IN THE SUPREME COURT OF THE STATE OF MONTANA
No. _____

JOHN ROBBINS,

Petitioner,

-vs.-

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, THE HON. JOHN C. BROWN, DISTRICT JUDGE,

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

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PETITION FOR WRIT OF SUPERVISORY CONTROL

Petitioner John Robbins, through counsel, petitions this Court to issue a Writ of Supervisory Control directing Respondent Montana Eighteenth Judicial District court, Hon. John C. Brown, District Judge (District Court) to: 1) vacate the District Court's October 11, 2024 Order for Interim Parenting Plan pursuant to this Court's ruling in *In Re: the Parenting of GLMS and TLS,* 2025 MT 10; and 2) properly provide notice and hearing of any further District Court Orders related to amendment of the parties' Parenting Plan herein.

LEGAL ISSUES

1. **DID THE DISTRICT COURT WRONGFULLY AMEND THE PARTIES' FINAL PARENTING PLAN WITHOUT PROPER NOTICE AND/OR HEARING RELATED TO THAT AMENDMENT;**

2. **DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT FAILED TO ACT UPON PENDING MOTIONS FOR APPROXIMATELY A YEAR FOLLOWING THE FILING OF MOTIONS.**

SUMMARY OF THE CASE AND STATEMENT OF RELEVANT FACTS

This case arises out of a Parenting action between John Robbins (John) and Melissa Robbins (n/k/a Melissa Bear) for their 13 year old child JR. Prior to October 11, 2024, John was the primary custodian of JR. Following multiple hearings in this matter, the District Court, Hon. Magdalena Bowen, Standing Master had entered a Final Parenting Plan in favor of John based upon Melissa's behaviors while parenting the parties' minor child.

John remained the primary parent in this case from August 11, 2021 through August, 2024, when Melissa, in a separate action, sought and obtained a Temporary Order of Protection against John.[1] At that time, Standing Master Bowen, who was intimately familiar with the parties and facts of the case, specifically Melissa's repeated attempts to use Orders of Protection to exclude John from parenting the

[1] Additional facts regarding the timing and amount of Orders of Protection Melissa sought is discussed further *infra.*

parties' minor child, had retired. Standing Master Bowen had multiple hearings in the matter and was familiar with Melissa's attempts to modify the Plan and had declined to do so. Melissa had violated the Parenting Plan by failing to pay expenses as ordered by the Court, including expenses related to band instruments for JR. After obtaining the Order of Protection, Melissa changed JR's school from Belgrade, where he had attended for all of his schooling up until that point to Bozeman, contrary to the provisions of the parenting plan which required that JR attend school in Belgrade. Judge John Brown assumed jurisdiction on or about August 5, 2024 after the Standing Master's retirement. He had no involvement with this case prior to that date.

A review of the 63 page docket sheet shows that this file is replete with filings by Melissa between 2021 and 2024 attempting to amend the parties' Final Parenting Plan and her multiple changes in counsel of record. Melissa has had six (6) attorneys over the course of this litigation. (Docket sheet, Exhibit 1). Despite Melissa's repeated efforts to circumvent the parenting plan, Standing Master Bowen denied each and every request. However, after retirement, Judge John Brown granted Melissa's request for a Temporary Order of Protection, despite the fact that she was not involved in the incident that she alleged resulted in the need for the Order of Protection. (Petition for Order of Protection Exhibit 2). Interestingly, Melissa did not reference the parenting matter at the time of filing the

request for the Temporary Order of Protection.

The Court held a hearing on the entry of a Final Order of Protection on or about September 24, 2024, where, upon being advised by John's counsel, it took judicial notice of the parenting matter in DR-14-100 and declined to extend the Order of Protection to become permanent.

Despite the denial of the Permanent Order of Protection, the Court then interviewed the parties' minor child, JR in chambers, away from the parties and not subject to cross examination of either party. Based on that interview, it determined that it was proper to amend the parties' Final Parenting Plan without any further inquiry. Melissa submitted her proposed amended plan on October 8, 2024. John declined to provide a modified plan as he did not agree to any modifications. The Court then entered Melissa's updated Plan as an Order on October 11, 2024 without providing John with the requisite 14 days to object to the parenting plan pursuant to Uniform District Court Rule 2(b). The District Court then adopted the Plan just three (3) days later and did not provide John with any further ability to object, provide Affidavits, participate in cross examination or having further hearing on the issue.

Following entry of that Order, John objected by Motion on October 24, 2024—within the timeframe permitted by the Rules of Civil Procedure, and requested that the Court set a hearing to modify that October 11, 2024 Parenting

Plan. The Court did not rule on that request. He then filed an additional Motion for Contempt on or about May 13, 2025 requesting further relief from the Court. Still the Court did not set a hearing or act on that motion.

As of October 10, 2025, Melissa has now moved from her apartment with the parties' minor child to a hotel pending "renovations" at her apartment. She provided notice of this move via email dated October 11, 2025. (Exhibit 8). She provided no further information about the move, however she has moved multiple times with JR since the inception of this case (approximately 6-7 times) where John has continued to reside in the same household for the duration of the matter. JR is now living in a hotel with no personal space of his own.

John has repeatedly attempted to contact JR, has attempted to exercise his parenting time, and has attempted to comply with the provisions of the Court's "Interim" Plan to no avail. Copies of the text message exchanges between John and JR evidencing his attempts to have contact with JR.

John files this Writ in response to the District Court's entry of the Plan and based on its inaction in addressing the outstanding issues in this case. The Court acted with conscious disregard of John's fundamental right to parent and failed and refused to apply controlling Montana law. John has been without meaningful contact with JR for a year-- since the Court's entry of the October 11, 2024 Order.

STANDARD OF REVIEW

Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Judicial Dist. Court*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted). Such writ is available "[o]nly in the most extenuating circumstances." *State ex rel. Ward v. Schmall*, 190 Mont. 1, 4, 617 P.2d 140, 141 (1980).

This case is appropriate for a Writ of Supervisory Control because not only is the District Court proceeding under a mistake of law, Constitutional issues of statewide importance are also involved. The District Court's failure to provide Petitioner with the most basic notice and right to hearing in this matter as well as multiple other pending matters before this same Judge with similarly situated litigants where the Court has failed and refused to address outstanding issues affects all litigants' fundamental Constitutional Rights to access to justice without

"sale, denial or delay." *See Article II, §16* of the Constitution of the State of Montana. The Court's deliberate and consistent failure to rule and resolve pending matters has deprived Petitioner and all other similarly situated litigants of their right to Due Process under the law. This issue will have long-lasting consequences to these litigants. While the District Court has allowed this matter to linger as well as others to linger (some as long as 4-5 years), Petitioner and those litigants have missed years of parenting time with their children. Petitioner has been prohibited at every turn from participating in his child's life over the past year which has only served to alienate his child and destroy any chance at a relationship.

For this reason, this an urgent issue exists that involves issues of statewide importance. This Court should not permit the Court to continue to participate in the gross abuse of power against litigants by failing to timely address matters concerning Constitutional rights.

ARGUMENT

1. THE DISTRICT COURT WRONGFULLY AMENDED THE PARTIES' FINAL PARENTING PLAN WITHOUT PROPER NOTICE AND/OR HEARING RELATED TO THAT AMENDMENT.

This matter initially came before the Court for a hearing on Melissa's Petition for an Order of Protection in DR-24-377. (Exhibit 2) The Court, after becoming aware of the extensive Parenting file that Melissa had deliberately

omitted, in her application determined that the Order of Protection was without merit and declined to continue the Temporary Order of Protection that it had issued in DR-24-377. However, despite finding the OOP had no merit, and without any sort of notice or hearing, the Court conducted an in-chambers interview of the minor child, JR, and amended the Final Parenting Plan in this matter DR-14-100. It did this without providing either party notice, an opportunity for cross examination of JR, or to present further witnesses. The District Court's actions were contrary to this Court's holding in *In Re: the Parenting of GLMS and TLS*, 2025 MT 10.

This case is similar to the facts in *GLMS and TLS*. In that case, the father argued that the District Court erroneously amended the parenting plan without holding a hearing pursuant to the requirements of § 40-4-220, MCA. As in that case, the minor child, in an in chambers interview, allegedly expressed a desire to reside with mother. Father therein did not have an opportunity to cross-examine the child. This Court, in finding that the district erred in entering a modified plan relied on Section 40-4-220(1), MCA, which states:

> Unless the parties agree to an interim parenting plan or an amended parenting plan, the moving party seeking an interim parenting plan or amendment of a final parenting plan shall submit, together with the moving papers, an affidavit setting forth facts supporting the requested plan or amendment and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the

> motion is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing on an order to show cause why the requested plan or amendment should not be granted.

In analyzing whether the District Court erred in not applying the mandates of this statute, this Court first began with looking at the statutory interpretation, including what the plain language of the statute contained. This Court cited *In re U.A.C.*, 2022 MT 230, ¶ 13, 410 Mont. 493, 520 P.3d 295 in support of its analysis finding that "[t]he plain meaning of a statute controls when the legislative intent can be determined from the plain meaning of the words used in the statute." In re U.A.C., ¶ 13 (citation omitted).

It went on to find that based on the plain language of the statute at issue, (Section 40-4-220, MCA), the district court was *required* to hold a hearing on a party's request to amend the parenting plan unless the parties agree to an amended parenting plan—which in that case, and here, they did not—or the court denied amendment to the parenting plan for lack of adequate cause set forth in the pleading documents. As in *GLMS and TLS*, John did not waive a hearing. But despite that, the district court issued the amended Plan in response to Melissa's request for an Order of Protection[2] (a method that she has employed and weaponized six (6) occasions during this process in an effort to amend the parenting plan).

[2] A method she has repeatedly attempted to employ to circumvent the Court process 6 times, Docket 189, 168, 115, 55, and two separate request in new related matters, DR-24-624 and DR-24-377.

Not surprisingly, the Standing Master declined similar attempts by Melissa to abuse the process in this manner. After the first attempts, the Standing Master became wise to Melissa's strategy and summarily denied the requests. However, when District Court Judge John Brown assumed jurisdiction of this matter on or about August 5, 2024, he was not aware of the extensive filings. It appears that he apparently did not review the extensive docket and filings in DR-14-100 and did not have a clear understanding of Melissa's dilatory tactics contained in the 266 filings set forth in the 63 page case registry herein (Exhibit 1) as well as two (2) separate Order of Protection requests in DR-24-377 and DR-24-624 before amending the parties' Parenting Plan. Had he done so, he would have ascertained that Melissa's strategy was to obtain baseless Orders of Protection to undermine the parenting process and take sole custody of JR, contrary to John's right to a hearing.

While the Court did properly deny entry of a permanent order of protection, it did not hold any substantive hearing regarding parenting. Instead, it interviewed the child, JR, in chambers to ascertain the child's wishes. It did not take further testimony regarding parenting. (Exhibit 3, hearing minutes). It then issued an Order in DR-14-100 adopting an Amended Interim Parenting Plan with no further Affidavits or hearing.

Despite its obligations to hold a hearing, and failure to do so, the Court entered the following Plan (which required a review in 90 days which has yet to

occur) which divested John of his primary custodial role and Ordered the following: JR would reside primarily with Melissa and have parenting time with John as follows pursuant to page 3, paragraph 7b:

> b. School year schedule. Both parents have important roles to play in the child's development and growth. J.R. shall reside primarily with Melissa during the school year. John shall enjoy parenting time with J.R. as follows:
>
> i. John shall have supervised parenting time with J.R. every other Saturday for two visitations - Saturday, October 19, 2024 and November 2, 2024, unless the parties agree to other dates. Visitation shall occur for a period of four hours on those dates from 10:00 a.m. until 2 p.m. Visitation shall be supervised by John's mother if she is willing and available. The supervisor has the responsibility to be present with the minor child during visitation, to protect the minor child and prevent any retaliation or harassment, and to end visitation as directed in this Order if the minor child requests. The supervisor shall promote and encourage healthy communications and visitation between parent and child. In the event John's mother is not willing or able to supervise visitation, John shall select another third party to supervise and so inform Melissa and the minor child. If Melissa does not agree to the proposed supervisor, then John shall make arrangements with Hearts and Homes to supervise visitation.
> ii. J.R. may terminate the parenting time at any point with John if he feels unsafe.. However, J.R. will at least show up to all parenting time. If visitation must be terminated, J.R. shall notify the supervisor who shall escort the child from the location to a safe, neutral location. J.R. shall have his telephone with him and J.R. and/or the supervisor shall notify Melissa to pick up J.R.
> iii. After the two supervised visitations, if everything goes well, then John may resume unsupervised visitation with

the minor child every other Saturday from 10 a.m. to 6 p.m. and every Tuesday from after school until 7:30 p.m.

The Plan further provided for contact between JR and John at page 6, paragraph 7g as follows:

g. Parent-Child Communication.

i. Melissa may initiate contact through telephone, Skype, Facetime, Zoom, other such technology, etc. with J.R. when she does not have parenting time, at a reasonable time.
ii. John may initiate contact through telephone with J.R. each night that he does not have parenting time, at 8 p.m. Melissa will encourage communication.
iii. J.R. may call either parent whenever he chooses.
iv. During either party's parenting time, the parent shall facilitate and allow J.R. to speak with the parent not exercising parenting time reasonably Interim Parenting Plan – page 6 of 10 often and at reasonable times. The parents should further cooperate in the use of video chat, Skype, Facetime, Zoom, other such technology, etc. if requested by the child not currently exercising parenting time.
v. If either parent leaves cell phone service for an extended amount of time, he or she shall leave an emergency contact number for J.R. with the other parent.

Finally, the Plan provided at page 10, paragraph 15 that:

15. Co-parenting guidelines. a. Best interests of the child. Each parent shall act with the child's best interests in mind and endeavor to promote a healthy, beneficial relationship between the child and the other parent.

Copies of the previous and Amended Plans are attached as Exhibits 4 and 5.

This Plan essentially stripped John of his parental role and did not provide him with any redress. John had no opportunity for a hearing, had no Affidavits

from Melissa in support of amending the parenting plan in this matter, and the District Court has failed to act on his requests for hearing. The District Court did not and could not find that there was a change in circumstance that would warrant amending the parenting plan. As this Court held in *GLMS and TLS,* "[u]nder the plain language of § 40-4-220, MCA, unless it found inadequate cause set forth in the pleading documents and denied the motion to amend, the court was required to hold a hearing." It did not. Thus, the District Court erred in not holding a hearing and in substantially changing the previous Parenting Plan based on its lack of knowledge of the history that led to the previous Plan's adoption with John as the primary parent.

In sum, this Court must instruct the District Court to immediately vacate the October 11, 2024 Interim Plan and set any appropriate hearings related to the pending Motions in this matter. Alternatively, this Court must, at a minimum, instruct the District Court to hold an immediate hearing in this case to determine what modification, if any is appropriate herein as allowing it to linger is in contravention of John's fundamental Constitutional right to parent his child.

2. THE DISTRICT COURT ABUSED POWER WHEN IT FAILED TO ACT UPON PENDING MOTIONS FOR APPROXIMATELY A YEAR FOLLOWING THE FILING OF MOTIONS RESULTING IN THE LOSS OF A PARENTAL RELATIONSHIP BETWEEN PETITIONER AND HIS MINOR CHILD.

After the District Court entered the October 11, 2024 Interim Parenting Plan, John filed Motions to Modify that Plan in accordance with the 90 day modification provision in that Plan on or about October 18, 2024 within the time frame permitted by the Rules of Civil Procedure. The Court did not rule on that Motion and did not provide John with a hearing. On May 13, 2025, John filed a Motion for Contempt based upon Melissa's non-compliance with the Parenting Plan and her willful frustration of his contact with JR. The Court did not set a hearing on this Motion and has not made a ruling on this Motion. Melissa filed an additional Motion, on or about May 20, 2025 seeking to modify the parenting plan. (Docket numbers 257, 262, and 263, Exhibit 1). To date, the District Court has not set a hearing on any of these Motions and has declined to Rule.

Since the time of the filing of the Motions, John has had little to no contact with JR for approximately one (1) year at the time of this filing. A copy of John's Affidavits outlining the efforts he has made to have contact with JR are attached as Exhibits 6 and 7 hereto. Despite his efforts to have contact, John has been unsuccessful. He has enlisted the assistance of law enforcement to enforce the plan, however law enforcement has declined to provide any assistances citing that the plan is "too vague" to enforce.

This matter is appropriate for this Court to issue a Writ because the issues it addresses pertain to multiple litigants before this district Judge. This District Court

Judge has a history of failing to rule on outstanding matters, however litigants have been reluctant to call matters of the utmost importance to the Court's attention for fear that the Court will issue retaliatory decisions based on the requests.

The following constitutes a list of eleven (11) matters currently pending before the Hon. John Brown without final resolution. This list is not by any means all inclusive, but is a representative example of the matters that have remained outstanding without action from the Court for lengthy periods of time related to critical issues such as parenting and full legal redress:

Name of Matter	**Date Fully Submitted/Brief**	**Length of Time Pending/Until Order Entered**
Charlton Campbell et al. v. Mason et. Al, *DV-18-911*	3 day Bench Trial held 1/4/2021-1/6/2021	4 years 10 months no final decision
State vs. Gregory Smith *DC-19-469*	1 day Bench Trial Held 1/28/2021; request for ruling filed by State 7/2025	4 years 10 months no final decision
Rogers v. Newhall *DR-21-392*	Notice of Objections to Standing Master Final Decree filed 10/15/2024; hearing held 5/20/2025	1 year –no decision on objections
Izzo v. Hurd *DR-23-440*	Motion to Enforce Property Settlement Agreement filed 1/26/2024; requests for ruling filed 2/23/2024, 3/14/2024, 4/17/2024	Order entered 12/31/2024—11 months from time fully briefed

Jonathan Distad v. Tesha Distad DR-21-463	Bench Trial held 9/16/2024-9/18/2024	1 year 1 month
Janel McClendon v. Raynor McClendon *DR-20-431*	Motion to Amend Parenting Plan filed 11/22/2024	11 months—no hearing no ruling
Nordahl v. Nordahl *DR-20-450*	Motion to Vacate Order of Contempt filed 12/30/2024	10 months pending no hearing no ruling
Jordan v. Posey *DR-21-296*	Bench Trial held 2/10/2025-2/12/2025	No Decree; Rule 7.G Reminder to Court filed 9/15/2025; no Decree Pending 8 months from date of trial
Baker v. Smith *DR-20-185*	Motion for contempt and request for hearing filed 2/25/2025; Notice of Issue and Request for Ruling on urgent parenting matters filed 8/27/2025	No hearing on Motion for Contempt; no ruling –pending 8 months
Sumida v. Sumida *DR-20-241*	Motion for Contempt for Failure to follow Parenting Plan and to Modify Plan filed 8/14/2024	No hearing—pending for 1 year 2 months
Automotive and Industrial Distributors of Billings v. Montana Oil Supply, Inc. *DV-20-1206*	Original action filed 11/2/2020; Court vacated trial over objection of Plaintiff by Order dated 8/11/2025 based on "long-standing discovery options" that remain "unresolved	Pending 5 years 2 months

This list supports the proposition that the District Court's denial of a hearing for John in this matter not only affects John's fundamental right to parent, it is directly contrary to the clear mandates of §40-4-220 and this Court's holding in *GLMS and TLS.* John and all similarly situated litigants have been denied their U.S. and Montana Constitutional Rights to Due Process, and justice with "sale, denial or (most importantly) delay. Article II, §16, Montana Constitution. This is a matter of statewide importance to ensure, just and speedy resolution of litigation matters.

CONCLUSION

In sum, this matter is appropriate for issuance of a Writ of Supervisory Control to compel the District Court to Act. The District Court misapplied the law in this case and violated John's Constitutional Rights to Due Process and Justice without delay. This is a matter of statewide importance. Judge Brown has multiple open matters pending without resolution which results in denial of litigants' most fundamental rights. Some matters affect parenting, such as this case, and others affect other fundamental rights, such as failure to adjudicate criminal behavior and/or failure to provide resolution in civil dispute.

Furthermore, this case may have long lasting consequences for JR and John's relations while waiting for any sort of hearing whatsoever to allow a Final Plan to be entered so that John can appeal. At this stage, by entering an Interim Plan, the

District Court had denied his right to full legal redress, including appeal. It is imperative that this Court address this issue to avoid litigants similarly situated to John who, over the past year, has missed opportunities to parent and be involved in his child's life. The appeal process (if a final plan is even entered), can take a year or more to complete and some of these aggrieved parties may discharge sentences while waiting on resolution of an issue that is readily capable of being addressed at this juncture.

This Court should grant this request for a Writ of Supervisory Control and Order that the District Court vacate the October 11, 2024 parenting plan or, alternatively instruct the District Court to hold an immediate hearing on the outstanding issues.

RESPECTFULLY SUBMITTED this 16th day of October, 2025.

/s/ Suzanne Marshall Malloy
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Petition for Writ of Supervisory Control is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double spaced except for footnotes or quoted or indented material; the word count calculated by MS Word is not more than 4,000 words, excluding Certificate of Service and Certificate of Compliance.

/s/ Suzanne Marshall Malloy
Attorney for Petitioner/Youth

APPENDIX

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CERTIFICATE OF SERVICE

I, Suzanne C. Marshall, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 10-16-2025:

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