

SUPREME COURT OF THE STATE OF MONTANA

In re the Marriage of Brockington

2017 MT 92 · No. DA 16-0387 · Decided April 18, 2017

SUMMARY

The Montana Supreme Court affirmed an amended parenting plan that reduced but preserved the father’s summer parenting time in Virginia and Montana. The court held that the district court appropriately considered the child’s wishes and the guardian ad litem’s recommendations in determining the child’s best interests. The court dismissed without prejudice the mother’s appeal from a contempt order because attorney’s fees and costs had not yet been determined, leaving the order nonfinal.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Laurie McKinnon; Chief Justice Mike McGrath; Justice Michael E. Wheat; Justice James Jeremiah Shea; Justice Jim Rice
JURISDICTION	Montana
DECIDED	April 18, 2017
DOCKET	DA 16-0387
DISPOSITION	other
PROCEDURAL POSTURE	Direct appeal from an order amending a parenting plan and a separate contempt order in a family-law proceeding.
STANDARD OF REVIEW	Findings of fact concerning amendments to parenting plans are reviewed for clear error. The decision to amend a parenting plan is reviewed for abuse of discretion when the underlying findings are not clearly erroneous. Whether a contempt order is a final judgment for purposes of appeal is reviewed under Montana's appellate-jurisdiction and final-judgment rules.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Deborah Brown v. Darin Brockington

TOPICS

child custody

family law procedure

final judgment rule

appellate jurisdiction

servicemembers civil relief act

PRACTICE AREAS

family law

appellate procedure

military law

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion in determining that the amended parenting plan was in A.E.B.'s best interests.
2. Whether Deborah's appeal from the separate contempt order was from a final judgment.

HOLDINGS

1. The District Court did not abuse its discretion in determining that the amended parenting plan was in A.E.B.'s best interests and in reducing, but not eliminating, Darin's summer parenting time.
2. The contempt order was independently appealable under Montana law, but it was not a final judgment because the District Court had not yet determined the amount of attorney fees and costs; the appeal was therefore dismissed without prejudice.

KEY QUOTATIONS

“Indeed, the guardian ad litem’s duty to represent the child’s interest in the dispute cannot be honored while at the same time honoring the obligation of a mediator to be an impartial third-party.” (¶ 26)

“Here, the contempt order is not a final judgment because it lacks the court’s decision regarding the amount of attorney’s fees and costs.” (¶ 35)

FACTUAL BACKGROUND

Darin Brockington and Deborah Brown are the parents of A.E.B., whose primary residence was with Deborah under a 2008 parenting plan that granted Darin substantial parenting time, including summer visits wherever his Army assignments placed him. After years of disputes over the amount and location of parenting time, Deborah sought to reduce Darin's summer time based largely on A.E.B.'s desire to remain in Montana. The District Court amended the plan to provide four weeks of summer parenting time in Virginia, while retaining other parenting opportunities, and later held Deborah in contempt after A.E.B. did not travel to Virginia. The contempt order included attorney fees and costs that had not yet been determined in amount when Deborah appealed.

PROCEDURAL HISTORY

The parties' marriage was dissolved in 2007, and a parenting plan was entered in 2008. Deborah moved to amend the parenting plan based on changed circumstances and the child's preferences; after a stay under the Servicemembers Civil Relief Act and a subsequent hearing, the District Court amended the plan on June 3, 2016. After Deborah did not deliver the child for the ordered parenting time, the District Court held her in contempt on

August 4, 2016, but had not yet determined the amount of attorney fees and costs. The Montana Supreme Court affirmed the amended parenting plan and dismissed the contempt appeal without prejudice as premature.

DISPOSITION

other

CASES CITED

- In re Marriage of Everett, 2012 MT 8, ¶ 11, 363 Mont. 296, 268 P.3d 507
- In re Marriage of Graham, 2008 MT 435, ¶ 8, 347 Mont. 483, 199 P.3d 211
- In re Marriage of Oehlke, 2002 MT 79, ¶ 9, 309 Mont. 254, 46 P.3d 49
- Albrecht v. Albrecht, 2002 MT 227, ¶ 7, 311 Mont. 412, 56 P.3d 339
- Kuzara v. Kuzara, 211 Mont. 43, 48, 682 P.2d 1371, 1374 (1984)
- Steab v. Luna, 2010 MT 125, ¶ 22, 356 Mont. 372, 233 P.3d 351
- Kircher v. W. Mont. Regl. Community Mental Health Ctr., 261 Mont. 227, 229, 861 P.2d 927, 929 (1993)
- In re Marriage of Griffin, 260 Mont. 124, 135, 860 P.2d 78, 85 (1993)
- Brockington v. 11th Jud. Dist. Ct., No. OP 16-0423, Or. Granting Pet. for Writ of Supervisory Control in Part (Mont. July 26, 2016)