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02/20/2026

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 26-0026

IN THE SUPREME COURT OF THE STATE OF MONTANA

ORIGINAL

FILED

FEB 20 2026

Bowen Greenwood
Clerk of Supreme Court
State of Montana

LYDIA BAKER,

Appellant/Petitioner,

v.

BRADLY SMITH,

Appellee/Respondent.

Case No: DA 26-0026

APPELLANT'S BRIEF

On appeal from the Montana Eighteenth Judicial District Court,

County of Gallatin,

Cause No. DR-20-185C,

Honorable Presiding Judge John C. Brown

Lydia Baker

Appellant, Pro se

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IN THE SUPREME COURT OF THE STATE OF MONTANA

<p>LYDIA BAKER, Appellant/Petitioner, v. BRADLY SMITH, Appellee/Respondent.</p>	<p>Case No: DA 26-0026</p> <p>APPELLANT'S BRIEF</p>
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COMES NOW, Appellant, Lydia Baker, and respectfully submits this *Appellant's Brief* to the Supreme Court of Montana.

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Cause No. DR-20-185C,

Honorable Presiding Judge John C. Brown

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TABLE OF AUTHORITIES

Cases

In re Marriage of Crowley, 2014 MT 298, 377 Mont. 168, 339 P.3d 608	p. 7
In re Marriage of Danelson, 2003 MT 277, 318 Mont. 223, 79 P.3d 319	p. 8
In re Marriage of Engen, 1998 MT 153, 289 Mont. 299, 961 P.2d 738	p. 8
In re Marriage of Tummarello, 2012 MT 18, 363 Mont. 387, 270 P.3d 28	p. 11
In re Parenting of D.A.H., 2005 MT 68, 326 Mont. 296, 109 P.3d 247	p. 7
Interstate Production Credit Ass'n v. DeSaye, 250 Mont. 320, 820 P.2d 1285 (1991)	p. 7,10
Troxel v. Granville, 530 U.S. 57 (2000)	p. 11

Statutes

Mont. Code Ann. § 40-4-110	p. 9
Mont. Code Ann. § 40-4-217	p. 2,7,11, 12

Mont. Code Ann. § 40-6-701 p. 6,9

Constitutional Provisions

Mont. Const. art. II, § 17 p. 8

STATEMENT OF THE ISSUES

Whether the District Court violated Appellant's right to due process by issuing its December 11, 2025 Order without notice or a meaningful opportunity to be heard regarding Appellant's progress, changed circumstances, and parenting time.

Whether the District Court abused its discretion by imposing supervised visitation conditions that are impracticable and financially unattainable, thereby effectively denying meaningful parenting time.

Whether the District Court abused its discretion by imposing supervised visitation costs, attorney's fees, and modified child support without adequately considering the parties' respective financial resources.

Whether the District Court's findings of fact were clearly erroneous because they relied on outdated, incomplete, or unsupported evidence.

Whether the District Court abused its discretion in finding Appellant in contempt absent evidence of a willful violation of a clear and definite court order.

Whether the District Court abused its discretion by eliminating Appellant's access to the minor child's medical providers without specific findings supporting such restriction.

Whether the District Court abused its discretion by permitting relocation of the minor child without compliance with Mont. Code Ann. § 40-4-217 and without adequate findings regarding the child's established family, school, and community ties.

STATEMENT OF THE CASE

This appeal arises from a parenting and custody proceeding concerning the parties' minor child, H.J.K.B-S.

On December 11, 2025, the District Court entered an Order modifying the existing parenting arrangement. The Order imposed supervised visitation, supervised visitation costs and attorney's fees of the other party, modified child support, restricted Appellant's access to the child's medical providers, permitted relocation of the minor child, and found Appellant in contempt. **Attachment A.**

The matter had previously been set for review in August 2025 to assess Appellant's progress and potential expansion of parenting time. No review hearing occurred prior to issuance of the December 11, 2025 Order. **Attachment B.**

As a result of the Order and its implementation, Appellant has been effectively denied meaningful parenting time, including parenting time during January and so far in February, attendance of the child's Christmas school program, and participation in the child's 10th birthday.

Appellant timely appeals.

STATEMENT OF THE FACTS

The parties share one minor child, H.J.K.B-S., who was nine years old at the time of the December 11, 2025 Order and turned ten on February 16, 2026.

The District Court's findings acknowledge that physical abuse is a factor in this case. Appellant submits that Respondent was charged with felony assault Case No.

DC-18-81C, Gallatin Eighteenth Judicial District Court, , which the District Court considered relevant in its determination of the child's safety and parenting considerations. **Attachment M and C, Felony Assault Case Documentation.**

The District Court previously ordered family counseling. The appointed counselor, Sara K. Elushik, LCSW, withdrew from providing services on August 28, 2025, prior to issuance of the December 11, 2025 Order. Written correspondence in the record reflects this withdrawal. **Attachment D.**

Appellant has participated in consistent mental health treatment since 2021 and before with no reported incidents since April 2021. **Attachments I, J, K and L.**

Appellant resides in Belgrade, Montana.

Appellee resides in Cut Bank, Montana.

On April 5, 2024, the same District Court entered a temporary order suspending Appellant's custody and contact based on allegations transmitted to the court. Shortly thereafter, Appellant submitted an email clarification from the child's counselor explaining the underlying events and correcting the context of the

allegations. Despite this submission, Appellant remained without custody or phone contact for approximately one month before a hearing was held. **Attachments G and H.**

On December 11, 2025, the District Court entered the Order at issue, imposing supervised visitation, supervised visitation costs and attorney's fees, modifying child support, restricting medical access, permitting relocation, and finding Appellant in contempt. **Attachment A.**

The record does not reflect personal service or certified mail service of a relocation motion upon Appellant as required by Mont. Code Ann. § 40-4-217. **Attachments E and F.**

SUMMARY OF ARGUMENT

The District Court violated Appellant's right to due process by issuing its December 11, 2025 Order without conducting the previously scheduled review hearing and without allowing Appellant to present updated evidence regarding compliance and changed circumstances.

The Court abused its discretion by imposing supervised visitation conditions that are impracticable and financially unattainable, effectively denying meaningful parenting time and permitting ongoing interference contrary to Mont. Code Ann. § 40-6-701.

The Court further abused its discretion by imposing financial obligations without adequate findings regarding the parties' respective financial resources, particularly in light of Appellant's reduced financial capacity following entry of the Order.

The Court's findings of fact were clearly erroneous because they relied on incomplete or outdated information, including counseling services that had ceased prior to the Order and matters that had been handled between the parties outside of Court.

The contempt finding lacks evidence of willful violation of a clear and definite court order.

The elimination of Appellant's access to medical providers lacks specific supporting findings and infringes upon fundamental parental rights.

Finally, the relocation ruling failed to comply with the mandatory notice and service requirements of Mont. Code Ann. § 40-4-217 and lacks adequate findings regarding the child's established ties and best interests.

The Order should be reversed.

STANDARD OF REVIEW

Constitutional questions are reviewed for correctness. In re Parenting of D.A.H., 2005 MT 68.

Statutory interpretation and notice compliance are reviewed de novo.

Findings of fact are reviewed for clear error. Interstate Production Credit Ass'n v. DeSaye, 250 Mont. 320 (1991).

Parenting determinations are reviewed for abuse of discretion. In re Marriage of Crowley, 2014 MT 298.

Attorney's fees awards are reviewed for abuse of discretion. In re Marriage of Engen, 1998 MT 153.

Contempt determinations are reviewed for abuse of discretion and require willful violation. In re Marriage of Danelson, 2003 MT 277.

ARGUMENT

I. Due Process Violation

Article II, Section 17 guarantees due process. The matter was set for review in August 2025. No hearing occurred. Instead, the Court issued its December 11, 2025 Order without affording Appellant a meaningful opportunity to present updated evidence.

Because the Order materially altered parental rights, imposed financial burdens, and entered a contempt finding without procedural safeguards, it violated due process and must be reversed. Attachments A and B.

II. Impracticable Supervised Visitation

The Order required consecutive three-day, eight-hour supervised sessions. In practice, providers in the Bozeman area typically offer two- to three-hour sessions.

The Order provided no mechanism for resolving supervisor disputes.

Mont. Code Ann. § 40-6-701 prohibits interference with parenting time. The structure imposed rendered visitation unattainable and enabled obstruction, including denial of attendance at school events and the child's birthday.

An order that cannot reasonably be complied with constitutes an abuse of discretion. Attachment A.

III. Financial Obligations Without Adequate Findings

Under Mont. Code Ann. § 40-4-110, the Court must consider financial resources.

The Order imposed supervised visitation costs, attorney's fees, and modified child support without comparative findings.

Following entry of the December 11, 2025 Order and resulting changes in household composition and income structure, Appellant lost employer-sponsored

health insurance coverage and Medicaid eligibility. This material reduction in financial capacity was not addressed in the Court's findings.

Financial obligations that exceed a party's ability to pay function as barriers to parenting and constitute abuse of discretion.

Attachment A.

IV. Clearly Erroneous Findings

The Court relied in part on counseling continuation despite the counselor's withdrawal on August 28, 2025. Findings based on incomplete or outdated evidence are clearly erroneous under DeSaye. Attachment A and B.

V. Contempt Finding

Contempt requires willful violation of a clear order. Several cited medical appointments predated the Order, and decision-making authority was modified thereafter. The record does not demonstrate willfulness.

The contempt finding must be vacated. Attachment A.

VI. Elimination of Medical Access

Parents possess fundamental liberty interests. *Troxel v. Granville*.

The Order eliminated Appellant's communication with medical providers without specific findings demonstrating necessity. Absent such findings, this restriction constitutes abuse of discretion. Attachment A.

VII. Relocation Without Statutory Compliance or Adequate Findings

Mont. Code Ann. § 40-4-217 requires written notice including specific address, mailing address, telephone number, and date of relocation, served by personal delivery or certified mail.

The District Court abused its discretion by permitting relocation without proper notice or adequate findings, see *In re Marriage of Tummarello*, 2012 MT 18, 363 Mont. 270 P.3d 28. The Notice provided only a general statement of intent to move from Bozeman to Cut Bank without specific mailing address, new school info, or definite date.

The Certificate of Service stated it was certified mailed on April 22, 2024.

However, Respondent's counsel admitted by email on May 10, 2024 that the

Notice had not been sent. The listed mailing address for Appellant was incorrect.

Because proper service did not occur, the statutory objection period could not lawfully begin.

Additionally, the Court made no findings regarding the child's lifelong residence, school, extended family ties, or community integration.

Relocation without strict compliance with § 40-4-217 and without best-interest findings constitutes abuse of discretion. Attachment E and F.

CONCLUSION

Appellant respectfully requests that this Court:

- Reverse the December 11, 2025 Order;
- Vacate the contempt finding;
- Remand for further proceedings consistent with this Court's opinion;
- Direct establishment of a workable parenting plan providing meaningful parenting time without impracticable supervisory or financial barriers;
- Order additional parenting time to compensate for the period of effective denial since December 11, 2025;
- Grant any further relief deemed just and proper.

2/20/26
Lydia Baher
~~Lydia Baher~~

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.

DATED this 20th day of February, 2026.



[Signature]

Lydia Bawher

[Print Name]

CERTIFICATE OF SERVICE

I certify that I have filed this Notice of Appeal with the Clerk of the Montana Supreme Court; and that I have mailed or hand delivered copies to the Clerk of the District Court, each attorney of record, each court reporter from whom a transcript has been ordered, and any party not represented by counsel as follows:

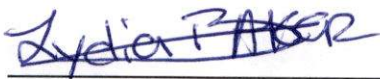
Emma Buescher

Attorney for Bradly Smith, Appellee/Respondent

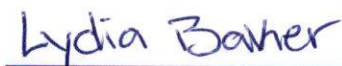
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DATED this 20th day of February, 2026.



[Signature]



[Print name]