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STATE OF MONTANA
Case Number: DA 25-0613

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 25-0613

Justin Vermace,

Respondent/Appellant,

v.

Lynnette Kathryn Sims,

Petitioner/Appellee.

APPELLANT'S REPLY BRIEF

On appeal from the Montana Fourth Judicial District Court, Missoula County, the Honorable John W. Larson presiding.

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Before addressing the merits of Appellee's ("Ms. Sims") *Response Brief*, several factual corrections are pertinent.

Throughout her *Response Brief*, Ms. Sims makes false and hyperbolic allegations regarding Appellant's ("Mr. Vermace") firearm use. For example, Ms. Sims states she alleged in her *Sworn Petition for Temporary Order of Protection and Request for a Hearing* that Mr. Vermace was "repeatedly trespassing on her property with a gun." (*Response Brief*, pg. 1). Ms. Sims made one singular allegation that Mr. Vermace possessed a firearm while on her property, and pointed to other instances where Ms. Sims believed Mr. Vermace came onto her property. (Dist. Ct. Dkt. 1., *Sworn Petition for Temporary Order of Protection and Request for a Hearing*, "Explanation of What Happened"). Ms. Sims did not allege specific facts that Mr. Vermace "repeatedly" trespassed while simultaneously bearing a firearm. *Id.*

Ms. Sims also stated that, *inter alia*, Mr. Vermace "started carrying a gun with him when he approached her," and has been "brandishing his weapon to intimidate Appellee . . . repeatedly . . . over the years." (*Response Brief*, pgs. 8, 29). At the March 28, 2025 hearing, Ms. Sims testified about and produced footage of one singular event, where a trail camera of hers recorded Mr. Vermace approaching their property line in the middle of the night while holding a firearm.

(Appendix to Opening Brief, Appendix 8, pgs. 29-31; Petitioner's Exhibit 13, USB Video). Ms. Sims acknowledged she had no idea this even occurred until approximately one month later after watching footage from the trail camera. (Appendix to Opening Brief, Appendix 8, pg. 29). It was not a contemporaneous perception.

Mr. Vermace's wife testified about ongoing concerns regarding Ms. Sims' increasingly invasive activity around the property line, including an instance of what she believed to be surreptitious observation and harassment of her by agents of Ms. Sims. (Appendix to Opening Brief, Appendix 8, pgs. 70-73). Mr. Vermace's wife had also testified that on May 29, 2024, the night in question, the household was alerted to activity on the North side of their property at multiple points throughout the evening/night/early morning. (Appendix to Opening Brief, Appendix 8, pgs. 73-75). Evident in the video produced by Ms. Sims and reviewed by the District Court was that Mr. Vermace was located right in front of his truck, checking the surroundings of his personal property, which Mr. Vermace's wife had explained was a product of the household's concerns regarding strange noise. (Appendix to Opening Brief, Appendix 8, pgs. 73-75; Petitioner's Exhibit 13, USB Video).

Ms. Sims did not offer testimony of any other instances where she observed Mr. Vermace holding a firearm in her physical presence, via video, or anywhere on

her property in any manner. There is no evidence in the record of an event concerning "Appellant approaching Appellee agitated, with a gun, and yelling about 'his' property." (*Response Brief*, pg. 6).

These statements suggest the District Court was made aware of a continuous pattern of firearm "brandishing" through the underlying proceedings. The record does not support that Mr. Vermace ever specifically approached Ms. Sims with a firearm, spoke to her with a firearm visible, or threatened to use a firearm. This is a new allegation that is exclusive to Ms. Sims' *Response Brief*, and is simply not reflective of the facts that were presented to the District Court.

It is also factually incorrect that Mr. Vermace "failed to file proof of service" of his *pro se Motion to Reconsider the Order of Protection*. (*Response Brief*, pg. 5). Mr. Vermace filed proof of service of his *Motion to Reconsider* with the District Court on May 23, 2025. (Dist. Ct. Dkt. 18, *Certificate of Service*). By filing a Certificate of Service, Mr. Vermace attested to hand delivery of the *Motion* to the office of counsel for Ms. Sims. This manner of service is permitted by Montana law. *See* M. R. Civ. P. 5(b)(1), (2)(B). Ms. Sims used this method to serve pleadings of her own upon Mr. Vermace. (Dist. Ct. Dkt. 1, *Certificate of Service* of *Motion to Continue Hearing* (August 9, 2024); *Certificate of Service* of *Response* (August 9, 2024)). Ms. Sims did not further press this issue beyond filing

a *Notice of Non-Service*, and did not note this as a problem in her *Motion to Reconsider and Brief in Support*.

I. Mr. Vermace is not barred from arguing that he had a right to be heard on Ms. Sims' proposed amendments.

A. Mr. Vermace did not twice participate in the "same procedure" he currently challenges.

Ms. Sims suggests that because Mr. Vermace has previously moved for alterations to the *Temporary Order of Protection* (TOP)/*Order of Protection* (OOP) without requesting a hearing in the corresponding Motion, he must be barred from requesting any hearings in perpetuity. The instances where Mr. Vermace requested modification of the TOP/OOP were not comparable to the procedure at issue here.

In the first request cited by Ms. Sims, Mr. Vermace sought modification of the TOP due to undue hardship and impossibility. (Dist. Ct. Dkt. 1, *Emergency Motion to Amend Temporary Order of Protection*, pg. 2). He argued that remaining 500 feet from Ms. Sims and her property was impossible given the parties share a fence line, Mr. Vermace's home is within 500 feet from the same, and Mr. Vermace's only road of access to his home crosses through Ms. Sims' property. (Dist. Ct. Dkt. 1, *Emergency Motion to Amend Temporary Order of Protection*, pg. 2).

The TOP was granted ex parte and therefore temporary by its nature, had not even been formally served on Mr. Vermace at the time of submission of that *Motion*, Mr. Vermace had only just obtained counsel, and a hearing was docketed for approximately one week from the date of submission of the *Motion*. (Dist. Ct. Dkt. 1, *Notice of Appearance* (August 7, 2024); *Emergency Motion to Amend Temporary Order of Protection*, pg. 1). Ms. Sims responded, noting partial opposition to Mr. Vermace's request, requested a continuance of the hearing and did not request a hearing. (Dist. Ct. Dkt. 1, *Response* (August 7, 2024); *Motion to Continue Hearing* (August 9, 2024)).

The second request cited by Ms. Sims is Mr. Vermace's *Motion to Reconsider the Order of Protection*. Mr. Vermace's *Opening Brief* sets forth in detail how this was a procedural matter and not a substantive request to "reduce" the protective terms of the OOP. This Court has held that even though no "Motion to Reconsider" is recognized under Montana law, motions entitled "Motion to Reconsider," will be evaluated under Rule 59 if it appears in substance that the party is requesting relief properly available under Rule 59. *Nelson v. Driscoll*, 285 Mont. 355, 359-60, 948 P.2d 256, 258-59 (1997).

Mr. Vermace filed his *Motion pro se* and was not privy to this distinction in title. Mr. Vermace requested what was in substance a Rule 59 motion to amend a judgment based on a verifiable error. This is a recognized basis for a Rule 59

Motion. *Id.* at 360, 948 P.2d at 259 (correction of a manifest error in the judgment); *Netzer, Krautter & Brown, P.C. v. State*, 2025 MT 249, ¶ 20, 424 Mont. 421, 578 P.3d 904 ("A party seeking relief under Rule 59(e) may request that a district court rectify its procedural error."). No hearing was necessary because the error was demonstrated through simple reference to the record. No substantive weighing or evaluation of fact was required to see that the OOP clearly contained terms not orally pronounced by the District Court at the March 28 hearing.

While its potential grounds are non-exhaustive, this Court has been clear on what kind of relief Rule 59(e) is *not* appropriate for. *Nelson*, 285 Mont. at 361, 948 P.2d at 259. As detailed in Mr. Vermace's *Opening Brief*, authority shows that the manner in which Ms. Sims sought to utilize Rule 59(e) is improper in this case, particularly in light of her request to amend a final judgment based on new information not in existence at the time of the March 28 hearing.

Mr. Vermace declined to request a hearing in one situation where a hearing was already anticipated to be one week away, and another where no substantive matters were at issue and the law recognizes a mechanism for a simple and efficient procedural correction to a final judgment. In both instances, Mr. Vermace was the movant; however, these were not flagrantly made, broad and continuous

requests for a reduction in protective terms. Being the Respondent, Mr. Vermace was and is the party whose liberty was and is in a position of restriction. None of the instances cited by Ms. Sims involve Ms. Sims making a substantive request to alter protective terms and Mr. Vermace's subsequent failure to ask for a hearing.

Ms. Sims could have requested a hearing on any of these matters if Ms. Sims wanted one, and taken steps to challenge any decision that came about due to a denial of any such request. She did not do so.

All of the above distinguishing points demonstrate Mr. Vermace's prior amendment requests were not the "same procedure" such that Mr. Vermace perpetually waived the ability to ask for a hearing on all decisions made regarding the OOP, as Ms. Sims seems to suggest. Mr. Vermace did not acquiesce, fail to object to, or participate in the procedure he now challenges.

B. Mr. Vermace preserved his claims on appeal by requesting a hearing and substantively explaining the basis for his right to be heard.

Montana law prioritizes substance over form. Mont. Code Ann. § 1-3-219. This Court has decided issues regarding a Respondent's opportunity to be heard in order of protection proceedings based on § 40-15-202, even when a party "characterize[d] their argument on appeal in terms of the opportunity to be heard generally without reference to any particular statute." *Bardsley v. Pluger*, 2015 MT

301, ¶ 15, 381 Mont. 284, 358 P.3d 907. Mr. Vermace's general characterization of his request based on an opportunity to be heard does not preclude him from making the arguments put forward in his *Opening Brief*.

Lockhead v. Lockhead is not on-point. 2013 MT 368, 373 Mont. 120, 314 P.3d 915. In *Lockhead*, the Respondent/Appellant participated in an evidentiary hearing on a TOP, after which the district court continued the TOP until further order, but did not make the TOP permanent. *Id.* at ¶ 6. That was in 1997. *Id.* Later, in an April 21, 1999 dissolution hearing, the district court entered a permanent order of protection against Respondent/ Appellant, which he was served with that same day. *Id.* at ¶¶ 7-8. Respondent/Appellant did not make any argument regarding a right to be heard on the order of protection at the dissolution hearing, nor did he appeal the order of protection. *Id.*

Then, 13 years later on November 16, 2012, Respondent/Appellant moved to vacate the permanent order of protection issued at the dissolution hearing, making arguments that "it was imposed without prior notice, without a hearing, and without supporting findings of fact and conclusions of law." *Id.* at ¶ 9. This Court upheld the district court's denial of the Motion to Vacate, commenting: "[Respondent/Appellant] waited 13 years to challenge the holding of the underlying Order of Protection . . . . We therefore determine he has failed to preserve these alleged errors for appeal." *Id.* at ¶ 16.

Unlike the Respondent/Appellant in *Lockhead*, Mr. Vermace did not wait 13 years to challenge the *Second Amended Order of Protection* and denial of a hearing. Mr. Vermace's appeal is timely. He promptly requested a hearing at the beginning of his *Response Brief*, stated his opposition to Ms. Sims' *Motion*, substantively argued that he was entitled to an opportunity to be heard, and again reiterated his request for a hearing at the end. (Appendix to Opening Brief, Appendix 1).

The denial of a request for a hearing is not an issue being presented for the first time on appeal, because the request was brought to the District Court's attention for consideration and was subsequently denied.

II. Section 40-15-202, MCA, can and should apply to amendments to an existing permanent order of protection, and case law supports such an interpretation.

That *Bardsley v. Pluger* concerned a new person is not dispositive to the applicability of its holding here. 2015 MT 301, 381 Mont. 284, 358 P.3d 907. In *Bardsley*, this Court stated that "§ 40-15-202(1) requires a court to conduct a show cause hearing before *issuing a permanent order of protection* wherein the respondent is permitted to testify and introduce evidence." *Id.* at ¶ 15. The question at issue in part was whether a statutory hearing was conducted "before expanding the order of protection to include Dora." *Id.* at ¶ 16.

A permanent OOP already existed, and yet this Court still applied § 40-15-202's hearing requirement for changes made to it. This Court did not treat the statutory hearing requirement as a strict, one-time event that only occurs prior to the entry of the first version of a permanent order of protection. Instead, it treated the district court's issuance of the expanded order of protection as if it were "issuing a permanent order of protection," and therefore the statutory hearing requirement could apply for the second time in the same matter. In the case of *Bardsley*, the new terms at issue included a new individual, but the inquiry still centered on whether she had "an opportunity to be heard." *Id.* This Court answered in the negative, concluding that not only was a second show cause hearing not held, but she was otherwise not able to put forward evidence on the alleged conduct at issue that led to the alteration of the order of protection. *Id.*

The issue of not having "an opportunity to be heard" is still translatable to Mr. Vermace's case given that this assessment amounts to what is meaningful "under the circumstances." *See In re Estate of Boland*, 2019 MT 236, ¶ 25, 397 Mont. 319, 450 P.3d 849. As discussed in Mr. Vermace's *Opening Brief*, Ms. Sims' request was based entirely on new information not in existence at the time of the hearing. Mr. Vermace had no meaningful opportunity to be heard on the contested facts that clearly formed the basis of the *Second Amended Order of Protection*.

Thus, § 40-15-202 can be interpreted to mean that a hearing is required prior to entry of any permanent order of protection, even if that order of protection is an altered version arising from an existing order of protection.

III. The District Court abused its discretion by failing to hold a hearing on Ms. Sims' proposed amendments and in granting the *Second Amended Order of Protection*.

Mr. Vermace's *Opening Brief* details how at the March 28 hearing the District Court expressly and deliberately declined to order the very terms it later granted. The District Court clearly relied on the new allegations submitted by Ms. Sims in making its decision.

Just because a 1500-foot distance is a statutorily suggested or permitted protective term, does not necessarily mean the District Court could or should have ordered such a term in this particular case. *See* Mont. Code Ann. § 40-15-201. The terms ultimately fashioned by the District Court must still be "appropriate." Mont. Code Ann. § 40-15-204(3). Ms. Sims' argument as to what the District Court "could have" done is uninformative in the face of what the District Court *actually* did, because it must be presumed that what the District Court actually did was exactly what it deemed "appropriate." Completely changing its position on what terms were necessary or appropriate from the time of the hearing, to the *Second Amended Order of Protection*, shows that the District Court had to have relied on the new allegations.

It was and still is disputed that "altercations" between the parties "bled into the community." Driving by each other briefly is not an "altercation" and it is the exact type of scenario the District Court understood and contemplated would occur—that the parties would pass by each other in the community surrounding their homes. So, for the District Court to receive information confirming that what the District Court anticipated would occur—and was not worried about—actually did occur, and using that to completely reverse its decision and enhance the protective terms is arbitrary and unreasonable.

The District Court itself recognized the precarious position the parties' status as adjacent neighbors puts Mr. Vermace in day-to-day. Mr. Vermace is at a severe risk of being restricted beyond what is necessary and of any restrictions impacting his ability to reasonably exist on his property. The District Court was concerned about this, notwithstanding Ms. Sims' status as a protected person. A hearing would not have been duplicative, and was necessary, because the purpose of a hearing is not just to argue a position but also to test the credibility of Ms. Sims and her allegations.

Allowing Mr. Vermace to cross examine Ms. Sims and present evidence at a hearing does not constitute granting Mr. Vermace "unfettered access" to Ms. Sims. There is no evidence Mr. Vermace was misusing proceedings to somehow harm or "get to" Ms. Sims. Ms. Sims' insinuations to that effect lack credibility, as

discussed in the *Opening Brief*. Ms. Sims is the one who sought the amendments, and should not be permitted to claim Mr. Vermace is somehow harassing her by asking for a hearing when he is defending himself in good faith against her allegations.

The relief requested by Mr. Vermace is the protection of his right to be heard, and due process should not be described as a "hurdle for victims." Even as a protected person, Ms. Sims should not be able to obtain relief so "swiftly and efficiently" that Mr. Vermace is denied the ability to meaningfully defend himself against her untested allegations.

A protected person *should* have to answer for their claims, and substantiate that the degree of relief they are requesting is actually necessary, with credible evidence. Without requiring Ms. Sims to do so, the District Court was not in a position to determine that Ms. Sims' request was justified under the circumstances.

The process of appealing an OOP to a district court is inapplicable because the *Second Amended Order of Protection* was not accomplished by Ms. Sims' appeal to the District Court of an OOP issued in Justice Court. Furthermore, how the jurisdictions cited by Ms. Sims treat a district court's discretion to order an additional evidentiary hearing is not controlling here because Montana has no comparable statute addressing a district court's authority to issue an order

amending a permanent order of protection without a hearing. Lastly, the hypothetical posited by Ms. Sims is uninformative because it is both factually and procedurally inapplicable. It does not properly account for the nuances of this case, and Mr. Vermace is not arguing that a hearing is required "for every change in circumstance."

The District Court abused its discretion and violated Mr. Vermace's due process rights when it failed to provide a hearing on Ms. Sims' proposed amendments and made the decision to grant the same.

CONCLUSION

For all of the above reasons, and as set forth in Mr. Vermace's *Opening Brief*, Mr. Vermace respectfully asks that this Court reverse the District Court's decision to grant Ms. Sims' *Motion to Reconsider* and order the District Court to re-issue the *Amended Order of Protection*.

DATED this 13th day of April, 2026.

Tipp Coburn Lockwood, P.C.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text of fourteen (14) points; is double-spaced; and the word count calculated by Microsoft Word is 3,264, excluding the cover page, table of contents, table of authorities, certificate of compliance, and certificate of mailing and appendix.

DATED this 13th day of April, 2026.

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I, Makayla Marceen White, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 04-13-2026:

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