IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0615

IN RE THE MARRIAGE OF:

TARALYN DECOCK,

Petitioner/Appellant,

and

DEAN DECOCK,

Respondent/Appellee.

OPENING BRIEF OF APPELLANT

On Appeal from the Montana Fifth Judicial District Court, Beaverhead County
Before the Honorable Luke Berger

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STATEMENT OF THE ISSUES

1. Whether the District Court abused its discretion through its deemed denial of Taralyn's Motion for Relief from Judgment under M.R. Civ. P. 60(b)(6) where her counsel possessed Dean's complete financial disclosures showing $1,285,705.86 in retirement accounts for weeks before mediation but affirmatively misrepresented their contents when Taralyn directly asked whether the discovery contained anything significant.

2. Whether the District Court committed reversible error by denying Taralyn's Motion to Rescind without conducting the unconscionability analysis required by Montana law.

3. Whether the District Court failed to fulfill its statutory duty under Mont. Code Ann. § 40-4-202 to ensure an equitable distribution when it approved a property settlement giving Dean $1,746,037.85 in marital assets while Taralyn received only $184,259.93.

STATEMENT OF THE CASE

This appeal is from the deemed denial of a Motion for Relief from Judgment under M.R. Civ. P. 60(b)(6) in the Montana Fifth Judicial District Court, Beaverhead County. The District Court failed to rule on the motion within sixty days, resulting in a deemed denial under M.R. Civ. P. 59(f). The Notice of Appeal was timely filed on November 21, 2025, within thirty days of the deemed denial on October 24, 2025.

This case arises from the dissolution of a fifteen-year marriage where Taralyn DeCock received approximately $184,260 in marital assets while her husband Dean received approximately $$1,746,037, a disparity of nearly $1.5 million. This extreme inequity resulted from her attorney's gross neglect in withholding Dean's complete financial disclosures showing retirement accounts worth $1,285,705.86 that Taralyn's counsel had received weeks before mediation. When Taralyn directly asked her counsel at mediation whether Dean's discovery contained anything significant she needed to know, counsel said no. This was a lie. Counsel had possessed Dean's complete financial disclosures for weeks, showing Dean had accumulated over $1.2 million in retirement accounts during the marriage. Taralyn discovered this betrayal only after signing away her rights to these assets.

The parties married on June 27, 2009. (D.C. Doc. 1 at 1). Taralyn petitioned for dissolution on November 13, 2023. (D.C. Doc. 1). Following mediation on March 5, 2024, the parties entered a Marital and Property Distribution Agreement. (D.C. Doc. 11). The District Court incorporated this agreement into its Findings of Fact, Conclusions of Law, and Decree of Dissolution on June 11, 2024. (D.C. Doc. 15).

On August 23, 2024, Taralyn filed a Motion for Relief from Judgment under M.R. Civ. P. 60(b)(6), supported by a detailed factual affidavit revealing that her counsel possessed Dean's complete financial disclosures weeks before mediation

but withheld this critical information from her. (D.C. Doc. 18; D.C. Doc. 19, Factual Affidavit of Taralyn DeCock). The District Court failed to rule on this motion within sixty days as required by M.R. Civ. P. 59(f), resulting in a deemed denial on October 24, 2025.

Taralyn also filed a Motion to Rescind the agreement based on unconscionability. (D.C. Doc. 22). The District Court denied this motion on October 31, 2024, explicitly acknowledging that "the issue is whether the Marital and Property Distribution Agreement must be rescinded because it is unconscionable" but then failing to conduct any unconscionability analysis whatsoever. (D.C. Doc. 28, Order at 6-7).

STATEMENT OF THE FACTS

Taralyn and Dean DeCock married on June 27, 2009, and have two minor children: C.D. (born xx/xx/2011) and C.D. (born xx/xx/2013). (D.C. Doc. 1 at 2). During the marriage, Taralyn primarily served as a homemaker and mother while Dean worked in the oil fields, accumulating substantial retirement benefits. (D.C. Doc. 19, ¶¶ 3-5).

On November 13, 2023, Taralyn filed for dissolution. (D.C. Doc. 1.) She retained an attorney who represented her through mediation on March 5, 2024. (D.C. Doc. 19, ¶ 15.)

Dean provided financial disclosure and discovery responses to Taralyn's counsel on or about February 15, 2024, nearly three weeks before mediation. (D.C. Doc. 19, ¶ 5). However, Taralyn's trial counsel never provided them to her. *Id.* At mediation on March 5, 2024, Taralyn specifically asked her attorney "if there was anything [she] needed to be aware of from Dean's discovery that was not something [she] had already brought up in [their] discussions of property distribution." (D.C. Doc. 19, ¶ 22). Counsel indicated nothing of significance existed. *Id.*

Based on this representation, and her counsel's assurance that the parties' retirement accounts were essentially a "wash" because they were approximately equal in value, Taralyn signed the Marital and Property Distribution Agreement. (D.C. Doc. 19, ¶¶ 3, 5). Because of her attorney's misrepresentations, Taralyn believed she was receiving approximately $520,720 in marital assets while Dean received approximately $725,169 at the time of signing. (D.C. Doc. 26 at 9.) The truth was something very different.

On April 26, 2024, nearly two months after executing the Agreement, Taralyn finally received Dean's discovery responses from her former counsel. (D.C. Doc. 19, ¶ 6). This was the first time she discovered that Dean had roughly $1,000,000 more in retirement, pension, and social security benefits than she was aware of at mediation. *Id.* The retirement accounts were not a "wash." They were not even close.

The following table was derived from Dean's financial disclosures that were in Taralyn's counsel's possession before mediation and illustrates the staggering disparity between what Taralyn was told at mediation and the actual distribution of the estate set forth in the Marital and Property Distribution Agreement:

DEAN'S ASSETS:

Asset	@Mediation (Taralyn's Understanding)	Actual Value
Equipment/Vehicles	$157,500.00	$157,500.00
200 Redtail Lane (home equity)	$640,000.00	$640,000.00
EJ Roth IRA	$872.39	$872.39
EJ 401k Rollover	$278,964.59	$278,964.59
Newmont Pension	-	$127,825.43
Covia Retirement	-	$152,615.19
MTI Retirement	-	$81,350.42
Newmont Stocks	-	$551.84
Towhaul	-	$206,000.00
CD	-	$119,000.00
Social Security	-	$333,526.00
Less: Dean's debts	-$15,000.00	-$15,000.00
Less: Camper loan	-$16,319.95	-$16,319.95
Less: Side-by-side loan	-$4,033.48	-$4,033.48
Less: 200 Redtail mortgage	-$316,814.58	-$316,814.58
DEAN'S TOTAL	**$725,168.97**	**$1,746,037.85**

TARALYN'S ASSETS:

Asset	@Mediation (Taralyn's Understanding)	Actual Value
Transfer from Dean's EJ Roth	$139,000.00	$139,000.00
Transfer from Dean (other)	$15,000.00	$15,000.00
Tara Roth	$138,350.13	$138,350.13
Tara IRA Rollover	$82,875.23	(non-marital)
Tara TOD	$164,835.51	(non-marital)
Vehicles	$20,000.00	$20,000.00

Asset	@Mediation (Taralyn's Understanding)	Actual Value
Marital equipment (34% business)	-	-$88,750.00
Less: Vehicle loan	-$14,340.20	-$14,340.20
Less: Credit card debt	-$25,000.00	-$25,000.00
TARALYN'S TOTAL	**$520,720.67**	**$184,259.93**

(D.C. Doc. 26 at 9).

At mediation, Taralyn believed she was accepting a distribution of $725,169 to $520,720; a ratio that slightly favored Dean of approximately 1.4 to 1. The actual distribution was $1,746,038 to $184,260; a ratio of 9.5 to 1 in Dean's favor.

In addition to the base distribution, the agreement also required Dean to pay Taralyn a $150,000 equalization payment. (D.C. Doc. 11 at 3.) Even assuming Taralyn receives this payment in full, the resulting distribution will still be $1,596,038 to $334,260, a ratio of nearly 5 to 1. Under either calculation, the disparity exceeds $1.2 million.

The agreement's retirement account division demonstrates the full extent of the concealment. Dean retained eight separate retirement vehicles: (1) Newmont Pension; (2) Newmont Company Stocks; (3) Newmont Investment Stocks; (4) Covia Retirement (Fidelity); (5) MTI Savings Plan 401K JH; (6) Roth IRA (Edward Jones); (7) IRA Advisory Solutions Fund (Edward Jones); and (8) Community Property WROS Select (Edward Jones). (D.C. Doc. 11 at 8-9.) Taralyn knew only of the Edward Jones accounts because they were discussed at annual meetings with their

financial planner. (D.C. Doc. 19, ¶ 4). The Newmont pension and employment-related retirement accounts were never mentioned.

Taralyn received only partial transfers from Dean's accounts ($139,000 from his Roth IRA and $15,000 via QDRO) plus three smaller accounts of her own: (1) NV TOD; (2) CB&T IRA; and (3) CB&T Roth. Of note, two of these were determined to be non-marital property. (D.C. Doc. 11 at 9; D.C. Doc. 26 at 9.) According to the agreement: "Taralyn's counsel shall prepare the paperwork necessary for the QDRO." This allowed the same attorney who concealed these values to process the minimal transfer and continue the deception. (D.C. Doc. 11 at 9.)

The agreement Taralyn signed contains provisions waiving her rights to Dean's retirement accounts. It provided that "[e]ach party shall retain their entire interest in any defined benefit or retirement plan in their name, and each party waives any further claim against the other party's retirement." (D.C. Doc. 11 at 3.) Taralyn signed this waiver without knowing that the retirement accounts she was waiving contained over $1,000,000 more than what her counsel had represented.

The agreement also provides that each party "made initial disclosures and explicitly waive final financial disclosures" and states the agreement "is voluntary" and that "[e]ach of the parties has read and approved this Agreement." (D.C. Doc.

11 at 2.) Taralyn signed these representations despite never having seen Dean's initial disclosures-disclosures her own counsel had possessed for nearly three weeks.

Had Taralyn known of the over $1,000,000 in additional retirement assets held by Dean at the time of mediation, she would never have agreed to the terms of the Agreement. (D.C. Doc. 24, ¶ 27.)

On May 13, 2024, less than three weeks after finally receiving Dean's discovery, Taralyn filed a Motion for Rescission, Contempt, Sanctions, Temporary Maintenance, Temporary Child Support and to Collect Personal Property from the Marital Home. (D.C. Doc. 18.) In that motion, Taralyn argued the Agreement should be rescinded because it was unconscionable. *Id.*

On October 31, 2024, the District Court issued its Order denying the Motion in its entirety. (D.C. Doc. 28). The court correctly identified that "the issue is whether the Marital and Property Distribution Agreement must be rescinded because it is unconscionable" and cited the proper legal standard. (D.C. Doc. 28 at 6.) However, the District Court then failed to conduct any unconscionability analysis, instead concluding without analysis that because Taralyn "was represented by counsel and willingly signed the Agreement," it was not unconscionable. (D.C. Doc. 28 at 7.) The October 31, 2024, Order was not a final order and therefore was not appealable. (D.C. Doc. 26 at 5.)

Following resolution of parenting issues through a Stipulated Final Parenting Plan executed on February 24, 2025, the District Court entered its Findings of Fact, Conclusions of Law and Decree of Dissolution on February 25, 2025, incorporating the Agreement by reference. (D.C. Doc. 26 at 5.)

On June 26, 2025, Taralyn filed a Motion for Relief under M.R. Civ. P. 60(b)(6), supported by a detailed Affidavit documenting her former counsel's gross neglect. (D.C. Doc. 26). The District Court failed to rule on this motion within sixty days as required by M.R. Civ. P. 60(c), resulting in a deemed denial. Taralyn timely appealed.

SUMMARY OF THE ARGUMENT

This Court should reverse on three independent grounds, any one of which requires remand for equitable distribution of marital assets.

First, the District Court abused its discretion by failing to grant relief under Rule 60(b)(6). Taralyn established all three requirements: (1) exceptional circumstances exist where her attorney possessed documentation showing Dean had $1,285,705.86 in retirement accounts but told Taralyn nothing significant existed when she directly asked; (2) substantial injustice results from a $1.5 million disparity in property distribution after a fifteen-year marriage where Taralyn was the primary caretaker of two children; and (3) no adequate remedy at law exists because a legal malpractice action cannot restore her statutory right to equitable distribution. This

Court's precedent in *Orcutt* compels relief where attorney misconduct prevents informed consent and deprives a party of statutory rights.

Second, the District Court committed reversible error in its October 31, 2024, Order denying the Motion to Rescind. The Court correctly identified that "the issue is whether the Marital and Property Distribution Agreement must be rescinded because it is unconscionable" and cited the proper legal standard from Mont. Code Ann. § 40-4-201(2), *Wagenman*, and *Tanascu*. (D.C. Doc. 28 at 6.) However, the it then completely failed to apply this standard, instead concluding without analysis that because Taralyn "was represented by counsel and willingly signed the Agreement," it was not unconscionable. (D.C. Doc. 28 at 7.) This Court's precedent in *Simpson* makes clear that courts must analyze unconscionability even when parties have counsel, and that unconscionability review trumps even explicit non-modification provisions. *In re Marriage of Simpson,* 2018 MT 281, ¶ 18. The District Court's failure to apply the very standard it identified constitutes reversible error.

Finally, the District Court violated its statutory duty under Mont. Code Ann. § 40-4-202 to ensure equitable distribution. The Court rubber-stamped an agreement giving Dean $1,746,037.85 while awarding Taralyn a paltry $184,259.93. It did so without any inquiry into this 9.5:1 disparity or the circumstances that created it. The conclusory finding that the agreement was "fair and equitable" was made without examining why one spouse received eight retirement accounts while the other

received partial transfers from two creating a gulf of over a million dollars. The District Court's failure to properly determine whether the vastly disparate distribution of the settlement agreement was conscionable pursuant to Mont. Code Ann. § 40-4-201(2) constitutes legal error and must be reversed.

STANDARD OF REVIEW

This Court reviews a District Court's ruling on a motion for relief from judgment under M.R. Civ. P. 60(b) for abuse of discretion. *In re Marriage of Anderson*, 2013 MT 238, ¶ 13, 371 Mont. 321, 307 P.3d 313. However, when the district court fails to exercise any discretion through a deemed denial, this Court must determine whether the movant presented sufficient grounds for relief. *Skogen v. Murray*, 2007 MT 104, ¶ 15, 337 Mont. 126, 157 P.3d 1105. In *Skogen*, this Court recognized that when a district court fails to rule within the time required by Rule 59(f), resulting in a deemed denial, the failure to exercise any discretion itself constitutes an abuse of discretion warranting closer appellate scrutiny.

The District Court's determination of unconscionability is reviewed for abuse of discretion, but its failure to apply the correct legal standard constitutes reversible error. *Tanascu v. Tanascu*, 2014 MT 293, ¶ 9, 377 Mont. 1, 338 P.3d 47. When a court identifies the correct legal standard but fails to apply it, this Court reviews de novo whether the error affected substantial rights.

Questions of law, including interpretation of statutes and court rules, are reviewed de novo. *In re Marriage of Simpson*, 2018 MT 281, ¶ 10, 393 Mont. 340, 430 P.3d 999.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO GRANT RELIEF UNDER RULE 60(B)(6) WHERE COUNSEL'S GROSS NEGLECT PREVENTED INFORMED CONSENT

Montana Rule of Civil Procedure 60(b)(6) provides relief from judgment for "any other reason that justifies relief." This Court has established a three-part test requiring: "1) extraordinary circumstances, such as gross neglect or actual misconduct by an attorney; 2) the movant acted to set aside the judgment within a reasonable period of time; and 3) the movant was blameless." *In re Marriage of Orcutt*, 2011 MT 107, ¶ 12, 360 Mont. 353, 253 P.3d 884 (additional citations omitted). Relief under subsection (6) is appropriate only in extraordinary circumstances that go beyond those covered by the first five subsections of the rule. *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 21, 338 Mont. 423, 166 P.3d 451. Taralyn satisfies all three requirements, and the resulting distribution creates such extreme inequity that fundamental fairness demands relief.

A. Extraordinary Circumstances Exist Where Counsel Possessed Complete Financial Information and Affirmatively Misrepresented its Contents.

The extraordinary circumstances requirement distinguishes Rule 60(b)(6) from the more routine grounds for relief in subsections (1) through (5). This Court has repeatedly addressed where that line falls, particularly in cases involving attorney misconduct.

In *Lords v. Newman*, counsel made a general appearance without authorization and then abandoned his clients entirely. *Lords v.* Newman, 212 Mont. 359, 367, 688 P.2d 290, 295 (1984). This Court granted relief, holding it "unconscionable to apply the general rule charging the client with the attorney's neglect" where counsel's actions constituted actual misconduct rather than mere negligence. *Lords*, 212 Mont. at 368, 688 P.2d at 295. The Court established that complete abandonment by counsel opens the door to extraordinary relief.

Not every attorney error crosses this threshold. In *Marriage of Castor*, this Court affirmed the denial of Rule 60(b) relief where counsel simply failed to note a rescheduled hearing date. *Marriage of Castor*, 249 Mont. 495, 499-500, 817 P.2d 665, 667-68 (1991). The Court found that missing a hearing due to a calendaring mistake was "not enough to require setting aside a judgment" because such errors, while regrettable, reflect ordinary negligence attributable to the client. Castor

establishes the baseline: routine attorney mistakes do not constitute extraordinary circumstances.

The analysis evolved significantly in *Karlen v. Evans*, where an attorney misled his clients into believing their case was progressing when it had actually been dismissed. *Karlen v. Evans*, 276 Mont. 181, 188, 915 P.2d 232, 237 (1996). This Court affirmed the District Court's grant of Rule 60(b)(6) relief, holding that "where the moving party can meet the higher burden of demonstrating extraordinary circumstances, gross neglect or actual misconduct, that the client was blameless and he or she acted to set aside the default within a reasonable period of time, then, under our case law, subsection (6) of Rule 60(b) is available." *Karlen*, 276 Mont. at 190, 915 P.2d at 238. The attorney's active deception about case status, as opposed to mere incompetence, constituted extraordinary circumstances warranting relief even thirteen months after judgment.

These same principles apply in dissolution proceedings. *See Orcutt*. There, the wife's attorney failed to disclose a real estate expert, failed to prepare evidence regarding the value of the marital home, and presented no evidence whatsoever on the only contested issue before the court. *Orcutt*, ¶¶ 3-4. The District Court "reluctantly" valued the home based solely on tax records submitted by the husband. *Orcutt*, ¶ 3. This Court reversed the denial of Rule 60(b)(6) relief, finding that counsel's complete failure to present evidence on the central issue constituted gross

neglect preventing "a full presentation of the cause or an accurate determination on the merits." *Orcutt*, ¶ 16. The Court emphasized that where the district court has a statutory obligation to equitably apportion the marital estate and counsel "totally failed to present evidence on the issue," relief is warranted. *Orcutt*, ¶ 17.

Taralyn's circumstances occupy the far end of this spectrum. This is not a missed deadline as in *Castor*. This is not abandonment as in *Lords*. This is not even a failure to investigate or prepare evidence as in *Orcutt*. Here, counsel possessed Dean's complete financial disclosures weeks before mediation, showing Dean had accumulated $1,285,705.86 in retirement accounts during the marriage. When Taralyn directly asked at mediation whether Dean's discovery contained anything significant she should know about, counsel affirmatively told her nothing of significance existed. That same day, relying on this false information, Taralyn signed the agreement.

The distinction between *Orcutt* and this case is critical. In Orcutt, counsel failed to obtain and present evidence. Here, counsel obtained the evidence, possessed complete knowledge of its significance, and actively concealed it while making affirmative misrepresentations when directly questioned. If failure to prepare evidence constitutes gross neglect warranting relief, then possessing evidence and lying about its existence must satisfy the extraordinary circumstances requirement *a fortiori*.

The *Karlen* comparison proves equally instructive. There, counsel deceived clients about procedural status, and this Court found extraordinary circumstances. Here, counsel deceived Taralyn about substantive financial information worth $1,285,705.86. If misleading a client about whether a case remains pending warrants relief, misleading a client about whether $1.2 million in retirement assets exists demands it.

The facts *sub-judice* are egregious. Counsel did not merely fail to act, as in *Lords*. Counsel did not merely make a calendaring error, as in *Castor*. Counsel did not merely fail to investigate, as in *Orcutt*. Counsel possessed complete information, was asked a direct question, and lied. When a client asks her attorney whether opposing discovery contains anything significant and the attorney falsely responds that nothing significant exists while sitting on documentation of $1.2 million in retirement accounts, extraordinary circumstances exist as a matter of law.

B. Taralyn Acted Within a Reasonable Time After Discovering the Deception.

The second element of a successful Rule 60(b)(6) motion requires that the movant act to set aside the judgment within a reasonable time. *Essex*, ¶ 25. What constitutes reasonable depends on the particular facts of each case. *In re Marriage of Waters*, 223 Mont. 183, 189, 724 P.2d 726, 730 (1986). Critically, the clock begins running not from entry of judgment but from discovery of the grounds for relief.

This Court's precedents establish generous timeframes where the movant could not reasonably have discovered the basis for relief earlier. In *Karlen*, clients filed their motion thirteen months after dismissal, yet this Court affirmed the district court's finding that they acted within a reasonable time. *Karlen*, 276 Mont. at 191, 915 P.2d at 239. The delay was excusable because the clients could not have discovered their attorney's deception any sooner. By contrast, in *Falcon v. Faulkner*, this Court found the timeliness element unsatisfied where the movant waited more than five years. *Falcon v. Faulkner*, 273 Mont. 327, 335, 903 P.2d 197, 202 (1995).

Where movants act immediately upon discovery, the element is readily satisfied. In *Wagenman v. Wagenman*, the wife moved within eight days of discovering the district court's error, and this Court found she "acted within a reasonable time as she moved immediately ... upon the discovery." *Wagenman v. Wagenman*, 2016 MT 176, ¶ 19, 384 Mont. 149, 376 P.3d 121. In *Orcutt*, approximately thirty days satisfied the requirement. *Orcutt*, ¶ 16.

Taralyn's timeline compares favorably to every case finding timeliness satisfied. On March 5, 2024, Taralyn asked her attorney whether Dean's discovery contained anything significant. Her attorney falsely said nothing of significance existed. Relying on that representation, Taralyn signed the agreement that same day. The deception remained concealed until April 26, 2024, when Taralyn finally

received Dean's financial disclosures and discovered the $1,285,705.86 in retirement accounts her attorney had hidden from her.

The seven weeks between signing and discovery is attributable entirely to counsel's concealment, not any lack of diligence by Taralyn. She asked the right question at the right time. Her attorney lied. She could not have discovered the lie any earlier because her own attorney controlled access to the documents that would have revealed the misrepresentation. Upon finally receiving those documents, she acted promptly.

If thirteen months is reasonable where clients must wait for an incarcerated attorney's files to become available, seven weeks is reasonable where a client must wait for her attorney to produce discovery that should have been provided before mediation. Dean suffers no prejudice from reopening this matter. The only consequence of granting relief is equitable distribution rather than allowing Dean to retain over $1.7 million while Taralyn receives less than $185,000.

C. Taralyn was Blameless Because she Reasonably Relied on Counsel's Misrepresentations.

The third element requires the movant to demonstrate blamelessness. *Essex*, ¶ 25. This Court has consistently held that clients are blameless when they reasonably rely on their attorneys and have no independent means of discovering the misconduct. Conversely, clients bear responsibility when they fail to take reasonable

steps to protect their own interests or remain willfully ignorant of readily discoverable information.

In *Griffin v. Scott*, this Court found clients were not blameless where they failed to mail a complaint promptly to their attorney, did nothing to check on the progress of the suit, and failed to inform their attorney that the matter required prompt attention. *Griffin v. Scott*, 218 Mont. 410, 413, 710 P.2d 1337, 1338-39 (1985). The clients in *Griffin* contributed to the default through their own inaction.

The calculus shifts entirely when clients act reasonably but are deceived by counsel. In *Orcutt*, this Court found the wife blameless because she "supplied her attorney with the realtor's letter, and according to her affidavit, was unaware [counsel] had failed to list the realtor as a witness." *Orcutt*, ¶ 16. The wife "believed the case was progressing and had supplied [counsel] with what she thought was evidence for trial." *Orcutt*, ¶ 16. She could not be faulted for trusting her attorney's handling of the case.

Similarly, in *Karlen*, this Court found the clients blameless where their attorney "intentionally misled them into believing that their case was progressing and concealed from them the fact that the case had actually been dismissed." *Karlen*, 276 Mont. at 190, 915 P.2d at 238. The clients made "numerous inquiries of counsel" about their case. *Id*., 276 Mont. at 187, 915 P.2d at 236. Their reasonable reliance on counsel's false assurances did not constitute fault on their part.

In *Wagenman*, this Court found the wife "blameless for failing to discover the issue, as the error was not due to her actions. Because the court had a duty to inquire about the equity of the agreement, we do not fault [her] as a pro se litigant who had little previous contact with the court system and who was relying on the marital dissolution statutes, and the court, to uphold their agreement." *Wagenman*, ¶ 20.

Taralyn's conduct demonstrates greater diligence than the blameless parties in *Orcutt*, *Karlen*, or *Wagenman*. She did not passively assume her attorney was handling matters properly. She did not simply trust that things were progressing. She asked a direct question at mediation: does Dean's discovery contain anything significant I should know about? This is precisely the inquiry a reasonable client should make before signing a property settlement agreement. Her attorney looked her in the eye and lied.

Taralyn had no independent means of discovering the deception. Her attorney possessed Dean's financial disclosures but had not provided them to her. She could not review documents she did not have. She could not verify representations about contents she had never seen. The information establishing the falsity of counsel's statement existed only in documents counsel controlled and withheld.

This is not a case like *Griffin* where the client failed to act. Taralyn acted. She asked. She inquired. She did what any reasonable person would do before signing away her interest in marital property. The fault lies entirely with counsel who

possessed $1,285,705.86 worth of information and concealed it while affirmatively misrepresenting its existence. No principle of law or equity assigns blame to a client who asks the right question and receives a false answer from her own attorney.

D. The Magnitude of the Resulting Disparity Confirms that Equity Demands Relief.

Beyond the three required elements, Rule 60(b)(6) relief must be justified by "reasons of fairness and equity." *Lussy v. Dye*, 215 Mont. 91, 93, 695 P.2d 465, 466 (1985). The disparity resulting from counsel's deception confirms that fundamental fairness requires reopening this agreement.

Dean walked away with $1,746,037.85 while Taralyn received $184,259.93. This 9.5-to-1 ratio resulted directly from counsel's concealment of Dean's retirement accounts. Dean retained his entire Newmont pension accumulated over fifteen years of marriage, his Newmont company stocks, his Newmont investment stocks, and five additional retirement vehicles. Taralyn received partial transfers and assumed the associated tax burden. No informed party would agree to receive less than ten percent of marital assets after a fifteen-year marriage.

This Court has recognized that a District Court "abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason resulting in substantial injustice." *Essex*, ¶ 19. It would have been obvious error for the District Court to impose such an inequitable distribution. A party should not be bound to one procured through her own attorney's fraud. The

equitable principles underlying Rule 60(b)(6) exist precisely for circumstances like these, where technical compliance with procedural requirements masks a fundamental miscarriage of justice.

Taralyn has demonstrated extraordinary circumstances, timely action, and complete blamelessness. The resulting distribution shocks the conscience. Relief under Rule 60(b)(6) is not merely appropriate but necessary to prevent counsel's misconduct from effecting a $1.5 million wealth transfer that Taralyn never knowingly approved.

II. THE DISTRICT COURT ERRED IN DENYING THE MOTION TO RESCIND AND APPROVING AN UNCONSCIONABLE AGREEMENT

The District Court's October 31, 2024, Order denying the Motion to Rescind represents a fundamental failure of judicial responsibility. The court explicitly stated that "the issue is whether the Marital and Property Distribution Agreement must be rescinded because it is unconscionable." (D.C. Doc. 28 at 6). The Court cited Mont. Code Ann. § 40-4-201(2) and this Court's decisions in *Wagenman* and *Tanascu* establishing that agreements are "binding upon the court unless it finds that the separation agreement is unconscionable." *Id.*

A. The Agreement is Unconscionable Under Montana Law

Mont. Code Ann. § 40-4-201(2) provides that separation agreements are binding "unless the court finds, after considering the economic circumstances of the

parties and any other relevant evidence, that the separation agreement is unconscionable." This is not discretionary. The law requires that District Courts make an independent determination of conscionability prior to approving a separation agreement. "If the separation agreement is found to be unconscionable, then the court may request that the parties submit a revised separation agreement or the court may order the disposition of property." *In re Marriage of Franks*, 275 Mont. 66, 70, 909 P.2d 712, 714 (1996) (citing Mont. Code Ann. § 40-4-203).

This Court has emphasized that "the terms of a separation agreement are binding upon a district court unless the court finds the separation agreement to be unconscionable." *Wagenman*, ¶ 14. Where, as here, the economic circumstances reveal a 9.5 to 1 distribution ratio after a fifteen-year marriage, the agreement cannot withstand scrutiny under the statute.

"There exists no set definition of unconscionability; rather, determinations of unconscionability are made on a case-by-case scrutiny of the underlaying facts." *Wilkes v. Est. of Wilkes*, 2001 MT 118, ¶ 23, 305 Mont. 335, 27 P.3d 433 (quoting *In re Marriage of Pearson*, 1998 MT 236, ¶ 30, 291 Mont. 101, 965 P.2d 268). The undisputed facts establish the agreement was unconscionable on its face. Dean received $1,746,037.85 in marital assets while Taralyn received $184,259.93. (D.C. Doc. 26 at 9.) This disparity resulted directly from Taralyn's counsel's concealment of Dean's financial disclosures, which revealed over $1,000,000 in retirement assets

that Taralyn was unaware of at mediation. (D.C. Doc. 19, ¶¶ 5-6.) When Taralyn specifically asked her counsel whether Dean's discovery contained anything significant, her attorney falsely stated nothing of significance existed. (D.C. Doc. 19, ¶ 22.) Taralyn signed waivers of Dean's retirement accounts without any knowledge of their actual value.

The distinction from *Tanascu* is dispositive. In *Tanascu*, this Court declined to reopen a property settlement where the wife "entered a property settlement agreement with full knowledge of the relevant facts" and "did not present any substantial reason that her agreement to the settlement should be overturned." *Tanascu*, ¶ 17. The wife in *Tanascu* "was aware of [the husband's] retirement benefit and aware of the amount he received each month." *Id.* She did not contend "that there was any fraud or failure to disclose the financial situation regarding [the husband's] retirement benefits." *Id.*

Here, the opposite is true. Taralyn did not have full knowledge of the relevant facts. She was actively deceived by her own counsel, who possessed Dean's complete financial disclosures for nearly three weeks before mediation but never shared them with her. (D.C. Doc. 19, ¶ 5). The *Tanascu* court's rationale for upholding that agreement does not apply here, as Taralyn was kept ignorant of over $1,000,000 in marital assets by her own attorney's misconduct.

The Legislature's intent in enacting § 40-4-201 was to protect parties from precisely Taralyn's situation. The Commissioners' Notes to the statute explain that the unconscionability standard was adopted specifically to provide "protection against overreaching, concealment of assets, and sharp dealing not consistent with the obligations of marital partners to deal fairly with each other." Mont. Code Ann. § 40-4-201 commissioners' cmt. An agreement procured through concealment of over one million dollars in marital assets cannot satisfy this standard regardless of whether the concealment originated with the opposing party or with counsel who owed Taralyn a duty of loyalty and disclosure.

This Court's decision in *Simpson* confirms that unconscionability review is mandatory regardless of other provisions. The *Simpson* Court held that "courts may modify decrees with settlement agreements in dissolution cases despite a non-modification clause if the agreement is unconscionable." *Marriage of Simpson*, ¶ 18. The Court further stated that "the non-modification provisions of 40-4-201(2), MCA, were not enacted to trump a district court's findings of unconscionability." *Id.* Reading the statutes together, "it is apparent that the Legislature considered unconscionability as an appropriate reason to modify property settlement agreements in all cases." *Id.,* ¶ 17.

The *Simpson* decision illustrates the analysis a District Court must undertake when unconscionability is at issue. In *Simpson*, the District Court conducted a

thorough examination of each asset identified in the parties' financial statements and traced how those assets had either decreased in value or were no longer in the husband's possession. *Marriage of Simpson*, ¶¶ 5, 20-29. The District Court found that the parties' financial statements had "exaggerated the parties' net worth" and that this exaggeration, combined with subsequent economic collapse, rendered continued enforcement unconscionable. *Marriage of Simpson*, ¶ 5. This Court affirmed, holding that "the District Court thoroughly considered the very unique facts of this case and the findings are not clearly erroneous." Marriage of Simpson, ¶ 32.

The District Court here conducted no comparable analysis. Despite undisputed evidence that Taralyn received approximately one-tenth of the marital estate and that this disparity resulted from her counsel's concealment of Dean's financial disclosures, the District Court declined to find unconscionability. If *Simpson* requires searching review when an agreement becomes unconscionable through subsequent events, the same rigor applies with even greater force when an agreement is unconscionable at its inception. The *Simpson* trial court examined whether changed circumstances justified modification of an agreement that was conscionable when entered. Here, the Agreement was never conscionable because Taralyn never possessed the information necessary to evaluate whether the proposed

distribution was fair. The District Court's failure to examine the net result of that agreement and the resulting distribution disparity constitutes an abuse of discretion.

While the Agreement here contains a non-modification clause, that clause cannot shield an unconscionable agreement from judicial review. *Marriage of Simpson*, ¶¶ 18-19. Section 40-4-201 exists to promote amicable settlement of disputes between divorcing parties, but that policy presupposes that both parties possess the information necessary to evaluate whether a proposed settlement is fair. When one party waives claims to retirement assets exceeding one million dollars without any knowledge that such assets exist, the resulting agreement cannot be deemed conscionable regardless of what boilerplate language it contains.

Unlike the wife in *Tanascu* who knowingly accepted a distribution she later regretted, Taralyn was deprived of the opportunity to make an informed decision about the division of the marital estate. The District Court's failure to find unconscionability under these circumstances does not reflect the conscientious judgment that § 40-4-201(2) demands. As discussed below, the District Court not only reached the wrong result but failed to conduct any meaningful analysis before doing so.

B. The District Court Failed to Conduct Any Unconscionability Analysis

The District Court's October 31, 2024, Order correctly identified the controlling issue: "the issue is whether the Marital and Property Distribution

Agreement must be rescinded because it is unconscionable." (D.C. Doc. 28 at 6). The court cited the proper legal standard from Mont. Code Ann. 40-4-201(2), *Wagenman*, and *Tanascu*. *Id.*

Having identified the correct standard, the District Court then failed to apply it. Section 40-4-201(2) requires that a District Court consider "the economic circumstances of the parties and any other relevant evidence" before determining whether an agreement is unconscionable. The entire analysis consisted of observing that Taralyn "was represented by counsel and willingly signed the Agreement after attending a settlement conference." (D.C. Doc. 28 at 7.) On its own, this observation does not meet the standard of the required analysis. Legal representation is one factor a Court may consider, but not a substitute for an examination of the economic realities created by the proposed distribution.

By comparison, *Tanascu* illustrates the proper approach. There, both parties were represented by counsel and participated in mediated settlement. *Tanascu*, ¶ 3. Yet this Court still examined the substantive question of whether the agreement was unconscionable, concluding it was not because the wife had "full knowledge of the relevant facts." *Tanascu*, ¶ 17. The presence of counsel did not excuse the District Court from conducting the analysis. It was appropriately one factor among many that informed the ultimate conclusion that the wife knowingly accepted the distribution she received.

Here, the District Court conducted no comparable inquiry. It did not examine the economic circumstances of the parties as the statute expressly requires. It did not consider whether a distribution ratio of 9.5 to 1 after a fifteen-year marriage was unconscionable. It did not address the undisputed fact that Taralyn's counsel possessed Dean's financial disclosures for nearly three weeks before mediation but concealed their contents from her. It did not consider whether Taralyn had "full knowledge of the relevant facts" when she signed the Agreement. The District Court simply invoked her represented status as a talisman against unconscionability. Montana law requires more than this summary disposition of the unconscionability inquiry.

This Court's decision in *Wagenman* recognized that district courts bear responsibility for ensuring the equity of agreements they approve. In *Wagenman*, this Court held that because "the court had a duty to inquire about the equity of the agreement," a party who relied on the Court to fulfill that duty was blameless for failing to discover the error. *Wagenman*, ¶ 20.

While *Wagenman* involved a pro se litigant, the statutory duty it recognized derives from § 40-4-201(2), which applies regardless of whether parties are represented. The District Court's failure to undertake any substantive inquiry into the fairness of an agreement that awarded her approximately one-tenth of the marital

estate, under circumstances where her own counsel concealed the existence of the majority of that estate, constitutes an abuse of discretion requiring reversal.

C. The Motion to Rescind Should Have Been Granted

Had the District Court conducted the required analysis, it could not reasonably have concluded the Agreement was conscionable. The economic circumstances are stark: after a fifteen-year marriage where Taralyn served as the primary homemaker and mother of two children, Dean received nearly ten times the marital assets Taralyn did. This occurred because Taralyn's counsel concealed financial disclosures revealing over one million dollars in retirement assets and affirmatively misrepresented that the parties' retirement accounts were comparable in value.

Montana law obligates courts to "equitably apportion between the parties all assets and property." *Estes v. Estes*, 2017 MT 67, ¶ 15, 387 Mont. 113, 391 P.3d 752. While equitable does not require mathematical equality, and indeed this Court has upheld distributions as disparate as 91% to 9% when justified by the statutory factors, those cases involve informed parties and proper consideration of § 40-4-202's requirements. *See Estes*, ¶¶ 19, 21 (affirming unequal distribution where district court considered all statutory factors and husband was aware of wife's premarital assets). Here, no such analysis was possible because Taralyn was kept ignorant of the assets being divided. A distribution ratio of 9.5 to 1 where one party lacked knowledge of the marital estate's composition cannot satisfy any reasonable

understanding of equity because the statutory factors cannot be meaningfully applied when the underlying facts are concealed.

Taralyn did not knowingly accept this distribution. She believed, based on her counsel's representations, that she was receiving approximately $520,720 with Dean keeping approximately $725,169. (D.C. Doc. 26 at 9.) That ratio of approximately 1.4 to 1, while favoring Dean, falls within the range of outcomes that informed parties might reasonably negotiate. The actual distribution does not. No reasonable person with full knowledge of the marital estate would agree to receive $184,260 while her spouse of fifteen years received $1,746,038. This is the essence of unconscionability.

The Agreement fails any meaningful unconscionability analysis. The process by which it was obtained was fundamentally flawed because Taralyn lacked the information necessary to evaluate the proposed terms. The resulting distribution is grossly inequitable by any objective measure. The District Court's failure to examine these problems before denying the Motion to Rescind constitutes an abuse of discretion. This Court should reverse and remand with instructions to set aside the Agreement and conduct equitable distribution proceedings consistent with § 40-4-202.

III. THE DISTRICT COURT FAILED ITS STATUTORY DUTY TO ENSURE EQUITABLE DISTRIBUTION

Mont. Code Ann. § 40-4-202 mandates that Courts "shall" apportion marital property equitably. This is not discretionary. Even when parties present an agreement, the Court retains an independent duty to ensure the distribution meets statutory requirements.

A. The Court Made Only Conclusory Findings Without Meaningful Review

This Court's decision in *Marriage of Gudmundson* directly addresses the inadequacy of perfunctory judicial review when approving separation agreements. In *Gudmundson*, the District Court approved a settlement agreement that contained no property valuations. *In re Marriage of Gudmundson*, 1998 MT 54, ¶ 10, 288 Mont. 70, 955 P.2d 648. The approving judge later testified that he did not inquire into whether the agreement was unconscionable because doing so was not his practice when parties had reached a settlement. *Id.*, ¶ 27. This Court reversed and remanded, holding that where a District Court failed to make an initial investigation into the conscionability of an agreement, it is not estopped from later finding the agreement unconscionable upon proper motion. *Id.*

Mont. Code Ann. § 40-4-201(2) provides that separation agreements are binding on a Court unless it finds the agreement unconscionable "after considering the economic circumstances of the parties and any other relevant evidence." This

Court has emphasized that such findings must be made on a case by case basis with attention to the underlying facts. *Marriage of Simpson*, ¶ 12. In *Simpson*, this Court conducted a detailed examination of the parties' assets, their stated values at dissolution, and the changed circumstances affecting those values. *Id.*, ¶¶ 20-29. The Court analyzed each significant asset individually before concluding that the agreement had become unconscionable. *Id.* This granular analysis reflects what meaningful judicial review requires under § 40-4-201(2).

The Agreement here received no such scrutiny. Like in *Gudmundson*, the Agreement contained no meaningful valuation information from Taralyn's perspective. She could not have known Dean's retirement accounts totaled $1,285,705.86 because her own counsel concealed that information from her. The Decree's conclusory statement that the Agreement was "fair and equitable" and "not unconscionable" floats without any supporting analysis. (D.C. Doc. 15 at 3-4.) The District Court did not acknowledge the 9.5 to 1 distribution ratio. Substantively, it wholly failed to grapple with how this could be considered an equitable award of the marital estate after a fifteen-year marriage as the primary caretaker for two children.

This Court has recognized that district courts must honor the statutory framework governing separation agreements, including the requirement that agreements are binding only if the court does not find them unconscionable. See *Wagenman*, ¶ 14. The unconscionability determination serves as a gatekeeping

function that Courts must actually perform. By approving the Agreement with only boilerplate findings, the District Court could not fulfill this function. Like the trial court in *Gudmundson*, it treated party agreement as a substitute for the judicial inquiry that § 40-4-201(2) requires. This was error and should be reversed.

B. The Court Failed to Consider the Statutory Factors Required by Mont. Code Ann. § 40-4-202

The District Court's failure to conduct meaningful review, as discussed above, necessarily resulted from its failure to consider the factors that define equitable distribution under Montana law. Mont. Code Ann. § 40-4-202(1) requires Courts distributing marital property to consider the duration of the marriage and the contribution of a spouse as homemaker, among other factors. While § 40-4-202 directly governs court-ordered distributions, these factors are equally relevant when evaluating whether an agreed distribution is unconscionable under § 40-4-201(2). The statute requires Courts to consider "the economic circumstances of the parties and any other relevant evidence" when determining unconscionability. Mont. Code Ann. § 40-4-201(2). The § 40-4-202 factors constitute that relevant evidence. A Court cannot meaningfully evaluate whether an agreement is unconscionable without reference to the criteria that define equitable distribution.

This Court has recognized that unconscionability must be determined on a case by case basis with attention to the specific circumstances of the marriage and the distribution. *Gudmundson*, ¶ 26 (citing *In re Marriage of Hagemo*, 230 Mont.

255, 259, 749 P.2d 1079, 1082 (1988)). Such individualized analysis requires examination of the factors the Legislature identified as relevant to equitable distribution. Without that examination, a Court's finding that an agreement is not unconscionable rests on no foundation.

The record here demonstrates that the District Court failed to consider any of the relevant factors. The District Court made no findings about the fifteen-year duration of the marriage, a factor that weighs heavily toward equal distribution of assets accumulated during that period. (D.C. Doc. 51.) The Court made no findings about Taralyn's limited employment history after serving as primary caretaker for two children, which bears directly on her opportunity for future acquisition of capital assets and income. Most significantly, the Decree made no findings about Taralyn's contributions as homemaker despite § 40-4-202(1)'s express requirement that Courts consider such contributions when distributing marital property.

The homemaker contribution factor carries particular weight in this case. The retirement accounts Dean retained represent deferred compensation accumulated during the marriage. Taralyn's contributions as primary caretaker enabled Dean to pursue the employment that generated those benefits. Yet the Agreement awarded Dean eight retirement accounts totaling $1,285,705.86 while Taralyn received partial transfers from only two accounts totaling $140,259.93. This distribution gave Taralyn less than eleven percent of the retirement assets accumulated during a

fifteen-year marriage in which she served as primary caretaker. The Decree contains no acknowledgment of this disparity and no explanation of how such a distribution could be equitable in light of Taralyn's contributions.

Without findings addressing the duration of the marriage, Taralyn's role as homemaker, or the disparity in retirement assets, the District Court had no basis to conclude the Agreement was not unconscionable. The boilerplate language in the Decree does not reflect considered judgment but an abdication of the analytical responsibility § 40-4-201(2) imposes.

C. Judicial Oversight Cannot Be Waived by Agreement

Montana law permits courts to defer to party agreements, but that deference rests on a critical assumption: that both parties knew what they were agreeing to. In *Tanascu*, this Court affirmed denial of a motion to reopen a dissolution decree where the wife had appeared with counsel, testified the agreement was fair, and later sought modification because she was unhappy with a deal she fully understood when she made it. *Tanascu*, ¶ 17. The Court emphasized that Linda Tanascu "entered a property settlement agreement with full knowledge of the relevant facts." *Id*. She simply wished she had negotiated a better deal.

That is not this case. Taralyn did not know the relevant facts. Her own attorney hid them from her. She had no idea Dean's retirement accounts totaled $1,285,705.86 because the lawyer she trusted to protect her interests concealed that

information from her. She could not evaluate whether giving up over $1.5 million in retirement assets was fair because she did not know those assets existed. This is not buyer's remorse. This is a party who was prevented from making an informed decision by the very person obligated to inform her.

When one party lacks the information necessary to evaluate an agreement, the rationale for judicial deference disappears. The Court's duty under § 40-4-201(2) to evaluate unconscionability exists for exactly this situation. As this Court recognized in *Simpson*, the Legislature considered unconscionability an appropriate basis to scrutinize property settlement agreements in all cases. *Marriage of Simpson*, ¶ 17. That safeguard means nothing if Courts simply rubber-stamp agreements without asking whether the parties who signed them understood what they were giving away.

The District Court here saw an agreement that handed one spouse over ninety percent of the marital estate after a fifteen-year marriage. That alone should have prompted questions. When combined with the fact that Taralyn's own attorney concealed the very information that would have revealed how lopsided the deal was, the need for judicial scrutiny becomes undeniable. Instead of scrutiny, Taralyn got a decree with boilerplate language pronouncing the Agreement fair and equitable. The statutory safeguard against unconscionable agreements failed at precisely the moment it was most needed.

CONCLUSION

At every opportunity, the system failed Taralyn DeCock. Her attorney possessed documentation showing Dean had $1,285,705.86 in retirement accounts but concealed it. When she asked directly whether Dean's discovery contained anything significant, her attorney lied. The District Court approved a distribution giving Dean $1,746,037.85 while Taralyn received $184,259.93 without any inquiry into this shocking disparity. When presented with evidence of attorney misconduct, the Court denied relief through inaction. When asked to review unconscionability, the Court identified the correct standard and then ignored it completely.

The law requires more. Under *Orcutt* and *Karlen*, attorney misconduct preventing informed consent constitutes extraordinary circumstances warranting Rule 60(b)(6) relief. Under *Simpson* and *Tanascu*, courts must analyze unconscionability regardless of counsel's presence. Under *Gudmundson* and the express requirements of § 40-4-201(2), courts must independently evaluate whether agreements are conscionable rather than rubber-stamp grossly inequitable distributions.

Taralyn seeks what Montana law guarantees: an equitable distribution of marital property after fifteen years of marriage and raising two children. This Court should not permit attorney deception to deprive her of approximately $1.5 million in marital assets she helped create.

This Court should reverse and remand with instructions to set aside the Marital and Property Distribution Agreement and conduct equitable distribution proceedings considering all factors under Mont. Code Ann. § 40-4-202.

DATED: November 25, 2025

MEASURE LAW, P.C.

By: /s/ Marybeth M. Sampsel
Marybeth M. Sampsel

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, excluding the certificate of service and the certificate of compliance.

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I, Mary-Elizabeth Marguerite Sampsel, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 11-25-2025:

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