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02/07/2020

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA  
Case Number: DA 20-0065

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Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

ANGIE SPARKS, Clerk of District Court  
By: *[Signature]* Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

ANIMALS OF MONTANA, INC.,  
TROY HYDE, permit holder,

Petitioner,

v.

STATE OF MONTANA  
DEPARTMENT OF FISH, WILDLIFE,  
AND PARKS,

Respondent.

Cause No. BDV-2015-999

**ORDER ON MOTION FOR STAY  
OF EXECUTION PENDING  
APPEAL TO THE SUPREME  
COURT**

**BACKGROUND**

On January 17, 2020, this Court issued its Order (Order) on Animals of Montana, Inc. (AMI) and Troy Hyde's (Hyde) Judicial Review Petition. This Court, among other things, Ordered that:

1. The Court's January 25, 2016 stay is **DISSOLVED**.

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1                   2.     “AMI’s permit is **REVOKED** and cannot be  
2 renewed. It is further **ORDERED** that AMI and FWP will coordinate to  
3 determine the disposition of the animals at the facility.” FWP Final Order.

4                   3.     FWP is **ORDERED** to immediately “redeem  
5 possession of all wildlife obtained by capture or unlawful propagation.” Mont.  
6 Code Ann. § 87-4-806 (2015).

7                   On January 29, 2020, AMI and Hyde filed an appeal relative to the  
8 Order with the Montana Supreme Court. On February 3, 2020, they moved this  
9 Court to stay execution<sup>1</sup> of the Order pending their appeal to the Montana  
10 Supreme Court.

#### 11                                   **DISCUSSION**

12                   Mont. R. App. 22(1), states, in relevant part, that:

13                   (1)     Motion for stay in the district court.

14                   (a)     A party shall file a motion in the district court for any of  
15 the following relief:

16                   (i)     To stay a judgment or order of the district court pending  
17 appeal;

18                   (ii)    For approval of a supersedes bond; or

19                   (iii)   For an order suspending, modifying, restoring, or  
20 granting an injunction pending appeal.

21                   (b)     If the appellant desires a stay of execution, the appellant  
22 must, unless the requirement is waived by the opposing party, obtain  
23 the district court's approval of a supersedeas bond which shall have 2  
24 sureties or a corporate surety as may be authorized by law. The bond  
25 shall be conditioned for the satisfaction of the judgment or order in  
full together with costs, interest, and damages for delay, if for any  
reason the appeal is dismissed or if the judgment or order is  
affirmed, and to satisfy in full such modification of the judgment or  
order and such costs, interest, and damages as the supreme court may  
adjudge and award. When the judgment or order is for the recovery

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<sup>1</sup>     The Court presumes AMI and Hyde’s motion was made pursuant to Rule 22(1), M.R.App.R. In their proposed order, they cite Mont. Ann. Code § 46-20-204 as the basis for awarding the requested stay. That statute relates to criminal appeals.

1 of money not otherwise secured, the amount of the bond shall be  
2 fixed at such sum as will cover the whole amount of the judgment or  
3 order remaining unsatisfied, costs on appeal, interest, and damages  
4 for delay, unless the district court after notice and hearing and for  
5 good cause shown fixes a different amount or orders security other  
6 than the bond. When the judgment or order determines the  
7 disposition of property in controversy as in real actions, replevin, and  
8 actions to foreclose mortgages, or when such property is in the  
9 custody of the sheriff or when the proceeds of such property or a  
10 bond for its value is in the custody or control of the district court, the  
11 amount of the supersedeas bond shall be fixed at such sum only as  
12 will secure the amount recovered for the use and detention of the  
13 property, the costs of the action, costs on appeal, interest, and  
14 damages for delay.

15 (c) The district court retains the power to entertain and rule  
16 upon a motion filed pursuant to this rule despite the filing of a notice  
17 of appeal or the pendency of an appeal.

18 (d) The district court must promptly enter a written order on  
19 a motion filed under this rule and include in findings of fact and  
20 conclusions of law, or in a supporting rationale, the relevant facts  
21 and legal authority on which the district court's order is based. A  
22 copy of any order made after the filing of a notice of appeal must be  
23 promptly filed with the clerk of the supreme court.

24 While the Montana Supreme Court adopted Mont. R. App. 22 in  
25 2007, there is limited case law explaining the rule. It is similar to Fed. R. App. R.  
8(a), and the United States Supreme Court has established the following test for  
determination of whether a stay should be granted:

- 21 (1) whether the stay applicant has made a strong showing  
22 that he is likely to succeed on the merits;
- 23 (2) whether the applicant will be irreparably injured absent a  
24 stay;
- 25 (3) whether issuance of the stay will substantially injure the  
other parties interested in the proceeding; and
- (4) where the public interest lies.

1 See, *State ex rel. McGrath v. Philip Morris*, 2007 Mont. Dist. LEXIS 600, at 3,  
2 (Dec. 11, 2007), (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

3 Here, it is unknown whether Montana (FWP) has waived the  
4 supersedeas bond requirement. Mont. R. App. 22(1)(b). Moreover, neither AMI  
5 nor Hyde provided the Court with any evidentiary support relative to the *Hilton*  
6 stay test factors. Consequently, the Court does not have sufficient information to  
7 comply with Rule 22(1)(d)'s supporting rationale requirements<sup>2</sup>. For these  
8 reasons,

9 **IT IS ORDERED** that AMI and Hyde's motion to stay execution  
10 of this Court's January 17, 2020 Order pending their appeal is **DENIED**, with  
11 leave to file a second motion that complies with Mont. R. App. 22(1) with  
12 supporting evidence that they believe satisfy the *Hilton* stay test.

13 DATED this 4<sup>th</sup> day of February 2020.

14  
15   
16 MICHAEL F. McMAHON  
17 District Court Judge

18  
19 cc: Aimee Hawhaluk, PO Box 200701, Helena, MT 59620-0701  
20 Herman Austin Watson, IV, 424 East Main Street, Suite 203A, Bozeman,  
21 MT 59715-4735  
22 Bowen Greenwood, Clerk of the Montana Supreme Court, PO Box  
23 203003, Helena, MT 59620-3003

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<sup>2</sup> Based upon the underlying record, the Court presumes that AMI and Hyde can establish the second irreparable injury factor.