

ORIGINAL

FILED

02/04/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0657

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FEB 04 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 18-0657

WILLIAM ("BILL") HARRISON and)
HARRIET ("SHERRI") HARRISON,)
individually as husband and wife,)

Plaintiffs,)

v.)

THOMAS ("TOM") D. HARRISON and)
KIMBERLY ("KIM") HARRISON,)
husband and wife, and LINCOLN ROAD)
RV PARK, INC., a Montana corporation,)

Defendants and Counter-Plaintiffs,)

v.)

WILLIAM ("BILL") HARRISON and)
HARRIET ("SHERRI") HARRISON,)
individually as husband and wife,)

Counter-Defendants,)

and)

**MOTION TO DISMISS
APPEAL
FOR FAILURE TO COMPLY
WITH RULES OF
MANDATORY APPELLATE
ALTERNATIVE DISPUTE
RESOLUTION**

JON BOUSER, KIMBERLY BOUSER,
ERICK BRODSHO and HEATHER
BRODSHO, GORDON BROWN and
LYNDEE BROWN, PAUL CHATRIAND
and TAMRAH CHATRIAND, KENDALL
CUNNINGHAM and ABIGAIL
CUNNINGHAM, REBECCA SMITH
EANES, JOSEPH FOWLER, FRANK
GONZALES and TRACY GONZALEZ,
HEATHER HARRINGTON, ROBERT
HOLLIDAY, ZACHARY KOZAK,
CHERIE LOFTON, JOSEPH MARINER,
RICHARD NEWBY and KRISTEN
NEWBY, ROBIN ROUSE and ALLEN
TARYN ROUSE, IAN STEFFAN,
JESSICA STUART, LINDSAY ZELL and
EMILIANO CUAUHTEMOC ZELL,
GV75, LLC,

Intervenors/Plaintiffs/Appellees,

v.

THOMAS ("TOM") D. HARRISON and
KIMBERLY ("KIM") HARRISON,
husband and wife,

Defendants/Appellants,

and

LINCOLN ROAD RV PARK, INC., a
Montana corporation,

Defendant/Appellee.

Defendant/Appellee Lincoln Road RV Park, Inc. by and through its Court Appointed Receiver Rita Cortright, (“Receiver”) and its undersigned counsel, respectfully moves to dismiss Defendants/Appellants Thomas D. Harrison and Kimberly Harrison’s (“Harrisons” or “Appellants”) appeal pursuant to Mont. R. App. P. 7(8) where Harrisons have failed to comply with Mont. R. App. P. 7(5)(d). That Rule requires Appellants to submit the required statement of position to the mediator and to the responsive party within 15 days of the date the notice of selection or order of appointment of the mediator is filed under section (4) of this rule. (Emphasis added).

The Order of Mediator Appointment was filed on December 28, 2018. Appellants’ statement of position was due by or before January 14, 2019. On January 28, 2019 the court appointed mediator circulated an e-mail to all parties reminding them that the Appellant’s statement of position was overdue and requiring that the statement of position be submitted on or before January 28 and responsive statements thereafter, but prior to February 4. Appellants’ counsel sent a response email stating that he could not possibly provide the statement of position on Monday, January 28, but would have it submitted by Friday, February 1. (A copy of that email string is attached hereto as Exhibit A.) To date, Appellants have not served the Receiver with the requisite Statement of Position.

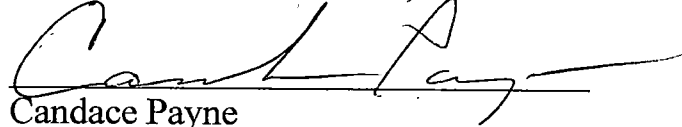
The Rules of Appellate Procedure provide for sanctions on motion of a party or

by the Supreme Court *sua sponte* where there is substantial noncompliance with the rule requiring alternative dispute resolution. *See* Mont. R. App. P. 7(8). That section of the Rule further provides for the assessment of mediator fees, imposition of monetary sanctions, costs, dismissal of the appeal, or such other sanction as the supreme court deems appropriate.

Receiver respectfully requests that this Court dismiss Appellants' appeal, or order such other monetary or non-monetary penalty as the Supreme Court deems proper under the circumstances, as provided in Mont. R. App. P. 7(8).

DATED this 4th day of February 2019.

CANDACE PAYNE LAW, PLLC

A handwritten signature in black ink, appearing to read 'Candace Payne', is written over a horizontal line.

Candace Payne

Attorney for Court Appointed Receiver

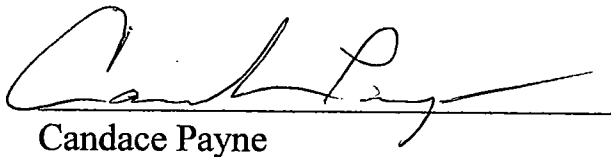
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February 2019 I duly served a copy of the foregoing MOTION TO DISMISS APPEAL FOR FAILURE TO COMPLY WITH RULES OF MANDATORY APPELLATE ALTERNATIVE DISPUTE RESOLUTION in the U.S. Mail, first class, postage prepaid or by electronic mail to:

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Courtesy copy to:
K.D. Feedback, Mediator at kdfedback@gmail.com


Candace Payne