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01/02/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 23-0629

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 23-0629

SHANNA SPRING MANYWOUNDS,

Petitioner,

v.

20TH JUDICIAL DISTRICT COURT, LAKE
COUNTY, HONORABLE DEBORAH KIM
CHRISTOPHER, PRESIDING JUDGE,

Respondent.

ORDER

FILED

JAN 02 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Petitioner Shanna Spring Many Wounds seeks a writ of supervisory control to vacate the September 19, 2023 Order of the Twentieth Judicial District Court, Lake County, in its Cause No. DR-23-17, that granted full custody of her minor son to Jonathan Carlton Whyte, the child's father. At our request and pursuant to M. R. App. P. 14(7), Whyte and Hon. Deborah Kim Christopher, District Court Judge, have each responded to the petition. After Judge Christopher responded, ManyWounds moved to strike the exhibit to Judge Christopher's response; we denied the motion to strike but have deemed ManyWounds' motion to be a reply brief.¹

ManyWounds and Whyte are the parents of C.L.W., a five-year-old boy. The parents resided separately in Oregon when C.L.W. was born. While C.L.W. was an infant, ManyWounds traveled to Montana with him and decided to remain in Elmo. Whyte was not opposed to moving to Montana, but after he was unable to find a job with a salary commensurate with what he earned in Oregon, he decided to remain in Oregon. The couple ended their engagement and ManyWounds remained in Montana with C.L.W.

¹ *ManyWounds v. Twentieth Judicial District Court*, No. OP 23-0629, Order (Mont. Jan. 2, 2024).

ManyWounds and Whyte did not have a formal parenting plan, but Whyte agreed to pay monthly child support of \$350. ManyWounds agreed that Whyte could visit C.L.W. at his discretion and that he was free to stay in her home when he did so. Whyte typically visited once a year and stayed for about four days per visit.²

In April 2023, Whyte petitioned the court for a formal parenting plan. Neither Whyte nor ManyWounds had legal counsel. Whyte wanted C.L.W. to spend time with him in Oregon. ManyWounds opined that C.L.W. did not know Whyte very well and she wanted them to develop a stronger relationship before Whyte took custody for any length of time. She proposed only supervised visits in her home “until a relationship and trust is established between all parties. Minimum of two years.” Taking ManyWounds’ concerns into account, Whyte revised his proposed parenting plan to provide that the parties would gradually increase Whyte’s time with C.L.W. over two years, so that by 2025 C.L.W. would reside primarily with ManyWounds but spend summer vacations and winter breaks with Whyte in Oregon, as well as alternating holidays. However, Whyte wanted to have unsupervised visitation in Montana for up to three days at a time beginning immediately. Whyte, a native of Jamaica, also wanted C.L.W. to obtain a passport so that Whyte could take him to Jamaica to meet his extended family. ManyWounds opposed both of these requests.

ManyWounds and Whyte then engaged in mediation via the Lake County District Court. Judge Christopher’s law clerk conducted the mediation but ManyWounds and Whyte failed to reach agreement on two key points: Whyte wanted ManyWounds to agree that Whyte’s proposed custody split would be fully implemented in 2025 but ManyWounds was not willing to “guarantee” that Whyte could take C.L.W. to Oregon until she felt C.L.W. was comfortable in Whyte’s care; and ManyWounds wanted to wait until C.L.W. was 14 years of age to obtain a passport for him.

² During the parenting plan hearing, Whyte advised the court that when ManyWounds and C.L.W. lived near him in Oregon, he saw C.L.W. once a month.

On September 11, 2023, Many Wounds and Whyte, both self-represented, appeared for a parenting plan hearing before Judge Christopher. Many Wounds explained that she was concerned about “jumping into” sending C.L.W. to Oregon too quickly because she felt that Whyte and C.L.W. had “essentially . . . no relationship.” She advised the court, “I would like to see time spent developing the relationship before, you know, the child is taken away from everything he’s ever known.” Many Wounds also expressed concern that Whyte had not been attentive to C.L.W. during his annual visits but usually spent his time engaged in activities that did not include C.L.W. She explained that during one visit, Whyte spent the majority of the time fixing C.L.W.’s toy car and during another, he spent several days fixing Many Wounds’ lawnmower, even though she encouraged him to focus on engaging with C.L.W. instead.

Judge Christopher questioned Whyte, confirming that, prior to this, he had generally visited C.L.W. once a year at Many Wounds’ home in Montana for approximately four days at a time. Whyte advised the court that either Many Wounds or Many Wounds’ mother was present during each visit.

At this stage of the hearing, Judge Christopher advised the parties that, “I think we need to immediately start alternating holidays, because those aren’t long periods of time and there isn’t a reason that a weekend or a week is going to be an issue.” Many Wounds did not object.

Judge Christopher then questioned Whyte about his desire to have C.L.W. during summers. She asked Whyte, “And do you think with regard to doing all summer[,] do you think that that’s where we should start with him or do you think we ought to do something that breaks it up a little bit more so Mom has some time in there, he gets the chance to just be sure that Mom’s still there and then come back to you?” Whyte advised the court that he was proposing that, for the next two years, he wanted “to be more involved, then after the two years I would have him for the next summers after that.” Whyte further advised the court that he understood that for the next two years, those visits would occur in Montana.

Observing that she had seen no reason to require that Whyte's visits be supervised, Judge Christopher admonished ManyWounds that Whyte's proposed visitation plan was "a better deal than you're going to get from me." ManyWounds replied she had not agreed to Whyte's proposal because she did not want to unconditionally guarantee that the proposed custody schedule would be fully implemented after two years. She wanted C.L.W. to have a say in whether he went to Oregon. She stated, "[I]f [C.L.W.] is comfortable, great. Then in two years he can go and do whatever. But I don't feel he should be made to do anything if he doesn't want to go. And if he does, perfect. Then he goes and has a new adventure." She described C.L.W. as a "very sensitive child" who struggles with transitions.

Judge Christopher scolded ManyWounds for failing to appreciate that Whyte had "granted [ManyWounds] a great courtesy" in not insisting on having more time with C.L.W. She accused ManyWounds of keeping C.L.W. from Whyte, while ManyWounds maintained that it was Whyte's decision not to visit more frequently. Judge Christopher asked Whyte if he had ever asked for more time and Whyte confirmed he had not done so.

Judge Christopher asked ManyWounds "[W]hy [do] you feel like you have more rights to the child than he does?" ManyWounds reiterated that she did not prevent Whyte from being involved with C.L.W. but that Whyte had chosen to visit for only a few days each year.

Judge Christopher advised the parties that she believed C.L.W. should spend equal amounts of time with both sides of his family and she opined that Whyte's willingness to allow C.L.W. to remain with ManyWounds during the school year was a "significant gift" to ManyWounds. She inquired about C.L.W.'s schooling and ManyWounds replied that C.L.W. was homeschooled. The court opined that if C.L.W. was not attending school, there was no reason to take the school year into account in determining visitation.

ManyWounds disagreed, opining that C.L.W.'s education should be consistent and uninterrupted. The court countered that Whyte could homeschool C.L.W. While agreeing that Whyte was likely capable of homeschooling C.L.W., ManyWounds advised the court

that Whyte worked full-time while ManyWounds worked part-time in order to have adequate time to homeschool C.L.W.

Judge Christopher further questioned the parties about the impasse over C.L.W.'s passport. ManyWounds explained that she felt C.L.W. was too young to travel to a foreign country, he did not currently have a strong relationship with Whyte, and he had had no contact with his relatives in Jamaica. She advised the court that none of those relatives had ever attempted to establish a relationship with C.L.W. by calling him or by sending him a birthday card. Judge Christopher opined that ManyWounds was to blame for C.L.W.'s lack of relationship with his relatives in Jamaica because she had not taken him to Jamaica to meet them.

ManyWounds further advised the court that when C.L.W. was three years old, Whyte told them he intended to move to Montana. The next time Whyte visited, C.L.W. was devastated when Whyte left because C.L.W. had thought Whyte had come to stay. She explained that C.L.W. came home from preschool expecting Whyte to be there, but he was gone.

Whyte advised the court that he decided not to remain in Montana because he did not find a job that paid as well as his job in Oregon. He further stated that when C.L.W. left for preschool that morning, Whyte thought he would see C.L.W. before leaving for the airport. However, ManyWounds dropped him off at the airport several hours ahead of his flight so that she would not have to miss work. Whyte stated that he spoke with C.L.W. on the phone from the airport but he would have preferred to say goodbye in person.

Judge Christopher scolded ManyWounds for taking Whyte to the airport before C.L.W. returned from preschool. ManyWounds explained that she could not afford to give up a day of work. She advised the court that she always tried to facilitate Whyte's visits, including taking him to and from the airport and allowing him to stay in her home, even though she found it uncomfortable to do so. She further stated that she has offered Whyte the use of her vehicle to spare him the expense of renting a car. She again attempted to explain her rationale to the court: "I've offered things to make things easier because I recognize that there is distance between us. . . . I'm not out to make him into a villain. . . .

All I'm concerned is the well being of my child. All I want is for him to be happy, and of course that would be to have both parents in his life."

Judge Christopher found ManyWounds' explanation unpersuasive. She responded, "[Q]uite frankly, that child should be with his dad. He has as much right - - I mean, I could send him home tonight for the next five years because he's old enough to do so[.]"

ManyWounds again attempted to clarify her position, advising the court that she had never intended to prevent Whyte from seeing C.L.W. She further stated, "I've let him visit any time he's wanted to visit."

Judge Christopher responded, "You've let him visit his child. Do you hear yourself?" She further stated, "It's his child, too. And you don't get to let him. He has as much right to that little boy that you have. Every right." ManyWounds attempted to apologize to the court and Judge Christopher asserted:

I'm just saying that legally he has every right to that child, and if I don't get you backed off of this my child, my child, my child, I get to run everything, I get control of everything, I get to supervise everything, that child is going to grow up without an ability to understand a lot of who he should be because he's not involved in the fact that he's a part of this world. You can't do that.

Judge Christopher then recessed the hearing. Upon reconvening, she advised the parties that she had arranged to hear testimony from Carolyn Hall, the Lake County Superintendent of Schools. After establishing Hall's credentials, Judge Christopher questioned her about child development. Judge Christopher asked Hall whether it was a "good situation if one parent has all of the control and the other parent doesn't seem to be able to exercise anything except a chance to be with their child?" Hall responded, in part, that the "total absence" of a parent could adversely affect a child.

In discussing visitation, Judge Christopher commented that her goal was to limit transitions and to ensure that C.L.W. spent sufficient time with Whyte. She noted, however, that C.L.W. should have "the ability to always call and talk to Mom when he needs to." Hall agreed with the court that it was difficult for children to switch custody too frequently. She opined that trading off between the school year and the summer or by school semester was better for most children than splitting custody weekly. Hall also

suggested it would be best for C.L.W. if Mother initially accompanied him to Oregon and then left him in Whyte's care because that would be less frightening. She opined it was "very important" that ManyWounds take C.L.W. to Whyte in Oregon instead of Whyte taking C.L.W. from Montana. She further opined that C.L.W. would benefit from getting to know Whyte and experiencing more of the world.

Judge Christopher likened ManyWounds' situation to her own, advising the parties that:

I had to share my children with someone who abused them and I didn't know how badly. And I found out when my youngest was 17 And he literally thought at the very last explosion of the person that was supposed to be his father, when he was walking back into my house he was going to get shot in the back. . . .

But I will tell you, as many times as I cried about the life I imposed on them, they tell me, Mom, we wouldn't trade how strong we are even if we had to go through that again. . . .

The hardest thing that you can imagine, how every Saturday I had to drop those kids off and every Sunday night I had to pick them up. I knew it was bad. I didn't know how bad. But they're better for it in the ability they have to deal with the world. . . .

And part of what you have to do is have the resilience that you can focus on, and if you were protected from everything, including your father, if you can build a resilience, it doesn't come from the fun times, the opportunities where you don't have to assert or develop stress muscles, is what I call them.

Judge Christopher then announced that she had decided that ManyWounds would turn C.L.W. over to Whyte immediately. She explained that although she had initially intended to impose Whyte's proposed parenting plan, she would now draft the parenting plan and, since ManyWounds had gotten C.L.W. for the first five years of his life, Whyte would have him for the next five years.

After Judge Christopher made this ruling, the court allowed ManyWounds to call Tania Osborn, ManyWounds' mother, as a witness. Osborn testified that ManyWounds allowed Whyte to visit C.L.W. any time he wanted. She further testified that ManyWounds

tried to maintain a connection between Whyte and C.L.W. even though Whyte seemed unmotivated to make the efforts himself. She testified that ManyWounds sent pictures even though Whyte never asked for them. She also stated that C.L.W. was once hospitalized with a serious respiratory illness and although ManyWounds apprised Whyte of the situation, Whyte never followed up to check on C.L.W.'s wellbeing.

While Osborn was still on the witness stand, the court asked Whyte to refute her testimony. Judge Christopher commented to Whyte, "[M]aybe this is me picking up on non-verbals. But my sense is with this you're practically begging for time with your son because you don't think you're going to get any." Whyte responded, "Nope." Judge Christopher asked Whyte if he wanted to have C.L.W. full-time and he stated that he did:

THE COURT: And has that always been the feeling you had?

MR. WHYTE: Yes.

THE COURT: Have you communicated that to [ManyWounds]?

MR. WHYTE: No.

THE COURT: Did you feel you could?

MR. WHYTE: No.

THE COURT: You assumed you couldn't.

MR. WHYTE: No.

THE COURT: You thought that they would say no.

MR. WHYTE: Yes.

THE COURT: And you thought you had no rights in this.

MR. WHYTE: Yes.

Judge Christopher then directed comments toward Osborn, stating, "[I]t's as if a father doesn't have rights. And it's as if it's your right to make those decisions for this child. And this man has every right to his son as much as your daughter does. And I don't know what the dynamics were to cause him to believe that he didn't have those rights."

After Osborn was excused as a witness, Judge Christopher asked Whyte if he had a car seat. He did not. ManyWounds advised the court that she had a booster seat for C.L.W. ManyWounds then asked the court to reconsider imposing Whyte's proposed parenting

plan. The court refused, stating, "Quite frankly, you are a grown adult. If you can't figure it out, now it's in front of me, now it's my call."

After some discussion about C.L.W.'s clothing and school supplies, Judge Christopher advised the parties, "[W]e're going to do this now. . . [and] we're going to have to have law enforcement involved."

ManyWounds requested leave to call another witness and the court reluctantly agreed. ManyWounds called Jeremy Lee, who testified that he and ManyWounds had been in a relationship for the past two years and he was also pastor at the church she and C.L.W. attended. He testified that C.L.W. was a sensitive child who was slow to become comfortable with people. He stated that he spent time with C.L.W. every week and after two years, C.L.W. was "still weird with me." He opined that an abrupt transition out of ManyWounds' care would "rock his world hard." He suggested it would be in C.L.W.'s interests if he could have a couple of days to get used to the idea before departing.

Judge Christopher refused, stating, "I've got law enforcement involved and you know exactly why I'm doing it." She explained that C.L.W.'s current life was detrimental to him because "the worst thing that happens to [C.L.W.] when he's in [ManyWounds'] care and he falls and scrapes his knee and you can put a Band-Aid on it." She told ManyWounds that "over protecting of kids results in kids that can't take care of themselves. And unfortunately on mine it was doubled up. They not only got over protected, they got abused. So you're going to get a gift I don't think you ever expected the opportunity to have."

Judge Christopher advised Whyte that she would have law enforcement deliver C.L.W. to him immediately and ManyWounds could deliver C.L.W.'s belongings to the courtroom for Whyte to pick up before he left town. She directed Whyte to get C.L.W. into therapy and ruled that C.L.W. was to have no contact with ManyWounds until the therapist opined it was appropriate for him to do so. Judge Christopher set no parameters as to credentials of the therapist nor the timeframe in which therapy was to begin.

On September 19, 2023, the District Court issued a brief order that granted immediate full custody of C.L.W. to Whyte for the next five years. The court further

asserted that it would prepare and file the final parenting plan but it neither required Whyte to get C.L.W. into therapy nor did it prohibit ManyWounds from having contact with C.L.W.

ManyWounds filed the present petition in this Court on October 24, 2023, with no final parenting plan having been issued by the District Court. In her petition, ManyWounds indicated that as of that date, she had had no contact with C.L.W. since the hearing and no indication that Whyte had taken any steps toward obtaining therapy for C.L.W., which she understood was a prerequisite for her to have contact with her son per the District Court's oral ruling.

Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Judicial Dist. Court*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted).

In this case, ManyWounds asserts that the legal question is whether the District Court erred by entering the September 19, 2023 order that gave full and exclusive custody to Whyte for the next five years. She argues that urgent and emergency factors make the normal appeal process inadequate because C.L.W. was abruptly removed from her care, the court has barred her from any contact with him until a therapist approves such contact, and she had no indication that Whyte had obtained therapy services for C.L.W. in the six weeks between the hearing and her filing of the present petition.

Whyte argues this matter is not appropriate for supervisory control because the court subsequently issued a final parenting plan which can be directly appealed. He further argues that no emergency justifies further consideration of this petition because ManyWounds has not demonstrated that Whyte is an unfit parent and C.L.W.'s "longing"

for ManyWounds is neither a “trauma” nor an emergency. After all, Whyte notes, C.L.W. was once “heartbroken” when Whyte left Montana without saying goodbye and he got over it.³

Although we agree with Whyte that a final parenting plan has a remedy on appeal, in this case, the District Court did not file a final parenting plan until November 2, 2023, nine days after ManyWounds petitioned for writ of supervisory control, which was in turn filed 43 days after the parenting plan hearing. Whyte then requested and received an extension of time to file a response to the petition, after which ManyWounds filed an objection that Whyte then moved to strike, delaying consideration of the petition further until the time ran on ManyWounds’ response to the motion to strike and the Court could then determine whether to strike the filing or further consider the arguments raised within.⁴ At this point, C.L.W. has been barred from any contact with his mother for over three and a half months. Whyte’s assertion that C.L.W.’s distress at missing his mother is not a “trauma” notwithstanding, we conclude this has created an urgent or emergency situation such that requiring ManyWounds to restart this process by filing a direct appeal would indeed provide an inadequate remedy. *See S.P. v. Mont. Sixth Judicial Dist. Court*, No. OP 21-0194, Order (Mont. June 22, 2021). In this instance, it would merely prolong the litigation, ultimately causing ManyWounds and Whyte to re-submit their arguments as to whether the parenting plan should be upheld that they have already placed before this Court. We thus consider the substance of ManyWounds’ petition.

For this Court to grant supervisory control, it must further determine that the District Court was operating under a mistake of law and causing a gross injustice. *M. R. App. P. 14(3)(a)*. ManyWounds argues that the District Court erred as a matter of law in failing to properly apply the best interest of child factors in § 40-4-212, MCA. She alleges that the

³ We note that in that instance, Whyte said goodbye to C.L.W. by telephone later that day, while in this instance, C.L.W. has been prohibited from all contact with ManyWounds.

⁴ *See ManyWounds v. Twentieth Judicial District Court*, No. OP 23-0629, Order (Mont. Jan. 2, 2024).

resulting transfer of full custody to Whyte, with ManyWounds and C.L.W. barred from contact with each other, is a gross injustice.

District courts have broad discretion to make parenting plan determinations under the applicable standards of § 40-4-212, MCA, and we review such determinations for clear abuse of discretion. *Besette v. Besette*, 2019 MT 35, ¶ 13, 394 Mont. 262, 434 P.3d 894 (citations omitted). Notwithstanding this deferential standard, however, judicial discretion must be guided by the rules and principles of law; thus, our standard of review is plenary to the extent that a discretionary ruling is based on a conclusion of law and in such circumstances, we determine whether the court correctly interpreted the law. *Puccinelli v. Puccinelli*, 2012 MT 46, ¶ 12, 364 Mont. 235, 272 P.3d 117 (citation omitted).

In this case, the question arises as to whether the District Court correctly interpreted § 40-4-212, MCA, which provides that it shall determine the parenting plan in accordance with the best interest of the child, and further enumerates relevant parenting factors to take into consideration. We conclude that here, the District Court erred as a matter of law because it failed to determine a parenting plan in accordance with the best interest of C.L.W. Instead, Judge Christopher created a parenting plan whose stated purposes were to punish ManyWounds for the court's belief that she had treated Whyte unfairly, to reward Whyte because she found him likeable, and to deliberately subject C.L.W. to potential trauma in a misguided attempt to "develop the stress muscles" of a child that the court believed had been overly protected by his mother and grandmother.⁵

In this case, the parties came before the court to resolve minor disagreements between their proposed parenting plans. At the outset, Judge Christopher stated that she found Whyte's proposed parenting plan to be very reasonable. In her response to the

⁵ Judge Christopher's decision to share details of her children's difficulties with their family's custody arrangements was inappropriate. Her decision to then give C.L.W. the "gift" of building his "stress muscles" by manufacturing a potentially traumatic transition because she believes her sons benefited from childhood trauma and abuse demonstrates a loss of objectivity and is inconsistent with the mandates of § 40-4-212, MCA.

present petition, she reiterates that she found Whyte's proposal to be an "incredibly reasonable Parenting Plan."

In fact, ManyWounds and Whyte largely reached agreement in how custody of C.L.W. would ultimately be split between the parents. They primarily differed in how long it should take to get there. ManyWounds articulated the basis of her reluctance to agree to Whyte immediately taking C.L.W. into his custody in Oregon, but she did not object when the court declared that "we need to immediately start alternating holidays." The parties agreed that Whyte had only seen five-year-old C.L.W. at his mother's residence for approximately four days per year for the last four years. The parties further agreed that ManyWounds would have allowed Whyte to stay more often or for longer periods of time but Whyte chose not to do so. However, for reasons that are not apparent from the transcript, as the hearing progressed Judge Christopher became increasingly upset with the parties' de facto custody arrangement, intensifying her criticism of ManyWounds while extolling Whyte's perceived virtues. In her response to this petition, Judge Christopher acknowledged that she found the matter "shockingly disturbing" and found herself unable to finish her draft of the Parenting Plan for several weeks after the hearing because "there was significant emotion in the draft" and she felt the need to "review the case with more judicial temperament." In the Parenting Plan itself, Judge Christopher writes that she did not issue the Parenting Plan for almost two months "until some of the dust and emotions cleared from one of the most odd, painful and difficult hearings ever held by this Court in 23 years."

While this Court recognizes that this case seems to have genuinely triggered distress for Judge Christopher, neither parent in this matter behaved in such a way as to reasonably trigger such a response. In this case, as in all cases, Judge Christopher had a duty either to resolve the dispute at issue in a fair and impartial manner or to recuse herself if she found herself unable to do so. Instead, she unfortunately rendered a decision that appears to arise from her desire to punish one parent and reward the other at the expense of a five-year-old child's best interest and/or from her connecting the circumstances in this case to the circumstances she faced when managing custody and visitation issues related to her own

children. Neither motivation is grounded in the requirements of § 40-4-212, MCA, and has resulted in misapplication of the law.

Judge Christopher's comments throughout the hearing illustrate that her ruling was colored by her personal feelings and perceptions of ManyWounds and of Whyte. Judge Christopher repeatedly chastised ManyWounds for being unappreciative of Whyte's parenting efforts, which she repeatedly described as a "gift," later declaring "I kind of like this guy," and opining that Whyte had created "the nicest [proposed] parenting plan I have ever seen." She attempted to enlist Whyte in her criticism of ManyWounds, commenting to him that she understood ManyWounds was "very strong" and that she understood Whyte had not sought more time with C.L.W. until now because "you feared you wouldn't be heard." Finding ManyWounds insufficiently appreciative of Whyte, she advised ManyWounds that Whyte had offered her "a gift that you didn't get" and that she hoped ManyWounds would realize how generous Whyte had been. In the Parenting Plan, she described Whyte as "a very quiet man who is polite to the core . . . [who] had been stripped of his paternal rights . . . by the manipulation of the Mother."

Overall, Judge Christopher accused ManyWounds of excluding Whyte from C.L.W.'s life when ManyWounds did not assume the task of managing Whyte's performance as a parent. In her response to this petition, Judge Christopher explained that Whyte "has done nothing to compromise his rights except not demand them" and thus "[ManyWounds] has left her son without a Father by exerting the kind of power and control the Court generally sees in Domestic cases." For reasons that the record does not bear out, Judge Christopher believes ManyWounds is responsible for Whyte's failure to exercise his rights to parent his child. Whyte admitted that he had never requested custody of his son and he had never attempted to ascertain the scope of his parental rights under the law. Judge Christopher's comments throughout the hearing demonstrate that she believes it was ManyWounds' responsibility to educate Whyte as to his parental rights, to initiate and maintain C.L.W.'s relationship with Whyte's family members, and to compel Whyte to engage more frequently and more meaningfully with C.L.W. She chastised ManyWounds for driving Whyte to the airport hours ahead of his flight instead of maximizing his time

with C.L.W. because she believed it was ManyWounds' responsibility to sacrifice her own financial wellbeing for the sake of Whyte's convenience, as Whyte's preferred schedule would have required ManyWounds to take a day off work. ManyWounds advised the court, and Whyte did not disagree, that he was free to visit C.L.W. at any time and that during these visits ManyWounds provided him with housing and transportation. However, Judge Christopher declared in the Parenting Plan that ManyWounds' conduct was "abusive" to Whyte and C.L.W. because, in the court's estimation, ManyWounds did not adequately support Whyte's contact with his son.

In determining a parenting plan, a court must utilize the best interest of the child standard, and it is improper for a court to use a parenting plan as a means to punish or penalize a parent. *Woerner v. Woerner*, 2014 MT 134, ¶¶ 19-20, 375 Mont. 153, 325 P.3d 1244 (citing *Guffin v. Plaisted-Harman*, 2009 MT 169, ¶¶ 12-13, 350 Mont. 489, 209 P.3d 225). Section 40-4-212(1), MCA, provides non-exhaustive factors a court shall consider in determining the child's best interests. The district court need not make specific findings on each relevant statutory factor but must make findings sufficient for this Court to determine whether the district court considered the statutory factors and made its ruling on the basis of the child's best interests. *Woerner*, ¶ 15.

In the Parenting Plan, the District Court's reasoning for how it weighed the factors further supports our conclusion that the court did not properly consider the statutory factors in relation to C.L.W.'s best interests. Factor § 40-4-212(1)(a), MCA, is "the wishes of the child's parent or parents." To determine ManyWounds' and Whyte's wishes, the court did not look to the proposed parenting plans of either parent. Instead, the court asserted, in part, that ManyWounds "chose to believe the child was hers alone" and that Whyte "has never been able to or granted the right to introduce his son to the paternal side of his son's heritage all in the direct violation of both the Child and the Father's rights." Neither of these assertions are supported by the record. There was no dispute between ManyWounds and Whyte that Whyte was allowed to contact C.L.W. and spend time with him in Montana at Whyte's discretion and that none of Whyte's extended family members had ever reached out to C.L.W.

As to § 40-4-212(1)(b), MCA—the wishes of the child—the court states that it is clear C.L.W. loves both of his parents. However, the court’s ruling that prohibits C.L.W. from having any contact with ManyWounds at present and that places him in Whyte’s sole custody for the next five years, does not support the best interest of a child who “loves both of his parents.”

Judge Christopher’s failure to consider C.L.W.’s best interest is illustrated by her application of § 40-4-212(1)(h), MCA, “continuity and stability of care.” The court asserts, “This will be a complete change but a critical one as this Child deserves as does the Father. Even though it costs *the Mother*, this Child should be so fortunate to have many love him.” (Emphasis added.) The court did not consider or address the potential trauma to C.L.W. as a result of the custody ruling. In the Parenting Plan, Judge Christopher asserts her ruling “flipped the entire current parenting,” but the parenting that was occurring at the time of the hearing allowed Whyte to contact C.L.W. and spend time with him in Montana as often as he wished. The Parenting Plan does not “flip” the current parenting; it bars C.L.W. from all contact with his primary caregiver until a yet-to-be-determined “therapist” determines otherwise and provided no timeframe in which Whyte was required to engage an acceptable therapist.

As to § 40-4-212(1)(i), MCA—developmental needs of the child—the court sua sponte called an expert witness of its choosing. In applying this factor, the court notes that Hall testified “this child needs both parents and each in their own way.” However, at the same time that the court gives lip service to Hall’s testimony, the court completely disregarded its substance and ruled counter to the opinions Hall offered. The court asked Hall if it would be emotional abuse if one parent kept the child from seeing the other parent and Hall responded that it would. However, this ruling keeps C.L.W. from seeing his mother, possibly for as long as five years—an outcome that the court’s own witness testified was abusive. Hall further testified to the importance of parents conferring to determine the best interests of the child, but the court strongly cautioned ManyWounds that she would be held in contempt if she had any contact with C.L.W., even if she and Whyte believed that such contact would be in C.L.W.’s best interest. The court also disregarded

Hall's testimony that it was "very important" for C.L.W.'s wellbeing that ManyWounds accompany him to Oregon on his first transition.

Section § 40-4-212(1)(l), MCA, specifically directs the court to consider "whether the child has frequent and continuing contact with both parents, *which is considered to be in the child's best interests* unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests." (Emphasis added.) Here, the court justifies its ruling not by discussing C.L.W.'s best interests but by asserting "The frequent and continued contact required by law as in the child's best interests when that would be in the child's best interests has been denied to the Father by the Mother without reason." Again, the court was primarily concerned with punishing ManyWounds for what the court perceived to be unfair treatment of Whyte.

The court also chose to apply § 40-4-212(1)(m), MCA, which concerns "continuous and vexatious parenting plan amendment actions." This factor is not at issue in this case, which concerns only the creation and implementation of a formal parenting plan. In explaining her reasoning as to why this factor also preponderates toward stripping ManyWounds of custody and all contact, Judge Christopher states, in part, "While there was not a current parenting plan, the Mother's conduct is the frustration of the Father's rights to parent his son which was the greatest injury with no reason." The record does not support the court's conclusion that ManyWounds frustrated contact between Whyte and C.L.W. versus Whyte not acting to increase his contact with C.L.W.

Judge Christopher's lack of meaningful consideration of the § 40-4-212, MCA, factors in relation to C.L.W.'s best interests is further illustrated by what she did *not* ask in the hearing. After making her ruling that transferred sole custody of C.L.W. to Whyte,⁶ she then inquired of Whyte, for the first time, whether anyone else resided in the home with him. At no time did she inquire as to the safety or stability of his residence, if he had a bed for C.L.W., his work schedule, or any other details that would indicate that he was adequately prepared to accept immediate long-term, sole custody of a five-year-old child,

⁶ We further note that Judge Christopher made her custody ruling prior to hearing the testimony of ManyWounds' witnesses.

beyond his apparent willingness to do so. Her only pre-ruling inquiry was whether Whyte had a car seat. Upon learning he did not, ManyWounds then offered to transfer hers into Whyte's vehicle. The court further ordered ManyWounds to return home, gather C.L.W.'s belongings, and deliver them to the court for Whyte to pick up.

We are not suggesting that Whyte is an unfit parent or that he is undeserving of a strong parent-child relationship with C.L.W. with frequent and continuing contact with his son. We further do not fault Whyte if he was not fully prepared to take immediate custody of C.L.W. as that was an outcome the parties could not have anticipated at the beginning of the parenting plan hearing. One of the more disturbing aspects of Judge Christopher's rulings in this case is the damage likely caused to the largely amicable coparenting relationship that ManyWounds and Whyte had forged. It is this Court's sincere hope that they are able to repair that relationship and successfully coparent C.L.W. in the future.

Having considered the petitions and responses filed, we conclude the District Court erred as a matter of law by removing C.L.W. from ManyWounds' custody, granting full custody to Whyte for the next five years, and barring ManyWounds from all contact with C.L.W. by failing to properly apply § 40-4-212, MCA. Therefore, supervisory control is warranted pursuant to M. R. App. P. 14(3).

IT IS THEREFORE ORDERED that this Petition for a Writ of Supervisory Control is ACCEPTED and GRANTED.

IT IS FURTHER ORDERED that the District Court's September 19, 2023 Order is VACATED and VOID.

IT IS FURTHER ORDERED that the District Court's November 2, 2023 Parenting Plan is VACATED and VOID.

IT IS FURTHER ORDERED that this matter is REMANDED to the District Court and, upon remand, the Clerk of the Twentieth Judicial District Court shall immediately REASSIGN this cause to Twentieth Judicial District Court Judge Hon. Molly Owen, who shall immediately assume jurisdiction of this matter.

IT IS FURTHER ORDERED that, upon remand and reassignment, the District Court SHALL restore custody of C.L.W. to Shanna Springs ManyWounds pursuant to the

de facto parenting arrangement existing at the time of the hearing and maintain such until the court can hold proceedings consistent with this Order and issue a Final Parenting Plan.

The Clerk is directed to provide immediate notice of this Order to counsel for Petitioner, all parties in the Twentieth Judicial District Court, Lake County, Cause No. DR-23-17, the Honorable Deborah Kim Christopher, presiding, and the Honorable Molly Owen.

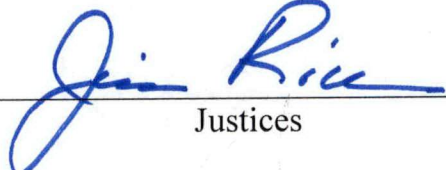
DATED this 22nd day of January, 2024.



Chief Justice

Justice

Justice

Justice

Justices