

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**Supreme Court Cause No. DA-25-0156**

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IN RE THE PARENTING OF J.E.B.  
and B.L.B.

JESSICA L. BROOKS,

Petitioner and Appellee,  
and

MATTHEW J. BROOKS,

Respondent and Appellant.

**APPELLEE'S MOTION TO  
DISMISS APPEAL**

The Appellee, Jessica L. Brooks (Jessica), through her attorney of record, Emily A. Lucas, RIES LAW GROUP, P.C., respectfully moves this Court to dismiss the appeal filed by the Appellant, Matthew J. Brooks (Matthew) on February 21, 2025.

Matthew objects to this Motion.

## Argument

Rule 12 of the Montana Rules of Appellate Procedure governs the requirements of any briefs filed with this Court. Rule 12(1)(g) requires that the appellant's brief contain an argument section including citations to the authorities and statutes. [Emphasis added]. This Court has consistently held that unsupported arguments will not be considered for appeal. *Snow v. Snow*, 2002 MT 143, ¶¶ 21, 27, 310 Mont. 260, 49 P.3d 610 (appeal was dismissed in part based on appellant's improper citation of a Montana Supreme Court case hindering appellee's ability to review the case for its applicability to the facts).

Matthew's appeal should be dismissed for his failure to comply with Rule 12(1)(g). Matthew filed Appellant's Opening Brief which contains a list of seven *alleged* Montana Supreme Court cases he claims support his appeal; however, upon examination, counsel was unable to locate *any* of these cases as cited by Matthew. Counsel was able to locate six cases with names matching the case names provided, but none of the holdings cited by Matthew matched the holdings of those cases. Of the case names that Jessica's counsel was able to identify, Matthew not only provided inaccurate holdings for those cases, but also inserted statements he cites as direct quotes from various Montana Supreme Court Justices who did not deliver the opinion and often were not even serving the Court during the year cited by Matthew.

Counsel will not leave this Court to research the cases, their citations, and accurate holdings as that heavy lifting has been done:

- Matthew cites *In re Marriage of Bartsch*<sup>1</sup> for the proposition that Mont. R. Civ. P. 52(a) stands for procedural fairness and warrants de novo scrutiny. Opening Brief, pg. 11. *In re Marriage of Bartsch* discusses the distribution of marital assets, specifically stocks. At no point does the Court in *Bartsch* address Rule 52(a), procedural fairness, fundamental rights or the need for transparency as alleged by Matthew in his brief. Further, Matthew cites specifically to Justice Cotter when it was Justice Warner who delivered the opinion of the Court. Opening Brief, pg. 11; *In re Marriage of Bartsch*, 2007 MT 136, 337 Mont. 386, 163 P.3d 72.
- Matthew cites *In re Marriage of Syverson*<sup>2</sup> stating “Justice McKinnon held that the court must link facts to best interests.” Opening Brief, pg. 13. While there is a Montana Supreme Court decision with this name that *upheld* a district court parenting determination (see *In re Marriage of Syverson*, 281 Mont. 1, 931 P.2d 691 (1997)), Justice McKinnon did not deliver that opinion

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<sup>1</sup> Matthew provides the following citation for this opinion: *In re Marriage of Bartsch*, 2004 MT 177, 322 Mont. 167, 95 P.3d 1018. Opening Brief, pg. 3, 11, 15, 17.

<sup>2</sup> Matthew provides the following citation for this opinion: *In re Marriage of Syverson*, 1997 MT 285, 285 Mont. 179, 951 P.2d 1356.

and was not on the Montana Supreme Court either when the opinion was delivered or during the year cited by Matthew.

- Matthew cites *Marriage of D’Alton* stating that “Justice Nelson reversed a custody ruling for lack of nexus,” referencing his position that the district court was reversed for failing to apply Montana Code Annotated § 40-4-212 in an amendment action. Opening Brief, pg. 13. In *Marriage of D’Alton* this Court affirmed a district court’s decision that there was no change in circumstances for the children, meaning the district court’s analysis of Montana Code Annotated § 40-4-212 (if any) was not evaluated. 2009 MT 184, 351 Mont. 51, 209 P.3d 251. Further, this opinion was delivered by Chief Justice Mike McGrath not Justice James C. Nelson.
- Matthew cites *Marriage of Guffin*<sup>3</sup> which he claims supports the following: “Legal interpretations, like Mont. Code Ann. §§ 40-4-212 and 40-4-219, receive de novo review, ensuring statutory fidelity. . . Justice Shea, in *Gulfin* [sic] (¶ 14), insists on precision here.” Opening Brief, pg. 10-11. Neither *Marriage of Guffin*, 2009 MT 169, 350 Mont. 489, 209 P.3d 225 nor *Marriage of Guffin*, 2010 MT 77, 356 MT 218, 232 P.3d 888 provide authority for a decision under Montana Code Annotated §§ 40-4-212 and 40-4-219 to be

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<sup>3</sup> Matthew provides the following citation for this case in his opening brief: *In re Marriage of Guffin*, 2010 MT 77, 356 Mont. 37, 231 P.3d 598.

reviewed de novo. Further, the decisions in these cases were not delivered by the Honorable Justice Jim Shea who was appointed to the Montana Supreme Court in 2014—four years after the year in the citation provided by Matthew.

- Matthew cites *Marriage of Hedges*<sup>4</sup> and claims Justice Rice “demands evidence-based rulings, not caprice.” Opening Brief, pg. 10. While at least the Honorable Justice James Rice participated in this decision, the opinion in *Marriage of Hedges*, 2002 MT 204, 311 Mont. 230, 53 P.3d 1273 was delivered by Justice Patricia O. Cotter and the pinpoint provided by Matthew for Justice Rice’s alleged quote does not exist.
- Matthew cites *Marriage of Jensen*<sup>5</sup> and provides the following quote he alleges is from Justice Leaphart: “[T]he court's failure to provide findings leaves this Court unable to discern its rationale.” Opening Brief, pg. 15. Counsel located two Montana Supreme Court cases matching the case name; however, neither of the opinions match the holding cited by Matthew and neither were delivered by Justice William Leaphart.

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<sup>4</sup> Matthew provides the following citation for this case in his opening brief: *In re Marriage of Hedges*, 2002 MT 126, ¶ 11, 310 Mont. 152, 49 P.3d 160. Opening Brief, pg. 3, 10.

<sup>5</sup> Matthew provides the following citation for this case: *In re Marriage of Jensen*, 1998 MT 141, 289 Mont. 263, 961 P.2d 733. Opening Brief, pg. 3, 15.


Lastly, and most egregious, Matthew cites to “*Marriage of Malmquist*, 2003 MT 91, 315 Mont. 222, 69 P.3d 495” which could be dispositive to the issue presented by Matthew. Opening Brief, pg. 14-15. After extensive and thorough research into the case as alleged by Matthew, counsel cannot confirm that the case exists, and the correct citation was not provided by Matthew when requested.

Matthew’s extensive use of inaccurate citations and nonexistent case law is misleading and disrespectful to this Court and to counsel. The amount of time it took counsel to attempt to locate the cases cited by Matthew and then to compare Matthew’s use of the case to the actual opinions of this Court was unduly burdensome. Further, Matthew’s actions hinder counsel’s ability to respond to Matthew’s arguments which are unsupported by law. Due to Matthew’s disregard of Rule 12(1)(g) in drafting his Opening Brief, his appeal does not sufficiently present a case that allows this Court the ability to make an informed decision on his assertions.

Accordingly, Jessica respectfully requests that Matthew’s appeal be dismissed.

DATED this 7th day of April, 2025.

RIES LAW GROUP, P.C.

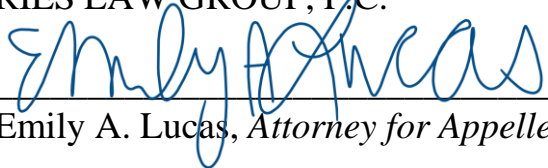
  
Emily A. Lucas, Attorney for Appellee

RULE 16 COMPLIANCE

Counsel for Appellee asserts this document, excluding the case caption, is 1210 words.

DATED this 7th day of April, 2025.

RIES LAW GROUP, P.C.



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Emily A. Lucas, *Attorney for Appellee*

## **CERTIFICATE OF SERVICE**

I, Emily Ann Lucas, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 04-07-2025:

Brandi Rose Ries (Attorney)  
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Electronically Signed By: Emily Ann Lucas  
Dated: 04-07-2025