

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

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KYLE SPENCER JACKSON,

Appellee and Petitioner,

s.

HEIDI JACKSON,

Appellant and Respondent.

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**APPELLEE’S ANSWER BRIEF**

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

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### Statement of issue

*Did the District Court abuse its discretion when it denied Appellant Heidi Dorrington's Motion for Modification of Child Support under Section 40-4-208(2)(b)(i), MCA, and found that sufficient facts to show that a substantial change in circumstances, making the current child support order unconscionable, had not been presented to the District Court in the pleadings that would have required that it grant the motion for discovery and an evidentiary hearing?*

### Statement of the case

Appellant Heidi Dorrington and Appellee Kyle Jackson have been divorced since 2018. The District Court issued its Final Decree of Dissolution in this matter on December 31, 2018. (Doc. 145, Appellant's Appendix, pgs. 4-45). In the Decree, the District Court set forth the amount of child support owed in this matter. (*Id.*, pgs. 12-13, Findings of Fact #33, #34, and #35). On December 20, 2024, Heidi filed a Motion for Modification of Child Support and a supporting Brief. (Docs. 207 and 208).<sup>1</sup> Heidi also requested that she be allowed to conduct discovery into Kyle's income. (*Id.*, at pg. 1). On January 2, 2025, Kyle filed a Response Brief. (Doc. 203). On January 6, 2025, Heidi filed a Reply Brief. (Doc. 206). The District Court denied the Motion for Modification of Child Support by

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<sup>1</sup> 1 As noted in the Opening Brief of the Appellant, due to an e-filing system error, the e-file system did not file the Motion for Modification of Child Support and supporting Brief correctly on December 20, 2024, although the attorney for Kyle received them directly from the e-filing system on December 20, 2024. The e-filing system therefore lists an incorrect date of the Motion being filed as January 8, 2025, which is after Kyle's Response Brief and Heidi's Reply Brief had both already been filed.

written order on January 13, 2025. (Doc. 209, Appellant's Appendix, pgs. 1-3).

Heidi timely appealed the denial of her Motion on January 14, 2025. (Doc. 210).

### Statement of the facts

The District Court entered a Final Decree of Dissolution of Marriage in this matter on December 31, 2018. (Doc. 145, Appellant's Appendix, pgs. 4-45). As part of the Final Decree, the District Court granted fifty-fifty custody to the parties and calculated child support in accordance with the Montana Child Support Guidelines on the child support worksheet attached to its Final Decree. (*Id.*, pgs. 38-45, Worksheet A). After properly calculating child support, the District Court ordered Kyle to pay \$421 per month per child in child support. (*Id.*, pg. 12, Finding of Fact #34(a)). The District Court also ordered that for uninsured healthcare costs, "Kyle shall be responsible for 83% and Heidi shall be responsible for 17% of the Children's uninsured healthcare costs." (*Id.*, pg. 12, Finding of Fact #32). In regard to extracurricular activities, the District Court ordered that "Kyle shall be responsible for 83% and Heidi shall be responsible for 17% of the cost of any mutually agreed upon extracurricular activity of the Children." (*Id.*, pg. 12, Finding of Fact #33). Since that time, three of the children, S.K.J., B.M.J., and M.J., have turned eighteen and graduated from high school. Therefore, the current amount of child support paid by Kyle to Heidi is \$1,263.00, or \$421 x 3 children, per month for the remaining minor children.

Kyle has paid child support to Heidi since the entry of the Final Decree. There are no allegations in Heidi's Opening Brief that Kyle is delinquent on his child support. In Kyle's Affidavit included with his Response Brief to Heidi's motion, he indicates that Heidi has not paid almost \$4,000 in expenses, as ordered, for her 17% of the unreimbursed healthcare and agreed upon extracurricular activities. (Doc. 203, *Affidavit in Support of Response to Motion to Modify Child Support of Kyle Jackson*, pg. 3, ¶ 10). He also attached a spreadsheet of the expenses that he has paid for in full for which he is owed 17% reimbursement. (*Id.*, pgs. 4-6). Heidi states in her affidavit attached to her Reply Brief that Kyle has never communicated with her about these expenses. (Doc. 206, *Affidavit of Heidi Dorrington*, pg. 4, ¶10). However, the record shows that as early as 2022, Kyle documented these unpaid expenses in his Affidavit to the District Court as follows, "Heidi continues to owe me money under other provisions of our Decree related to the children, but I do not bring actions against her and do not intend to file anything, as I am not interested in spending the lives of our children in Court." (Doc. 197, *Affidavit of Kyle Jackson*, pg. 9, ¶9). Kyle has continued to choose not to go back to court over these unreimbursed expenses, as he still does not wish to engage in ongoing litigation over his children and has heeded the advice of the District Court in its January 18, 2022 order when it found a "pattern of distrust and

disruption between the parties” and urged them to “take a deep breath” before filing further litigation. (Doc. 154, pg. 1).

After being unable to receive reimbursement for any of these expenses, for four months in 2024 Kyle paid Heidi an amount less than the court ordered child support amount, as Heidi continued to let the amount of money that she owed Kyle for unreimbursed medical expenses and extracurricular activities grow, and he did not want to take this matter back to court. However, after further consideration, in November 2024, Kyle chose to pay Heidi the remaining amounts he owed on all four of those child support payments, prior to having any knowledge that she intended to file a Motion for Modification of Child Support. This contradicts Heidi’s statement in her Reply Brief Affidavit that states that she requests that Kyle get caught up from these payments he did not make in full. (Doc. 206, *Affidavit of Heidi Dorrington*, pg. 2, ¶5). While Kyle does not believe these facts are relevant facts in this appeal, as Heidi’s Opening Brief maligns Kyle for allegedly habitually not paying his child support, Kyle feels compelled to ensure that there is a complete and accurate statement of the facts (Appellant’s Opening Brief, pg. 22 and pg. 25).

On December 19, 2024, Heidi’s sixth attorney entered his Amended Notice of Appearance (Doc. 202). When Kyle did not immediately agree to his discovery requests and to recalculate child support, Heidi filed her Motion for Modification

of Child Support the next day, on December 20, 2024. (Doc. 207). In her affidavit accompanying her brief in support of the motion, Heidi alleges only the following facts: 1). That the District Court had included spousal support in its initial child support calculation, and she no longer receives maintenance payments as she remarried; 2). That her current marriage, after her marriage to Kyle, is now ending, and there is a dissolution matter pending before the same District Court; 3). That her income is lower than the amount of income used to calculate child support in 2018, and that she has no current steady employment; and 4). That she will be starting a job with the State of Montana legislature and making \$24 an hour in January 2025. (Doc. 208, *Affidavit of Heidi Dorrington*, pgs. 1-2, ¶¶1-4 ). In her motion, Heidi asked the court to set a hearing and allow her to conduct discovery into Kyle's income from his business. However, Heidi does not provide any reasons why she has no current steady employment six years after her marriage to Kyle ended, and she makes no assertions related to the needs of the children being increased or unmet, resulting in an unconscionable child support calculation and a substantial injustice. She also provides no facts to support her request to allow for discovery into Kyle's income.

On January 2, 2025, Kyle filed a Response Brief and Affidavit. (Doc. 203). In his response, Kyle objected to the Motion and stated his concerns that Heidi is initiating this Motion in an effort to reopen discovery into his business and engage

in litigation that is not warranted by the facts and is harassing and vindictive. (*Id.*, pg. 2, ¶¶ 3-4). Kyle noted that he has previously raised these concerns in his 2022 Affidavit to the District Court. (Doc 197, *Affidavit of Kyle Jackson*, pg. 2, ¶¶ 3-5). Kyle also indicated that he continues to be employed as an orthodontist in private practice and nothing about his business has changed since the time of the District Court's prior child support calculations. (Doc. 203, *Affidavit in Support of Response to Motion to Modify Child Support of Kyle Jackson*, pg. 2, ¶¶ 7-8). Kyle also noted that Heidi continues to owe him money for the 17% of the expenses for the children that she is responsible for under the District Court's current child support order but stated that he has not filed a motion with the court as he does not want to continue to engage in litigation. (*Id.*, pg. 2 ¶¶ 9-10). Kyle also noted that Heidi's failure to obtain steady employment for six years, when it was foreseeable that maintenance payments would end, did not make the current child support calculation a significant change in circumstances or unconscionable, just because she did not obtain employment that she had previously testified that she would have by then at the time of the final merits hearing in this case (Doc. 145, Appellant's Appendix, pg. 28 ¶ 47). Kyle also noted that Heidi had obtained her real estate license and built and listed a home for over a million dollars in 2024. (Doc. 203, *Affidavit in Support of Response to Motion to Modify Child Support of Kyle Jackson*, pg. 2, ¶ 6). He stated that he did not wish to be put into a position

where he would have to inquire into this issue. (*Id.*). Kyle requested in his Response Brief that the District Court deny Heidi's motion for all of these reasons.

After Kyle filed his response brief, on January 3, 2025, Heidi's fifth attorney, Christopher Gillette, filed his Motion to Withdraw and the District Court signed an order allowing him to withdraw. (Docs. 204 and 205).

In Heidi's reply brief, filed on January 6, 2025, for the first time she raises health issues and a car accident that she states prevented her from obtaining the level of employment and income that the District Court had previously determined that she could obtain after five years of maintenance payments. Although she attaches a letter from her Doctor, the letter does not say that Heidi's illnesses or accident prevented her from obtaining employment, and as documented in other filings with the District Court, Kyle has expressed his concern that Heidi has previously used her health issues as a reason to continue a prior court hearing on her sixth Motion for Contempt, while she otherwise continued to lead an active lifestyle without indication of serious injury or illness. (Doc 197, Exhibit 4, *Affidavit and Memorandum in Support of Request for Hearing on Attorney Fees*, pg. 2, ¶ 8). The District Court also notes in its order that it is familiar with these health issues. (Doc. 209, Appellant's Appendix, pgs. 2-3). While Heidi does acknowledge her involvement in real estate and states that she had listed a house for sale in her Affidavit attached to her Reply Brief, she also stated that the home

she had listed was no longer on the market and that she had not made any money from this work. (Doc. 206, *Affidavit of Heidi Dorrington*, pg. 3, ¶ 8). Heidi also raises the issue of Kyle's health insurance for their special needs child being inappropriate for the first time in her reply; however, Kyle has had the same health insurance since the District Court entered its Decree in 2018. (*Id.*, pg. 2, ¶6). As Heidi choose not to assert any of these facts to support her Motion for Modification of Child Support until her Reply Brief, it is disingenuous for her to then fault Kyle for not responding to them in his Response Brief, and to use his failure to respond as a basis to support remanding this matter to the District Court to allow for discovery and an evidentiary hearing (Appellant's Opening Brief, pg. 18). Such assertions are not the facts of this case and are vexatious.

After receiving Heidi's Reply Brief, the District Court issued its order denying Heidi's motion on January 13, 2025. (Doc. 209, Appellant's Appendix, pgs. 1-3). The District Court set forth a factual basis, based upon the pleadings and extensive record in this matter, to support its order. (*Id.*) Heidi timely appealed the District Court's denial of her motion the next day, on January 14, 2025. (Doc. 210).

#### Standard of review

In the case of *Brown v. Brown*, the Montana Supreme Court determined that the standard of review for a District Court's ruling on a motion for modification of

child support is whether the District Court abused its discretion. (*Brown v. Brown*, 2016 MT 299 at ¶ 11, 385 Mont. 369, 384 P.3d 476 (Mont. 2016)). The Montana Supreme Court also applies this standard of review to a District Court's decision not to hold an evidentiary hearing on a motion for modification of child support before denying the motion for modification of child support in this case and states as follows:

We review a district court's ruling on a motion for modification of child support for an abuse of discretion. *In re Marriage of Pearson*, 1998 MT 236, ¶ 29, 291 Mont. 101, 965 P.2d 268. We also apply the abuse of discretion standard to a district court's decision not to hold an evidentiary hearing. *Harrington v. Energy W. Inc.*, 2015 MT 233, ¶ 11, 380 Mont. 298, 356 P.3d 441. A court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *Pearson*, ¶ 30. (*Id.*, ¶ 11).

Furthermore, in *Brown v. Brown*, the Montana Supreme Court also set forth the statutory law that a District Court must apply when ruling on a motion for child support modification as follows:

Child support provisions in a dissolution decree may be amended only under certain, specific conditions. *See* § 40-4-208(2)(b), MCA. One of these conditions requires “a showing of changed circumstances so substantial and continuing as to make the terms unconscionable.” Section 40-4-208(2)(b)(i), MCA. Unconscionability determinations are made on a case-by-case basis at the discretion of the district court. *Pearson*, ¶ 30. (*Id.*, ¶ 15).

Therefore, the statute governing the District Court’s ruling on the underlying motion for modification of child support that is on appeal is § 40-4-208(2)(b)(i), MCA, and the administrative rules and child support guidelines that the District Court used to calculate its initial child support order in 2018 and that would be required to be considered under Section 40-4-204(3), MCA, are not relevant or at issue, in spite of the arguments to the contrary made by Heidi in her Opening Brief.

In the case of *In re the Marriage of Carter-Scanlon*, the Montana Supreme Court further explained the application of Section 40-4-208(2)(b)(i) to individual cases in which a party is seeking a modification of a previous child support order,

A district court may modify maintenance or support “upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable.” Section 40–4–208(2)(b)(i), MCA. We have interpreted this standard to mean that a finding of changed circumstances is a prerequisite to any inquiry into the unconscionability of a prior support award. *In re Marriage of Pearson*, 1998 MT 236, ¶ 41, 291 Mont. 101, 965 P.2d 268. If a change in circumstances is established, the District Court must then determine whether the change in circumstances is “so substantial and continuing as to make the terms unconscionable.” *Pearson*, ¶ 41. There is no set definition of unconscionability; rather, determinations of unconscionability are made on a case-by-case scrutiny of the underlying facts. *Pearson*, ¶ 30. (*In re the Marriage of Carter-Scanlon*, 2016 MT 190 at ¶10, 384 Mont. 273, 378 P.3d 1157(2016), citing to *In re Marriage of Pearson*, 1998 MT 236, ¶ 41, 291 Mont. 101, 965 P.2d 268 (1998)).

As the District Court could not make the prerequisite findings required by this case and Section 40-4-208(2)(b)(i), in order to proceed to a modification and

recalculation of its previous child support in this case, it did not trigger the requirements of Section 40-4-204(3), MCA, regarding the child support rules and guidelines for calculation of child support. Therefore, this is not a statute that governs this appeal, and the Montana Supreme Court should instead determine whether the District Court abused its discretion with regard to finding that there have not been changed circumstances so substantial and continuing as to make the current child support order unconscionable.

#### Summary of the Argument

The District Court did not abuse its discretion or act in an arbitrary and capricious manner in denying Heidi's Motion for Modification of Child Support without allowing for discovery and an evidentiary hearing. The Courts' order denying the Motion is supported by the facts and the extensive history in this case, and it is not arbitrary, does not lack conscientious judgment, nor does it exceed the bounds of reason, resulting in substantial injustice. Rather, the order reflects the conscientious and fact-based judgment of the District Court in making a ruling consistent with the pleadings, the record, and the law. Furthermore, given the extensive history of this case, and the familiarity of the District Court with this matter, the order does not exceed the bounds of reason. In addition, no substantial injustice has resulted, as this has been the child support order since 2018 and there has not been a substantial change in circumstances alleged in order to render the

previous child support order unconscionable. There are also no factual allegations of substantial injustice related to unmet or increased needs of the children.

Therefore, there are not sufficient grounds for the Montana Supreme Court to overturn the District Court's order denying Heidi's motion on appeal in this matter. Additional discovery and an evidentiary hearing on the motion are not necessary or required under the law. The Montana Supreme Court should defer to the discretion of the District Court that has spent a significant amount of time on this matter and affirm the District Court's order.

#### Argument

The District Court did not abuse its discretion in denying the Motion for Modification of Child Support without allowing for discovery and an evidentiary hearing. The District Court's order should be affirmed as it is not arbitrary, it demonstrates conscientious judgment, and it does not exceed the bounds of reason or result in substantial injustice. Section 40-4-208(2)(b)(i), MCA, states as follows:

**40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. ...**

(2) (b) Except as provided in 40-4-251 through 4-4-258, whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. (Section 40-4-208(2)(b)(i), MCA, (2017)).

This statute allows for a modification of the current child support order only upon a showing of changed circumstances that are substantial and continuing, making the terms of the 2018 child support order unconscionable. In this case, Heidi did not demonstrate a sufficient factual basis for the District Court to grant her motion for discovery or to conduct an evidentiary hearing. The District Court did not abuse its discretion when it denied her motion and her request to conduct discovery into Kyle's current income and conduct an evidentiary hearing as follows:

*A. The District Court did not conclude that Heidi should be imputed income in the amount of \$91,200 arbitrarily and capriciously.*

Heidi argues that the District Court arbitrarily and capriciously imputed income to her and did not follow the administrative rules that set forth the child support guidelines or Section 40-4-203(3) in denying her motion to modify its previous child support order. However, whether the District Court followed the child support guidelines in imputing income to Heidi is not an issue on appeal. Furthermore, Heidi cites Section 40-4-204(3), MCA, and *In re Marriage of Carter-Scanlon*, to support the facts that she argues that the District Court should have considered when making its ruling on her motion. However, as previously stated,

this case makes clear that the provisions of Section 40-4-204(3) and the administrative rules setting forth the guidelines apply only after the District Court has made the prerequisite finding under Section 40-4-208(2)(b)(i), MCA. Upon receiving a motion to modify a previous child support order, the District Court must first determine whether the circumstances have changed in a substantial and continuing manner, and if so, then determine if those changes make the current child support order unconscionable. (*In re the Marriage of Carter-Scanlon*, 2016 MT 190 at ¶10, 384 Mont. 273, 378 P.3d 1157(2016), citing *In re Marriage of Pearson*, 1998 MT 236, ¶ 41, 291 Mont. 101, 965 P.2d 268 (1998)). While Heidi cites case law related to a different section of the law and to administrative rules related to the child support guidelines, and she is alleging that the District Court improperly imputed income to her in making its decision to deny her motion, this argument is not the issue the District is required to determine until after making other prerequisite findings that it could not make in this matter based on the evidence presented.

The District Court is very familiar with this case and conducted a two-day contested hearing, including on the issue of child support, at the time of the parties' dissolution in 2018. In its order denying Heidi's Motion for Modification of Child Support, the District Court states the following regarding Heidi's change in income due to her loss of maintenance to support its decision to maintain the prior child

support order, “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 that Heidi has been 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 Kyle’s control have dictated Heidi’s career path moving forward.” (Doc. 209, Appellant’s Appendix, pgs. 2-3). The District Court is not imputing income in its order denying Heidi’s Motion for Modification of Child Support or recalculating child support. Instead, the District Court is making a finding of fact related to the applicable legal standard that requires Heidi first show there have been continuing substantial changes in circumstances and then show that those changes in circumstances make the previous award unconscionable. Therefore, the District Court did not act arbitrarily or capriciously with regard to this finding and issue.

*B. The order denying discovery into Kyle’s income is not arbitrary and capricious.*

Heidi argues that the District Court’s denial of her Motion for Modification of Child Support is also arbitrary and capricious as it fails to grant her request to conduct discovery into Kyle’s income in spite of her providing all of the evidence she has access to in order to support it. However, there are no facts in Heidi’s

motion to support that Kyle's income has changed and thereby results in a need for discovery. Instead, Heidi simply wants to find out what Kyle is making now to see if that is in fact the case. As Heidi does not know if Kyle's income has increased or not, but does know that his employment has not changed, it supports the District Court's order denying her motion as it does not demonstrate a significant change in circumstances. While Heidi states that Kyle lives in an expensive home and bought a new boat, and perhaps new vehicles, to support her discovery request in her Reply Brief, these facts have no relevance to whether the current child support order is unconscionable as Kyle has resided in the exact same house, which he rents, since the time of the parties separation. He has also owned vehicles and a boat throughout the marriage and since the parties' dissolution. It is noted in the final decree that Kyle received the 2016 Dodge Ram and 2009 Moomba Surf Boat (Doc. 145, Appellant's Appendix, pg. 11-12). The fact that Kyle has bought a new boat and potentially new vehicles in the past six years is not sufficient to demonstrate that the circumstances have changed substantially, as he owned both types of assets at the time of the initial child support calculation. As the District Court appropriately notes in its order, "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 the marriage to Heidi.” (Doc. 209, Appellant’s Appendix, pg. 3). Therefore, considering the District Court’s knowledge of the extensive history in this case, including its knowledge of the finances of the parties both during the marriage and after the dissolution, this finding is not arbitrary or capricious, and it is supported by the evidence and demonstrates conscientious judgment on the part of the District Court.

*C. The District Court’s conclusion that Heidi cannot seek a modification of child support, based largely on the failure of Heidi to state that the needs of the children are not being met, is not arbitrary or capricious, and a change in financial circumstances is not sufficient on its own to trigger a modification of child support.*

Heidi argues that the District Court’s order is arbitrary and capricious as it found that she had not alleged that the children’s needs had increased and were not met by the current child support order in her motion. In her Opening Brief on appeal, Heidi argues that she presented evidence in her Reply Brief that the health insurance that Kyle has maintained since 2018 is not sufficient for one of their children. (Doc. 206, *Affidavit of Heidi Dorrington*, pg. 2, ¶ 6). However, this is a vague statement that Kyle had no opportunity to respond to, and the District Court was correct to find that this was not alone a sufficient fact that would require that discovery and an evidentiary hearing take place on the motion. As the District Court states, “Most importantly though nothing has been alleged regarding the needs of the children. 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.” (Doc. 209, Appellant’s Appendix, pg. 3). There is nothing arbitrary or capricious about this finding considering the pleadings and the lack of alleged facts that the children’s needs have changed in any way since the time of the initial child support order of the District Court. Nothing shows significant or changed circumstances. Although Heidi cites *In re the Marriage of West* to support her argument, this case can be distinguished as in that case the Montana Supreme Court found that the “mother’s threshold evidentiary burden of proving the needs of the children have increased” had been met. (*In re the Marriage of West*, 212 Mont. 374 at 377 , 692 P.2d 1213 (1984)). In this case, the District Court found that the threshold evidentiary burden had not been met as Heidi had failed to allege any facts of an increase or change in the needs of the children.

Furthermore, in the matter of *In re the Marriage of Barnard*, the Montana Supreme Court found that changes in financial circumstances, by itself, does not render the prior child support award unconscionable. In this case, it states,

It is obvious that Timothy's financial success constitutes a change in circumstances. However, this fact, by itself, does not render the prior child support award unconscionable. In *Green v. Green* (1978), 176 Mont. 532, 579 P.2d 1235, we declined to define the word "unconscionable" for purposes of modifying child support and

declared that "[w]e will follow the policy of determining on a case to case basis, from the underlying facts, whether the evidence is sufficient to be unconscionable." (*In re the Marriage of Barnard*, 264 Mont. 103 at 107, 870 P.2d 91, 51 St.Rep. 173(1994) citing *Green v. Green*, 579 P.2d at 1238-39, 870 P.2d 91, 264 Mont. 103).

Therefore, Heidi's argument that the District Court only needed only to find that her financial circumstances had changed and that her income is now less than the amount used in the initial child support calculation in order to grant her request for discovery and a hearing on her motion is inconsistent with the case law that requires the District Court to determine on a case by case basis whether the evidence is sufficient to support a finding that the child support award is unconscionable. The District Court is not required by law to grant Heidi's motion only because she stated that her financial situation has changed and her income had decreased, and the District Court is not required to reapply the child support guidelines or to apply Section 40-4-204(3), MCA, in making such a determination. Therefore, the order is not arbitrary or capricious in this regard.

*D. The 2018 child support calculations are not unconscionable, and the denial of the Motion for Modification of Child Support does not result in substantial injustice to the parties' children.*

Heidi argues on appeal that there are numerous facts that the District Court had been aware of that should have led to a finding that the current child support order results in substantial injustice to the parties' children; however, not one of the

bullets in Heidi's Opening Brief relate to the unmet or increased needs of the children. (Appellant's Opening Brief, pg. 22). Instead, just as in her motion, the focus is on Heidi's financial situation and her list of reasons that make her suspect Kyle's income may have increased. The argument of Heidi in her Opening Brief refers to the statutes and administrative rules that govern the District Court's child support calculations once the District Court has made a finding, under Section 40-4-208(2)(b)(i), MCA, that there has been a significant and continuing change in circumstances making the previous child support order unconscionable. As correctly stated by the District Court, there is no evidence that the children are not living at the standard of living that the law requires, and the District Court was correct in finding that Heidi failed to make any showing that any substantial injustice would result from a denial of her Motion for Modification of Child Support. Therefore, this determination and finding of the District Court is not arbitrary or capricious and is well within the bounds of reason.

*E. Kyle should be awarded attorney's fees for having to defend the District Court's order on appeal as Heidi's appeal has been taken without substantial or reasonable grounds and is vexatious.*

The Montana Supreme Court has stated, "We will award attorney's fees under M. R. App. P. 19(5) if the appellant's claims for relief are 'frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial or reasonable grounds.'" (*In re Marriage of Parker*, 2013 MT 194, ¶ 54, 371 Mont.

74, 305 P.3d 816 (2013)). In this case, Kyle has done his best to heed the advice of the District Court not to come running back to court without first trying to work things out. However, his efforts have not been successful, as Heidi has obtained her sixth attorney in this case and filed this motion one day after her new attorney entered his Notice of Appearance. While Heidi may deny it in her Opening Brief, the facts alleged in her initial motion support that Heidi is trying to make up income from her lost maintenance payments and the financial support of her second husband by asking the District Court to increase child support. The District Court properly denied Heidi's motion. Instead of accepting that this ruling is correct, Heidi has filed this appeal that is not supported by reasonable grounds and has caused Kyle to incur the related costs.

The tone of Appellant's opening brief is also focused on painting a picture of Kyle that is meant to unfairly vilify and demean Kyle, while Kyle has tried to be reasonable and not to bring litigation before the District Court. Since 2018, Kyle has paid his child support and is not delinquent on reimbursement for expenses, and he has supported his children without any issues being raised. In 2023, the District Court also noted in its Order on Motion for Attorney's Fees and Costs the following about the matter, "This situation is a result of a severe lack of trust and communication between the parties. No amount of Court involvement will solve either of these issues. While Heidi will receive attorneys fees from this situation,

the Court cautions her in bringing further Motions for Contempt that have not first been discussed behind the scenes. Just as Kyle's lack of communication resulted in an award of fees against him, Heidi rushing to Court unnecessarily may result in her being ordered to pay fees in the future." (Doc.200, pg. 6).

This appeal is a now a result of a motion filed by Heidi only one day after her sixth attorney entered his appearance in this case, before her previous attorney even had a chance to withdraw, and without making any efforts to work with Kyle behind the scenes aside from asking if he would just agree to discovery and to a modification of child support. Once again, Heidi has hired new counsel and rushed back to the District Court, only to appeal its order when it ruled properly on her motion. Therefore, Kyle should be awarded his attorneys fees related to this appeal under M. R. App. P. 19(5). Neither Heidi's motion nor her appeal is supported by substantial or reasonable grounds, and the District Court recognized this when it denied the motion without an evidentiary hearing or allowing for discovery. Heidi's choice to appeal the order denying her motion is consistent with her previous and ongoing use of the court system to harass Kyle, and it needs to be curtailed. Therefore, awarding Kyle his attorney fees for this appeal would be appropriate in this matter under this rule.

## Conclusion

Based on Section 40-4-208(2)(b)(i), MCA, and case law that governs this issue, the Montana Supreme Court should affirm the District Court's order denying Heidi's Motion for Modification of Child Support and request to conduct discovery and hold an evidentiary hearing, and it should award Kyle his attorney fees in this matter, under M. R. App. P. 19(5), in an effort to put an end to this frivolous and vexatious litigation. The decision of the District Court was reasonable and based on the facts with which it had been presented. Heidi has failed to demonstrate that the decision of the District Court was arbitrary or capricious. In highly litigated family law matters such as this, the District Court is in the best position to rule on motions to modify its previous orders, and its order on appeal should be affirmed.

Dated this 21<sup>st</sup> day of March, 2025.

By: /s/ Sarah Corbally  
Sarah Corbally  
Attorney for Appellee/Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)e of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 365 for Mac is 5,929, not averaging more than 258 words per page, excluding caption, certificate of compliance, and certificate of service.

By: /s/ Sarah Corbally  
Sarah Corbally  
Attorney for Appellee/Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2025, I have filed a true and accurate copy of the foregoing APPELLEE’S ANSWER 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/ Sarah Corbally  
Sarah Corbally  
Attorney for Appellee/Petitioner

## **CERTIFICATE OF SERVICE**

I, Sarah Corbally, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-21-2025:

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Dated: 03-21-2025