FILED
09/17/2025
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 25-0516

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause DA 25-0516

LAURA TUREK

Petitioner/Appellant.

v.

MARK TUREK

Respondent/Appellee.

APPELLANT'S OPENING BRIEF

From the Montana Fifth Judicial District Court, Jefferson County
District Court Case DR-22-2024-04
Honorable Luke Berger, Presiding

APPEARANCES:
Brian J. Miller
Morrison, Sherwood, Wilson, and Deola PLLP
401 North Last Chance Gulch
P.O. Box 557
Helena MT 59624-0557
(406) 442-3261
bmiller@mswdlaw.com

Attorneys for Petitioner/Appellant

Garrett R. Norcott, Esq.
Norcott Legal
1 N Last Chance Gulch, Suite 6
Helena, MT 59601
406.594.2017
garrett@norcottlegal.com

Attorneys for Respondent/Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES v

ISSUE 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 1

STANDARD OF REVIEW 12

SUMMARY OF THE ARGUMENT 14

ARGUMENT 16

I. The Court disregarded substantial credible evidence of Mark's alcoholism and abusive conduct, and made clearly erroneous findings that were insufficient to protect the children's best interests, when it ordered the children spend up to 4 weeks of unsupervised parenting time with him, and share vacations 16

a. The District Court's Findings of Fact No. 7 & 8 and Conclusion of Law 5(g) regarding the effect of Mark's drinking on his ability to safely parent are clearly erroneous and do not protect the children's best interests 16

b. The District Court's Finding of Fact No. 9 and Conclusion of Law 5(f) regarding physical abuse, are clearly erroneous and do not protect the children's best interest 19

c. The District Court failed to give appropriate weight to the wishes of the children to be protected from Mark's alcohol-related behavior in Conclusion of Law 5(b) and failed to make sufficient factual findings on the matter 20

II. The District Court abused its discretion when it when it entered a parenting plan allowing Mark to claim the children on taxes when he was approximately $ 8,000 behind in child support and had not been

assisting with the payment of child-related costs during the pendency of the proceedings. 21

III. Laura requests this case be assigned to another District Court Judge 22

CONCLUSION 23

CERTIFICATE OF COMPLIANCE 25

TABLE OF AUTHORITIES

CASES

Brown v. Brown,
2016 MT 299 12

In re Marriage of Oehlke,
2002 MT 79, ...14

In re Marriage of Williams,
2018 MT 221 13

In re Parenting of D.C.N.H.,
2020 MT 119 ....12, 13

Silva v. City of Columbia Falls,
258 Mont. 329 (1993) 13

STATUTES

Section 40-4-212(1), MCA 13

Issues

Issue One: Did the District Court disregard substantial credible evidence of Mark's alcoholism and abusive conduct, and make clearly erroneous findings which were insufficient to protect the children's best interests, when it ordered the children spend up to 4 weeks of unsupervised parenting time with him starting in the summer of 2026, as well as extended vacation time?

Issue Two: Did the District Court abuse its discretion when it when it entered a parenting plan allowing Mark to claim the children on taxes when he was over $ 8,000 behind in child support, and had not been assisting with the payment of child-related costs during the pendency of the proceedings?

Statement of the case

Appellant/Petitioner Laura Turek filed a Petition for dissolution on January 10, 2024. (District Court Record Document 1). A hearing on the Petition was held before the District Court on May 8, 2025, and the District Court entered its Findings of Fact, Conclusion of Law and Order on July 9, 2025. (DCR Doc. 53). Laura filed a timely notice of appeal and is only appealing the District Court's parenting plan decision.

Statement of the facts

Appellee/Respondent Mark Turek and Laura were married on July 9, 2016, in Hall County, Nebraska. (DCR Doc. 1). The parties separated in August of 2022.

(*Id.*). The parties had three children of the marriage, J.C.T., born 2008; S.L.T., born 2010; and L.J.T., born 2017. (DCR Doc. 1).

In the Final Pretrial Order, Laura alleged that she moved to Boulder in May of 2023, and that the relationship was abusive. (DCR Doc. 40, Petitioner's Contention # 1). Laura alleged Mark was an active alcoholic, and that he had made little to no effort to be in the children's lives or support them since the parties' separated. (*Id.*, Petitioner's Contention # 2). Laura noted that since the separation, Mark had made trips to visit women in Wyoming and Montana and spent money on them, but never made arrangements to see his children. (*Id.*, Petitioner's Contention # 3).[1] Laura also noted that Mark owed over $ 6,000.00 in back child support at the time of the hearing. (*Id.*, Petitioner's Contention # 4). In Contention Nos. 5 and 6, Laura stated the following:

> 5. Laura supports Mark's involvement in the children's lives if he sobers up, gets into counseling and treatment, and begins with supervised visits. However, in his present state of mind and conduct, Laura believes that it would not be in the best interest of the children for them to have unsupervised parenting time with Mark.
>
> 6. Additionally, Laura is concerned that Mark would drive while the children while intoxicated or otherwise jeopardize their personal safety through his general carelessness.

---

[1] A review of the District Court docket will also demonstrate that Mark never filed a motion for an interim parenting plan.

At trial, Frankie Niemeir, Laura's mother, testified that Mark was "very violent" when he drank. (*Hearing Tr.*, pg. 11:15 to 12:14).

Laura testified that Mark had not exercised any visitation since she had moved to Boulder, even though credit card statements showed he had been in Montana and Wyoming. (*Hearing Tr.*, pg. 26). She testified that he owed $ 8,709 in back child support at the time of the hearing, as reflected in CSED records. (*Id.*, pg. 27).

Laura testified that the children were "scared of him when he drinks and the don't want to see him if he's still drinking . . . they are very adamant that they don't want to be around him unless he's quit drinking." (*Id.*, pg. 28). Laura testified about the volume and frequency of Mark's drinking during the marriage. (*Id.*). In her direct testimony, Laura went through credit card statements from the time period of the pendency of these proceedings, noting the frequency and amount of purchases that were associated with establishments that she knew Mark would drink at. (*Id.*, pg. 118-123) (discussing Exhibit 14).

Laura admitted texts into evidence (Exhibit 17), which showed Mark using vile and language to her during the pendency of the proceedings. (*Id.*, pg. 30). In one of them, Mark admitted hitting one of the children in the past but blew it off as horseplay. (*Id.*, pg. 30-31). Laura recounted the incident as follows:

> MS. TUREK: I was in the kitchen and [J.T.] came upstairs and he was holding his stomach, and his eyes were watering. I could tell he was fighting back tears, and "I said, 'What's wrong?'" And he said- like he shook his head, and "I said, 'What happened?'" and "he goes, 'Dad

> punched me in the stomach.'" And "I said, 'Why? What happened?'" And "he goes, 'Because I guess he called down the stairs and I didn't come up fast enough.'" And we left shortly after that.
> MR. MILLER: Okay. You left Mark shortly after that?
> MS. TUREK: Yeah.
> MR. MILLER: Had that kind of thing happened before?
> MS. TUREK: Yeah. [J.T.] has a Snapchat video that his friends videoed of him with a belt chasing him around with a belt like whipping him and [J.T.] you can tell, is scared, but he's smiling because all of his buddies are in the video. They're the ones videotaping it.

(*Id.*, pp. 31-32).

Laura testified that she did not want Mark having unsupervised parenting time with the children until he demonstrated sobriety. (*Id.*, pg. 35). Laura's response to Mark's proposed parenting plan (which was the one adopted by the District Court in this case) was as follows:

> MR. MILLER: Mark is wanting to have, in addition, to wanting to claim to get the benefits of the taxes, he also wants to have them for eight consecutive weeks during the summer. How do you think that would impact them?
> MS. TUREK: I think it would impact them a lot, especially if he's drinking. I sat the older kids down and let them know, you know, eight weeks to get their feelings on it and how they felt about it and my daughter started crying and "said, 'I can't go there that long, I mean, who's going to take care of us.'" So, she has celiacs. I mean, it's special food. It's special, you know, you can't have buns on the hamburgers, you can't use the same utensils, and he doesn't take it serious.
> MR. MILLER: Are you concerned he could drop the ball on that and actually cause her to have a health crisis?
> MS. TUREK: Yes.
> MR. MILLER: And then, he's also wanting Thanksgiving breaks and winter breaks. How do you think that would impact them?
> MS. TUREK: They've never been away from me for holidays, I mean.

> MR. MILLER: But you are open to the idea if he gets sobered up, he proves that he's in treatment, that he's sober, and then you are willing to work with him?
> MS. TUREK: Absolutely. They just want their dad back before he was drinking.
> MR. MILLER: Do you think his plans are in their best interest?
> MS. TUREK: Not right now.

(*Id.*, pp. 43-44).

Under cross examination on this same topic from Mark's attorney, Laura testified as follows:

> MR. NORCOTT: Okay, and so if he's not drinking, they would like to have parenting time with them, is that your testimony?
> MS. TUREK: Yes.
> MR. NORCOTT: Okay, and how are you proposing that Mark show that he doesn't drink if, in fact, he does drink in excess?
> MS. TUREK: I'd like AA meetings or treatment. Something to show that he's graduated from something, and he understands, I mean, his addiction.
> MR. NORCOTT: Okay, and when you say his addiction, has he been diagnosed with that addiction?
> MS. TUREK: Yes. So, we went for his brain tumor, and he had a bunch of symptoms and we thought it was because of the tumor, and it wasn't. The doctor said it was because of his fatty liver from drinking and his alcoholism. That's why his arms were going numb. They're actually in the doctor's reports.
> MR. NORCOTT: Okay, and when was this visit to the doctor?
> MS. TUREK: It was shortly before I left.

(*Id.*, pg. 90-91).

During their in chambers interviews, the two oldest children corroborated Laura's testimony regarding the danger that Mark presents with respect to parenting when under the influence of alcohol. These included J.T. telling the Court the following:

- "I feel a lot safer in Montana . . . than living with my dad." (*In Chambers Tr.*, pg. 11:6-8)
- "If he actually did change which I don't think he has. I don't think it'd be a good idea." (*Id.*., pg. 11:15-17).
- He would want to see proof that Mark was attending "AA or something" before they stayed with him. (*Id.*, pg. 11:21-22).
- "I don't think he's changed . . . and I really wouldn't want to see him, even if he asked. . . And just with the stuff I've been through with him." (*Id.*, pg. 15:5-11).
- "I mean, I could inform you, I guess, when we first moved up here and I guess I slept off to the door. Just to make sure it's like locked. It was a safety thing. I remember when he came up here and he went to Billings for a girlfriend of his. When he did come to visit, I stayed outside every night to make sure he didn't come out the house." (*Id.*, pg. 16:4-11)
- "Another time, and this is when I was living with him, I think, his buddies were up in an old country house living in and there's I think a tornado warning. Tornados are bad and I forgot to close the cabinet door. I got kicked out of the house for that night. I slept in a camper my mom snuck out and unlocked for me." (*Id.*, pg. 16:13-19).

- "And I just don't feel comfortable, you now, since I'm turning a legal adult and like you said, things won't come towards me, involve me. I don't feel comfortable [C.T.] or [L.T.] living with him, I mean without mom or me there. . . Since he liked to push me around and I won't be able to push around no more. He'd pick the next one. Maybe [C.T.]." (*Id.*, pg. 16:25 to pg. 17:8).

The following exchange was particularly disturbing:

CHILD: Well, I'd be four or five, he forced me out of my bed into a bachelor party, I think.
THE COURT: Yeah.
CHILD: Fed me shots and made me drive home and it doesn't take a lot of shots to get a four year-old drunk.
THE COURT: Yeah.
CHILD: And I had to drive like 30- or 40miles home drink driving because he was too drunk to drive.
THE COURT: Yeah. That's not the best situation.
CHILD: Oh yeah, there's several incidents of him punching me on the sides of my liver, kidneys, and stuff. Tackling me.
THE COURT: Yeah.
CHILD: Yeah, I just don't- Yeah.
THE COURT: You just don't want to be around him?
CHILD: Yeah. I mean, living through that, you can't just skip through
THE COURT: You can't just forget it?
CHILD: Yeah.
THE COURT: No, that makes sense.
CHILD: And I wake up every other night because of night terrors because of it.[2]

[2] Laura corroborated this testimony at trial. "MR. MILLER: Okay and how's [J.T.] doing these days? MS. TUREK: A lot better. It was a rough road in the beginning. I mean, he would wake up two to three times in the middle of the night to make sure the doors were locked. I would hear him moving around so I would get up to check and so then we finally got cameras because that made him feel better, but he would check constantly that the doors were locked." (*Tr.*, pg. 32:7-16).

(*Id.*, pg. 17:13 to pg. 18:13)

The second child, C.T., told the Court the following:

> CHILD: I don't know. I just- I don't think I want to see my dad. He's just not that type of person because I did see him a couple of times and same old, just like, I'll do this for you. Like if you stay and everything, but like I did stay at one point, and it was just the same old thing.
> THE COURT: Just the same old thing.
> CHILD: Yeah. Just consistent drinking, like manipulating and everything.
> THE COURT: Yeah, so when was the last time you stayed with him?
> CHILD: Like, stayed or visited?
> THE COURT: Oh, we'll say visited.
> CHILD: We went down to Nebraska for graduation. I think in May.
> THE COURT: May of this year?
> CHILD: Yeah.
> THE COURT: Okay.

(*Id.*, pg. 23:7 to 25).

C.T. also relayed to the Court the situation where Mark was in town, and she informed him she only wanted to see if him if he stopped drinking. (*Id.*, pg. 24:25 to pg. 26:9). According to C.T., Mark responded by berating Laura. (*Id.*). At another point in the interview, C.T. told the Court the following:

> CHILD: But he did admit to drinking though, he did admit.
> THE COURT: Well, so that was in court and I'm not going to go into that.
> CHILD: No, it was on the phone. He did tell me because he tried, he like basically told me that maybe one day you'll understand addiction and everything and all that and that like even if I drink one or two, it's not going to affect you and everything and it's just kind of a big spiel.

(*Id.*, pg. 26:20 to pg. 27:4).

In his direct testimony, Mark denied that that he drank in excess, saying that the last time he drank in excess was in 2021. (*Id.*, pg. 134). When asked how he behaved when drunk, Mark described himself as "sarcastic and funny". (*Id.*, pg. 135). Mark denied he was ever violent. (*Id.*, pg. 135).

Mark claimed at the hearing that the last time he'd been drunk was years ago, but also admitted that he had "two Coors Lights" just the day before the hearing while he was at Helena Hot Springs. (*Id.*, pg. 136). He said that he did not drive after consuming those beers. (*Id.*).

On cross examination, Mark was asked why he did not take time to see the children when he was in Boulder for the hearing. (*Id.*, pg. 188-89). He admitted he was in contact with them by text and that Laura had not done anything to interfere with his visitation. (*Id.*).

> MR. MILLER: But you're not, I mean, you're not pointing to anything. Okay, let me ask you this because I'm trying to figure this out. Is there anything that you are asking Laura to do that she hasn't done yet so you can see the older kids?
> MR. TUREK: No.
> MR. MILLER: Okay. So, it's on you to make that happen, right?
> MR. TUREK: Yep.
> MR. MILLER: You're not saying she's stopping you from making it happen.
> MR. TUREK: I guess not.
> MR. MILLER: Okay, thank you.

(*Id.*).

In cross examination, counsel discussed with Mark the vile texts that he sent Laura, as admitted in Exhibit 17. Mark admitted that Laura was being polite during

the text exchanges. (*Id.*, 192-93). Mark offered no defense or justification for his use of language in the texts.

> MR. MILLER: No, but and I understand that. I know this is difficult, but I'm just- you haven't identified anything that she's doing that's causing the problem there, right?
> MR. TUREK: Right.
> MR. MILLER: Okay, so I mean, could you understand why if Laura is being exceedingly polite to you and she's not obstructing you from seeing your kids, could you understand why she might have a hard time talking to you if you're going to use that kind of language?
> MR. TUREK: Yeah.
> MR. MILLER: Okay, and there's a lot of f-bombs in this text from you, aren't there, sir?
> MR. TUREK: Yep.
> MR. MILLER: Will you pledge under oath to not use that kind of language with Laura again?
> MR. TUREK: Yes.
> MR. MILLER: You promise?
> MR. TUREK: Yeah.
> MR. MILLER: Thank you.

(*Id.*, pg. 193-94).

On cross, Mark testified as to his consumption of alcohol at Broadwater Hot Springs the day before the hearing as follows:

> MR. MILLER: I want to ask you a question that I wasn't totally clear. You said that yesterday you were at the Hot Springs at Broadwater?
> MR. TUREK: Yep.
> MR. MILLER: And then you had said that you were with a girlfriend, I suppose?
> MR. TUREK: Yep.
> MR. MILLER: And you mentioned that she had been driving?
> MR. TUREK: Right, she drove there.
> MR. MILLER: Okay. She drove back- was it seemed like there was something to do with the beers you had as to why you weren't driving. I got that impression. Does that have anything to do with it?

MR. TUREK: Well, yeah, you shouldn't drink and drive.
MR. MILLER: Okay, so at least yesterday, you wisely thought that you'd at least had enough alcohol where you shouldn't be driving.
MR. TUREK: Well, it wasn't just yesterday.
MR. MILLER: Okay, when else?
MR. TUREK: I don't drink and drive.
MR. MILLER: Yeah, no, I understand, but I'm just- I'm not trying to criticize that. I think that's smart, but I'm just saying that like I got the impression from your testimony that you'd felt like you'd had enough beers to where you didn't feel comfortable driving, fair to say?
MR. TUREK: One beer is too many to drive.
MR. MILLER: But I mean, for you yesterday, however many you had, you felt like you had too many to drive?
MR. TUREK: I don't know if it was that. She drove there and she drove back.

(*Id.*, pg. 195-96)

In its Findings of Fact, the District Court only stated the following regarding the testimony about Mark's behavior and parenting matters:

5. The parties have three children. J.T. is 16, C.T. is 14, and L.T. is 7. Laura informed the Court visitation has been sporadic at best between Mark and his children. Mark asserts he had regular text and phone contact with his children until approximately 2 months ago when their phone numbers were changed.
6. Mark asserts he wants to see his children but feels the distance and Laura's changing plans have always been in the way.
7. Laura is concerned with Mark's drinking and believes he is not safe for the children when he has been consuming excessive alcohol. Mark acknowledges there was a time he was consuming excessive alcohol, after the death of his father and when his marriage ended, but asserts that while he currently drinks, he does not consume to excess and has not been intoxicated for years. Laura has not seen Mark drink since she left him and only assumes he is currently drinking to excess because of his tone/attitude in texts and other communications.
8. Mark acknowledged he continues to drink but that he drinks responsibly and doesn't see this as an issue.
9. Laura provided text messages showing the parties have a difficult time communicating and highlighting her concerns of violence towards

the children. See Ex. 17. Laura believes Mark has been violent to J.T. Mark informed the Court he was simply horsing around and while his son may have been hurt it was not his intention to injure him.

In its Conclusions of Law under the Section 40-4-212, MCA, the Court's analysis on the salient factors under 212 under Conclusion of Law No. 5 were as follows:

> (b) Wishes of the child: The children appear to be comfortable in their current situation and have a desire to stay with their mother. The older children express concern with their father's drinking and are unsure if this is still a problem. The older children expressed concerns about visiting their father and how he would care for them for extended periods of time.
> (e) Mental and Physical Health of all Individuals involved: This does not appear to be an issue with either parent.
> (f) Physical Abuse: There are allegations of rough play/abuse from the oldest child against father. Father acknowledges this incident but assertions it was horsing around. Their son will turn 18 prior to the summer of 2026.
> (g) Chemical Dependency/Chemical Abuse: Laura has concerns with Mark's drinking and believes it is inappropriate for the children to be around him unless he is sober. Mark acknowledges a previous problem with alcohol but asserts this is no longer the case.

(DCR Doc. 53, Conclusions of Law 5(b), (e), (f), and (g)).

In the "Final Decree" portion of its Order, the District Court order that Mark have four consecutive weeks of parenting time in the summer of 2026, and that the parties rotate Thanksgiving and Christmas holidays. Otherwise, the children were to remain with Laura in Boulder, Montana.

The District Court also ordered that the parties would alternative claiming taxes starting with the year 2025.

Standard of review

"A district court has broad discretion when considering the parenting of a child, and we must presume the court carefully considered the evidence and made the correct decision. This Court does not reweigh conflicting evidence or substitute its judgment for that of the district court; rather, we evaluate findings of fact to determine whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and whether they are supported by the evidence presented. Absent clear error, we review a district court's decision regarding a parenting plan for an abuse of discretion." *In re Parenting of D.C.N.H.*, 2020 MT 119, ¶ 8 (citations omitted).

"A court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice." *Brown v. Brown*, 2016 MT 299, ¶ 11 (citations omitted). "Webster's Ninth New Collegiate Dictionary defines 'arbitrary' to mean 'existing or coming about seemingly at random or by chance or as a capricious and unreasonable act of will;' similarly, 'capricious' is defined as 'characterized by a sudden, impulsive and seemingly unmotivated notion or action.' Thus, a review by a district court or this Court of an action under the 'arbitrary and capricious' standard does not permit a reversal merely because the record contains inconsistent evidence or evidence which might support a different result. Rather, the decision being challenged must appear to be random,

unreasonable or seemingly unmotivated, based on the existing record." *Silva v. City of Columbia Falls*, 258 Mont. 329, 335 (1993).

"Section 40-4-212(1), MCA, sets forth a non-exhaustive list of factors that a court must consider in determining what parenting arrangement is in the best interests of the child . . . at minimum, the court must make findings sufficient for this Court to determine whether the trial court considered the statutory facts and made its ruling based on the child's best interests." *In re Parenting of D.C.N.H.*, 2020 MT 119, ¶ 15 (citations omitted). The District Court's conclusion must be supported by "substantial evidence". *Id.*, ¶ 21.

This Court reviews "underlying findings in support of a districts court's decision regarding a parenting plan under the clearly erroneous standard. We review a district court's conclusions of law to determine if they are correct." *In re Marriage of Williams*, 2018 MT 221, ¶ 5 (citations omitted). "Findings are clearly erroneous if they are not supported by substantial evidence, the court misapprehends the effect of the evidence, or this Court's review of the record convinces it that a mistake has been made." *In re Marriage of Oehlke*, 2002 MT 79, ¶ 17 (quotation omitted).

Summary of argument

In denying Laura's request for supervised visitations, the District Court ignored substantial credible evidence that Mark has a serious drinking problem which impairs his ability to safely parent the children. Both older children expressed

fear and concern about being in his presence, and relayed specific incidents of unsafe parenting behavior. It was also undisputed that Mark struck his oldest child on at least one occasion, and that his conduct caused him to experience PTSD-like symptoms (night terrors).

Furthermore, Mark's admission that he was drinking the day before the hearing, and felt he was incapable of driving, is also very concerning given the fact that issues related to alcohol usage were front and center in this hearing. Moreover, Mark made little to no effort to see his children prior to the hearing when he was in Boulder, and could not explain why he failed to do so.

In the District Court's findings, it accepted Mark's explanation that his physical assault on his son was simply "horseplay" but did not mention any of the evidence provided by the children during the in chambers interview. Nor did the District Court carefully examine the totality of the circumstances to make sure the children were protected by harm from Mark's alcoholic behavior. Clearly the District Court had concerns about Mark's drinking, but it did not order treatment, AA, or supervised visitations. All it did was say at Conclusion of Law 5(f), the following (in bold): "**When the children are visiting their father he shall not consume any amount of alcohol. Failure to comply may result in loss of visitation.**" However, the District Court gave no teeth to this provision, and it would be impossible to ever prove Mark drank unless he was charged with a DUI or some

other alcohol-related crime. If the District Court was concerned about Mark's drinking on his ability to parent, it did not craft any provisions which would adequately address that.

Although this Court begins its consideration of a lower court's parenting decision under the assumption that it "carefully considered the evidence and made the correct decision", this presumption must yield to the facts when the totality of the circumstances suggests otherwise. This must be especially true in cases where there is admitted substance abuse, acts of physical violence from a parent to a child, and the expression of concern and fear from the children of being in the parent's care.

At a minimum, the "best interests of the children" standard must mean that children have a right to be safe and secure in a home environment. Unless a district court has substantial credible evidence that expressions of fear or unsafety are the product of duress or parental alienation, it has a responsibility to take the concerns of children seriously. The District Court did not do that in this case. This decision must be reversed as its findings are clearly erroneous; the evidence established that Mark's alcoholism had a legitimate effect on his parenting ability, and the safety of the children while in his care.

Furthermore, the District Court's decision to allow Mark to claim the children for tax purposes was also an abuse of discretion. Mark is over $ 8,000 behind in

child support and had not paid for bills. He has shown no responsibility for the children at all. By allowing Mark to claim the children for taxes, and not at least requiring that Mark pay all of the back child support and bills, the District Court was essentially rewarding Mark for failing to support his children. This is also a clear abuse of discretion and must be reversed.

Laura also requests this Court reassign this case to a different Judge who can take a fresh look at this case and take appropriate steps to investigate the serious allegations brought by the children, before Mark is allowed to have unsupervised parenting time with them.

Argument

I. The District Court disregarded substantial credible evidence of Mark's alcoholism and abusive conduct and made clearly erroneous findings that were insufficient to protect the children's best interests, when it ordered the children spend up to 4 weeks of unsupervised parenting time with him, and share vacations.

a. The District Court's Findings of Fact No. 7 & 8 and Conclusion of Law 5(g) regarding the effect of Mark's drinking on his ability to safely parent are clearly erroneous and do not protect the children's best interests

In her direct testimony, Laura testified that Mark punched his oldest son in the stomach when he failed to respond fast enough to an order from him. She also relayed another incident of abuse. This son expressed fear of seeing his father again. He also was concerned that if he was not present when his father was with

his sisters, one of them would be the subject of Mark's abuse. Mark did not deny that he punched in his son in the gut, but wrote it off as "horseplay".

The oldest daughter expressed concerns about Mark's drinking as well. She informed the Court that Mark was drinking excessively at a recent contact she had with him in Nebraska in May of 2025. She also informed the Court that Mark had admitted to her directly that he was still drinking. Mark also admitted that he drank the day before the hearing, and that he felt someone else should be driving. Laura also had serious concerns about whether Mark would be able to take care of their daughter's celiac disease, and explained her reaction to the idea that she would have to spend extended, unsupervised time with Mark:

> MR. MILLER: Mark is wanting to have, in addition, to wanting to claim to get the benefits of the taxes, he also wants to have them for eight consecutive weeks during the summer. How do you think that would impact them?
> MS. TUREK: I think it would impact them a lot, especially if he's drinking. I sat the older kids down and let them know, you know, eight weeks to get their feelings on it and how they felt about it and my daughter started crying and "said, 'I can't go there that long, I mean, who's going to take care of us.'" So, she has celiacs. I mean, it's special food. It's special, you know, you can't have buns on the hamburgers, you can't use the same utensils, and he doesn't take it serious.
> MR. MILLER: Are you concerned he could drop the ball on that and actually cause her to have a health crisis?
> MS. TUREK: Yes.

(*Tr.*, pg. 43:8 to pg. 44:2).

Yet, in the District Court's findings, none of the statements of the children are mentioned at all, and the totality of the evidence is not considered. Indeed, it is

unclear what the District Court's position on this critical issue is at all. The District Court simply recites what Mark says ("Mark acknowledged he continues to drink but that he drinks responsibly and doesn't see this as an issue."), but never makes its own findings of the facts. Even in Conclusion of Law No. 5(g) the District Court simply says, "Mark acknowledges a previous problem with alcohol but asserts this is no longer the case."

The District Court's order seems devoid of its own findings on this issue. Does the District Court think that Mark was violent with his older son when drunk? Does the District Court think that the children's fears of being with their father are credible? Does the District Court itself actually believe that Mark's drinking is a problem? These are critical questions regarding the children's safety that are left unanswered by the District Court's analysis. Indeed, it seems as if the District Court was reluctant to make adverse findings or coming to a firm conclusion about what happened in the past and what needed to be done to protect the children in the future. In this case, however, the best interests of the children required the District Court to weigh the evidence and come to some kind of conclusion on this very serious and important issue.

The District Court's findings are inadequate to provide a firm basis upon which to conclude that the children should have unsupervised time with Mark. The District Court failed to explain and analyze the situation, and make a determination

regarding the facts. The District Court did not make any mention at all of the children's testimony, Mark's inability to explain why he was drinking in the days before the hearing and did not see his children, and the conclusions to be drawn from this. The best interests of the children in a case like this required the District Court to determine whether or not Mark had engaged in abusive conduct while intoxicated and explain why it was not ordering supervision. The District Court's findings are clearly erroneous and work a substantial injustice to these children, by placing them in a potentially dangerous situation where they may be exposed to harm at the hands of their father which was supported by substantial, credible evidence. This evidence should have triggered the appointment of a *guardian ad litem* to be paid for by Mark instead of giving Mark unsupervised time with the children.

b. <u>The District Court's Finding of Fact No. 9 and Conclusion of Law 5(f) regarding physical abuse, are clearly erroneous and do not protect the children's best interest</u>

A similar analysis holds true with respect to allegations of physical abuse. Mark admitted he punched his son in the stomach but claimed he was just horsing around. Laura provided further context for the assault, and the oldest son expressed unmistakable fear for his own safety and that of his sister. But what did the District Court think of this? Did the District Court think this was abuse, or just horseplay? If so, why? We have no idea because it did not make any concrete findings. A finding of this nature is critical in a case like this and cannot be ignored due to the

serious ramifications that would accrue if one of the children was exposed to further abuse during unsupervised time with Mark.

If every parent who assaulted a child could be let off the hook by simply claiming it was "horseplay," no one would ever be convicted of abuse. Mark's excuse would never be sufficient to shield him from criminal liability if he had been charged with an offense for such conduct, so why does the District Court think it was apparently harmless? We do not know because the District Court did not explain itself on this critical issue. Its finding is clearly erroneous and is not sufficient to ensure the best interests of the children are being protected.

c. <u>The District Court failed to give appropriate weight to the wishes of the children to be protected from Mark's alcohol-related behavior in Conclusion of Law 5(b) and failed to make sufficient factual findings on the matter</u>

The two oldest children expressed unmistakable fear of being with the father due to his drinking. The oldest daughter even corrected the District Court's mistaken impression about Mark's admission to her that he was still drinking. She also explained to the Court that when she was around him in May of 2025, he was still drinking and that it was having an impact on his parenting. None of these facts made its way into the District Court's findings.

The Court's written findings do not reflect that the children's wishes to be safe and free from danger were weighed. In this case, given the totality of the circumstances and the risk, they should have been given tremendous weight, but it

is difficult to see if they were given any weight at all. Indeed, the District Court's findings on this issue appears to be clearly erroneous, as all it said of the matter was that, "[t]he older children expressed concerns about visiting their father and how he would care for them for extended periods of time." But this is not what the evidence actually showed. The evidence actually showed the children expressing legitimate safety concerns about being in their father's care due to his drinking, with specific instances of conduct and actual fear—not just concerns. The District Court's findings paint a much more benign and harmless picture of the situation than what the Court was actually told. This finding, as the others, is insufficient as a matter of law, clearly erroneous, and does not protect their best interests.

II. The District Court abused its discretion when it when it entered a parenting plan allowing Mark to claim the children on taxes when he was over $ 8,000 behind in child support and had not been assisting with the payment of child-related costs during the pendency of the proceedings.

Exhibit 19 was entered into evidence and showed that, as of the hearing, Mark owed Laura $ 8,709 in back child support. (*Tr.*, pg. 27:15-21). Mark was uncooperative in establishing support. (*Tr.*, pg. 41:9-18). Laura also testified about extensive medical bills and costs for the children, and the fact that Mark had not paid for any of it. (*Tr.*, pg. 37:9 to pg. 38:12; pg. 42:3-25). Medical expenses were admitted in Exhibit 2, and discussed extensively. (*Tr.*, pg. 61:24 to pg. 65:9). Even though a letter was sent to Mark's attorney with the expenses and seeking payment at Exhibit 20, no payment from Mark was ever provided. (*Tr.*, pg. 65:14 to pg.

69:10). School expenses were also admitted at Exhibit 4. (*Tr.*, pg. 70:2-16). Laura also testified that she makes about $ 5,000 per month after taxes, has rent and basic utilities at around $ 2,000.00, and that she lived paycheck to paycheck. (*Tr.*, pg. 39:22 to pg. 40:19).

Mark provided no excuse or justification for his failure to pay all of these expenses, as well as child support. Mark lives at his mom's house and does not have a car payment. (*Tr.*, pg. 197:5-10). Mark has about $ 4,000 per month in disposable income after his basic expenses. (*Tr.*, pg. 197:11-14). Mark claimed he would pay $ 900 to get caught up on child support. (*Tr.*, pg. 198:1-6).

Allowing Mark to claim the children for tax purposes in this case is an abuse of discretion. Mark owed over $ 8,000 in child support, thousands in bills, and does nearly nothing to support the children. None of this was mentioned in the District Court's findings. This conclusion must be reversed as well.

III. Laura requests this case be assigned to another District Court Judge

Laura believes her children went out of their way to let the District Court Judge know they were scared of their father when they drank and did not want to be alone in his care. Laura does not think that the District Court Judge took adequate steps to protect them from future harm and did not give the children's testimony the weight they deserved. She asks this Court to reassign this case to another District Court Judge to take a fresh look at this case and perhaps appoint a GAL, at Mark's

expense, to conduct an investigation before he has any unsupervised time with the children. She believes this would be in her children's best interests. Laura simply does not have any confidence that this District Court Judge would get this issue right the second time around and does not want to take the risk with her children's safety and well-being. She does not understand why this issue was not taken with greater care and seriousness by the District Court Judge in this case. She has gone to great lengths to get out of an abusive relationship and protect her children from Mark, and she appeals to this Court to ensure that her efforts and work are respected and that the children are not needlessly placed in harm's way.

IV. Conclusion

The District Court's decision must be REVERSED. The District Court was presented with substantial credible evidence that Mark's use of alcohol was presenting a safety risk for unsupervised parenting time. The District Court's findings failed to reflect these facts and were clearly erroneous.

In the face of the evidence of the effect of Mark's drinking on this parenting, Mark telling the Court that "he doesn't see this as an issue," is wholly insufficient to protect the children's best interests. The oldest boy, J.T., expressed substantial and significant fear of his father, including a fear that if he was not present with his sisters, one of them would suffer next. The District Court had a responsibility to weigh and consider this testimony, especially given the fact that Mark admitted he

had struck his son on at least one previous occasion, but failed to do so. The District Court's findings do not reflect the facts presented on the serious issue of the well-being and safety of the children and are clearly erroneous as they do not reflect the seriousness of this situation as established through the testimony and Mark's own admission.

Similarly, the District Court's decision to award Mark the ability to claim the children for tax purposes is an abuse of discretion. Mark was behind approximately $ 8,709 in child support at the time of the hearing, and had not paid medical bills. Laura was living paycheck to paycheck, while Mark lived at his mom's house and had approximately $ 4,000 per month in disposable income. The District Court's decision to give Mark the ability to claim the children for tax purposes is a substantial injustice and should be reversed as well.

Finally, Laura requests this Court exercise its discretion and reassign this case to a different judge on remand. She requests a new judge take a fresh look at these facts, and then take further steps—such as the appointment of a GAL at Mark's expense—to ensure the children are safe and protected.

DATED this 15th day of September, 2025.

By: /s/ Brian Miller
Brian Miller
MORRISON SHERWOOD WILSON DEOLA PLLP
Attorney for Petitioner/Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2016 for Mac is 6885, not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

BY: /s/ Brian J. Miller
Brian J. Miller
Attorney for Petitioner/Appellant

CERTIFICATE OF SERVICE

I, Brian James Miller, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 09-17-2025:

Garrett R. Norcott (Attorney)
1 N Last Chance Gulch
Suite 6
Helena MT 59601
Representing: Matthew Allen Turek
Service Method: eService

Electronically signed by Chris Gaub on behalf of Brian James Miller
Dated: 09-17-2025