

1 KARL KNUCHEL, P.C.  
 2 KARL KNUCHEL  
 3 ERIC T. ODEN  
 4 101 North E Street  
 5 P.O. Box 953  
 6 Livingston, MT 59047  
 7 (406) 222-0135  
 8 [karl@knuchelpc.com](mailto:karl@knuchelpc.com)  
 9 [eric@knuchelpc.com](mailto:eric@knuchelpc.com)

ATTORNEYS FOR DEFENDANTS AND APPELLANTS

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 18-0592

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13 DAVID STANLEY and JEAN B. KEFFELER,

14 Plaintiffs and Appellees,

15 v.

17 WILLIAM CHARLES HOTES,  
 18 ARDIS J. HOTES, and all other persons  
 19 unknown, claiming or who might claim any right,  
 20 title, estate or interest in or lien or encumbrance  
 21 upon the real property described in the Complaint  
 22 adverse to Plaintiffs' ownership or any cloud upon  
 23 Plaintiffs' title thereto, whether such claim or  
 24 possible claim be present or contingent,

25 Defendants and Appellants.

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26 **APPELLANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' /**  
 27 **APPELLEES' MOTION FOR RECONSIDERATION OF ORDER**

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1 COMES NOW the Defendants and Appellants, William Charles Hotes and  
2 Ardis J. Hotes (“Hotes”), by and through their attorney, and hereby oppose the  
3  
4 Appellees’ Motion for Reconsideration of Order.

## 5 BRIEF IN OPPOSITION OF MOTION

### 6 I. Procedural Background

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8 On November 28, 2018 this Court issued its Notice of Filing, which directed  
9 that Hotes’ opening brief was due within 30 days of that date, December 28, 2018.  
10 Hotes filed a Motion for Extension to File Appellants’ Brief on January 8th, 2019.  
11 The Court granted that motion on January 11, 2019, and extended Appellants’  
12 deadline to file their appeal brief to January 28th, 2019. That extension was the first  
13 extension asked for and granted. There have been no additional extensions in this  
14 appeal. Appellees now ask the Court to reconsider the order granting that extension  
15 on based on Montana Rules of Appellate Procedure 13(3), 16, and 26.  
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### 19 II. Legal Argument

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21 Motions for reconsideration are not authorized by the Montana Rules of Civil  
22 Procedure. *Horton v. Horton*, 2007 MT 181, ¶ 7, 338 Mont. 236, 165 P.3d 1076  
23 (established that motions for reconsideration are not post-judgment motions  
24 authorized by the Montana Rules of Civil Procedure and analyzing appellant’s  
25 motion under Rule 59(g)). The closest analogue in the Montana Rules of Appellate  
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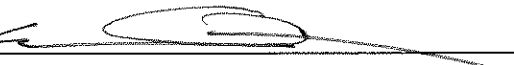
1 Procedure is a petition for rehearing, which requires: “...(i) [t]hat it [this Court]  
2 overlooked some fact material to the decision; (ii) [t]hat [this Court] overlooked  
3 some question presented by counsel that would have proven decisive to the case; or  
4 (iii) [t]hat [this Court’s] decision conflicts with a statute or controlling decision not  
5 addressed by the supreme court.” M.R.App.P. Rule 20(1)(a). Rule 20 further states,  
6 “Absent clearly demonstrated exceptional circumstances, the supreme court will not  
7 grant petitions for rehearing of its orders disposing of motions or petitions for  
8 extraordinary writs.” M.R.App.P. Rule 20(1)(d). Here, Appellees have not alleged  
9 any of the Rule 20(1)(a) factors, nor have they clearly demonstrated exceptional  
10 circumstances.  
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15 Appellees further argue that “Rule 26 requires that any motion for extension  
16 must include a statement that opposing counsel has been contacted regarding they  
17 motion, and whether they object...” Appellees’ Resp. to Mot. for Extension, p. 4.  
18 Rule 26 goes on to state that the failure to do so *may* result in denial of the motion.  
19 M.R.App.P. Rule 26(1). Denial of a motion is not a required result of that failure.  
20 Rule 16(1) imposes the same obligation on any motion filed with this Court.  
21 M.R.App.P. Rule 16(1). Appellees did not follow this rule with their own motion to  
22 dismiss. Appellees are asking for this Court to deny a motion for failure to follow a  
23 rule that Appellees themselves did not follow.  
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1 Appellees also request the Court reconsider the Court's order because  
2 Appellees were not given the opportunity to file a response to the motion for  
3 extension. Rule 16(2) governs responses to motions, stating, "Any party may file a  
4 response in opposition within 11 days after service of the motion, or within such  
5 time as the supreme court may direct." M.R.App.P. Rule 16(2). That Rule does not  
6 grant a party opposing a motion the absolute right to 11 days after service to file a  
7 response to any motion, and it does not bar this Court from ruling on a motion  
8 before those 11 days have passed if this Court sees fit.  
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13 In this case, Appellants moved for an extension of the initial brief, which is  
14 allowed by Rule 26. The Court granted that motion and granted an extension until  
15 January 28, 2019. Appellees have not clearly demonstrated exceptional  
16 circumstances which warrant this Court reconsidering its order. Because of that,  
17 Appellants respectfully request this Court DENY Appellees motion for  
18 reconsideration.  
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23 DATED this 18<sup>th</sup> day of January, 2019.

24  
25 By   
26 ERIC T. ODEN  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served a full, true and accurate copy of the foregoing document on the 1<sup>st</sup> day of January, 2019, to the following named person:

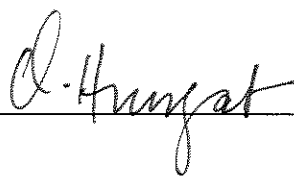
\_\_\_\_\_ by personal service

\_\_\_\_\_ by depositing a copy of same in the mail box maintained at the Clerk of Court's office in the Park County Courthouse in Livingston, Montana for the following attorney

\_\_\_\_\_ by FAX to the following FAX number

X \_\_\_\_\_ by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

STEVE WOODRUFF  
P.O. Box 523  
Livingston, MT 59047  
ATTORNEY FOR PLAINTIFFS AND APPELLEES

  
\_\_\_\_\_

## **CERTIFICATE OF SERVICE**

I, Karl Knuchel, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 01-18-2019:

Stephen Eric Woodruff (Attorney)

420 S. 2nd St.

P.O. Box 523

Livingston MT 59047

Representing: William Charles Hotes, Ardis J. Hotes, Larry A. Lahren

Service Method: Conventional

Electronically Signed By: Karl Knuchel

Dated: 01-18-2019