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FILED
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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 25-0305

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0305

DANIELLE C. BUCK and
JESSE B REHBEIN,
Pro Se Appellants,
v.
ANNETTE REHBEIN and
DOUG REHBEIN,
Third-Party Intervenors/Appellees.

EMERGENCY MOTION TO STAY ENFORCEMENT OF SECOND AMENDED FINAL PARENTING PLAN PENDING APPEAL

COMES NOW the Appellants, JESSE B. REHBEIN and DANIELLE C. BUCK, appearing pro se, and respectfully move this Honorable Court pursuant to Mont. R. App. P. 22(3) and the Court's inherent equitable authority to stay enforcement of the Second Amended Final Parenting Plan entered April 2, 2025, pending resolution of this appeal. Immediate relief is necessary to prevent irreparable harm, unconstitutional interference with parental rights, and further enforcement of a judgment that is void for lack of jurisdiction and founded on misrepresentation and fraud.

This case involves an unconstitutional parenting plan imposed on two fit, biological parents based on:

- A void guardianship,
- A parenting case that was formally closed,

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- False representations of CPS involvement,

- A GAL report built on unsworn hearsay and deliberate omission of exculpatory evidence, and

- A district court order that knowingly disregarded the record.

The April 2, 2025 parenting plan must be stayed to prevent further illegal enforcement, which continues to deprive Appellants of their fundamental right to parent their children, absent any lawful finding of unfitness, abuse, or danger.

As self-represented litigants, Appellants Jesse Rehbein and Danielle Buck respectfully assert that while they may not possess the formal training of licensed attorneys, the constitutional violations and procedural defects in this case are so pervasive and undeniable that their pro se status cannot be used to excuse or shield unlawful conduct by the district court. Courts in Montana have long recognized that pro se litigants are entitled to reasonable leniency, particularly when asserting fundamental constitutional rights and exposing judicial fraud. "[T]he law does not demand procedural perfection from pro se litigants attempting to assert meritorious claims," especially where failure to act would result in "a manifest miscarriage of justice." *Polasek v. Omura*, 2006 MT 103, ¶21, 332 Mont. 157, 136 P.3d 519.

This Court has also held that judgments obtained through misrepresentation and suppression of material facts are void and must be vacated under Mont. R. Civ. P. 60(b)(4) and (d)(3). See *Saylor v. Sun*, 2023 MT 175, ¶¶ 42–45, 413 Mont. 303, 536 P.3d 399; *Kulstad v. Maniaci*, 2009 MT 326, ¶¶ 52, 64, 352 Mont. 513, 220 P.3d 595; *In re B.D.Y.*, 2010 MT 108, ¶¶ 18–19, 356 Mont. 254, 233 P.3d 353. Montana law is clear: the judiciary cannot rely on fabricated GAL reports, closed-case jurisdiction, or omitted CPS findings without triggering constitutional redress. The procedural and factual

record before this Court is not a matter of mere error — it is a record of systemic violation and denial of due process. A court cannot insulate itself from scrutiny by punishing pro se parents for pointing to suppressed CPS letters, falsified jurisdictional findings, and retaliatory rulings.

Appellants therefore urge this Court to recognize not only the constitutional magnitude of this appeal, but also the robust Montana precedent requiring vacatur of void judgments and correction of judicial misconduct in the interests of justice.

Montana law is unequivocal that a judgment entered without subject matter jurisdiction is void and may be challenged at any time. "A court's lack of subject matter jurisdiction renders its judgment void and open to attack at any time." *In re Marriage of Miller*, 2022 MT 35, ¶ 19, 407 Mont. 192, 503 P.3d 120. Likewise, fraud upon the court particularly when committed by an officer of the court or involving suppression of material facts — invalidates a judgment regardless of finality. "There is no time limitation on a Rule 60(d)(3) motion for relief from a judgment obtained by fraud upon the court." *Sailor v. Sun*, 2023 MT 175, ¶ 42, 413 Mont. 303, 536 P.3d 399. A party alleging that a court acted without jurisdiction or that its judgment was procured by fraud is entitled to have the judgment declared void as a matter of law. See also *State ex rel. Dept. of Health v. B.B.*, 2007 MT 87, ¶ 18, 337 Mont. 221, 158 P.3d 857 ("When a judgment is void, it is a nullity and the court has no discretion to refuse to set it aside.").

Because the judgment is void from its inception on February 5, 2019, every order flowing from it, including the April 2, 2025 parenting plan, is a legal nullity. This Court does not need to wait for final appellate briefing to protect the integrity of Montana's judiciary. It may act now to suspend and vacate the plan, not only to prevent further constitutional harm, but to correct a systemic failure. As this Court stated in *State ex rel. Dept. of Health v. B.B.*, 2007 MT 87, ¶ 18, "[a] void judgment is a nullity and is subject to attack at any time." And where a lower court acts "without jurisdiction or by fraud

upon the court, no finality can attach." *Sailor v. Sun*, 2023 MT 175, ¶ 42. Vacating an unconstitutional judgment is not an extraordinary remedy — it is a mandatory one when the law has been subverted. Restoring lawful custody to two fit parents under these facts is not only proper — it is legally required

I. INTRODUCTION

This case involves an unconstitutional parenting plan imposed on two fit, biological parents based on:

- A void guardianship,
- A parenting case that was formally closed,
- False representations of CPS involvement,
- A GAL report built on unsworn hearsay and deliberate omission of exculpatory evidence, and
- A district court order that knowingly disregarded the record.

The April 2, 2025 parenting plan must be stayed to prevent further illegal enforcement.

II. LEGAL STANDARD

A stay pending appeal is appropriate under **Mont. R. App. P. 22(3)** when the movant demonstrates:

1. Likelihood of success on the merits;

2. Irreparable harm if the stay is not granted;

3. No substantial harm to other parties; and

4. Public interest favors relief.

This Court also retains inherent authority to stay enforcement of orders that are **void or unconstitutional**, particularly when based on fraud upon the court. See *Sailor v. Sun*, 277 Mont. 170 (1996); *In re Marriage of Guffin*, 2009 MT 247, ¶21.

III. ARGUMENT

A. The Judgment Is Void for Lack of Jurisdiction

The record contains a certified transcript of the February 5, 2019 hearing in which the district court explicitly closed the parenting case (DR-18-281) upon granting a guardianship to third parties. No petition to reopen the parenting case was ever filed. Jesse Rehbein did not file any petition to modify or reopen the parenting plan. Instead, he filed to terminate the guardianship in a separate action. Nevertheless, the court later allowed third-party intervenors to enter the closed parenting action and falsely claimed that Appellants petitioned the court to modify custody.

Because the third-party intervenors already held guardianship, they could have filed a new action under Mont. Code Ann. § 40-4-228. Instead, they were allowed to improperly intervene in a closed case without moving to reopen it or initiating a new action. This procedural shortcut deprived Appellants of proper notice, bypassed statutory filing requirements, and rendered the resulting orders void for lack of subject matter jurisdiction.

A district court's jurisdiction over parenting matters cannot be created by judicial

misstatement or informal intervention into a terminated proceeding. *In re A.T.*, 2003 MT 154; *Sailor v. Sun*, 277 Mont. 170 (1996).

Even if this Court were to assume proper jurisdiction and filing, the district court still lacked legal authority to impose a third-party parenting plan over the objection of both fit biological parents. Such an act violates the core holding of *Troxel v. Granville* and controlling Montana law, including *Kulstad v. Maniaci*, 2009 MT 326, ¶64; and *In re A.J.B.*, 2020 MT 66, ¶¶ 22–23. The parenting plan is not just void—it is irreconcilably unconstitutional.

B. The Foundational Guardianship Was Void

The February 5, 2019 guardianship was granted without any oral or written findings of parental unfitness, as required by both federal constitutional law and Montana precedent. The transcript confirms that the court closed the parenting case (DR-18-281) at the conclusion of the hearing and instructed counsel to provide findings of fact afterward. The written findings were not entered and signed until February 7, 2019, two days later. Meaning the order was issued based on false accusations alone, without contemporaneous factual determinations or legal conclusions.

This violates core due process principles established by *Troxel v. Granville*, 530 U.S. 57 (2000), which holds that fit parents have a fundamental liberty interest in the care, custody, and control of their children, and that the state cannot override this right absent a finding of unfitness or demonstrated harm. See also *Santosky v. Kramer*, 455 U.S. 745 (1982) (requiring clear and convincing evidence in proceedings to terminate parental rights), and *Kulstad v. Maniaci*, 2009 MT 326, ¶64 (reaffirming the constitutional presumption that fit parents act in their children's best interests).

The guardianship was based solely on unsubstantiated third-party allegations and

attorney representations. No CPS petition was filed. No CAPTA-compliant investigation occurred. No Title 41 abuse or neglect proceeding was initiated. In fact, the official DPHHS closure letter from Jodi Black-Fucci (DOC. 74.3) confirmed that the state had found no safety concerns and did not place or monitor the children. The guardianship was not based on any lawful dependency determination, agency supervision, or statutory findings of imminent harm.

Moreover, the court's February 7, 2019 written findings **(DOC 14.00 EXHIBITS A and B)** make no reference to state action, no evaluation of parental capacity, and no evidence of abuse or neglect. The findings recite the intervenors' positions without legal analysis or factual conclusions under Montana law. This is not a valid basis for stripping custody from a parent. It is a facial due process violation.

Because the guardianship was granted outside the hearing, without proper notice, f indings, or legal authority, it is void ab initio. All subsequent orders — including the parenting plan now being enforced — rest on this invalid foundation and must be stayed or vacated accordingly.

C. Judicial Misrepresentation of Material Facts in the April 2, 2025 Findings of Fact (Filing 116.00)

> *"The Fourteenth Amendment prohibits state actors, including judges, from arbitrarily depriving parents of the care, custody, and companionship of their children."— Santosky v. Kramer,* 455 U.S. 745 (1982)

Appellants object to the **Second Amended Final Parenting Plan and Findings of Fact, Conclusions of Law, and Order filed April 2, 2025 (Filing 113.10)** not only because it was entered without jurisdiction, due process, or legal authority, but also because it is built on a foundation of material **misstatements and judicial misrepresentations of fact.** Many of which are **affirmatively disproven by the record.**

The following misrepresentations are not mere interpretive disputes, they are:

- Directly contradicted by transcripts,
- Disproven by official CPS documentation,
- Or based on **post hoc filings submitted after the order was already signed.**

These defects are individually unconstitutional and, taken together, irreparably taint the judgment

1. Judicial Misrepresentation of Jurisdictional Facts and Use of a Closed Case

The Findings of Fact, Conclusions of Law, and Order (Doc. 113.10) entered April 2, 2025 repeatedly misrepresent the procedural history of this case. Specifically, ¶2, ¶3, and ¶5 state or imply that Appellant Jesse Rehbein petitioned to reopen the parenting case (DR-18-281) or voluntarily sought third-party custody adjudication. These statements are categorically false.

The certified transcript from the February 5, 2019 hearing (Exhibit D, Doc. 121.00) confirms the following facts:

- Judge Eddy explicitly stated: THE COURT: **"Good luck. DR-18-281, which is the parenting action between parents of these minor children is hereby closed."** (Transcript, 2/5/2019, p. 11, lines 8–10).
- Judge Eddy Requested and Emily von Jentzen, counsel for the intervenors, stated:

  THE COURT: Ms. von Jentzen, if you have the proposed paperwork I'll take it now so I can review it during the course of testimony.

  MS. von JENTZEN: Your Honor, I don't have the Findings of Fact. I can present them after court I wasn't sure who would show up today.

THE COURT: All right. Thank you. *(Transcript, 2/5/2019, p. 5, lines 17–23).*

- Annette Rehbein falsely testified that CPS removed *(Transcript, 2/5/2019, p. 7, lines 3–5)* the children and placed them with her and Doug Rehbein — a claim later disproven by CPS Supervisor Jodi Black-Fucci's letter (Filing #74.3), confirming there was no removal, no monitoring, and no placement by the state.

Moreover, the parenting case never included a Title 41 dependency proceeding. All three Registers of Action — DR-18-281 (Parenting), DG-18-073 (Guardianship of both children), and DG-18-075 (duplicate guardianship). Show no CPS involvement, no Title 41 abuse or neglect filings, and no Department petitions. In fact, a formal **Objection to Unsealing** was filed by CPS in the parenting ROA (DR-18-281), confirming that DPHHS opposed disclosure and explicitly did not consider the case to involve a child protection action. Exhibit A to Filing 93.00 contains the ROA from DG-18-073, which plainly shows no CPS placement or dependency proceeding. These ROAs collectively confirm that the guardianship was entirely private and constitutionally void.

Despite this, Judge Eddy allowed the Third-Party Intervenors to file into the closed parenting case in 2023–2024 without a motion to reopen, and later stated in ¶2 of the Findings (Doc. 113.10) that Jesse Rehbein "filed a petition to establish a parenting plan." This is not supported anywhere in the record and is flatly contradicted by the ROA and transcript.

There is no filing by Appellants in DR-18-281 after February 5, 2019 indicating any petition to reopen or modify the parenting plan. Instead, Jesse Rehbein filed to terminate the guardianship in a separate action. The third party, already holding guardianship, should have initiated a new case under Mont. Code Ann. § 40-4-228 if they sought to change custody. They did not.

This misrepresentation of procedural history is not harmless. It created the false

impression that the parents consented to or initiated the court's involvement post-guardianship. It also distorted the jurisdictional foundation of the case, as no statutory basis exists for reopening a closed parenting action without motion, notice, or findings.

Because Judge Eddy closed the parenting case in open court and then permitted improper filings without reopening it, her findings in ¶2, ¶3, and ¶5 are jurisdictionally void. Her statement that Jesse petitioned for a parenting plan is a judicial misrepresentation of fact. No such petition exists. Danielle Buck and Jesse Rehbein, as united co-parents, never sought a parenting plan against each other. Only to terminate an unconstitutional guardianship. Their rights were violated when the court reframed this as a parental dispute and used that frame to strip their rights.

These facts support not only a stay, but vacatur under Rule 60(b)(4), as the court acted without jurisdiction and relied on materially false procedural representations to justify its orders.

2. Reliance on Discredited and Fabricated GAL Evidence

¶6–¶8 of the Findings (Filing 113.10) falsely characterize the GAL report (Doc. 38) as credible and rooted in CPS findings. In fact, the GAL, Marybeth Sampsel, knowingly fabricated and omitted material facts:

- **Fabrication of Criminal History:** Sampsel created a homemade criminal history table that included dismissed charges and unrelated proceedings, falsely portraying Jesse Rehbein as dangerous without any citation to certified records. These entries were unsupported by any formal conviction history and were never verified through the Montana DOJ. Her "table" is not sourced, not authenticated, and relies entirely on court files selectively interpreted without context or rebuttal.

- **Use of Perjured and Unsubstantiated Allegations:** Sampsel's report repeated

Annette Rehbein's false claim that the Department of Child and Family Services (DPHHS) "placed" the children with Doug and Annette, despite the fact that **Exhibit C to Filing 93.00**, a June 7, 2022 DPHHS closure letter by Supervisor Jodi Black-Fucci, states explicitly that the Department **did not** place the children, found no ongoing safety concerns, and was not involved in any supervision.

- **Suppression of Exculpatory Evidence: Exhibit B to Filing 93.00** proves that Sampsel received this exculpatory DPHHS letter via email in September 2022. Nevertheless, she knowingly excluded it from her 54-page GAL report and based her recommendations on the exact CPS narrative it refutes. This omission was deliberate and constitutes willful suppression of material evidence.

- **No Direct Investigation:** The GAL **never interviewed Jesse Rehbein, never spoke to DPHHS caseworker Jodi Black-Fucci**, and **never contacted the therapists or counselors involved in the resolved CPS matter**. The "sources" she did rely on were largely the self-serving declarations of Doug and Annette Rehbein, without cross-reference to DPHHS findings or any CAPTA-compliant investigatory records.

- **No Exhibits or Affidavits to Support Claims:** GAL Sampsel attached **no supporting exhibits**, no affidavits, and no formal documents to verify the factual basis of her report. The report is entirely conclusory, and its factual claims are unsupported hearsay and editorial commentary masquerading as evidence.

The continued judicial reliance on this report, even after Appellants filed a **Motion to Strike and Disqualify the GAL** (which the district court denied without a hearing) constitutes fraud upon the court under **Mont. R. Civ. P. 60(d)(3)**. Courts in Montana have held that a guardian ad litem must act with impartiality and rely on verified evidence. See *In re Kessler*, 2009 MT 55, ¶¶21–24 (holding that GAL credibility and due process are essential in parental rights cases).

Judge Eddy's continued reliance on GAL Sampsel's report. Even after evidence surfaced disproving its key claims, constitutes ongoing due process error. While Appellants were permitted to cross-examine the GAL during later proceedings in 2023,

this occurred only after the GAL's report had already shaped the trajectory of the case, and only after Appellants' former counsel failed to object or act on the glaring omissions contained in that report. Notably, Appellants' prior attorney was included on the original email chain in which Marybeth Sampsel received the June 7, 2022 CPS exculpatory letter from Jodi Black-Fucci — yet made no effort to submit or reference it, and raised no objection to its omission formal counsel Mary kate Moss never Objected at all.

Judge Eddy ultimately denied Appellants' Motion to Strike and Disqualify the GAL without a hearing, despite being presented with unrebutted evidence that the GAL relied on unverified criminal allegations, excluded formal CPS findings, and attached no exhibits or affidavits to support her accusations. The GAL's failure to disclose exculpatory material, combined with the court's refusal to strike or even scrutinize the report in light of that evidence, constitutes fraud upon the court under Mont. R. Civ. P. 60(d)(3).

The judge's continued reliance on this discredited and unsupported report — including in the April 2, 2025 Findings of Fact (Filing 113.10, ¶¶6–8, ¶52, ¶55) — despite its proven falsity and its origins in suppressed material, confirms that the misrepresentations were not merely overlooked, but knowingly adopted into final judgment.

3. Post Hoc Justification of the Findings and Procedural Due Process Violations

The Second Amended Final Parenting Plan (Doc. 113.20) and its accompanying **Findings of Fact, Conclusions of Law, and Order** (Doc. 113.10) were signed and entered by Judge Amy Eddy on April 2, 2025. The plan was entered before the record was complete and before Appellants had any opportunity to confront or rebut the key evidence it relies on, a fundamental violation of procedural due process.

Moreover, the declarations by Alida Boren (Doc. 114) and Annette Rehbein (Doc.

115), which the court explicitly relies on in the Findings — were not filed until April 3, 2025, as confirmed by the court's **Supplemental Order** (Doc. 116.00).

Despite this, the court cited these documents as if they were already part of the record. The fact that they were filed after the ruling proves that:

- The judgment relied on evidence that had not been filed, served, or tested by adversarial process;
- The court deprived Appellants of any opportunity to review or respond to that evidence before entry of judgment;
- The documents themselves are labeled "supplemental," confirming they were submitted to retroactively justify findings already made.

Further, the judge's adverse findings against Jesse Rehbein (e.g., ¶25 and ¶33) appear based not on the content of those declarations, but on **ex parte assumptions or speculative inferences** drawn from Jesse's lawful appearance at court on April 1, 2025, when he came to file a formal written objection (Doc. 112.00). There is no mention of this protected activity in the court's findings, and the declarations themselves make **no reference** to Mr. Rehbein's legal documents filed that day at the courthouse.

The inference that Jesse's appearance constituted "instability" or was "concerning" is therefore not only unsupported by any record evidence ,it appears fabricated. This further supports the conclusion that the court had **prejudged the matter** and used irrelevant or retaliatory reasoning to justify its order.

Moreover, the court relied on Nevaeh's in-chambers interview to support ¶27–¶30

and ¶34–¶35 of the Findings. However:

- The transcript shows that Nevaeh's responses were hesitant and vague (e.g., "I don't know," "I guess so");

- CPS had already investigated and **unsubstantiated** the very allegations Judge Eddy repeated, as acknowledged in the March 17, 2025 hearing transcript and in Exhibit A entered during that hearing;

- Jesse Rehbein reminded the court that CPS had statutory authority and had already **exonerated** him and Danielle Buck of the claims presented by therapists and the third party

  Mr Rehbein"Your Honor, CPS was given a letter — the letter from Alida Troxell. CPS is trained in these matters, they have statutory authority, they went through this and they conducted an assessment, they asked the questions that CPS would ask regarding this letter, and they found it was unsubstantiated."
  — Transcript, 3/17/25, p. 58, lines 13–20

- Judge Eddy explicitly acknowledged on the record that she understood CPS had "unsubstantiated" the very claims contained in Alida Boren's letter (Transcript, 3/17/25, p. 58, lines 21–25 and p.59 lines 1-3)

  MR. REHBEIN: "Your Honor, CPS was given a letter — the letter from Alida Troxell. CPS is trained in these matters, they have statutory authority, they went through this and they conducted an assessment, they asked the questions that CPS would ask regarding this letter, and they found it was unsubstantiated."

  THE COURT: "What letter are you talking about?"

  MR. REHBEIN: "This letter from Alida."

  THE COURT: "Oh, okay. I'm just making sure there's nothing else you're referring to."

  MR. REHBEIN: "No, Your Honor, this was submitted to CPS, so —"

  THE COURT: "I understand."

  — Transcript, 3/17/25, p. 58, lines 21–25 & p. 59, lines 1–3

Furthermore, **Document 102.10,** submitted at the March 17, 2025 hearing includes **Exhibits 1 and 2** submitted by Emily von Jentzen, which contain the letters from Ms. Boren and Ms. Metcalfe, as well as the exculpatory CPS letter from caseworker **Amber Gannon** unsubstantiating those very letters. Judge Eddy was fully aware of this during the hearing and still knowingly adopted discredited material in her findings, in violation of **CAPTA standards and due process.**

Even the in-chambers interview does not support the findings attributed to Nevaeh. She did **not fully endorse** the therapists' claims, expressed confusion and hesitation, and at times contradicted the severity of the concerns alleged. The court's decision to **selectively quote or paraphrase** this uncertain testimony while ignoring CPS's official findings is a **textbook case of cherry-picking facts** to support a preordained conclusion and further supports a claim of **judicial misrepresentation.**

These are not harmless errors. The findings were entered:

- Before the declarations were filed;
- While denying Appellants a meaningful opportunity to review the in-chambers interview transcript;
- While ignoring contradictory CPS evidence that had been admitted on the record.

This constitutes a **structural violation of procedural due process** under Mont. R. Civ. P. 52(a), Rule 60(b)(4), and controlling case law including *Kulstad v. Maniaci*, 2009 MT 326, and *In re B.D.Y.*, 2010 MT 108. The court's reliance on hearsay, post hoc filings, and previously discredited allegations. After admitting the CPS letter into the record. This proves both **misrepresentation and unconstitutional bias.**

Compounding the due process violations, Appellant Jesse Rehbein had every right to appear at the courthouse to observe his daughter's entry into chambers, particularly given the court's refusal to disclose that therapist Alida Boren would be present. The Order for In-Chambers Interview **(Doc. 107.00)** makes no mention of Boren's participation, and her presence was not disclosed to the parents beforehand. That a third-party therapist, retained by the intervenors and biased by her own admission. Was allowed access to the child and court without notice or procedural safeguards is deeply prejudicial. If Jesse had remained present, he might have witnessed ex parte communication or improper influence. Instead, the judge later used Jesse's brief and lawful appearance. A **protected activity under Article II, §§ 4 and 17 of the Montana Constitution and the First and Fourteenth Amendments to the U.S. Constitution.** To label him "unstable" and restrict his rights. This is judicial retaliation for protected legal conduct and irreparably taints the court's findings.

4. Use of Unrebutted, In-Chambers Testimony to Justify Findings Before Disclosure or Objection Period

On April 1, 2025, Judge Eddy conducted an in-chambers interview with Appellants' daughter Nevaeh over Appellants' objections. Although a transcript was ultimately created, the court:

- **Issued its Findings of Fact and Parenting Plan on April 2, 2025** — the very next day;
- **Did not serve or disclose the transcript until after judgment** was entered;
- And **did not allow Appellants to review or rebut** the child's testimony prior to the ruling.

This process deprived Appellants of their right to respond, object, or cross-examine before judgment. A **clear violation of procedural due process.**

While Mont. Code Ann. § 40-4-215 permits judicial interviews of children, it requires:

- That they be conducted **on the record,** and
- That the contents be made **available for rebuttal** in adversarial proceedings if relied upon.

Here, the interview was used to support multiple critical findings (¶27–¶30, ¶34–¶35) that:

- Were **factually overstated** (e.g., that the child does not want contact, that she "endorsed" therapist claims),
- Misrepresented the tone and substance of Nevaeh's statements (which were frequently **uncertain, confused, or ambiguous** — e.g., "I don't know," "I guess so"), and
- Were **entered as final orders** before the transcript was reviewed or objections could be filed.

As a result, the court effectively:

- **Prejudged the outcome before receiving all testimony**, and
- Denied Appellants any meaningful opportunity to challenge the evidence that became the basis for denying all contact with their child.

This sequence of events issuing findings before the testimony was even reviewed. Violates fundamental fairness under the Fourteenth Amendment and the requirements of § 40-4-215. It also violates *In re B.D.Y.*, 2010 MT 108, ¶¶18–19, which held that **unrebutted child interviews cannot be used to determine custody without violating due process**

5. Judicial Retaliation for Filing Objections

- In ¶33, the judge labels Jesse Rehbein "unstable" because he "unexpectedly appeared at the courthouse on April 1." In reality, Appellant was there to **lawfully file a formal objection** to the court's unilateral interview of his daughter — an act of legal advocacy, not misconduct.

- There was **no no-contact order** at the time, and Doug and Annette Rehbein were present to supervise. Nonetheless, the court **used this lawful act as a basis to restrict all contact,** in what amounts to judicial retaliation.

- This retaliation is a **constitutional violation** of the First and Fourteenth Amendments and is grounds for reversal under *In re A.J.B.*, 2020 MT 66, and *Matter of A.S.B.*, 2022 MT 71.

6. Use of Misquoted or Mischaracterized Statements from Therapists

Findings ¶9, ¶11–13, ¶18, ¶19, and ¶43 mischaracterize the testimony of therapists Alida Boren and Jennifer Metcalf, both of whom admitted on cross-examination (Transcript, 3/17/2025) that they:

- Had **no direct contact** with the parents;

- Relied solely on the child and third parties;

- Had not reviewed CPS or criminal background;

- And were unaware that CPS had **closed the case with no findings.**

The court's acceptance of these hearsay-based, biased opinions as dispositive proof of harm or instability is legally insufficient and contradicts the **clear and convincing evidence standard** mandated in *Kulstad v. Maniaci*, 2009 MT 326, and *Santosky v. Kramer.*

7. Omission of Exculpatory CPS Findings

Nowhere in the April 2 Findings does the court acknowledge the **exculpatory CPS letter**, and that it un substantiated the Exact Question she led our daughter throught despite it being **"understood"** and:

- **Part of the record (Exhbit A filed that day(Doc 102,10), This documentation shows a Violation of CAPTA on it's Face.**

- Served on all parties,

- And explicitly contradicting the and therapist claims.

This omission further supports Appellants' contention that Judge Eddy engaged in **deliberate misrepresentation and suppression of exculpatory evidence**, violating CAPTA, due process, and the standards outlined in *Sailor v. Sun*, 277 Mont. 170 (1996).

These judicial misrepresentations are not harmless error. They are **structural due process violations** that:

- Render the judgment void under Rule 60(b)(4),
- Establish fraud upon the court under Rule 60(d)(3),
- And constitute an ongoing constitutional injury justifying immediate appellate intervention.

8. Patterned Judicial Misrepresentation Merits Reversal and Triggers Judicial Oversight.

Appellants are mindful that judicial misstatements and factually unsupported findings are not merely appellate issues. They are also matters of judicial ethics. In Montana, judges have been publicly **censured, suspended, and reprimanded** for materially similar misconduct, including prejudgment of facts, failure to hold hearings, and reliance on improper or undisclosed evidence. See *In re Inquiry Concerning Judge Blair Jones*, Public Censure (2021); *In re Judge Jeffrey Langton*, Censure (2002); *In re Justice of the Peace David Ortley*, Suspension (2006). The Montana Judicial Standards Commission and this Court have made clear that such conduct violates Canons 1, 2, and 3 of the **Montana Code of Judicial Conduct**, and compromises public confidence in the judiciary. The misrepresentations in Filing 116.00 are not harmless error — they reflect a breakdown in judicial neutrality and process that justifies both appellate relief and, if necessary, administrative review under the authority of this Court

Appellants respectfully request this Court consider these misstatements in granting the stay, and as further grounds for vacatur and remand in the underlying appeal.

D. The Parenting Plan Is Unconstitutional on Its Face

Even if jurisdiction existed, the parenting plan would still be invalid. It:

- Imposes supervised visitation despite the court admitting no safety concerns;
- Completely bans counseling or reunification efforts;
- Grants custody to third parties without clear and convincing evidence;
- Allows third parties to unilaterally assign successor custodians upon their death; without vetting or notice to the parents.
- Threatens the parents with incarceration for violating unlawful terms.

These provisions violate:

- The 14th Amendment's due process clause,
- Montana Constitution Article II, § 10 and § 17,
- *Troxel v. Granville*, supra,
- MCA § 40-4-228.

The plan also permits unlawfully delegates decision-making authority over education, medical care, and child care exclusively to third parties, and includes enforcement provisions threatening arrest and criminal charges for civil parenting

violations. Most egregiously, it allows the plan to be "binding on heirs and assigns," and empowers third parties to transfer custody to successors without due process. These provisions violate Mont. Code Ann. §§ 40-4-219 and 40-4-228, as well as the Due Process Clause of the Fourteenth Amendment and the holdings of *Troxel v. Granville*, *Kulstad v. Maniaci*, and *In re A.J.B.*. They are void on their face.

E. Successor Custodian Clause Is Void and Reflects Systemic Judicial Bias

The final clause of the April 2, 2025 Second Amended Final Parenting Plan (Doc. 117.00, Section VI(D)) unlawfully states: "This Parenting Plan shall be binding upon the parties, their personal representatives, heirs and assigns." This provision explicitly authorizes third-party custodians — Doug and Annette Rehbein — to unilaterally transfer custody of Appellants' children to unknown, unvetted individuals without court oversight, notice, hearing, or any finding of parental unfitness.

This language creates a private mechanism of custodial succession that is wholly unauthorized under Montana law. There is no provision in MCA § 40-4-228, § 40-4-219, or Title 72 that permits legal custodians to privately assign parental rights to "heirs and assigns." Such a delegation strips the judiciary of its constitutional role and bypasses the procedural safeguards that exist to protect fit biological parents.

This clause is unconstitutional on its face. It violates the Fourteenth Amendment to the U.S. Constitution, Montana Constitution Article II, §§ 4, 10, and 17, and the core holdings of Troxel v. Granville, 530 U.S. 57 (2000); Kulstad v. Maniaci, 2009 MT 326; and In re A.J.B., 2020 MT 66. A parenting plan that allows private individuals to determine future custodians, without any judicial process is not a lawful order; it is a privatized adoption scheme, executed under color of law.

Moreover, this clause proves that the court has no intent to restore lawful custody to

Appellants. By binding the parenting plan to unknown successors, the court has not merely suspended parental rights — it has functionally terminated them. This reflects systemic bias and a preordained outcome incompatible with due process.

F. Clause Denying Modification Violates Montana Constitution and Parental Rights

In addition to the successor custodian provision, the Second Amended Final Parenting Plan includes a clause stating that the plan is not subject to future modification by the parties. This denies Appellants their legal and constitutional right to petition the court to modify custody and visitation based on changing circumstances or rehabilitation.

This violates:

- Mont. Code Ann. § 40-4-219(1)–(2), which guarantees parents the right to petition for modification of parenting plans;
- Montana Constitution Article II, § 16 (guaranteeing full access to the courts);
- And federal constitutional guarantees under the First and Fourteenth Amendments.

A parenting plan based Particularly fabricated and discredited evidence, is not merely excessive; it is illegal. It forecloses the possibility of reunification and counseling, suppresses legal redress, and denies Appellants the right to ever reestablish a parent-child relationship all without lawful adjudication.

Taken together, these clauses demonstrate that the parenting plan is not a good-faith effort to protect children. It is a punitive and unconstitutional judgment designed to permanently erase the role of both biological parents. This Court must act immediately to stay enforcement and restore the constitutional rights of Appellants.

G. Irreparable Harm Is Ongoing

Appellants have not seen or spoken to their daughter N.R. since February 24, 2025, when the district court issued an order suspending parental contact based solely on a third-party ex parte motion. That restriction was imposed **without any evidentiary hearing, CPS involvement, or findings of unfitness or danger**. Although the court held a hearing weeks later, on March 17, 2025, the damage was already done: a fit parent was denied all access to their child for nearly two months, and remains denied to this day based entirely on private accusations.

This deprivation of contact is unconstitutional, traumatic, and ongoing. The current parenting plan **blocks all access, prohibits reunification therapy**, and grants the third-party custodians full discretion to control or deny contact. The emotional harm inflicted on the children by denying them contact with both of their biological parents. Without findings, without process, and without justification is profound and irreparable. See *Troxel v. Granville*, 530 U.S. 57; *Kulstad v. Maniaci*, 2009 MT 326; *In re A.J.B.*, 2020 MT 66

The Second Amended Parenting Plan also violates Montana's statutory best-interest framework. Under **Mont. Code Ann. §§ 40-4-212 and 40-4-234**, children are presumptively entitled to **frequent and continuing contact with both parents** unless the court finds that such contact would endanger the child's physical, emotional, or moral health. No such finding was entered here. The parenting plan entirely severs contact between the children and both parents without justification or lawful basis, in direct violation of the Montana Legislature's statutory command to preserve and foster the parent-child bond. This continuing denial of access is not only unconstitutional — it is unlawful under Montana family law and must be stayed.

H. Suspension of Rights Without Due Process Was Illegal

The restriction of Appellants' rights — including denial of contact with N.R. — was imposed **solely based on the third-party's ex parte motion**, without:

- An evidentiary hearing,
- CPS filings,
- Findings of unfitness,
- Or state intervention under Title 41.

Montana law does not permit termination or restriction of parental rights based solely on private allegations. This is a direct due process violation under both *Kulstad* and *Troxel.*

I. The GAL Knowingly Withheld CPS Evidence and the Court Relied on a False Narrative

The Guardian ad Litem falsely claimed the children were "placed" with Doug and Annette by CPS. This is disproven by **Exhibit C to Filing 93.00** — the June 7, 2022 letter from DPHHS Supervisor Jodi Black-Fucci, confirming that Jesse completed a voluntary agreement and that **no placement or monitoring occurred.**

Exhibit B to Filing 93.00 proves the GAL received this letter by email in March 2025 — yet she **intentionally excluded it** from her 54-page final report. The court adopted her false narrative anyway, and then denied Appellants' motion to disqualify the GAL **without a hearing.**

This is **fraud upon the court** under Mont. R. Civ. P. 60(d)(3). A parenting plan based on falsehood and suppressed state evidence is void. See *Guffin*, *Sailor v. Sun*, and *In re A.J.B.*, 2020 MT 66.

J. Only an Independent Tribunal May Restrict Parental Rights — Not Biased Third-Party Counselors

The U.S. Supreme Court and the Montana Constitution guarantee that fundamental parental rights may only be limited by an **independent, impartial tribunal**, based on verified evidence and after a full due process hearing. In this case, no such independent tribunal ever made findings of harm, unfitness, or neglect. The court instead relied on **therapists selected and paid by the third-party custodians**, who admitted under oath that they:

- Never interviewed Appellants;
- Never reviewed CPS or criminal history;
- And were unaware of the State's formal closure of all child protection investigations.

The therapists' recommendations were based entirely on one-sided information filtered through the third parties and minor children — **not on independent forensic evaluations** or statutory abuse findings. The district court adopted these biased recommendations without verifying their foundation, effectively allowing private parties to engineer a judicial outcome through non-neutral actors.

This process violates **Mont. Const. Art. II, §§ 17 and 24** (due process and impartial tribunal), as well as federal guarantees under the 14th Amendment. The

Montana Supreme Court has repeatedly emphasized that judicial intervention in parental rights requires **a formal legal process**, not reliance on **subjective counseling opinions**. See *Kulstad v. Maniaci*, 2009 MT 326, ¶64; *In re A.J.B.*, 2020 MT 66, ¶¶22–26; *Matter of A.S.B.*, 2022 MT 71, ¶18.

If CPS or the Department of Justice had found credible harm or risk, proper Title 41 proceedings would have followed. The fact that CPS closed the file and found no basis for intervention and yet Appellants' rights were still suspended, confirms that a biased, non-judicial process was substituted for constitutionally required due process. This invalidates the entire parenting plan and demands immediate relief.

This case satisfies, and in fact exceeds, every requirement under Mont. R. App. P. 22(3) for a stay pending appeal:

1. **Likelihood of success on the merits** is overwhelming. The record proves the district court acted without subject matter jurisdiction, relied on fabricated evidence, suppressed official CPS exculpatory findings, and imposed unconstitutional restrictions on fit parents without a hearing or findings of unfitness.

2. **Irreparable harm** is ongoing and severe. Appellants have been denied all contact with their children without cause. The current parenting plan forecloses reunification and violates the children's right to a relationship with their parents, inflicting permanent emotional damage.

3. **No substantial harm to others** will result. The third-party custodians are not at risk of any legally protected injury from a stay. In contrast, Appellants' constitutional rights are being irreparably denied every day this judgment is enforced.

4. **Public interest** demands relief. Upholding the rule of law, protecting family integrity, and preventing unconstitutional delegation of custody to private parties are compelling public interests at the core of Montana and federal constitutional jurisprudence.

Additionally, this Court has made clear that **fraud upon the court** and **void judgments** are not subject to any time limitation and must be corrected whenever discovered. See *Sailor v. Sun*, 2023 MT 175, ¶ 42 ("There is no time limitation on a Rule 60(d)(3) motion for relief from a judgment obtained by fraud upon the court."); *State v. B.B.*, 2007 MT 87, ¶ 18 ("A void judgment is a nullity and is subject to attack at any time."). As further affirmed in *In re Marriage of Miller*, 2022 MT 35, ¶ 19, a court's lack of subject matter jurisdiction renders its judgment void and "open to attack at any time."

Appellants Jesse Rehbein and Danielle Buck, though self-represented, have produced a record of undeniable constitutional violations. The Montana Supreme Court has held that courts must not dismiss or diminish pro se filings when they raise valid claims of judicial misconduct and due process deprivation. "[T]he law does not demand procedural perfection from pro se litigants attempting to assert meritorious claims," especially where inaction would result in "a manifest miscarriage of justice." *Polasek v. Omura*, 2006 MT 103, ¶ 21.

To allow enforcement of a parenting plan that:

- Emerged from a **void guardianship,**
- Was filed into a **closed case with no motion to reopen,**
- Relied on a **GAL report built on fabrication and suppression,**
- Denied all contact with children **without findings or hearings**, and

- **Delegates custody to unknown successors with no oversight**

would be to **condone a systemic breakdown in judicial integrity.**

This Court is empowered, and obligated, to stop that breakdown. The Second Amended Final Parenting Plan is **void on its face**, constitutionally irreparable, and its enforcement must be **stayed immediately** to prevent further harm.

WHEREFORE, Appellants respectfully request this Court GRANT this Motion to Stay Enforcement of the April 2, 2025 Parenting Plan in full, and issue all relief requested to protect the constitutional rights of Appellants and their minor children, and to preserve the integrity of the Montana judiciary

V. RELIEF REQUESTED

Appellants respectfully request that this Court:

1. STAY enforcement of the Second Amended Final Parenting Plan entered April 2, 2025, in its entirety, pending final resolution of this appeal;

2. VACATE the April 2, 2025 parenting plan as **void** under Mont. R. Civ. P. 60(b)(4) and (d)(3), due to lack of subject matter jurisdiction, fraud upon the court, and structural violations of due process;

3. DECLARE the February 5, 2019 guardianship **void ab initio** for failure to include contemporaneous written or oral findings of parental unfitness or Factual findings at all. and for violating constitutional and statutory requirements under Troxel v. Granville, Santosky v. Kramer, and MCA § 72-5-222;

4. VACATE all subsequent orders flowing from the void guardianship, including the unlawful third-party intervention proceedings filed into DR-18-281, which was closed by court order on February 5, 2019 and never lawfully reopened;

5. REINSTATE the prior parenting schedule in effect before February 24, 2025, or in the alternative, **grant immediate unsupervised visitation** to Appellants as interim relief to prevent further irreparable harm;

6. SUSPEND enforcement of the "heirs and assigns" clause in the parenting plan as ultra vires, unauthorized by statute, and facially unconstitutional, as it purports to delegate custody rights without judicial oversight or due process;

7. ORDER that, in the alternative, if this Court declines to vacate the parenting plan or reinstate full access, Appellants be granted immediate and ongoing reunification counseling with their children under the direction of a **neutral, licensed child and family therapist appointed by the Court**, with sessions to occur **at least twice per week** during normal hours and **outside the influence of the third-party custodians or their retained counselors**. This relief is necessary to begin repairing the **psychological and relational harm inflicted on the children** through prolonged separation, the suppression of reunification, and the one-sided narrative perpetuated by the third-party custodians and their counselors. The district court's refusal to permit or facilitate such reunification efforts — despite no findings of unfitness, danger, or abuse — violates **Appellants' fundamental parental rights**, and the **children's own right to maintain relationships with their biological parents**. Denial of access to neutral, therapeutic reunification services constitutes a structural due process violation under the **Fourteenth Amendment to the U.S. Constitution, Article II, §§ 4, 10, and 17 of the Montana Constitution**, and governing precedent including **Troxel v. Granville, Kulstad v. Maniaci**, and **In re A.J.B.** Appellants respectfully assert that **no lawful parenting plan may bar counseling or reunification efforts absent clear and convincing evidence of harm**, which is entirely lacking in this case. If this Court grants no other relief, it must at minimum **remedy the psychological injury being inflicted on these children by ordering neutral reunification counseling now.**

9. RECOGNIZE AND DECLARE the GAL report (Doc. 38) **inadmissible and materially false**, and acknowledge that the GAL's reliance on fabricated criminal history and suppression of exculpatory CPS findings constitutes **fraud upon the court** under Mont. R. Civ. P. 60(d)(3);

10. DECLARE that enforcement of the Second Amended Parenting Plan is **barred** until this Court resolves the jurisdictional, constitutional, and evidentiary defects now before it;

11. RECOGNIZE the district court's pattern of **judicial misrepresentation, reliance on suppressed material evidence, and retaliatory rulings** as violations of due process and judicial ethics, and take corrective action necessary to **restore public confidence in the Montana judiciary**; and

12. GRANT any other relief this Court deems just and proper to:

- restore lawful custody to fit biological parents,
- protect Appellants' constitutional rights,
- and uphold the integrity of the judicial process

Respectfully submitted,

Dated this 19 day of May, 2025.

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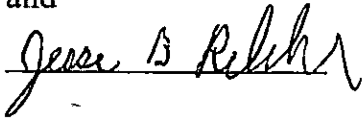

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