

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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THOMAS D. KERR,

*Petitioner,*

v.

HEIDI L. KERR,

*Respondent.*

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**On Petition for Writ of Certiorari to the  
Supreme Court to the State of Montana**

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**PETITION FOR WRIT OF CERTIORARI**

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November 3, 2020

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## QUESTION PRESENTED

It has long been well settled that parents enjoy a fundamental liberty of rights of childrearing, procreation, and education. *See Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925). Moreover, this Court has recently clarified the application of laws to favor one parent over the other on the basis of gender is unconstitutionally permissible. *See Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017).<sup>1</sup>

Thus, the simple question presented is:

1. Can the Montana Supreme Court ignore the unjustifiable and inexplicable decisions of the lower court discriminate against a father for no other discernable reason than his gender without running afoul of the clear protections of the United States Constitution's guarantees to due process and equal protection or the decisions of the Court applying those protections to parenting?

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<sup>1</sup> Prescribing one rule for mothers, another for fathers, § 1409 is of the same genre as the classifications we declared unconstitutional in *Reed*, *Frontiero*, *Wiesenfeld*, *Goldfarb*, and *Westcott*. As in those cases, heightened scrutiny is in order. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017)

## **PARTIES TO THE PROCEEDING**

Petitioner is Thomas Kerr. He was the Respondent in the District Court divorce proceeding and the *pro se* Appellant before the Supreme Court of Montana.

Respondent is Heidi Kerr. She was the Petitioner in the District Court divorce proceeding and the Appellee before the Supreme Court of Montana.

## **STATEMENT OF RELATED CASES**

- *Kerr v. Kerr*, No. DR-17-00886, Montana Fourth Judicial District Court, Missoula County, Judgment entered April 18, 2019.
- *Kerr v. Kerr*, No. DA 19-0276, 2020 MT 158N, In the Supreme Court of the State of Montana, Judgment entered June 16, 2020.

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## PETITION FOR WRIT OF CERTIORARI

“This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.” (App. A 10). Such a statement appearing to be simple and innocuous, could simply not be more inapposite of the truth of this situation. While at the same time, such a statement could not be more consistent with one of the greatest failings and most troubling constitutional crisis occurring on a nationwide basis every day in our family court system. Putting aside the fact that almost all divorces are messy in some sense of the word and that this case presents one of the most egregious examples unequal treatment before the law or gender bias in our court systems, the simple fact that should be readily apparent to the Court is that system is broken when a state high court can be presented with such a clear example and think nothing of the harms done to one party’s fundamental liberties. Unfortunately, Petitioner’s circumstances and loss of liberty presented here are not rare, they are commonplace, often times following gender lines, but in almost every case trampling the rights of one parent in favor of the other.

Thus Montana Supreme Court’s decision to ignore the constitutional injuries visited upon Petitioner without justifiable cause or concern for his Due Process rights serves to present this Court the opportunity to correct a great wrong harming not just Petitioner’s children by depriving them of the meaningful involvement of their father

in their lives by of all of the children of this nation that have suffered the deprivation of having the equal opportunity to be parented by both of the parents that possess the fitness to provide that to them.

This Court should grant review to 1) reaffirm the equal right to parent of both parents regardless of gender, *Sessions v. Morales-Santana*, 137 S. Ct. 1678 at 1692-3; and 2) restore the protections of the Due Process to every parent that is not prohibited by some statutorily recognized limitation to be an equal parent in their child's life.

### **OPINIONS BELOW**

The Montana Supreme Court's unpublished opinion is reported at 464 P.3d 1012. Appendix B. (Memorandum Opinion, June 16, 2020) The unpublished Order of District Court of the Fourth Judicial District, In and For the County of Missoula, Cause No. DR-17-886 dated April 18, 2019. Appendix A.

### **JURISDICTION**

The decision of the Supreme Court of the State of Montana for which certiorari is sought was entered on June 16, 2020. Pet.App.1a. This Court has jurisdiction under 28 U.S.C. § 1257. This Petition for Writ of Certiorari is timely filed pursuant to the Thursday, March 19, 2020 United States Supreme Court Order 589 U.S.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. Constitution, Article III, Section 1:**

The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish...

### **U.S. Constitution – Amendment 14:**

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **STATEMENT OF THE CASE**

### **A. The Underlying Divorce Proceeding**

Respondent filed for divorce in December 2017 and after 1 ½ years of mediation, hearings, multiple court filings, the 4<sup>th</sup> Judicial District Court in Missoula County filed a judgement on April 18<sup>th</sup>, 2019.

As was noted above, divorce proceedings are typically messy affairs that typically result in an outcome where one party wins and the other loses the description of this case is no different and is largely illustrative of the assumed



reasons that why, with regard to parenting that such an unequal and unconstitutional outcome was reached and then later ratified by the Montana Supreme Court without any substantive constitutional review.

The descent of this case down the rabbit hole to a bizarre realm that is all too common in domestic relations law began with the division of marital assets which was bizarre in that substantially all marital cash assets were allocated to Respondent and substantially all marital debt was allocated to Petitioner without justification. The District Court Judge allocated assets to Respondent that she didn't even ask for. For example, the parties agreed to split the marital home 50/50, but the District Judge refused the agreement and allocated to Respondent mother seventy percent of the value of the home. In addition, full proceeds of a vacation home sale were allocated to Respondent that Petitioner had purchased before the marriage and never contributed or maintained by the marriage.

Again, a disparate division of assets isn't that unusual if there is a disparity of earnings capacity, but it is usually offset with a reduced level of child support and maintenance, which was not in this case. The total of child support and maintenance awarded exceeded Petitioner's salary at the time and the sum of all court order obligations exceed the higher imputed salary that was imposed to Petitioner. In essence, the District Court essentially manufactured a situation wherein Petitioner couldn't pay for his normal living expenses and was therefore prohibited from

legitimately achieving an equal opportunity to be a parent to the children. Likewise the lopsided vendetta of the District Court continued with regard to the application allocation or share of children's healthcare costs, requiring Petitioner already at a deficit to be responsible for one hundred percent of the children's health insurance and eighty-two percent of all out of pocket child healthcare costs. Moreover, child credit tax deductions were awarded to Respondent every year with no alternating years and Petitioner was required to pay all of Respondent's legal fees.

In one of most clear-cut examples of bias by the District Court, that appears to have been purposefully overlooked by the Montana Supreme Court, the Petitioner filed a pre-judgement motion to inform the District Court of various financial conflicts as well as to note the Respondent's ongoing harassment and abuse citing 12 examples. Not only did the District Court not address the issues, the District Court had the motion stricken from the record and claimed the Petitioner was actually harassing the Respondent by filing the motion and trying to portray her in a bad light.

Lastly, oral testimony and evidence was presented during the case by the Petitioner that there was a substantial amount of physical spousal abuse by the Respondent during the marriage. The District Court and Montana Supreme Court wholesale dismissed the issue, apparently because the abuse came from a woman against a man, further correlating a gender bias towards one parent of the

children. Both Courts dismissed written testimony by the Respondent's own family members which expressed their concerns over her lifelong struggles with anger. The Petitioner's goal regarding this issue was not to declare mother unfit, nor to take the children away from their mother, but to simply ask for mandated anger management classes or targeted therapy to protect the children. Yet the District Court even specifically opined that anger management classes are not necessary.

Despite the lopsided and punitive financial aspects of the judgement and the refusal to acknowledge domestic abuse, the impetus animating the current petitioner is not the disparate treatment of a spouse in an divorce proceeding but what animates Petitioner call out for the mercy of this Court and what should animate this Court is the disparate treatment of a fit parent in the District Courts award of custody and parenting plan despite clear undisputed evidence that both parents were equally involved in parenting the children. Shockingly, the District Court did not just largely remove father from the children's lives in terms of timesharing and input into decision making regarding the rearing of the children, District Court allowed the children to be removed from their home in Montana, where for four years they were deeply embedded in the Missoula community with friends, sports, schooling and a strong parental support group to another state. The District Court's decision, thus, inexplicably and regulates a parent out of any meaningful opportunity to be an equal parent to his children trampling his rights to equal protection and due process under

the Fourteenth Amendment to the United States Constitution.

### **B. The Montana Supreme Court Decision**

The Montana Supreme Court affirmed. Pet.App.1a-10a. The Decision affirming the District Court's Order though presented with many questions implicating a well-known fundamental liberty, engaged in no analysis or consideration of the constitutional issues presented to them by such a disparate decision regarding child custody and parenting, instead applying Montana state law MCA § 40-4-212(1), in a discriminatory fashion that favors one parent on basis of attributes associated to that gender instead of affording both parents equal protection of the law.

### **REASONS FOR GRANTING THE PETITION**

The negative impacts associated to removal of one parent from a child's life are undisputed, well-document and long understood, such that they need not be repeated to this Court. And yet, despite this clear understanding this Nation has long tolerated a system that is supposed to put the best interests of the children first behind a system that has deteriorated into a system the deprives children of the opportunity of being parented by both fit parents. This case presents and clean, clear and precise opportunity for the Court to affirm the protections of our Constitution that ensure that both parents of our children are provided equal protection of our laws and due process of law before they are deprived of that long recognized fundamental liberty.

Without sounding too cliché, this case is about our children and this Court should not resist or miss the opportunity to do what is right for the children of America.

After all this Court has plainly said that:

The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

*Obergefell v. Hodges*, 576 U.S. 644, 664 (2015). This Petitioner presents a claim to liberty that this Court must address.

**I. THE APPLICATION OF FAVORABLE FACTORS ON THE BASIS OF GENDER SERVED TO INCORRECTLY AVOID A CRITICAL AND FUNDAMENTAL QUESTION REGARDING DUE PROCESS ASSOCIATED TO PARENTING AND EQUAL PROTECTION AFFORDED TO A FIT PARENT**

In avoiding any constitutional analysis of whether or not it was permissible to remove a fit father from the lives of his children, the Montana Supreme Court ratified a deprivation of Petitioner's rights to Due Process and Equal Protection. Moreover, the Supreme Court's failure to uphold Due Process and Equal Protection for Petitioner as parent violates the clear precedent of this Court. Despite the fact that this Court has recognized that "choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution," *Obergefell v. Hodges*, 576 U.S. 644, 666 (2015), the Montana

Supreme Court stripped away Petitioner's decisions and input into the childrearing of his children. They did so on the basis that mother:

has been the children's primary caretaker and the coordinator of school, activities, and medical/therapy appointments, and is adept at managing their day-to-day care. Heidi has acted not only as the children's activities coordinator but also as their source of nurturance and affection. She provides the children with predictability, support, and was found by the District Court to be "more skilled and gifted in providing nurturance and empathy."

Pet. App. 6a. A clearer example of bias based upon gender factors is hard to fathom. Thus, the Montana Supreme Court's decision to uphold the District Court's discriminatory ruling without any evaluation of the constitutional protections afforded to both parties squarely ignores this Court's holding,

that we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children \*535 under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state.

*Pierce v. Socy. of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534–35 (1925).

Moreover, as Justice Ginsburg has recently pointed out for the unanimous decision of this Court that gender-based decisions or laws that impact the fundamental right to be a parent to children are viewed by this Court

with suspicion laws that rely on "overbroad generalizations about the different talents, capacities, or preferences of males and females." *Virginia*, 518 U.S., at 533, 116 S.Ct. 2264; see *Wiesenfeld*, 420 U.S., at

643, 648, 95 S.Ct. 1225. In particular, we have recognized that if a “statutory objective is to exclude or ‘protect’ members of one gender” in reliance on “fixed notions concerning [that gender's] roles and abilities,” the “objective itself is illegitimate.” *Mississippi Univ. for Women*, 458 U.S., at 725, 102 S.Ct. 3331.

*Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1692 (2017). But that is exactly what the Montana Supreme Court affirmed a decision that is directly contrary to this Court’s holding to discriminate against a father on the basis of stereotypes of the differing attributes that mothers and father’s bring to child rearing. Again, a more illuminating and important distinction than what Justice Ginsburg authored in this regard is hard to fathom and should never have been ignored by the Montana Supreme Court:

Laws according or denying benefits in reliance on “[s]tereotypes about women's domestic roles,” the Court has observed, may “creat[e] a self-fulfilling cycle of discrimination that force[s] women to continue to assume the role of primary family caregiver.” *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721, 736, 123 S.Ct. 1972, 155 L.Ed.2d 953 (2003). Correspondingly, such laws may disserve men who exercise responsibility for raising their children. See *ibid.* In light of the equal protection jurisprudence this Court has developed since 1971, see *Virginia*, 518 U.S., at 531–534, 116 S.Ct. 2264, § 1409(a) and (c)'s discrete duration-of-residence requirements for unwed mothers and fathers who have accepted parental responsibility is stunningly anachronistic.

*Id* at 1693. Thus, the gender based distinction upheld by the Montana Supreme Court in this case must be determined to violate the equal protections of the Fourteenth Amendment under this Court’s rationale in *Morales-Santana* and the Petition should

be granted so that this Court might evaluate the best way to ensure that the fundamentally liberty of childrearing is equally available to all fit parents regardless of their gender.

Finally, in clear recognition of this Court's jurisprudence with regard to the due process that should be afforded to the fundamental liberty of childrearing for a parent this Court should grant the petition to address the deprivations of the Petitioner's due process as the Montana Supreme Court's decision conflicts this Court recent decision in *Obergefell* in this regard. "[T]he right to 'marry, establish a home and **bring up children**' is a central part of the liberty protected by the Due Process Clause." *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015) quoting *Zablocki v. Redhail*, 434 U.S. 374, 384, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978) (emphasis added). Thus, allowing the states to strip away a long recognized fundamental liberty that formed undisputed part of the basis for this Court's decision in *Obergefell* upon the basis that two fit parents have decided to divorce or end their relationship which requires that what was previously a right equally afforded to both parents must now be curtailed in order to satisfy a compelling state interest with evaluation or tailoring of how such an interest is met is purely wrong. But a trampling of liberty is now the norm for the family court systems in almost all states. The need for the granting of this Petition to restore that liberty balance simply cannot be overstated.



## CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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# **APPENDIX A**

DA 19-0276

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 158N

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IN RE THE MARRIAGE OF:

HEIDI L. KERR,

Petitioner and Appellee,

and

THOMAS D. KERR,

Respondent and Appellant.

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APPEAL FROM: District Court of the Fourth Judicial District,  
In and For the County of Missoula, Cause No. DR-17-886  
Honorable Karen S. Townsend, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Thomas D. Kerr, Self-Represented, Missoula, Montana

For Appellee:

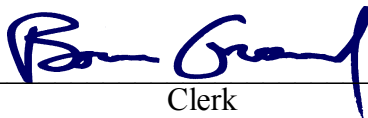
André Gurr, Garden City Law, PLLC, Missoula, Montana

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Submitted on Briefs: March 4, 2020

Decided: June 16, 2020

Filed:

  
Clerk

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Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Thomas Kerr (Tom) appeals from an order of the Fourth Judicial District Court, Missoula County, regarding division of marital assets, child support, parenting plan, spousal maintenance, and attorney fees. We affirm.

¶3 This case involves a highly contentious dissolution of marriage between Tom and his wife of 16 years, Heidi Kerr (Heidi). The couple have three minor children, J.L.K. (13 years of age); W.D.K. (12 years of age); and C.T.K. (12 years of age). The parties were married in Los Angeles County, California, in 2002, and continued to live there until Tom moved to Missoula, Montana, in 2014 for work. Heidi and the children followed to Missoula in June 2015. Tom is 55 years old and has an employment history of working as an investment manager in California and later in Missoula at S.G. Long Finance. Tom lost his job with S.G. Long Finance in October 2018, and was still unemployed at the time of the District Court proceedings. He received a promise for a satisfactory recommendation upon his leaving S.G. Long Finance and was given \$50,000 in severance pay. Heidi is 50 years old. She earned a Bachelor of Science in Exercise Science in 1992, and a credential in Adapted Physical Education in 1999. Heidi

worked as a physical education teacher in California prior to the family decision that she stay home when J.L.K. was born. She has since primarily worked as a stay-at-home mother. Heidi previously had a dog training business, Heidi Paws, while living in California, and has also been a licensed massage therapist. At the time of the District Court proceedings Heidi was employed at the Humane Society, working 32 hours per week at \$12.25 per hour. Her California teaching credentials had lapsed at the time of the proceedings.

¶4 The parties separated on December 7, 2017, although they continued to reside in the family home until Heidi secured separate housing in May 2018. Also on December 7, 2017, Heidi filed a Petition for Dissolution of Marriage, to which Tom responded. Initial proceedings were conducted before a Standing Master who issued an Order for Temporary Child Support on February 22, 2018; the Standing Master eventually issued a Revised Order upon Tom's request for review. The matter was later referred to the District Court on April 18, 2018. The District Court set a hearing on Tom's request to review the Standing Master's orders but continued that hearing upon request of the parties to pursue settlement. After a settlement conference on August 17, 2018, the parties did not entirely settle, but did reach a Stipulation on an Interim Parenting Plan and on Child and Family Support. Following the report of the Settlement Master, the District Court held a hearing on November 7 and 8, 2018, to resolve the remaining issues in Tom's review request, including ruling on the Order for Family Support and the Order for Temporary Child Support, in addition to deciding on

the distribution of the parties' marital assets. The parties stipulated that the testimony of Dr. Sara Baxter, who had completed an earlier parenting evaluation, could be received from Dr. Baxter's deposition testimony as she was unavailable on the hearing dates.

¶5 Following the hearing, but before the District Court issued its findings and conclusions, Heidi filed a motion for the sale of the family home on April 3, 2019. Tom responded, agreeing to the sale but making several demands for deductions from the sale proceeds to settle outstanding credit card debts before the remainder was divided between the parties. The District Court held a hearing on Heidi's motion on April 10, 2019. On April 18, 2019, the court issued a single order on both the November 2018 and April 2019 hearings.

¶6 The District Court made thorough findings and conclusions regarding the dissolution, parenting plan, child support, spousal maintenance, and attorney fees. Based in large part on Tom's superior earning capacity, the "extreme" conflict between the parties, and the extensive support group and financial opportunities available in California, the District Court permitted Heidi to move back to California with the children; adopted Heidi's proposed parenting plan; awarded Heidi an equitable portion of the marital estate; ordered Tom to pay \$615 per child per month (\$1,844 total per month) in child support and \$1,500 per month in maintenance to Heidi for 6 years; and ordered Tom to pay Heidi's attorney fees pursuant to § 40-4-110, MCA. Tom appeals, alleging the District Court made numerous errors in its order, namely by allowing Heidi to move to California with the children; erroneously calculating Tom's historical earning capacity,

Heidi's maintenance award, and the child support amount; and ordering Tom to pay Heidi's attorney fees. Both parties were represented by counsel in the District Court proceedings, though Tom now represents himself in this appeal.

¶7 This Court reviews a district court's findings of fact regarding parenting plans, division of marital property, child support, and maintenance awards to determine whether they are clearly erroneous. *In re C.J.*, 2016 MT 93, ¶ 12, 383 Mont. 197, 369 P.3d 1028; *Paschen v. Paschen*, 2015 MT 350, ¶ 17, 382 Mont. 34, 363 P.3d 444. A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if our review of the record convinces us that the district court made a mistake. *In re C.J.*, ¶ 12.

¶8 We first address Tom's argument that the District Court erred by permitting Heidi to relocate to California with the children. A district court has "broad discretion when considering the parenting of a child, and we must presume that the court carefully considered the evidence and made the correct decision." *In re C.J.*, ¶ 13 (quoting *In re Marriage of Woerner*, 2014 MT 134, ¶ 12, 375 Mont. 153, 325 P.3d 1244). Accordingly, absent clearly erroneous findings, we will not disturb a district court's decision regarding parenting plans unless there is a clear abuse of discretion. *In re C.J.*, ¶ 13. Although district courts have broad discretion when considering the parenting of a child, a district court must determine the parenting plan in accordance with the best interests of the child, pursuant to § 40-4-212(1), MCA. *In re C.J.*, ¶ 14. The statute includes a non-exhaustive list of factors that district courts are directed to consider

in making a best interest determination. *See* § 40-4-212(1), MCA. Although district courts are encouraged to make specific findings on each factor listed in § 40-4-212(1), MCA, “we require only ‘that the district court make findings sufficient for this [C]ourt to determine whether the court considered the statutory facts and made its ruling on the basis of the child’s best interests.’” *In re C.J.*, ¶ 14 (quoting *Woerner*, ¶ 15).

¶9 Upon review of the record, and the District Court’s findings relative to the best interest factors in § 40-4-212(1), MCA, we hold that the District Court did not misapprehend the effects of the evidence or clearly err in finding that it was in the children’s best interests to move to California with Heidi. Tom raises several arguments condemning the authenticity of Heidi’s California support group and the viability of the employment opportunities available to Heidi in California, facts upon which the District Court relied in making its determination. The District Court found that the children would likely easily adjust to a move back to California, given their support network of extended family and old friends, and their familiarity with the locale. Heidi has been the children’s primary caretaker and the coordinator of school, activities, and medical/therapy appointments, and is adept at managing their day-to-day care. Heidi has acted not only as the children’s activities coordinator but also as their source of nurturance and affection. She provides the children with predictability, support, and was found by the District Court to be “more skilled and gifted in providing nurturance and empathy.” Further, the court noted Dr. Baxter’s evaluation recognizing “Tom’s obvious



struggles with empathy.” The District Court’s findings were based on an analysis of the factors presented in § 40-4-212(1), MCA, and the record supports those findings. Given the District Court’s broad discretion in determining parenting plans, we will not disturb the court’s decision absent a clear abuse of that discretion. Based on a review of the record, the District Court did not err by adopting Heidi’s proposed parenting plan and permitting Heidi to move with the children to California.

¶10 Tom next argues that the District Court erred in its determination of Tom’s earning capacity, an error which Tom alleges was compounded because this “unrealistic and unobtainable” earning capacity was then used to determine other financial aspects of the case, including equitable division of the marital assets, spousal maintenance, and child support.

¶11 The distribution of marital property in dissolution proceedings is governed by § 40-4-202, MCA, under which a trial court is vested with broad discretion to distribute the marital property in a manner that is equitable to both parties. When dividing marital property, the trial court must reach an equitable distribution, not necessarily an equal distribution. A district court’s apportionment of the marital estate will stand unless there has been a clear abuse of discretion as manifested by a substantially inequitable division of the marital assets resulting in substantial injustice. *Paschen*, ¶ 16.

¶12 There is no evidence in the record that the District Court made an error in its determination of Tom’s earning capacity. Despite Tom’s “evasive” and “not as direct” responses to questions regarding his financial position and job prospects, Tom’s earning

capacity was calculated by using his past earning record and social security statements. Following hearings, numerous exhibits, and extensive witness testimony, the District Court equitably divided the marital estate, entering a 61-page order based upon thorough findings which considered the criteria required in § 40-4-202, MCA, including: the length of the marriage (16 years); the parties' ages (55 and 50, respectively); the parties' high standard of living during the marriage; Heidi's contributions as a homemaker and primary caretaker of the children; Heidi's income (\$12.25 per hour); the lapsing of Heidi's teaching credentials; the parties' "extreme" level of conflict; Tom's practice of maintaining a high standard of living through use of credit cards; the parties' stipulated values of assets and debts; Tom's severance package from S.G. Long Finance; Tom's financial support from family; Tom's dissipation of retirement accounts; and much more.

¶13 Given the thorough fact-finding engaged in by the District Court, and upon our examination of the record, we find that the District Court did not err in its calculation of Tom's earning capacity, or in its calculation of an equitable division of the marital assets. "As we have frequently stated, 'It is not this Court's function, on appeal, to reweigh conflicting evidence or substitute our evaluation of the evidence for that of the district court.'" *Paschen*, ¶ 42 (quoting *State v. Bieber*, 2007 MT 262, ¶ 23, 339 Mont. 309, 170 P.3d 444). Where, as here, the District Court bases its findings on substantial evidence, we will not disturb its ruling. The District Court did not err in

determining Tom's earning capacity; nor did the court err in dividing the marital assets based, in part, on the correctly calculated earning capacity of Tom.

¶14 As to the calculation of spousal maintenance and child support, we find no error with the District Court's findings, as those findings were supported by substantial credible evidence. Section 40-4-203(2), MCA, requires the court to consider, among other factors, the financial resources of the party seeking maintenance as well as the "ability of the spouse from whom maintenance is sought" to meet his or her own needs and the maintenance request of the other party. *Paschen*, ¶ 21. With respect to child support, § 40-4-204(2), MCA, obligates the court to consider "all relevant factors," including the financial resources of the child and the parents, as well as the child's standard of living had the parents not gotten divorced. *Paschen*, ¶ 21. Upon review of the facts in the record, there is ample evidence supporting the District Court's findings regarding spousal maintenance and child support. The District Court did not err in making these determinations.

¶15 Finally, Tom argues that the District Court erred by awarding attorney fees to Heidi. We disagree. "An award of attorney fees under § 40-4-110, MCA, is within the sound discretion of the trial judge, and the trial judge's determination regarding attorney fees will not be disturbed absent an abuse of discretion." *Schmieding v. Schmieding*, 2000 MT 237, ¶ 22, 301 Mont. 336, 9 P.3d 52. To determine whether an award of attorney fees was appropriate pursuant to § 40-4-110, MCA, we consider whether the award was: (1) based on necessity; (2) reasonable; and (3) based on competent evidence.

*Schmieding*, ¶ 25. First, Heidi clearly demonstrated her inability to pay her own attorney fees, given her \$12.25 per hour part-time job, and attorney fees totaling more than \$20,000. The District Court did not err in finding that this income amount was not adequate to satisfy Heidi's living expenses, must less her attorney fees. Tom's own representations at trial admitted his high earning capacity and concomitant ability to pay Heidi's attorney fees. Second, given the parties' earning capacity, it was reasonable for the court to conclude that Tom can absorb the cost of Heidi's attorney fees. Lastly, the award was based on competent evidence that Tom's economic situation was much better than Heidi's, and that he should therefore be required to pay her attorney fees. As a whole, the District Court's findings adequately support its award of attorney fees.

*Schmieding*, ¶ 34. Tom failed to show that the District Court abused its discretion in this regard.

¶16 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶17 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH  
/S/ JAMES JEREMIAH SHEA  
/S/ DIRK M. SANDEFUR  
/S/ JIM RICE

# **APPENDIX B**

1 Karen S. Townsend, District Judge  
2 Fourth Judicial District, Dept. 4  
3 Missoula County Courthouse  
4 200 West Broadway  
5 Missoula, MT 59802  
6 (406) 258-4774

FILED APR 18 2019

By  SHIRLEY E. FAUST, CLERK  
Deputy

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8  
9 IN RE THE MARRIAGE OF:

Dept. 4

10 HEIDI KERR,

Cause No. DR-17-886

11  
12 Petitioner,

13 and

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, DECREE  
OF DISSOLUTION, PROPERTY  
SETTLEMENT ORDER AND  
ORDER ADOPTING PARENTING  
PLAN

14 THOMAS KERR,

15 Respondent.  
16

17 A Petition for Dissolution of Marriage in this case was filed on December 7,  
18 2017 by Petitioner, Heidi Kerr (hereinafter Heidi or Mother). Respondent, Thomas  
19 Kerr, (hereinafter Tom or Father) responded. Heidi was represented throughout by  
20 Andre Gurr of Garden City Law, PLLC. Tom was represented throughout by Mars  
21 Scott of P. Mars Scott Law Office. The case has been heavily litigated. Initial  
22 proceedings were conducted before Standing Master, Amy Rubin, who on February  
23 22, 2018 issued an Order for Temporary Child Support (Doc. No. 33). Tom  
24  
25  
26

1 requested review of that Order and ultimately after Standing Master Rubin issued a  
2 Revised Order (Doc. No. 53), the matter was referred to the District Court Judge on  
3 April 18, 2018. The District Court set a hearing on the request to review the  
4 Standing Master's orders but the initial hearing was continued on request of the  
5 parties to permit them to attend a settlement conference. Cynthia Thiel conducted a  
6 settlement conference on August 17, 2018. Although the case did not entirely  
7 settle, the parties reached a Stipulation on an Interim Parenting Plan and on Child  
8 and Family Support. (Doc. No. 89). Following the Settlement Master's Report, the  
9 Court set a hearing on the remaining issues for November 7-8, 2018. Tom  
10 continues to request a ruling on the Order for Family Support, and the Order for  
11 Temporary Child Support as well as an Order on the distribution of marital assets.  
12 The Court concludes that based on the agreement of the parties on April 9, 2019, as  
13 well as the Stipulation signed in August of 2018, that the objections to the Order  
14 Addressing Residence of Parents in Marital Home is moot, although distribution of  
15 proceeds from the sale of the family home remains.

21 The parties appeared with counsel at the November, 2018 hearing.

22 Testimony was received from Heidi Kerr, Jodi Crofton, Susan Ibara, Victoria  
23 Stickel and Emily Alison on behalf of Petitioner, Heidi Kerr, on November 7, 2018.

24 On November 8, 2018, Thomas Kerr, Michelle Doubet, Christopher McCann,  
25  
26

1 Geoff Gilbert, Lois Stickel Stitt testified on behalf of Respondent, Thomas Kerr.  
2 Exhibits were also received into evidence. In addition, the parties had stipulated  
3 that the testimony of Dr. Sara Baxter who had completed the parenting evaluation  
4 that had earlier been agreed to by the parties was received from her deposition as  
5 she was unavailable on the trial dates. Prior to the hearing, the parties submitted  
6 Proposed Findings of Fact and Conclusions of Law and were permitted to file  
7 Supplemental Proposed Findings of Fact and Conclusions of Law following the  
8 testimony.  
9  
10  
11

12 On April 3, 2019, Heidi filed a Motion for sale of the family home. Tom  
13 responded on April 9, 2019. In Tom's response, he agreed to the sale, but made  
14 several demands for deductions from the sale proceeds to settle outstanding credit  
15 card debts before the remainder would be divided between the parties. The parties  
16 appeared for a hearing on April 10, 2019 and initially asked for a brief time to see if  
17 an agreement could be reached. The parties agreed to sell the home, to the use of  
18 two realtors, and that upon request of the realtors that Heidi would contribute no  
19 more than \$2,000.00 for repairs to the home prior to sale. The parties could not  
20 agree on how the proceeds of the sale would be distributed. The Court took certain  
21 testimony from Tom regarding some of his requests for deductions from the  
22 proceeds of the sale prior to distribution to the parties.  
23  
24  
25  
26



1 From the testimony, exhibits, and court file, the Court makes the following:

2 **FINDINGS OF FACT**

3  
4 1. The parties were married in Los Angeles County, California on the  
5 October 27, 2002. The marriage license is registered in Los Angeles County,  
6 California. Both parties were living in Southern California at the time of their  
7 marriage and continued to live there until Tom moved to Missoula in 2014 and  
8 Heidi moved with their children in June, 2015.

9  
10 2. The parties have been married sixteen (16) years. Heidi is age 50 and  
11 Tom is age 55.

12  
13 3. The parties separated on December 7, 2017, although for a period of  
14 time both parties continued to reside in the family home until Heidi secured  
15 separate housing at the end of May, 2018.

16  
17 4. The marriage is irretrievably broken, with no reasonable prospect of  
18 reconciliation.

19  
20 5. The provisions of the Montana Conciliation Law, § 40-3-101 through  
21 § 40-3-127 do not apply.

22  
23 6. Both parties have been domiciled within the State of Montana for more  
24 than ninety (90) days. Neither party is a member of the U.S. Armed Forces.

1           7. Tom is 55 years old. He has an employment history of working as an  
2 investment manager in California where the parties met and in Missoula after he  
3 moved to Montana to accept a position with S.G. Long Finance. He lost his job  
4 with S. G. Long in October, 2018 and has been unemployed since. He is not  
5 handicapped in a search for new employment by a non-compete clause and was  
6 promised a satisfactory recommendation upon his leaving together with a half-  
7 year's salary as severance pay. Although he has looked for employment, and  
8 testified that there are job prospects, there is no evidence before the Court that he  
9 has had any job offer. He has exhausted the severance pay he received from S. G.  
10 Long.  
11

12  
13  
14           8. Heidi is 50 years old. Heidi earned her Bachelor of Science in  
15 Exercise Science in 1992, and a credential in Adapted Physical Education in 1999.  
16 She worked as a physical education teacher in California prior to the family  
17 decision that she stay home when J.L.K. was born. She has primarily been a stay at  
18 home mother since. She also had a dog training business, called Heidi Paws, while  
19 in California. She has also been a licensed massage therapist. Heidi now works for  
20 the Humane Society 32 hours per week and earns \$12.25 per hour. Heidi has  
21 sought employment with the Missoula Public Schools but has not been hired. Her  
22 teaching credentials have lapsed.  
23  
24  
25  
26

1           9.     The parties have three (3) minor children of the marriage. Heidi is not  
2 pregnant.

3  
4           10.    Following their marriage, Heidi and Tom tried to get pregnant but were  
5 unsuccessful. They decided to pursue an adoption after significant time with no  
6 successful pregnancy. After they successfully adopted one child, Heidi succeeded  
7 in getting pregnant using in-vitro fertilization and their twins were born.  
8

9           11.    The parties' three minor children are J.L.K. (age 13, born April 2006),  
10 C.T.K. (age 12, born mid-November 2007), and W.D.K (age 12, born mid-  
11 November 2007).  
12

13           12.    J.L.K. is the adopted child. He was adopted at birth. Jodi Croften is  
14 the biological mother of J.L.K. She resides in Washington. Heidi keeps Ms.  
15 Croften informed of J.L.K.'s development and facilitates ongoing contact between  
16 J.L.K. and his birth mother and his half-sibling.  
17

18           13.    J.L.K. is diagnosed with Asperger's Disorder. He is prescribed  
19 medication, but chooses when to take (or not take his medication) in accord with  
20 healthcare provider input. Heidi has been the primary parent most involved in  
21 J.L.K.'s special needs and care throughout his life. Heidi managed his care in  
22 Southern California from 2006 to 2015. Heidi arranged therapy with Cindy Bryson  
23  
24  
25  
26

1 when Heidi and the children moved to Missoula in 2015. Heidi has continued her  
2 primary role in J.L.K.'s care.

3  
4 14. The twins, C.T.K. and W.D.K. are healthy and have no significant  
5 health issues or special needs.

6  
7 15. The family lived together in Southern California during the first seven  
8 years of the twins' life and the first nine years of J.L.K.'s life. They have resided in  
9 Missoula since June, 2015, although Tom arrived in November, 2014 to begin his  
10 work with S.G. Long.

11  
12 16. J.L.K. benefits from an Individual Education Program ("IEP") in the  
13 7th grade at Hellgate Middle School. J.L.K. adjusted well to his relocation to  
14 Missoula under Heidi's primary care, and would adjust well to returning to his  
15 friends, extended family, and support group in Southern California under Heidi's  
16 continued primary care.

17  
18 17. C.T.K. and W.D.K. are currently in the 5th grade at Hellgate  
19 Elementary. The twins likewise adjusted well when relocated to Missoula, and  
20 likely would adjust well to returning to their friends, extended family, and support  
21 group in California.

22  
23  
24 18. Heidi wishes to move back to Southern California with the three  
25 children. She believes that she will have significant family support there, the  
26

1 children will be able to re-engage with friends they knew from before, and more  
2 importantly Heidi will be able to secure better employment to allow her to support  
3 herself and her children, allowing her to become less reliant on Tom for financial  
4 support. She has been promised the opportunity to work at a Wellness Center in  
5 Oak Park, California by the owner as well as housing for her and her children "as  
6 long as she needs it."  
7  
8

9 19. Tom is adamantly opposed to Heidi moving back to Southern  
10 California with the children. He prefers to remain in Montana for the lifestyle,  
11 although he has sought employment outside of Montana and would consider  
12 seeking employment in California if the Court allows Heidi to relocate with the  
13 children.  
14

15 20. The conflict between Tom and Heidi is extreme. They cannot  
16 communicate civilly with each other and such conflict inevitably impacts the  
17 children.  
18

19 21. The parties agreed to a parenting evaluation conducted by Sarah  
20 Baxter, PhD. Dr. Baxter followed her standard protocol in conducting her  
21 parenting evaluation. She had both parents complete lengthy questionnaires  
22 regarding parenting concerns (the Parenting History Survey), that described the  
23 other spouse and listed their concerns about the other spouse, described their  
24  
25  
26

1 children, had them complete the MMPI 2nd, conducted a lengthy interview of each  
2 parent, observed them each interacting in their respective residences with their  
3 children, spoke to collateral contacts suggested by the parties including their  
4 respective therapists, and reviewed documents including court filings and certain  
5 communications from Our Family Wizard. She began her evaluation in May, 2018  
6 and concluded it on August 6, 2018. Following her initial evaluation, Tom Kerr  
7 made contact with her with a list of concerns that he believed she had not  
8 adequately addressed and provided her with additional documents to review and she  
9 made contact with most of these additional collateral contacts at his suggestion.  
10 She continued to stand by her initial recommendations.  
11  
12  
13

14 22. Dr. Baxter concluded that Heidi was the children's primary parent, but  
15 that Tom had played a significant role as well in the children's upbringing.  
16

17 23. Dr. Baxter in her deposition testified that "this marriage has had a  
18 really high level of conflict for a long time, so they're adapted to it and I think  
19 that's part of what's making it really hard to disengage." (Depo. pg. 67, lines 19-  
20 23.)  
21

22 24. She earlier testified: "Their marital conflict is at a high level and their  
23 abilities to resolve the issues between them are unlikely to improve in the wake of  
24 separation" (quoting from her Report during her Depo. Pgs. 66-67, lines 23-25, line  
25  
26

1) Later she stated in response to a question as to why the issues were unlikely to improve: “[D]ue to the level of blame they have with one another. They’re very blaming of each other.” (Depo.pg. 67, lines 6-7.)

25. Dr. Baxter placed emphasis on and clearly stated that the primary goal for the family was “reduction of the conflict between these parents” and absent such reduction of conflict that such conflict was “likely to take a long, slow and significant toll on the children over time.” (Depo. pg. 68, lines 4-8.)

26. In terms of parenting strengths, Dr. Baxter found that Heidi is attuned to the children, aware of their individual needs, affectionate, sets appropriate limits, good at seeking out resources for them, and takes pride in the social networks she is able to build on the boys’ behalf. Her main parenting challenge is her resentment for Tom. (Parenting Evaluation, 20, Exhibit 1).

27. Dr. Baxter did not find that Heidi had mental health issues that make her an unfit parent despite Tom’s repeated insistence that she did and that she had displayed mental health symptoms over the course of their marriage. Dr. Baxter relied both on her own interaction with Heidi as well as her collateral contacts, particularly with Heidi’s therapist, Dr. Cindy Miller. In her deposition, she stated: “no one I talked to saw Heidi as an unfit parent either.” (Depo. pg. 55, lines 1-2.) She further testified: “And I did honestly try to listen to Mr. Kerr’s concerns about

1 that and try to assess those behaviors in relation to how they might be expressed in  
2 relation to the children, and I could not find ways in which Ms. Kerr is emotionally  
3 aggressive or physically aggressive towards the children.” (Depo. pg. 55, lines 16-  
4 22.)  
5

6 28. The Court finds that Dr. Baxter made significant investigation into  
7 these claims from Tom concerning his allegation that Heidi has mental health issues  
8 and the Court adopts her finding that there are no such issues. The Court also notes  
9 that Dr. Baxter did not recommend that Heidi complete anger management  
10 counseling, although she did acknowledge that “it couldn’t hurt.” The Court does  
11 not find that Heidi should be required to complete anger management counseling.  
12  
13

14 29. Dr. Baxter concluded that Tom acknowledges he has difficulty talking  
15 about feelings, is less attuned to the boys’ emotions, is less nurturing, and is less  
16 astute at communicating appropriate limits. However, he wants to be involved in  
17 his children’s lives, is aware of their individual differences, makes efforts to  
18 involve them in activities, and demonstrates concern over their adjustment.  
19  
20 (Parenting Evaluation, 20, Exhibit 1).  
21

22 30. During Dr. Baxter’s deposition, she discussed Tom’s lack of empathy  
23 that particularly impacts his ability to be sensitive to J.L.K.’s feelings and/or take  
24 appropriate steps when W.D.K. interacts with his brother in ways that are not  
25  
26



1 understanding of J.L.K.'s special needs. She also concluded that although  
2 developing empathy is not easy, it is possible to improve that skill with work with  
3 his therapist.  
4

5 31. Dr. Baxter recommended that an interim parenting schedule be adopted  
6 that cut down on transitions and thus avoided opportunities for conflict. Her  
7 recommendation was for a 9-day/5-day basis with the children residing primarily  
8 with Heidi and Tom parenting from Wednesday through Sunday every other week  
9 during the school year and the schedule reversing during the summer if the children  
10 and Heidi remained in Missoula. Tom had insisted on a 50/50 parenting schedule.  
11 He continues to insist on such a schedule.  
12  
13

14 32. Dr. Baxter also recommended that if Heidi were to move to California  
15 with the children, that the children would reside with her during the school year,  
16 reside with Tom one long weekend per month, half of the Christmas holiday, all of  
17 Spring Break, and the bulk of the summer.  
18

19 33. Dr. Baxter made further recommendations concerning the parties' use  
20 of Our Family Wizard in an effort ratchet down the tone of their communications  
21 and avoid communications from each party that can rise to passive-aggressive  
22 writings. Specifically, she suggested that both Heidi and Tom keep their  
23 communications short, address one issue at a time, try to respond within 48 hours,  
24  
25  
26

1 and not bring up old issues or make statements like “I have always done this or you  
2 have always done that.” She suggested that the parties avoid using accusing tones.  
3 She further suggested that these communications be limited to the children’s issues  
4 and logistics. She suggested that the parties take their Our Family Wizard  
5 communications to their therapy sessions and discuss with their respective  
6 therapists how to improve their communication with each other.  
7  
8

9 34. The Court finds that it will be in the children’s best interests for the  
10 parents to communicate exclusively through Our Family Wizard, unless it is an  
11 emergency. The Court finds that the parents should follow Dr. Baxter’s  
12 recommendations for communications to try to reduce parental conflict.  
13

14 35. Dr. Baxter’s schedule recommendation was adopted when the parties  
15 stipulated to an Interim Parenting Plan in August, 2018 after a mediation session  
16 with Cynthia Thiel, with the slight modification that Tom have additional visits on  
17 Wednesday evenings during Heidi’s parenting time. This Stipulation also called for  
18 Tom to pay Heidi \$3,100 per month in child support and family support.  
19  
20

21 36. Tom objected to the amount of child and family support. The Court  
22 finds that the amounts were correctly calculated and denies his objection.  
23

24 37. Dr. Baxter discussed the best interest of the child factors during her  
25 deposition and looked at the benefits and risks of Heidi and the boys moving back  
26

1 to California. While recognizing that there are uncertainties, her bottom line was  
2 “While relocation would change the pattern of their daily lives significantly, it also  
3 holds the promise of relieving the boys of a very painful situation.” She explained  
4 that what she meant was “just reducing their exposure to parental conflict.” (Depo.  
5 pg. 69, lines 15-18, 22-23.) However, she did not make an unqualified  
6 recommendation that Heidi and the boys be permitted to move to California: “Are  
7 you making a recommendation that she should move to California? No.” (Depo.  
8 pg. 144, lines 20-23.)

11  
12 **Analysis of Best Interests of the Children using Mont. Code Ann. §**  
13 **40-4-212**

14 **38. Wishes of the children’s parents:** Both parents wish that their  
15 proposed parenting plan be adopted. Tom asks for a parenting plan that splits time  
16 50/50 and that the children remain in Missoula. Heidi wishes that she and the  
17 children be permitted to move back to Southern California which would entail the  
18 children residing with her during the school year, with Tom having one long  
19 weekend per month, one-half of the Christmas Holiday, all of Spring Break, and the  
20 majority of the summer. The Court finds therefore that the parents’ wishes offset  
21 each other.  
22  
23

24 **39. Dr. Baxter testified in her Deposition that in “a 50/50 arrangement**  
25 **where there is high-conflict parents, there’s a...higher likelihood of exposing kids**  
26

1 to conflict.” (Depo. pgs. 122-3, lines 23-25, 1-3.) She concluded that the wishes of  
2 the parents essentially offset each other, but that even if Heidi and the children  
3 remain in Missoula, that the 9/5 plan she recommended is in the children’s best  
4 interest. The Court finds that a 50/50 parenting plan would not be in the best  
5 interest of the children. The Court finds that allowing Heidi to move with the  
6 children to Southern California will be in the best interests of the children because  
7 it has the best possibility of cutting down on the parental conflict and permitting  
8 Heidi to become self-supporting.  
9  
10

11  
12 **40. Wishes of the children.** Dr. Baxter did not interview the children in  
13 an attempt to discover their wishes. She chose to not interview on purpose because  
14 she did not want to put the children on the spot and expressed concerns about  
15 making children choose and subjecting them to anxiety, especially J.L.K. For this  
16 factor, the Court finds that it favors neither parent.  
17

18  
19 **41.** The Court further finds that it is not necessary to interview these  
20 children to attempt to assess their wishes. The Court accepts Dr. Baxter’s opinion  
21 that attempting such an interview would necessarily make these children “have to  
22 choose” between their parents, a position that they should not be put in. Although  
23 these children are not infants or toddlers, they are not of the age that the Fourth  
24 Judicial District Parenting Guidelines suggest that they should be consulted, and  
25  
26

1 further considering J.L.K.'s Asperger's diagnosis, such an interview could place too  
2 much of a strain on him in particular.

3  
4 **42. The interaction and interrelationship of the child with the child's**  
5 **parent or parents and siblings and with any other person who significantly**  
6 **affects the child's best interest.** The Court finds that the twins are very close with  
7 each other, and also with their older brother, despite some friction between W.D.K.  
8 and J.L.K. They get along well in each household, and are relaxed in each place.  
9 They also have significant contacts in Southern California with friends and  
10 relatives. The Court finds that just as they adjusted well to the move to Montana,  
11 they would likely adjust well to a return to Southern California and that such a  
12 move would provide an opportunity for more contact with relatives. Further, since  
13 Tom has indicated a willingness to look for employment in Southern California if  
14 Heidi is allowed to relocate, the current parenting schedule could continue, and if  
15 he finds employment elsewhere, the alternative plan of having the bulk of the  
16 summer vacation, all of spring break, and half of Christmas holiday as well as one  
17 long weekend a month would provide significant contact with Tom.  
18  
19  
20  
21

22 **43. The child's adjustment to home, school, and community.** The  
23 children adjusted well to the move to Missoula and are well integrated into their  
24 school and their activities here in Missoula. They have friends (although J.L.K.  
25  
26

1 recently lost his best friend due to a move), participate in sports and other activities  
2 (J.L.K. does Robotic Club). They are comfortable in each home, although the  
3 future sale of the family home will require a new location for Tom if he remains in  
4 Missoula.  
5

6       **44. The mental and physical health of all individuals involved.** There  
7 are no physical health concerns about either parent or any of the children. Although  
8 J.L.K. has his Asperger's diagnosis and there has been some significant dispute on  
9 his medication, his therapy in Missoula has helped as has his IEP program at his  
10 school. Such provisions could certainly continue in Southern California. The  
11 Court does not find that there is a mental health issue with either parent that makes  
12 either parent an unfit parent. The Court concurs with Dr. Baxter that there was no  
13 significant evidence that Heidi was emotionally or physically aggressive towards  
14 the children. The Court further concurs with Dr. Baxter that it is likely in the best  
15 interests of the children if Heidi can establish her financial independence and be  
16 financially separate from Tom and the best hope for that scenario is a move to  
17 Southern California because of job opportunities not available to her in Missoula.  
18  
19  
20  
21

22       **45. Physical abuse or threat of physical abuse by one parent against**  
23 **the other parent or the child.** There is no evidence that either parent has been  
24 physically abusive towards the children. Tom has alleged that Heidi has been both  
25  
26

1 physically and emotionally aggressive towards him and supplied certain emails with  
2 swearing and name-calling. There are also hints that Tom has expressed some  
3 derogatory remarks about Heidi in front of the kids (alluding to the fact that they  
4 had no beds at his house after Heidi moved out because she took them and refused  
5 to give him money to replace them). Both parents need to tone these remarks down.  
6  
7 Separate households should help. It is clearly in the best interest of these children  
8 that the parents eliminate or at least minimize such disparaging remarks about the  
9 other parent in situations where the children might overhear or have access to such  
10 information.  
11  
12

13 **46. Chemical dependency as defined in 53-24-103, or chemical abuse**  
14 **on the part of either parent.** There is no evidence that either parent is getting  
15 intoxicated in front of the children, either parent is chemically dependent, or that  
16 there is evidence of chemical abuse by either parent.  
17

18 **47. Continuity and stability of care.** All three children have been living  
19 in the care of both parents their whole lives. Heidi has been their primary caretaker  
20 and the coordinator of school, activities, and medical/therapy appointments and is  
21 good at that, managing their day-to-day care. She has coached athletic teams.  
22 Heidi is better at nurturing them. Tom has also been involved with the children.  
23 He has read to them and involved them in outdoors activities such as skiing,  
24  
25  
26

1 camping, hiking, etc. As stated above, Heidi's proposed parenting schedule even  
2 with her move to Southern California will continue to allow Tom to have  
3 significant parenting time with the children. In addition, the current financial  
4 uncertainty which has resulted from Tom not making his agreed upon support  
5 payments and him not having found comparable employment during the six-months  
6 since his lay-off from S.G. Long and Heidi's ability to have secure employment and  
7 housing promises more stability for these children.  
8

9  
10 **48. Developmental needs of the child.** The children not only need an  
11 activities coordinator at their current ages, but also need nurturance and affection.  
12 They also need predictability and support in getting homework done, going to  
13 activities, and keeping everything on track. Heidi not only has a track record of  
14 meeting these needs, she is more skilled and gifted in providing nurturance and  
15 empathy. Dr. Baxter recognized Tom's obvious struggles with empathy. The Court  
16 finds that as to this factor, it is in the children's best interest for Heidi's parenting  
17 plan to be adopted.  
18  
19  
20

21 **49. Whether a parent has knowingly failed to pay birth-related costs.**

22 N/A.  
23

24 **50. Whether a parent has knowingly failed to financially support a**  
25 **child that the parent is able to support.** During the period of the marriage before  
26



1 Heidi filed her Petition for Dissolution, Tom was the primary bread winner for the  
2 family after the children were born based on a family decision that Heidi would be a  
3 stay-at-home mom. There is no issue that he supported the family prior to the  
4 dissolution being filed. The parties entered into a Stipulation which called for Tom  
5 to pay \$3,100.00 per month in child support and family support. Tom has objected  
6 to the amount stating that he cannot meet his own expenses and pay this amount,  
7 and he has continually raised the issue of certain cash that Heidi has in her bank  
8 account from the sale of the California vacation home that she refuses to use to  
9 support herself or give to Tom to meet some of his expenses. Tom has exhausted  
10 his severance from S.G. Long, and despite his S.G. Long salary and/or his  
11 severance pay, appears to have been trying to maintain his high standard of living  
12 by living off credit cards. He has made no attempt to economize or reduce his  
13 expenses despite being unemployed for six months. He bought a more expensive  
14 vehicle than might have been necessary. He has failed to pay the mortgage on the  
15 family home for April, 2019. He does not appear to be prioritizing a search for  
16 employment. Recent court filings show that he is delinquent in family support.

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22 **51. Whether the child has frequent and continuing contact with both**  
23 **parents.** Both parents' proposed parenting plans call for frequent and continuing  
24 contact with both parents, although the contact is not 50/50 as requested by Tom.  
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26

1           **52. Whether there are adverse effects on the child resulting from**  
2 **continuous and vexatious parenting plan amendment actions.** Although this  
3 factor is not implicated at this time, the contentious nature of the litigation in this  
4 case indicate that this could be a concern in the future.  
5

6           **53. The Court concludes in balancing and weighing each of these factors**  
7 **that it is in the best interests of the children for Heidi's parenting plan with**  
8 **contingency B be adopted and further that she be allowed to move with the children**  
9 **to Southern California when school ends this year. The Parenting Evaluation**  
10 **recognized significant benefits of this move as it would necessarily cut down on the**  
11 **family conflict because of fewer exchanges of the children. Although the parenting**  
12 **Evaluation recognized certain risks of such a move, the evaluation was completed**  
13 **before Heidi had firmed up housing and employment in California. Heidi has a**  
14 **solid plan for a residence and employment in Southern California and the further**  
15 **opportunity to become financially independent from Tom. The Court finds that**  
16 **with this plan in place, the benefits of the move outweigh the potential risks to the**  
17 **move. Additionally, at present, Tom has no employment ties to Missoula, and**  
18 **would be free to move to Southern California to seek employment if he wanted to**  
19 **maintain the current 9/5 stipulated parenting plan arrangement, or if he remains in**  
20 **Missoula, Tom will have regular, on-going, and significant contact with the boys**  
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1 according to Heidi's plan. The separation will inevitably cut down on the high  
2 conflict between the parents thus minimizing the impact that such ongoing contact  
3 would have on the boys.  
4

5 54. In addition to the communication provisions contained in the Parenting  
6 Plan, the best interests of the children dictate that communication between the  
7 parents should be done exclusively through Our Family Wizard, unless it is an  
8 emergency. Also, that the parents should follow Dr. Baxter's recommendations as  
9 to communications.  
10

#### 11 **Division of Marital Assets**

12  
13 55. The parties have accumulated assets and debts during their marriage  
14 that should be equitably divided and apportioned.  
15

16 56. Prior to trial of these issues, the parties stipulated to the values of  
17 assets and debts. A table reflecting these stipulated values and other assets and  
18 liabilities follows. The children's life insurance policies and college funds are not  
19 included.  
20

Asset/Liability	Value
<b>Real Estate:</b>  2651 Grassland Drive, Missoula, MT	\$475,000.00 *

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Mortgage with Stockman's Bank	\$303,023.99
Marriott Timeshare	\$4,000.00
*Latest real estate estimate may be higher	
<b>Vehicles:</b>	
2008 Toyota Sienna	\$8,000.00
2012 Nissan Armada	\$19,300.00
Loan on Nissan	(\$16,607.24)
Acadia (to be sold)	\$500.00
<b>Bank Accounts:</b>	
Tom's Stockman Checking	\$442.61
Heidi's Missoula Federal Credit Union	\$13,855.00
Heidi's Chase Account	\$25,329.02
<b>Stocks/Bonds/Securities</b>	
Tom's ETRADE Brokerage	\$1882.61
<b>Retirement Accounts:</b>	
Tom's John Hancock 401(k)	\$28,085.22
Tom's E*TRADE IRA	\$14,515.98

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Heidi's E*TRADE IRA	\$29,022.00
Heidi's CalSTRS account	\$37,563.84
<b>Term Life Insurance Policies (Tom pays premiums):</b>	
Tom's: Genworth Term Life	\$500,000.00
Tom's Term Essential Prudential	\$500,000.00
Tom's AIG Term	\$500,000.00
Tom's Northwestern Mutual	\$1,000,000.00
Heidi's Genworth Term Life	\$500,000.00
Heidi's Aegon Term Life	\$1,000,000.00
<b>Credit Card Debt</b>	
Tom's American Express (6/13/17-5/14/18)	0
Costco VISA (Joint) (9/15/17-5/13/18)	\$10,431.00
Tom's BOA Mastercard (12/17/16-8/6/18)	\$9,177.50
Tom's United Chase card (2/16/18-8/16/18)	\$18,200.19
American Express Debt Consolidation (9/14/18)	\$6,762.64
Heidi's Alaska VISA (5/15/17-4/13/18)	\$1,338.00

57. The marital residence was purchased with marital income, and both parties contributed to maintenance of the property. Tom contributed income,

1 whereas Heidi contributed as a homemaker, caring for the children, and maintaining  
2 and improving the property.

3  
4 58. The parties have agreed that the family home should be sold. They  
5 have agreed to use two realtors, and that Heidi should contribute no more than  
6 \$2,000.00 to any repairs suggested by the realtors prior to listing. The Court was  
7 not advised if Tom will likewise contribute to any pre-sale repairs suggested by the  
8 realtors prior to listing. The Court finds that it is equitable that any contribution of  
9 funds towards repairs of the family residence suggested by the realtors by either  
10 party should be reimbursed to the party making the payment from the proceeds of  
11 the sale.  
12

13  
14 59. Tom has advised that due to the exhaustion of his severance pay, he is  
15 unable to pay the April mortgage. Tom suggested that the payment simply be  
16 missed and that the bank would take the missed payment and any late penalties out  
17 of the proceeds of the sale. The Court finds that such a plan presents a substantial  
18 risk to a major marital asset since it is unlikely that the marital home will sell prior  
19 to the next mortgage payment being due.  
20

21  
22 60. The Court finds that it would be equitable that if Heidi decides to make  
23 any mortgage payments prior to the sale of the residence making use of the funds  
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1 from her bank accounts, that she should be reimbursed for those payments from  
2 Tom's share of the proceeds of the sale.

3  
4 61. Tom requests reimbursement for \$1,200.00 from Heidi for funds that  
5 were used to purchase plane tickets instead of being used to make a mortgage  
6 payment. He also asks for reimbursement for money used to pay plastic surgery for  
7 Heidi because he found it "frivolous." The Court does not find it equitable that he  
8 should receive such reimbursements. There was not sufficient testimony presented  
9 at the trial or at the April 10, 2019 hearing to justify such reimbursements.  
10

11  
12 62. Tom has requested that prior to division of the proceeds of the sale of  
13 the family home, that all the credit card debt outlined above be paid first, and then  
14 the remainder be distributed 50/50. Tom asserts that these credit card debts were  
15 accrued for payment of "normal household expenses and Heidi did not prove  
16 otherwise." Tom did not, however, testify to such at the hearing on April 10, 2019  
17 nor did he file an Affidavit attesting to such facts. Further, the Court has examined  
18 the credit card bills that have been submitted and the Court does not find that they  
19 are all for "normal household expenses." For example, on the Costco bills detailing  
20 Tom's charges is a payment to Dr. Sarah Baxter in the amount of \$2,750.00. Tom  
21 moved for this evaluation and promised to pay for it and the parties later agreed to  
22 the evaluation. The Court has no information that the parties agreed to share the  
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1 cost of the evaluation. He should not have this amount reimbursed. Tom also  
2 wants all the interest he has paid on his credit card debt (\$2,250.34) reimbursed  
3 from these proceeds prior to distribution. The Court does not find that this request  
4 is equitable. First, Tom's individual debt is \$34,140.33. Heidi's individual debt is  
5 \$1,338.00. The Joint Costco Credit Card is \$10,431.00. Not all the Costco bills are  
6 included in the exhibits. In reviewing the charges, the Court finds that Tom and  
7 Heid spent approximately the same amount on the joint card. The Court finds that it  
8 is equitable that each party be responsible for the credit card debt in their individual  
9 names. Thus, Tom is responsible for \$34,140.33 and Heidi is responsible for  
10 \$1,338.00. If the parties wish to have their individual shares of the home sale  
11 proceeds used to pay off these amounts, that is their choice. The Court also finds  
12 that it is not equitable that Tom be reimbursed for the credit card interest. The  
13 Court finds that the Joint Costco card debt should be paid from the proceeds from  
14 the sale of the house, less the \$2,750 payment to Dr. Baxter which is Tom's sole  
15 responsibility. Both parties shall immediately stop charging any amounts on the  
16 Joint Costco Card and deliver the actual card to their respective attorneys. The title  
17 company shall be instructed as to payment of this debt from the proceeds from the  
18 sale of the home prior to any distribution of proceeds to the parties.  
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1           63. The net proceeds from the sale of the marital home, after deductions  
2 set forth above are made, should be divided between the parties in such a way as to  
3 take into account Heidi's significantly lower earning potential and her limited  
4 ability therefore, to purchase a home in the future. The net proceeds from the sale  
5 of the home after deductions should be shared by the parties as follows: 30% to  
6 Tom and 70% to Heidi.  
7

8  
9           64. Dividing the proceeds from the sale of the home on a 30/70 division is  
10 equitable when considering each party's future earning potential, and is done in lieu  
11 of awarding Heidi more maintenance and takes into account each party's financial  
12 situation.  
13

14           65. Tom shall continue to be responsible for the mortgage and utilities,  
15 taxes, and insurance on the home until the date of sale. If the residence does not  
16 sell and Tom continues to reside in the home for more than six months following  
17 the date of this Final Decree, then upon sale, Tom will owe reasonable rent to Heidi  
18 for her share of the home of \$800 per month, starting as of the date of the Final  
19 Decree until the home is sold.  
20

21  
22           66. The Marriott Timeshare has a stipulated value of \$4,000.00. The  
23 parties have agreed to a sale of this timeshare. It is equitable that each party receive  
24 \$2,000.00 from that sale.  
25  
26

1           67. Each party is in possession of suitable vehicles as set forth in their  
2 disclosures. Heidi has her 2008 Toyota Sienna, which has a stipulated value of  
3 \$8,000. Tom has a 2008 GMC Arcadia that is no longer in working condition. It  
4 has an estimated wreckage value of approximately \$500. The Court finds that this  
5 vehicle should be sold and the proceeds distributed 50/50. Tom purchased a newer  
6 2012 a Nissan Armada post separation for \$21,975. (Tom's Veh. Purch. Exhibit  
7 37). It is equitable Tom be apportioned the value of the vehicle and the debt related  
8 to this vehicle. It is not equitable that Heidi reimburse Tom \$10,000.00 toward the  
9 down payment for this vehicle as he has requested. Tom did not have to purchase  
10 such an expensive vehicle. His vehicle is worth 2 ½ times that of Heidi's. He  
11 should not be reimbursed.  
12

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15           68. The parties sold a vacation home in California with sale proceeds  
16 equaling \$77,143.97. \$30,000.00 of those proceeds were deposited in an account  
17 and the balance was used to pay down debt and purchase items for the family home  
18 in Missoula. Heidi transferred the remaining \$30,000.00 to an account solely  
19 controlled by her. (Tom's supplemental Finding of Fact # 35 uses this \$30,000.00  
20 figure which is \$10,000.00 less than his allocation table attached as Exhibit C to his  
21 initial Proposed Findings of Fact and Conclusions of Law.) The Court finds that  
22 this account is a marital asset. The Court concludes that it is equitable for Heidi to  
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1 retain these proceeds as part of her share of the marital estate. This allocation takes  
2 into consideration the other assets and insurance policies which Tom is retaining as  
3 his portion of the marital estate, as well as the entire \$50,000 of severance package  
4 which Tom received while the dissolution was pending and which he spent in its  
5 entirety (as compared to Heidi's actions in conserving this balance in her bank  
6 account).  
7  
8

9 69. Tom's Stockman's checking account amounts to \$432.61 and is a  
10 marital asset and he should retain that account.  
11

12 70. Heidi has two bank accounts: a Missoula Federal Credit Union account  
13 with \$13,855.00 and a Chase account with \$25,329.20. These total \$39,184.20. Of  
14 this amount, \$30,000.00 are the proceeds of the sale of the California vacation  
15 home and those monies have been addressed above. The remaining \$9,184.20  
16 should be first used to pay Heidi \$3,100 per month in child support and family  
17 support for any payments which Tom has failed to pay to Heidi while the case has  
18 been pending. If there are other amounts owing to Heidi under this Decree, those  
19 amounts may be offset against the remaining balance. After these amounts are  
20 deducted, any balance remaining should be split 50/50 between the parties.  
21  
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24 71. Tom has an E\*TRADE brokerage account. The stipulated value of the  
25 account is \$1,882.61. According to Tom's Proposed Post Trial Findings of Fact #  
26

1 36, Tom tapped into that account "since the parties separated to pay for family  
2 expenses." He lists withdrawals on June 14, 2017, June 14, 2017, July 10, 2017,  
3 July 26, 2017, August 22, 2017, February 7, 2018, February 12, 2018. The total  
4 withdrawals amount to \$9,848.00. The Court notes that only two of these  
5 withdrawals came after the Petition for Dissolution was filed amounting to \$850.00  
6 and none occurred after Heidi moved out of the family home. The Court further  
7 notes that Tom has provided absolutely no proof that these withdrawals were for  
8 "legitimate family expenses." The Court concludes that it is equitable to allocate  
9 \$9,848.00 as a marital asset and for Tom to retain that amount based on Heidi  
10 retaining her bank accounts.  
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14 72. The parties have retirement accounts. Tom has two accounts with a  
15 total stipulated value of \$42,601.20. Heidi has two accounts with a stipulated value  
16 of \$66,585.84. One of Heidi's accounts is her CalSTRS account that equals  
17 \$37,563.84. Her other account is the E\*TRADE IRA equaling \$29,022. Heidi has  
18 alleged that Tom dissipated this account by bad management, Tom has responded  
19 that the reduction in the value of the account was due to market forces beyond his  
20 control. The Court does not find that Heidi proved that Tom wasted this family  
21 resource. The Court concludes that it is more equitable that the parties keep the  
22 total of their own accounts. Although the distribution is not equal, it is equitable  
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1 when considering each party's future earning capability and hence each party's  
2 ability to add to his or her retirement accounts in the future from earnings. Tom  
3 should maintain sole ownership and control over both of his retirement accounts,  
4 Heidi should maintain sole ownership and control over her retirement accounts  
5 (CalSTRS account and E\*TRADE IRA). This allocation gives each party an  
6 equitable share of the retirement accounts, does not dissipate the accounts, and is  
7 fair and equitable.  
8

9  
10 73. Tom has control over the various 529 education and investment  
11 accounts for the children's benefit (J.L.K.'s 529 College Funds x9607, W. D.K.'s  
12 529 College Funds x 9606, C.T.K.'s 529 College Funds x9607, and Capital One  
13 Investing, LLC for each child). See Tom's Final Disclosures, 6, Exhibit K. With  
14 his financial experience, Tom should continue to serve as custodian of these  
15 accounts and should manage and control these accounts, but as custodian of these  
16 accounts he has the responsibility to use these accounts for the sole benefit of the  
17 children and their education.  
18  
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21 74. Tom has control over the "Life Insurance Kids - Cash Value" of  
22 \$4,518. See Tom's Final Disclosures, 5, Exhibit K. With his financial experience,  
23 Tom should continue to manage and control these accounts, but these accounts  
24 should be used solely for the benefit of the children.  
25  
26

1           75. Tom owns a Genworth Term Life Insurance policy x1802 with a  
2 \$500,000 death benefit and no cash value. Tom pays the premium and is the  
3 insured. This life insurance policy should be awarded to Tom.  
4

5           76. Tom owns a Prudential Term Essential Policy x1143 with a \$500,000  
6 death benefit. Tom pays the premium and is the insured. This life insurance policy  
7 should be awarded to Tom.  
8

9           77. Tom owns an AIG Term policy x3079 with a face value of \$500,000.  
10 Tom pays the premium and is the insured. This life insurance policy should be  
11 awarded to Tom.  
12

13           78. Tom owns a Northwestern Mutual life insurance policy x8589 with a  
14 \$1,000,000 death benefit. Tom pays the premium and is the insured. This life  
15 insurance policy should be awarded to Tom.  
16

17           79. Tom owns a Northwestern Mutual life insurance policy x5693 with a  
18 \$56,006 death benefit and a cash value of \$1,458.98 which the parties stipulate to.  
19 J.L.K. is the insured. This life insurance policy should be awarded to Tom.  
20

21           80. Tom owns a Northwestern Mutual life insurance policy x5676 with a  
22 \$55,990 death benefit and a cash value of \$1,400.80 which the parties stipulate to.  
23 W.T.K. is the insured. This life insurance policy should be awarded to Tom.  
24  
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1           81. Tom owns a Northwestern Mutual life insurance policy x5711 with a  
2 \$55,990 death benefit and a cash value of \$1,400.80 which the parties stipulate to.  
3 C.D.K. is the insured. This life insurance policy should be awarded to Tom.  
4

5           82. Heidi owns a Genworth Term Life Insurance policy x1806 with a  
6 \$500,000 death benefit and no policy value. Tom pays the premium, Heidi is the  
7 insured. This life insurance policy should be awarded to Heidi with Heidi being  
8 responsible for any future premiums that come due after she receives her share of  
9 the proceeds from the sale of the family home.  
10

11           83. Heidi owns an Aegon Term Life Policy x4052 with a face amount of  
12 \$1,000,000. Heidi is the insured. This life insurance policy should be awarded to  
13 Heidi.  
14

15           84. The parties agree that the value of JLK's 529 College Funds x8672 is  
16 \$6,333. This account should be managed by Tom for the benefit of JLK.  
17

18           85. The parties agree that the value of WTK's 529 College Funds x9606 is  
19 \$4,935. This account should be managed by Tom for the benefit of WTK.  
20

21           86. The parties agree that the value of CDK's 529 College Funds x9607 is  
22 \$4,936. This account should be managed by Tom for the benefit of CDK.  
23  
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1           87. The parties agree that the value of JLK's 529 Capital One Investing,  
2 LLC x9921 is \$1,463.72. This account should be managed by Tom for the benefit  
3 of JLK.  
4

5           88. The parties agree that the value of CDK's 529 Capital One Investing,  
6 LLC x9974 is \$1,299.24. This account should be managed by Tom for the benefit  
7 of CDK.  
8

9           89. The parties agree that the value of WTK's 529 Capital One Investing,  
10 LLC x9960 is \$1,014.80. This account should be managed by Tom for the benefit  
11 of WTK.  
12

13           90. The parties each testified and presented exhibits as to their respective  
14 financial positions and needs. The Court finds that Heidi was credible in her  
15 testimony regarding these matters, as well as the steps she had taken to find housing  
16 and employment in California. The Court further finds that she has taken steps to  
17 economize and downsize in light of her separation and move from the marital home.  
18 In contrast, the Court finds that Tom was not as direct and at times evasive in his  
19 response to questions from either counsel for Heidi or the Court regarding his  
20 financial position and/or his job prospects. He often responded: "It depends" or  
21 "That's a hard question to answer."  
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1           91. Personal property needs to be divided. When Heidi moved from the  
2 family home to her apartment, she took necessary furniture, children's clothing, and  
3 other household items for the new residence. Some items have had to be duplicated  
4 by Tom. The parties should keep the items they currently have in their possession.  
5 Tom agrees that Heidi should be awarded the massage table, ice cream maker, door  
6 frame, and the two (2) dogs and the cat subject to Tom being able to periodically  
7 spend time and interact with the pets.  
8

9  
10           92. Heidi has identified certain items that are still in the family home that  
11 she desires. Tom has not objected in his Post-Trial findings. Therefore, Heidi is  
12 awarded the following:  
13

- 14           a. Any and all items from Heidi's family, including dresser from  
15 Heidi's grandfather, plastic containers with items from Heidi's  
16 grandmother (in garage), pictures and slides belonging to or of  
17 Heidi's dad, the train and track collection of Heidi's father.
- 18           b. Doorframe of boys' heights (Heidi brought from California)
- 19           c. The framed professional pictures of boys. These pictures should  
20 be duplicated for Tom if he so wishes.
- 21           d. Box of Hot Wheels and Trios building toys Heidi compiled for  
22 the children.
- 23           e. Christmas and Halloween decorations
- 24           f. Furniture shelving Heidi painted
- 25           g. Kids art work, including art in white frames
- 26           h. Heidi's cameras
- i. Framed pictures Heidi took, including Vermont pictures
- j. Pictures and frames with chains by front door
- k. Picture in guest bedroom
- l. Picture in main bedroom
- m. One of the large mirrors

- 1 n. Heidi's road bike and mountain bike  
2 o. Laminating machine and materials  
3 p. The books Heidi acquired and collected  
4 q. China collection  
5 r. Dining table Heidi sanded and refinished  
6 s. Dining table light/chandelier  
7 t. Wagon wheel in front of home (Heidi got from movie set  
8 auction)  
9 u. Barrels (from Heidi's friend)  
10 v. Snow tires (fitting Heidi's vehicle).

### Maintenance

11 93. Maintenance is appropriate under these circumstances.

12 94. The parties have been married over 16 years.

13 95. The parties established and enjoyed a high standard of living during  
14 the marriage, largely commensurate to Tom's substantial income and earning  
15 capacity.

16 96. Heidi quit her teaching job in 2006 to raise the children. Heidi has not  
17 taught full-time since 2006.

18 97. Although Heidi has reduced her expenses and standard of living, she  
19 will lack property sufficient to provide for her reasonable needs, and is unable to  
20 be self-supporting without financial support from Tom for the foreseeable future.  
21

22 98. Earning \$12.25 per hour is not adequate to satisfy Heidi's reasonable  
23 living expenses. ( Mother's Expenses and Budget, Exhibit 23).  
24  
25  
26

1            99. Heidi's earning capacity would not increase if she were to remain in  
2 Missoula. If Heidi were to remain in Missoula, she would likely have limited  
3 ability to earn enough to support herself and would need significantly more  
4 financial support from Tom.  
5

6            100. In order to eventually become financially independent, Heidi is  
7 returning to her extensive network in California, with greater employment and  
8 income opportunities, including the option to renew her teaching license or pursue  
9 other employment options.  
10

11            101. Although California offers increased income and employment  
12 opportunities for Heidi, it will take time to establish secure employment through a  
13 teaching position or as a massage therapist and develop necessary contacts to  
14 augment her income through re-establishing her Heidi Paws business.  
15  
16

17            102. Heidi's age and emotional struggle with this dissolution are not factors  
18 that will enhance Heidi becoming financially independent in the near future.  
19

20            103. Heidi is not being awarded sufficient marital assets to permit her to  
21 support herself without maintenance for a reasonable time.  
22

23            104. Under the circumstances of this case, and considering the disparity in  
24 income or earning potential of the parties, and retirement age or eligibility to  
25 receive retirement or social security, six (6) years is a reasonable time for Heidi to  
26

1 receive maintenance. Even with maintenance, Heidi will still not be able to  
2 maintain the standard of living which she enjoyed during the marriage. However,  
3 maintenance will help her as she works to establish appropriate employment and  
4 adequate income to be self-supporting and financially independent.  
5

6 105. Maintenance should be due from Tom to Heidi in the amount of \$1,500  
7 a month, with payments due on or before the 1st of each month.  
8

9 106. While this amount is inadequate to cover monthly expenses exceeding  
10 Mother's monthly income, child support is factored into this maintenance amount,  
11 as well as the Court's division of the proceeds from the sale of real property.  
12

13 107. Although Tom was recently laid off, his earning history indicates  
14 average earnings of more than \$230,000 a year during the last two decades with  
15 only short, finite, gaps in employment or reduced earnings. Tom's Social Security  
16 Statement, Exhibit F.  
17

18 108. Tom's alleged income and monthly expenses misleadingly downplay  
19 Tom's earning capacity and actual earning history. For example, Tom alleges an  
20 "average per year" income of "\$65,520." (Tom's Final Disclosure Statement),  
21 Exhibit K. The Court does not find that this amount accurately reflects Tom's  
22 income and earning capacity.  
23  
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1           109. Tom has an earning capacity of \$230,000/year, which should be used  
2 for purposes of assessing his ability to cover his expenses while paying  
3 maintenance.  
4

5           110. Tom has superior earnings, earning capacity, and ability to acquire  
6 assets in the future. Tom is well suited to pay maintenance while helping with  
7 Heidi's expenses, and has the ability to do so.  
8

9           111. Furthermore, Tom has various expenses and optional spending he may  
10 curtail to free up additional assets.  
11

12           112. Tom's obligation to pay maintenance should be terminated upon the  
13 death of either party or the remarriage of Heidi. § 40-4-208(4), MCA.  
14

### 15                           **Child Support**

16           113. The parties have vastly different earning capacities. Heidi's current  
17 earnings amount to \$12.25 per year. Although Heidi has the opportunity for  
18 employment in California, her employer testified that she would need time to  
19 establish a clientele. Her child support calculations impute income to Heidi  
20 \$30,578 with a net income of \$29,469. On Heidi's calculations, Tom's earnings are  
21 figured at \$114,400. Even using these figures, Tom's child support obligation is  
22 \$1844.00 per month.  
23  
24  
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26

1 114. Tom's earning capacity is more than \$114,000. His earning record  
2 show the following:

3  
4 2000 \$ 112,390  
5 2001 \$ 114,208  
6 2002 \$ 162,939  
7 2003 \$ 186,167  
8 2004 \$ 367,808  
9 2005 \$ 485,301  
10 2006 \$ 659,635  
11 2007 \$ 677,095  
12 2008 \$ 300,721  
13 2009 \$ 306,811  
14 2010 \$ 320,974  
15 2011 \$ 270,939  
16 2012 \$ 13,416  
17 2013 \$ 0  
18 2014 \$ 53,493  
19 2015 \$ 88,333  
20 2016 \$109,361  
21 2017 TOTAL \$ 4,229,591 (2000-2016 = 16 years).

22 (Tom's Social Security Statement, Exhibit F). Tom therefore averaged taxable  
23 earnings of \$248,799 a year during this period of time. This more accurately  
24 reflects Tom's earning capacity than the "\$ 65,520" "average per year" alleged at  
25 Tom's Final Disclosure Statement, Exhibit K.

26 115. In addition to his income, Tom's parents consistently gift him \$11,000  
each year (which averages to \$916/mo.). Tom's parents are also paying his attorney  
fees in this matter. Affidavit Tom Kerr, ¶23 (Doc. No. 41). These contributions  
enhance resources available to Tom.

1           116. The Court concludes that Child Support should be calculated using  
2 Tom's recent actual income and using imputed income to Heidi to establish Child  
3 Support amounts payable by Tom to Heidi.  
4

5           117. The Court has considered the Maintenance payments that are ordered  
6 and has not included these maintenance amounts as additional income to Heidi nor  
7 as a deduction to Tom's income, in accordance with current I.R.S. regulations.  
8

9           118. The child support calculations are based on these income  
10 considerations, and are in accordance with the Montana Child Support Guidelines.  
11

12           119. The Court finds that it is in the children's best interests that Tom's  
13 child support obligation be met. Therefore, the Court finds that Tom should  
14 maintain life insurance of at least \$500,000 with the children as beneficiaries so  
15 long as he has a child support obligation. Upon fulfillment of his child support  
16 obligation, he should no longer be required to maintain that life insurance policy.  
17 So long as he is required to maintain the policy, Tom should provide proof to Heidi  
18 in January every year that this life insurance policy for the required amount remains  
19 in effect.  
20  
21

#### 22                           **Attorney Fees**

23           120. The Court finds that Tom has sufficient resources to pay his own  
24 attorney fees especially since his parents are contributing to that effort.  
25  
26

1 121. The Court also finds that Heidi does not have sufficient resources to  
2 pay her attorney fees even with the proposed distribution of marital assets because  
3 of the disparity of her earning power, and her lack of employment over the many  
4 years she was a stay-at-home mother.  
5

6 122. The Court further finds that Tom has sufficient earning capacity to pay  
7 Heidi's attorney fees.  
8

9 123. Awarding Heidi her attorney fees and costs is necessary and  
10 appropriate to avoid a situation where the attorney fees and costs Heidi incurred  
11 would substantially offset the value of assets apportioned to Heidi, thereby  
12 undermining and preventing equitable apportionment.  
13

14 124. Tom should reimburse Heidi for the attorney fees and costs she  
15 incurred to maintain these protracted proceedings. § 40-4-110, MCA.  
16

### 17 **No Name Restoration**

18 125. Heidi does not request her maiden name be restored.  
19

20 126. To the extent the conclusions of law section herein contains findings  
21 of fact, those findings are hereby incorporated by reference as though fully set forth  
22 in these findings of fact.  
23

24 From the foregoing findings of fact, the Court makes the following:  
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## CONCLUSIONS OF LAW

1. To the extent the foregoing findings of fact contain conclusions of law, such conclusions are hereby incorporated by references as though fully set forth in these conclusions of law.

2. This Court has jurisdiction over this cause, the parties, their children, the assets and debts, and all other issues raised in the pleadings filed herein.

3. The jurisdictional requirements of § 40-4-104 are satisfied, and the marriage of the parties should be dissolved.

4. District courts must determine a parenting plan “in accordance with the best interest of the child.” § 40-4-212(1), MCA. The statute requires the court to consider all relevant parenting factors, which may include the thirteen enumerated factors, in determining the best interest of the child. § 40-4-212(1)(a)-(m), MCA. The Montana Supreme Court does not require specific findings on each of the relevant enumerated factors, but encourages district courts to make such findings. *Woerner v. Woerner*, 2014 MT 134, ¶ 15, 375 Mont. 153, 325 P.3d 1244. “The court’s findings should, at a minimum, ‘express the essential and determining facts upon which it rests its conclusions.’” *Woerner*, ¶ 15 (internal quotation omitted).

5. Custodial parents have a fundamental right to travel, and are entitled, to the greatest extent possible, to seek a better life for themselves and the children.

1 *In re Marriage of Cole*, 224 Mont. 207, 213, 729 P.2d 1276, 1280 (Mont. 1986).

2 “As a fundamental right, the right to travel interstate can only be restricted in  
3 support of a compelling state interest.” *In re Marriage of Cole*, 224 Mont. 207,  
4 213, 729 P.2d 1276, 1280 (Mont. 1986) (citing *Shapiro v. Thompson*, 394 U.S. 618,  
5 89 S.Ct. 1322, 22 L.Ed.2d 600). “[A]ny interference with this fundamental right  
6 must be made cautiously, and may only be made in furtherance of the best interests  
7 of the child.” *Id.* The parent demanding a travel restriction has the burden to  
8 provide sufficient proof that a restriction is, in fact, in the best interests of the child.  
9

10  
11 *Id.*

12  
13 6. It is in the children’s best interests that Heidi continue her primary  
14 parenting role, and that conflict be reduced.

15  
16 7. There has not been a showing that restricting Heidi from returning to  
17 California with the children would be in the children’s best interests.

18  
19 8. Heidi should be permitted to return with the children to Southern  
20 California.

21  
22 9. It is in the children’s best interest that their return be as fluid as is  
23 reasonably possible.

24  
25 10. It is in the children’s best interests that the *Stipulation for Interim*  
26 *Parenting Plan* (Doc. No. 89) be adopted as the parenting plan between now and

1 the time the children finish the current school year, and the parties thereafter abide  
2 by *Mother's Proposed Parenting Plan*, Exhibit 5 (including the residential schedule  
3 identified as "Contingency B" at page 6), with the children starting school in  
4 California for the 2019/2020 school year.  
5

6 11. Although the Parenting Plan which the Court is adopting does not  
7 require the parents to use Our Family Wizard, it will be in the children's best  
8 interests for the parents to communicate exclusively through Our Family Wizard,  
9 unless it is an emergency, and for the parents to follow Dr. Baxter's  
10 recommendations for communication.  
11  
12

13 12. Child support must be determined according to the child support  
14 guidelines, considering all relevant factors, including the financial resources of the  
15 child and parents, standard of living the child would have enjoyed had the marriage  
16 not been dissolved, physical and emotional condition of the child, the child's  
17 educational and medical needs, the age of the child, the cost of day care for the  
18 child, any parenting plan ordered. § 40-4-204, MCA.  
19  
20

21 13. It is appropriate to impute full time income to Tom of between  
22 \$114,000 and \$240,000, based upon this history of consistent employment and  
23 substantial income (with only short periods of reduced earnings), professional  
24  
25  
26

1 qualifications as a seasoned financial analyst, and widespread need and demand for  
2 persons with Tom's skillset in the financial industry. ARM 37.62.106.

3  
4 14. It is appropriate to impute Heidi with full time income since she works  
5 32 hours per week but is presumed to be capable of working 40 hours per week.  
6 ARM 37.62.106.

7  
8 15. Heidi's *Proposed Child Support Calculations*, Exhibit 6, are in  
9 accordance with the Montana Child Support Guidelines, and should be adopted and  
10 entered as an order of the Court.

11  
12 16. Out of pocket medical expenses should be divided in accordance with  
13 the child support guidelines (and line 9 of the child support calculations). § 40-5-  
14 806(7), MCA.

15  
16 17. The medical support provisions set forth at pages 13-14 of *Mother's*  
17 *Proposed Parenting Plan*, Exhibit 5, should be adopted as an order of the Court.

18  
19 18. Section 40-4-202, MCA, vests the district court with broad discretion  
20 to apportion the marital estate in a manner equitable to each party under the  
21 circumstances, providing in relevant part:

22 (1) In a proceeding for dissolution of a marriage ... the court, without  
23 regard to marital misconduct, shall ... finally equitably apportion  
24 between the parties the property and assets belonging to either or both,  
25 however and whenever acquired and whether the title thereto is in the  
26 name of the husband or wife or both. In making apportionment, the  
court shall consider the duration of the marriage and prior marriage of

1 either party; the age, health, station, **occupation, amount and sources**  
2 **of income**, vocational skills, employability, estate, liabilities, and  
3 needs of each of the parties; custodial provisions; whether the  
4 apportionment is in lieu of or in addition to maintenance; and the  
5 opportunity of each for future acquisition of capital assets and income.  
6 The court shall also consider the contribution or dissipation of value of  
7 the respective estates and the contribution of a spouse as a homemaker  
8 or to the family unit. In dividing property acquired prior to the  
9 marriage; property acquired by gift, bequest, devise, or descent;  
10 property acquired in exchange for property acquired before the  
11 marriage or in exchange for property acquired by gift, bequest, devise,  
12 or descent; the increased value of property acquired prior to marriage;  
13 and property acquired by a spouse after a decree of legal separation,  
14 the court shall consider those contributions of the other spouse to the  
15 marriage, including:

16 (a) the nonmonetary contribution of a homemaker;

17 (b) the extent to which such contributions have facilitated the  
18 maintenance of this property; and

19 (c) whether or not the property division serves as an alternative to  
20 maintenance arrangements.

21 19. Section 40-4-202(1), MCA requires district courts to equitably  
22 apportion "everything owned jointly or by either party ... regardless of when or how  
23 it was acquired." *In re Marriage of Funk*, 2012 MT 14, ¶ 13, 363 Mont. 352, 270  
24 P.3d 39 (emphasis in original).

25 20. "[A]n equitable division does not require that every marital asset or  
26 liability be split evenly. *In re Marriage of Parker*, 2013 MT 194, ¶47, 37 Mont.  
74, 305 P.3d 816. See also, *Collins v. Collins*, 2004 MT 365, ¶31, 324 Mont. 500,  
104 P.3d 1059 (affirming 55/45 split in Wife's favor).

1           21. The Court has considered all the factors of MCA § 40-4-202(1) in  
2 considering an equitable property distribution.

3  
4           22. It is equitable that the assets and debts of the marital estate be divided  
5 and allocated as set forth in the foregoing Findings of Fact.

6           23. Partition by sale of the marital residence is authorized and appropriate  
7 to motivate Tom to arrange for payment to Heidi of her equitable share in the  
8 marital residence (and removal of her name from the mortgage). *Marriage of*  
9 *Clark*, 2015 MT 263, ¶14, 381 Mont. 50, 357 P.3d 314. (District Court acted  
10 within its sound discretion to order an up-front equalization payment and to  
11 incentivize husband's cooperation by specifying consequences for failing to make  
12 the payment within a specified time, including the forced sale of the ranch or its  
13 transfer to wife for sale.)

14           24. Maintenance is appropriate when a spouse has insufficient assets to  
15 cover living expenses and cannot reasonably earn a sufficient amount to maintain  
16 an appropriate standard of living achieved during the marriage. Section 40-4-  
17 203(1), MCA. *In re Marriage of Crilly*, 2009 MT 187, ¶ 10, 351 Mont. 71, 73, 209  
18 P.3d 249, 250.

19           25. The amount and period of maintenance must be determined after  
20 considering all relevant facts, including:  
21  
22  
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- 1 (a) the financial resources of the party seeking maintenance,  
2 including marital property apportioned to that party, and the party's  
3 ability to meet the party's needs independently, including the extent to  
4 which a provision for support of a child living with the party includes a  
5 sum for that party as custodian;
- 6 (b) the time necessary to acquire sufficient education or training to  
7 enable the party seeking maintenance to find appropriate employment;
- 8 (c) the standard of living established during the marriage;
- 9 (d) the duration of the marriage;
- 10 (e) the age and the physical and emotional condition of the spouse  
11 seeking maintenance; and
- 12 (f) the ability of the spouse from whom maintenance is sought to  
13 meet the spouse's own needs while meeting those of the spouse seeking  
14 maintenance.

15 Section 40-4-203, MCA.

16 26. Although a district court must consider each of the factors listed in §  
17 40-4-203, MCA, the court need not make specific findings of fact regarding each  
18 factor, so long as the Montana Supreme Court can determine the trial judge actually  
19 considered these factors: *In re Marriage of Payer*, 2005 MT 89,112, 326 Mont. 459,  
20 110 P.3d 460 (citations omitted).

21 27. The Montana Supreme Court will reverse the trial court if the duration  
22 of awarded maintenance is not enough to allow the supported spouse enough time  
23 to become financially independent to maintain the standard of living attained during  
24 marriage. *In Re Marriage of Rolfe*, 699 P.2d 79, (Mont.1985). In *Rolfe*, the  
25  
26

1 Montana Supreme Court remanded the award of maintenance for only one year  
2 because that was not enough time for the wife to find adequate employment to  
3 maintain her standard of living. In *Rolfe*, the wife had a B.A. in education and had  
4 taught for several years prior to marriage. She did not work during the 15 years of  
5 marriage. The Court found the District Court had relied heavily on the husband's  
6 assertion that the wife could earn \$17,000 a year as an elementary school teacher.  
7 At the time of trial, she was without a teaching certificate or teaching experience for  
8 16 years.  
9

10  
11  
12 28. Similar to *Rolfe*, Heidi has not worked as an PE teacher for over 12  
13 years (since 2006). Further, such positions are essentially not available in the  
14 Missoula area, and it will take time for Heidi to secure a position in Southern  
15 California sufficient to be self-supporting and even so she is unlikely to accomplish  
16 the standard of living the family achieved during the marriage.  
17

18 29. Maintenance should be due from Tom to Heidi in the amount of \$1,500  
19 a month, for a duration of six (6) years, with payments due on or before the 1<sup>st</sup> of  
20 each month based upon the 16 year marriage, the parties' ages, the substantial  
21 disparity of income (with Tom earning more than \$114,000 until very recently, and  
22 Heidi earning \$12.25/hour), Tom's historical capacity to earn more than \$240,000,  
23 the high standard of living established during the marriage, Heidi having primary  
24  
25  
26



1 custody of the children, and Heidi being forced to reduce her and the children's  
2 standard of living while Tom continues to have a high earning potential.

3  
4 30. Tom's obligation to pay maintenance should be terminated upon the  
5 death of either party or the remarriage of Heidi. § 40-4-208(4), MCA.

6  
7 31. Attorney fees are requested in *Mother's Petition for Dissolution of*  
8 *Marriage* (Doc. No. 1). The Court is authorized to grant Heidi's request for attorney  
9 fees follows:

10 40-4-110. Costs -- professional fees. (1) The court from time to time,  
11 after considering the financial resources of both parties, may order a  
12 party to pay a reasonable amount for the cost to the other party of  
13 maintaining or defending any proceeding under chapters 1 and 4 and  
14 for professional fees, including sums for legal and professional  
15 services rendered and costs incurred prior to the commencement of the  
16 proceeding or after entry of judgment. The court may order that the  
amount be paid directly to the professional, who may enforce the order  
in the professional's name.

17 (2) The purpose of this section is to ensure that both parties have  
18 timely and equitable access to marital financial resources for costs  
incurred before, during, and after a proceeding under chapters 1 and 4.

19 Section 40-4-110, MCA.

20  
21 32. The Court has wide discretion to award attorney fees and costs.  
22 *Weibert v. Weibert*, 2015 MT 29, ¶10, 378 Mont. 135, 343 P.3d 563 (fees awarded  
23 to ex-wife on motion to modify parenting plan). An award must be reasonable,  
24 based on necessity, and rooted in competent evidence. *Id.* An award is not based on  
25 whether a party prevails. *Id.* ¶¶ 12-13.  
26

1           33. Facts demonstrating necessity are: (1) the requesting party's inability to  
2 pay attorney fees; (2) the other party's ability to pay attorney fees; and (3) the  
3 relative financial positions of the parties. *Schmieding v. Schmieding*, 2000 MT 237  
4 ¶ 26, 301 Mont. 336, 9 P.3d 52, reversed in part on other grounds, 2003 MT 246,  
5 317 Mont. 320, 77 P.3d 216.  
6

7  
8           34. Disparity between the parties in their economic situations is a  
9 compelling reason to award fees, and is the "salient fact" justifying an award of  
10 attorney fees under § 40-4-110. *Schmieding*, 2000 MT 237, ¶33, favorably citing  
11 following cases: *In re Marriage of Forsman*, 229 Mont. 411, 416, 747 P.2d 861,  
12 864 (Mont. 1987)(the fact that the husband was in a much better economic situation  
13 than the wife was a compelling reason to award her attorney fees); *In re Marriage*  
14 *of Roullier*, 229 Mont. 348, 360, 746 P.2d 1081, 1088 (Mont. 1987)(Court properly  
15 exercised discretion to award the wife her attorney fees where the husband's cash  
16 flow levels were more adequate to pay); *In re Marriage of Manus*, 225 Mont. 457,  
17 464-65,733 P.2d 1275, 1279-80 (Mont. 1987)(Court did not abuse its discretion in  
18 awarding fees to wife, even though she was awarded monthly income from property  
19 in addition to child support and maintenance, when husband earned substantially  
20 more than her); *Carr v. Carr*, 205 Mont. 269, 272, 667 P.2d 425, 427 (Mont.1983)  
21 (was not an abuse of discretion to award the wife her attorney fees where the  
22  
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1 husband had a greater earning potential with a much larger salary and the wife was  
2 in poor health).

3  
4 35. *Schmelling* is factually similar. In *Schmelling*, the parties were married  
5 for approximately 18 years and had three minor children. 2000 MT 237, ¶ 3. The  
6 parties lived in Florida for most of their marriage until Father decided to move to  
7 Montana approximately two years before the parties separated. *Id.* ¶ 7. Mother was  
8 primarily a homemaker but worked seasonally as a ski patroller after the family  
9 relocated to Montana. *Id.* ¶ 4. Father owned a dental practice and was the primary  
10 earner for the family. *Id.* ¶ 7. After the parties separated, Father withdrew all the  
11 funds from the parties' joint checking account and deposited the funds into his  
12 personal account. *Id.* ¶ 17. All future earnings that Father had were deposited into  
13 his personal account, so Mother only had access to funds at Father's discretion. *Id.*  
14 Father had an earning potential of \$91,500 a year, whereas Mother earned \$16,632  
15 a year. *Id.* at ¶¶28, 30. Under these facts, the Montana Supreme Court affirmed the  
16 District Court order that Father pay Mother's attorney fees and costs pursuant to §  
17 40-4-110, MCA. *Schmelling* ¶ 40.

18  
19  
20  
21  
22 36. Like *Schmelling*, there is significant disparity of income, with Tom  
23 earning more than \$114,000 a year, and Heidi earning \$12.25 an hour. Further, the  
24 parties moved from Southern California to Missoula only a few years before  
25  
26

1 dissolving the marriage, and Tom unilaterally cut Heidi off from his marital income  
2 when she filed for divorce.

3  
4 37. Tom's parents paying his attorney fees compounds the disparity of  
5 income and further justifies an award of attorney fees to Heidi.

6  
7 38. Additionally, Tom has prolonged these proceedings by refusing to  
8 abide by the parenting recommendations yielding from the parenting evaluation he  
9 insisted the parties undergo.

10  
11 39. The requirements for attorney fees under § 40-4-110, MCA are  
12 satisfied, and Heidi should be awarded her reasonable attorney fees and costs.

13  
14 40. The Court may issue a judgment to include the unpaid monetary  
15 amounts, with statutory interest in accord with § 25-9-205, MCA.

16  
17 41. The parties should cooperate in preparing and executing any  
18 documents necessary to effectuate this Decree.

19  
20 42. Temporary orders should be vacated, except as otherwise provided  
21 herein.

22  
23 43. Any and all pending motions are should be denied to the extent the  
24 relief requested is inconsistent with the order herein, and granted to the extent the  
25 relief requested is consistent with the order herein.

26  
44. Heidi does not request her former name be restored.

1 From the foregoing findings of fact and conclusions of law, the Court  
2 enters the following:

3 **FINAL DECREE OF DISSOLUTION**

4  
5 IT IS HEREBY ORDERED, adjudged and decreed as follows:

6  
7 1. The marriage of the parties is hereby dissolved.

8 2. *Mother's Proposed Parenting Plan* (Dec. 7, 2017) (Doc. No. 2),  
9 attached as *Exhibit 5*, is incorporated by reference as though fully set forth herein,  
10 and is adopted and entered as an order of the Court. The parties are ordered to  
11 abide by the terms of the parenting plan, except to the extent modified in herein.  
12

13 Heidi is permitted to relocate with the children to Southern California, with the  
14 children commencing the 2019/2020 school year in the Oak Park School District in  
15 Southern California. Heidi shall be responsible for enrolling the children and  
16 including Tom as a contact. Heidi shall arrange for a suitable therapist for J.L.K. in  
17 California. Between the time of this order and the end of the children's 2018/2019  
18 school year in the Hellgate School District, the parties shall continue to abide by  
19 residential schedule and parenting provisions set forth in the parties' *Stipulation for*  
20 *Interim Parenting Plan* (Doc. No. 89), which is adopted and entered as an order of  
21 the Court as though fully set forth herein. Beginning last day of the children's  
22 2018/2019 school year, and continuing thereafter, the parties shall abide by  
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1 *Mother's Proposed Parenting Plan*, attached as Exhibit 5, including the residential  
2 schedule identified as "Contingency B" at page 6.

3  
4 3. In addition to the communication provisions contained in the Parenting  
5 Plan, the best interests of the children dictate that communication between the  
6 parents shall be done exclusively through Our Family Wizard, unless it is an  
7 emergency. Also, that the parents shall follow Dr. Baxter's recommendations as to  
8 communications between the parents:  
9

10 4. Both parties are strongly encouraged to return to individual therapy on  
11 a regular basis to the extent they can afford it.  
12

13 5. As the primary parent, Heidi shall be entitled to claim the children for  
14 all tax purposes.  
15

16 6. Heidi's proposed child support calculations, attached as Exhibit 6, are  
17 adopted and entered as an order of the Court. Tom shall pay Heidi \$615 per child  
18 per month (\$1,844 total per month) in child support on or before the 1<sup>st</sup> day of each  
19 month.  
20

21 7. The medical support provisions set forth at pages 13-14 of *Mother's*  
22 *Proposed Parenting Plan*, attached as Exhibit 5, are incorporated and adopted as an  
23 order of the Court. Tom shall maintain health insurance on the minor children, and  
24  
25  
26

1 receives credit of \$960 per child, per year, in the child support calculations for  
2 providing health insurance for the children.

3  
4 8. The assets and debts of the marital estate shall be divided and allocated  
5 as set forth in the foregoing Findings of Fact.

6  
7 9. The marital residence located at 2651 Grassland Drive, Missoula,  
8 Montana, shall be sold, as set out above in the Findings of Fact. Until the date of  
9 sale, Tom is solely responsible for all mortgage payments, utilities, expenses, and  
10 liabilities relating to the residence except as otherwise provided herein. If the  
11 residence does not sell and Tom continues to reside in the home for more than six  
12 months following the date of this Final Decree, then upon sale, Tom will owe  
13 reasonable rent to Heidi for her share of the home of \$800 per month, starting as of  
14 the date of the Final Decree until the home is sold.  
15  
16

17 10. Heidi shall remove her personal property items and belongings from  
18 the marital residence within thirty (30) days of this order, which include the  
19 personal property items set forth in the findings of fact section (which are  
20 incorporated by reference). Thereafter, the parties shall each retain personal  
21 property items in their possession.  
22  
23

24 11. Each party shall be solely responsible for any debts or liabilities in  
25 their name, including all debts and liabilities incurred after March 29, 2018 when  
26

1 the Court ordered the parties cancel any joint credit cards or accounts (*Order*, par.  
2 7, Doc. No. 53) (which necessarily includes debts and liabilities incurred after May  
3 28, 2018 when the parties separated households). Parties shall not charge anything  
4 on the joint Costco credit card, and will turn the actual cards over to their respective  
5 attorneys to be destroyed. The account shall be closed upon payment of the balance  
6 owed from the proceeds of the sale of the home, as set forth above.  
7  
8

9 12. Tom shall continue to manage the children's 529 education accounts  
10 and life insurance policies, but these funds shall be solely for the children's benefit.  
11 Tom shall serve as custodian and shall manage any other accounts which are in the  
12 children's names, but these also shall be held for the children's benefit.  
13

14 13. Heidi and Tom shall each retain possession and ownership of the pets  
15 currently in their possession.  
16

17 14. Maintenance shall be due from Tom to Heidi in the amount of \$1,500 a  
18 month, for a duration of six (6) years, with payments due on or before the 1<sup>st</sup> of each  
19 month. Tom's obligation to pay maintenance shall be terminated upon the death of  
20 either party or the remarriage of Heidi. § 40-4-208(4), MCA.  
21

22 15. Tom shall reimburse Heidi for the reasonable attorney fees and costs  
23 she incurred to maintain these proceedings. § 40-4-110, MCA. Heidi shall file an  
24 affidavit of attorney fees and costs incurred within twenty-one (21) days of this  
25  
26



1 Decree. If Tom disputes the reasonableness of the amount of fees and costs  
2 requested, he shall file his objection and request for hearing within fourteen (14)  
3 days of Heidi's affidavit. Failure to do so shall be deemed waiver of the right to  
4 hearing or objection to the reasonableness of fees and costs.  
5

6 16. This Court retains jurisdiction to enter any and all future orders  
7 necessary to properly enforce this Final Decree of Dissolution.  
8

9 17. Upon request, the Court will issue a judgment to include the unpaid  
10 monetary amounts, with statutory interest in accord with § 25-9-205, MCA,  
11 accruing as of the date of this Order.  
12

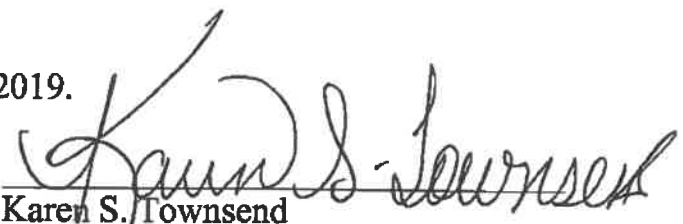
13 18. The parties shall cooperate in preparing and executing any documents  
14 necessary to effectuate this Decree.  
15

16 19. Any temporary orders are hereby vacated, except as otherwise  
17 provided herein. The Maintenance and Child Support Order contained in this Final  
18 Decree shall take effect on the first day of the month following the entry of this  
19 Final Decree. The Temporary Family Support and Child Support amounts (based  
20 on Stipulation of the parties) of \$3,100 per month remains in effect until the  
21 Maintenance and Child Support Orders become effective on the first day of the  
22 month following entry of this Final Decree.  
23  
24  
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1           20. Tom shall maintain life insurance of at least \$500,000 with the children  
2 as beneficiaries so long as he has a child support obligation. Upon fulfillment of  
3 his child support obligation, he is no longer required to maintain that life insurance  
4 policy. So long as he is required to maintain the policy, Tom shall provide proof to  
5 Heidi in January every year that this life insurance policy for the required amount  
6 remains in effect.  
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9           21. Any and all pending motions are hereby denied, except as otherwise  
10 specified herein.  
11

12 Dated this 18<sup>th</sup> day of April, 2019.

13   
14 Karen S. Townsend  
15 District Judge

16 cc: Andre Gurr, Esq.  
17 P. Mars Scott, Esq.  
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