

FILED

03/24/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0141

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. DA-25-0141

JOSHUA GENNARI,
Petitioner and Appellant,

v.

JACALYN GENNARI,
Respondent and Appellee.

**APPELLANT JOSHUA GENNARI'S BRIEF IN OPPOSITION TO
APPELLEE'S MOTION TO DISMISS APPEAL**

Introduction

Petitioner/Appellant Joshua Gennari respectfully submits this brief in opposition to Respondent/Appellee Jacalyn Gennari's motion to dismiss the appeal. The motion to dismiss is predicated on the assertion that the February 12, 2025 Order from the Ravalli County District Court is not a final order and thus not appealable. However, this brief will demonstrate that the appeal is justified and should proceed.

Argument

I. The February 12, 2025 Order Substantially Affects Appellant's Rights

The February 12, 2025 Order, which denied Appellant's motion for a scheduling conference, significantly impacts Appellant's ability to effectively participate in the proceedings. The denial of a scheduling conference impedes Appellant's right to a fair and timely resolution of the issues at hand, including the parenting and support of the parties' minor children and the division of marital assets and liabilities. The order's impact on these substantial rights warrants appellate review.

II. The Order Meets the Criteria for an Interlocutory Appeal

While the Appellee argues that the order is interlocutory and not subject to appeal, it is crucial to recognize that interlocutory orders can be appealed if they affect substantial rights or if delaying review would cause irreparable harm. The denial of a scheduling conference and the enforcement of the Domestic Relations Case Scheduling Order without Appellant's input effectively prejudices Appellant's case and could lead to irreparable harm. The appellate court's intervention is necessary to prevent such harm.

III. The District Court's Discretionary Power Does Not Preclude Appellate Review

Appellee cites the District Court's inherent discretionary power to control trial administration as a basis for dismissing the appeal. 3 However, this discretion is not absolute and must be exercised in a manner that does not infringe upon the parties' rights. The appellate court has the authority to review discretionary decisions that materially affect the parties' rights or result in a miscarriage of justice. 4 In this case, the denial of a scheduling conference without considering Appellant's circumstances constitutes an abuse of discretion that merits appellate review.

IV. Appellant's Actions Were Not Vexatious or Meritless

Appellee's characterization of Appellant's motions as meritless and vexatious is unfounded. Appellant has actively participated in the proceedings and sought to protect his rights and interests. The request for a scheduling conference was a legitimate attempt to ensure a fair and orderly process, not a delay tactic.

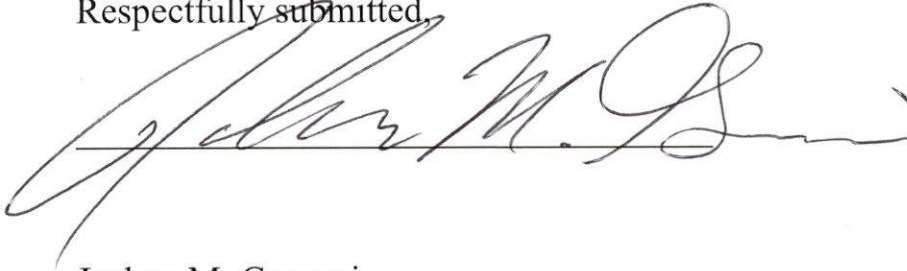
Appellant's actions were in good faith and aimed at achieving a just resolution of the issues.

Conclusion

For the foregoing reasons, Appellant respectfully requests that the Court deny Appellee's motion to dismiss the appeal. The February 12, 2025 Order substantially affects Appellant's rights, and appellate review is necessary to ensure a fair and just resolution of the proceedings.

DATED this 17th day of March 2025.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joshua M. Gennari", written over a horizontal line.

Joshua M. Gennari

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Certificate of Service

I hereby certify that on the 17th day of March 2025, a true and correct copy of the foregoing document was served electronically upon the Respondent's attorney, Nicholas D. Connor, at the email address listed below.

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