

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 25-0549

IN RE THE MARRIAGE OF:

JOSHUA FERRAZZANO,

Petitioner/Appellee,

v.

KELLY FERRAZZANO,

Respondent/Appellant.

RESPONSE BRIEF OF APPELLEE

*On appeal from the Montana Eleventh Judicial District Court,
Cause No. DR-24-71(C), The Honorable Heidi J. Ulbricht presiding.*

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STATEMENT OF THE ISSUES

1. Should Kelly's appeal be dismissed or the District Court summarily affirmed for her purposeful failure to provide this Court transcripts of hearings and trial?

2. Did the District Court abuse its discretion in equitably dividing the marital estate when it awarded her well over 50% of the marital estate (\$501,794.67) and ordered Josh to pay all the marital debts (approximately \$144,000) and all her post-separation debts (approximately \$43,000)?

3. Did the District Court abuse its discretion when it denied Kelly's claim for maintenance after she testified she was college educated, capable of working outside the home, intended to work outside the home, and would soon be employed as a realtor making \$80,000 per year, and it awarded her over \$300,000 in cash?

4. Did the District Court violate Kelly's Due Process rights when it denied her untimely motions to compel and her multiple, duplicative, frivolous filings?

STATEMENT OF THE CASE

Appellant Kelly Ferrazzano (Kelly) appeals from the District Court's Findings of Fact, Conclusions of Law, and Decree entered on May 14, 2025. App. 1 (Doc. 116). Despite receiving the vast majority of the value of the marital estate,

approximately \$300,000 in cash and relief from approximately \$200,000 in debt, including her own post-separation debt, Kelly maintains that District Court abused its discretion when it failed to award her more.

Kelly also asserts the District Court abused its discretion when it denied her claim for \$8,000 per month in maintenance when her own sworn testimony defeated her claim for maintenance. She testified she has a college degree, is capable of working outside the home (has no physical limitations), intended to work outside the home after the children went to school, and would soon be making \$80,000 per year as a realtor.

Kelly also appeals from the District Court's June 20, 2025, denial of her Rule 59(e) Motion and her twenty-nine (29) other frivolous motions, declarations, and filings made after the March 3, 2025, trial. App. 2 (Doc. 139). The District Court found:

Many, if not all of them, are baseless in fact and/or law, blatantly misstate the Court record, and are blatant attempts to get a second bite at the apple and relitigate matters.

App. 2, p. 4-5 (emphasis added). Kelly's flood of filings were denied because she was attempting to relitigate this case, which is not a basis for relief. App. 2.

Undeterred, Kelly then demanded documents from Judge Ulbricht, accused her of "potential judicial misconduct and ethical violations," and threatened to report her to the Judicial Standards Commission. Docs. 140, 140.10, p. 3.

RELEVANT FACTS

Appellee Joshua Ferrazzano (Josh) and Kelly were married on July 1, 2011, in Los Angeles, California. They have two minor children, D.A.F. and G.F.F. App. 1 at FOF ¶ 1-3. At the very beginning of this case, Josh and Kelly agreed on a 50/50 parenting plan, each having the children for one week at a time. This parenting plan was stipulated to and is not part of this appeal. *Id.* at FOF ¶ 6.

Josh filed for dissolution on February 24, 2024. Doc. 1. Kelly retained an attorney and responded. Docs. 4-6. Kelly was represented by counsel until November 18, 2024. Doc. 61. Kelly had counsel when the Scheduling Order was issued. Doc. 8.

In April 2025, the parties and their counsel attended mediation and entered a Stipulation re: Interim Issues. App. 3 (Doc. 10). The mediated Stipulation resolved all interim support issues. It provided that Josh would pay for literally every debt and bill the parties had, pay Kelly \$5,000 per month, and provide her a one-time payment of \$8,000 for a vacation. The Stipulation also provided that the children's tuition would be paid from an account at Northern Trust. *Id.* It specifically reserved the issue of attorneys' fees and maintenance for trial. *Id.*, at ¶ 1.

Kelly had counsel when she moved to extend the deadlines in the Scheduling Order for 60 days. Doc. 15. The District Court granted her motion. Doc. 40. The new Scheduling Order set a deadline of September 17, 2024, for

completion of discovery. Doc. 40, p. 1. It also set a deadline of September 24, 2024, to file motions. Doc. 40, p. 1.

During the discovery period, Kelly's counsel issued subpoenas duces tecum to Bank of America, Charles Schwab, JP Morgan, Northern Trust Company, Wells Fargo, and Whitefish Credit Union. Doc. 51. Josh's motion to quash these subpoenas was denied. Doc. 51. Kelly also served discovery, to which Josh responded. Docs. 28, 36. No motion to compel was filed. Despite receiving a 60-day extension on the discovery deadline, Kelly did not seek to depose Josh or anyone else.

Before the motions deadline expired, Kelly, through counsel, filed three motions, one of which was later withdrawn. The two motions filed on September 24, 2025, sought to enforce the TERO (related to Josh's father's post-separation financial gifts to Josh) and to advance her attorneys' fees. Docs. 17, 33, 48, 50. Again, none of Kelly's motions sought to compel discovery. Josh responded to each of Kelly's motions.

The parties attended a second mediation in mid-November 2024, immediately after which Kelly's counsel moved to withdraw. Docs. 59-61. The Motion to Withdraw specifically stated "Respondent can no longer afford the cost of her attorney *and has decided she can fully represent herself* moving forward in

this matter.”¹ App. 4 (Doc. 59 (emphasis added)). Kelly agreed with, and signed, the motion. *Id.*

Josh’s counsel contacted Kelly regarding the proposed pretrial order on December 3, 2024. Doc. 64, Exhibit A. Kelly refused to cooperate in preparing a joint pretrial order. Doc. 64. Josh filed his portions on December 6, 2024. Doc. 64. The same day, December 6, 2024, Kelly began filing motions and other documents seeking additional discovery. Docs. 65-70. Kelly did not prepare or file her proposed pretrial order as required by the Scheduling Order. Docs. 64, 68, App. 5 (Doc. 75). In compliance with Mont. Code Ann. § 40-4-253, Josh also provided Kelly a complete and Final Disclosure on December 13, 2024.

Kelly’s *pro se* Motion to Compel Forensic Accounting (Docs. 65-67) sought “full disclosure” due to Josh’s alleged “undisclosed accounts” – specifically the Northern Trust accounts – and alleged “irregular business transactions.” Doc. 66, p. 2. She asked the Court to appoint a forensic accountant to “investigate irregular transactions, assess concealed income or assets, and conduct a lifestyle analysis.” Doc. 66, p. 3. Significantly, before Kelly’s counsel withdrew, she took no issue with Josh’s discovery production nor the Northern Trust accounts, and neither of Kelly’s previous attorneys filed discovery motions.

¹ A review of the extensive record after counsel’s withdrawal reveals that counsel likely withdrew because of Kelly’s unrealistic view of the parties’ financial position and value of the marital estate.

The Court set a Pretrial Conference and hearing on Kelly's motion for attorneys' fees for January 3, 2025. At the hearing, Kelly appeared in person. The Court deferred ruling on Kelly's motion for fees until trial. The Court denied Kelly's motions (Docs. 65, 66, 67, 68, 69, 70) as untimely. App. 5 (Doc. 75). The Court again ordered the parties to mediation. *Id.*

On January 29, 2025, after the Court issued the Pretrial Order and denied Kelly's motions as untimely, Kelly filed another flurry of motions and documents. Docs. 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91.10. Kelly again sought production of more discovery and documents, which Josh already produced in discovery and that her counsel previously subpoenaed.

Contrary to Kelly's unsupported belief, this marital estate was simple. The Court held a bench trial on March 3, 2025. App. 6 (Doc. 92). At trial, the District Court heard testimony from both parties. During the marriage, Josh and Kelly lived beyond their means and relied upon Josh's father, Dennis Ferrazzano (Dennis), for financial support. Neither of them saved for retirement. App. 1, at FOF ¶ 8. They had more debt than assets. App. 1, at FOF ¶ 33 (chart). They had no investment accounts other than custodial accounts established by Dennis for the benefit of D.A.F. and G.F.F. App. 1, at FOF ¶ 8. Both Josh and Kelly stipulated that the children's accounts belonged to the children and should be awarded to the children, which is what the District Court did. App. 1, at FOF ¶ 9.

Because Josh and Kelly lived beyond their means, they had no savings and no retirement. There were only two major assets of the marital estate – the Trego home and Josh’s 50% interest in World War 7 Studios (WW7), a production company. As explained below, the District Court divided the value of both of these assets equally.

Josh and Kelly owned a home on 5.23 acres near Trego, Montana. App. 1, at FOF ¶¶ 5, 10. The home was purchased with marital funds. App. 1, at FOF ¶ 12. They moved to Whitefish and lived in a home at 234 Deer Trail, purchased by Dennis as the Trustee of the Dennis and Frances Ferrazzano Trust. Josh and Kelly did not own, nor pay rent to live in, the Whitefish home. The Trust sold it in 2024.

From the date of purchase, Josh paid the mortgage on the Trego home. At the trial on March 3, 2025, David Scott, a “certified residential real estate appraiser” valued the home at \$750,000 as of February 14, 2025. App. 1, at FOF ¶ 11. No other value was offered. Therefore, the District Court adopted this valuation. App. 1, at FOF ¶ 11. The Trego home had debt of approximately \$390,000. The District Court awarded it to Josh, and ordered him to pay off or otherwise satisfy the mortgage, and the parties would split the equity equally. App. 1, at FOF ¶¶ 33, 35. Kelly’s equity of \$182,364.80 was paid to her on September 23, 2025, after months of her refusing to sign the quitclaim deed. Doc. 146.

The other significant asset was Josh’s 50% interest in WW7. App. 1, at FOF

¶ 13. The District Court considered testimony from WW7's other member, David Shafei; its CFO, Ross Vinstein; and Daren Mesrobain, who conducted a business valuation of WW7. App. 1, at FOF ¶¶ 14-26. Extensive testimony was offered about WW7's business model, finances, cash flow, and Operating Agreement. App. 1, at FOF ¶¶ 14-26.

The Court heard that, despite Kelly's unsupported allegations, WW7 is not hiding assets for Josh, is not reducing or diminishing Josh's income, and is not reducing its business for this divorce case, and "would not do so even if asked." App. 1, at FOF ¶ 18 (emphasis added). There is also no secret third member of WW7. App. 1, at FOF ¶¶ 19, 23. Although Kelly failed to provide a trial transcript, each of these witnesses was subject to cross-examination by Kelly, and the District Court asked Mesrobain its own questions about the valuation.

Ultimately, the only evidence of the value of Josh's 50% share was provided by Daren Mesrobain. App. 1, at FOF ¶¶ 22-27. He testified that Josh's 50% share could be valued two ways: the fair market value of \$310,000 or the "applicable price" value of \$197,000. App. 1, at FOF ¶ 26.

WW7's Operating Agreement, in place for over a decade at the time of the hearing, allowed Shafei to buy Josh's 50% interest at the "applicable price" in the event of an "involuntary transfer," which was defined as "distribution pursuant to an involuntary liquidation, transfer or disposition in connection with a divorce or

settlement decree or agreement.” App. 1, at FOF ¶ 25. In other words, if Josh was ordered to sell or transfer his share to Kelly in the dissolution, the most the shares would be worth was the “applicable price” of \$197,000.

The “applicable price” is the value of Josh’s capital account, which fluctuates as deposits and withdrawals are made. App. 1, at FOF ¶ 25. At the date of Mesrobian’s valuation, the “applicable price” was \$197,000, and in August 2024, was \$220,000. App. 1, at FOF ¶ 27. The District Court found that if it ordered Josh to liquidate his shares or transfer them to Kelly, Shafei could buy them for the “applicable price.” App. 1, at FOF ¶ 27. Therefore, the values were averaged to \$208,500, and Kelly was awarded half of that amount, \$104,250. Stated another way, Kelly was awarded half of the value of Josh’s 50% interest in WW7. Kelly received \$104,250 in May 2025.

The remainder of the marital estate consisted of vehicles, bank accounts, credit cards, and loans. Josh and Kelly’s debts exceeded the value of any money in the bank. App. 1, at FOF ¶ 29. The Court awarded Kelly her vehicle debt free; Josh was ordered to pay it off in full. Kelly did not want any other vehicle. App. 7. Josh was awarded the other vehicles along with the related debt. Josh was awarded all the martial debt and all of Kelly’s post-separation debts of over \$43,000 in credit card debt and attorneys’ fees. Josh paid Kelly \$25,000 for her credit card debt and paid her attorneys’ lien of \$18,544.67 in May 2025.

Ultimately, Kelly received a 2021 Ford Explorer debt free (\$30,000), half the equity in the marital home (approximately \$180,000), \$104,250 in cash for half of Josh's 50% share in WW7, her \$25,000 post-separation credit card debt was paid by Josh, and her \$18,544.67 attorneys' lien was paid by Josh. The value to Kelly was \$358,044.67. Additionally, she was relieved of any obligation on the marital debt related to various vehicles, loans, and credit cards, which totaled over \$144,000. App. 1, at FOF ¶¶ 33-36. The net value to Kelly was approximately \$500,000.²

Ultimately, Josh received the Trego home, valued at \$750,000 with associated debt of \$390,000, his 50% share of WW7 (\$208,500, less the \$104,250 equalization payment to Kelly), was responsible for all of the marital debt, which amounted to over \$144,000, and was responsible for Kelly's post-separation credit card debt and attorneys' fees of \$43,000, and paid Kelly \$180,000 for her half of the equity in the Trego home. App. 1, at FOF ¶¶ 33-36. The net value to Josh was approximately \$96,000.³

Kelly also sought maintenance of \$8,000 per month. App. 1, at FOF ¶ 37.

² This amount is calculated as follows: $\$30,000 + \$180,000 + \$104,250 + \$25,000 + \$18,544.67 + \$144,000 = \$501,794.67$.

³ This amount is calculated as follows: $\$750,000 + (\$390,000) + \$104,250 + (\$144,000) + (\$25,000) + (\$18,544.67) + (\$180,000) = \$96,705.33$. The bank accounts and vehicles he received were a net zero to him given the debts associated therewith.

This claim was rejected by the District Court due to Kelly's own sworn testimony. She testified she graduated from college and has no physical or other limitations that prevent her from working. App. 1, at FOF ¶ 38. The children are in school full-time and on a 50/50 parenting schedule. She has the education, physical ability, and time to find and maintain full time employment. App. 1, at FOF ¶ 38. Kelly testified that the parties agreed she would stay home with the children and return to work when they went to preschool. App. 1, at FOF ¶ 39.

Kelly testified that, post-separation, she turned down full-time work because she did not want to ask Josh for help with picking up the children. App. 1, at FOF ¶ 40. She testified that Josh was "in L.A." but also said she would never ask for Josh's help and "she never wants to see his face again." App. 1, at FOF ¶ 40. She testified that she was taking the real estate licensing exam in April 2025 and would make \$80,000 per year. App. 1, at COL ¶ 20.

Despite receiving approximately 80% of the value of the marital estate in either cash or debt relief, Kelly was unsatisfied. She immediately began flooding the District Court with repetitive motions and documents seeking to litigate this case anew. Additional facts about these filings will be discussed below where necessary.

STANDARD OF REVIEW

Usually, this Court reviews a district court's division of marital property to

determine whether the district court's findings of fact are clearly erroneous, and the conclusions of law are correct. Absent clearly erroneous findings, this Court will affirm a district court's division of property and award of maintenance unless an abuse of discretion is identified. *In re Funk*, 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39; *In re Marriage of Haines*, 2002 MT 182, ¶ 15, 311 Mont. 70, 53 P.3d 378; *In re Marriage of Crilly*, 2005 MT 311, ¶ 10, 329 Mont. 479, 124 P.3d 1151.

However, Kelly chose not to provide this Court with any transcripts and is precluded from challenging the District Court's findings of fact. *Marriage of Hodge*, 2003 MT 146, ¶¶ 7, 11, 316 Mont. 194, 69 P.3d 1192; *Giambra v. Kelsey*, 2007 MT 158, ¶ 36, 338 Mont. 19, 162 P.3d 134. Therefore, the only review this Court can conduct is to determine whether the District Court abused its discretion in dividing the marital estate and determining maintenance. *Marriage of Hodge*, ¶7.

This Court will affirm a district court's property division and maintenance determinations unless it identifies a clear abuse of discretion as manifested by a substantially inequitable division of the marital assets resulting in substantial injustice. *Richards v. Trusler*, 2015 MT 314, ¶ 11, 381 Mont. 357, 360 P.3d 1126; *Hutchins v. Hutchins*, 2018 MT 275, ¶ 7, 393 Mont. 283, 430 P.3d 502; *Crilly*, ¶ 10.

This Court reviews a district court's rulings on discovery matters for an abuse of discretion. *Draggin' Y Cattle Co. v. Addink*, 2013 MT 319, ¶ 17, 372 Mont. 334, 312 P.3d 451. A district court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re Marriage of Davis*, 1999 MT 218, ¶ 20, 295 Mont. 546, 986 P.2d 408.

SUMMARY OF ARGUMENT

Kelly's appeal should be dismissed. After bombarding the District Court with endless motions seeking to relitigate the issues at trial, she strategically did not file a transcript. This Court should not condone Kelly's behavior, self-represented or not. The District Court should be summarily affirmed.

To the extent this Court does not dismiss Kelly's appeal or summarily affirm the District Court, the District Court did not abuse its discretion. The District Court's distribution of the marital estate was fair and reasonable under the circumstances of this case.

The marital estate consisted of a home with a mortgage, a 50% interest in an LLC, and debt that exceeded the value of their personal property. The District Court awarded Kelly \$501,794.67 and ordered Josh to pay \$144,000 in marital debt and all of Kelly's \$43,000 post-separation debt. There was no abuse of discretion.

Kelly's other claims are nonsensical, false, and/or unsupported by any evidence. The District Court did not violate any of Kelly's rights, properly denied her claim for maintenance, and correctly denied her litany of motions, declarations, and other repetitive filings.

Josh, like all litigants, is entitled to finality. He respectfully requests that the District Court be affirmed.

ARGUMENT

I. Should Kelly's appeal be dismissed or the District Court summarily affirmed for her purposeful failure to provide this Court transcripts of hearings and trial?

Mont. R. App. P. 8(2) provides "[f]ailure to present the court with a sufficient record on appeal may result in dismissal of the appeal or affirmance of the district court on the basis the appellant has presented an insufficient record."

Kelly failed to provide this Court transcripts of the hearings in this matter, including the March 3, 2025, bench trial. It was not an oversight or the mistake of a self-represented litigant. Her notice of appeal specifically states that "no additional transcript is required beyond what exists in the record. The appeal focuses on post-trial procedural violations and rulings issued after the final hearing." Notice of Appeal, p. 2.

However, the issues raised in her Notice of Appeal do not correlate to the issues raised in her Opening Brief. The Opening Brief challenges the District

Court's factual findings made based upon trial testimony. Kelly does not focus on post-trial issues. She focuses on pre-trial and trial issues yet failed to provide the Court the means to assess the issues she raises.

It is the appellant's burden to show error by reference to matters of record. Mont. R. App. P. 8(2). A transcript was essential to Kelly's claims of error. Her failure to provide it renders this Court unable to address the merits of her appeal. It should be dismissed or the District Court summarily affirmed. *Giambra*, ¶ 36.

II. Did the District Court abuse its broad discretion in equitably dividing the marital estate when it awarded Kelly well over 50% of the marital estate (\$501,794.67) and ordered Josh to pay all the marital debts (approximately \$144,000) and all Kelly's post-separation debts (approximately \$43,000)?

Because Kelly failed to provide this Court with the necessary transcripts, the Court can determine only whether the District Court abused its discretion in dividing the marital estate. *Marriage of Hodge*, ¶ 7.

“A district court is vested with broad discretion to apportion the marital estate in a manner equitable to each party under the circumstances.” *In re Marriage of Hardman*, 2019 MT 152, ¶ 11, 396 Mont. 238, 443 P.3d 1108 (citing *In re Marriage of Funk*, 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39). An equitable division does not require an equal split of marital assets, liabilities, or net value; rather, a district court's apportionment is equitable if it is fair and reasonable

under the totality of the circumstances. *In re Marriage of Elder & Mahlum*, 2020, MT 91, ¶ 9, 399 Mont. 532, 462 P.3d 209.

The District Court's division of the Ferrazzanos' marital estate was equitable, fair, and reasonable under the circumstances of this case. The District Court considered all the relevant factors, made detailed findings, and awarded approximately 80% of the value of the marital estate to Kelly, as discussed above on pages 10-11. *See also* App. 1, at FOF ¶¶ 33-36. Kelly appears to argue that the District Court was only supposed to be fair and equitable to her, not Josh. That is not the law.

There was no abuse of discretion. The District Court considered all the circumstances of this case and specifically found:

This division takes into account the parties' almost 14 year marriage; their ages (51 and 49); their good health; Josh's occupation and Kelly's future occupation as a real estate agent; the amount and sources of their income, that both possess college degrees, vocational skills, and are employable; the limited assets of the marital estate which the Court divided equally; the parties' liabilities which have mostly been apportioned to Josh; the reasonable needs of each of the parties; the 50/50 parenting plan; that the apportionment provides Kelly ample cash up front to support herself; and that each has good prospects for the future acquisition of capital assets and income.

The Court also considered the fact that Josh primarily contributed to the monetary value of the marital estate while Kelly contributed as a homemaker and mother. Both are valuable, and the Court has given credit to each party for their contributions by equally dividing the marital assets and assigning the marital debt to Josh.

App. 1, at COL ¶¶ 14-15.

Each of Kelly's specific arguments about the District Court's findings is addressed below.

A. 234 Deer Trail

Kelly expressly waived any argument about her purported "marital contributions" to the Whitefish home long before trial. "Waiver is a voluntary and intentional relinquishment of a known right, claim or privilege, which may be proved by express declarations or by a course of acts and conduct which induces the belief that the intent and purpose was waiver." *VanDyke Construction Co. v. Stillwater Mining Co.*, 2003 MT 279, ¶ 15, 317 Mont. 519, 78 P.3d 844. Here, Kelly withdrew her motion on this very issued and expressly waived it.

In May 2024, Kelly moved to add an additional party to this case, specifically, the owner of 234 Deer Trail, the Trustee of the Dennis and Frances Ferrazzano Living Trust (Josh's father, Dennis). Doc. 17. Kelly's motion specifically sought the inclusion of a "beneficial interest" in 234 Deer Trail in the marital estate. However, Kelly and her counsel subsequently withdrew that motion. Doc. 33. She expressly said, "After further discussion and discovery, Respondent [Kelly] made the decision not to move to join Dennis Ferrazzano in this matter." Doc. 33.

Kelly expressly waived her right to claim any purported marital contributions to 234 Deer Trail. She cannot now fault the District Court for not

considering her withdrawn motion and waived arguments.

B. Northern Trust Accounts

Kelly's claim that the Northern Trust Accounts were undisclosed or minimally disclosed is easily proven false. Just three months after this case was filed, Kelly and her counsel stipulated that one of the Northern Trust Accounts would be used to pay the children's tuition. App. 3 (Doc. 10). She had Northern Trust statements because she asked about specific transfers in discovery. App. 8, Interrogatories 8-9; Docs. 77, 82. In fact, her counsel subpoenaed documents directly from Northern Trust. Doc. 51.

It is unclear what more Kelly wants - Josh responded to her discovery requests and Kelly subpoenaed the documents directly from Northern Trust. There was nothing hidden. There was no abuse of discretion in awarding the Northern Trust account to Josh to pay the children's tuition as stipulated to by the parties.

Moreover, this issue was addressed at trial, but Kelly failed to provide this Court a transcript. That is because, despite having subpoenaed the documents and conducting discovery, she cannot support any of her claims about these accounts. There was no abuse of discretion.

C. Custodial Accounts

Kelly faults the District Court for doing exactly what she asked it to do on the record. App. 1, at FOF ¶ 9. The District Court found:

The parties stipulated on the record that all custodial accounts held for the minor children belong to and shall be awarded to the minor children. The parties further stipulated that no funds may be withdrawn from those accounts for personal use by either parent; the accounts must be preserved for the benefit of the children.

App. 1, at FOF ¶ 9. The accounts have always been in Josh’s name for the benefit of the children. Trial Exh. 26. Kelly now complains that the District Court failed to ensure “oversight terms to ensure the funds are preserved for the children and not used to conceal marital assets or post-decree income streams.” Opening Brief, p. 14. Kelly cannot fault the District Court for doing exactly what she asked. *State v. Gray*, 2004 MT 347, ¶ 20, 324 Mont. 334, 102 P.3d 1255 (This Court will not put a district court in error for action in which the appealing party acquiesced or actively participated).

To the extent Kelly’s claim makes any sense, the District Court did not abuse its discretion by adopting the parties’ stipulation, on the record, that the accounts would be preserved with no withdrawals by either parent for personal use. App. 1, at FOF ¶ 9.

D. Cryptocurrency

Kelly next complains that Josh was awarded \$10,067.35 in cryptocurrency without explanation. It was Kelly’s burden to prove this was error. She has not. She provided no transcript. But more importantly, in Kelly’s own proposed findings, she did not ask for this account. App. 7. She cannot now claim the

District Court abused its discretion when awarding Josh an asset she did not seek. *Gray*, ¶ 20 (This Court will not put a district court in error for action in which the appealing party acquiesced or actively participated).

The District Court did not abuse its discretion in awarding Josh's cryptocurrency account to him, especially in light of the equitable distribution as a whole, which was heavily in Kelly's favor.

E. Economic Disparity

Kelly fails again to show that the District Court abused its discretion. She ignores her own testimony that she was capable of working and would soon be employed as a realtor making \$80,000 per year. Kelly ignores the fact that she received substantial assets valued at over \$500,000, including almost \$300,000 in cash. She refused to acknowledge that she and Josh lived beyond their means during the marriage, and neither could maintain that lifestyle post-dissolution. App. 1, at COL ¶ 21.

Again, the District Court recognized and considered all the testimony, including Kelly's, and considered all the circumstances of this case:

This division takes into account the parties' almost 14 year marriage; their ages (51 and 49); their good health; Josh's occupation and Kelly's future occupation as a real estate agent; the amount and sources of their income, that both possess college degrees, vocational skills, and are employable; the limited assets of the marital estate which the Court divided equally; the parties' liabilities which have mostly been apportioned to Josh; the reasonable needs of each of the parties; the 50/50 parenting plan; that the apportionment provides

Kelly ample cash up front to support herself; and that each has good prospects for the future acquisition of capital assets and income.

The Court also considered the fact that Josh primarily contributed to the monetary value of the marital estate while Kelly contributed as a homemaker and mother. Both are valuable, and the Court has given credit to each party for their contributions by equally dividing the marital assets and assigning the marital debt to Josh.

App. 1, at COL ¶¶ 14-15.

The District Court did not abuse its discretion when it awarded Kelly significantly more value than it awarded Josh, especially given her testimony that she was capable of working and supporting herself.

F. Swamp Creek assets

Kelly claims the District Court failed to make findings about Swamp Creek, LLC. Kelly knows Swamp Creek is defunct. The only evidence before the District Court was that Swamp Creek, LLC's sole asset was \$1,732.03 in a bank account and \$3,815.59 in debt. Trial Exhs. 9, 21.

Kelly's failure to provide a transcript makes it impossible for her to prove any error about Swamp Creek's assets or debts. In any event, the District Court did not abuse its discretion by awarding Josh the bank account and requiring him to pay the debt. It is a net loss, as Swamp Creek's debt exceeds its sole asset. Trial Exhs. 9, 21.

G. Inaccurate and Unverified Financial Records

As discussed in detail in Section IV, below, there were no inaccurate or “unverified” financial records. Exhibit 26 does exist. Docs. 92, 93. Kelly has not identified any missing accounts nor shown that any admitted evidence was incomplete or otherwise wrong.

Kelly cannot challenge the findings of fact. She failed to prove the District Court abused its discretion because she cannot. She was awarded approximately 80% of the value of the marital estate. Josh got all the debt, including Kelly’s post-separation debt. The idea that she is left destitute by an unfair distribution is a farce.

III. Did the District Court abuse its discretion when it denied Kelly’s claim for maintenance after Kelly testified she was college educated, capable of working outside the home, intended to work outside the home, and would soon be employed as a realtor making \$80,000 per year, and it awarded Kelly over \$300,000 in cash?

The District Court could award Kelly maintenance only if it found that she “(a) lacks sufficient property to provide for her reasonable needs; *and* (b) is unable to be self-supporting through appropriate employment[.]”⁴ Mont. Code Ann. § 40-4-203(1) (emphasis added). Both factors must be met. *Id.* The District Court must also consider all relevant facts, including:

⁴ The second part of subsection (b) does not apply to the facts of this case.

- (a) Kelly's financial resources, including marital property apportioned to her, her ability to meet her needs independently, including the extent to which she will receive child support;
- (b) the time necessary to acquire sufficient education or training to enable Kelly to find appropriate employment;
- (c) the standard of living established during the marriage;
- (d) the duration of the marriage;
- (e) Kelly's age and physical and emotional condition; and
- (f) Josh's ability to meet his own needs while meeting Kelly's.

Mont. Code Ann. § 40-4-203(2).

The District Court properly found that Kelly did not meet both factors to be awarded maintenance in the first instance. It considered the requisite law and all the parties' testimony. App. 1, at COL ¶¶ 16-21. Contrary to Kelly's argument, it specifically found:

18. Kelly did not meet her burden to establish she is entitled to maintenance.

19. The Court's division of the marital estate awards her almost \$300,000 in cash and a 2021 Ford Explorer with zero debt. Further, Kelly received almost \$71,000 in cash payments over the past year. These amounts are sufficient to provide for her reasonable needs. Kelly has not established the first factor for an award of maintenance, Mont. Code Ann. § 40-4-203(1)(a).

20. Kelly is also able to be self-supporting through appropriate employment. She testified that she had a college degree, no physical limitations, and she planned to take the real estate licensing exam in April 2025. She testified that, within a few years, she believed her income would be approximately \$80,000 per year. During those few years, Kelly will have enough cash to meet her reasonable needs.

Kelly has not established the second factor for an award of maintenance, Mont. Code Ann. § 40-4-203(1)(b).

App. 1, at, COL ¶¶ 18-20.

Contrary to Kelly's argument, the District Court also addressed the marital standard of living:

neither party can continue living the lifestyle they had during the marriage. The parties lived beyond their means and neither saved any money for retirement nor otherwise. *There is no evidence before the Court either party objected to the state of their finances during the marriage. Rather, both knew there was no money saved for their future.* Both Josh and Kelly must work outside the home. However, the Court's property division allows both parties to adequately meet their reasonable needs.

App. 1, at COL ¶ 21 (emphasis added).

As the Court can see, the Decree does not lack any findings. To the contrary, the District Court made detailed findings and analyzed all the requisite legal factors. App. 1. The District Court awarded Kelly sufficient property to meet her *reasonable* needs, and she testified that she was able to be self-supporting through appropriate employment.

Kelly, by her own testimony, did not meet the criteria for an award of maintenance. She testified she was able to be employed full-time, there was nothing prohibiting her from being employed full-time, and that she declined full-time employment rather than co-parent with Josh to arrange after-school pick-ups. She also told the Court that she would become a realtor the next month and would

soon be making \$80,000 per year. App. 1, at COL ¶ 20.

Kelly's own testimony showed she was not entitled to maintenance. The District Court did not abuse its discretion.

IV. The District Court did not violate Kelly's Due Process rights when it denied her untimely motions to compel and her multiple, duplicative, frivolous filings.

Due process requires notice and a hearing, but “the process due in any given case varies according to the factual circumstances of the case, the nature of the interests at stake and the risk of making an erroneous decision.” *Montanans v. State*, 2006 MT 277, ¶ 30, 334 Mont. 237, 146 P.3d 759. “Therefore, due process requirements of notice and a meaningful hearing are ‘flexible’ and are adapted by the courts to meet the procedural protections demanded by the specific situation.” *Estate of Boland*, 2019 MT 236, ¶ 25, 397 Mont. 319, 450 P.3d 849.

“Whether to hold a hearing is a matter left to the district court's discretion.” *Estate of Boland*, ¶ 18 (citing *In re Marriage of Sampley*, 2015 MT 121, ¶ 9, 379 Mont. 131, 347 P.3d 1281); Mont. Unif. Dist. Ct. R. 2(c). Due process does not require a hearing on every motion or every issue raised by a party. *In re C.M.R.*, 2016 MT 120, 383 Mont. 398, 372 P.3d 1275.

District courts have the authority to control trial administration and inherent discretionary power to control discovery, including compliance with scheduling orders. *Anderson v. Werner Enterprises, Inc.*, 1998 MT 333, ¶ 13, 292 Mont. 284,

972 P.2d 806.

A. Kelly was afforded 7 months for discovery and her discovery motions were untimely.

Kelly's due process rights to conduct discovery were not violated by the denial of her multiple, untimely motions. The initial discovery period was approximately 5 months. Doc. 8. Kelly received a 60-day extension of the scheduling order. Doc. 40. Even with the extension, Kelly, who was represented by counsel, did not file a motion to compel discovery nor did she conduct any depositions.

Kelly's discovery motions were denied because they were filed months after the extended motions deadline expired. Kelly was told why they were denied. She was present in person at the Pretrial Conference on January 3, 2025. Her motions were discussed and denied because they were untimely. App. 5 (Doc. 75).

Moreover, Kelly's purported issues with discovery were not lack of production. Kelly had questions about the information *within* the documents produced and asked them in discovery. App. 8. Josh produced over 3,000 pages of documents, including extensive information regarding WW7. App. 8, Requests for Production 2-24 (to which Josh produced documents 1-354 and 484-2285). Kelly subpoenaed records from numerous financial institutions. Doc. 51. Any further answers she felt necessary could have been obtained via deposition during the discovery period or on cross-examination at trial. Again, Kelly, who was

represented through the entire discovery period and for 2 months thereafter, did not seek to depose anyone, did not seek another extension of the discovery or motions deadline, and did not file any motions to compel discovery.

At trial, Kelly cross-examined Josh; David Sahfei, Josh's WW7 business partner; Ross Vinstein, WW7's CFO; and Daren Mesrobian⁵ who valued Josh's 50% share of WW7. Kelly also had the opportunity to testify at trial about all of these issues. App. 6 (Doc. 92).

She was afforded due process – that is, she was notified of the discovery and motions deadlines, received an extension, served discovery, chose not to depose anyone, and was given the opportunity to file discovery motions but did not. Docs. 8, 40. Additionally, she was notified of trial, was present in person, and was given the opportunity to both cross-examine all the witnesses and present her own testimony. Docs. 8, 40, App. 6 (Doc. 92). She was afforded due process.

Kelly's claim that she was unaware of the Northern Trust accounts is easily proven false. Just three months after this case was filed, Kelly and her counsel stipulated that one of the accounts would be used to pay the children's tuition. App. 3 (Doc. 10). She had Northern Trust statements because she asked about

⁵ Mr. Mesrobian holds a Bachelor of Science degree, a Master of Business Administration degree, and is accredited in Business Valuation by the American Institute of Certified Public Accountants (AICPA). He has 17+ plus years of experience and has conducted more than 1,000 business valuations. Kelly did not and does not challenge his qualifications as an expert in business valuation.

specific transfers in discovery. App. 8, Interrogatories 8-9; Docs. 77, 82.

Moreover, *her attorney even subpoenaed documents directly from Northern Trust.*

Doc. 51. Kelly knew about these accounts. Nothing was hidden.

Contrary to Kelly’s argument, none of the financial information presented at trial was “unverified.” At trial, the Court had current statements from all the parties’ financial accounts:

Exhibit No.	Account Holder	Asset/Debt
3	PNC Bank	Mortgage on Trego Home
4	Ford Credit	Kelly’s Ford Explorer
5	Hyundai Finance	Josh’s Hyundai Ioniq
6	Whitefish Credit Union	Checking, savings, Sea-Doos
7	Sheffield Finance	Polaris RZR
9	Bank of America	Swamp Creek, LLC
10	Bank of America	Joint checking
11	Bank of America	Josh’s new checking
12	Northern Trust	Children’s tuition
13	Ethereum	Crypto currency
14	Treasury Direct	G.F.F. bonds
15	Treasury Direct	D.A.F. bonds
16	Treasury Direct	Josh for D.A.F. bonds
17	Charles Schwab	Josh for D.A.F.
19	Synchrony	HVAC loan
20	Bank of America	Joint credit card
21	Bank of America	Swamp Creek, LLC credit card
22	Bank of America	Summary of Accounts
26	Morgan Stanley	Custodial accounts; Summary of last 12 months

These are the accounts Josh disclosed in his Final Disclosure on December 13, 2024. Kelly has not identified any missing accounts nor shown that any admitted evidence was incomplete or otherwise wrong. While Kelly does not like

the state of the parties' finances, that does not make the evidence admitted incomplete or wrong.

Kelly is also wrong about Trial Exhibit 26. It does exist, was provided to everyone at trial, and is reflected in the District Court record. Docs. 92, 93. A review of Trial Exhibit 26 shows that it consists of account statements from Morgan Stanley. Trial Exhibit 26 is not fictional, and Kelly did not object to its introduction into evidence. Docs. 92, 93.

Kelly cannot now object to the admission of Trial Exhibit 26. Mont. R. Evid. 103; *State v. Gray*, 2004 MT 347, ¶ 20, 324 Mont. 334, 102 P.3d 1255 (This Court will not put a district court in error for action in which the appealing party acquiesced or actively participated); *State v. Gardner*, 2003 MT 338, ¶ 44, 318 Mont. 436, 80 P.3d 1262, *cert. denied*, 541 U.S. 1034 (2004) (acquiescence in error takes away the right of objecting to it).

Kelly was not prejudiced by the District Court's denial of her untimely discovery motions. She was afforded due process and had ample time to request documents during the seven-month discovery period. The District Court should be affirmed.

B. Kelly's Rule 59(e) Motion and other various filings were properly denied.

Rule 59(e) relief is available only in extraordinary circumstances, for example, to:

- correct manifest errors of law or fact upon which the judgment was based;
- raise newly discovered or previously unavailable evidence;
- prevent manifest injustice resulting from, among other things, serious misconduct of counsel; or
- bring to the court's attention an intervening change in controlling law.

Lee v. USAA Casualty Ins. Co., 2001 MT 59, ¶ 75, 304 Mont. 356, 22 P.3d 631;

Nelson v. Driscoll, 285 Mont. 355, 360, 948 P.2d 256, 259 (1997).

Rule 59(e) relief is not available to:

- relitigate issues already litigated,
- raise new arguments not previously made but that could and should have been made, nor
- reconsider arguments or issues previously raised.

Lee, ¶¶ 71-72; *Nelson*, 285 Mont. at 360-61, 948 P.2d at 259.

Kelly did not meet this Court’s criteria for Rule 59(e) relief. She sought to relitigate the case anew, which is not grounds for relief. App. 2 (Doc. 139). Kelly continues the same baseless, or downright false, arguments before this Court. Each of her specific arguments is addressed below.

1. No filings were suppressed.

Kelly’s Proposed Findings of Fact and Conclusions of Law were not “suppressed.” A review of the docket shows that her Proposed Findings of Fact

were docketed on April 1, 2025, as a proposed order so there is no docket number assigned. *See* docket, generally; doc. 125, Exhibit A. The same was done to Josh’s proposed findings. *See* Doc. 98, with proposed order without a docket number.

Kelly claims there was no ruling on her Proposed Findings. That is also untrue. The “ruling” was the Decree. App. 1. As the Court can see, the District Court considered Kelly’s proposed findings because it adopted some of them. It changed the time-period for Josh to purchase the Trego home from Josh’s proposed 180-days to Kelly’s proposed 90-days. It also adopted Kelly’s proposal that Josh pay all her post-separation debt, rather than Josh’s proposal to pay only half of the attorneys’ lien. *Compare* Doc. 98, proposed order, ¶ 32 (chart) *with* App. 7, ¶¶ 10, 15.

Kelly’s proposed findings were docketed, considered, and some adopted. There was no due process violation.

2. No motions were denied instantaneously.

None of Kelly’s multiple, repetitive, and frivolous post-trial motions were denied instantaneously. After trial, Kelly “lodged thirty filings with this [District] Court seeking relief, resurrecting abandoned claims, and otherwise trying to supplement the record.” Appo. 3 (Doc. 139 (emphasis added)). The bevy of filings had been pending from 90 to 9 days (an average of 1 filing every 3 days). On June 20, 2025, the District Court denied Kelly’s thirty filings in a written order. App. 2

(Doc. 139).

The District Court found Kelly did not meet the Rule 59(e) criteria for relief.

It found:

Kelly is flooding the docket with post-trial and post-decree motions, notices, declarations, and other filings of an ad hoc and repetitive nature. The filings violate the doctrine of finality of judgments, the Rules of Civil Procedure and this Court's Scheduling Order (doc. 8). Many, if not all of them, are baseless in fact and/or law, blatantly misstate the Court record, and are blatant attempts to get a second bite at the apple and relitigate matters.

App. 2, at pp. 4-5 (emphasis added). While the District Court did not sanction Kelly, it warned of its intent to “declar[e] her a vexatious litigant and impos[e] restrictions on filing as well as other sanctions” if her conduct continued. App 2, at p. 5.

The same day, June 20, 2025, Kelly filed another motion, this time accusing the District Court of essentially conspiring against her. Doc. 140. Among her litany of demands, Kelly sought all communications between Judge Ulbricht, the Clerk of Court, Josh's counsel, and court staff related to drafting and filing the Decree, the June 18, 2025, Order that was stricken (App. 9 (Doc. 137)), her Proposed Finding of Fact and Conclusions of Law, and anything about her filings. Doc. 140, p. 2. She also threatened to file a complaint against Judge Ulbricht with the Judicial Standards Commission. Doc. 140.

A week later, on June 27, 2025, Kelly filed a Letter to the Clerk of Court

demanding production of similar records to “preserve evidence of potential judicial misconduct and ethical violations for reporting to appropriate oversight bodies.” Doc. 140.10, p. 3. Kelly’s motion was denied 11 days later in a written order. App. 11 (Doc. 141).

As the docket makes clear, no motion was denied instantaneously. The District Court issued written orders. App. 2, App.11. There was no procedural irregularity but those of Kelly’s own making via constant, repetitive filings.

In fact, Kelly’s filings continued after the Court issued its written orders. To date, Kelly has filed multiple additional documents. Docs. 143, 154.10, 154.20, 157, 158, 159, 160, 161, 162, 164. One of those documents, Kelly’s motion to relocate, is referenced in this appeal. Docs. 154.10, 154.20. She asked the District Court for “permission” to move to Minnesota and have Josh become the primary parent. Doc. 154.10. When Josh agreed, Kelly withdrew the Motion, purportedly because CSSD ordered child support of \$2,344 per month.⁶ Docs. 156-159. Her games with both Josh and the District Court continue unabated.

3. There was not unequal treatment or bias.

None of Kelly’s filings were stricken from the record. Kelly believes document 137 was her filing. It was not. It was an Order that was “misfiled.” App.

⁶ Neither party appealed the CSSD order, and the time to do so expired.

10 (Doc. 138). Viewing the document shows exactly that. App. 9. And Kelly knows this because the stricken Order is the basis for her claim of unequal treatment.

Kelly complains because the stricken order relieved Josh, for 2 days, from responding to Kelly's serial filings (thirty by June 20, 2025) absent a Court order. Doc. 126. Kelly was not affected by the stricken Order at all – she could continue to file her admittedly AI generated, stream of consciousness filings. Doc. 121 (Kelly admits to using AI to draft her filings). Josh was simply relieved of having to respond. For 2 days. The order was stricken and replaced with a new Order App. 2 (Doc. 139). Kelly was not prejudiced by it being in place for 2 days.

Moreover, none of this demonstrates that the District Court abused its discretion in distributing the marital estate or denying Kelly's claim for maintenance. Kelly's false claims of unequal treatment involve issues that occurred months after the Decree was entered.

4. Kelly was not coerced into signing a quit claim deed.

As this Court knows, filing a notice of appeal does not stay a judgment. Mont. Code Ann. § 25-12-103; Mont. R. App. P. 22. The Decree required Josh to act on the Trego home within 90 days. App. 1, at FOF ¶ 33. Therefore, to keep the home, Josh performed and asked Kelly to sign a quitclaim deed. She refused. Doc. 143. The District Court issued an Order to Show Cause. Doc. 146.

Kelly's refusal was based upon her false claim that she was obligated on the Note for the Trego home. Doc. 151. She was not. App. 12 (Doc. 152). Only Josh signed the Note, and only Josh is liable on the Note. App. 12; Doc. 146, Exhibit B. Just before the show cause hearing, Kelly agreed to sign the quit claim deed and filed a reservation of rights regarding her appeal. App. 13 (Doc. 153); App. 14 (Doc. 154).

Kelly was not coerced. She agreed to sign because the basis for her refusal was false. But dispositively, none of this could affect the District Court's distribution of the marital estate, nor the denial of her multiple motions, which all occurred *months prior*.

CONCLUSION

Kelly knew she was required to provide a transcript. She strategically decided not to. The District Court did not abuse its discretion. The division of the marital estate grossly favored Kelly, and Josh believes the division was fair and reasonable under the circumstances of this case.

Josh and the District Court deserve a final judgment. Kelly's relentless motions, accusations, and attacks have wasted not only Josh's resources, but the State's limited judicial resources; resources that are better spent on meritorious cases. The District Court exercised tremendous restraint and did not sanction Kelly, despite her attacks on the integrity of the court itself. Josh has not asked this

Court for attorneys' fees, although he would be justified in doing so, because he just wants an end to Kelly's abusive litigation conduct.

Josh respectfully asks this Court to affirm the District Court in every respect.

DATED this 8th day of December, 2025.

FAURE HOLDEN HENKEL TERRAZAS, P.C.

By: /s/ Jason T. Holden
Jason T. Holden

By: /s/ Katie R. Ranta
Katie R. Ranta

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Response 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 less than 10,000 words (8,445 words), excluding table of contents, certificate of service and certificate of compliance.

FAURE HOLDEN HENKEL TERRAZAS, P.C.

By: /s/ Jason T. Holden
Jason T. Holden

By: /s/ Katie R. Ranta
Katie R. Ranta

APPENDIX INDEX

Appendix No.	Description
1	Docket 116 - Findings of Fact, Conclusions of Law, and Decree of Dissolution
2	Docket 139 - Order
3	Docket 13 - Stipulation RE Interim Issues
4	Docket 59 – Motion and Consent to Withdrawal of Counsel
5	Docket 75 – Minute Entry
6	Docket 92 – Minute Entry
7	Kelly’s Proposed Findings of Fact, Conclusions of Law, and Decree of Dissolution
8	Josh’s Responses to Kelly’s First Combined Discovery Requests (partial)
9	Docket 137 – Order (Stricken)
10	Docket 138 – Order Striking Docket Number 137
11	Docket 141 – Order Denying Respondent’s Motion for Judicial Records, Minutes, and Communications Regarding Case Administration, Decree Finalization, and Related Orders
12	Docket 152 - Reply in Support of Motion for Order to Show Cause
13	Docket 153 – Minute Entry
14	Docket 154 – Reservation of Rights

CERTIFICATE OF SERVICE

I, Jason Trinity Holden, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-08-2025:

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