

University of Montana

Missoula, Montana

May 1999

JD Law

8. List any scholarships, awards, honors and citations that you have received:

I received several scholarships for my undergraduate degree at Montana State University in Bozeman.

I received an Indian Law scholarship while attending the University of Montana School of Law.

In 2009 I received the State Bar of Montana Neil Haight Pro Bono Award.

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

I was not a member of the Law Review.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

Court or Administrative Body

Date of Admission

All Montana State Courts

September 1999

Chippewa Cree Tribal Court

March 2000

Fort Belknap Tribal Court

September 2000

11. Indicate your present employment. (List professional partners or associates, if any).

I have my own law practice and I do not have any partners or associates.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

Employer's Name

Position

Dates

Randolph Law Firm

Owner/Attorney

Sept. 1999 - current

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

I have been employed continuously since completion of my formal education.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

I have a general law practice, representing parties in both civil and criminal matters. I represent defendants charged in criminal matters privately and as a contract attorney for the Montana State Office of Public Defender. I represent both plaintiffs and defendants in civil matters, I practice family law, I represent parties in adoptions and guardianships, and I represent parties in various estate proceedings. At this time my practice is primarily criminal defense, I believe about 75% of my time is spent on criminal defense cases and the remaining 25% relatively equally on all other civil, family, and estate matters. I also represent numerous parents and children in youth in need of care matters and have represented several parties in involuntary commitment proceedings, however, I have included those numbers in my criminal defense cases percentage described above, as they are always assigned to me as a conflict attorney for the State of Montana Office of Public Defender.

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I do have an interest in Indian Law, I am a member of the Little Shell Tribe, and I served on the Tribal Council for the Little Shell Tribe as a general councilman and as the secretary/treasurer for a few years.

16. If you specialize in any field of law, what is your specialty?

I do not specialize in any field of law.

17. Do you regularly appear in court? I am in court almost every day of the week, often several different courts on the same day.

What percentage of your appearance in the last five years was in:

Federal court	<u>0</u>	%
State or local courts of record	<u>99</u>	%
Administrative bodies	<u>1</u>	%
Other	<u> </u>	%

18. During the last five years, what percentage of your practice has been trial practice? 90 %

19. How frequently have you appeared in court? 50 times per month on average, 50 different hearings.

20. How frequently have you appeared at administrative hearings?
0.1 times per month on average.

21. What percentage of your practice involving litigation has been:

Civil	<u>24%</u>
Criminal	<u>75%</u>
Other	<u>1%</u>

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

Yes, I appeared once in the last five years on a family law case, representing the appellee, Supreme Court case number DA-11-0732. Opposing counsel was Lindsay A. Lorang, 410 3rd Avenue, Havre, MT 59501. 265-1530. I do not typically handle Montana Supreme Court appeals, however, between 2006 and 2008 I handled six criminal matters before the Court, two civil matters, and one DN matter.

23. State the number of jury trials that you have tried to conclusion in the last ten years. 25

24. State the number of non-jury trials that you have tried in the last ten years. 20

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

Hill County Attorney's office, all attorneys in the office over the past two years, Hill County Courthouse, Havre, Montana, 265-5481 ext 211, various criminal hearings in many different causes in Hill County Justice Court before Judge Barger, 265-5481 ext 240, and in Hill County District Court before Judge Boucher, 265-5481 ext 231.

Havre City Attorney, Tamara Barkus, P.O. Box 1712, Havre, Montana, 265-7871, various criminal hearings in many different causes in Havre City Court before Judge Seigel, 265-8575.

Blaine County Attorney's office, all attorneys in the office over the past two years, Blaine County Courthouse, Chinook, Montana, 357-3220, various criminal hearings in many different causes in Blaine County Justice Court before Judge Miller, 357-2335, and in Blaine County District Court before Judge McKeon, 654-1062.

Phillips County Attorney's Office, Dan O'Brien, P.O. Box 1279, Malta, Montana, 654-1256, various criminal hearings in many different causes in Phillips County Justice Court before Judge Taylor and Judge Stahl, 654-1118, and in Phillips County District Court before Judge McKeon, 654-1062.

Valley County Attorney's office, all attorneys in the office over the past two years, Valley County Courthouse, Glasgow, Montana, 228-6286, various criminal hearings in many different causes in Valley County District Court before Judge McKeon, 654-1062.

Lindsay Lorang, 410 3rd Avenue, Havre, Montana, 265-1530, various civil and family law cases in Hill County District Court and Blaine County District Court, before Judge Boucher, 265-5481 ext 231, and before Judge McKeon, 654-1062.

Jamie Bedwell of Bosch, Kuhr, Dugdale, Martin, and Kaze, P.O. Box 7152, Havre, Montana, 265-6706, various civil and family law cases in Hill County District Court and Blaine County District Court, before Judge Boucher, 265-5481 ext 231, and before Judge McKeon, 654-1062.

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have had a few social security disability hearings, a few hearings with the Montana Child Support Enforcement Division, I have been an attorney on the Montana Medical Legal Panel on a few occasions, and I have been an attorney representing a party in a Montana Medical Legal Panel hearing.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

I have not published any legal books or articles and I have not lectured on legal issues at continuing legal education seminars.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

I am a member of the Montana Bar Association, the Twelfth Judicial District Bar Association, and the National Association of Criminal Defense Lawyers. I am a past member of the Montana Trial Lawyers Association and the American Bar Association. I served as the President of the Twelfth Judicial District Bar Association from 2007 through 2010.

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

I have been involved in various bowling organizations, including serving as president of a league from 2008 through 2013. I have been involved in the Havre Youth Basketball Association, including serving as a basketball coach for one season. I have assisted the local girl scouts, cub scouts, and boy scouts over the last five years but did not hold any office or position during that time. I have been involved in various other

organizations in the past, however, with two school age children I have had a difficult time making time for organizations.

30. Have you ever run for or held public office? If so, provide the details.

Yes, I ran for the position of Hill County Attorney twice, once in 2010 and another time in 2004.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

I believe it is important to be involved in public activities and community service organizations. I am a lifelong resident of my local community, and my family ties go back more than six generations in the Havre and Hi-Line communities. I am related to many people in Havre and along the Hi-Line, including residents of both the Fort Belknap Indian Reservation and the Rocky Boy's Indian Reservation. With such strong local ties the health and well being of the community is of vital importance to me. I think everyone should give back to their community in any way they can.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No

F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

Yes. My wife and I have a few rental properties and manage some rental properties for my mother. My wife and I have eight rental properties in the Havre area and manage thirteen of my mother's rental properties. My wife and I have had our rental properties for about twelve years, starting with just one but then purchasing the others over the last twelve years. My father passed away in April of 2016, so my wife and I have been managing his thirteen rental properties for my mother since April of 2016.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

As discussed above my wife and I own eight rental properties and manage thirteen others, all located in Havre, Montana. My wife and I conduct business as sole proprietors, both having an ownership interest in our eight rentals and both assisting in the management of the other thirteen rentals. If appointed as district court judge my wife would manage our rentals and my mother's rentals as her sole and separate business.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

I have received compensation/rent from tenants over the last five years, constituting about fifteen percent of my income over the past five years.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? Yes No

If not, please explain.

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)? Yes No

If yes, please explain.

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No

G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

I perform my own research and draft my own briefs. I only have one full time secretary in my office and her responsibilities primarily include answering phones, filing documents, and organizing my dockets. I research legal issues and draft briefs on a regular weekly schedule. I try to set one day aside a week to do most of my legal research and brief drafting.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

I have not engaged in any other types of legal writing over the last five years.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

I have included ten pages of the Appellee's Response Brief I submitted to the Montana Supreme Court in Case No. DA-11-0732.

48. What percentage of your practice for the last five years has involved research and legal writing?
25 %

49. Are you competent in the use of Westlaw and/or Lexis?

I am competent in both Westlaw and Lexis.

H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

I enjoy hunting, fishing, and most other outdoor activities. I enjoy bowling, I am currently on a bowling league, and have been bowling for thirty-five years. I enjoy reading and have an extensive collection of books. I enjoy spending time with family and attending my children's various sporting events. I enjoy traveling across Montana and around the world with my family.

51. Describe the jobs that you have held during your lifetime.

I worked as a laborer and carpenter with my father's construction company during the summers, throughout High School and College. I worked at IGA in Havre as a box boy during the school year while in High School. I worked at Country Lanes, a bowling alley in Bozeman, while at college as Montana State University. I worked with a local Havre attorney, Mort Goldstein, in the summer after my first year of law school. I worked for a Missoula attorney, Mark Jones, during second and third years of law school. I worked for the Chippewa Cree Tribe, as their Court Administrator, after completing law school. I started my own practice in Havre in September of 1999, after being admitted to practice law, and have had my own practice since September of 1999.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

I have performed a significant amount of pro-bono work over the last five years, mainly assisting clients with family law matters. I have taken pro-bono matters referred through Montana Legal Services and the local bar association. I also perform various work free of charge to members of my community who have not been directly referred by an association, but who desperately need legal assistance and cannot afford an attorney. I received the Neil Haight Pro Bono award from the State Bar of Montana in 2009 for my dedication to pro bono service. During the last five years I have been a conflict attorney for the Montana Office of Public Defender,

where I perform work for indigent defendants at no cost to them and at a significantly discounted rate to the State of Montana.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

While working for a local attorney after my first year of law school I met an elderly lady who had very little savings and lived off a small amount of social security income each month. The elderly lady needed assistance with some legal matters to protect what limited income she had, and could not afford an attorney. The attorney I worked for gladly accepted her case and provided her with several hours of legal assistance without charge. The elderly lady greatly appreciated the assistance and baked the office cookies to show her gratitude. This entire interaction was inconsequential to the attorney I worked for, however, that minor event has greatly influenced my commitment to provide free, or reduced fee, legal services to those in need in my community.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

I believe it is important for a district court judge to be patient, open-minded, understanding, kind, stern, compassionate, humble, and generally down to earth. It is important for a judge to be even tempered and willing to listen to all sides of an issue before making a decision, however, a judge does need to be willing to make difficult decisions knowing that all parties may be disappointed .

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

The law is like a living organism, it grows, it develops, and it changes over time. A court should follow precedent and should create its own body of precedent so that those that are regularly involved with the court have a good idea what to expect, however, as new issues arise and as the law develops there must be some

flexibility in the law. I do not think an appropriate balance can be explained or applied in definite terms, only that a judge must be rational and reasonable in its interpretation of the law.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I am seeking office as a district court judge because I want to serve my community and be a larger part of the judicial system in Montana. I am a lifelong resident of my local community, and my family ties go back more than six generations in the Havre and Hi-Line communities. I am related to many people in Havre and along the Hi-Line, including residents of both the Fort Belknap Indian Reservation and the Rocky Boy's Indian Reservation. I believe my background and experience would make me well suited to serve as a district court judge in this judicial district. It would be a crowning achievement to my career to serve as a district court judge.

57. What items or events in your career have distinguished you or of which you are most proud?

I have always been committed to provide pro-bono and reduced cost legal services to members of my community. I am very proud to have received the Neil Haight Pro Bono award from the State Bar of Montana in 2009. I am proud to have served my tribe, the Little Shell Tribe, as a councilman, as well as the Chippewa Cree Tribe as a court administrator. I am proud to have a good relationship with the other attorneys, judges, and court staff in my community.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

I do have a varied area of practice. I am familiar with the area attorneys and each of the courts served by the judge, and I have extensive experience with area tribal courts. I regularly practice in the Fort Belknap Tribal Court and the Chippewa Cree Tribal Court, and I have handled matters before the Fort Peck Tribal Court and the Blackfeet Tribal Court. The Seventeenth Judicial District Court region includes counties wherein both

the Fort Peck tribes and the Fort Belknap tribes are located, and is close to the location of the Chippewa Cree tribes. I am sensitive to many local tribal issues and their interdependence upon the local communities.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

I think we have a strong legal community in the area and I am certain that any attorney from the area that submits an application will be highly qualified. I think the only thing that truly sets me apart from most of the other attorneys in the area is my involvement with the local tribal courts and tribal issues.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 17th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

(Date)

(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on September 1, 2016.

Mail the signed original to:

**Office of Court Administrator
c/o Lois Menzies
P.O. Box 203005
Helena, MT 59620-3005**

Send the electronic copy to: mtsupremecourt@mt.gov

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 11-0732

IN RE THE MARRIAGE OF
AYLYNN KING, kna AYLYNN MATTE,
Petitioner and Appellant,

v.

JOSEPH KING,
Respondent and Appellee.

APPELLEE'S RESPONSE BRIEF

ON APPEAL FROM THE MONTANA TWELFTH JUDICIAL DISTRICT COURT,
HILL COUNTY, BEFORE THE HONORABLE DANIEL A. BOUCHER

APPEARANCES:

FOR THE APPELLANT: LINDSAY A. LORANG
 KAREN M. ALLEY
 Lorang Law, P.C.
 410 3rd Avenue
 Havre, MT 59501

FOR THE APPELLEE: RANDY H. RANDOLPH
 Randolph Law Firm
 Attorney At Law
 P.O. Box 1138
 Havre, MT 59501

STATEMENT OF THE CASE

The parties were married in June of 2009. The Appellant gave birth to B.K. in May of 2009. The Appellee is not the natural father of B.K., but he did adopt her in May of 2010. Appellant filed a Petition for Dissolution in October of 2010. Appellee filed his response to the Petition in November of 2010 and requested the District Court establish a parenting plan for the care of B.K. The Appellant filed an Amended Petition in April of 2011, requesting B.K.'s surname be changed. The District Court held a final hearing to establish a final parenting plan and to address the Petition For Name Change on November 3, 2011. The District Court entered its Decree on November 30, 2011, wherein the Court ordered a final parenting plan and refused to order the name change of B.K.

STATEMENT OF FACTS

The parties were married in Havre, Hill County, Montana in June of 2009. (April 6, 2011 Transcr. 13:10-17) The Appellant gave birth to B.K. in May of 2009. (November 3, 2011 Transcr. 31:11-14) The Appellee is not the natural father of B.K., but he did adopt her in May of 2010. (Jan 13, 2011 Transcr. 7:1-6) Appellee has two children from a previous marriage. (Id. at 11:7-16) Appellant has one child of a previous relationship. (Id. at 42:10-12) Appellant filed a Petition for Dissolution in October of 2010. (District Court file) Appellee filed his

response to the Petition in November of 2010 and requested the District Court establish a parenting plan for the care of B.K. (District Court file) The District Court ordered an Interim Parenting Plan after hearing on January 13, 2011, granting Appellee parenting of B.K. two days every week from Monday at 6:00 p.m. through Wednesday at 6:00 p.m. (Jan 13, 2011 Transcr. 50:6-12) The Appellant filed an Amended Petition in April of 2011, requesting B.K.'s surname be changed. (District Court file) The District Court held a final hearing to establish a final parenting plan and to address the Petition For Name Change on November 3, 2011. (November 3, 2011 Transcript) The District Court entered its Decree on November 30, 2011, wherein the Court ordered a final parenting plan and refused to order the name change of B.K. (District Court file)

SUMMARY OF THE ARGUMENT

The District Court did not err when it denied Appellant's request to have B.K.'s surname changed. The District Court did make sufficient findings regarding the request for name change by Appellant. The District Court specifically found that the Appellant failed to meet her burden to establish that changing the child's name would serve her best interest. The Court could not find that changing B.K.'s name would serve her best interest.

The District Court did order a final parenting plan that was supported by substantial evidence and that was in the best interests of B.K. The final parenting plan ordered by the District Court did not substantially change the residential schedule of the interim parenting plan. The District Court's findings were supported by the record and in no way erroneous.

ARGUMENT

Standard of Review

"The standard of review of a district court's findings of fact is whether they are clearly erroneous." Daines v. Knight (1995), 269 Mont. 320, 324, 888 P.2d 904, 906. "If it is determined that those findings are not clearly erroneous, the Supreme Court will reverse the lower Court's findings only when there is an abuse of discretion which is clearly demonstrated." In re Marriage of Oehlke, 2002 MT 79, 309 Mont. 254, 46 P3d 49. "The standard of review of a district court's conclusions of law is whether the court's interpretation of the law is correct." Carbon County v. Union Reserve Coal Co. (1995), 271 Mont. 459, 469, 898 P.2d 680, 686.

The District Court did not err when it denied Appellant's request to change B.K.'s surname.

"A district court, in determining whether to change a child's surname, must be guided by the child's best interests; and finally, that this Court reviews a district court's

determination of best interests under an abuse of discretion standard." Fireman v. Fireman (1980), 187 Mont. 465, 469-470 610 P.2d 178, 181.

"Review of a district court's ruling in these matters is very narrow. A lower court's decision regarding the best interest of the child will not be overturned on appeal unless there is a clear abuse of discretion." Matter of Iverson, 241 Mont. at 141, 786 P.2d at 2.

Pursuant to the case law controlling this issue, the district court would have had to make a finding that it was in the best interests of B.K. for her surname to be changed. The district court need not make a finding that it is in the best interest of B.K. for her surname to remain the same. The Appellant argues that the District Court erred by not making findings that it is in B.K.'s best interest for her surname to remain the same, however, that is not a finding the District Court would have to make. The District Court did find that the Appellant failed to meet her burden to establish that changing B.K.'s name would serve her best interest. Specifically, the District Court could not find that changing B.K.'s name would serve her best interest. The District Court has not clearly abused its discretion in this matter. The District Court judge was the finder of fact and he could not find that a surname change would serve B.K.'s best interest. The Appellant has

failed to establish that the District Court's findings on the matter were clearly erroneous.

The District Court's ordered final parenting plan was supported by substantial evidence and is in the best interest of B.K.

We presume a district court's ruling is correct, and will not overturn the court in child custody matters unless we determine that there has been a clear abuse of discretion. In re Marriage of Hedges, 2002 MT 204, ¶ 19, 311 Mont. 230, ¶ 19, 53 P.3d 1273, ¶ 19. The standard for an abuse of discretion is whether the trial court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. In re Marriage Gallagher, 2003 MT 124, ¶ 32, 316 Mont. 531, ¶ 32, 77 P.3d 550, ¶ 32.

The District Court is required to determine a parenting plan in accordance with the best interest of the child.

(1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to: (a) the wishes of the child's parent or parents; (b) the wishes of the child; (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest; (d) the child's adjustment to home, school, and community; (e) the mental and physical health of all individuals involved; (f) physical abuse or threat of physical abuse by one parent against the other parent or the child; (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent; (h) continuity and stability of care; (i) developmental needs of the child; (j) whether a parent has knowingly failed to pay birth-related costs

that the parent is able to pay, which is considered to be not in the child's best interests;(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;(l) 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. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.

(2) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:(a) A parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan.

§ 40-4-212 Mont. Code Ann.

The Appellant argues that the final parenting plan was substantially different than the interim parenting plan. The interim parenting plan is not substantially different from the final parenting plan. The Appellee was given two days a week with B.K. on his days off of work in the interim parenting plan and was given the same two days per week in the final parenting plan. The final parenting plan simply gives the Appellee additional periods of visitation during the summer and holidays.

The primary residential custodian is not changed and the Appellee does not get significantly more time with B.K. Appellee will effectively only get three additional days per week for six weeks of the summer, 18 days total.

The District Court is not required to make specific findings as to each criteria listed in Mont. Code Ann. § 40-4-212; however the District Court should consider the criteria and discuss these criteria in its final Decree. In re Paternity of C.T.E.-H., 2004 MT 307, 323 Mont. 498, 101 P.3d 254.

Where the District Court makes specific Findings and considers relevant evidence, the Supreme Court will not disturb its parenting plan. In re the Marriage of Carter, 2003 MT 19, 314 Mont. 84, 63 P.3d 1124.

The District Court made a finding that both parties have demonstrated an inability to treat each other with maturity, respect, and civility in its Decree. The District Court judge was in a position to weigh the testimony and evidence presented and made its findings and conclusions based upon that testimony. The District Court has made several findings in its Decree regarding the best interests of the child. The District Court indicated in its Conclusions of Law that it is considered in the best interest of the child to have continuing and frequent contact with both parents unless such contact is found to be

detrimental to the child's best interest. The District Court could not find such contact to be detrimental in this case.

The Appellant argues that the District Court overlooked her client's concerns raised at the final hearing in this matter. The Appellant simply restates her testimony to this Court and expects that such transcribed and singular testimony by her is all that matters. The District Court judged weighed that testimony and the testimony of the other witnesses in making its decision. The District Court Judge made its decision based upon the statements made as well as the credibility of those making them. The District Court was not impressed with the actions of either party, finding that both parties have demonstrated an inability to treat each other with maturity, respect, and civility. The Appellant is simply making the same argument to the Supreme Court as she did to the District Court, as the District Court judge did not find those statements credible or relevant. The District Court did act reasonably and did not cause substantial injustice upon the Appellant or B.K.

CONCLUSION

The District Court did not err when it denied Appellant's request to have B.K.'s surname changed. The District Court did make sufficient findings regarding the request for name change by Appellant. The District Court specifically found that the

Appellant failed to meet her burden to establish that changing the child's name would serve her best interest. The Court could not find that changing B.K.'s name would serve her best interest.

The District Court did order a final parenting plan that was supported by substantial evidence and that was in the best interests of B.K. The final parenting plan ordered by the District Court did not substantially change the residential schedule of the interim parenting plan. The District Court's findings were supported by the record and in no way erroneous.

Respectfully submitted this ____ day of March, 2012.

Randy H. Randolph
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By _____
Randy H. Randolph
Attorney for Appellee

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this ____ day of March, 2012, a copy of the foregoing Appellee's Response Brief was hand delivered to the following:

Lorang Law, PC
410 3rd Avenue
Havre, MT 59501

By _____
Randy Randolph
Attorney for Appellee