

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 25-0479

IN RE THE MARRIAGE OF:

CLARK RYAN RAMSEY,

Petitioner and Appellant,

and

WHITNEY LYNN SODERHOLM
(f/k/a Whitney Lynn Huber, Whitney
Lynn Ramsey),

Respondent and Appellee,

APPELLEE'S ANSWER BRIEF

On Appeal From The Montana Thirteenth Judicial District Court,
Yellowstone County
Before the Honorable Colette B. Davies
Cause No. DR 20-0160

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I. STATEMENT OF ISSUES PRESENTED FOR APPEAL

1. Whether the District Court abused its discretion by retaining jurisdiction and denying Clark Ramsey's Motion to Surrender Jurisdiction.

II. STATEMENT OF THE CASE

This dissolution matter was originally filed by Appellant ("Clark") on or about February 12, 2020, when both parties and their three children resided in Montana. *District Court File, Doc. 1 and 2*. It is undisputed that since the filing of the Petition for Dissolution, Clark has resided in Montana and has been a resident of the State of Montana. *District Court File*. The Honorable Colette B. Davies, of the Thirteenth Judicial District Court, has been the presiding Judge of this matter since it was originally filed. *District Court File; see also App. A to Appellant's Brief, Order dated June 5, 2025*. This matter has been a highly contested matter throughout its inception. *Id.* During the course of the proceedings and up to the latest Order, there have been over 157 docket entries; a Court Appointed Parenting evaluation; eleven hearings; a three-day trial; multiple expert witnesses; and multiple in-chamber interviews of the minor children at issue. *Id.* Additionally, multiple witnesses residing in multiple states provided testimony in this matter via remote appearance. *Id.*

Early on in the proceedings, Clark, who is a practicing attorney, engaged in activity that damaged his credibility. *Doc. 41 and 42*. Within days of Judge Davies

issuing an interim parenting plan wherein the children were to primarily reside with Appellee (“Whitney”), Clark forged his attorney’s signature to a motion to dismiss and represented to the Court that the undersigned had agreed to dismiss the divorce action in its entirety. *Id.* Clark was admonished by the Court and was ordered to pay attorney fees and costs. *Id.*

After several days of trial and expert witness testimony, on or about September 14, 2022, the Hon. Davies entered her Findings of Fact, Conclusions of Law, and Decree of Dissolution in this matter. *Id.*, *Doc. 139*. On the same day, the Final Parenting Plan was entered by the Hon. Davies. *Id.*, *Doc. 138*. Pursuant to this Parenting Plan, the children primarily reside with Whitney, and Clark has frequent and continuing contact with the children in both Montana and in Virginia. *Id.*

On or about July 9, 2024, in the Commonwealth of Virginia, Clark registered the Montana Order. *Doc. 145, Exhibit 2*. On or about September 13, 2024, Clark filed in Virginia for a Protective Order on behalf of R.R. and B.R. (two of the three children) and against Whitney. *Doc. 145, Exhibit 1*. A preliminary Order of Protection was granted immediately, and subsequently extended until December 2, 2025. *Doc 147, Exhibit A*.

On November 25, 2024, Clark filed a Motion to Surrender Jurisdiction. *Doc 145*. After a status conference and full briefing, oral argument was held on the matter

on June 3, 2025. *See Transcript of June 3, 2025 hearing attached as Appellee's Appendix 1 ("Transcript")*. The Court orally pronounced its ruling at the conclusion of the hearing, which denied Clark's Motion to Surrender Jurisdiction. *Id.* On or about June 5, 2025, the Court issued the written Order reflecting its decision. *App. A to Appellant's Brief, Order dated June 5, 2025*. Clark is appealing the latest decision by the Thirteenth Judicial District Court, denying Clark's Motion for the District Court to Surrender Jurisdiction to the Commonwealth of Virginia. *App. A to Appellant's Brief, Order dated June 5, 2025*.

Just prior to changing counsel and filing his appeal, Clark filed a Motion to Disqualify Judge Davies, and filed a supporting Affidavit. *Doc. 162 and 163*. In said Affidavit, Clark levels many baseless accusations against Judge Davies, illustrating his contempt for Judge Davies. *Id.* Said Motion was denied by the present Court. *Id.*

III. STATEMENT OF FACTS

This Appeal is with regard to the discretion of the Honorable Colette B. Davies to retain jurisdiction over this matter. It is an undisputed fact that when the dissolution action was filed, both parties agreed that the Thirteenth Judicial District Court had jurisdiction over the parties and the subject matter therein. *Please see Court Docket*. It is also undisputed that all times relevant, Clark has resided in the State of Montana and continues to reside in the State of Montana. *Id.* Pursuant to

the Final Parenting Plan, the children primarily reside with Whitney in the Commonwealth of Virginia, and have frequent and continuing contact with Clark through monthly visits, Holiday parenting time in Montana, and at least eight weeks in the Summer in Montana. *Id.* The parties have been following the terms of this Parenting Plan since, and neither party has requested a modification of the Parenting Plan. *Id.*

Both Montana and the Commonwealth of Virginia abide by the terms of the Uniform Child Custody and Jurisdiction Enforcement Act (“UCCJEA”), and have enacted statutes reflecting the same. Pursuant to the applicable Virginia statutes, when Clark registered the Montana Orders, it did not confer jurisdiction or authority of the Virginia Courts to modify the Montana Orders. § 20-146.27, *Code of Virginia*. Virginia recognized that it had the authority to enforce, but not to modify the Montana Orders. *Id.*

Clark attempts to mislabel the circumstances surrounding his request for an Order of Protection, and the subsequent orders from the Virginia Juvenile and Domestic Relations District Court. First and foremost, Clark did not request an Order of Protection for all of the children of the household, leaving out the middle child. *Doc 145, Exhibit 1 and Doc 147, Exhibit A; Document 152.* At no point in any of the proceedings did the Virginia Domestic Relations Court find that the children were in danger, nor acted to remove the children from Whitney’s primary

care. *Id.* Whitney was barred from engaging in corporal punishment of the children, but her other interactions with the children were not limited in any manner. *Id.* Further, the Virginia Juvenile and Domestic Relations Court specifically stated that Whitney (and Clark) should follow the terms of the Final Parenting Plan issued by Judge Davies. *Id.*

After Clark filed his Motion for Court to Surrender Jurisdiction, the Court gave Clark several opportunities to provide documentation of the proceedings in Virginia. At no point, did Clark provide the Court with a copy of any Petition to Modify filed in Virginia. *Doc. 145, 147, 152, 154.* When asked specifically about another parenting action filed in Virginia, Clark's counsel specifically represented to the Court that he was not aware of any pending matter in a parenting court in Virginia. *Transcript, p. 20, line 13 to p. 21, line 16; p. 24, ll. 2 to p. 25, line 3.*

With regard to the applicable authority, Clark argued that for Montana to surrender jurisdiction, a **parenting** action needed to be filed in Virginia. *Doc. 145, p. 3, ¶ 2, citing In Re A.R.B., 2013 MT 310, 372 Mont. 274, 312 P.3d 425 (2013);* see also *Transcript, p. 20, ll 13-20.* Clark did not argue that the action filed in Virginia needed to be a "pending" action. Rather, Clark argued that the Order of Protection proceedings qualified as a "parenting" action. *Id.*

IV. APPLICABLE STANDARD OF REVIEW

The standard of review of a motion to decline jurisdiction is whether the District Court abused its discretion. *Stoneman v. Drollinger*, 2003 MT 25, ¶ 10, 314 Mont. 139, 144, 64 P.3d 997, 1000. The decision to decline jurisdiction on inconvenient forum grounds is purely discretionary with the District Court. *In re Marriage of Cook*, 223 Mont. 293, 297, 725 P.2d 562, 564–65 (1986). This standard requires that the abuse of discretion be so significant as to materially affect the substantial rights of the complaining party. *Perdue v. Gagnon Farms, Inc.*, 2003 MT 47, ¶ 8, 314 Mont. 303, 306, 65 P.3d 570, 572. An abuse of discretion occurs when a district court acts arbitrarily without conscientious judgment or exceeds the bounds of reason. *Id.*

This Court reviews the findings of a trial court sitting without a jury to determine if the court's findings are clearly erroneous. *Schubert v. Toepp*, 2025 MT 239, ¶ 12 (*citation omitted*). The findings of a district court “are clearly erroneous if they are not supported by substantial credible evidence, if the trial court has misapprehended the effect of the evidence, or if a review of the record leaves this Court with the definite and firm conviction that a mistake has been committed.” *Id.* (*citation omitted*). We “must view the evidence in the light most favorable to the prevailing party” when “determining whether the trial court's findings are supported

by substantial credible evidence.” *Id.* (citation omitted). This Court reviews a trial court's conclusions of law for correctness. *Id.* (citation omitted).

V. SUMMARY OF THE ARGUMENT

The ability of the District Court to properly adjudicate this matter since its inception has been conclusively proven. During the pendency of the divorce proceedings, Whitney and the children were primarily residing in Virginia. *See Court File.* A Court-appointed parenting evaluator was utilized that travelled to Virginia. *Id.* The children’s therapist was located in Virginia and provided testimony via Zoom. *Id.* The relatives of the parties were located in several different states and provided testimony via Zoom. *Id.* Judge Davies has already demonstrated that this matter can be properly adjudicated in Montana with those conditions precedent. Clark has failed to demonstrate how the current living status and conditions differ from those that already existed during the litigated dissolution.

At no time did the District Court “lose” jurisdiction, as the continued residence of Clark in Montana assured that Montana maintained exclusive and continuing jurisdiction. Additionally, on appeal, Clark is presenting new arguments and arguments contrary to those presented to the Court below. Clark cannot switch horses on appeal. Specifically, Clark’s counsel represented to the Court that a parenting proceeding in another state was a prerequisite to Montana surrendering jurisdiction. Clark’s counsel also represented that no parenting proceeding had been

filed in Virginia. For the purposes of the appeal, Clark has now presented a different legal theory on appeal. He has also made different factual representations. Pursuant to that alone, this appeal must be denied, as these new legal theories must be rejected. Regardless, to the extent that the Court considers this argument, a request for a restraining order is not a “parenting” proceeding.

The District Court did consider the relevant factors under the inconvenient forum factors. Additionally, no authority was cited stating that the factors are required to be weighted evenly. The District Court’s decision comported with the purposes of the statute. Further, Clark cannot establish that any such abuse of discretion be so significant to materially affect the rights of Clark.

Should the Court rule in Clark’s favor, the remedy on remand is to have the Court amend its Order to specifically address the alleged shortcomings. The remedy is not to direct the Court to grant Clark’s Motion to Surrender Jurisdiction.

VI. ARGUMENT

I. No ambiguity exists with regard to the District Court having exclusive and continuing jurisdiction over this matter.

It is an undisputed fact that Clark has resided in Montana prior to the filing of the Petition for Dissolution, and after the Decree of Dissolution and Parenting Plan was entered by the Court. Montana continues to have “exclusive and continuing” jurisdiction unless the circumstances listed in (a) or (b) in § 40-4-202 (1) M.C.A. are

demonstrated. §40-4-202 (1), M.C.A.; *In re B.P.*, 2008 MT 166, ¶ 19, 343 Mont. 345, 350, 184 P.3d 334, 338.

On appeal, Clark spends considerable time discussing how this statute should be construed and argues the District Court “lost” jurisdiction. The applicable authority makes it clear that the District Court did not “lose” jurisdiction:

“Under this statute, the Montana District Court retains “exclusive, continuing jurisdiction” over this matter until one of the two specific events described in subsections (a) or (b) occurs. **These subsections are neither arbitrary nor confusing. The statute unequivocally states that exclusive and continuing jurisdiction exists *until* a court in this state determines that none of the relevant parties reside in Montana.**”

In re B.P., 2008 MT 166, ¶ 19, 343 Mont. 345, 350, 184 P.3d 334, 338 (emphasis added).

Since Clark still resides in Montana, the District Court continued to have exclusive and continuing jurisdiction over the matter. The District Court did not commit error or abuse its discretion in determining that it maintained exclusive and continuing jurisdiction.

II. Clark is barred from raising new issues on appeal by changing his factual representations and legal theories.

As a threshold matter, it is well settled law that this Court will not address an issue raised for the first time on appeal, nor will it address a party's change in legal theory. *Zirkelbach Constr., Inc. v. DOWL, LLC*, 2017 MT 238, ¶ 12, 389 Mont. 8,

11, 402 P.3d 1244, 1246 (citation omitted). This rule applies to both substantive and procedural matters, as well as to a change in a party's theory of the case. *Est. of Harris v. Reilly*, 2025 MT 126, ¶ 17, 422 Mont. 383, 389–90, 570 P.3d 552, 557 (citations omitted). The basis for this general rule is that it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider. *Id.* (citation omitted).

On appeal, Clark is attempting to change his legal theory and is also attempting to raise new theories. In the case below, Clark argued that for the District Court to entertain his Motion to Surrender, a “**parenting**” proceeding must first have been filed in another jurisdiction. *Doc. 145, p. 3, ¶ 2, citing In Re A.R.B., 2013 MT 310, 372 Mont. 274, 312 P.3d 425 (2013)*; see also *Transcript, p. 20, ll. 13-20*. Clark’s attorney also argued that for the District Court to entertain a motion to surrender jurisdiction, it was a prerequisite to have another “parenting” case filed in Virginia. *Id.* In addition to the foregoing, in the matter below, Clark made it clear that no parenting matter had been filed in Virginia, and failed to provide the District with the documentation demonstrating the filing of the action. *Id.; Transcript, p. 20, line 13 to p. 21, line 16; p. 24, ll. 2 to p. 25, line 3; see also Doc. 145, 147, 152, and 154.*

Clark is now arguing that only a “pending” proceeding is required for the purposes of entertaining a motion to surrender jurisdiction. *Appeal Brief, page 13.*

This directly contradicts his briefing and argument below that a “parenting” proceeding was required to have been filed. In addition to the foregoing, Clark also now represents on appeal that a Motion to Modify Parenting Plan was filed in Virginia, and the District Court “ignored” its filing. However, as conclusively proven, counsel for Clark represented that it had not been filed. Further, although given the opportunity to do so, Clark failed to provide the Court with documentation demonstrating that he had petitioned the Virginia Court in a parenting proceeding.

The very first basis of the District Court Order that denied the Motion to Surrender Jurisdiction was that Clark’s attorney represented to the District Court that the filing of a “parenting” matter was a threshold requirement for his Motion. *Order Denying Motion to Surrender Jurisdiction*; p. 2, ¶ 2. The District Court further stated that it was advised by Clark’s attorney that no parenting matter had been filed in Virginia. *Id.* In other words, the District Court made its rulings based upon the legal theory and factual representations made by Clark’s attorney. Clark now has changed his theory and factual representations on appeal, and asks the present Court to find error and abuse of discretion when the District Court directly relied upon the legal arguments and factual representations made by Clark’s counsel.

Pursuant to the applicable authority, Clark is barred from doing so on appeal. Therefore, the District Court cannot be found to have committed error or abused its discretion with regard to: (1) determining that the filing of a “parenting” proceeding

had not occurred; and (2) that without a parenting proceeding being filed in Virginia, it could not entertain the Motion to Surrender. This issue alone dooms the entire appeal of Clark, and requires that his appeal be denied.

III. The Order of Protection matter in Virginia was not a parenting or pending proceeding in which jurisdiction could be surrendered.

The one consistent argument that Clark pursued in the matter below and on appeal is the argument that the Order of Protection matter was a “parenting” proceeding. Regardless of whether the matter was a “parenting” proceeding or a “pending” proceeding, it was not a viable action into which the case could be transferred.

Under the UCCJEA and the Virginia Code, the court that issued the Order of Protection was operating under very specific authority in which it only could enforce the Montana Orders:

§ 20-146.27. Enforcement of registered determination.

A. A court of this Commonwealth may grant any relief normally available under the law of this Commonwealth to enforce a registered child custody determination made by a court of another state.

B. A court of this Commonwealth shall recognize and enforce, but may not modify, except in accordance with Article 2 (§ [20-146.12](#) et seq.) of this chapter, a registered child custody determination of a court of another state.

§ 20-146.27, Code of Virginia.

In addition to the foregoing, the court in Virginia in which the matter was filed was not a court of record. Most importantly, not all of the children were listed as parties to this request for a restraining order. Therefore, not all of the necessary parties and children were subject to the limited authority of the Virginia court when it was deciding the restraining order matter.

Clearly, the court utilized in the Virginia restraining order matter was not an appropriate court to receive jurisdiction of an ongoing dissolution and parenting plan matter. The Virginia court lacked jurisdiction other than to enforce the Montana Order, and could not enter its own orders regarding the dissolution and parenting. The court in Virginia is not a court of record, and is not an equivalent court to a Montana District Court. Further, not all of the necessary parties and children were included in this action. Based on the foregoing, there was no viable “parenting” or “pending” action in which to receive this matter. Therefore, this Appeal must be denied.

IV. Judge Davies did consider the factors of § 40-7-108(2), M.C.A., and assigned proper weight to the most applicable factors.

The commissioner notes with regard to the application of § 40-7-108, M.C.A. are instructive in the present case. *§ 40-7-108, M.C.A. Commissioner Notes*. The purpose of the statute is to allow court to decide if another state is in a better position to make custody determinations. *Id.* The list of the factors under this statute in not

meant to be exclusive, allowing the courts to entertain other factors that may be relevant. *Id.* Courts are to utilize communication technology to alleviate concerns regarding distance. *Id.* If one state has the jurisdiction to decide both parenting and support issues, it is desirable for that state to be determined the most convenient. *Id.*

A review of both the transcript of the hearing and the written Order signed by the Court, that the factors of § 40-7-108 (2), M.C.A. were considered by Judge Davies in deciding the Motion.

Factor (a): The District Court acknowledged the Order of Protection and specifically noted that the children were not taken from Whitney's custody in analyzing any domestic abuse issue. *Transcript, p. 20, ll. 7-12; Order, page 2.* The District Court also specifically mentioned its ability to continue to preside over the matter and provide immediate relief to either party. *Id., p.25, line 4 to p. 27, line 6; Order, pp. 3-4.*

Factor (b): Since the District Court has been on the case since its inception, Judge Davies was well-aware of the length of time the children resided in Virginia primarily, and how much time the children have spent in Montana each year. The District Court noted that Clark still resides in Montana and that the children continue to have parenting time with him in Montana. *Transcript, p.22, line 25 to p. 23, line 1.*

Factor (c): Since Judge Davies has been the only Judge in this matter, the District Court was well-aware of the distance between Montana and Virginia, and the ability to conduct hearings with individuals residing in both states via technology. Based upon the history of the case, and the multitude of hearings, this is a factor that required no speculation on behalf of the District Court. The District Court had already successfully conducted several hearings with witnesses appearing electronically.

Factor (d): Judge Davies was also well-aware of the relative financial circumstances of the parties. Ironically enough, it is Clark who is asking the Court to potentially increase his costs of litigation by being the person that travels. Whitney's position is to keep the matter in Montana, and she is willing, if necessary, to travel and incur the cost. It would appear that this factor is irrelevant to deciding the motion, since it is designed to protect those parties that cannot afford to travel to another State.

Factor (e): There was no agreement and this factor is irrelevant.

Factor (f): Again, the District Court has been the only court to conduct hearings and has received evidence from individuals located in Virginia by way of electronic means. The Court noted that she has interviewed the children on multiple occasions and that has occurred both in chambers and via electronic means. The

District Court noted Clark's continued residence in Montana and that the children still had a connection with the State.

Factors (g) and (h): These factors were noted in detail by the District Court. *Transcript, p. 22; ll 3 to p. 17, line 6; Order, pp. 3-4.* These factors clearly weigh in favor of Judge Davies declining to surrender jurisdiction and promote the purpose of the UCCJEA. There is no dispute that the only court to have presided over this matter for five years is in the best position to make custody determinations.

In addition to the foregoing, no authority has been cited that states that each of the above factors must be weighed evenly. The comments to the statute allow any court to consider factors not listed above. Presumably, a district court can make its ruling solely upon factors not listed in the statute. When reading the statute as a whole, incorporating the comments, it is crystal clear that the District Court made the correct decision in maintaining jurisdiction. As stated by the District Court, Judge Davies is uniquely positioned to continue to rule on matters involving parenting and support.

Simply put, Clark wishes to have a clean sheet and to have anyone but Judge Davies decide this matter. However, as demonstrated, pursuant to the applicable authority, the District Court is not an inconvenient forum and is best positioned to continue to preside over the matter.

With regard to the authority cited by Clark, said authority is distinguishable. In *Myrland*, the district court declined to surrender jurisdiction by finding that it did not have subject matter jurisdiction because of the residency status of the child. *In re Marriage of Myrland*, 210 MT 286, 359 Mont.1, 248 P.3d 290 (2010). The Supreme Court reversed because it concluded that the inconvenient forum factors of § 40-7-108, M.C.A., were not even considered, let alone utilized by the Court. *Id.* The Supreme Court found that the district court failed to apply the appropriate statute in deciding the matter. *Id.* The matter was remanded for the Court to apply the appropriate statute to the facts of the case. *Id.*

In *N.G.H.*, a similar error was committed by the district court. *In Re N.G.H.*, 2004 MT 162, 322 Mont. 20, 92 P.3d 1215. In *N.G.H.*, the district again failed to analyze the issue pursuant to § 40-7-108, M.C.A. *Id.* Instead, the district court utilized a “interests of the child” analysis. *Id.* The case was remanded to apply the correct statute. *Id.*

In the present matter, Judge Davies did utilize § 40-7-108, M.C.A. in its decision and analyzed the matter under the factors stated therein. In the authority cited by Clark, neither district court considered § 40-7-108, M.C.A. at all. Therefore, said cases are not applicable. Certainly, neither case stands for the proposition that it is reversible error, as Clark has argued.

V. If the Appeal is successful, the applicable remedy is to remand for further findings, not to substitute the Court's judgment for that of the District Court.

On appeal, the Supreme Court's function is not to substitute its judgment in place of the District Court, but rather, it is confined to determining whether the District Court's findings are clearly erroneous. *MCA 3-2-204(5); Meridian Minerals Co. v. Nicor Minerals, Inc., 1987, 228 Mont. 274, 742 P.2d 456.*

Clark's main argument is that the District Court failed to address all of the factors contained in § 40-7-108, M.C.A. Pursuant to the relevant authority, if he is successful in convincing the Court that this occurred, the remedy is to remand the case to the District Court to specifically address those factors. It is not the function of this Court to substitute its judgment for that of the District Court or make findings on its own. This is especially true considering the history of the proceedings, and that Judge Davies is the only Court to have adjudicated this matter from its inception.

VII. CONCLUSION

Based on the foregoing, Whitney requests that the Appeal be denied and that she be awarded her attorney fees and costs incurred in litigating this appeal.

DATED this 21st day of November, 2025.

HENDRICKSON LAW FIRM, P.C.
Attorneys for Appellee

By /s/ Jeff A. Turner
JEFF A. TURNER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Appellee's Answer Brief was filed with the Clerk of the Montana Supreme Court and that a true and correct copy was served on the following counsel of record, by e-service upon:

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this 21st day of November, 2025.

HENDRICKSON LAW FIRM, P.C.
Attorneys for Appellee

By /s/ Jeff A. Turner
JEFF A. TURNER

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that the foregoing *Appellee's Answer Brief* is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes, quoted, and indented material; and the word count calculated by Microsoft Word is 4272 words, excluding the Exclusions set forth in (4)(d) thereof.

DATED this 21st day of November, 2025.

HENDRICKSON LAW FIRM, P.C.
Attorneys for Appellee

By /s/ Jeff A. Turner
JEFF A. TURNER

CERTIFICATE OF SERVICE

I, Jeff A. Turner, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-21-2025:

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Dated: 11-21-2025