

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 21-0012

IN THE MATTER OF THE ESTATE OF

DOUGLAS C. DOWER,

DECEASED.

LINDA GAYLENE DOWER,

APPELLANT

—vs—

JAYNE LUX,

PERSONAL REPRESENTATIVE,

APPELLEE.

On Appeal from the Montana Eighth Judicial District Court

Cascade County, Montana, Cause No. BDP-20-003

**BRIEF OF THE BUSINESS, ESTATES, TAX, TRUST, AND REAL PROPERTY
SECTION OF THE MONTANA STATE BAR AS AMICUS CURIAE**

Appearances:

LAURA E. WALKER
HEATHER M. STARNES
Jardine, Stephenson, Blewett & Weaver, PC
300 Central Avenue, Suite 700
P.O. Box 2269
Great Falls, Montana 59403
(406) 727-5000

LIZA L. DENNEHY
2801 S. Montana
Butte, Montana 59701
(406) 782-0484

JUSTIN M. BRYAN
Bryan Law Firm, PC
11 East Main Street, Suite D
P.O. Box 1371
Bozeman, MT 59771
Phone: 406-586-8565
Email: justin@bryanlawpc.com

DREW MOORE GAERTNER
McLean, Younkin & Willett, PLLC
2066 Stadium Drive, Suite 101
Bozeman, MT 59715
Phone: 406-582-0027
Email: dmooregaertner@bozeman.legal

MOLLY S. CONSIDINE
Patten, Peterman, Bekkedahl & Green, PLLC
2817 2nd Avenue North, Suite 300
Billings, MT 59101
Phone: 406-252-8500
Email: mconsidine@ppbglaw.com

TABLE OF CONTENTS

INTEREST OF THE BUSINESS, ESTATES, TAX, TRUST, AND REAL PROPERTY SECTION OF THE STATE BAR.....5

STATEMENT OF THE ISSUE.....5

SHORT ANSWER REACHED BY BETTR SECTION.....5

STATEMENT OF THE CASE.....6

ARGUMENTS.....8

I. Surviving Spouses are Entitled to Certain Statutory Allowances...7

II. Abatement Applies when the Assets of the Estate Are Insufficient to Satisfy the Testator’s Intent and the Estate’s Obligations.....15

III. The District Court Correctly Concluded that the Dower Family Trust Should not be Invaded to Satisfy the Statutory Allowances.16

 A. Linda’s Argument Disregards the Distinction Between Trust Assets and Estate Assets.....16

 B. The Spouse’s Entitlement to Statutory Allowances is Not an Absolute Right.....17

 C. Abatement Operates as An Exception to the Statutory Allowances when the Estate is Insufficient to satisfy its Claims and Allowances.....18

CONCLUSION.....19

CERTIFICATE OF COMPLIANCE21

CERTIFICATE OF SERVICE22

TABLE OF AUTHORITIES

Cases

<i>In re Lawson</i> , 222 Mont. 276, 279, 721 P.2D 760, 762 (Mont. 1986).....	13
<i>In re Estate of Martelle</i> , 306 Mont. 253, 259, 32 P.3d 758, 763 (Mont. 2001).....	13
<i>Bell v. Est. of Bell</i> , 2008-NMCA-045, 143 N.M. 716, 181 P.3d 708.....	14, 15

Statutes

§ 72-1-101, MCA.....	7
§ 72-1-103, MCA.....	7, 11,16
§ 72-2-412, MCA.....	12,17,19
§ 72-2-413, MCA.....	12,13,17,19
§ 72-2-414, MCA.....	12,13,17,19
§ 72-3-901, MCA.....	5,11, 12,15,16,17,18,19
§ 72-6-112, MCA.....	5,10,16,18,19
§ 72-38-505, MCA.....	5,8,15,16,18,19

Secondary Sources

RESTATEMENT (SECOND) PROP.: DONATIVE TRANSFERS § 34.3(3) (AM. L. INST. 2020) and RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 7.2 cmt b.....	9
--	---

Mark R. Siegel, <i>Extending Abatement to Non-Probate Succession</i> , 13 Est. Plan. & Community Prop. L.J. 487, 491 (2021).....	15,16
--	-------

INTEREST OF THE BUSINESS, ESTATES, TAX, TRUST, AND REAL PROPERTY SECTION OF THE STATE BAR

This case involves interpretation of the Montana Uniform Probate Code and Uniform Trust Code, both of which are core statutes used by practitioners involved with the Business, Estates, Tax, Trust, and Real Property Section of the State Bar of Montana (“BETTR Section”). The BETTR Section has an interest in this Court’s interpretation of Montana’s Uniform Probate Code and Uniform Trust Code, particularly when the interpretation is in regard to a matter of first impression in this state. This Court generously invited the BETTR Section to submit an Amicus Brief regarding the issues raised by the Appellant. Order dated June 23, 2021, at 1.

STATEMENT OF THE ISSUE

The BETTR Section addresses only the following question:

Whether assets in a revocable trust at the decedent’s death or the abatement statutes should be applied first to satisfy any deficiencies in the statutory allowances asserted by the surviving spouse in an estate administration?

SHORT ANSWER REACHED BY THE BETTR SECTION

The BETTR Section’s analysis finds that the surviving spouse’s specific devise abates to satisfy the surviving spouse’s statutory allowances under § 72-3-901, MCA.

STATEMENT OF THE CASE

1. Douglas C. Dower (the “Decedent”) died testate on December 20, 2019. (Appellee Br., pg. 1 (hereinafter “Lux App. Br.”)). The Decedent is survived by his spouse, Linda G. Dower (“Linda”); his adopted daughter from his marriage with Linda, Destiny Dower (“Destiny”), a minor child; his four adult children from a prior relationship, Jayne D. Lux (“Jayne”), Nellie Anselmo (“Nellie”), Dan Dower (“Dan”), and Dave Dower (“Dave”). *Id.*
2. The Decedent’s will devises all of the personal property to Linda.
3. The Dower Family Trust was established by the Decedent and his first wife, who predeceased him. *Id.* at pg. 6. Upon the death of the Decedent’s first wife, half of the Dower Family Trust became irrevocable and half was revocable and amendable by the Decedent until his death. *Id.*
4. Jayne was appointed as personal representative of the Decedent’s probate estate on January 3, 2020. Lux App. Br., pg. 2.
5. Linda filed a petition for Homestead Allowance, Exempt Property Allowance, and Family allowance on May 28, 2020. *Id.* Linda has requested a total of \$57,750.00, which is comprised of \$22,500 in a homestead allowance, \$15,000 in the exempt property allowance, and

\$27,000 of a family allowance (which is split \$20,250 to Linda and \$6,750 to Destiny) (collectively, the “Statutory Allowances”). Lux App. Br., Ex. B. pg. 8.

6. The current value of the probate assets equals \$64,160.00. Lux App. Br., Ex. B, pg. 8; Appellee’s Res., pg. 20. The costs of administration equal \$12,217.50 as of August 2020. Lux App. Br., Ex. B., pg. 8. Accordingly, when the Statutory Allowances and costs of administration are taken against the value of the probate assets, there is a deficiency of approximately \$5,807.50. *Id.*

ARGUMENT

I. Surviving Spouses are Entitled to Certain Statutory Allowances.

Montana has enacted the Uniform Probate Code as chapters 1-5 and 16, part 6 of Title 72, Montana Code Annotated, which governs administration of probates, guardianships, and conservatorships (“UPC”). § 72-1-101, et. seq., MCA. Section 72-1-103, MCA provides definitions for chapters 1 through 6.¹ The term “estate” is defined to include “the property of the decedent, trust, or other person **whose affairs are subject to chapters 1 through 5** as originally constituted and as it exists from time to time during administration.” (emphasis added).

¹ Chapters 1 through 5 are included in the Uniform Probate Code and Chapter 6 deals with non-probate transfers.

In this case, the Dower Family Trust is not subject to chapters 1 through 5. Rather, the portion of the Dower Family Trust that became irrevocable on the death of Decedent's first wife is subject to Chapter 38, and the portion that was revocable on Decedent's death is subject to Chapters 6 and 38.

Nevertheless, through the application of § 72-38-505, MCA, a revocable trust, such as the portion of the Dower Family Trust that was revocable on the death of Decedent, is subject to claims, costs, expenses and statutory allowances of the Decedent as settlor if the probate estate is insufficient. Indeed, § 72-38-505(1)(c), MCA specifically provides that:

Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(c) After the death of the settlor, and subject to the settlor's right to direct the source from which the liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children **to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.**

(emphasis added). In this context, a trust that was revocable at death only becomes subject to the creditors of a decedent when the probate estate has been exhausted.

This interpretation is supported by the Comments to the Uniform Trust Code, which Montana has adopted, which state the following:

Subsection (a)(3) recognizes that a revocable trust is usually employed as a will substitute. **As such, the trust assets, following the death of the settlor, should be subject to the settlor's debts and other**

charges. However, in accordance with traditional doctrine, the assets of the settlor's probate estate must normally first be exhausted before the assets of the revocable trust can be reached.

This section does not attempt to address the procedural issues raised by the need first to exhaust the decedent's probate estate before reaching the assets of the revocable trust. Nor does this section address the priority of creditor claims or liability of the decedent's other nonprobate assets for the decedent's debts and other charges. Subsection (a)(3), however, does ratify the typical pourover will, revocable trust plan. As long as the rights of the creditor or family member claiming a statutory allowance are not impaired, the settlor is free to shift liability from the probate estate to the revocable trust. Regarding other issues associated with potential liability of nonprobate assets for unpaid claims, see Section 6-102 of the Uniform Probate Code, which was added to that Code in 1998.

(emphasis added); *see also* RESTATEMENT (SECOND) PROP.: DONATIVE TRANSFERS § 34.3(3) (AM. L. INST. 2020) and RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 7.2 cmt b (stating decedent's surviving spouse and children asserting their entitlement to statutory allowances may be entitled to satisfy their claims from the decedent's will substitutes, as provided by the applicable state law).

This interpretation is likewise supported by the UPC's directive that creditor claims, including statutory allowances, be paid first from the probate assets and that nonprobate assets, which include a funded revocable trust, remain liable only if the probate estate is insufficient. Specifically, part 6 of the UPC limits payment of the statutory allowances as follows:

Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory allowances to the decedent's spouse and children **to the extent the estate is insufficient to satisfy those claims and allowances....**

§ 72-6-112(2), MCA (the exception referenced would exclude exempt assets such as life insurance from creditor claims). This indicates the UPC recognizes a difference between “probate” estate as used in Parts 1 through 5, and nonprobate assets, which include the “revocable trust” estate, in Part 6. § 72-6-112(1) and (3)(b), MCA. It also specifically recognizes property titled in the name of the trustee of a revocable trust is not subject to satisfying the statutory allowance until exhaustion of the probate estate assets. In fact, a special procedure must be followed before the personal representative can proceed against the assets of the revocable trust and other nonprobate assets. The surviving spouse must make a written demand on the personal representative and the proceeding by the personal representative to collect from the nonprobate assets must be commenced within one year from the date of death. § 72-6-112(7), (8) MCA. The line between the creditor’s limited ability to reach nonprobate assets as opposed to probate assets is blatantly drawn.

In the case at bar, Linda’s claim that because the word “trust” is included in the § 72-1-103(15), MCA definition of estate, the assets in the

Dower Family Trust are available to pay statutory allowances and claims before the specific devises abate under § 72-3-901(1), MCA is not supported by law or fact. Indeed, § 72-3-901(1), MCA states:

- (1) Except as provided in subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of **distributees abate**, without any preference or priority as between real and personal property, in the following order:
 - (a) property not disposed of by the will;
 - (b) residuary devises;
 - (c) general devises;
 - (d) specific devises.

(emphasis added).

The term “distributee” is defined under § 72-1-103(14), MCA, as follows:

- (14) “Distributee” means any person who has received property of a decedent **from the decedent’s personal representative** other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee’s hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(emphasis added).

A “testamentary trust” is a trust created under a will and would not include the Dower Family Trust which was created *inter vivos*. Therefore, the

abatement dictated by § 72-3-901, MCA does not apply to the Dower Family Trust because it is not a distributee.²

Under the UPC, a surviving spouse and children, are entitled to receive assets from a decedent's estate in certain instances by virtue of the Statutory Allowances. The Statutory Allowances arise as a matter of law and do not require the surviving spouse or children to file a claim against the decedent's estate. *See* §§ 72-2-412 – 414, MCA. The entitlements which comprise the Statutory Allowances are more particularly described as follows:

1. Homestead Allowance:

A decedent's surviving spouse is entitled to a homestead allowance of \$22,500. [...] The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. § 72-2-412, MCA.

2. Exempt Property Allowance:

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding \$15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. [...] Rights to exempt property and assets needed to make up the deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit the earlier payment of homestead and family allowances. These rights are in addition to any benefit or share passing

² The Dower Family Trust could be a distributee to the extent that the Dower Family Trust received assets from the pour-over will. In which event, the assets flowing from the estate to the Dower Family Trust would be subject to abatement. However, it is our understanding that the Dower Family Trust assets at issue in this case are those which the Dower Family Trust owned prior to Decedent's death.

to the surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way of elective share. § 72-2-413, MCA.

3. Family Allowance:

(1) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support...are entitled to a reasonable allowance in money out of their estate for their maintenance during the period of administration... The family allowance is exempt from and has priority over all claims except the homestead exemption.

(2) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will or the decedent unless otherwise provided, by intestate succession, or by way of the elective share. § 72-2-414, MCA.

These Statutory Allowances exist “to ensure that a surviving spouse is not left penniless and abandoned by the death of a spouse. The allowances are not designed to support the family until they share in the estate, but irrespective of whether they do or do not share.” *In re Lawson*, 222 Mont. 276, 279, 721 P.2D 760, 762 (Mont. 1986). Public policy dictates that defenses such as offset, satisfaction, payment or abandonment are not allowed, assuming such defenses can be proved. *Id.* Instead, public policy dictates that the Statutory Allowances must be liberally construed to “effectuate its purpose, a public policy to protect the surviving family of the decedent.” *In re Estate of Martelle*, 306 Mont. 253, 259, 32 P.3d 758, 763 (Mont. 2001). The Statutory Allowances are “off-the-top” and in addition to any rights flowing from the estate. *Id.*

The Court of Appeals in New Mexico analyzed a case similar to the Estate of Douglas C. Dower in *Bell v. Est. of Bell*, 2008-NMCA-045, ¶ 8, 143 N.M. 716, 181 P.3d 708, which involved an interpretation of New Mexico’s Uniform Probate Code. *Id.* at 714, 722. In *Bell*, the decedent’s estate plan consisted of a pour over will to his revocable trust that provided exclusively for his children from a prior marriage. *Id.* at 718, 740. After the decedent executed his estate plan, he married Mrs. Bell. *Id.* When the decedent died, he was survived by Mrs. Bell and his two children from a prior marriage. *Id.* Mrs. Bell elected to pursue her rights as an omitted spouse, which under New Mexico law entitles her to a share of the estate. *Id.* Mrs. Bell sought to have the assets of the revocable trust included in the decedent’s estate for purposes of calculating her share of the estate. *Id.*

The Court held that the assets of a revocable trust cannot be invaded to satisfy her intestate share (which is the equivalent to an elective share under Montana law). *Id.* at 713-714. The Court concluded that Mrs. Bell misunderstood the distinction between probate and non-probate assets. *Id.* at 713-714. The “probate estate” only consisted of the assets owned by the decedent and acquired by the decedent’s estate. *Id.* at 714. The decedent funded the trust before he died. *Id.* Therefore, the decedent no longer owned those assets because they were now in the possession of the trustee. *Id.* As such, the trust property never became part of the probate estate. *Id.* There

was no statutory provision in the New Mexico Uniform Trust Code that allowed a surviving spouse to invade a trust to satisfy an intestate share. *Id.*

However, the Court held that a revocable trust can be invaded to satisfy claims of creditors and to provide the surviving family with the statutory allowances, when the settlor's probate estate is inadequate to do so. *Id.* In arriving at this conclusion, the Court interpreted the same Uniform Trust Code provision adopted by Montana at § 72-38-505(1)(c). *Id.*

II. Abatement Applies when the Assets of the Estate Are Insufficient to Satisfy the Testator's Intent and the Estate's Obligations.

Abatement applies when there are insufficient assets in the probate estate to “go around,” and is part of “exhausting the probate estate” to pay its obligations. *See* Mark R. Siegel, *Extending Abatement to Non-Probate Succession*, 13 Est. Plan. & Community Prop. L.J. 487, 491 (2021). Montana has adopted an abatement statute set forth in § 72-3-901(1), MCA, which provides as follows:

- (1) Except as provided in subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of the distributees abate, without preference or priority as between real and personal property, in the following order:
 - (a) Property not disposed of by the will;
 - (b) Residuary devises;
 - (c) General devises;
 - (d) Specific devises.

- (3) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by an order

of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

The term “property not disposed of by will” is intended to mean property distributed pursuant to intestacy. *See* Mark R. Siegel, *Extending Abatement to Non-Probate Succession*, 13 Est. Plan. & Community Prop. L.J. 487, 491, n. 54 (2021).

III. The District Court Correctly Concluded that the Dower Family Trust Should not be Invaded to Satisfy the Statutory Allowances.

The District Court properly held that the Dower Family Trust should not be invaded to satisfy the Statutory Allowances because the probate estate is not “inadequate” as required by § 72-38-505(1)(c), MCA, or “insufficient” under § 72-6-112(2), MCA, after application of the abatement rules under § 72-3-901, MCA.

A. Linda’s Argument Disregards the Distinction Between Trust Assets and Estate Assets.

Linda correctly states that the term “estate” under § 72-1-103(15) MCA, includes the term “trust.” However, the crux of her argument as to the inclusion of trust assets in the estate disregards the distinction between a trust estate and a probate estate. In this regard, the *inter vivos* transfer of assets to the Trustee of the Dower Family Trust, resulted in those assets becoming trust property governed by chapter 38 of Title 72. Indeed, an *inter vivos* trust, as opposed to a testamentary trust, is not subject to chapters 1-5. *See also*, § 72-1-103(55), MCA. For a trust to be included in an “estate” it must be subject to chapters 1-5.

B. The Spouse's Entitlement to Statutory Allowances is Not an Absolute Right.

The Decedent's probate estate consists entirely of personal property devised to Linda. Section 72-3-101(2), MCA, provides that "[u]pon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's last will...subject to the homestead allowance, exempt property, and family allowance [.]" These Statutory Allowances are generally in addition to any share passing to the surviving spouse or children "unless otherwise provided." §§ 72-2-412 -414(2), MCA. The phrase "otherwise provided" operates as an exception to the surviving spouse's entitlement to the Statutory Allowances. §§ 72-2-412 -414(2), MCA.

Thus, Linda is entitled to Statutory Allowances of \$57,750 pursuant to §§ 72-2-412 – 414, MCA, so long as the estate is solvent. However, the attorneys' fees and costs and statutory allowances in this case have rendered the estate insolvent in the amount of \$5,807.50 as of August 2020 (and presumably more considering the ongoing litigation). Therefore, the statutory exception under §§ 72-2-412 -414(2), MCA, is triggered because the personal representative must complete an abatement analysis under § 72-3-901, MCA.

It is only after the abatement analysis is applied that the personal representative can declare the estate inadequate or insufficient and invade a

revocable trust under § 72-38-505(1)(c), MCA, or pursue non-probate assets pursuant to § 72-6-112(2), MCA.

C. Abatement Operates as An Exception to the Statutory Allowances when the Estate is Insufficient to satisfy its Claims and Allowances.

When the estate is insolvent, § 72-3-901, MCA, provides a mechanism to satisfy the allowances, claims, expenses, and distributions from an estate. Abatement follows a specific order: (a) property not disposed by will; (b) residuary clause; (c) general devise; and (d) specific devises. § 72-3-901, MCA.

This abatement statute applies when the estate is insufficient to satisfy the claims, allowances, and distributions from an estate unless an exception applies. In this case, the only exceptions to § 72-3-901, MCA, are inapplicable. The Will does not express an order for abatement. *See Lux App. And Reply Br. & Dower App. Br.* Likewise, the testamentary plan or the express or implied purpose of the devise would not be defeated by the abatement. Based on the briefing, it does not appear as though the Trust contains a provision addressing abatement. *See Lux App. And Reply Br. & Dower App. Br.* (not containing a single reference to abatement in the briefs). Linda is likewise not pursuing an elective share, which also operates as an exception to abatement. § 72-3-901(1), MCA.

The Decedent died testate. Lux Br., pg. 1. The only assets subject to estate administration consist of tangible personal property specifically devised to Linda. Dower Br., pg. 6. There are no intestate assets, which renders § 72-3-901(1)(a),

MCA, inapplicable. There are no assets subject to the residuary clause of the Will, rendering § 72-3-901(1)(b), MCA, inapplicable. There are no general devises, rendering § 72-3-901(1)(c), MCA, inapplicable. Thus, the only assets available for abatement consist of the tangible personal property specifically devised to Linda and subject to abatement under § 72-3-901(1)(d), MCA. Accordingly, the tangible personal property abates as necessary to satisfy Linda's Statutory Allowances.

CONCLUSION

The UPC and Montana's Uniform Trust Code work in tandem to fulfill a surviving spouse's Statutory Allowances. However, before a revocable trust can be invaded by a surviving spouse to satisfy statutory allowances under § 72-38-505(1)(c), MCA, or non-probate assets clawed back into an estate under § 72-6-112(2), MCA, the probate estate must be "inadequate" or "insufficient." This requires the personal representative to fully analyze the assets of the estate, and if the estate is insolvent, complete an abatement analysis under § 72-3-901, MCA. Furthermore, as applicable in this case, the abatement statute may "otherwise provide" that the Statutory Allowances are not in addition to a share passing under a will pursuant to §§ 72-2-412-414, MCA. Accordingly, the BETTR Section respectfully requests that the Court find that Linda's specific devise abates to satisfy her Statutory Allowances.

Dated this 23rd day of July, 2021.

Bryan Law Firm, PC

By: /s/ Justin Bryan

Justin Bryan

Chair of the BETTR Section

Patten, Peterman, Bekkedahl & Green, PLLC

By: /s/ Molly S. Considine

Molly S. Considine

Vice Chair of the BETTR Section

McLean, Younkin & Willett, PLLC

By: /s/ Drew Moore Gaertner

Drew Moore Gaertner

Chair of Estate, Trust, Probate Committee

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3), M. R. App. P., I certify the foregoing BRIEF is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count calculated by Microsoft Word is 3,684 words, excluding list of authorities, certificate of service, and certificate of compliance.

DATED this 23rd day of July, 2021.

Bryan Law Firm, PC

By: /s/ Justin Bryan
Justin Bryan
Chair of the BETTR Section

Patten, Peterman, Bekkedahl & Green, PLLC

By: /s/ Molly S. Considine
Molly S. Considine
Vice Chair of the BETTR Section

McLean, Younkin & Willett, PLLC

By: /s/ Drew Moore Gaertner
Drew Moore Gaertner
Chair of Estate, Trust, Probate Committee

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing Reply Brief with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing upon each attorney of record, via e-pass electronically filing on July 23, 2021, addressed as follows:

LAURA E. WALKER
HEATHER M. STARNES
Jardine, Stephenson, Blewett & Weaver, PC
300 Central Avenue, Suite 700
P.O. Box 2269
Great Falls, Montana 59403

LIZA L. DENNEHY
2801 S. Montana
Butte, Montana 59701

/s/ Molly S. Considine
For Patten, Peterman, Bekkedahl & Green

CERTIFICATE OF SERVICE

I, Molly S. Considine, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 07-23-2021:

Laura E. Walker-Livergood (Attorney)
300 Central Avenue, 7th Floor U.S. Bank Building P.O. Box 2269
GREAT FALLS MT 59401
Representing: Linda Gaylene Dower
Service Method: eService

Heather M. Starnes (Attorney)
P.O. Box 2269
Great Falls MT 59403
Representing: Linda Gaylene Dower
Service Method: eService

Liza L. Dennehy (Attorney)
2801 S. Montana
Butte MT 59701
Representing: Jayne Lux
Service Method: eService

Francis Joel Joseph (Attorney)
2801 South Montana Street
Butte MT 59701
Representing: Jayne Lux
Service Method: eService

Electronically Signed By: Molly S. Considine
Dated: 07-23-2021