

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 24-0549

In Re the Marriage of:

HEIDI MARIE BOESHANS,

Petitioner/Appellee,

v.

JOSEPH RYAN BOESHANS,

Respondent/Appellant.

APPELLEE'S RESPONSE BRIEF

On Appeal from Montana Thirteenth Judicial District Court, Yellowstone County
Cause No. DR 56-2023-00797
Before the Honorable Brett Linneweber

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STATEMENT OF THE ISSUES

Respondent/Appellant (Joseph) raises 3 issues on appeal. Petitioner/Appellee (Heidi) responds to each issue as they are presented in Joseph's brief as follows:

1. Whether the lower court correctly set forth a parenting plan which was in E.H.B.'s best interest while addressing the parenting deficits of Joseph;
2. Whether the district court correctly set forth Joseph's noncompliance with the financial disclosure requirements as set forth by Mont. Code Ann.; and,
3. Whether the district made a fair and equitable distribution of marital assets and debts by awarding Heidi the J.R. Boeshans Engineering PLLC (Boeshans Engineering).

STATEMENT OF THE CASE

Heidi filed her petition for dissolution on August 8, 2023, in the Montana Thirteenth Judicial District Court, Yellowstone County bearing Cause No. DR 56-2023-797. The action proceeded to trial on August 1, 2, and 9, 2024. The District Court issued its *Findings of Fact, Conclusions of Law, Order and Decree of Dissolution After Non-Jury Trial* on August 16, 2024. A *Notice of Entry of Final Decree of Marital Dissolution* was filed by Heidi on August 19, 2024. Joseph filed *Notice of Appeal* on September 13, 2024, and Heidi now responds.

STATEMENT OF THE FACTS

Joseph and Heidi were married on October 18, 2020. (Findings of Fact, Conclusions of Law and Decree of Dissolution After Non-Jury Trial (“FOFCOL” ¶5, August 15, 2024, DR 23-797.) The couple have one child as issue of the marriage, E.H.B. born August 21, 2022. (“FOFCOL” ¶6, August 15, 2024, DR 23-797).

Parenting of E.H.B.

Joseph and Heidi have one child born August 21, 2022. *Id.* Joseph and Heidi separated on or about June 28, 2023, when E.H.B. was eleven (11) months old. (FOFCOL ¶9); (Tr. Day 1, 58:24-25; 59:1). Heidi provided the care for E.H.B. with Joseph only exercising up to four (4) hours of visitation. (FOFCOL ¶23); (Tr. Day 1, 42:1-25; 43:1-8).

Joseph displayed and the district court found several safety concerns and/or parenting deficits with Joseph. Joseph’s parenting deficit’s include substance use issues resulting in his own admissions through a letter introduced at trial that he overconsumed alcohol, several photographs depicting marijuana paraphernalia, and a report by the clerk of district court that Joseph was intoxicated while filing his financial disclosure the afternoon before day three of trial (FOFCOL p. 7, ¶ 32); (Tr. Day 1, 97:5-25, 197: 1-25); (Tr. Day 3, 520:8-18). The district court also noted

that Joseph’s parenting deficiencies included controlling and harassing behavior including sending over 3,000 pages to Heidi after he was ordered to only communicate with her in writing through the parenting app, Our Family Wizard, and the communications should only pertain to parenting of the parties’ child. Joseph’s communications included discussions about prohibited topics and threats to Heidi (FOFCOL p. 5, ¶ 26), (Tr. Day 1, 14:11-21; 16:16-25, 17: 1-25, 18: 1-25).

Financial Disclosure

Joseph throughout the proceedings failed to provide financial disclosures and on August 8, 2024, after two (2) days of hearing Joseph finally went to the clerk of district court and filed his financial disclosure (FOFCOL p. 20, ¶ 89); (Tr. Day 3, 520:3-7). Joseph would have filed his final financial disclosure after Heidi had concluded her direct testimony and cross-examination and after he had completed his direct testimony.

Award of J.R. Boeshans Engineering PLLC

Joseph and Heidi while married purchased J.R. Boeshans Engineering PLLC (Boeshans) from Joseph’s father and stepmother in February 2023 with a SBA loan (FOFCOL p. 13, ¶ 61); (Tr. Day 1, 203:8-19). A lien for the SBA loan was attached to Heidi’s premarital home. (Tr. Day 1, 204:13-16). Joseph would not be

able to refinance or remove the SBA loan from Heidi's premarital house given his lack of assets and credit risk. (Tr. Day 1, 206:13-25). Heidi would be able to assume the SBA loan into her sole name. (Tr. Day 1, 206:24-25; 207:1-15).

In addition to the SBA loan a HELOC loan was also taken out against Heidi's premarital residence to fund the purchase of Boeshans Engineering. (Tr. Day 1, 164:1-23).

Joseph had mismanaged Boeshans to the detriment of the company. This included not setting up the autopayment for the lease on the building (Tr. Day 1, 189:7-25; 190:1). Joseph failed to pay the interest on the HELOC that had been utilized for the business. (Tr. Day 1, 21:23-25). Joseph drinking while at work. (Tr. Day 1, 29:7-20). Lastly, the turnover of employees under Joseph has been high. (Tr. Day 1, 30: 14-16; 219: 12-20, 256:17-23). If the SBA loan is not Heidi's premarital home will go into foreclosure. (Tr. Day 1, 217:1-9). If Boeshans Engineering were to be liquidated the assets would not be sufficient to cover the outstanding debt that has been taken against Heidi's premarital residence. (Tr. Day 1, 204:16-21).

STANDARD OF REVIEW

This Court reviews a district court's findings of fact supporting a parenting plan to determine whether they are clearly erroneous. *In re the Parenting of M.C.*, 2015

MT 57, ¶ 10, 378 Mont. 305, 343 P.3d 569. A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if a review of the record convinces this Court that the district court made a mistake. *Id.* This Court review a district court's conclusions of law to determine if they are correct. *Id.* A district court abuses its discretion if it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re the Marriage of Woerner*, 2014 MT 134, ¶ 12, 375 Mont. 153, 325 P.3d 1244 (quoting *In re Marriage of Crowley*, 2014 MT 42, ¶ 44, 374 Mont. 48, 318 P.3d 1031).

In a dissolution proceeding, findings of fact are reviewed for clear error. *In re Marriage of Funk*, 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39. A finding of fact is clearly erroneous if: (1) it is not supported by substantial evidence; (2) the district court misapprehended the effect of the evidence; or (3) the district court made a mistake. *Id.*

If the district court's findings are not clearly erroneous, the division of property should be affirmed unless there was an abuse of discretion. *Id.* An abuse of discretion occurred if “the district court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in a substantial injustice.” *Id.*

In a dissolution proceeding, conclusions of law are reviewed de novo for correctness. *Id.*

SUMMARY OF ARGUMENT

Joseph has submitted an appeal based largely on portions of the *Final Findings of Fact, Conclusions of Law and Decree* without providing support for how the findings are erroneous or unsupported in the record. Joseph's complaints against the court's findings and broad statements that the findings are erroneous are unsupported and fall far short of meeting the high bar that has been set for a district court's findings to be overturned.

ARGUMENT

Joseph's assertion that the district court's parenting plan violated his constitutional rights is blatantly false and based on an incomplete representation of the district court's orders.

Joseph's assertion that the district court erred by not stating he filed a final financial disclosure is a misstatement of the facts and record and does not demonstrate reversible error.

The issues concerning the distribution of the business should be analyzed through in *In re Marriage of Funk*, 2012 MT 14, 363 Mont. 352, 270 P.3d 39, and

the application of the factors set forth by case law and statute for district courts to apply when determining an equitable division of the marital estate including the distribution of a professional corporation.

a. The district court correctly set forth a parenting plan that is in E.H.B. 's best interest and will address the parenting deficits of Joseph.

Joseph raises the issue on appeal that the district court erred in issuing a final parenting plan which is “impossible to understand and permanently deprives [Joseph] of his parental rights” *Appellate Opening Brief*, p. 6. This assertion as set forth misstates the full record and ruling of the district court as it pertains to the final parenting plan.

In looking to specific areas where the district court erred Joseph identifies the language from the *Final Parenting Plan* (4)(b) as “inscrutable” and “unclear” *Appellate Opening Brief*, p. 7. Specifically, Joseph claims confusion as to what the district court is ordering must be completed through the Thirteenth Judicial District Court’s Family Relations Department. From this confusion Joseph then argues that his perceived lack of understanding functions to terminate his constitutional right to parent.

Joseph’s confusion is a product of his own making in failing to read the

accompanying *Findings of Fact, Conclusions of Law, and Decree* issued by the court contemporaneously with the *Final Parenting Plan*. The excerpt of the *Final Parenting Plan* Joseph cites to specifically references back to the Decree, “through the Thirteenth Judicial District Court’s Family Relations Department that is **concurrently ordered in the Decree.**” *Final Parenting Plan*, ¶4b emphasis added.

The district court dedicated approximately seven (7) pages of the *Findings of Fact, Conclusions of Law and Decree* to analyzing the parenting of E.H.B. This includes a complete analysis of the best interest of the child factors under Mont. Code Ann. §40-4-212 and how the testimony of each party was weighed and applied to the factors. (FOFCOL p. 22, ¶11, p. 23-25, ¶12).

The district court then sets forth the specific steps to be taken by Joseph for Phase One of the graduated parenting plan to begin as follows:

3. Joseph shall immediately contact the Court’s Family Relations Department (specifically by emailing Martha.Forrest-Martin@mt.gov). Joseph shall arrange for an anger/risk assessment, mental health evaluation, and chemical dependency evaluation. Joseph must provide the evaluator with a Copy of this Order, as well as any subsequent collateral information requested by the evaluator.
4. Joseph shall enroll in and complete a parenting class.

(FOFCOL p. 25, ¶¶3 and 4, li 19-25).

These sections from the *Final Findings of Fact, Conclusions of Law and Decree* address the questions raised by Joseph as to what evaluations are to be

completed, and when Phase One of the *Final Parenting Plan* can commence.

Joseph stating that he is unclear on what evaluations are required is especially disingenuous as he cites to the *Final Findings of Fact, Conclusions of Law and Decree* throughout *Appellant's Opening Brief*. The district court far from terminating Joseph's parental rights set forth specific assessments and even went so far as to provide the specific email address for the person to be contacted to set up the evaluations. The timeline rests completely on Joseph to first and foremost read the district court orders in their entirety and then to send an email. As set forth in *supra* the district outlined extensively the basis for its belief that Joseph had serious parenting deficits to be addressed by the district court's order of setting forth a graduated parenting plan.

b. The district court correctly made note that Joseph did not provide financial disclosures.

Joseph asserts on appeal that the district court committed reversible error when it found that he failed to complete the required financial disclosures. As with the previous issue raised by Joseph, this assertion is based on incomplete facts.

Mont. Code Ann. § 40-4-253(1)(a)(ii) sets forth, "[e]ach party shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury: in the event that the case goes to

trial, no later than 45 days before the first assigned trial date.”

As established in the record Joseph filed his financial disclosure, on August 8, 2024. As the court noted at the beginning of the hearing on August 9, 2024:

There are a few procedural issues. I did note, yesterday, while I was in a separate matter that, in the afternoon, Mr. Boeshans filed a financial disclosure with the clerk of court. Mr. Boeshans, that’s tardy. You can’t do it towards the end of the trial.

Tr. Day 3, 520:3-7

Joseph states that the district court did not appropriately acknowledge that a financial disclosure was filed. However, this disclosure occurred after two (2) days of testimony and was not in compliance with Mont. Code Ann. § 40-4-253(1)(a)(ii). Joseph further asserts that the district court’s finding on the disclosure calls into question the “district court’s consideration of the evidence—including the timing of the district court’s creation of the FOF and the evidence provided by the parties.” *Appellant’s Opening Brief*, p. 9. Joseph makes this passing assertion and then fails to provide any examples where the district court’s consideration of the evidence was egregious and/or not supported¹.

Further this Court has well established that the district court judge in family law

¹ It is worth noting that Joseph throughout his *Opening Brief* makes no references to the record that was established in the three (3) days of testimony.

proceedings sits as the trier of fact and as such is in the best position to determine the weight and credibility to give to each witness and exhibit. This Court has found, “it is exclusively within the province of the trier of fact, and not this Court, to weigh evidence, including conflicting evidence, and judge the credibility of the witnesses.” *In re Marriage of Edwards*, ¶ 18 (quoting *Owen v. Skramovsky*, 2013 MT 348, ¶22, 372 Mont. 531, 313 P. 3d 205). This Court has further gone on to state “we will not second-guess a district court’s determinations regarding the strength and weight of conflicting testimony.” *In re Marriage of Edwards*, ¶18 (quoting *Owen*, ¶22). Joseph’s issues associated with the weight the district court gave to exhibits and testimony in light of the district court’s findings on the financial disclosures can be dismissed based on the record and precedent set forth by this Court.

c. The district court made a fair and equitable distribution of the marital assets and debts by awarding J.R. Boeshans Engineering PLLC to Heidi

In first looking to the division of Boeshans Engineering, Joseph makes much of the fact that the district court and Heidi did not correctly state the businesses name. This is neither a legal argument and does little to establish why the district court’s distribution was clear error.

Joseph cites that the distribution of a professional corporation is prohibited under Mont. Code Ann. §35-4-207 as one-half of the directors must be qualified

persons in respect to the corporation. However, Mont. Code Ann. §35-4-311 sets forth the steps and timeline by which a disqualified person can correct the ownership requirements for a professional corporation. Under the statutes provided by Joseph Heidi is capable of retaining ownership of Boeshan Engineering so long as the ownership can be brought into compliance with Montana Professional Corporations Act. However, whether Boeshan Engineering is operating in compliance with the Montana Professional Corporations Act is not Joseph's claim to make as it is set forth in statute that a person who is not engaged in the profession of the business can be an owner.

The district court was in a particularly difficult position in attempting to fairly and equitable divide the marital assets and debts especially as Heidi's premarital assets had been utilized as collateral for the parties to purchase Boeshans Engineering. Mont. Code Ann. §40-4-202(1) sets forth, "the court,...shall,finally equitably apportion between the parties the property and assets belonging to either or both, **however and whenever** acquired and whether the title to the property and assets is in the name of the husband or wife or both." *Emphasis added*. This Court has vested "the district court with broad discretion to apportion the marital estate in a manner equitable to each party under the circumstances." *In re Marriage of Funk*, 270 P.3d 39 ¶6.

CONCLUSION

The matter before the Court comes on Joseph's misrepresentation of the facts that were established through three (3) days of testimony and his displeasure at not being awarded what he desired from the proceedings. The district court carefully considered all evidence, testimony, and exhibits and issued a parenting plan supported by the record to address both the best interest of E.H.B. and to address safety concerns with Joseph's current parenting abilities. The district court further correctly noted that until the afternoon prior to the last day of hearing Joseph had not complied with the financial disclosure requirements. Joseph only filed financial disclosures after direct examination had been concluded for both himself and Heidi, and thus the courts representation that he had not provided financial disclosure is correct. Lastly, the court was put in an especially difficult position of making a fair and equitable division of the marital assets and debts. The court carefully considered the options and determined that in order to equitably divide the marital estate J.R. Boeshans Engineering PLLC would need to be awarded to Heidi. Heidi is more than capable under the law of owning this corporation in compliance with Montana Professional Corporations Act. Joseph himself acknowledges in his *Opening Brief* that Mont. Code Ann. §35-4-311 sets forth a path for next steps to be taken with Heidi maintain the awarded business. The

district court's August 15, 2024, Decree should be affirmed.

DATED this 7th day of April, 2025.

BERST LAW FIRM, PLLC

____/s/ Katherine Delaney Berst____
Katherine Delaney Berst

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this *Appellee's Response Brief* is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes, quoted, and indented material; and that the word count calculated by Microsoft Word Professional Edition, is 2,935 words, excluding the Table of Contents, Table of Authorities, and Certificate of Compliance.

DATED this 7th day of April, 2025.

BERST LAW FIRM, PLLC

____/s/ Katherine Delaney Berst____
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CERTIFICATE OF SERVICE

I, Katherine Delaney Berst, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 04-07-2025:

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