

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0031

IN RE THE MARRIAGE OF:

CIARA LYNN REHBEIN,

Petitioner and Appellant/Cross-Appellee,

v.

JESSICA MICHELLE PADDOCK,

Respondent and Appellee/Cross-Appellant.

**APPELLEE/CROSS-APPELLANT'S COMBINED ANSWER BRIEF AND
CROSS-APPEAL BRIEF**

On Appeal from the Montana Second Judicial District Court,
Silver Bow County,
The Honorable Ray J. Dayton, Presiding.

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STATEMENT OF THE ISSUES

1. Was the District Court clearly erroneous when it granted Respondent a Third-Party Parental Interest and Parenting Rights under Mont. Code Ann. § 40-4-228 and § 40-4-211?
2. Was the District Court clearly erroneous when it did not recognize Respondent as Presumed Parent under Mont. Code Ann. § 40-6-105?
3. Were The Pleadings In The District Court Case Properly Amended By The District Court?

STATEMENT OF THE CASE AND FACTS

The parties were a same-sex couple who had two (2) minor children during their marriage, namely, A.M.R., born in 2018, currently 6 years of age; and M.J.R., born in 2021, currently 4 years of age. The parties reside in Butte, Montana.

The parties originally met in 2011, became a couple, and the Petitioner (“Ciara”) moved in with Respondent (“Jessica”) in 2012 in Butte after Ciara completed Passages DOC chemical dependency treatment program. (12/8/23 Hr’g Tr. at 19.) The parties were originally married in 2014 and then divorced in Spring 2017. (12/8/23 Hr’g Tr. at 19; 7/11/24 Hr’g Tr. at 10.) Jessica stated one of the reasons for the divorce was Ciara’s chemical dependency issues and she did not want to have children with Ciara while Ciara was not sober. (12/8/23 Hr’g Tr. at 21.)

The parties reentered their relationship again several months later, around approximately fall 2017 while both parties were living in Butte, and the parties

began co-habituating again. (12/8/23 Hr’g Tr. at 22, 115, 117, 241.) At this point the parties began discussing having a family together again, and where Ciara would carry the baby. (12/8/23 Hr’g Tr. at 21-22.)

In fall 2017 the parties sought out a mutual friend, Jesus Soto, for sperm donation. (12/8/23 Hr’g Tr. at 22-23, 117, 214-215.) The parties had tried insemination methods during their prior marriage and had been unsuccessful. (Ct. Ex. B; 12/8/23 Hr’g Tr. at 21, 30, 112-113; 7/11/24 Hr’g Tr. at 11.)

On October 1, 2017, Ciara and Jesus Soto signed a Donor Agreement and Jessica signed as a witness. (Ct. Ex. A; 12/8/23 Hr’g Tr. at 25-26, 216; 7/11/24 Hr’g Tr. at 23-24.) The Donor Agreement refers to Jessica as a “parent”, and Mr. Soto waived all paternity rights to any child produced. (Ct. Ex. A, #3; 12/8/23 Hr’g Tr. at 215-216, 217.)

Jesus Soto testified that his intent was to provide sperm to the parties so that they could start a family together, that Jessica would be the child’s second parent (with Ciara being the first, biological parent), and that he would not be serving in the capacity of a father to any child produced. (12/8/23 Hr’g Tr. at 215-218, 221, 236.) Jessica was very involved in the insemination process, including buying the supplies and transporting the sperm from Mr. Soto to Ciara for insemination. (*Id.* at 26, 30, 135, 218-219.)

Initial attempts at insemination with Mr. Soto were not successful, and Mr.

Soto began having physical intercourse with Ciara, in addition to continuing the artificial insemination method, to conceive a child. (12/8/23 Hr'g Tr. at 30-31 117-119, 219, 230; 7/11/24 Hr'g Tr. at 8.) Mr. Soto testified that at no point did he consider himself in a relationship with Ciara and that he felt bad about having physical intercourse with Ciara. (12/8/23 Hr'g Tr. at 219-220-221, 229-230, 231.) Mr. Soto testified that the parties were still in a romantic relationship. (7/11/24 Hr'g Tr. at 12; 12/8/23 Hr'g Tr. at 21-22, 215-218, 221, 236.)

Ciara did eventually conceive via Mr. Soto's sperm in October 2017. (12/8/23 Hr'g Tr. at 31, 115; 7/11/24 Tr. at 8.) It is not known which method of impregnation resulted in pregnancy (insemination vs. intercourse). (12/8/23 Hr'g Tr. at 223.) Mr. Soto has never had a relationship with the child produced, A.M.R., as a parent would have. (*Id.* at 216, 222, 223, 239.) Mr. Soto sees and talks to A.M.R. on occasion when Jessica is present, but he has never cared for or supported A.M.R. (12/8/23 Hr'g Tr. at 27-28, 38, 222, 232-234; 7/11/24 Hr'g Tr. at 25.)

After conception the parties moved together to Kalispell and lived together at Ciara's mother's home. (12/8/23 Hr'g Tr. at 16, 115-116.) On Mother's Day (May) 2018 just prior to the birth of A.M.R., Ciara sent Jessica a Facebook post wishing her Happy Mother's Day and a picture of A.M.R.'s ultrasound. Ct. Ex. U. Ciara and Jessica also proceeded to get married again on July 13, 2018, just prior

to the birth of A.M.R. (12/8/23 Hr’g Tr. at 14.)

A.M.R. was born on July 29, 2018, in Kalispell. (*Id.* at 16, 31.) Jessica was present for the birth, Jessica cut the umbilical cord, and Jessica did skin-on-skin bonding with A.M.R. at the hospital. (*Id.* at 32-34.) Jessica helped pick A.M.R.’s middle name of Michelle, which is also Jessica’s middle name. (*Id.* at 32.) Jessica was initially listed as the “Father” on A.M.R.’s birth certificate. (Ct. Ex. C; 12/8/23 Hr’g Tr. at 34-35, 124; 7/11/24 Hr’g Tr. at 27.)

The parties continued to reside together as a married couple with baby A.M.R. in Kalispell and then moved again together back to Butte, Montana for a job opportunity for Jessica approximately a year later. (12/8/23 Hr’g Tr. at 47-48.) During this time, Ciara was a stay-at-home mother and Jessica worked full time and supported the household. (*Id.* at 46-47, 144.) Also, during this time, Ciara posts on social media stating how Jessica is supporting their family and is great with “our daughter”. (Ct. Ex. E; 12/8/23 Hr’g Tr. at 51-52.)

Jessica testified she assisted in all aspects of childcare for A.M.R. when Jessica was not working, including holding A.M.R., bathtime, skin-on-skin bonding, sleeping in shifts, bottle feeding, regular feedings, teaching her to walk, talk, and was involved with education, teachers, and daycare providers, etc. (12/8/23 Hr’g Tr. at 17, 46-48, 53-54; 7/11/24 Hr’g Tr. at 49.) At minimum, Ciara testified that Jessica was a “wonderful stepparent”. (7/11/24 Hr’g Tr. at 141-142.)

Jessica financially supported the household as Ciara did not work. (12/8/23 Hr’g Tr. at 46-51, 143-44, 145.) The parties had quickly depleted Ciara’s prior settlement money from a prior accident, and a second settlement from a medical case with Ciara purchasing a home in Butte and on other outstanding bills. (*Id.*)

In 2018, Jessica listed A.M.R. as her beneficiary. (Ct. Ex. L; 12/8/23 Hr’g Tr. at 17, 67-68.)

Jessica provided health insurance for A.M.R. following her birth. (Ct. Ex. H; 7/11/24 Hr’g Tr. at 17, 60-61, 130; 7/11/24 Hr’g Tr. at 129-130.) Around approximately 2020, Jessica applied and changed A.M.R.’s healthcare coverage to Montana Healthy Kids/Montana Medicaid. (12/8/23 Hr’g Tr. at 62-63.)

For the years 2021 and 2022 the Montana Medicaid Chimes statements for Jessica’s account lists Jessica as the “parent, caretaker” to both A.M.R. and M.J.R. (Ct. Exs. I and J; 12/8/23 Hr’g Tr. at 62-67.) After the birth of M.J.R. in 2021, he was also immediately listed under Jessica’s health coverage with Montana Medicaid. (Ct. Ex. K; 12/8/23 Hr’g Tr. at 66.) After Jessica Petitioned for parenting in this matter, Ciara proceeded to have the children removed from Jessica’s health coverage and placed under Ciara’s own name. (12/8/23 Hr’g Tr. at 17, 62-67, 75.)

For the tax years 2018, 2019, 2020, and 2021 the parties file joint federal and state income tax returns as Married Filing Joint, with Jessica as the primary

and the children listed as dependents. (Ct. Exs. M, N, O, P; 12/8/23 Hr’g Tr. at 70-72.)

In and around September 2020, Jessica was removed from A.M.R.’s birth certificate. (12/8/23 Tr. at 35, 126-127.) Jessica testified that Ciara had told her it was illegal for Jessica to be listed as the “father” on a birth certificate when she was not a man. Based on this, Jessica signed an affidavit of “non-paternity” as she is not a man who can establish paternity in the natural sense, and this was used to have A.M.R.’s birth certificate modified. (Ct. Exs. 1 and 2; 12/8/23 Hr’g Tr. at 35-38, 126-127, 138-141.) The intent was for Jessica to complete formal adoption of A.M.R., because she believed that was the proper process of same-sex couples. (12/8/23 Hr’g Tr. at 36-38, 139-142.) Unfortunately, Jessica never ended up having the money to complete a formal legal adoption for both A.M.R. and M.J.R. before the parties separated. (*Id.*)

Jessica testified that following the removal of Jessica from A.M.R.’s birth certificate, the parties continue to live together as a married couple for *several years* and Jessica *continued to support and care for A.M.R. just as she had before* the birth certificate modification. (12/8/23 Hr’g Tr. at 38.)

The parties next child, M.J.R. was born on October 18, 2021. Jessica was also present for the birth of M.J.R., helped during the delivery, cut his umbilical cord, and did skin-to-skin bonding with him at the hospital as well. (*Id.* at 40.)

Jessica was the only caregiver present when M.J.R. was circumcised. (*Id.* at 41-42.)

Jessica testified that she was initially told by Ciara that the conception of M.J.R. was the result of a rape. (*Id.* at 38-39, 154-157, 160.) Witness Chad Lacey testified that Ciara also told those in their AA group, the day after the conception of M.J.R. that she had been raped. (7/12/24 Hr’g Tr. at 361-362.) Jessica testified that Ciara told her that the night she conceived M.J.R. Ciara had been drinking, drank too much, was not conscious, and that a man named Matthew Allen who was at the bar with her had sexually taken advantage of her. (12/8/23 Hr’g Tr. at 38-39, 154-156, 158.)

Witnesses Dixie Holland, Chad Lacey, Jonathan Shepard, and Janice Basso, as well as Jessica, all testified that Ciara struggles with alcohol addiction and frequently relapses or is in active addiction for certain periods of time. (12/8/23 Hr’g Tr. at 83-98, 194-197; 7/12/24 Hr’g Tr. at 347-349, 351-352, 353-356, 404-405, 408-414, 426-428, 455, 457, 459-460, 465-467, 471-472.)

Ciara and Matthew Allen testified to the Court that the intercourse was not rape and was consensual infidelity, and both were intoxicated. (12/8/23 Hr’g Tr. at 160-161; 7/11/24 Hr’g Tr. at 34-35, 195-196, 213.) Matthew Allen was not aware of the conception until after M.J.R. was born. (12/8/23 Hr’g Tr. at 45; 7/11/24 Hr’g Tr. at 189.)

Some testimony by Jessica and Ciara indicated that Matthew Allen may have known about the M.J.R. in 2021 when M.J.R. was an infant, and at that time Matthew Allen declined to be involved with the child. (12/8/23 Hr’g Tr. at 191; 7/11/24 Hr’g Tr. at 147-150.) Other testimony indicates that Matthew Allen certainly learned of the existence of M.J.R. in June/July 2022 (when M.J.R. was approximately 9 months old), and coincidentally just weeks prior to the parties’ first parenting hearing in this matter. (7/11/24 Hr’g Tr. at 40, 146, 190, 209.) Mr. Lacey testified that Ciara sought out Mr. Allen in 2022 after dissolution/parenting case was filed and was able to locate him in less than a month. (7/12/24 Hr’g Tr. at 364-365.)

Mr. Lacey, a former partner of Ciara and father to another one of Ciara’s children, testified he understood Mr. Allen’s current involvement in the case to be a favor to Ciara and that he truly did not intend on parenting M.J.R. (7/12/24 Hr’g Tr. at 367-368.) Mr. Shepard also testified that Ciara told him she did not believe Mr. Allen was capable of parenting. (*Id.* at 451.)

Following the birth of M.J.R., Jessica testified that she parented M.J.R. just the same as she did A.M.R.; and Ciara confirmed Jessica assisted with the children, and Jessica continued to support the family during this time until the parties separated in February 2022. (12/8/23 Hr’g Tr. at 17, 46-47; 7/11/24 Hr’g Tr. at 49-50, 53.) Jessica attended A.M.R. and M.J.R.’s doctors’ appointments, and medical

providers listed Jessica as a “parent” on medical charts and listed the children as having “two mothers”. (Ct. Exs. F and G; 12/8/23 Hr’g Tr. at 42-43, 55-60, 172-174.)

Jessica always held herself out to the public as the children’s parent. (12/8/23 Hr’g Tr. at 46.) Witnesses Dixie Holland and Karla Canavan, each testified that they observed Jessica acting a parent toward A.M.R. and M.J.R., including caring for them, supporting them, comforting them, and holding them out to the public as her children. (*Id.* at 195-197, 200-201, 205-207.) Both Ms. Holland and Ms. Canavan distinguished Jessica’s care and treatment of A.M.R. and M.J.R. from how Jessica interacted and treated two of Ciara’s other children (one a teenager born prior to the parties’ relationship and another born after the parties separated with Chad Lacey). (*Id.* at 195-197, 200-201, 205-209.)

Ciara filed for dissolution of marriage from Jessica on April 14, 2022 (this matter). Ciara’s Petition stated that the parties did not have any children of the marriage. (Doc. 1.) However, following the party’s separation in February 2022 and filing for Dissolution in April 2022, Jessica continued to have regular care of the children (including with M.J.R. who was a baby), including overnights. (12/8/23 Hr’g Tr. at 18, 151, 153, 196-197.) The parties coordinated exchanges and whatever was needed so Jessica could help care for the children. (*Id.* at 18.)

On May 17, 2022, Jessica Answered and Counter-Petitioned that A.M.R.

and M.J.R. were her children, children of the marriage, and the parties needed a parenting plan. (Doc. 4.) Following Jessica's Answer and Counter-Petition, Ciara stopped allowing Jessica to see the children for 72 consecutive days until the District Court Ordered, by stipulation of the parties, on July 15, 2022, that Jessica should have interim visitation. (Doc.15; 7/14/22 Hrg. Tr. at 23, 45-46; 12/8/23 Hr'g Tr. at 76-79, 197.) The District Court later increased Jessica's visitation time on November 15, 2022. (Doc. 33; 12/8/23 Hr'g Tr. at 80.) As this case progressed, Ciara again began allowing Jessica to have exponentially more caretaking time with the children. (12/8/23 Hr'g Tr. at 84-96.) From mid-2023 to December 8, 2023 (the first final contested parenting hearing date) Jessica was having the children several days a week including almost weekly over nights and some full weekends. (Ct. Ex. R; 12/8/23 Hr'g Tr. at 84-96, 197-198.) This 2023 period also coincided with Ciara fully relapsing on alcohol use, and Jessica often kept the children when Ciara was not feeling well, out at bars, or spending time with new intimate partners. (12/8/23 Hr'g Tr. at 84-96, 100-103; 7/11/24 Hr'g Tr. at 153-161.)

Following the December 8, 2023, hearing date, Ciara again stopped allowing Jessica to have any additional time with the children and actually reduced time in contempt of the Court Order. (12/8/23 Hr'g Tr. at 96; 7/11/24 Hr'g Tr. at 86, 101-103.) Also following the December 8, 2023, hearing date, Ciara had her babysitter

sign a Non-Disclosure Agreement to not discuss the circumstances and conditions of Ciara when she went out. (Ct. Ex. X; 7/11/24 Hr'g Tr. at 162-163.)

During the pendency of this case Jessica tried to continue financially supporting the children, and bought things for their care when she has them and other essentials like clothing. (12/8/23 Hr'g Tr. at 53, 162-163, 181; 7/11/24 Hr'g Tr. at 173.) Mr. Soto and Mr. Allen also do not currently pay child support for either of the children. (7/11/24 Hr'g Tr. at 203.)

Also, during the period of 2022, 2023, and 2024 while this matter was pending, Ciara began allowing Matthew Allen and some members of his family to gradually start meeting M.J.R. (7/11/24 Hr'g Tr. at 41-43, 150-151, 199-200; 7/12/24 Hr'g Tr. at 366, 451; Ct. Ex. 3.) In 2023 Matthew Allen signed an acknowledgement of paternity of M.J.R. (Ct. Ex. 5; 7/11/24 Hr'g Tr. at 44-45, 196.) Without permission of the District Court, Ciara tried to add Matthew Allen to M.J.R.'s birth certificate using this acknowledgement of paternity document, however, it was declined by DPHHS because of Ciara and Jessica's marriage to each other when at M.J.R.'s birth. (12/8/23 Hr'g Tr. at 43-45, 128; 7/11/24 Hr'g Tr. at 118-119.)

Similarly, in 2022 and 2023 the Montana DPHHS had notified Ciara that M.J.R.'s birth certificate was incorrect under presumption of parentage statute of Montana, because the parties *were married*, and *Jessica had not been listed as the*

father/other parent on M.J.R.'s birth certificate. (Ct. Ex. T; 12/8/23 Hr'g Tr. at 43-45, 128; 7/11/24 Hr'g Tr. at 118-119.) Currently no one is listed as a second parent on M.J.R.'s birth certificate, and M.J.R.'s birth certificate is essentially "locked" with DPHHS because Jessica has not declined parentage of M.J.R. (12/8/23 Hr'g Tr. at 45; 7/11/24 Hr'g Tr. at 43, 47, 121-122.)

According to the testimony and exhibits: 1.) Matthew Allen had about 4 visits with M.J.R. between April and June of 2024 and 4 video visits, 2.) Mr. Allen has had no overnights, 3.) M.J.R. had never been to Mr. Allen's home in Anaconda, 4.) Ciara did not specifically know where Matthew Allen lived, and 5.) Mr. Allen had helped purchase some essentials like clothing here and there for M.J.R. (Ct. Ex. 3; 7/11/24 Hr'g Tr. at 151-152, 203, 218, 219.)

Ciara and Mr. Allen testified they were concerned that if Jessica's parental rights to M.J.R. were formally recognized by the Court, it would interfere with Mr. Allen's potential for parenting time. (7/11/24 Hr'g Tr. at 153-154.) However, in contrast, both Ciara and Mr. Allen did not think relocating the child hundreds of miles from Butte to Kalispell would impede Mr. Allen's parenting time because they can do "video" visits. (*Id.* at 153-154, 202.) Mr. Allen acknowledged that he is currently having visits with M.R.J., as is Jessica, and the child is doing well. (*Id.*)

Following the separation the parties in February 2022, Ciara began dating

Chad Lacey in March 2022 and they conceived a child just after Ciara filed for divorce from Jessica. Hr’g Tr. at 341-343, (July 12, 2024). Chad Lacey testified that during this time he financially supported Ciara and the children because Ciara continued to remain unemployed, and how Ciara continued to drink alcohol. (7/12/24 Hr’g Tr. at 347-349, 351-352, 357-358, 369.) Mr. Lacey testified that Ciara is a safety risk to her children when she is drinking. (*Id.* at 347-349, 351-352, 353-356.) Ciara and Mr. Lacey’s relationship lasted 12 months and now these parties are also involved in a contested parenting case. (7/11/24 Hr’g Tr. at 66; 7/12/24 Hr’g Tr. at 346.)

Jessica has never claimed a parental interest to the child conceived between Ciara and Mr. Lacey as this child was conceived post-separation, post-divorce filing, and both Jessica and Mr. Lacey testified that Jessica has never acted as a parent to this child, never supported this child, and never held this child out as her own. (12/8/23 Hr’g Tr. at 132-134; 7/12/24 Hr’g Tr. at 343.)

Interestingly, because Ciara and Jessica remained legally married during the pendency of the dissolution matter, including during the time when Mr. Lacey’s baby was born, the Montana DPHHS legally presumed Jessica was this child’s other parent pursuant to the Montana presumption of parentage laws. (Ct. Ex. Q; 12/8/23 Hr’g Tr. at 73-75.) The Montana DPHHS automatically listed this child under Jessica’s Medicaid health coverage as being part of Jessica’s family. *Id.*

Witness Mr. Shepard testified he and Ciara were in a relationship from July to before Thanksgiving in 2023. (7/12/24 Hr'g Tr. at 442.) Jonathan Shepard also testified regarding Ciara's drinking problems and his concerns about Ciara's stability and ability to parent. (*Id.* at 404-405, 408-414, 426-428.) Jonathan Shepard testified as to coordinating with Jessica to provide safe care for the children while Ciara was drinking or unable to parent. (*Id.* at 408-409.)

Ms. Basso also testified as to Ciara's drinking behaviors and binges as well as concerns regarding Ciara's parenting. (*Id.* at 455, 457, 459-460, 465-467, 471-472.) Ms. Basso also testified to communicating with Jessica about the children's care. (*Id.* at 474.) Ms. Basso testified as to seeing Ciara drunk at exchanges. (*Id.* at 455-456.)

Witnesses Chad Lacey, Jonathan Shepard, and Ms. Basso all provided testimony that Jessica acted in the capacity of a parent toward A.M.R. and M.J.R. (*Id.* at 376, 429, 458-459.) Mr. Shepard testified that Jessica provided stability in the children's lives and was their "landing pad". (*Id.* at 429, 458-459.) Sherry Tinseth, Ciara's mother who lives in Kalispell, testified that she thought Ciara was an appropriate parent when she saw her. (7/11/24 Hr'g Tr. at 69, 72, 252, 265-267, 271.)

During the pendency of the dissolution matter, Ciara was criminally cited in 2023 for conduct outside a bar in the Kalispell area. Mr. Shepard testified that the

children were in Ciara's care at the time, but that she left them with Mr. Shepard and Ciara's mother while she went out drinking. (7/11/24 Hr'g Tr. at 268-269; 7/12/24 Hr'g Tr. at 423-425.)

In August 2022, Ciara put A.M.R. into counseling with Fredricka Grunhuvd. (7/12/24 Hr'g Tr. at 300.) Ms. Grunhuvd testified that A.M.R. was struggling with role confusion as to how to classify and treat the adult caregivers in her life, and that the duration of this case was difficult on the child in resolving that role confusion. (*Id.* at 301, 302-307, 309-310, 315-316.)

Ms. Grunhuvd did not know if any parental "coaching" or inappropriate communication was occurring by either party with the children, but Ms. Basso and Mr. Shepard testified that Ciara did coach the children. (*Id.* at 317, 431, 459, 473.) Ms. Grunhuvd testified that A.M.R. believed Jessica was special person in her life and loved spending time with Jessica. (*Id.* at 304.)

Ms. Grunhuvd also testified that children are capable of loving and bonding to a same-sex parent or adoptive parent (ie. nonbiological parent) just as much as any biological parent, and a non-biological parent is reciprocally capable of bonding with and loving a non-biological child just as much as a biological child. (*Id.* at 318-320.) Ms. Grunhuvd discontinued therapy with A.M.R. in June 2024 because Ms. Grunhuvd moved out-of-state. (7/11/24 Hr'g Tr. at 76.)

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SUMMARY OF THE ARGUMENTS

The District Court did not err in recognizing that Jessica Paddock is parent to the children involved in this matter.

The District Court did error when it made its ruling that Jessica Paddock had parenting rights and a parental interest as a third-party parent, rather than as a presumed parent. Jessica Paddock should not have been required to “prove” she was a parent by third-party parenting statutory requirements. Jessica Paddock had the right, as a married person in the State of Montana, to a presumption of parentage to any children born during her marriage with her partner. And finally, Ciara Rehbein was not able to overcome that presumption based the significant evidence presented at trial.

It is unclear under Montana law the significance, if any, there is between natural parent’s rights, presumed parents’ rights, and third-party parenting rights. However, if there is a difference in the level or extent of rights that can be recognized or bestowed upon a parent, it is critical that Jessica be granted parenting rights to the fullest extent possible under Montana law. Jessica Paddock made it clear to the Court and opposing counsel from the instance she filed her Counterclaim for parenting rights and a parenting plan that she was seeking a determination as to her rights to whatever extent allowable under the law. Again, this was understood by opposing counsel for *years* while this case was pending,

and opposing counsel *never* made any motions or objections regarding the manner in which plausible statutory parenting rights options were pleaded and presented to the District Court. In fact, opposing counsel even fully briefed and prepped based on the amending pleadings prior to the first trial date.

STANDARD OF REVIEW

The standard of review for this appeal is Clear Abuse of Discretion. Family law matters, including third-party parenting, parenting matters, and presumption of parentage are reviewed under this standard. Both sides must show the District Court was clearly erroneous in its finding. (*See Bessette v. Bessette*, 2019 MT 35; *King v. Chilcott* (In re Parenting of K.J.K.), 2020 MT 224; *In re Parenting of L.M.A.R. and N.R.R., Rehbein v. Buck*, 2024 MT 148.)

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN DID NOT DETERMINE RESPONDENT WAS A PRESUMPTIVE PARENT UNDER MONT. CODE ANN. § 40-6-105.

The minor children, A.M.R. and M.J.R., were born during the legitimate wedlock of the parties. Thus, the children are justly *presumed legitimate* under Mont. Code Ann. § 40-6-201. More importantly, the *presumed parentage* of the minor children A.M.R. and M.J.R. are Ciara and Jessica because they were married at the time of both children's birth pursuant to Mont. Code Ann. § 40-6-105(1)(a).

Married persons are not, and should not, be required to adopt their own

children in the State of Montana, including same-sex couples.

A couple who has children during their marriage has the same parental rights as biological or “natural” parents, whether it be a married same-sex couple or a married heterosexual couple. Same-sex married couples are entitled to all the “constellation of benefits that the States have linked to marriage”, which necessarily includes a presumption of parental rights for children born of their marriage and full rights to parent their children the same as any other legal parent. (*See Pavan v. Smith*, 582 U.S. 1 (2017); *Obergefell v. Hodges*, 576 U.S. 644 (2015).) A necessary extension of the right to same sex-marriage, is this right to parentage of a same-sex couples’ legitimate children. To deny same-sex married couples this presumptive right of parentage to their children would be discriminatory. Refusal to extend a same-sex married couple all the legal rights an opposite-sex married couple has would be a violation of the Fourteenth Amendment on both due process and equal protection grounds as well as a violation of the Montana Constitution. (U.S. Const. amend. XIV.) The United States Supreme Court has case law dating back to the 1980’s stating that issue resulting from a marriage are deemed children of that marriage and the married parties are the parents. (*See Michael H. and Victoria D. v. Gerald D.*, 491 U.S. 110 (1989).) Since same-sex marriage became legal in 2015, states throughout the United States have followed suit applying family law statutes and case law to same

sex couples as well. (*See Obergefell v. Hodges*, 576 U.S. 644 (2015).) Marriage is an important institution, and social, religious, and legal construct in this nation, and Jessica has the right to have her marriage respected and to receive any marital rights of said union just the same as any other married couple.

There is Montana Supreme Court case law from 2009 where the ACLU successfully argued that the non-biological mother in a lesbian dissolution of marriage case had a right to parent her children. (*See Kulstad v. Maniaci*, 220 P.3d 595 (Mont. 2009).) This mother had taken these children into her home to raise with her spouse (the biological mother) for more than 10 years. (*See Id.*) Similarly, not only were Jessica and Ciara married when both of their children were married, but Jessica very much did take A.M.R. and M.J.R. into her home and raised them as her own since their births (further, the parties had been a couple for nearly 10 years and married for 4 of those years). Jessica acted as a parent to these two young children, including being active while they were in utero, picking their names, during birth, and following birth doing tummy time, baths, feeding, night-time feedings and fussiness, play, and helping teach the children to walk, talk, use the potty, etc. Ciara may have taken on more a traditional maternal caregiving role--- and Ciara was largely able to do that and be a stay-at-home mother because Jessica worked and financially supported the family, even if it meant night shift work. However, Jessica's decision to be the financial provider for the family does

not make her any less of an involved, emotionally invested, and caring parent. Jessica also made sure the children were enrolled on her health insurance policy, she was listed as a parent with the children's healthcare providers, and listed the children as dependents on her income taxes for several years. Not did Jessica receive the children into her home, financial support, and care for the children who were born during her marriage to Ciara just like a parent, but Jessica also represented to the public that these are her children. (*Id.* at 46, 195-197, 200-201, 205-207.). Jessica's family and friends all believe and understand that A.M.R. and M.J.R. are Jessica's children. Even Ciara made admonishments on her social media indicating that Jessica was a parent of these children. (12/8/23 Hr'g Tr. at 51-52.) The parties even divided Mother's Day and Father's Day between the two of them prior to their separation. Jessica satisfies both the criteria of Mont. Code Ann. § 40-6-105(a) and § 40-6-105(d).

In this case, the State of Montana, through the DPHHS and the Vital Statistics Departments, correctly *presumed* Jessica Michelle Paddock as a parent to A.M.R. and M.J.R. when reviewing birth certificate and Montana Healthy Kids/Montana Medicaid matters. (12/8/23 Hr'g Tr. at 43-45, 73-74, 127-128; 7/11/24 Hr'g Tr. at 43-45, 65-66.) The State of Montana, through Vital Statistics, sent multiple letters to the parties asking them to correct M.J.R.'s birth certificate to include Jessica since the parties were married, and even refused to add Matthew

Allen because of the existence of Jessica and Ciara's marriage. (*Id.*; Ct. Ex T.)

Further, because Jessica and Ciara continued to remain married to each other during the pendency of this matter, the Montana DPHHS correctly applied said presumption statute when Ciara gave birth to yet another child during the party's marriage. (12/8/23 Hr'g Tr. at 73-74; 7/11/24 Hr'g Tr. at 65-66; Ct. Ex Q.)

Because of the situation of that third child in relation to this contested case, Jessica and the natural father appropriately completed the necessary rebuttal and paternity documentation to correct who that child's second parent truly was, but the point is, the Montana DPHHS did properly and automatically apply the presumptive of parentage statutes as it should of from the beginning. (*Id.*; Ct. Ex Q.) It very much appears that Montana's departments and institutions already understand and apply how the presumptive parentage statute of Mont. Code Ann. § 40-6-105(1)(a), even in the case of same-sex couples and despite outdated gendered language within the statute. Ciara is essentially trying to undo this law, Montana's application of the law, and have Montana declare it will not treat all married couples the same.

The phrase "presumption of paternity" which is the technical language of the Montana Code Ann. §40-6-105, versus a more gender neutral and appropriate term such as "presumption of parentage" does not defeat the intent of the presumption statute as applying to all married couples giving birth to children during the course of their marriage. Since the recognition of marriage equality, parental presumption

laws should and must apply equally to all married couples in Montana, including same-sex couples. (*See Pavan v. Smith*, 582 U.S. 1 (2017); *Obergefell v. Hodges*, 576 U.S. 644 (2015).) Whether or not a statute name/title has been updated to reflect the correct gendered language should be irrelevant. According to the Montana Human Rights Network, there is a general consensus that Montana's presumptive parentage statutes *should* apply to same-sex couples just the same as they apply to opposite-sex couples. (*See* APPENDIX B, Kim Abbott & Denise Brogan-Kator, *Montana LGBTQ Family Law: A Resource Guide for LGBTQ-Headed Families Living in Montana*, 8-9 (Montana Human Rights Network and Family Equality Counsel, December 2017).)

Ciara makes the argument to this Court that her parental rights prevail over a non-parent's rights and that her fundamental constitutional rights as a parent have been impeded on in this matter. Ciara fails to acknowledge that *Troxel v. Granville* is a grandparent's rights case, and wholly different legally and factually from a parental right, presumptive parent, or even a third-party parenting case such as this case. (*See Troxel v. Granville*, 530 U.S. 57 (2000).) In fact, almost all of the caselaw Ciara relies on in her appellant's brief is at least 30 years old or older, and certainly well before *Obergefell v. Hodges* and subsequent rulings regarding same sex married couples. In regards to *Sayler v. Yan Sun*, again the facts concern a child who was not born during the parties' marriage, and the Court simply found

that the District Court first needed to make finding under Montana Code Ann. § 40-4-228 before a parenting plan could be Ordered. (*Saylor v. Yan Sun*, 2023 MT 175, 413 Mont. 303.) In this case, Jessica is not a “non-parent”. Jessica is very much a parent to these children just as Ciara is. To treat Jessica as a non-parent would be in fact to impinge on *Jessica’s* fundamental constitutional rights as a parent. Further, Ciara, as the children’s other parent, made it abundantly clear to the District Court that her actions are routinely contrary to a child-parent relationship, and thus, Ciara’s wishes should not prevail over Jessica’s rights as the other parent.

Further, the *children* born of a married same-sex couple are also entitled to same rights of other children born to married opposite-sex couples, including the right to be considered legitimate children. By extension, it makes no logical sense to recognize children born of married couple as legitimate, including children born from a married same-sex couple, but then deny one of the parents the rights of being a presumed parent under the law to said legitimate children. If the child is truly legitimate that necessarily means the child has two presumed parents who are married.

Finally, Ciara did not make a sufficient showing by a preponderance of evidence under Mont. Code Ann. § 40-6-105, that Jessica’s presumption of parentage was rebutted. Jessica received both A.M.R. and M.J.R. into her home as

babies and continues to do so. (Doc. 118, at 25.) Jessica has openly represented to the community, doctors, teachers, counselors, financial institutions, governing entities, taxing authorities, employers, etc. that A.M.R. and M.J.R. are her children, she is their parent, and she has been their parent since their births. *Id.* Finally, Jessica has acknowledged to the public that she is the parent of A.M.R. and M.J.R. and witnesses corroborated this finding at trial. (*Id.*) Again, these actions are all above and beyond the important fact that Jessica and Ciara were legally married when these children were born. Ciara tries to rely on the fact that Jessica took herself off of A.M.R.'s birth certificate at one point as evidence that her presumption of parentage is rebutted by that action. The District Court heard these arguments and reviewed said evidence related to A.M.R.'s birth certificate, including Jessica's testimony about the parties discussions regarding the legality of Jessica being listed as a "father" on the birth certificate, the parties misunderstanding that the non-natural parent from a same-sex couple must complete an adoption, and the fact that Jessica continued to care for and support A.M.R. like a parent for *years* following the edit to the birth certificate. (12/8/23 Hr'g Tr. at 35-38, 126-127, 7/11/24 Hr'g Tr. at 31-32.) Ultimately, on the birth certificate rebuttal issue the District Court factually found Jessica to be credible, and in doing so did not abuse its discretion.

The necessary existence of biological/natural fathers who were necessary in

the literal creation of A.M.R. and M.J.R. does not defeat Jessica’s parental rights or show that she should be excluded from a presumption of parentage. A.M.R.’s “natural father”, Mr. Soto, has never acted as parent to A.M.R., has never received A.M.R. into his home, has never financially supported A.M.R., and has never held himself out as a parent of A.M.R. (Doc. 118 at 25; 12/8/23 Hr’g Tr. at 223.) Mr. Soto made clear in a contract between the parties that he was not to be a parent to A.M.R. and that Jessica was to be the parent of any child resulting from his sperm. (12/8/23 Hr’g Tr. at 214-218, 220-222.) It is irrelevant whether the actual conception of A.M.R. was the result of artificial insemination or natural conception, neither of which can ever be definitively proved.

The introduction and involvement of “natural father”, Matthew Allen, to M.J.R.’s life since the opening of this legal matter also does not rebut Jessica’s presumption of parentage to M.J.R. While Matthew Allen’s interest in M.J.R. since finding out of M.J.R.’s existence appears genuine, it does not change the fact that Jessica has stood in the role of a parent to M.J.R. since his birth and that M.J.R. was born during the course of Ciara and Jessica’s marriage.

Based on Mont. Code Ann. § 40-6-105 and § 40-6-201, Jessica should legally be a presumed parent to A.M.R. and M.J.R. and have full parental rights to A.M.R. and M.J.R.

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II. THE DISTRICT COURT DID NOT ERR IN CONSIDERING THIRD-PARTY PARENTING RIGHTS.

Appellant (Ciara) incorrectly states to this Court that the District Court improperly “amended its pleadings after trial” to include an evaluation of Third-Party Parenting Statutes. First, Jessica’s Counter-Petition was filed on May 17, 2022, where she simply counters that the original Dissolution Petition did not properly include the children and parenting, and where in fact “the parties have two minor children of their marriage” and, thus asked for a parenting plan in the matter. (Doc. 4.) Ciara Answered the Counter-Petition on June 6, 2022, where Ciara indicated she contested not only parenting, but Jessica’s parental rights. (Doc. 9.) Also on June 6, 2022, Jessica filed a Motion for a Temporary Parenting Plan Order as it was clear the case was contested, particularly regarding parentage. (Doc. 6.) On July 14, 2022, a hearing was held on the interim parenting matter and the initial concepts of parenting, third-party parenting, and step-parenting were discussed for preliminary purposes in establishing an interim visitation plan. (7/14/22 Hrg. Tr. at 45, lines 21-25.)

Upon understanding that Ciara planned on contesting Jessica’s parental rights, and not just terms of a parenting plan, Jessica filed a “Petition For Judgment Regarding Parentage And Brief” on October 19, 2022. (Doc. 26.) This Brief included Presumptive Parentage analysis. (Doc. 26.) When that Petition was not immediately granted by the District Court, the extent of, or what form of parental

rights Jessica had become the crux of the discussion during this case and was brought up at numerous interim hearings and mediation. (7/14/22 Hrg. Tr. at 45, lines 21-25.) The extent and type of parental interests Jessica had, if any, were the open-ended questions of the entire case. (*Id.*)

Ciara submitted a “Trial Brief” to opposing counsel and the District Court *before* the first final hearing on parentage on December 4, 2023. (*See* APPENDIX A attached hereto.) It appears from the Register of Actions (ROA) in the matter that Ciara’s counsel did not actually properly file the Trial Brief as it does not appear in the ROA. This was Ciara’s third attorney at the time, and he was new to the matter, and he likely misfiled the Trial Brief due to the confusing nature of having several judge substitutions and recusals throughout the matter. Regardless, the Trial Brief *was* provided to Judge Dayton and opposing counsel as the certificate service states, and the Trial Brief specially speaks to the District Court and makes arguments to the District Court. (APPENDIX A.)

In this unfiled Trial Brief, Ciara’s counsel specifically briefs *both* presumptive parentage and third-party parental interest laws and makes analysis and arguments about both sets of law to the District Court. (APPENDIX A.) Again, this brief was *submitted prior to the contested trial date* on December 4, 2023 (trial date being December 8, 2023), and Ciara’s counsel clearly understood both sets of statutes would be discussed at trial. To argue to this Court that Ciara

and her counsel were not aware the District Court would be conducting both a presumptive parentage and third-party parenting statute analysis in insincere, inaccurate, and frankly appalling. Ciara's December 4, 2023, Trial Brief is further evidence that she consented to the amended pleadings in this matter and was prepared to proceed to trial.

Further, throughout the entire duration of the trial, both on the record and off the record, the parentage causes at issue were discussed openly, including statutory criteria and evidence for both presumptive parenting and third-party parenting. (7/14/22 Hrg. Tr. at 45, lines 21-25.; Doc 26; Doc 31; APPENDIX A.) Much of the questioning and evidence were very clearly geared toward establishing at least a third-party parenting interest for Jessica in the case. (*See* Ct. Ex. R; 12/8/23, including 85-87, 103-104, 180; and 7/11/24- 7/12/24 Ct. Hr'g Transcripts, including 102, 221-222.)

The contested trial on parentage matters consisted of three days. The first day being held on December 8, 2023, and then the second and third days being held on July 11 and 12, 2024--- over 7 months later. At the December 8, 2023, trial date, it was again made abundantly clear that the Court would be hearing argument, testimony, and presented evidence on both the presumptive parentage and third-party parenting statutes. (*See* Ct. Ex. R; 12/8/23, 85-87, 103-104, 180.) No objection was made by Ciara on December 8, 2023. Then Ciara proceeded to

have an additional seven (7) months, at her counsel's request, to further prepare for the remainder of the contested hearing which the District Court granted. At no point during the seven (7) months did Ciara object to third-party parenting considerations or allege errors or omissions in either party's pleadings.

On the remaining final trial dates of July 11 and 12, 2024, again argument, testimony, and evidence were presented by both sides regarding both presumptive parenting and third-party parenting. (7/11/24- 7/12/24 Ct. Hr'g Transcripts, including 102, 221-222.) No objection was made by Ciara or her counsel. It was not until 3 months after the conclusion of the final day of trial that Ciara made an objection to the Court for considering third-party parenting statutes in a Post-Trial Brief. (Doc. 115.) The District Court properly denied that objection in its final findings on the matter. (Doc. 118.)

M. R. Civ. P. 15(b) allows for amendments made both during and after trial. Specifically, 15(b)(2) states that "when an issue not raised by the pleadings is tried by the parties' express or implied consent, it *must* be treated in all respects as if raised in pleadings." (emphasis added). Here, Ciara consented to the amended pleadings of including third-party parenting rights as a consideration in addition to presumptive parenting when she prepared for said arguments in her pre Trial Brief, participated in three days' worth of trial which included both presumptive parenting and third-party parenting arguments, testimony, and evidence, never

objected to third-party parenting pleading during first day of trial in 2023, never objected to third-party parenting pleading during the 7 months in between the final hearing dates, and never objected to third-party parenting pleading during the last remaining two days of hearing on parenting.

Third-party parenting statutes of Mont. Code Ann §40-4-228 and §40-4-211 were properly plead and understood by the parties and the District Court to be an alternative pleading in the matter. The District Court did not abuse its discretion in allowing the alternative pleading under M. R. Civ. P. 15(b)(2).

III. THE DISTRICT COURT DID NOT ERR IN RECOGNIZING RESPONDENT HAD PARENTAL RIGHTS.

The District Court declined to apply the Presumption of Parentage statutes under Montana Law applied to same-sex couples, and specifically to Jessica because she was not a man capable of providing “paternity” to a child. The District Court instead found that Jessica easily satisfied Montana’s Third-Party Parenting statutes under Mont. Code Ann. § 40-4-211 and § 40-4-228. The District Court found, and stated so very strongly, that Jessica had met the criteria for having a parental interest in these children and should have parenting rights “to the fullest extent available” for a parent. (Doc. 118, page 31.)

It is worth noting there is a distinction in Mont. Code Ann. § 40-4-228(1) between parties who seek a parental interest *or* seek visitation. If a full parental

interest cannot be established under Mont. Code Ann. § 40-4-228(2)(a)-(b), then visitation may still be ordered if it is in the best interest of the minor child under Mont. Code Ann. § 40-4-228(3). In this case, the District Court found Jessica was entitled to full third-party parenting rights, and more than just visitation with the children. (Doc. 118.) This would include all parenting rights, including but not limited to matters of religion, education, medical, residency, etc., and the Final Parenting Plan issued by the Court reflected these full parental rights.

Under Mont. Code Ann. § 40-4-228(2), a non-parent/third-party may further seek a “parental interest” in a child under if there is clear and convincing evidence that:

- a. The *natural* parent has engaged in *conduct that is contrary* to the child-parent relationship, and
- b. The *non-parent* has *established* with the child *a child-parent relationship*, as defined in Mont. Code Ann. § 40-4-211, and is in the *best interests of the child* to continue that relationship.

Mont. Code Ann. § 40-4-228(2)(a)-(b) (emphasis added).

Further,

- (4) For purposes of this section, *voluntarily permitting a child to remain continuously in the care of others for a significant period of time* so that the *others stand in loco parentis to the child* is conduct that is contrary to the parent-child relationship.

Mont. Code Ann. § 40-4-228(4) (emphasis added).

See also In re Parenting of L.M.A.R. and N.R.R., Rehbein v. Buck, 2024 MT

148.

Ciara consistently engaged in conduct contrary to the parent-child relationship, including her struggles maintaining sobriety, concerning parenting practices, and her conduct of regularly and voluntarily permitting the children to continuously be in the care of others for a significant period of time so that others stand in loco parentis to the children, including boyfriends, grandparents, babysitters, and Jessica before and after the party's separation. On the other hand, Jessica's behavior was consistently stable and fostered a parent-child relationship. Jessica has been sober for nineteen (19) years, has never had a problem with alcohol, and only attended AA meetings when she was with Ciara to be supportive (contrary to Appellants Brief to this Court). (12/8/23 Ct. Hr'g Trn. At 146-147, 235.)

Further, the District Court found that Jessica established and maintained a child-parent relationship with A.M.R. and M.J.R. pursuant to Mont. Code Ann. § 40-4-211(6) as required under Mont. Code Ann. § 40-4-228(2)(a)-(b).

Mont. Code Ann. § 40-4-211(6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that:

(a) exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or *provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline;*

(b) continues or existed on a day-to-day basis through *interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs; and*

(c) meets or met the *child's need for continuity of care by providing permanency or stability in residence, schooling,*

and activities outside of the home.

Mont. Code Ann. § 40-4-211(6) (emphasis added).

Sufficient testimony and evidence were provided to the District Court that Jessica, since the children's birth and ongoing to the present, provided for the physical needs of the children, including supplying food, shelter, and clothing, and has acted as parent in providing the children with necessary care, education, and discipline. Mont. Code Ann. § 40-4-211(6)(a). Jessica was the sole income provider and primary financial supporter of the household while the parties were together, she provided for their health insurance and continues to do so best she can given the circumstances of this case. Jessica provided the children with care, shelter, and financial support while in her care whenever she was allowed following the separation of the parties.

On a day-to-day basis which existed from the children's birth and continues today, Jessica has provided the children with interactions, companionship, interplay, and mutuality that fulfil the children's psychological needs as a parent as well as for the children's physical needs. Mont. Code Ann. § 40-4-211(6)(b). Sufficient testimony was heard as to how Jessica positively interacts with and parents A.M.R. and M.J.R., so that their needs are met.

Jessica has provided A.M.R. and M.J.R. with continuity of care by providing them with permanency or stability in residence, schooling, and activities outside of

the home. Mont. Code Ann. § 40-4-211(6)(c). Jessica demonstrated to the Court she is a pillar of stability and safety for these children at all times, including being available whenever Ciara is not able or necessarily fit to parent herself. Jessica has maintained involvement with the children's doctors, daycare teachers, schoolteachers, and other social activities the children are involved in to the extent possible (Ciara severely limited Jessica's contact with the children's third-party providers while this case was being litigated).

Finally, even under Montana's third-party parenting statutes of Mont. Code Ann. § 40-4-228(2)(b), it would be in the A.M.R. and M.J.R.'s best interest to ensure Jessica has a parental interest in these children. Although not specifically stated within Mont. Code Ann. § 40-4-228(2)(b), Montana's best interest of the child standard is found within Mont. Code Ann. § 40-4-212. In this case, A.M.R. and M.J.R. love Jessica and enjoy their time with Jessica. Jessica has been there for them consistently since their births. Jessica demonstrated to the District Court that she is a reliable adult and parent to these children, including when their natural mother is not capable of doing the same. Jessica was found to exercise good judgment and able to continuously make decisions carefully so that the children's best interests are paramount, and the children are safe and cared for with her. Continuing, the relationship between Jessica, A.M.R. and M.J.R. was and is in these children's best interest. In contrast, to take child-parent relationship away

from these children would be harmful and not in the children's best interests.

CONCLUSION

For these reasons, this Court should award Appellee full parental rights as a presumed parent under Mont. Code. Ann. § 40-6-105, and remand to the District Court to revise the parties' parenting plan to clearly reflect said rights.

Respectfully submitted this 11th day of April, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material, and the word count calculated by Microsoft Word for Windows is 8,373 words, excluding the cover page, table of contents, table of authorities, appendices, certificate of service, and certificate of compliance.

/s/ Amanda D. Hunter
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