

DA 18-0426

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 166N

IN RE THE MARRIAGE OF:

BETH E. BAKKEN,

Petitioner and Appellant,

v.

CHRISTOPHER A. BAKKEN,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DR-12-497B
Honorable Rienne H. McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Beth Eileen Bakken, Self-Represented, Bozeman, Montana

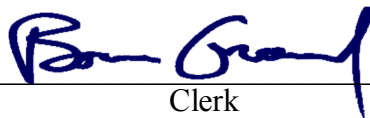
For Appellee:

Suzanne Marshall, Marshall Law Firm, P.C., Bozeman, Montana

Submitted on Briefs: June 5, 2019

Decided: July 23, 2019

Filed:


Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Beth Eileen Bakken appeals the order of the Eighteenth Judicial District Court, Gallatin County, affirming the Standing Master's Order denying her Motion to Modify Parenting Plan. We affirm.

¶3 On November 24, 2014, the District Court ordered a parenting plan for Beth Eileen Bakken (Mother) and Christopher A. Bakken (Father) allowing near equal parenting time. This plan was in effect for several years before Father became concerned about Mother's behavior. On August 31, 2017, Father filed a Verified Ex Parte Motion to Modify Parenting Plan. On September 21, 2017, the Standing Master held a show cause hearing. On October 13, 2017, the District Court, through the Standing Master, entered a Modified Final Parenting Plan. The modified plan allowed Mother limited parenting time, forbade contact between the children and Mother's boyfriend, and required Mother to abstain from consuming alcohol for ninety days. After the ninety-day duration, the parenting time would again be approximately equal. On October 20, 2017, Mother filed a Notice of Appeal with the Montana Supreme Court, appealing the plan. The appeal was dismissed with prejudice after Mother failed to file her opening brief.

¶4 After the ninety days had run, Father filed a Verified Expedited Motion to Extend [Modified] Parenting Plan. At this time, Mother filed an Ex Parte Motion to Modify and/or Amend Parenting Plan under § 40-4-219, MCA. Mother alleged (1) Father committed perjury at the September 21, 2017 hearing, and (2) that the children have displayed behavioral issues since the implementation of the Modified Final Parenting Plan.

¶5 On April 10, 2018, the Standing Master entered an Order Denying Motions in which it: (1) denied Father's motion, holding there was no evidence that Mother had violated any provisions of the Modified Final Parenting Plan such that the initial terms should be extended; (2) denied Mother's motion, holding Mother had failed to meet the heavy burden of showing changed circumstances as required under § 40-4-219(1), MCA; and (3) ordered the Modified Final Parenting Plan issued on October 13, 2017, to continue in full force and effect. The Standing Master further explained that "the facts alleged by Mother do not rise to the level of an emergency situation concerning the endangerment of the children as contemplated by the statute."

¶6 On April 20, 2018, Mother filed her objection to the Standing Master's Order Denying Motions. The District Court held a hearing pursuant to § 3-5-126, MCA, and, on June 25, 2018, the District Court affirmed the Standing Master's Order, concluding that Mother should have brought her allegations to the Standing Master's attention earlier because "the court is not going to go backwards with respect to things that happened prior to October of 2017."

¶7 For cases tried before a standing master, ““we apply the same standard of review to the standing master’s order that we do to any other district court order.”” *In re Marriage of Patton*, 2015 MT 7, ¶ 17, 378 Mont. 22, 340 P.3d 1242 (quoting *Maloney v. Home & Inv. Ctr., Inc.*, 2000 MT 34, ¶ 28, 298 Mont. 213, 994 P.2d 1124). We review a district court’s decision de novo to determine whether it applied the correct standard of review to a standing master’s findings of fact and conclusions of law. *In re Marriage of Patton*, ¶ 17. We review a district court’s conclusions of law for correctness, *In re Marriage of Guffin*, 2010 MT 100, ¶ 20, 356 Mont. 218, 232 P.3d 888, and a district court’s findings of fact to determine whether they are clearly erroneous, *In re Marriage of D’Alton*, 2009 MT 184, ¶ 7, 351 Mont. 51, 209 P.3d 251 (citation omitted). If the findings of fact are not clearly erroneous, then we will only overturn the district court’s decision whether to amend a parenting plan if there is an abuse of discretion. *In re Marriage of D’Alton*, ¶ 7 (citation omitted).

¶8 Section 40-4-219(1), MCA, allows a court to amend a prior parenting plan if “a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child.” However, a party seeking to modify a parenting plan under § 40-4-219, MCA, bears a heavy burden of showing changed circumstances. *In re R.J.N.*, 2017 MT 249, ¶¶ 8-9, 389 Mont. 68, 403 P.3d 675 (citations omitted).

¶9 The District Court held a hearing pursuant to § 3-5-126, MCA, and reviewed Mother’s and Father’s motions. The District Court did not err when it affirmed the

Standing Master's Order Denying Motions. Mother did not allege facts that established a change of circumstances subsequent to the Modified Final Parenting Plan. The alleged perjury occurred at the September 21, 2017 hearing, weeks before the Standing Master implemented the Modified Final Parenting Plan on October 13, 2017. Mother then failed to prosecute her October 20, 2017 appeal to this Court. The District Court's affirmation of the Standing Master's Order Denying Motions based on the finding that Mother failed to meet her burden under § 40-4-219, MCA, was not an abuse of discretion. *See In re Marriage of D'Alton*, ¶ 7.

¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶11 Affirmed.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ JIM RICE

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON