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Montana Supreme Court 2015 Family Law Update

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Missoula

Beth has compiled short summaries (issues, short answers, facts, procedural posture, and holding) of all published family law cases decided by the Court in 2015, as well as an overview of all 2015 unpublished family law decisions, and posted both documents as pdfs on her website, BrennanLawandMediation.com. under Teaching Presentations.

Full case summaries, including the Court's reasoning, of all Montana Supreme Court 2015 published decisions are also available on Beth's website under Montana Supreme Court Summaries. These are updated as the Court issues new decisions.

Family Law Published Decisions 2015

***Marriage of Edwards*, 2015 MT 9 (Jan. 13, 2015) (Cotter, J.) (5-0, aff'd)**
Issue: (1) Whether the district court erred in ordering Jim's corporation to undergo a Divisive Reorganization to effect an equitable distribution of marital assets, and (2) whether the district court abused its discretion in valuing and distributing the marital estate.
Short Answer: (1) No, and (2) no.
Affirmed

Facts: Jim and Melinda Edwards divorced after 23 years of marriage. The majority of marital assets were held in Jim's corporation, Bi Lo Foods, Inc. Based on considerable expert testimony about distributing corporate assets in a marital dissolution, the district court ordered Jim to proceed with a Divisive Reorganization (D Reorg) under IRS Rules to accomplish the division of assets ordered by the court and avoid immediate tax consequences to Bi-Lo or the parties.

Procedural Posture & Holding: Jim moved to amend the final decree, arguing a D Reorg would not meet IRS guidelines and could be devastating to the value of the marital assets. He further argued the court's valuation of the Pattee Creek Market was not supported by the evidence. The district court denied the motion, and Jim appeals. The Supreme Court affirms.

***Patton v. Patton*, 2015 MT 7 (Jan. 13, 2015) (Shea, J.) (5-0, rev'd)**
Issue: (1) Whether the district court abused its discretion by declining to rule on Gail's post-trial motions; (2) whether the district court erred in its review of the standing master's report; and (3) whether the district court abused its discretion by adopting the standing master's report, which excluded evidence of Bill's alleged abuse, in determining maintenance.
Short Answer: (1) Yes; (2) yes; and (3) no.
Reversed and remanded

Facts: Gail and Bill married in 1998. When they married, Gail was 43, rented an apartment, drove a used car, and had about $30,000 in the bank. Bill had substantial real and personal property, including the marital home, a veterinary practice, and a working ranch. During the marriage, Gail was primarily a homemaker, but worked part-time as a music teacher and caterer. Her health declined considerably during the marriage. After the parties separated in early 2011, Gail moved into subsidized housing and had limited assets. In July 2012, the district court granted Gail six months' temporary maintenance and $5,000 of attorneys' fees.

The district court assigned the case to a standing master, who held a two-day bench trial in August 2012. The standing master entered her findings, conclusions, and final decree in March 2013. She valued the marital estate at about $1 million, with liabilities of $55,632. Gail's share of the marital estate totaled $99,296.

Bill and Gail both objected to the standing master's report. Gail also moved to introduce new evidence under Rule 59, asking for additional maintenance due to further physical deterioration and her inability to pay medical bills and attorneys' fees. In May 2013, Gail was diagnosed with breast cancer, and moved the court to amend the findings to take that into consideration.

Procedural Posture & Holding: The district court held a hearing in September 2013, but declined to rule on Gail's Rule 59 motion or her motion to amend, stating it was "beyond the scope of judicial review." In October 2013, the district court adopted the standing master's report with minor adjustments, and ruled that Gail's pending motions were to be left to the standing master, "who will resume jurisdiction of this case upon the filing of this Order." Gail appeals, and the Supreme Court reverses.

***In re SCB*, 2015 MT 19 (Jan. 27, 2015) (Cotter, J.) (5-0, rev'd)**
Issue: Whether the district court properly granted venue change in parenting plan action.
Short Answer: No.
Reversed & remanded

Facts: SCB was born to Burrington in 2006. SCB and Burrington have lived with Burrington's mother, Hovland, in Flathead County for most of SCB's life. Hovland financially supports Burrington and SCB.

Burrington was convicted of her fourth DUI in December 2013 and sentenced to four years with the DOC, all suspended. She and SCB moved in March 2014 to Havre. In May 2014 Burrington's probation officer conducted a home visit, found Burrington severely intoxicated, and called police. Burrington was arrested and detained for 20 days, and Hovland was contacted to pick up SCB in Havre.

Procedural Posture & Holding: In June 2014, Hovland petitioned for a parenting plan establishing her as SCB's primary care provider and for a TRO against Burrington. Burrington moved for a change of venue to Havre. After a hearing, the court granted the motion and transferred the proceeding. The court further ordered that SCB remain with his grandmother "until further order." Hovland appeals and the Supreme Court reverses.

***Weibert v. Weibert*, 2015 MT 29 (Feb. 3, 2015) (McGrath. C.J.) (5-0, aff'd)**
Issue: Whether the district court erred in ordering Jim to pay Crissy's attorney's fees.
Short Answer: No.
Affirmed

Facts: Jim and Crissy divorced in February 2012. They have one minor child, BW, who is autistic. After a 2011 hearing on Crissy's proposed relocation to Washington, the district court concluded it was in BW's best interest to continue living with Crissy. Crissy moved to Washington and has lived there since.

The parties stipulated to a new visitation schedule, which also required Crissy to follow the recommendations of Dr. Simon-Thomas, who had evaluated BW. Jim moved to modify the parenting plan in September 2012 to grant him primary custody, claiming Crissy was not following Dr. Simon-Thomas's recommendations.

Procedural Posture & Holding: At the hearing on Jim's motion, Jim withdrew his request to be the primary custodial parent and was mostly concerned about speech therapy. The parties conferred and reached agreement on all but four issues. The district court ruled on those issues and ordered Jim to pay Crissy's attorneys' fees incurred in defending against his motion to amend the parenting plan. The court held a hearing on the reasonableness of the fees, and ordered Jim to pay $10,359. Jim appeals, and the Supreme Court affirms.

***In the Matter of HT*, 2015 MT 41 (Feb. 10, 2015) (Baker, J.) (5-0, aff'd and rev'd)**
Issue: (1) Whether the termination of Mother's parental rights must be reversed because the district court failed to hold an adjudicatory hearing that complied with § 42-3-437, MCA; and (2) whether the district court's failure to follow statutory procedural requirements subject to the Indian Child Welfare Act (ICWA) requires reversal.

Short Answer: (1) No; (2) yes. The Court reverses and remands for entry of a new order on the termination of Mother's parental rights using the proper standard.
Affirmed in part, reversed and remanded in part

Facts: Montana DPHHS petitioned for emergency protective services for 7-year-old HT in October 2012 on the basis of domestic violence between Mother and her boyfriend as well as Mother's drug use. The petition stated HT may be an Indian child for purposes of ICWA, with an affidavit stating inquiry had been made of Mother and maternal grandparents regarding HT's tribal affiliation. Notice of the action was sent to the Blackfeet Tribe and the Assiniboine and Sioux Tribes, and a letter was sent to the Bureau of Indian Affairs for confirmation of tribal affiliation.

The district court granted the petition and found the Department was justified in not making active efforts to prevent HT's removal from her home because the child was in "immediate or apparent danger of harm." ¶ 4. HT was placed with a maternal great aunt, and the district court held a show cause hearing. Mother did not contest probable cause but requested a separate adjudicatory hearing. The court accepted the parties' stipulation that probable cause of abuse or neglect existed and advised it would set a date for an adjudicatory hearing.

Procedural Posture & Holding: The district court set the adjudicatory hearing for February 2013 but rescheduled for late April 2013. The Department filed a supplemental affidavit indicating HT was eligible to enroll in the Fort Belknap Tribe. At the April hearing the court announced it was a dispositional hearing. It never addressed HT's adjudication, nor did Mother stipulate to adjudication of HT as a youth in need of care. Nonetheless, the district court issued an order adjudicating HT as a youth in need of care and requiring Mother to comply with her treatment plan.

***In re the Parenting of MC*, 2015 MT 57 (Feb. 24, 2015) (McKinnon, J.) (5-0, aff'd)**
Issue: Whether the district court violated mother's fundamental right to travel by ordering that the parties' minor child should reside in Montana.
Short Answer: No.
Affirmed

Facts: MC was born to Pirkle and Mitchell Collie in Missoula in 2012, and lived there until March 2013 with her parents, who were not married. Pirkle was from Ohio, and moved here to attend the university. She had difficulty finding work after MC was born, and was MC's primary caregiver.

In March 2013, Pirkle took MC to Ohio to attend a family wedding. Pirkle told Collie in April 2013 that she and MC were going to stay in Ohio. Collie petitioned the Missoula district court for a parenting plan under which he would be the primary caregiver. In May 2013, he moved for an order that Pirkle return MC to Montana no later than July 2013.

The matter was referred to a standing master, who ordered that Collie buy a plane ticket for Pirkle and MC to return to Missoula, and move out of the family home so that Pirkle

could stay there with MC. Pirkle did not return as ordered, and could not be contacted for a telephone hearing.

Pirkle initiated a parenting plan action in Ohio and moved the Montana district court to cede jurisdiction to Ohio. The Ohio court dismissed for lack of jurisdiction and the Montana court denied Pirkle's motion to cede jurisdiction.

The district court held a hearing on establishing a parenting plan in February 2014. Pirkle proposed to live in Ohio as MC's primary caregiver, with the parties sharing the costs of visitation for Collie. Collie did not object to Pirkle being the primary caregiver if she lived in Montana, but said that if she lived in Ohio, he believed MC should live with him in Montana.

Procedural Posture & Holding: The district court entered FOF/COLs weighing the best interests of the child and found most did not strongly favor one parent over the other. The court found that Pirkle had made no active effort to foster a relationship between MC and Collie. It held that it was in MC's best interest to live in Montana, and said Pirkle could choose to stay in Ohio or move back to Montana. Pirkle appeals, and the Supreme Court affirms.

***Marriage of Axelberg*, 2015 MT 110 (March 11, 2015) (Wheat, J.) (5-0, aff'd)**
Issue: (1) Whether the district court should have considered the net worth of the marital estate before dividing the property; (2) whether the district court erred in awarding Tracy certain pre-marital and post-separation property; (3) whether the district court abused its discretion by refusing to award maintenance to Delynn; (4) whether the district court erred by retroactively modifying Tracy's obligations under the interim support agreement; and (5) whether the child support order was clearly erroneous or an abuse of discretion.
Short Answer: (1) No; (2) no; (3) no; (4) no; and (5) no.
Affirmed

Facts: Delynn and Tracy married in 1998 and separated in 2010. Delyn filed for divorce in June 2011. The parties entered an interim support agreement in February 2012 under which Tracy paid Delynn $5,000 a month in temporary support.

Procedural Posture & Holding: Trial was held in May 2012, and a final order of dissolution was entered in May 2014. The district court ordered Tracy to pay $2,225 per month in child support, decided an award of maintenance was not appropriate, terminated Tracy's support obligations under the interim agreement and made the termination retroactive to the first day of trial, and divided the parties' property between them. Delynn appeals, and the Supreme Court affirms.

***Cadena v. Fries*, 2015 MT 90 (March 24, 2015) (Wheat, J.) (5-0, aff'd)**
Issue: (1) Whether the district court properly valued Fries' pension plan in the QDRO; and (2) whether Cadena is entitled to attorneys' fees on appeal.
Short Answer: (1) Yes, using the time rule approach; and (2) yes.
Affirmed

Facts: In their settlement agreement of dissolution in 2000, Cadena and Fries agreed that Fries' pension would be equally divided between them as of the date of the dissolution. Cadena filed a QDRO in November 2013. The pension had not fully vested or begun paying. Fries objected to Cadena's QDRO and submitted his own.

Procedural Posture & Holding: The district court issued a QDRO identical to Cadena's. Fries appeals, and the Supreme Court affirms.

***Glueckert v. Glueckert*, 2015 MT 107 (April 17, 2015) (McGrath, C.J.; Rice, J., concurring & dissenting) (4-1, aff'd)**
Issue: Whether district court properly held that grandparents are not entitled to unsupervised visitation with grandchild contrary to mother's wishes.
Short Answer: Yes.
Affirmed

Facts: The Glueckerts' son Thayer married Kristin Glueckert, and the couple had a son in 2013, MT. Thayer is on active military duty outside of Montana. He and Kristin have separated but not divorced, and no parenting plan is in place. MT has lived with Kristin since he was born, and Thayer has had physical contact with him only when home on leave.

The Glueckerts sought regular visitation with their grandson by negotiating with Kristin. Kristin agreed to contact, and provided one-hour visits in her home, but would not generally allow unsupervised visits except when Thayer was home on leave.

The Glueckerts petitioned for four three-hour unsupervised visits a week, with additional unsupervised visits on special occasions. Kristin objected. She and the Gluekcerts have different views on corporal punishment, homosexuality, and other issues, and do not have a good relationship.

At the time of the district court decision, Kristin was planning to move to Idaho for radiography training. She was willing to allow the Glueckerts to come to Idaho to visit MT in supervised sessions.

Procedural Posture & Holding: The district court held a hearing and granted Kristin's motion for summary judgment. Glueckerts appeal, and the Supreme Court affirms.

***In the Matter of TN-S, NN-S, EN-S, & AN-S*, 2015 MT 117 (Apr. 28, 2015) (Shea, J.; McKinnon, J., concurring) (5-0, aff'd)**
Issue: (1) Whether Mother's treatment plan was appropriate although it did not require her to obtain a chemical dependency evaluation; (2) whether Mother's counsel was ineffective for failing to advocate for a chemical dependency evaluation in the treatment plan; and (3) whether the district court was required to disclose to the parties the transcripts of its in-chambers interviews with the children.
Short Answer: (1) Yes; (2) no; (3) no.
Affirmed

Facts: Mother's children were ages 15, 12, 9, and 4 at the time of the hearing. In October 2012 and January 2013, the Department received reports that Mother and Father were unable to care for their children due to drug use. The parents entered into a voluntary services agreement. In May 2013, the district court adjudicated the children youths in need of care, and in July 2013, it adopted the treatment plan agreed to by Mother and her attorney. The treatment plan set a goal of addressing Mother's chemical dependency issues and staying drug-free, but did not require her to complete a chemical dependency evaluation.

Mother tested positive for methamphetamine in August and September 2013, and was jailed for drug possession from December 2013-March 2014. She was then accepted into Treatment Court, which imposed several conditions on her.

In late March 2014, DPHHS petitioned for termination of Mother's parental rights. The district court held a hearing over two days. The child protection specialist testified that although Mother was doing well in Treatment Court, she had only minimally complied with her treatment plan and was unlikely be able to care for four children in a reasonable amount of time.

On the second day of the hearing the district court conducted in-chambers interviews with the three oldest children. The court told the children it was required to create a transcript but that the parties and their lawyers would not see them. Mother's attorney requested a transcript and the Court denied the request.

Procedural Posture & Holding: After the hearing, the district court found termination was appropriate, and that the best interests of the children would be served by termination. Mother appeals, and the Supreme Court affirms.

***Marriage of Sampley*, 2015 MT 121 (May 5, 2015) (Wheat, J.) (5-0, aff'd)**
Issue: (1) Whether the district court by refusing to hold a hearing prior to issuing its order; and (2) whether the district court erred by deciding it lacked jurisdiction over the parenting and custody issues.
Short Answer: (1) No, and (2) no.
Affirmed

Facts: Matthew and Michelle Sampley married in January 2010 in Canada, and moved to Alaska in October 2010. Cael was born in Alaska in 2011. The family moved to Washington in October 2011, and to Billings in September 2013.

In October 2013, Michelle and Cael moved to Canada to stay with Michelle's parents. They extended their stay until the end of December 2013. Matthew visited them in Canada for five days in November and 10 days in December. During the December visit, Michelle told Matthew she and Cael would stay in Canada through March 2014. In February 2014, she traveled to Billings and removed her and Cael's personal belongings without Matthew's knowledge, and returned to Canada.

Matthew petitioned for dissolution in May 2014, and asked the court to determine parenting and custody issues. Michelle responded to the petition and moved to dismiss all parenting and custody issues, arguing the district court lacked jurisdiction.

Procedural Posture & Holding: The district court granted Michelle's motion to dismiss, holding Montana was not Cael's "home state" under § 40-7-201, MCA, and that it therefore lacked jurisdiction over the parenting and custody issues. Matthew appeals, and the Supreme Court affirms.

***Amour v. Collection Professionals, Inc.*, 2015 MT 150 (June 2, 2015) (Baker, J.) (5-0, aff'd)**

Issue: (1) Whether the debt Amour owed to the GAL was regulated by the FDCPA; (2) whether the GAL was entitled to quasi-judicial immunity under the Montana Consumer Protection Act; and (3) whether the district court correctly awarded CPI $7,408.70 plus interest.

Short Answer: (1) No; (2) yes; and (3) yes.
Affirmed

Facts: Shannon Amour petitioned for dissolution in 2007. In 2008, the court entered an order naming Nancy Smith the GAL for Amour's children. The court specified Smith's duties, granted her immunity, and specified that the gross marital estate was responsible for paying her. Amour entered a contract with Smith agreeing to pay Smith $90/hour plus expenses. Smith billed Amour half of the account and Amour's ex-husband half. Amour made some payments, but stopped paying in May 2010.

Smith assigned $6,975.60 in unpaid bills to CPI in November 2011. CPI notified Amour she owed $7,511.74, including interest. In January 2012, the dissolution court entered ordered that the individual debts to the GAL were solely the responsibility of the individuals, not of the marital estate.

CPI filed a complaint in justice court in March 2012. Amour filed a counterclaim exceeding the jurisdictional amount and the case was dismissed. Amour then filed in district court, alleging CPI violated the Fair Debt Collection Practices Act by attempting to collect a false debt, that Smith committed defamation against Amour by falsely publishing that Amour owed a debt, and that Smith violated the MCPA. CPI counterclaimed for breach of contract and breach of a court order.

Procedural Posture & Holding: CPI and Smith moved for summary judgment. The district court granted Smith summary judgment in full, and CPI partial summary judgment, reserving the issue of damages due CPI. In July 2014, after CPI moved for summary judgment on damages, the court entered judgment for CPI in the amount of $7,408.70 plus interest. Amour appeals, and the Supreme Court affirms.

***Marriage of Steyh*, 2015 MT 193 (July 7, 2015) (Cotter, J.) (5-0, rev'd)**
Issue: (1) Whether the district court erred in holding that William's statements made in the March 2012 dissolution hearing were judicial admissions; and (2) whether the district court erred in precluding William from presenting evidence of the value of the real property based on the judicial admissions.
Short Answer: (1) Yes, and (2) yes.
Reversed and remanded

Facts: Julie petitioned for dissolution and included a proposal for distribution of the marital assets, under which William would have been awarded the couple's house and property on Hobson Street in Butte. William elected to default.

The district court held a final dissolution hearing at which both parties appeared pro se. The court inquired of William the value of the house. No appraisal reports were offered into evidence. The court found Julie's proposed property division unfair to her, and required William to pay her $30,000 over three years. William appealed and this Court reversed in July 2013, holding the lower court had not given William a meaningful opportunity to contest the distribution of assets.

On remand, the parties were ordered to submit proposed findings and conclusions at least one week before trial. The consolidated pretrial order submitted by the parties focused only on the equitable division of the property. William disclosed expert and lay witnesses, while Julie did not identify any witnesses beyond herself, William, and William's witnesses.

William contended that when Julie made her initial proposal, she knew the house's foundation required substantial repairs costing $88,000-$124,000, and asked Julie to pay for half of the estimated repairs, or $50,000.

Procedural Posture & Holding: At a bench trial, Julie's counsel argued for the first time that William's statement regarding the value of the house made during the 2012 dissolution hearing constituted judicial admissions, precluding him from introducing contradictory evidence. The court agreed. In its final decree, it adopted its previous order from April 2012. William appeals, and the Supreme Court reverses.

***City of Missoula v. Duane*, 2015 MT 232 (Aug. 11, 2015) (Cotter, J.; McGrath, C.J. concurring) (5-0, aff'd)**
Issue: (1) Whether allowing Dr. Sjolin to testify against Duane via Skype offended his rights under the Confrontation Clause; and (2) whether the district court erred in concluding M.R. Evid. 611(e) does not apply to criminal cases.
Short Answer: (1) No; and (2) yes, but it was a harmless error.
Affirmed

Facts: Duane and two others were charged with misdemeanor cruelty to animals after police responded to a report of a dead puppy, found filthy conditions and no water, and a necropsy revealed the puppy died of blunt force trauma.

Before trial, the city requested that Dr. Sjolin, the veterinarian who performed the necropsy, be allowed to testify via Skype, or that her supervisor be allowed to testify to Sjolin's report, as Sjolin had moved to California. Duane objected, and the municipal court heard argument. It held that Sjolin had to testify, not her supervisor, and that she could do so either in person or via Skype, after concluding Skype testimony would not violate Duane's constitutional right to confrontation.

Procedural Posture & Holding: The municipal court held a jury trial, and Sjolin testified via Skype. The jury returned a guilty verdict, and Duane was sentenced. Duane appealed to the district court, which affirmed and stayed the sentence pending appeal. Duane appeals, and the Supreme Court affirms.

***In re the Parenting of SEL*, 2015 MT 228 (Aug. 11, 2015) (Rice, J.) (5-0, aff'd)**
Issue: (1) Whether the district court erred by holding the child's best interests would be served by allowing her to relocate to Nevada with her mother; (2) whether the district court erred by limiting Father's visitations while SEL lives in Nevada; and (3) whether the district court erred by denying Father's motion for relief from the judgment.
Short Answer: (1) No; (2) no; and (3) no.
Affirmed

Facts: Shad Lemke and Siri Aanrud have a daughter, SEL, born in 2008. The parties never married, and their relationship ended by 2010. When SEL was four months old, the parties moved to Shields Valley, Montana, where Mother primarily stayed home to care for SEL. During the first year of SEL's life, Father worked construction in Alaska and spent time in Hardin, where he owned some cattle.

Father and Mother co-parented without a parenting plan for two years after their relationship ended. SEL lived primarily with Mother during that time. The parties executed a stipulated final parenting plan on Sept. 17, 2012, under which SEL lived with Mother Monday afternoons through Friday mornings while she attended school, and lived with Father the rest of the week.

Eventually Mother became engaged to a man who lives in Elko, Nevada. Because of his ties to Elko, Mother decided to relocate there. Mother was pursuing her master's degree in counseling and obtained an internship in Elko in her field of study.

Mother filed a proposed amended parenting plan under which she would take SEL with her to Elko. Lemke objected and filed his own proposed parenting plan, under which he would have primary custody. The district court held a hearing, and issued findings and conclusions concluding Mother was SEL's primary parent and SEL should be allowed to move to Elko with her.

Procedural Posture & Holding: Mother submitted a final parenting plan for court approval, and Father moved for clarification, asking for seven uninterrupted parenting days whenever he visited SEL in Nevada. Mother argued the request was excessive and potentially disruptive, and suggested Father be allowed to visit one weekend a month upon

prior notice. The district court approved a final parenting plan limiting Father to one long weekend a month, upon notice, when school is in session. Father moved for relief from the judgment and requested a new hearing, alleging Mother had misled the court. The motion was deemed denied, and Father appeals. The Supreme Court affirms.

***In re TDH, JH, & JH*, 201 MT 244 (Aug. 18, 2015) (Baker. J.; McKinnon, J., concurring & dissenting) (4-1, aff'd)**
Issue: (1) Whether the district court abused its discretion in rescinding OPD's appointment of counsel for Ja.H. and denying OPD's motion to appoint counsel after the termination hearing; (2) whether the district court abused its discretion in concluding Mother's conduct made her unfit to parent and was unlikely to change within a reasonable time; (3) whether DPHHS made reasonable efforts to prevent the removal of the children and reunify Mother with her children; and (4) whether Mother was denied due process.
Short Answer: (1) The Court declines to reach this issue, leading Justice McKinnon to dissent; (2) no; (3) yes; and (4) no.
Affirmed

Facts: Mother met Father when she was a 17-year-old runaway, after years of abuse. Father was 37, and continued Mother's abuse. They have three children, TDH (14), Je.FL (12) and Ja.FL (10), whom Father also repeatedly abused. In early 2012, the family agreed to a voluntary services agreement, and when it expired in March 2012, the department determined there was no substantive improvement in parenting. After the children disclosed multiple incidents of abuse by Father to a department social worker, the children were removed and placed in foster care. Three days later, Mother asked Father to move out, which he did.

In May 2012, the district court granted emergency protective services ad temporary investigative authority, to which both parents stipulated. In July 2012, the court appointed a CASA to represent the children's best interests.

During the department's investigation, each child was diagnosed with psychiatric disorders. Although they were placed in foster care they were unable to maintain their foster placements and were transferred to a series of residential treatment facilities and group homes.

At a hearing in November 2012, the court heard testimony that Mother was terrified of Father, and that he was harming her efforts to reunite with the children. The court granted the department legal custody for 6 months, ordered the parents not to have contact with each other, and adjudicated all three children as youths in need of care. Neither parent objected to the order.

The court approved a treatment plan for Mother in December 2012. In February 2013 the department raised concerns that Mother was not complying, and again at an April 2013 status hearing. Following the April hearing, the court held Mother in contempt for having contact with Father and failing to obtain a psychological exam.

Father's parental rights were terminated in August 2013. The department did not petition to terminate Mother's parental rights until July 2014. A hearing was set for December 2014. At a pre-hearing attorneys' conference, the children's counsel, Larsen, advised the court that Ja.H had developed a position against reunification that directly conflicted with his siblings. Larsen said she could not advocate for two irreconcilable positions. After a lengthy discussion, Larsen agreed that Ja.H's position aligned with the department's, and that his interests were adequately represented without counsel. The next day, OPD appointed Kathryn McEnery as counsel for Ja.H. McEnery filed a notice of appearance on Dec. 3, and the district court rescinded her appointment on Dec. 4.

The court held a termination hearing on Dec. 9, 2014.

Procedural Posture & Holding: After the termination hearing, on Dec. 10, 2014, OPD moved to appoint counsel for Ja.H. and requested a hearing. DPHHS opposed the motion and request. The district court issued two orders on Dec. 18 – one denying OPD's motion to appoint counsel and the other granting the department's petition to terminate Mother's parental rights. OPD filed a notice of appeal and notice of appearance on behalf of Ja.H., challenging the Dec. 4 order rescinding McEnery's appointment as Ja.H.'s counsel, and Mother and TDH appealed the order terminating Mother's parental rights. The department moved to dismiss OPD's appeal. This Court took the motion under advisement and ordered the parties to fully brief both issues, and now affirms.

***Smith v. Smith*, 2015 MT 256 (Sept. 1, 2015) (Rice. J.) (5-0, aff'd & rev'd)**
Issue: (1) Whether the district court erred in ordering the division of Glenn's social security benefits; (2) Whether the district court abused its discretion in ordering maintenance to Debora; (3) whether the district court abused its discretion in imposing conditions on the termination of maintenance; (4) whether the district court's equalization payment was an abuse of discretion; (5) whether the district court's award to Debora of the SeaDoo was an abuse of discretion.
Short Answer: (1) Yes; (2) yes, without sufficient findings; (3) no; (4) no; and (5) no.
Affirmed and reversed

Facts: Glenn and Debora live in Polson. They married in 1978 and separated in 2010. Their two children are adults. Debora petitioned for dissolution in April 2011. During most of the marriage, Debora was a homemaker. She is currently unemployed but is eligible for social security benefits of $1,500 a month. Glenn works for CSKT as an investment manager, making $175,000 a year, and also received $28,000 a year in social security. Both have been diagnosed with PTSD, and Glenn has several other health issues that have led medical professionals to advise him to retire.

Glenn lives on Kings Point Road, which is on tribal land. He is an enrolled member of the CSKT; Debora is not. Glenn bought the Kings Point property with money he obtained from mortgaging property that Debora's family friends, the Fredericksons, had transferred to him. He encumbered that property with a $198,000 mortgage and used $150,000 of that money to buy the Kings Point property.

Debora lives in the parties' marital home on Flathead Lake, which has a market value of $595,000 but is encumbered with a $536,982 mortgage. They also own property on Schaefer Road outside of Polson, with a market value of $90,000 and debt of $75,000, and a lot in Hungry Horse that is worth $15,000 and is unencumbered. The parties' personal property includes a 2006 SeaDoo and a retirement account valued at $251,544.

The court held a two-day trial, made detailed findings and conclusions, and entered an order dissolving the marriage and distributing the marital estate.

Procedural Posture & Holding: The court ordered the immediate sale of the lake house, the Hungry Horse lot, and the Schaefer Road property, with net proceeds to be divided equally; ordered the retirement account to be divided equally; awarded Debora the SeaDoo; and awarded Debora and equalization payment of $164,500. The court concluded it lacked jurisdiction over the Kings Point property and did not consider the property a marital asset, but found that the proceeds from the Fredericksons' property and $16,000 used for improvements to the Kings Point property were marital funds unilaterally taken by Glenn or otherwise concealed, and considered these assets to be marital property in determining the equalization payment. The court ordered Glenn to pay $2,500 a month in maintenance, which will cease if Debora remarries or cohabits with another adult who is not her relative, or if Glenn ceases to be gainfully employed and no longer receives income from investments other than retirement. Glenn appeals, and the Supreme Court affirms in part and reverses in part.

***Marriage of Clark*, 2015 MT 263 (Sept. 8, 2015) (Baker, J.) (5-0, aff'd & rev'd)**
Issue: (1) Whether the district court abused its discretion in ordering Gordon to make an equalization payment within 120 days or be forced to sell or transfer the ranch; (2) whether the district court abused its discretion in failing to consider tax liabilities associated with selling the ranch; and (3) whether the district court erred in its valuation of the ranch.
Short Answer: (1) No; (2) yes; and (3) no.
Affirmed (1 & 3) and reversed (2) and remanded

Facts: Gordon and Nancy married in 1996 and separated in 2012. No children were born to the marriage. Nancy entered the marriage with property on the Stillwater River (the river house) and Gordon entered that marriage with ranch property (the ranch). The parties put both properties under joint title upon their marriage.

After the parties separated, Nancy moved for temporary maintenance and the district court ordered Gordon to pay $2,800 a month until the final decree unless the river house sold first. Gordon made payments from Nov. 2012-Feb. 2013 and then stopped. He also stopped making mortgage payments on the ranch in early 2012, sending the property into foreclosure. The parties sold part of the ranch and used the proceeds to bring the mortgage current in 2012, but Gordon again stopped making payments and the ranch went into foreclosure a second time.

The river house sold in early 2013, and the district court allowed Nancy to withdraw her temporary maintenance from those proceeds. At the time of the final decree, the district court estimated $289,681.23 remained from the river house sale proceeds.

The parties presented conflicting evidence about the ranch's value. Neither party presented evidence about the tax implications of selling the ranch.

Procedural Posture & Holding: The court valued the ranch at $2.45 million, and the marital estate at $2.6 million. It awarded the ranch and its debt to Gordon. It awarded $955,298 to Nancy, or about 37% of the marital estate, and required Gordon to make an equalization payment of $650,000 to Nancy within 120 days of the order, or sell the ranch and make the payment from the proceeds. If Gordon did not cooperate with the ranch sale, the court ordered the property to transfer solely to Nancy's name so that she could handle the sale. Gordon made post-trial motions, which the district court denied without explanation. Gordon appeals, and the Supreme Court affirms in part and reverses in part.

***State v. Robertson*, 2015 MT 266 (Sept. 8, 2015) (McGrath, C.J.) (5-0, aff'd)**
Issue: Whether the probationary condition prohibiting Robertson from having contact with his son and daughter violates his statutory and constitutional rights.
Short Answer: No.
Affirmed

Facts: Dustin Robertson was charged with kidnapping the mother of his young children, Chalsea Cady, by restraining her at their apartment in July 2011; misdemeanor endangering the welfare of children; and two counts of felony partner/family member assault. He pled guilty to one offense of criminal endangerment of Cady for physically assaulting her, and the state dropped the remaining charges.

The presentence investigation reported a history of physical and mental abuse of Cady by Robertson, and proposed a probationary condition prohibiting Robertson from having any contact with Cady unless she initiated it through the DOC. Cady testified that the children were traumatized by seeing their father hit and choke and threaten their mother, and a probation and parole officer testified that the children met the definition of victim under § 46-24-106(5)(a), MCA.

Procedural Posture & Holding: Robertson was sentenced to the DOC for five years with two suspended. The district court imposed several conditions of probation, including one that prohibited Robertson from having contact with Cady, his two children, and Cady's mother unless they initiated contact through the DOC and it was approved by a probation and parole officer. Robertson appeals this condition as it applies to his children, and the Supreme Court affirms.