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Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 25-0070

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court Cause No. DA 25-0070

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KRISTEN J. SCHAFER,

Petitioner and Appellee,

v.

THOMAS A. SCHAFER,

Respondent and Appellant,

FILED

JUN 27 2025

Bowen Greenwood  
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**APPELLANT'S OPENING BRIEF**

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On appeal from the Montana Second Judicial District Court, Silverbow County  
Cause No. DR-47-2023-153; Honorable Judge Kurt Krueger

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## **STATEMENT OF ISSUES**

1. Whether the District Court displayed shameful and stunning abuse of power and showed pure disdain and abusive behavior toward a Pro Se Litigant, for being Pro Se.
2. Whether the District Court was clearly erroneous and abused its discretion with regard to the Petitioner's Consolidated Motions to Compel and for Sanctions filed May 10th, 2024. Requiring the respondent to reimburse additional attorney's fees in the amount of \$2,500.00.
3. Whether the District Court was clearly erroneous and abused its discretion denying the Respondent's Motion to Compel and for Sanctions filed June 10th, 2024 while implying they were filed to harass the Petitioner.
4. Whether the District Court clearly abused its discretion distributing past tax debt requiring the Respondent to be responsible for the debt owed while filing married joint returns for ten years.
5. Whether the District Court was erroneous and abused its discretion by not following the agreed parenting plan where it is clearly stated that CSSD would review financial affidavits and calculate collection of child support for CSSD.
6. Whether the District Court was clearly erroneous and abused its discretion with regard to the distribution of property: when it failed to consider the statutory factors of

40-4-202, including the length of the marriage and prior marriage of either party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, custodial provisions.

7. Whether the court erred in the distribution of the couples retirement plans

8. Whether the court erred in the childrens savings, that the State of Montana garnished from their savings accounts, and applied towards the couples' owed state income tax from previous tax years. Requiring Tom to repay the entire amount although the couple had filed joint tax returns since 2013.

9. Whether the court erred in the family debt distribution, requiring Tom be responsible for the entirety of the couples debt, just because all of the debt throughout the marriage was carried in Tom's name.

### **STATEMENT OF THE CASE**

This matter arises out of the District Courts dissolution order signed and filed December 31, 2024, the final day as District Court Judge of the honorable Judge Kurt Krueger before beginning his retirement. The trial was held December 4th, 2024 following a mediation that morning. The Appellant is a 56 year old disabled underground miner and has been on SSD since 2019. He did not complete high school and has very

limited skills other than heavy labor type work. He sold his primary vehicle for five thousand dollars to hire an attorney with a retainer fee of four thousand dollars. The attorney, after presenting in a premature mediation on January 3rd, 2024 without asking the Appellant for financial disclosure or discovery related to his finances or income withdrew from the case which was granted from the District Court on March 7th, 2024. Order allowing withdrawal as attorney of record for respondent filed 03/07/2024. The attorney did not refund the retainer fee to the Appellant. The Appellant's only source of income is what he receives from SSD and could not / can not afford to hire an attorney going forward in the case. His only option was / is to represent himself and with ongoing medical treatment of his cervical spine, his disabilities and limited education makes it extremely difficult to meet the deadlines and demands of the Court. The Appellant is limited to not more than two hours a day of activity without laying horizontally to relieve pressure off his spine. He attempted to reschedule the mediation and Bench Trial to separate days as an eight hour consecutive day was way beyond his capacity. The court rejected the Appellant's motion to reschedule and motion to reconsider only to, and I quote; "wrap this up before I leave office". The Appellant strongly believes the bench trial was hasty and the court rushed things along to fit his schedule, not allowing the time for the Appellant to properly defend himself. The trial began at approximately 2:00pm and ended at 4:15pm. Just prior to the beginning of the trial the Judge called the



Appellant and petitioner's attorney into his chambers and instructed them on what he expected during the trial, part of that instruction was not allowing witness testimony unless it had to with the value to the residence. Therefore the Appellant strongly believes this matter deserves to be heard in a Court that demands a fair trial in which the Appellant can argue the facts of the case without prejudice and censoring.

### **STATEMENT OF THE FACTS**

#### **I. The parties, their premarital residences, belongings, finances, and employment.**

Tom is a 56-year-old disabled underground miner. Tom's work history has revolved around mining and heavy labor type work his entire life which has taken its toll on his entire spine, especially in the cervical region leaving him unable to work and making everyday life difficult. Tom has gone through multiple surgeries including cervical disc replacements and is scheduled to undergo cervical disc fusion followed by a surgery to his left shoulder. He has been unable to work due to his work related injuries since April 2019 and was deemed as totally disabled by SSD early in 2021 which has been his only source of income. Tom depleted his savings and retirement accounts to maintain the standard of living the family became accustomed to along with driving up debt over the same period of time. All of the family debt and monthly expense was in Tom's name excluding a couple of shopping credit cards with small balances that Kristen held in her

name.

Tom bought his residence in June of 1999 with his late wife and young children. His wife passed away unexpectedly in July of 2006 from a rare blood disease (TTP). He was left raising his two young boys at the time and had to seek employment locally here in Butte at Montana resources at the open pit mine. He remained single and focused his life to raising his children and maintaining their lifestyle on his own until 2011 when he opened up to a new relationship. Tom and Kristen began dating in 2011 and had twin girls in 2012. They met at a casino bar where Kristen was working. They married April 15, 2015.

Tom paid all of the monthly mortgage payments on the residence during the time the couple was together as well as all of the monthly bills and expenses car loans ect. Kristen as of May 2023 began to pay the power bill and some of the groceries. The couple shared a joint bank account that was originally opened by Tom in 1985 at Southwest Montana Community Federal Credit Union. Kristen joined onto the account approximately July of 2012. All of Tom's payroll, savings and 401k disbursements were deposited into that account and both parties had full and unlimited access to the account. Kristen began working at the credit union and prior to filing for dissolution drained money from the joint account (Tom's only account) into her own privately help account without his knowledge and redirected her payroll into her privately held account. Kristen



began a new career in January 2023, leaving her job at the credit union to begin a job at Marsh-McLennan insurance agency. The new job starting wage was nearly double her previous salary. Tom supported this career change and helped her study and pass her state insurance exams clear into June of 2023. Kristen's grandfather passed away in July of 2023, approximately a month later August 19th 2023 she met with her uncle (her grandfather's executor of estate) for the reading of her grandfather's will. She was left an undisclosed amount of money in her grandparent's will. Five days later she came home with a petition for dissolution of marriage.

Kristen immediately began packing her belongings and searching for a house to rent. She Moved into her new home the last weekend of September 2023. She had many trucks, some with trailers and about eight adult males moving her belongings beginning at 8:30am. The moving commenced through the weekend and was completed Monday October 2nd with witnesses walking her from room to room throughout the entire house asking if there was anything else she wanted. Some more things were packed and loaded until she assured us there was nothing more. The following months as Tom found belongings of hers he packed them into boxes and gave them to her as well as allowing her to come get other belongings such as Christmas decorations ect. Kristen completely furnished her new place with everything she needed and took everything she wanted without hindrance. The only asset in dispute is the residence that Tom had purchased in

1999 with his late wife. Kristen is not experiencing any kind of hardship over loss of assets or financial burden as expressed in her counsel's Motion to Compel filed after Tom's motion to appeal.

## **II. Stipulated parenting plan, child support and health insurance**

Tom and Kristen, through mediation agreed to and signed a stipulated parenting plan on July 11th, 2024. On page 3, ¶ 5, headlined child support it clearly states that child support obligations shall be calculated in accordance with the Montana Child Support Guidelines. Both parties shall submit financial affidavits and supporting documents to the Child Support Services Division for calculation and collection of child support as required by CCSD. The petitioner shall be responsible for making application to CCSD for services.

This has not been done by the petitioner or her counsel and the court ruled that a portion of what Tom receives from SSD be directed to the petitioner. The court clearly did not review the parties' respective incomes, the financial resources of the parents or the standard of living enjoyed by the children, as outlined on page 3, ¶ 13, of the courts findings of fact conclusions of law and final decree of dissolution of marriage filed December 31st, 2024.

Kristen's income exceeds Tom's income, her reported annual from Marsh-McLennan income of \$49,500.00 is false and there is no mention of her income from the

Oasis Casino (her part time job) pg 3 paragraph 15 of the court order. Kristen has no debt compared to Tom as the court ruled that Tom continue to pay all the debt accrued during the time of the marriage including an IRS tax debt incurred as a result of an early withdrawal of retirement funds and a back payment from SSD that was incorrectly claimed on that particular tax year. The parties filed joint tax returns starting in 2013 and Kristen enjoyed the large tax returns for many years while Tom was working. The credit card debt accrued under Tom's name was openly used by Kristen and the credit cards were used to pay a portion of the family expenses such phone bills, Dr bills, veterinary bills, gas, clothes and food. This debt should be equally divided by the parties. pg 6 and 7 paragraph 26 of the court order. Kristen

### **III. Kristen's attorney's violations of Rule 11**

Kristen's attorney Brad L. Belke is the "go to" divorce attorney in Butte and surrounding area. Mr. Belke consistently reminds me of his 40 years experience and consistently reminds me that I have no clue what I am doing as well as reminding the court of this. Following Jeffery Dahoods withdrawal as attorney of record for respondent on March 7th 2024 and not having the money to retain further counsel I filed for an extension of time to respond to discovery request, filed March 25th, 2024. Filing # 17. The court granted the extension on April 24th, 2024 allowing discovery requests until May 10th, 2024. Filing #24, and certificate of service filing #25. Tom filed respondent's

discovery requests to petitioner certificate of service on May 7th, 2024, filing #26 and disclosure of income and expenses May 7th, 2024 filing #27, Tom also filed response brief to motion to sell residence and brief on May 9th, 2024 filing #29 with affidavit filing #30 I also filed certificate of service of over two thousand pages of discovery on May 10th, 2024, filing #31. The discovery was hand delivered to Cindi Johnson, Mr. Belke's long time assistant at his office on 444 East Park Street in Butte, while in his office Cindi asked me to wait a minute that Mr. Belke wanted to talk to me. A moment later Mr. Belke approached me and handed me a copy of consolidated Motions to Compel and for Sanctions that he filed that day, filing #32. After a brief look at the motions I replied with, "my discovery is not late it was due today as per the courts order granting extension of time" (filing #24), he denied receiving the order. I hand delivered nearly everything to Mr. Belke's office, as he has a reputation for underhandedness, it was no surprise that he would lie to me but he also lied to the court on paper trying to confuse the confuse the issue filing a barrage of motions, filing #s 23, 28, 32, 33, 34, 37, and 39 making it extremely difficult for me to meet the deadlines and confusing dates. I feel the court did not take the time to review the filings in a haste to "wrap this case up" before the Judge's retirement date of December 31st, 2024 refer to court order page 2, ¶ 8, ruling that the petitioner's motions have merit and that I acted in bad faith. That is not true and a review of the motions will verify that Mr. Belke acted in bad faith and complicated

resolution of this matter.

#### **IV. TESTIMONY, FALSE TESTIMONY,**

Page 2, ¶ 8, of the court order states that the petitioner testified that the respondent did not properly disclose his assets and income and that the petitioner testified regarding workers' compensation benefits were undisclosed by the respondent and the respondent failed to list a pending workers' compensation case seeking damages for the work-related injury that resulted in his Social Security disability. That is simply not true, I gave full disclosure of everything asked please see attachment 2a and 2b. I do have an open claim with workers' compensation seeking medical treatment for the cervical spine, and bilateral shoulder injuries. Since the time the discovery was written further treatment of the cervical spine has been scheduled.

In addition, page 2, ¶ 8, of the court order, the petitioner testified that it was documented that I recently paid \$15,000.00 in past due property taxes, without disclosing the source of said funds, no funds having been listed on the respondent's disclosure. No funds were disclosed in the respondent's financial disclosure because the respondent did not have \$15,000.00 in funds and \$15,000.00 was not paid in back taxes. The respondent became aware of a grant allowing up to \$10,000.00 toward back taxes, applied for the grant and was excepted, I paid the additional amount of \$786.54. Please refer to attachment 3a, and 3b. The petitioner clearly had no idea of what she was testifying and the court erred in its

ruling of page 2, ¶ 8, in its entirety by allowing testimony without proof verifying its accuracy.

Kristen gave conflicting testimony while being questioned about where Tom's early 401k retirement withdrawals was spent and what it was used for. She testified that she did not know where the money went portraying that Tom withdrew large amounts of money and somehow hid it. She also testified that all of the withdrawals were deposited into our joint bank account at the credit union that she worked at during that time period. She also testified to viewing our account daily and transferring a very large amount into her private account. Please review transcript pg 42 line 3 to 25, pg 42 line 1 to 25, pg 43 line 1 to 25, pg 44 line 1 to 25, and page 45 line 1 to 10.

### **STANDARD OF REVIEW**

When reviewing property distribution in a dissolution, this Court reviews findings of fact for clear error. *Richards v. Trusler*, 2015 MT 314, ¶ 12, 381 Mont. 357, 360 p.3d 1126. A finding is clearly erroneous if it is not supported by substantial credible evidence, or if the Court, after reviewing the record, has a "definite and firm conviction that a mistake has been committed." *Id.* This Court reviews legal conclusions for correctness. *In re Marriage of Funk*, 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39.

If the findings are not clearly erroneous, the Court reviews a property distribution for abuse of discretion. *Richards*, ¶ 12. "A Court abuses its discretion if it acts

arbitrarily, without conscientious judgment, or exceeds the bounds of reason resulting in a substantial injustice. *Id.* A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence or if, upon reviewing the record, this court is left with definite and firm conviction that the district court made a mistake." *In re S.T.*, 2008 MT 19, ¶8, 341 Mont. 176, 176 P.3d 1054.

If the findings are not clearly erroneous, then the court's division of property will be affirmed unless there is an abuse of discretion. *In re Marriage of Payer*, 2005 MT 89, ¶ 9, 326 Mont. 459, 110 P.3d 460. A district court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *In re Marriage of Alexander*, 2011 MT 1, ¶ 11, 359 Mont. 89, 246 P.3d 712.

A district court's conclusions of law are reviewed de novo to determine whether they are correct. *Giambra v. Kelsey*, 2007 MT 158, ¶ 28, 338 Mont. 19, 162 P.3d 134 (citations omitted).

### **SUMMARY OF THE ARGUMENT**

First, in distributing Tom and Kristen's estate, the District Court made many several errors which require reversal for a new trial. First, the court erred by making no findings on the marital estate's net worth or the values of the parties' assets and liabilities before apportioning the estate. This alone constitutes a reversible error. Without findings,



its impossible to determine what the actual allocation of the estate was, but it is certain that the court allocated 100% of the liabilities to Tom and forcing the scheduling of the trial to fit the Judges retirement date.

Second the Court clearly did not review the Filings of the Case. The court did not give the case a thorough review which is evident in its ruling of the case and the final order.

Third, the court did not allow due process by not allowing Tom to argue his side of the case. The court denied witness testimony unless it had to due with the value of the real property (Tr. Tran:51:3-10), "the court has set the parameters of this to deal with the property. (Tr. Tran:47:3-25, Tr. Tran:48:1-25, Tr. Tran:49:1-10). The court ended Tom's cross examination, in which he did not complete his argument and did not get to enter his exhibits or important witness testimony to the court for record.

Fourth, the court did not have evidence that the Petitioner made substantial contributions to the value of the residence at 125 Mountain View Road in Silver Bow County, Montana (Order: 4:¶22). Improvements were not made to the home during the time the Petitioner resided at the residence as Per the Petitioner's testimony, (Tr. Tran:20:25 and Tr. Tran:21:1-4). The Petitioner did withdraw a small amount from her retirement account on one occasion of \$9,700.00 (Tr. Tran:25:7-12), to pay a tax delinquency. This was merely a loan, and she was repaid an amount of \$15,000.00 out of

their joint account shortly after Tom had withdrawn his final amount from his retirement account in 2022, which was concluded the amount withdrawn and used to maintain the families standard of living since 2019, when Tom became unable to work, (Tr. Tran:9:18-25, and 10:1-6). The petitioner gave false testimony claiming she did not know where the money went, although she worked at the credit union, was joint on the account since 2012, and had full access to every transaction and viewed the account almost daily, (Tr. Tran:10:7-8), (Tr. Tran:40:8-25, 41:1-25, 42:1-25, 43:1-25, and 44:1-13). The court grew impatient with the questioning, urging to move "you move on to another line of questioning. you've gone, you've gone through this for five minutes" (Tr. Tran:44:17-19). Tom felt pressured to hurry up the questioning but continued by asking the Petitioner about another withdrawal of \$40,000.00 finalizing a previously held retirement account in 2015. ( Tr. Tran:44:24-25, 45:1-10). Tom withdrew all of his retirement money to pay bills and maintain the standard of living the family was accustomed to totaling roughly \$240,000.00 while Kristen withdrew a small amount once to pay property taxes which she was reimbursed for.

The court was impatient about the time, rushed the defendant, showed no interest in the cross examination unless it was directly related to the value of the residence, (Tr. Tran:46:3-25, 47:1-25, 48:1-25, 49:1-10). Tom had long exceeded his physical limitations with mediation that began at 9am that morning and ending at noon, then a bench trial

following at 1:30pm. Tom asked the court to reschedule due to his physical limitation, but was denied, (Record filing 54, 55), he asked for the court to reconsider providing medical evidence to the court of his disabilities and physical limitations, but was again denied, (Record filing 58, 59, 59.01, 60).

## **ARGUMENT**

**THE DISTRICT COURT WAS CLEARLY ERRONEOUS AND ABUSED ITS DISCRETION WITH REGARD TO THE DIVISION OF PROPERTY.**

**A. The court abused its discretion when it failed to consider the statutory factors of § 40-2-202, including the ability to acquire capital.**

The court abused its discretion by failing to apply the statutory factors of §40-2-202, MCA, in apportioning the estate, the court should consider several factors including "the opportunity of each for future acquisition of capital assets and income" and the age, health, station, occupation, respective incomes, vocational skills, employability, estate, liabilities, and needs of the Petitioner and Respondent; custodial provisions; and either apportionment in lieu of or in addition to maintenance; the opportunity to Petitioner and Respondent respectively for future acquisitions of capital assets or income. The court failed to account for the facts that Tom's health and disabilities limit his means of income. Kristen is 15 years younger and has good steady employment with Marsh-McLennan and a second job at the Oasis Casino. In calculating the apportionment of the property the

court clearly did not consider the best interest of the children. Its very clear that the best interest of the children is to remain in their home as well as the wishes of the children.

Tom provided testimony regarding his disability to work or return to work, and that he has been unable to work since April, 2019 due to cervical spine injuries. Tom has been drawing Social Security Disability since it was determined in 2021, that he would not be able to return to gainful employment. Kristen gave testimony (Tr. Tran: 16:11-14) that she believes Tom is capable of working and added a document from workers compensation (Exhibit 1), (Tr. Tran: 16:21-25 and 17:1-11). Her testimony is clearly her opinion and denies the fact that the Social Security Disability declared Tom disabled through a close review of medical records a physical examination as well as a mental evaluation. The document provided to the court as Exhibit 1 is only a small portion of his injuries, as his cervical spine, other body parts, and ongoing medical treatments are not mentioned. The courts allocation rested on the clearly erroneous finding that Tom is able to return to work.

**B. The court did not allow due process, did not consider what is best for the children and abused its discretion in its Findings of facts, Conclusions of law and final decree of Dissolution of Marriage.**

This case deserves to be heard without being subject to a hasty trial and without prejudice for the due process that was denied in this case. The best interest of the minor

children has been largely ignored in the order of the district court, and the appellant feels the best interest of children is to remain in their home. The two children have expressed their desire to remain in their home and the appellant feels that is in their best interest.

Statutorily, the courts are mandated to "determine the child support obligation by applying the standard in this section and the Uniform Child Support Guidelines." §40-4-204(3)(a). In fact, the Montana Child Support Guidelines ("Guidelines") "are promulgated...for the purpose of establishing a standard to be used by District Court's...attorneys and parents in determining child support obligations." The public policy behind this broad definition is that a child's standard of living should not be adversely affected because the child's parents no longer live in the same household. A.R.M. 37.62.101(2); *Adami v. Nelson (In re J.K.N.A.)*, 2019 MT 286, ¶47, 398 Mont. 72, 454 P.3d 642. A court must follow the Guidelines unless there is clear and convincing evidence that deviating from the guidelines is unjust to the child or the parties or is inappropriate. *In re Marriage of Albinger*, 2002 MT 104, ¶12, 47 P.3d 820, 309 Mont 437.

Kristen 's intent is to force Tom to sell his home that he bought with his late wife Pana, in June of 1999. She knows' his financial history, knows he has very limited fixed income and knows his savings and retirement accounts have been depleted. The court assigned Tom all the marital debt, ie; credit card debt installment debt and mortgage debt while all the credit card debt had been, installment loans (Kristen's and Tom's) had been

paid to zero balances' in 2022 with Tom's retirement money. The credit cards were used to keep up with daily expenses including orthodontic expenses for one of the children, orthodontic expenses for Tom, medical bills, phone bills, gas, groceries, clothes and other expenses. The court adopted Kristen's testimony without clear evidence that Tom used the credit cards for his exclusive use such as to buy guns and such from Amazon. Amazon is not allowed by Federal law to sell guns. (Tr. Tran:

The Petitioner testified (Tr. Tran:18:1-25) stating the mortgage amount of the residence was \$42,652.15 in 2013. That is not correct Exhibit 6 was admitted to the court as the mortgage balance, (Tr. Tran:19:2-7) is not a 1st mortgage it is a tax statement for the previous year on a second mortgage that Tom had taken out years prior at Pioneer Federal Credit Union. Her testimony implied that Tom owed \$42,652.15 in 2013 and Exhibit 7, (Tr. Tran:19:8-25, and 20:1-24) showing the 1st mortgage at \$200,284.08 in 2024 and testified she did not know where that money went, (Tr. Tran:20:20-24). All the refinancing of the property was reported in the disclosure.

## **CONCLUSION**

By adopting the Petitioner's proposed Petition the court, with all due respect, exercised no discretion and exercised no judgment. This alone is a basis for a remand. When its failure to exercise its own conscientious judgment results in an arbitrary

decision that exceeds the bounds of reason, a new trial is warranted.

The dissolution bar needs guidance from this court. With respect to this case, there has been a substantial injustice. For the district court to adopt the proposed petition of one party was wrong. Call it abuse, call it injustice, or call it inequity. The parties, be it pro se or attorney's have expectations they will likely be treated fairly in the system. When that does not occur, the recourse must come from the Montana Supreme Court. This court should send a message to practitioners to file supportable findings and conclusions and to the district court judges to do their own work. It needs to assure everyone their access to a fair trial and due process and that this court will protect the party abused by the process and make certain that the result will not stand and make certain such party is not required to pay for the appeal, and for the first trial.

I have run out of time. I am going to have to turn this in today as it is. Not knowing the laws and having to research the rules and laws as I go is exhausting and very time consuming. I do not have an office or work space adequate, I work on this when the children are not home and have packed it away while they are here only to have set it all



up and start again.

Respectively submitted this 27th day of June 2025.

Thomas Andrew Schafer

Pro Se Appellant

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.

  
\_\_\_\_\_  
[Signature]



## CERTIFICATE OF SERVICE

I certify that I filed this

☐ Petition☐ Motion☐ OtherOpening Brief  
[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Brad L. Belke  
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[Signature]  
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