

IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No. DA 25-0318

IN RE THE MARRIAGE OF:

HEATHER HANDY
N/K/A HEATHER MILLER,
Petitioner and Appellee,

-and-

JACOB HANDY,
Respondent and Appellant,

APPELLEE'S RESPONSE BRIEF

On Appeal from Nineteenth Judicial District Court, Lincoln County
District Court Cause No. DR-27-2021-133
Honorable Jeffrey Dahood, Current Presiding Judge
Honorable Matthew Cuffe, Previous Presiding Judge

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ISSUES PRESENTED

1. Whether the District Court erred in issuing its April 23, 2025 Order Granting Motion to Amend in Part and Granting Motion for Contempt in Part and its April 23, 2025 Amended Final Parenting Plan without holding an additional hearing.
2. Whether the District Court denied Jacob the opportunity to cross-examine the minor child’s counselor and if so, did the District Court err in doing so.
3. Whether the Amended Final Parenting Plan is in the best interests of the minor children.

STATEMENT OF THE CASE

A Petition for Dissolution was filed by Appellee, Heather Handy (“Heather”), on August 16, 2021 (CR Doc. 1). The parties settled their divorce on July 26, 2022, and entered into a Final Stipulated Parenting Plan (CR Doc. 59). Since the entry of the Final Parenting Plan, Appellant, Jacob Handy (“Jacob”), has violated its terms and the final Decree that adopted the Final Stipulated Parenting Plan as a Court Order (CR Doc. 60). Accordingly, on October 6, 2022, Heather submitted a *Motion for Contempt and Brief in Support* and an *Affidavit of Heather Handy* with the District Court (CR Doc. 61 and 62). The parties then stipulated to appointing another guardian ad litem, Joseph Raffiani, on October 7, 2022 (CR Doc. 63). The agreement to appoint Joseph Raffiani did not resolve Heather’s *Motion for Contempt*, nor was it withdrawn in lieu of a guardian ad litem investigation. Jacob filed his response to the *Motion for Contempt* and an *Affidavit in Support* on October 21, 2022 (CR Doc. 69 and Doc. 70). Between the time of Heather’s *Motion for Contempt* and the

appointment of Joseph Raffiani, Joseph Raffiani made recommendations that impacted the parenting time and rights of the parties, however, none of his recommendations were filed with the District Court until August 15, 2023, ten months after being appointed (CR Doc. 87). On June 22, 2023, Heather filed a motion to set a hearing on her October 6, 2022 *Motion for Contempt* and asked for Joseph Raffiani to be removed as guardian and to enforce her parenting time and therefore amend the parenting plan (CR Doc. 73). Then, on August 3, 2023, Heather filed her *Motion to Amend Parenting Plan, Affidavit in Support, Proposed Amended Parenting Plan* and *Notice of Intent to Move* with the District Court (CR. Doc 81, Doc. 82, Doc. 83, and Doc. 84). A hearing was held on August 23, 2023, which covered Heather's *Motion for Contempt* (CR Doc. 61).

The District Court issued a ruling on November 9, 2023, which held Jacob in contempt of court, awarded attorney's fees, made adjustments to the parties' parenting plan and denied removing Joseph Raffiani (CR Doc. 102). While this order made adjustments to the parties' parenting plan, it did not specifically address Heather's *Motion to Amend Parenting Plan* that was filed on August 3, 2023. On December 7, 2023, Jacob appealed the November 9, 2023 Order with the Supreme Court, to which it was later affirmed on August 6, 2024.

However, also on December 7, 2023, Heather filed her *Ex Parte Motion to Amend Parenting Plan and for Contempt, Affidavit in Support, and Proposed*

Amended Parenting Plan with the District Court (CR Doc. 104, Doc. 105, and Doc. 106). On March 5, 2024, Heather filed her *Notice of Issue* (CR Doc. 131) with the District Court stating her *Ex Parte Motion* was ripe for ruling after all responses and supplemental responses had been filed. As the appeal on the previous order was still pending at that point, the District Court issued its *Order Staying Proceedings* on March 13, 2024 (CR Doc. 132).

At this point, several months had passed since the Court received substantive briefings, and since the appeal had run its course. On September 5, 2024, Heather filed her *Unopposed Motion to Set Telephonic Status Hearing* (CR Doc. 135) to address supplemental briefing deadlines for her outstanding August 3, 2023 *Motion to Amend* and her December 7, 2023 *Ex Parte Motion to Amend*. Jacob's attorney withdrew from the matter on October 9, 2024, and Jacob appeared Pro Se. A status hearing was held on October 15, 2024 wherein the District Court set a deadline for the parties to file supplemental information on the outstanding motions by November 15, 2024, and instructed the parties the District Court may rule on the affidavits instead of holding another hearing, to which neither party objected. (10/15/2024 Hrg. Tr. 7:4-8:13) This deadline considered that Jacob's attorney withdrew, and no orders could be entered within the window proscribed by Rule 10. The Court discussed Jacob's deadline to have an attorney appear, or to represent himself, as well as the deadline to supplement any briefings he wished to be

considered. Later in the proceeding, the Court asked Jacob again whether he understood the status of the case and the upcoming steps. *Id* at 10:12-13. Jacob replied that he had no questions. Counsel for Heather verified what the Court intended to do following the supplemental briefings. Heather’s counsel asked whether the Court intended to set a hearing. The Court noted: “I will decide whether I want a hearing or not.” *Id* at 11:8-19. The Court again asked Jacob whether he understood and he replied: “Yes, Your Honor. I do.” *Id* at 12:9.

Heather filed her supplemental affidavits with the District Court on November 14, 2024, and March 4, 2025 (CR Doc. 141 and Doc. 144), to which Jacob never filed any responses nor supplemental affidavits of his own, despite having ample notice and time to do so.

Ultimately, the District Court issued its order finding Jacob in contempt (again), and amending the parenting plan in part, giving Heather primary custody of K.H. and Jacob primary custody of Z.H. and E.H. (CR. Doc. 145 and Doc. 146). Jacob now appeals.

FACTUAL BACKGROUND

The parties are a divorced couple and parents of three children. Unfortunately, this Court is familiar with this family. The facts that led to the instant appeal address two parenting motions which date back to August 3, 2023 (CR Doc. 83) and December 7, 2023 (CR Doc. 104). During that time frame, the most recent *Motion*

to address an amendment to the parenting plan was Heather's *Ex Parte* request, which implicated Mont. Code Ann. § 40-4-220(2)(b) (CR. Doc. 104). Jacob submitted responses while he had counsel, including affidavits of therapists. (CR. Docs. 117-120). Finally, on April 23, 2025, the Court entered an order which addressed the pending amendment, *ex parte* amendment, and Jacob's ongoing contempt. (CR. Doc. 145). It is noteworthy that the original Motion to Amend had been pending for over twenty (20) months and had been ripe since January 2024. The *guardian ad litem* ("GAL"), by his own accord and request, did not submit any new reports to the Court by his own request given his claim that he had not been paid. The GAL has not been substantively involved since he submitted his *Report to the Court* on August 15, 2023 (the day of the last hearing) (CR. Doc. 86). Ms. Sterling was involved by the Court after its November 2023 Order, which was affirmed on appeal (CR. Doc. 102). It was also affirmed that "Jacob is on notice that further defiance of the Court's orders SHALL subject him to the full contempt powers of the Court, including but not limited to incarceration and alternative placement of the children."

The facts leading to the Court's amendment were detailed in the briefing in response to Heather's amendment motion and additional issues were raised when she submitted her *ex parte* motion. Heather provided information about her relocation and how the parenting situation continued to worsen following the August

2023 hearing. (CR Docs. 81, 82, 104, and 105) Heather referenced her move to Libby, Jacob's defiance of utilizing Ms. Leslie Sterling for therapy as ordered, his refusal to facilitate parenting time, his refusal to discharge the therapists who he unilaterally hired, his refusal to use Our Family Wizard, the children's aggressive behavior towards one another, and other issues. The issues continued to mount with no end in sight.

Jacob answered these claims via two briefing cycles. In response to Heather's request to amend the parenting plan due to her move to Libby from Eureka, Jacob submitted a verified response totaling 12 pages. (CR Doc. 86). Jacob did not request a separate hearing outside of the one already set for August 23, 2023.

In response to Heather's *ex parte* motion, Jacob submitted his affidavit and the affidavit of two therapists (Julie Wulfekuhle and Athena Martell) (CR. Docs. 118, 119, 120). The combined pages of these submissions are thirty-five (35) pages of affidavit and twenty-seven (27) pages of argument and responsive claims. In his submissions, Jacob indicates that he 'chose to rely on [his] faith, mental health care professionals, and Heather's maternal instinct to bring peace to our family.'" (CR. Doc. 118, ¶ 8). He also made representations that he was supportive of public school, therapy, and the like despite his actions being contrary. *Id.* Jacob alleged that Heather was abusive, as was her partner, and accused her of rescheduling her parenting time. *Id.* at ¶ 19. The record is ripe with evidence, as was submitted in Heather's

submissions, that none of the foregoing are true. Jacob claims that Heather ignored the children's mental health crisis, despite defying the Court's order to establish in person therapy. *Id* at ¶ 81. In this submission by Jacob, he addressed his side of Heather's claims. In response to the *ex parte* motion that was briefed after the August 23, 2023 hearing, Jacob did not request a separate hearing. (CR. Doc. 109). Jacob requested that the status quo be maintained and that the Court interview the children (as he asked in Doc. 86), among other things. Jacob, by his own volition, did not submit supplemental briefings after his attorney withdrew.

In its ten (10) page order, the Court provided significant details which led to his decision. His recital of his factual findings demonstrated that he reviewed the briefings and remembered the hearing held on August 23, 2023 very well. (CR. Doc. 145). In its Order, the Court detailed the best interest factors one by one which provided a factual basis to the conclusion offered in the Order. While Ms. Sterling is mentioned in the Order, her input was not impacting each factor analyzed by the Court. It is evident that the claims both parties levied were taken at face-value by the Court. The Court had the discretion to weigh the factors as it saw fit, including heavily weighing its finding that Jacob was primarily responsible for interfering with Heather's parent time. CR. Doc. 145, page 8, ¶ 2.

STANDARD OF REVIEW

The standard of review on a parenting plan modification is by clear error. “If its findings are not clearly erroneous, “we will reverse the district court's decision only where an abuse of discretion is clearly demonstrated.” *In re Marriage of Klatt*, 294 P.3d 391, 394 (Mont. 2013). “We have repeated on numerous occasions that the trial court's decision is to be accorded great deference because it “is in a better position than this Court to resolve child custody issues.” *Id.* An issue of law is reviewed *de novo*. “We review parenting plan determinations and modifications for a clear abuse of discretion.” *In re Marriage of Bessette*, 434 P.3d 894, 898 (Mont. 2019).

SUMMARY OF ARGUMENT

The District Court appropriately entered an amended parenting plan to address the amendment motions that that had been pending for over twenty (20) months and to address the fully ripe motion from August of 2023 that was ripe upon Jacob’s response filed January 2, 2024. While Jacob continued to try to levy the delays of the process, and an appeal, the Court was equipped with sufficient facts to enter an amended parenting plan with the best interests of the children as the paramount consideration. The Court entered detailed findings to support its modification of the parenting plan which it was empowered to do.

ARGUMENT

1. The Court's Amended Parenting Plan was supported by the findings made.

The District Court has discretion to amend a parenting plan where there is an emergency, and when circumstances have changed for the children that necessitate an amendment to serve the best interests of the children. Mont. Code Ann. §§ 40-4-212(1), 40-4-219(1), 40-4-220(2)(b). The statute provides that a motion to amend a parenting plan must have with it accompanying affidavits and factual support. “Adequate findings and conclusions are essential for without them this Court is forced to speculate as to the reasons for the District Court's decision. Such a situation is not a healthy basis for review.” *Jacobsen v. Thomas*, 142 P.3d 859, 863 (Mont. 2006). Heather complied with this requirement, and the record that preceded the order provided a plethora of facts to base its order upon. It is evident by the record in this matter that the Court spent significant time with this family and significant time considering the competing extreme claims over the course of four years. The Court weighed each best interest factor with factual support that was gathered from both parties’ submissions, arguments, and affidavits. The Court considered information presented in person at the hearing in August of 2023 as well. Jacob had the same opportunity to submit more requests to the Court or to request a hearing but did not do so. At no point in his responsive briefing to Heather’s motions did

Jacob ask that the Court set a hearing. In addition, Jacob was on notice that if he continued to defy the parenting plan, as he has done time and time again, the Court would utilize its contempt powers including but not limited to: “incarceration and alternative placement of the children.” The Court did just that, adjusted the placement of the children and imposed additional contempt sanctions.

2. Ms. Sterling was not a court-appointed expert or psychologist, rather a fact witness, so Mont. Code Ann. § 40-4-214 and ARM 24.189.807 is immaterial.

While Ms. Sterling was appointed as the child’s therapist, the Court did not reference Mont. Code Ann. § 40-4-214 when it involved her in this matter. While the statute does indicate that the Court may seek the advice of professional personnel, at no point did the Court indicate in any order or otherwise that it was appointing Ms. Sterling to provide advice to the Court. Ms. Sterling was not in a consulting role. Jacob cannot impose a duty upon Ms. Sterling that the Court did not. This argument lacks merit and should not be considered.

3. The Final Amended Parenting Plan is in the best interests of the children pursuant to Mont. Code Ann. § 40-4-212.

The Court possesses broad discretion when determining what is in the best interest of the children and to enter orders accordingly. The Court reviews parenting plan determinations and modifications for a clear abuse of discretion. It is evident from the Orders of the Court in this matter that all factors under Mont. Code Ann. § 40-4-212 were weighed and considered. The Court was presented with may


emergent issues and extreme facts and had to weigh them. Jacob has been notified more than once that his defiance of the parenting plan and Court orders had consequences which continue to play out via Court Orders, including the Order Jacob seeks the current appeal of. Jacob was notified, after a hearing, that the Court would exercise its discretion and powers to adjust child placement and impose other penalties if the issues persisted. The Court nonetheless analyzed each factor in its decision. The findings demonstrate that both sides of the arguments were considered and weighed by the Court.

CONCLUSION

For the foregoing reasons, Heather respectfully requests that this Court affirm the District Court's order that entered an Amended Parenting Plan.

DATED this 12th day of November, 2025.

GRAVIS LAW, PLLC



Mary Kate Moss

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with Rule 11 of the Montana Rules of Appellate Procedure. In accordance with Rule 11(e), the required portions of this document are double-spaced and printed in proportionately-spaced, 14-point Times New Roman typeface. The total word count of this document, as calculated by the undersigned's word processing system, contains 2643 words. This calculation excludes the Certificates of Compliance and Service and Tables of Contents and Authorities, but includes footnotes.

DATED this 12th day of November, 2025

GRAVIS LAW, PLLC



Mary Kate Moss

CERTIFICATE OF SERVICE


I hereby certify that, on the 12th day of November, 2025 a true and correct copy of the foregoing document was duly served upon the following named person(s):

_____ by depositing the same in the United States mail, postage prepaid and addressed as follows;

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I, Mary Kate Moss, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-12-2025:

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Electronically signed by Destini Townsend on behalf of Mary Kate Moss
Dated: 11-12-2025