

**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. DA 24-0382

**FILED**

04/09/2025

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 24-0382

---

IN THE MATTER OF THE PARENTING OF:

A.H.S., a minor child;

CHAD SENECHAL,

Petitioner Appellee,

And

MAIRA HORTA MOSS,

Respondent Appellant

**FILED**

APR - 9 2025

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

---

**PETITION FOR REHEARING**

---

On Appeal from the Montana First Judicial District Court, Lewis and Clark  
County, Cause No. DDR 2022-528, The Honorable Christopher D. Abbott

---

APPEARANCES

MAIRA HORTA MOSS  
846 11th Avenue  
Helena, MT 59601  
Phone: (442)877-2313  
Email: therapy@mairahorta.com

*Appellant Pro Se*

SARA S. BERG  
Laird Cowley, PLLC  
40 W. 14th Street, Suite 4A  
Helena, MT 59601  
sberg@lairdcowley.com 215

*Attorney for Appellee*

## INTRODUCTION

Appellant Maira Horta Moss petitions for rehearing under Mont. R. App. P. 20(1) (a) (i)–(iii), challenging this Court’s March 25, 2025 Opinion affirming the District Court’s final custody order. Rehearing is warranted because the Opinion: (1) overlooked facts established in the record material to its decision; (2) failed to address the legal question of whether Montana retained jurisdiction following California’s appellate reversal and remand and whether Montana complied with its statutory duties under UCCJEA and Montana law; and (3) applied the wrong standard of review to a threshold jurisdictional issue. In doing so, the Court affirmed a judgment that conflicts with controlling Montana law, UCCJEA mandates, and constitutional principles of due process and full faith and credit.

Moreover, the Court mischaracterized Appellant’s jurisdictional argument as merely a dispute over initial custody determinations, focusing on Montana’s status in 2022 while failing to engage with the controlling question of whether jurisdiction was divested after California’s May 21, 2024 appellate reversal and remand. This Court reframed Appellant’s jurisdictional challenge as forum shopping, rather than addressing her core statutory argument—that Montana lost jurisdiction once California’s appellate court reinstated proceedings under the UCCJE.

The Court likewise framed Appellant’s arguments as part of a parenting dispute rather than addressing the jurisdictional core. It omitted key facts directly

relevant under the UCCJEA: the parties no longer resided in Montana, having sold their home and prepared to return to California; Appellant filed first in California following documented domestic violence; and the child had lived in Montana only four months, spending extended periods in Brazil and California. Rather than engage with these jurisdictional facts, the Opinion adopted a narrative that Appellant “secreted” the child, overlooking her lawful filings and documented efforts to maintain contact.

The Court also ignored its own prior ruling granting Maira’s Writ of Supervisory Control, which held that the District Court’s contempt proceeding was unconstitutional—yet still adopted a narrative implying that Chad was forced to pursue contempt due to Maira’s misconduct. This contradiction unfairly distorted the record and contributed to a legally flawed conclusion.

Finally, the Court applied a deferential abuse-of-discretion standard, insulating a jurisdictional error that required de novo review. Rehearing is necessary to correct these legal and factual errors and to ensure jurisdictional determinations comply with the UCCJEA, Montana law, and constitutional protections.

**STATEMENT OF THE CASE**

This case arises under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and centers on whether Montana retained legal authority to issue a final custody order after jurisdiction was reinstated in California.

In October 2022, following a coordination call, the San Diego Superior Court relinquished jurisdiction to Montana. At that time, no final custody orders had been entered in either state.

On May 21, 2024, the California Court of Appeal reversed and remanded the relinquishment, instructing the trial court to conduct an evidentiary hearing and reassess jurisdiction under the UCCJEA. That ruling revived California's proceeding and triggered Montana's mandatory duty under §§ 40-7-107 and 40-7-108, MCA to stay its action and reinitiate coordination with California. Instead, the next day, the Montana District Court issued final custody orders, falsely stating the California appeal remained pending (Dkt. 171 at 4).

On March 25, 2025, this Court affirmed the Montana order, without analyzing the legal effect of the California reversal or addressing Montana's statutory obligations under the UCCJEA. The Opinion relied on the October 2022 coordination as determinative, referenced the reversal only in a footnote, and applied a deferential abuse-of-discretion standard—even though jurisdiction presents a legal question.

Appellant now petitions this court for rehearing to correct these legal errors and to ensure that the Court's decision complies with Montana law, the UCCJEA, and constitutional guarantees.

## **ARGUMENT**

### **I. THE COURT OVERLOOKED FACTS MATERIAL TO ITS DECISION TO AFFIRM THE DISTRICT COURT'S ORDER, WARRANTING REHEARING**

This Court's Opinion rests on factual misstatements and critical omissions, directly contradicted by the trial record and extensively briefed on appeal. These are not peripheral matters—they strike at the core of the UCCJEA jurisdictional analysis and, under Mont. R. App. P. 20(1)(a)(i), compel rehearing.

#### **A. Misstatement of the Timeline and the Legal Context of Maira's Departure**

The Opinion mischaracterized the nature of the parties' relationship and Appellant's actions, stating: "Unhappy differences arose between the parties, and Mother secreted A.H.S. to California without prior notice or consent of Father" (Opinion at 2). In truth, the record—unrebutted—tells a different story:

1. Maira fled Montana on September 4, 2022, after being assaulted by Chad. Officer Nick Ransom testified at trial that he advised Maira not to remain in the Airbnb with Chad and documented the incident in his report. He also contacted the local domestic violence shelter and attempted to assist her in securing safe accommodations for the night. (Opening Brief at 23–24; 4/17/24 Tr. at 133:1–9; HPD Case No. TK-520-2022-0001699).
2. On September 7, 2022, Maira filed for a DV Restraining Order and Custody Orders in California. The Superior Court issued a TRO the same day—

initiating a custody action under the UCCJEA (Opening Brief at 7–9; 1/17/24 Tr. at 54:5–8).

3. Chad filed in Montana on September 8, claiming the child had lived there for two years. The actual record reflects, the child had only been in Montana for 4.5 months. The parties had already sold their Helena home, packed, and were preparing to return to California (Opening Brief at 7–9, 20–21; 1/17/24 Tr. at 22:5–11; Dkt. 171 at 2).
4. Chad withheld the fact of the domestic violence from the Montana court and falsely suggested Maira had absconded. In reality, he knew her whereabouts, evaded service, and refused in person contact with the child once the TRO was lifted (Reply Brief at 4–6).

This Court’s adoption of Chad’s narrative distorted the legal context of Maira’s departure and tainted the jurisdictional analysis—particularly whether the child’s “home state” under § 40-7-102(7), MCA.

#### **B. Disregard of the Legal Consequences of the California Appellate Reversal**

The Opinion asserted that “The San Diego court ceded jurisdiction to Montana” (Opinion at 2) but failed to acknowledge that this ruling was reversed on May 21, 2024, by the California Court of Appeal—a *decision that nullified the jurisdictional foundation for the Montana proceedings.*

That appellate ruling found the trial court had failed to apply the UCCJEA and remanded for a full evidentiary hearing (Opening Brief at 22–24; Reply Brief at 7–9; CA Court of Appeal Reversal at pp. 6, 11–13). Under California law, the ruling was immediately effective and reinstated California’s jurisdiction.

This legal development triggered Montana’s duty under §§ 40-7-107(2) and 40-7-108, MCA to stay proceedings and reengage in coordination with California. But the Montana District Court did the opposite: it entered a final custody order one day later and falsely stated the California appeal was *still pending* (Dkt. 171 at 4). Rather than correcting that error, this Court adopted the District Court’s misstatement and relegated the California reversal to a footnote (Opinion at 4), treating the October 2022 coordination call as dispositive, despite its legal invalidation by the California Court of Appeal.

### **C. Failure to Consider Domestic Violence and the Child’s Welfare**

The Opinion also failed to engage with overwhelming evidence of domestic violence and child trauma that was presented in the record:

- Chad’s assault on September 3, 2022, was confirmed by Officer Ransom’s testimony and Maira’s contemporaneous report (Opening Brief at 23–24; 4/17/24 Tr. at 133).
- Two TROs were issued against Chad by California courts based on credible danger (Opening Brief at 8–9).

- A.H.S.’s teacher reported disturbing behavior—mimicking strangulation—and fear that Chad would harm her mother. The teacher filed a formal report with DPHHS (Opening Brief at 10–12; Trial Exhibit F).
- Chad declined in person visits with A.H.S. in California and evaded service (Reply Brief at 4–5).

These facts were directly relevant to best interest determinations, and also to whether Maira’s return to California qualified as an emergency under UCCJEA § 40-7-204, MCA.

**II. REHEARING IS REQUIRED BECAUSE THE COURT OVERLOOKED A CENTRAL LEGAL QUESTION, APPLIED AN INCORRECT STANDARD AND AFFIRMED A DECISION THAT CONFLICTS WITH CONTROLLING LAW**

Rehearing is warranted because this Court failed to resolve a dispositive jurisdictional issue, used the wrong standard, and affirmed a decision conflicting with statutory authority and precedent. Any one of these errors warrants rehearing.

**A. The Court Ignored a Dispositive Jurisdictional Question Raised on Appeal**

The first question raised by Appellant on appeal was whether Montana retained jurisdiction after the California Court of Appeal reversed the San Diego Superior Court’s October 21, 2022 order relinquishing jurisdiction to Montana. The May 21, 2024 reversal vacated the relinquishment and remanded the case for a full evidentiary hearing and proper application of the UCCJEA—thereby reactivating

the California custody proceeding and nullifying the basis for Montana’s continued jurisdiction.

As detailed in Appellant’s Opening Brief (at 20–27) and Reply Brief (at 6–9), the reversal triggered Montana’s duty under §§ 40-7-107(2) and 40-7-108, MCA to stay its proceedings and communicate with the court of the other state. The District Court failed to do so. Instead, it entered a final custody order the very next day—falsely stating that the California appeal remained pending (Dkt. 171 at 4).

This Court then affirmed that order without addressing Appellant’s argument: that Montana’s jurisdiction was extinguished by the California reversal and that Montana failed to comply with its statutory obligations after the reversal. The Opinion stated, “The San Diego court ceded jurisdiction to Montana” (Opinion at 2), without acknowledging that the order had been reversed before issuing final custody orders.

The California appellate court expressly found the trial court failed to apply the UCCJEA, did not hold a mandatory evidentiary hearing, and relinquished jurisdiction based on an incomplete record (CA Ct. App. Reversal at 11–13; Opening Brief at 22–24; Reply Brief at 7–9). Under California law, the ruling was immediately effective and reinstated jurisdiction.

Yet this Court failed to assess whether Montana’s jurisdiction had expired. Instead, it treated the now-invalid October 2022 coordination as dispositive and

buried the reversal and remand order to a footnote. By adopting the District Court's misstatement that the California appeal remained pending and failing to reassess jurisdiction as required by § 40-7-107(2), MCA, this Court allowed Montana to continue without proper legal authority. This omission constitutes reversible error and a failure of full faith and credit.

**B. The Court Misapplied the Standard of Review and Failed to Analyze Controlling Jurisdictional Law**

Rehearing is warranted because the Court's Opinion applied the wrong standard of review to a jurisdictional question and failed to enforce Montana's mandatory statutory duties under the UCCJEA. Although the Court acknowledged that subject matter jurisdiction is reviewed for correctness, it proceeded to frame the entire parenting determination—including the legal question of jurisdiction—as discretionary and entitled to deference (Opinion at p. 5, ¶8). That is incorrect.

As this Court has repeatedly held, jurisdiction under the UCCJEA is a legal question reviewed de novo, not for abuse of discretion. See *Sampley v. Sampley*, 2015 MT 121, ¶ 6; *In re B.K.*, 2020 MT 123, ¶ 13. In *Sampley*, this Court reversed a lower court's jurisdictional ruling specifically because it failed to reassess jurisdiction in light of a concurrent out-of-state proceeding. Similarly, in *In re B.K.*, the Court emphasized that jurisdiction must be determined according to statutory criteria, not judicial discretion.

Yet in this case, the Court affirmed a District Court order that relied on a May 18, 2023 jurisdictional finding—issued before California’s Court of Appeal reversed its prior relinquishment of jurisdiction on May 21, 2024. The Opinion made no effort to evaluate whether Montana still had jurisdiction as of May 22, 2024, when the District Court entered its final custody order. Nor did it apply Montana’s own statutory framework for simultaneous custody proceedings.

This directly contravenes § 40-7-107(2), MCA, which provides that:

“If a court of this state has been asked to make a child custody determination and a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction... the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the other state does not determine that the court of this state is the more appropriate forum, the court of this state shall dismiss the proceeding.”

The California appellate reversal unambiguously reactivated California’s jurisdiction. Under *Sampley, B.K.*, and *Smalling v. Klubben*, 2018 MT 217, ¶¶ 15–16 supra, this Court was required to apply the most recent jurisdictional facts—not rely on outdated coordination. *Smalling* emphasized that effective jurisdictional cooperation requires timely reassessment, particularly when the original jurisdictional decision in a sister state is later vacated.

By ignoring the California reversal and failing to enforce Montana's UCCJEA obligations, this Court insulated a jurisdictionally void custody order from proper legal review. Rehearing is necessary to correct that legal error and preserve the integrity of Montana's jurisdictional process.

### **III. REHEARING IS NECESSARY BECAUSE THE COURT IGNORED MATERIAL EVIDENCE ON PARENTING RIGHTS AND DOMESTIC VIOLENCE**

Lastly, the Opinion failed to meaningfully review Appellant's second and third issues: the unjustified restriction on her and the child's travel and the trial court's failure to consider documented abuse.

The trial court imposed a broad travel restriction without making any factual findings of risk under § 40-4-212, MCA. The Opinion claimed the order only restricted the child, but the record shows the travel ban functionally denied Maira's constitutional right to travel with her daughter, and disproportionately impacted A.H.S.'s connection to her maternal family and culture compared to Chad's family(Opening Brief at 27–45).

Additionally, the trial court and this Court overlooked extensive evidence of abuse—verified by law enforcement, mental health professionals, teachers, and DPHHS (Opening Brief at 10–12, 23–24; Reply Brief at 15–23; Tr. 4/17/24 at 146–47, 182–83). These omissions violate Montana's statutory mandate to consider domestic violence in custody determinations (see *In re P.H.R.*, 2021 MT 5; *In re*

*A.P.V.W.*, 2022 MT 159), and disregard constitutional protections recognized in *Troxel v. Granville*, 530 U.S. 57 (2000). These facts were central to both the best-interest and safety analyses under the UCCJEA. Their exclusion deprived this Court of the full context needed for meaningful appellate review.

### CONCLUSION

Rehearing is warranted under Mont. R. App. P. 20(1)(a)(i)–(iii) to remedy the Court’s failure to consider material facts, to address a central jurisdictional question presented on appeal, and to correct an order that conflicts with governing law and constitutional mandates. Accordingly, Appellant respectfully requests that this Court:

1. Grant rehearing;
2. Vacate the final custody order entered by the District Court;
3. Remand the case for a jurisdictional reassessment in accordance with the UCCJEA;
4. Order coordination with the California court to resolve the jurisdictional conflict; and
5. Grant any other relief deemed appropriate.

Dated: April 9<sup>th</sup>, 2025

Respectfully submitted



---

Maira Horta Moss, Appellant  
846 11th Avenue  
Helena, MT 59601  
Phone: (442) 877-2313  
Email: therapy@mairahorta.com

### **CERTIFICATE OF COMPLIANCE**

Pursuant to M. R. App. P. 20(3), I certify that this petition is printed in a proportionally spaced typeface and contains fewer than 2,500 words, excluding the caption, certificate of service, and this certificate.

April 9, 2025



\_\_\_\_\_  
Maira Horta Moss, Appellant

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this Petition for Rehearing was served on the following counsel on the date below by email:

Sara S. Berg  
Laird Cowley, PLLC  
40 W. 14th Street, Suite 4A  
Helena, MT 59601  
Email: sberg@lairdcowley.com

April 9, 2025



\_\_\_\_\_  
Maira Horta Moss, Appellant