion on that basis, but Jessica filed no such motion or opposed Ciara's post-trial brief on this point, which makes consideration of Mont. Code Ann. § 40-4-228 even less appropriate.
- This Court reversed a judgment granting a father primary physical custody to the parties' child because the father made this request outside the pleadings and only after trial, and "[t]his was the first time [mother] was put on notice that [father] sought immediate custody and that she might lose her right to custody." *In re Custody of C.J.K.*, 258 Mont. 525, 526-28, 855 P.2d 90, 90-92 (1993).

- This Court reversed an order granting relief to a mother beyond the scope of the narrow visitation issues before the district court, noting that "the rule in Montana as well as in other jurisdictions seems to be well settled that a judgment . . . *must be within the issues presented to the court*." *In re Custody of C.S.F.*, 232 Mont. 204, 209, 755 P.2d 578, 582 (1988) (citation omitted) (italics in original).

Regarding the district court's citation to Mont. R. Civ. P. 15(b)(2) as allowing amendment of pleadings after trial, this is possible only "[w]hen an issue not raised by the pleadings is tried by the parties' express or implied consent[.]" No such express or implied consent was given here.

Neither of the parties expressly consented to try the issue of a nonparent's rights under Mont. Code Ann. § 40-4-228, as the evidence from before and during the trial shows that Jessica's only stated basis for exercising parental rights was as a "parent" under Mont. Code Ann. § 40-6-105. After the trial, Ciara emphasized this by stating in her post-trial brief that Mont. Code Ann. § 40-4-228 was not an issue before the district court, and Jessica did not dispute this in her opposition brief. When Ciara noticed that Jessica had snuck that statute into her proposed FFCL as an alternative basis for relief, Ciara objected again. Clearly, there was no express consent.

As for implied consent, **there can be no implied consent when the new issue is first announced after the parties have presented their cases at trial**. *See, e.g., Bates v. Neva*, 2013 MT 246, ¶ 15, 371 Mont. 466, 308 P.3d 114 ("In order to find that an issue was litigated by 'implied consent,' the other party must be 'put on notice that [the] issue was being raised[,]' . . . , and the parties must have 'actually tried' the issue.")) (citations omitted). The failure to provide prior notice threatens due process of law, as explained by this Court in another case concerning parental rights:

> Concerning the issue of implied consent, we have stated that "pleadings will not be deemed amended to conform to the evidence because of "implied consent" where the circumstances were such that the other party was not put on notice that a new issue was being raised." . . . In the case at bar, appellant did not receive adequate notice before trial, and therefore, could not impliedly consent to consideration of the new issue of whether or not respondent be granted immediate primary physical custody. Appellant's adamant objection to the consideration of this issue, and her claim that she was "caught off-guard" by this "eleventh-hour change in attack" is in no way indicative of implied consent.
>
> **Because of lack of notice, possible prejudice to appellant must be considered. Respondent's unexpected request denied appellant adequate opportunity to prepare her case thereby denying her due process of law**.

See In re Custody of C.J.K., 258 Mont. at 528 (emphasis added) (citation omitted).

This is precisely what happened here. Ciara had no prior notice that Jessica would be seeking rights as a "nonparent" under Mont. Code Ann. § 40-4-228 at trial. Jessica asserted the opposite during trial and never made a request under that statute until *after* trial and *outside* her arguments to the district court. This was an eleventh-hour sneak attack that caught Ciara off-guard, which is why Ciara did not analyze the merits of this issue in her post-trial brief. When Ciara noticed that Jessica was placing the issue before the district court for the first time in the proposed FFCL, Ciara repeated her objection to any such inclusion of this issue and made an argument on the merits. This disproves the district court's finding of implied consent. It also confirms that Ciara did not receive a full and fair opportunity to litigate this issue, especially considering that the district court ignored the substantive arguments and evidence in Ciara's reply brief.

This Court has reversed erroneous findings of implied consent under Rule 15(b) on other instructive occasions. For example, a district court committed reversible error when ruling that the parents had given implied consent to modify the physical-custody provisions of a joint decree, especially because one of the parents repeatedly had objected to this. *In re Marriage of Frydenlund*, 255 Mont. 474, 477, 478, 844 P.2d 58, 60, 61 (1992). A district court committed reversible error in a property dispute by amending the pleadings after a hearing to include a request for injunction, given that the opposing party had no prior notice that such

relief was being sought. *Country Estates*, 269 Mont. 131 at 133, 134. These decisions reflect the Court's longstanding policy "that fair notice to the other party remains essential, and pleadings will not be deemed amended to conform to the evidence because of 'implied consent' where the circumstances were such that the other party was not put on notice that a new issues was being raised[.]" *McJunkin v. Kaufman & Broad Home Sys.*, 229 Mont. 432, 437, 438, 748 P.2d 910, 913 (1987) (citation omitted).

Turning to the district court's stated rationale for finding consent here, the Decree amends the pleadings to include Jessica's rights as a "nonparent" under Mont. Code Ann. § 40-4-228 because "[t]he case was tried in such a way that it was clear that Jessica was asserting her rights to a parenting plan and her rights to a parental interest in the child [sic]." Decree, Conclusions of Law ¶¶ 18-20. This rationale disregards and contradicts the jurisprudence discussed above herein, which requires specific prior notice of specific legal theories, not general awareness of any number of legal theories that might apply to the facts. The district court's approach would render Rule 15(a)(2) meaningless and effectively destroy litigants' rights to due process of law, as litigants would be expected to brief every possible legal theory or risk waiving their arguments. The district court's approach also ignores Jessica's repeated assertions of pursuing only her

rights as a "parent" under Mont. Code Ann. § 40-6-105 while ignoring Ciara's repeated objections to pursuing any other theory of relief.

What the district court did was the opposite of cautious. It was reckless as well as unfounded in the law or the facts. This is a clear abuse of discretion that requires reversal.

B. The District Court Erroneously Granted Jessica's Request For Parental Rights Under Mont. Code Ann. § 40-4-228

The District Court's second (and more serious) error was to grant parental rights to someone other than A.M.R. and M.J.R.'s natural parents, who are all still alive and have not relinquished their rights. Once again, this Court has emphasized the need for caution when doing this because the rights of a natural parent are fundamental and constitutional, meaning that they cannot be curtailed without very good reason:

> As matters of substantive due process, equal protection, and retained personal rights under the Fourteenth and Ninth Amendments to the United States Constitution, the legal parents of a child have an implicit fundamental constitutional right to the custody, care, rearing, companionship, and to determine the best interests of their child or children vis-à-vis nonparent third parties including state governments under state law. . . .

Sayler, 2023 MT 175 at ¶ 33 (citations omitted).

In the quoted language above and elsewhere in *Sayler*, this Court repeatedly discussed a precedent from the United States Supreme Court that

emphasizes the need for caution when a nonparent seeks to interfere in a natural parent's rights, *Troxel v. Granville*, 530 U.S. 57 (2000). "Underlying a parent's fundamental constitutional right to parent his or her child is the rebuttable presumption that a parent will adequately care for his or her child and act in the child's best interests." *Sayler* at ¶ 33 (citing *Troxel*, 530 U.S. at 68-70). "As a matter of law, a parent's fundamental federal constitutional right to parent his or her child thus 'prevails over' any nonparent's claim of parental or custodial interest or right regarding the child absent adjudication that the parent 'has forfeited' the exclusivity of that right to an applicable degree under applicable state law conforming to constitutional limits." *Sayler* at ¶ 33 (citing *Troxel*, 530 U.S. at 73, 74). "[The] parental 'right of upbringing would be a sham' if [the] parent [is] not 'free of judicially compelled [nonparent] visitation" simply because a nonparent "could make a better decision than the parent[.]'" *Sayler* at ¶ 33 (quoting *Troxel*, 530 U.S. at 78 (Souter, J., concurring)).

As *Sayler* went on to explain, these constitutional concerns must play a role in applying the narrow, statutory grounds by which a nonparent may assert a "parental interest in a child" when the natural parents retain their constitutional rights, namely by providing "clear and convincing evidence" of three factors:

> (1) the existing parent "has engaged in conduct that is contrary to the child-parent relationship";

(2) "the nonparent has established" "a child-parent relationship" with the child; and

(3) "it is in the best interests of the child to continue" the child-parent relationship between the nonparent and the child.

Sayler at ¶ 37 (quoting Mont. Code Ann. § 40-4-228(2)(b)).

A district court's failure to make specific findings supported by clear and convincing evidence for all of these factors constitutes reversible error. *Sayler* at ¶¶ 42, 47, 48, 50, 54. This is what happened in the present case, for the district court did not make findings supported by clear and convincing evidence, but rather glossed over a large number of record facts showing that the statutory criteria are not met and, at best, debatable.

Ciara acknowledges that evidence can be conflicting yet still "clear and convincing," and that this Court will not "pass upon the credibility of witnesses." *In re J.M.J.*, 1999 MT 277, ¶ 20, 296 Mont. 510, 989 P.2d 840 (citations omitted). The relevant issue "is whether substantial evidence supports the District Court's findings of fact." *Id.* at ¶ 24. That is not the case here, which is why reversal is warranted.

1. <u>There is no clear and convincing evidence that Ciara engaged in conduct contrary to the child-parent relationship</u>

The first factor concerns whether the natural parent acted contrary to the "child-parent relationship," a term that is defined separately under Mont. Code

Ann. § 40-4-211.[1] One of the ways a natural parent might do this is by "voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child[.]" Mont. Code Ann. § 40-4-228(4). "[I]n order to stand in loco parentis to another, a person must intentionally assume the status of a parent by accepting those responsibilities and obligations incident to the parental relationship without benefit of legal adoption." *Sayler* at ¶ 37 (citations omitted).

According to the district court, Ciara meets this criterion because she struggled with maintaining sobriety while "regularly and voluntarily permitting the children to be in the care of others for a significant period of time so that others stand in loco parentis to the children, including boyfriends, grandparents, babysitters, and Jessica before and after the parties' separation." Decree,

[1] (6) . . . "child-parent relationship" means a relationship that:

> (a) exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline;
>
> (b) continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs; and
>
> (c) meets or met the child's need for continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home.

Conclusions of Law ¶¶ 4, 5. This conclusion is not supported by clear and convincing evidence.

Jessica's own proposed FFCL – wherein Jessica first suggested obtaining relief under Mont. Code Ann. § 40-4-228 admits that the children reside with Ciara, who has not sought child support, and that Jessica's visitation since 2022 has been by court order rather than by necessity or by Ciara's voluntary choice. Jessica FFCL, Findings of Fact ¶¶ 4-6, 57-59, 62, 65, 66. The district court adopted these findings almost verbatim. Decree, Findings of Fact ¶¶ 8-10, 85-87, 90, 93, 94.

Multiple witnesses (including Jessica) testified that Ciara has consistently taken care of the children, provided for their needs, and provided them with a home since birth – including when Jessica was absent or out of work. Part 1 at 46:12 – 47:11; 75:7-18; 115:15-24; 117:1-10. Part 2 at 16:1-25; 39:4-8; 49:1-4; 123:17-22; 126:14-18; 134:1 – 136:18; 180:11 – 181:8; 241:11-23; 283:1-16; 331:1-18; 334:1 – 335:3.

Both children are covered by Ciara's health insurance, something Jessica also admits. Part 1 at 75:7-18. The only insurance that Jessica currently provides for the children is life insurance. Part 1 at 75:7-18. The Decree ignores this and asserts that Jessica is the one who procured and maintains health insurance for the children. Decree, Findings of Fact ¶¶ 72-75.

Regarding Ciara's alleged problems with maintaining sobriety, Jessica cited testimony from herself, Dixie Holland, Chad Lacey, Jonathan Shepherd, and Janice Basso. FFCL, Findings of Fact at ¶¶ 41, 76, 84-87, 92, 95. Once again, the district court echoed this testimony and placed heavy reliance on these witnesses. Decree, Findings of Fact ¶¶ 14, 32, 35-40, 42-45, 47, 48, 53-55, 58-62, 64, 65, 68-71, 73-77, 85-89, 92, 103-105, 110-117, 120, 121, 124. This testimony is problematic and fails to satisfy Jessica's burden for several reasons:

- Multiple other witnesses dispute this testimony, stating that Ciara does not have a drinking problem and is no danger to the children. Part 2 at 490:23-25; 492:9-22; 497:23 – 499:16; 500:1-22; 511:9 – 24; 513:17 – 514:17; 519:19-23; 521:1 – 522:1; 528:9 – 529:23; 534:18-25.
- Jessica is the adverse party in the dissolution proceeding and has an obvious bias against Ciara.
- Dixie Holland openly admits "I don't like Ciara." Part 1 at 198:5.
- Chad Lacey is an ex-boyfriend of Ciara and the father of another one of Ciara's children. Part 2 at 341:1-21. He has been litigating against Ciara with regard to their child, and he believes that Ciara retaliated against him by obtaining an order of protection. Part 2 at 344:10-12; 347:2-7; 532:12-15. He has been convicted for assault with a weapon against a child. Part 2 at 379:12-23. Ciara ended her relationship with him

because of his violent behavior and the danger it represents to her children. Part 2 at 504:12-24; 506:11 – 507:13. His visitation with their child was supervised. Part 2 at 510:2-9. He admits driving by Ciara's house in the middle of the night. Part 2 at 388:3-5. He also admits collaborating with Jessica to spy on Ciara. Part 2 at 388:17 – 389:6.

- Jonathan Shepherd is also an ex-boyfriend of Ciara. Part 2 at 403:16 – 404:5. He often complained about how Ciara had broken up with him. Part 2 at 515:9 – 516:10. He accuses Ciara of collaborating with his ex-wife to defame him. Part 2 at 415:20 – 416:14; 436:15-24; 441:14-22. Jonathan and Ciara always had a rocky relationship, and he has wanted to portray her as the "bad guy." Part 2 at 499:1-16.
- Janice Basso is Chad Lacey's mother. Part 2 at 453:10-22. She admits having an antagonistic relationship with Ciara because of this, especially considering the ongoing dispute between Ciara and her son Chad. Part 2 at 475:3-18.
- Jessica has a friendly relationship with all of the above-mentioned witnesses who are hostile to Ciara. Jessica FFCL, Findings of Fact at ¶¶ 82, 83; Decree, Findings of Fact ¶¶ 111, 112; Part 1 at 194:7 – 195:1.

Under these record facts, the district court's conclusion that Jessica had met her high burden of proving that Ciara acted contrary to the child-parent relationship is not supported by substantial evidence and is clearly erroneous.

2. There is no clear and convincing evidence that Jessica established a child-parent relationship with A.M.R. and M.J.R.

The second factor concerns whether the children have established a "child-parent relationship" with the nonparent. Again, the statutory definition of this relationship is demanding and requires that the nonparent – both before the filing of the action and up to the present – continuously provide for the child's physical needs, educational needs, disciplinary needs, "psychological needs for a parent," and the need for "continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home." Mont. Code Ann. § 40-4-211(6). The evidence presented at trial does not support the district court's finding that Jessica meets this test.

Two witnesses (Sherry Tinseth and Fredericka Grunhuvd) testified that Jessica acted as a grandparent figure rather than a mother, even to the point of being called (by herself and by the children) a Spanish nickname meaning grandfather. Part 2 at 242:1-18; 303:7-16. The children never called Jessica "mom." Part 2 at 261:2-4. Ms. Grunhuvd stated that A.M.R. in particular "doesn't identify Jessica as a parent" but rather as "someone special that she goes and

visits." Part 2 at 304:9-11. Ms. Grunhuvd also specifically said that A.M.R. was afraid that Jessica would take her away from her mom, meaning Ciara, which the Decree ignores when discussing Ms. Grunhuvd's testimony. Part 2 at 304:5-7.

An acquaintance of Ciara and Jessica, Richard Dilka, testified that Jessica rarely watched over the children and gave them a basic amount of attention that any adult would have, which was less than a parent would. Part 2 at 327:14 – 328:8; 331:3 – 332:13. Ciara was the one acting as a parent, and Jessica did not discipline the children. Part 2 at 334:1 – 335:3.

To reiterate, the children reside primarily with Ciara, and Jessica's visitation with the children since 2022 has been by compelled by court order. Decree, Findings of Fact ¶¶ 8, 9. Jessica has not assumed the role of a parent or provided "permanency or stability in residence, schooling, and activities outside of the home."

Jessica was not the "breadwinner" in the relationship and was unemployed on several occasions. Part 2 at 283:11-16. To reiterate, the children are covered by Ciara's health insurance, as Jessica admits. Part 1 at 75:7-18. The only insurance that Jessica currently provides for the children is life insurance. Part 1 at 75:7-18. The Decree ignores this and asserts that Jessica is the one who procured and maintains health insurance for the children. Decree, Findings of Fact ¶¶ 72-75.

Jessica has her own problems with substance abuse, specifically alcohol and marijuana. Part 2 at 234:20 – 235:2; 259:13-24. This is one of the reasons that Ciara allowed Jessica to move back into Ciara's residence. Part 2 at 234:12-22. Jessica has admitted driving while under the influence of alcohol or marijuana. Part 2 at 70:1-14. On one such occasion, she got in a car crash, causing minor injuries to herself but major injuries to somebody else. Part 2 at 235:3-13. She gave marijuana to one of Ciara's other children on multiple occasions, but without Ciara's consent. Part 2 at 81:14 – 82:1; 165:10 – 166:10. She used to participate in Alcoholics Anonymous but has stopped going. Part 2 at 71:17-22. If considerations of substance abuse undermine Ciara's relationship with the children, they must also undermine Jessica's.

Under these record facts, the district court's conclusion that Jessica had met her high burden of proving that she had a child-parent relationship is not supported by substantial evidence and is clearly erroneous.

3. The district court failed to make necessary findings regarding the best interests of A.M.R. and M.J.R., and there is no clear and convincing evidence that those interests are served by continuing a child-parent relationship with Jessica

The third and final factor concerns whether a continuation of the parent-child relationship with the nonparent serves the children's best interests. This requires evidence and findings regarding the multiple factors appearing in a

separate statute, Mont. Code Ann. § 40-4-212, as this Court held in *In re L.M.A.R.*, 2024 MT 148, ¶¶ 10, 11, 417 Mont. 212, 552 P.3d 678.

Although the Decree cites *In re L.M.A.R.*, the Decree does not mention Mont. Code Ann. § 40-4-212 or discuss its factors or make findings corresponding to those factors. Instead, the Decree devotes a single paragraph to the children's best interests, as follows:

> Finally, under Montana's third-party parenting statues [sic] of Mont. Code Ann. § 40-4-228(2)(b), it would be in the [sic] A.M.R. and M.J.R.'s best interest to ensure Jessica Michelle Paddock has a parental interest in these children. These children appear to love Jessice Michelle Paddock, she has been there for them consistently since their births, she is a reliable adult and parent to these children, the children enjoy spending time with Ms. Paddock. Ms. Paddock exercises good judgment and can continue to make decisions carefully so that the children's best interests are paramount, and the children are safe and cared for with her. To take this relationship away from the children would be harmful and not in the children's best interests.

Decree, Conclusions of Law ¶ 27.

This conclusion is deficient for a variety of reasons, chief of which is that it does not bother to discuss the factors under Mont. Code Ann. § 40-4-212(1):

> (a) the wishes of the child's parent or parents;
>
> (b) the wishes of the child;
>
> (c) 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;
>
> (d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

(h) continuity and stability of care;

(i) developmental needs of the child;

(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;

(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;

(*l*) 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. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).

(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions

Second, the test under Mont. Code Ann. § 40-4-228(2)(b) is whether it is in the best interests of the children to *continue* a child-parent relationship that already has been proved to exist. For the reasons stated above herein, no such

relationship with Jessica has been proved by clear and convincing evidence, making the best-interests test inapplicable and moot.

Third, the district court overlooks the importance of the children's relationship with their natural fathers, who are still alive, who still retain their legal rights, and who have stated that they regard the children as part of their families. Mr. Allen in particular has expressed a strong interest in being an active father and making M.J.R. a member of his family. Adding Jessica as a third "parent" to M.J.R.'s two natural parents will have an obvious and serious effect on M.J.R.'s upbringing that the district court never analyzes. Ciara testified that adding Jessica as a "parent" will interfere in Mr. Allen's relationship with M.J.R. and will not serve M.J.R.'s best interests. Part 2 at 75:12-25. As for A.M.R., Ms. Grunhuvd testified that it is harmful and confusing for her custody to be shared among multiple people. Part 2 at 306:7 – 307:8. The Decree ignores or downplays these considerations by concluding that A.M.R.'s father (Mr. Soto) has not acted as one and that Mr. Allen can still pursue his parental rights in court, closing with the dismissive observation that "[t]he necessary existence of biological fathers who were necessary in the literal creation of A.M.R. and M.J.R. does not defeat [Jessica's] parental interest." Decree, Conclusions of Law ¶¶ 10-14.

To reiterate, Jessica has serious problems with substance abuse, which the district court ignored but which plays an important role in the best-interests analysis per Mont. Code Ann. § 40-4-212(g).

Ciara obtained orders of protection against both Jessica and Chad Lacey because they were stalking her. Part 2 at 94:18-25; 97:10 – 98:21. This is why Ciara began conducting the court-ordered transfers of the children to Jessica in public places. Part 2 at 87:1-8. Chad Lacey accompanies Jessica during these exchanges, and Chad also has begun spending much of his free time with Jessica. Part 2 at 503:1-25. Jessica also caused serious damage to Ciara's garage, completely ripping the door off its hinges. Part 2 at 96:9 – 97:3. These are serious considerations that affect the children's best interests under Mont. Code Ann. § 40-4-212(c), (e), and (f), but they have been ignored.

Under these record facts, the district court's conclusion that Jessica had met her high burden of proving that children's best interests are served by continuing a child-parent relationship with her is not supported by substantial evidence and is clearly erroneous.

CONCLUSION

The District Court abused its discretion by amending the pleadings after trial to include a request by Appellee for rights as a "nonparent" under Mont. Code Ann. § 40-4-228. Appellee never made such a request before, during, or

even after the trial. Instead, Appellee's only request was to be treated as a "father" under Mont. Code Ann. § 40-6-105. The first and only time Appellee mentioned Mont. Code Ann. § 40-4-228 was in her proposed findings of fact and conclusions of law. Appellant never consented to try that issue, and she objected to it upon noticing it in the Appellee's proposed findings. By amending the pleadings under these circumstances, the District Court deprived Appellant of due process of law.

Furthermore, the District Court committed clear error when finding that Appellee is entitled to rights as a "nonparent" under Mont. Code Ann. § 40-4-228. This finding is not supported by the required clear and convincing evidence. The District Court ignored or mischaracterized crucial evidence showing that the statutory test is not met, and the District Court also relied on certain witnesses who have an admitted bias against the Appellant. This Court has consistently upheld the fundamental rights of natural parents to direct the care, custody, and upbringing of their children except in extreme circumstances not proved here. Allowing the District Court's decision to stand would set a dangerous precedent that undermines parental rights and erodes procedural safeguards meant to protect families.

For the foregoing reasons, Appellant respectfully requests that the Court reverse the District Court's order, vacate the award of parental rights to Appellee,

and remand with instructions to dismiss Jessica Paddock's claim under Mont. Code Ann. § 40-4-228.

Respectfully submitted, this 20th day of March, 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with Rule 11(4)(e) of the Montana Rules of Appellate Procedure. The document is double-spaced and printed in Times New Roman, proportionately spaced, in 14-point typeface. The total word count does not exceed 10,000 words, as calculated by this party's word processing system, excluding the tables and certificates.

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I hereby certify that, on the 20th day of March, 2025, a true and correct copy of the foregoing BRIEF OF APPELLANT was duly served upon the following named person(s):

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I, James David Sweet, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-20-2025:

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