

IN THE SUPREME COURT FOR THE STATE OF MONTANA

Docket No. DA 25-0795

PRESTON BULL,

Petitioner/Appellant,

v.

JACQUELINE BULL,

Respondent/Appellee

APPELLANT'S OPENING BRIEF

On Appeal from the Fourth Judicial District Court in Missoula
The Honorable Judge Shane Vannatta Presiding

APPEARANCES:

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TABLE OF CONTENTS

| | |
|---|-----------|
| Table of Contents | 1 |
| Table of Authorities | 2 |
| ISSUES PRESENTED FOR REVIEW | 3 |
| STATEMENT OF THE CASE..... | 3 |
| STATEMENT OF THE FACTS | 4 |
| STANDARD OF REVIEW | 8 |
| SUMMARY OF ARGUMENT | 9 |
| ARGUMENT | 9 |
| I. The District Court abused its discretion by issuing a final parenting plan delegating responsibility for parenting time to the minor children..... | 9 |
| a. Appropriate parenting time is a legal conclusion that cannot be left subject to the wishes of minor children..... | 9 |
| b. Parents have an obligation to attempt to overcome a child’s resistance to visitation..... | 11 |
| II. The District Court erred by issuing a final parenting plan that requires the Father to pay unlimited and unspecified amounts above the child support and medical support calculations at the Mother’s sole discretion..... | 12 |
| a. The District Court erred by requiring discretionary payments beyond child support amounts. | 12 |
| b. The District Court erred in granting payment for expenses neither party requested. | 13 |
| CONCLUSION..... | 15 |
| CERTIFICATE OF COMPLIANCE..... | 16 |
| CERTIFICATE OF SERVICE..... | 16 |
| APPENDIX | 17 |

TABLE OF AUTHORITIES

Cases

| | |
|---|----|
| <i>In re Marriage of Guffin</i> 2010 MT 100, 356 Mont. 218, 232 P.3d 888..... | 8 |
| <i>In re Marriage of Toavs</i> 2002 MT 230, 311 Mont. 455, 56 P.3d 356. | 13 |
| <i>In re Marriage of Whyte and Couvillion</i> 2012 MT 45, 364 Mont. 29, 272 P.3d 102. | 10 |
| <i>Marez v. Marshall</i> 2014 MT 333, 377 Mont. 304, 340 P.3d 520..... | 11 |
| <i>Matter of George Trust</i> 253 Mont. 341, 345, 822 P.2d 1378, 1381 (1992). | 14 |
| <i>Woener v. Woener</i> 2014 MT 134, 375 Mont. 153, 325 P.3d 1244..... | 8 |

Statutes

| | |
|-------------------------------------|----|
| Mont. Code Ann. § 40-4-204 | 12 |
| Mont. Code Ann. § 40-5-203(1) | 13 |
| Mont. Code Ann. § 40-5-208(2) | 13 |
| Mont. Code Ann. § 40-5-225(1) | 13 |
| Mont. Code Ann. § 40-5-227(1) | 13 |

ISSUES PRESENTED FOR REVIEW

1. The District Court erred by issuing a final parenting plan that delegated responsibility for parenting time decisions to the minor children.
2. The District Court erred by issuing a final parenting plan that requires the Father to pay unlimited and unspecified amounts above and beyond the child support and medical support obligations at the Mother's sole discretion.

STATEMENT OF THE CASE

This case comes on appeal following a trial before the Missoula County District Court regarding the dissolution of the parties' marriage and a final parenting plan for their three minor children. Following that trial, the district court adopted the Appellee's proposed final parenting plan in full. That plan contained provisions that are contrary to Montana law, and this Honorable Court should reverse those provisions. Specifically, this Court should reverse the provision allowing the minor children's wishes to be the deciding factor in the Father's parenting time, and it should also reverse the provision that requires the Father to be financially responsible for unspecified and

discretionary amounts above and beyond child support and medical support obligations.

STATEMENT OF THE FACTS

Petitioner/Appellant Preston Bull (Preston or Father) and Respondent/Appellee Jacqueline Bull (Jackie or Mother) are parties to a dissolution of marriage and parenting plan action originally filed in the Missoula County District Court. Trial was held on May 13 and 14, 2025, regarding all issues, and the Court heard testimony from both parties, as well as witnesses for both parties, and reviewed exhibits presented by both parties. [Doc. 159, p. 1.]

Following trial, the district court issued a Findings of Fact, Conclusions of Law, and Decree of Dissolution (Decree) disposing of all issues. [Doc. 159.] As part of that Decree, the district court adopted in full Jackie's amended proposed parenting plan, which had been filed with the court in March of 2025, a little more than two months prior to the trial. [Doc. 159, p. 11.]

The adopted parenting plan called for the parties' three minor children (ages 6, 9, and 12 at the time of trial) to be able to make the final determination about whether or not they would spend any

parenting time with their father, Preston. [Doc. 134, p. 3.] Specifically, the parenting plan provides that Preston

“shall have the option of exercising supervised parenting time with the children one day every other week for a period of up to 1.5 hours per visit at Planet Kids in Missoula, Montana, or at another supervised visitation facility chosen by Mother.”

The plan further provides that

“Father’s parenting time should be subject to the wishes of the children so that if a child(ren) does not want to attend Father’s parenting time, the child(ren) should not be required to attend.”

Additionally, the plan provides that

“Father’s parenting time with the children could be re-assessed, if Father were to resume his therapeutic work (including individual therapy, parenting consultation and parent coaching) and the professionals involved with the family determine that Father has made therapeutic progress based upon their professional opinions.”

In other words, under this plan, the children bear the sole responsibility of determining whether or not parenting time with their father will occur. The children also bear the sole responsibility of determining whether the father’s parenting time will be re-assessed under the terms of the parenting plan because they can elect not to participate in parenting time with Preston, including the parenting coaching that is a prerequisite for reassessing parenting time. Both of these important,

legal issues are inappropriately left up to the children’s “wishes” by the parenting plan adopted by the district court.

The parenting plan adopted by the district court also provides that Preston shall pay Jackie child support and medical support as determined by the Montana child support guidelines. [Doc. 159, p. 12.] Specifically, Preston was ordered to pay \$822.00 in monthly child support, and 50% of all uncovered medical expenses and health insurance for the children. [Doc. 159, p. 13.] At the time of trial, the children were insured by Montana Healthy Kids at no expense to either parent. Since then, due to Jackie’s high income, the State removed the children from Montana Healthy Kids, and Jackie obtained insurance with a premium of \$1,236.00 for the month of December, 2025, and \$668.66 premium going forward. Under the parenting plan, Preston is responsible for half of these new insurance expenses, and that amount was not included in the child support calculations.

The district court found that Jackie earns more than twice the amount that Preston earns, specifically that she earns \$154,039.00 per year and that he earns \$64,409.09 per year. [*Id.*]

In addition to the child support and medical support, the district

court's plan requires Preston to pay for 50% of the children's extracurricular activities,

“including extra-curricular activity registrations and equipment expenses. Mother shall provide Father (through counsel) with proof of the expense in writing, and Father shall pay his portion of the expense within thirty (30) days of receiving the documentation.” [Doc. 134, p. 7.]

The plan does not place any financial limitations on or guidelines for the extracurricular activity expenses. Instead, it allows Jackie to have sole discretion on the amounts spent on the children's activities without regard to Preston's ability to pay. Jackie is able to choose activities and equipment that meet her financial abilities and make a demand that Preston reimburse her for half of those expenditures within 30 days of her demand.

The court found that Preston earns approximately 35% of the amount that Jackie earns each year. Put another way, Jackie earns approximately 240% of what Preston earns each year. Preston is unable to reasonably pay for these additional, discretionary expenses on top of child support, medical support, medical insurance, and his own financial needs.

No witness testimony or evidence was presented at trial regarding

extracurricular expenses, and neither party made any requests regarding the payment of these expenses.

Preston is appealing the district court's parenting plan and seeks an order from this Honorable Court reversing the decision to allow the children's wishes to determine parenting time and the decision to require Preston to pay discretionary amounts above and beyond his child support and medical support obligations.

STANDARD OF REVIEW

A district court's determination of a parenting plan is reviewed for abuse of discretion. *Woener v. Woener*, 2014 MT 134, ¶ 12, 375 Mont. 153, 325 P.3d 1244. 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. *In re Marriage of Guffin*, 2010 MT 100, ¶ 20, 356 Mont. 218, 232 P.3d 888.

A district court's conclusions and applications of law, including conformance to applicable statutory requirements, are reviewed *de novo* for correctness. *Bessette v. Bessette*, 2019 MT 35, ¶ 13, 394 Mont. 262, 434 P.3d 894.

SUMMARY OF ARGUMENT

This district court abused its discretion by adopting a final parenting plan that places parenting time decisions solely on the shoulders of the children, and by requiring the Appellant Father to pay amounts above and beyond his child support and medical support obligations. This Honorable Court should reverse the district court's order that allows the minor children to determine whether or not parenting time will occur. It should also reverse the part of the district court's final parenting plan which requires Preston to pay for financial obligations beyond child support and medical support, in an amount solely determined by Jackie, for expenses about which no evidence or witness testimony was presented at the final hearing.

ARGUMENT

I. The District Court abused its discretion by issuing a final parenting plan delegating responsibility for parenting time to the minor children.

a. Appropriate parenting time is a legal conclusion that cannot be left subject to the wishes of minor children.

“While consideration of the child's desires is statutorily required when the child is 14 years old, the ultimate decision is for the court to

make, based upon the evidence, and cannot be delegated to the child.”
In re Marriage of Whyte and Couvillion, 2012 MT 45, ¶ 28, 364 Mont.
29, 272 P.3d 102. “Whether a parenting plan is appropriate is a legal
conclusion that can only be made by a court.” *Id.*

In *Whyte*, the mother moved the district court for an amended
parenting plan seeking to have the parties’ 11-year-old child reside
primarily with her rather than primarily with the father. *Id.* ¶ 6. The
district court held a hearing, and ultimately issued an amended
parenting plan that required the child “to notify both his parents
whether he wants to continue or whether he’d like to reverse the living
arrangements.” *Id.* ¶ 27.

Here, as in *Whyte*, the district court has issued a parenting plan
that requires the parties’ three minor children to each make the
decision about which parent they will spend time with. The district
court has delegated this responsibility to children who were the ages of
6, 9, and 12 at the time of trial. Specifically, the court ordered:

“Father’s parenting time should be subject to the wishes of
the children so that if a child(ren) does not want to attend
Father’s parenting time, the child(ren) should not be
required to attend.” [Doc. 134, p. 3.]

The district court abused its discretion in issuing this parenting plan which is contrary to Montana law and improperly delegates parenting decisions to minor children. This Court should reverse the district court's parenting plan and order that parenting time take place with the children's Father even on days when the children's wishes lie elsewhere.

b. Parents have an obligation to attempt to overcome a child's resistance to visitation.

“A parent is not a powerless bystander in the decisions and actions of a child, and has an obligation to attempt to overcome the child's resistance to visitation.” *Marez v. Marshall*, 2014 MT 333, ¶ 34, 377 Mont. 304, 340 P.3d 520, internal quotes omitted. “A parent has a great deal of influence over a child's ideas and feelings, which carries with it an affirmative responsibility to nurture in the child a positive regard for his or her other parent.” *Id.*

Here, in an abuse of discretion, the parenting plan issued by the district court allows Jackie to ignore her affirmative responsibility as a parent to nurture a positive regard for Preston in the parties' children. It allows her to act as though she is a powerless bystander in the

decisions of the parties' children, as young as 6 years old. As written, the parenting plan places adult decisions squarely upon the shoulders of young children, which is neither appropriate nor in the children's best interest. The district court's parenting plan does not account for Jackie's obligation to attempt to overcome the children's resistance to visitation. The Court has determined appropriate parenting time, and it has determined an appropriate path for revisiting parenting time; those provisions should not be subject to review by minor children. This Court should issue an order reversing the district court's provision that the children can decide whether or not to participate in parenting time, and that Preston's parenting time should occur on a consistent and predictable basis.

II. The District Court erred by issuing a final parenting plan that requires the Father to pay unlimited and unspecified amounts above the child support and medical support calculations at the Mother's sole discretion.

a. The District Court erred by requiring discretionary payments beyond child support amounts.

Montana law provides two legal avenues for imposition of child support obligations: 1) district court child support determinations pursuant to Mont. Code Ann. § 40-4-204; or 2) administrative CSSD

child support determinations pursuant to Mont. Code Ann. §§ 40-5-203(1), -208(2), -225(1), and/or -272(1), as applicable.

Here, the district court has ordered Preston to reimburse Jackie for half of the children's extracurricular activities above and beyond the amounts he is paying in child support and medical support. The extracurricular activities and equipment are solely at Jackie's discretion, and there is no financial cap on the amount or cost of those. Jackie earns more than twice the amount Preston earns working full time. His child support and medical support obligations have been calculated pursuant to Montana statutory law. He can not afford to pay an additional, discretionary amount on top for extracurricular activities and equipment, nor does Montana law support such a financial imposition. This district court's order that Preston pay an additional amount for extracurricular expenses should be reversed.

b. The District Court erred in granting payment for expenses neither party requested.

“A district court may not grant relief not requested when the facts and issues necessary to support such relief have not been tried and proven at trial.” *In re Marriage of Toavs*, 2002 MT 230, ¶ 26, 311 Mont.

455, 56 P.3d 356, quoting *Matter of George Trust*, 253 Mont. 341, 345, 822 P.2d 1378, 1381 (1992).

At trial, neither party presented evidence or testimony regarding the cost of the children’s extracurricular activities and equipment or whether those costs should be borne by the parents separately from child support. When asked about the children’s extracurricular activities, Jackie indicated that the children were involved in “Quite a bit. We do soccer, and softball. Choir, track, drama. All of them have completed swimming lessons as well.” [Trans. p. 319, ln. 12-14.] Jackie also testified that the children were involved in “a busy season” with the children participating in activities “every day” and “multiple activities every week.” [Trans. p. 384, ln. 18; p. 385, ln. 4.]

Jackie did not request that the court order Preston to reimburse her for the extracurricular activities or equipment she chooses for the children, nor did she present evidence or testimony about those expenses. No witness presented any testimony about the subject. The district court erred in ordering Preston to pay for amounts not requested by either party, and the order that he reimburse Jackie for half of the children’s extracurricular activities and equipment should be

reversed. This Court should issue an order reversing the district court's order that Preston be financially responsible for amounts above and beyond child support and medical support obligations, and it should order that any amounts Preston paid pursuant to that order be reimbursed to him or credited against future legitimate financial obligations.

CONCLUSION

For the foregoing reasons, this Honorable Court should issue an order reversing the provisions of the district court's parenting plan that place determination of parenting time upon the children's shoulders. It should also reverse the provisions of the parenting plan that require Preston to pay discretionary amounts above and beyond his child support and medical support obligations. Finally, this Court should issue an order that any amounts Preston for the discretionary extracurricular expenses above and beyond child support should be returned to him or credited against future financial obligations.

DATED this 15th day of December, 2025.

By: /s/ Misty D. Gaubatz
Counsel for Petitioner/Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11 (4)(d), I certify that this Appellant's Brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points and is double-spaced. The word count calculated by Microsoft Word is 2465, exclusive of the tables of contents and authorities and the certificates of compliance and service.

/s/ Misty D. Gaubatz

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 15th day of December, 2025, a true and correct copy of the foregoing was served upon the following via the State's ePass electronic filing system:

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/s/ Misty D. Gaubatz