

ORIGINAL

FILED

05/08/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0156

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 25-0156

IN RE THE PARENTING OF:

J.E.B. and B.L.B., Minor Children,

JESSICA L. BROOKS,

Petitioner and Appellee,

and

MATTHEW J. BROOKS,

Respondent and Appellant.

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Clerk of Supreme Court
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ORDER

Appellee Jessica L. Brooks, via counsel, has moved to dismiss this appeal on the basis that the Opening Brief of Appellant Matthew J. Brooks fails to comply with M. R. App. P. 12(1)(g).

After Jessica moved to dismiss, Matthew, a self-represented litigant, moved for leave to file an amended Opening Brief that he asserts will correct the alleged deficiencies. Jessica responded in opposition to Matthew's motion and renewed her motion to dismiss, arguing that Matthew's proposed amendments are insufficient to cure the deficiencies. Matthew then filed a response to the motion to dismiss, arguing it would be unfair to dismiss his appeal on procedural grounds and again asking this Court to grant him leave to file an amended Opening Brief and allow his appeal to be heard on the merits.

M. R. App. P. 12 sets forth the required sections of an appellant's brief, including a section designated "Argument." Rule 12(1)(g) provides, "The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on[.]" Matthew's Opening Brief contains an Argument section, with citations. However, Jessica alleges that Matthew's legal citations either do not exist or do not stand for the propositions Matthew

asserts. She asserts, “most egregious, Mathew cites to ‘*Marriage of Malmquist*, 2003 MT 91, 315 Mont. 222, 69 P.3d 495’ which could be dispositive to the issue presented by Matthew. . . . [However], counsel cannot confirm that the case exists, and the correct citation was not provided by Matthew when requested.”¹

Matthew has provided a Memorandum in Support of Motion to Amend Appellant’s Opening Brief and two affidavits in support of his motion for leave to amend. In the affidavits, he admitted making errors in legal citations that he explained were unintentional and due to his limited legal knowledge. In requesting leave to file an amended brief, he alleges the corrected brief “aligns with” the applicable statutes, is not overlength, and contains proper formatting and accurate citations. He argues that allowing him to file an amended brief will not prejudice Jessica or further delay the disposition of this appeal.

In the memorandum Matthew provides the following authority in support of his request: “In *State v. Gallagher*, 2005 MT 140, ¶ 7, 327 Mont. 339, 114 P.3d 1012, the Montana Supreme Court permitted an amendment to a brief to correct a citation error Similarly, in *Miller v. Herbert*, 2014 MT 201, ¶ 14, 376 Mont. 212, 333 P.3d 921, the Court underscored its preference for deciding cases based on substance rather than procedural technicalities.”² However, as Jessica points out in her response in opposition to Matthew’s motion to amend, none of the parallel citations offered by Matthew go to cases by those names, and none of the cases for those citations appear to stand for the propositions offered by Matthew. Jessica accuses Matthew of offering “made-up legal authority to support his requested relief.”

Jessica further alleges that Matthew’s proposed amended brief fixes some, but not all of the citation errors of the Opening Brief.³ She alleges the amended brief continues to

¹ This Court has similarly been unsuccessful in identifying a case that fits Matthew’s citation.

² Matthew reiterates these citations in his response in opposition to Jessica’s motion to dismiss and in the affidavit in support of that response.

³ Although it appears Jessica has received and reviewed Matthew’s proposed amended brief,

rely on the non-existent *Malmquist* decision. Jessica speculates that Matthew may have relied on artificial intelligence (AI) to assist him in drafting his legal arguments and failed to ensure the accuracy and veracity of the information thus generated. She argues that, regardless of the source of the “fake caselaw,” Matthew’s proposed amended brief also fails to comply with Rule 12(1)(g) and this Court should not accept it.

Matthew’s incorrect citations notwithstanding, this Court generally favors resolution of a case on its merits rather than dismissing an appeal on procedural grounds. *See State v. Case*, 2024 MT 165, ¶ 49, 417 Mont. 354, 553 P.3d 985 (“Regardless of any procedural issues, we prefer to resolve cases on their merits.”) (citations omitted). However, when considering the merits of a case, we consider the weight of the authority supporting the arguments made by the litigant. Although we deny Jessica’s motion to dismiss, she is not precluded from refuting the strength of Matthew’s arguments in her Answer Brief.

IT IS THEREFORE ORDERED that the motion to dismiss is DENIED.

IT IS FURTHER ORDERED that the motion for leave to amend the Opening Brief is GRANTED. Appellant Matthew J. Brooks shall prepare, file, and serve his amended opening brief on or before May 16, 2025. All further briefing deadlines shall run from the date of filing and as provided in M. R. App. P. 13(1).

The Clerk is directed to provide a copy of this Order to all parties of record.

DATED this 8th day of May 2025.



Chief Justice



Matthew did not attach it as an exhibit to his motion to amend and this Court has not reviewed it.

John F. Kennedy

Lyndon B. Johnson

Katherine M. Bradley

Justices