

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 01-151

IN RE THE MARRIAGE OF)
)
 SCOTT TOAVS,)
)
 Petitioner and Respondent,)
)
 and)
)
 KIMBERLY TOAVS,)
)
 Respondent and Appellant.)

FILED

MAY - 8 2001

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

ORDER

Before the Court is Respondent Scott Toavs' motion to strike affidavits that Appellant Kimberly Toavs appended to her appellant's opening brief, a motion for extension of time and a motion for sanctions.

This is an appeal from the April 5, 2000, findings of fact and conclusions of law and decree of dissolution of marriage. Appellant filed her opening brief on April 9, 2001. Appended to that brief, and referenced therein, are three affidavits: those of Brad Buls, Steve Fetveit and Kimberly Buls (Toavs). Each of these affidavits is dated April 7, 2001, over one year after the court entered its decree of dissolution.

Respondent contends that these affidavits are not part of the record before the District Court and should be stricken. We agree. In *State v. McKinnon* (1998), 288 Mont. 329, 957 P.2d 23, 26, we stated: "We continue to condemn this practice and again remind counsel that parties on appeal are bound by the record and may not add additional matter in briefs or appendices. . . . We will not tolerate an attempt to introduce extraneous information into the proceedings." [Citations omitted.]

Appellant's counsel has attempted to circumvent the above rule by appending three affidavits to his opening brief—all of which were signed over a year after the District Court's final decree. These affidavits are not part of the record on appeal and are thus extraneous material not properly before the Court.

The respondent's brief was filed herein on May 3, 2001. Thus, the respondent's motion for an extension of time is now moot. Therefore, instead of striking appellant's initial brief and requiring appellant to file a new brief, which would in turn require the refiling of respondent's brief as well,

IT IS HEREBY ORDERED that the affidavits of Brad Buls, Steve Fetveit and Kimberly Buls (Toavs) dated April 7, 2001, and appended to the appellant's brief as Exhibits 8, 10 and 11 are hereby stricken and shall be removed from the appellant's appendix.

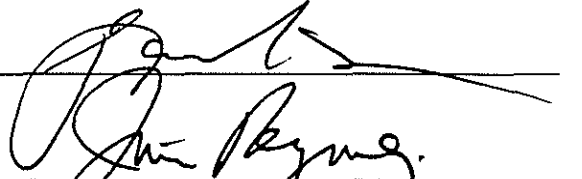
IT IS FURTHER ORDERED that all references to the affidavits delineated as Exhibits 8, 10 and 11 and all discussion pertaining thereto shall be stricken from appellant's brief.


IT IS FURTHER ORDERED that respondent's motion for sanctions is denied.

The Clerk is directed to mail copies hereof to counsel of record for the respective parties.

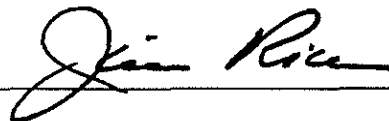
DATED this 8th day of May, 2001.

Chief Justice









Justices