

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 20-0374

Dash DeJarnatt
Bryan Law Firm, P.C.
11 East Main Street, Suite D
P.O. Box 1371
Bozeman, MT 59771-1371
(406) 586-8565
Attorney for Appellee Linda A. Goldan

IN THE MATTER OF THE GUARDIANSHIP
OF

V.L.Z.,

An Alleged Protected Person

**APPELLEE'S UNOPPOSED MOTION
TO DISMISS APPEAL WITH
PREJUDICE**

COMES NOW, Linda A. Goldan, Appellee herein, by and through her counsel of record, Dash DeJarnatt, of the Bryan Law Firm, P.C., and respectfully requests this Court dismiss this appeal with prejudice on unopposed motion. On August 21st, Appellant's counsel followed up with Appellee's counsel, V.L.Z.'s attorney, and the court-appointed mediator, Margot Ogburn, indicating that Appellant intended to dismiss this appeal, as shown in **Exhibit A**. On August 27, Appellee's counsel received an email from Appellant's Counsel including Appellant's Notice of Dismissal of Appeal ("Notice"), both the Email and accompanying Notice are attached as **Exhibit B**. Appellee's counsel followed up with Appellant's counsel on September 2nd in an email attached as **Exhibit C** indicating that Appellant had not actually filed anything and that Appellee intended to file this motion today. Appellant's counsel has not responded to Appellee's email from September 2nd. Given Appellant's clear intention to dismiss the appeal as demonstrated by the

emails and executed Notice and appellant's unresponsiveness, Appellant makes this unopposed motion to dismiss this appeal with prejudice.

This motion is expected to be uncontested. To the extent this motion is contested, Appellee requests maximum sanctions allowed under the Rules of Appellate Procedure 7(8) be imposed against Appellant for failure to abide by the mediation procedures Appellant specifically requested; namely, the failure to provide 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 Rules of Appellate Procedure 7(5)(d), which was issued on August 18, 2020 and for false certification of Certificate of Service on Appellant's August 27th Notice.

A proposed order is attached for the Court's consideration and use.

Dated this 10th day of September, 2020.



Dash DeJarnatt
Attorney for Appellee Linda A. Goldan

CERTIFICATE OF SERVICE

The undersigned hereby certifies and declares that on the 10th day of September, 2020, a copy of the foregoing was filed electronically with the Clerk of the Montana Supreme Court and served upon the following individuals:

☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile
☒ E-Mail

Attn: Terry F. Schaplow
Terry F. Schaplow, P.C.
3825 Valley Commons Drive, Ste. 1
Bozeman, MT 59718
tfschaplow@gmail.com

☐ U.S. Mail
☐ Hand Delivery
☐ Facsimile
☒ E-Mail

Attn: Todd Hillier
Schraudner & Hillier
3825 Valley Commons Dr #5
Bozeman, MT 59718
thillier@bridgeband.com



Dash DeJarnatt

EXHIBIT A

Appellant's August 21st Email

Dash DeJarnatt

From: Terry Schaplow <tfschaplow@gmail.com>
Sent: Friday, August 21, 2020 2:26 PM
To: margot@ogburnlawfirmmt.com; Dash DeJarnatt; Todd Hillier
Subject: Guardianship of VLZ

Good afternoon,

I have been out of the office for awhile this week due to my teaching duties at MSU. This week is the first week of class, with the usual organization/administration problems etc

I see where Virginia's house has been sold, which makes the appeal moot. Therefore we will be dismissing the appeal.

I have an out of the office appointment on Monday. If I do not get the formal pleading done today, i will do it next week.

Thanks. Terry Schaplow, appellant's atty.

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Please be advised that I do not receive text messages or emails on my phone. Thank you.

EXHIBIT B

Appellant's August 27th Email and Executed Notice of Dismissal of Appeal

Dash DeJarnatt

From: Terry Schaplow <tfschaplow@gmail.com>
Sent: Thursday, August 27, 2020 6:23 PM
To: margot@ogburnlawfirmmt.com; Todd Hillier; Dash DeJarnatt
Attachments: CCF08272020_0002.pdf

Good evening,

Enclosed please find the Appellant's notice of dismissal of appeal.

Thank you,
Terry Schaplow

PERSONAL AND CONFIDENTIAL

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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA20-0374

Terry F. Schaplow, P.C.
3825 Valley Commons Dr., Suite 1
Bozeman, Montana 59718
(406) 587-2767
Fax (406) 587-3033
Attorney for Steve Zisch Appellant

IN THE MATTER OF THE
GUARDIANSHIP OF

V.L.Z.
An Alleged Protected Person

APPELLANT'S NOTICE OF
DISMISSAL OF APPEAL

Notice is given that Steve Zisch, the Appellant above-named, hereby
dismisses his appeal in this case. This is because the District Court removed
the stay of the sale of the residence, while appellant's counsel was out of
state, thereby rendering the appeal moot.

Dated this 27th day of August, 2020.



Terry F. Schaplow P.C.

CERTIFICATE OF SERVICE

I hereby certify that on 8/27/20 I have filed a true and correct copy of the foregoing NOTICE OF DISMISSAL OF APPEAL with the clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing NOTICE OF DISMISSAL OF APPEAL upon the following.

X EMAIL

Dash DeJarnatt

Dash@bryanlawpc.com

X EMAIL

Todd Hiller

thillier@bridgeband.com

X EMAIL

Margot Barg Ogburn

margot@ogburnlawfirmmt.com

X US Mail

X Fax 406-444-5705


Clerk of Montana Supreme Court

Room 323 justice Building

215 North Sanders

P.O Box 203003

Helena MT, 59620-3003



Terry F. Schaplow, P.C.

EXHIBIT C

Appellee's September 2nd Email

Dash DeJarnatt

From: Dash DeJarnatt
Sent: Wednesday, September 2, 2020 10:19 AM
To: Terry Schaplow; Todd Hillier
Subject: Zisch Dismissal

Terry,

I hope all is well. I followed up with the Supreme Court today. The Clerk there indicated no motion to dismiss or notice of motion to dismiss has been filed. If nothing has been filed by next Wednesday morning I will respectfully submit an uncontested motion to dismiss with prejudice attaching your notice and your email. I will throw in brief language that IF the uncontested motion is challenged (which I assume is a non-issue) we will request RAP Rule 7(8) costs.

Additionally, please confirm whether or not you still intend to challenge my legal fees at a fee hearing.

Best,

Dash DeJarnatt

J.D., LL. M. in Taxation

Email: ddejarnatt@bryanlawpc.com

Website: bryanlawpc.com



BRYAN
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CERTIFICATE OF SERVICE

I, Justin Mark Bryan, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 09-10-2020:

Terry F. Schaplow (Attorney)
3825 Valley Commons Dr Ste 1
Bozeman MT 59718-6436
Representing: Steve Zisch
Service Method: Conventional

Todd Robert Hillier (Attorney)
3825 Valley Commons Dr Ste 5
Bozeman MT 59718-6436
Representing: V. L. Z.
Service Method: E-mail Delivery

Dashiell Haviland DeJarnatt (Attorney)
11 E. Main Street, Suite D
P.O. Box 1371
Bozeman MT 59715
Representing: Linda A. Goldan
Service Method: Conventional

Electronically Signed By: Justin Mark Bryan
Dated: 09-10-2020