

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court Cause No. DA 21-0011

IN THE MATTER OF THE CONSERVATORSHIP OF

H.D.K., a Protected Person

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**APPELLANT'S REPLY BRIEF**

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From the Montana Fourth Judicial District Court  
Missoula County  
District Court Cause No. DG-19-52  
Honorable Shane A. Vannatta, Presiding

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## **INTRODUCTION**

On December 3, 2020, the district court filed its *Findings of Fact, Conclusions of Law, and Order* in Missoula County DG-19-52 concluding H.D.K., a protected person, retains testamentary capacity, and essentially setting forth an estate plan to be carried out by the Western Montana Chapter dividing H.D.K.'s estate, 60% to Appellant T.K. ("Tony") and 40% to Appellee S.K.H. ("Sofeea"), to be further valued, if necessary, at the time of H.D.K.'s death.

Tony filed his *Opening Brief* on April 26, 2021. Sofeea filed her *Answer Brief* on June 24, 2021, and H.D.K. filed her *Answer Brief* on June 28, 2021. Most of the facts and legal issues are common between this Reply Brief and the Answer Briefs filed by the above-named parties. Tony hereby incorporates each and every common fact and common legal issue as though set forth in full herein. Tony asserts certain facts relied upon by the district court in its final order (CR 72) and relied upon by H.D.K. and Sofeea in their respective response briefs are stated in error and will be refuted here.

## **SUMMARY OF ARGUMENT**

The trial court deprived Tony of procedural due process or abused its discretion when it denied Tony's request for a Rule 16 Scheduling Order, quashed Tony's subpoena for Dirk Williams to produce H.D.K.'s original estate file,

prematurely issued certain pre-hearing orders, and concluded the hearing on H.D.K.'s testamentary intent after objection. The district court denied Tony's substantive and procedural due process rights when it ordered the Western Montana Chapter to assist H.D.K. in using her estate plan to transfer certain real property, in which Tony has a present interest, to Sofeea upon H.D.K.'s death.

The district court erred when it found H.D.K. retained testamentary capacity by incorrectly concluding H.D.K. was aware of the nature and extent of her property, especially when comparing H.D.K.'s testimony in-chambers with her testimony in court on the same day. The district court erred in finding H.D.K. was able to identify most of her real estate holdings.

The district court erred in concluding H.D.K.'s long standing testamentary intent was to divide her estate 60% to Tony and 40% to Sofeea. Dirk Williams's testimony supporting this assertion lacked foundation and credibility. Dirk William's credibility as a witness is in serious question because of the numerous errors he made in his botched attempt to form an estate plan for H.D.K. and because of his untruthfulness to the court.

The various documents, submitted to the Court by Sofeea, purporting to establish evidence of H.D.K.'s testamentary intent, were inconsistent and were not legally executed documents. The Dec. 6, 2018 letter, written by H.D.K. to Tony

and Sofeea, referencing a distribution list asserted by Sofeea to be H.D.K.'s true wishes, was written under Sofeea's eight months of supervision and the referenced list was not dated. *See original version* filed as Trial Exhibit 2. H.D.K. directly refuted the asserted list in the letter. Trial Exhibit 1, p. 3. Although H.D.K. mentioned 60/40 in the letter, H.D.K. never testified she wanted 60% - 40% split between her children. The statements she made in-chambers and then in her courtroom testimony were unreliable on their face. H.D.K.'s unreliability was confirmed by Dr. Lorretta Bolyard's (a board-certified neurologist) diagnosis of H.D.K. having Major Neurocognitive Disorder, presumably related to Alzheimer's disease.

The district court failed to properly require the completion of an inventory of H.D.K.'s real and personal property before issuing its order distributing H.D.K.'s estate. The filing of the inventory of a protected person's property is a non-waivable requirement and was needed by the district court to properly establish an estate plan if it should have even done so.

## **ARGUMENT**

**A. The district court deprived Tony of procedural due process and abused its discretion for the reasons set forth below.**

### **1. Rule 16 Scheduling Order**

H.D.K. asserted no interested party, including Tony, filed any pleading with the district court “highlighting a dispute in need of adjudication.” H.D.K., RB, p. 16, citing (CR 16, pp.1-3). Sofeea similarly states the district court, in its order denying a Rule 16 Scheduling Order, set forth Tony’s unfulfilled “prerequisite” for such an order, leaving the matter open for further application. Sofeea RB, p.15.

Sofeea filed her *Verified Petition for Appointment of Temporary Conservator; Request for Hearing* July 17, 2019, purportedly to protect H.D.K.’s “assets [from] immediate risk because of ongoing pressure and influence from other family members ....” (CR 1, p. 3 at ¶ 15). Sofeea further indicated in her initial pleading there were unresolved issues for which mediation might be appropriate. (*Id.*, ¶ 12). Sofeea identified the unresolved issues as: 1. H.D.K.’s estate plan needing correction; and 2. Said estate plan getting corrected without undue influence. (*Id.*, ¶ 11). The Court ultimately ordered the parties to mediate their dispute. (CR 14). The parties and the court clearly recognized the nature of the disputes at bar and to whom the accusations were aimed. The district court denied Tony procedural due process when it denied Tony’s request for a Rule 16 Scheduling Order. (CR 15, 16, 17); Tony, OB, pp. 23-25.

The standard for abuse of discretion was identically cited by all parties under *City of Missoula v. Mountain Water Co., 2016*. See, Tony, OB, (Standards of

Review, pp. 19-20). The Court failed to comply with following mandatory language of the rule:

Upon request by a party, except in categories of actions exempted by district court rule, the judge must issue a scheduling order after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

25-20-16(b)(1), MCA; cited in (CR 15).

Tony filed his Rule 16 request on Feb. 24, 2020, (CR, 15), which followed the court's *Order Extending Temporary Conservatorship and for Mediation*. (CR 14). Sofeea filed her response objecting to the request on Feb. 27, 2020, (CR, 17), and the court denied Tony's request on Feb. 17, 2020. (CR, 16). Mediation was ordered by the court for the parties to settle their dispute. (CR, 14). The court's denial is a clear contradiction of the governing rule.

In pertinent part,

Within fourteen days after service of the opposing party's answer brief, the movant may file a reply brief or other appropriate responsive documents.

Rule 2, Uniform District Court Rules.

The order of events as entered in the ROA Listing suggest the court entered its denial of Tony's Rule 16 request before Sofeea filed her objection and well before Tony's procedural right to file a reply in support of his original motion expired. The court's misapprehension of the facts set forth in Sofeea's initial petition as undisputed and its own recognition there was a dispute to be mediated coupled

with its order foreclosing Tony's request for a Rule 16 Scheduling Order denied Tony his procedural due process right to reply to Sofeea's objection under Rule 2. The court's misapprehension further denied Tony's procedural due process right to obtain a Rule 16 Scheduling Order as prescribed by said rule. Rule 2 and Rule 16 of the Montana Rules of Civil Procedure are clearly stated as a matter of statutory construction. U.D.C.R. 2(b-c); M. R. Civ. P. 16(b)(1). The court's failure to comply lacked conscientious judgment, exceeded the bounds of reason, and was procedurally arbitrary. *City of Missoula v. Mountain Water Co.*, 2016 MT 183, ¶ 18, 384 Mont. 193, 378 P.3d 1113 (add'l. citations omitted). The court abused its discretion.

## **2. Subpoena Duces Tecum – Dirk A Williams**

Sofeea stated Tony did not argue waiver of attorney-client privilege when the court quashed his subpoena for Dirk Williams to produce certain documents and Tony had the opportunity to present non-privileged information in Dirk Williams's possession to the extent such information supported Tony's cause. Sofeea, RB, p. 16.

Tony filed his Notice of Service of Subpoena (accompanied by the actual Subpoena Duces Tecum) on Aug. 31, 2020. (CR, 33). H.D.K. filed her *Motion to Quash Subpoena* on Sept. 3, 2020. (CR, 35). The court issued its *Order to Quash*

*Subpoena* without legal authority on Sept. 10, 2020, (CR, 39), once again precluding Tony from his right to submit a reply brief within fourteen days under Rule 2 of the Montana Uniform District Court Rules. This premature foreclosure of Tony's right to argue his position is perplexing because it demonstrates the court's continual failure to provide basic procedural due process according to a clear-cut rule.

If Tony had been given his procedural right to reply, he would have requested Dirk Williams submit a privilege log (*See*, Rule 45(e)(2)(A)(ii), M. R. Civ. Pro.), regarding the perceived pertinent documents. Tony, OB, p. 25. Tony would have argued H.D.K. waived the privilege by virtue of her having consented to both his and Sofeea's presence at numerous estate planning meetings held between her and Williams. H.D.K. also waived her privilege when she requested Williams turn her file over to Tony. (CR, 61, ¶¶ 20-21; *See*, CR, 61, ¶¶ 17-19). Tony's subpoena duces tecum requested Williams,

To produce all documents in your possession or control related to or in support of your *Initial Report of Counsel for [H.D.K.]* filed with the Court in the above captioned matter on Sept. 17, 2019....

(CR, 33).

In his report to the court, Williams stated,

... more than one hundred pages of documents and correspondence referred to in this report are not attached. The undersigned will provide those documents to the Court at its request.

(CR, 10).

Under subpoena of H.D.K., the court, ultimately agreeing with Tony, allowed Williams to testify to the contents of his report. *See* CR 42; Tr. 9/18/20, 8: 17-25.

Under the above-stated facts, Tony would have also argued for Williams to turn over the “more than one hundred pages” foundational to his disclosed report to the court and not protected by privilege.

The court’s purpose in allowing Williams to testify was to determine H.D.K.’s testamentary intent. *Id.* Williams was allowed, against objection based on lack of foundation (*see* Tr. 9/23/20, 3:05 p.m., 17: 1-9; *See also*, Rule 1006, Montana Rules of Evidence), to provide lengthy testimony espousing H.D.K.’s intent to split her estate between Tony 60% and Sofeea 40% and accuse Tony of undue influence. William’s report to the court and oral testimony amounted to a one-sided, unsubstantiated, soliloquy repeatedly referencing a fictitious 60/40 split not found in any estate document properly executed by H.D.K. or in Williams’s file. (*See*, CR 10; Tony, OB, pp. 26-27; *See also*, CR, 50). None of the exhibits Williams attached to his report to the court were actual trust or other testamentary documents acknowledged by H.D.K. or her deceased husband. (CR, 10, Exhibits A-C.) Starkly missing from William’s report is a copy of the properly executed *James and [H.D.K.] Trust*, Aug. 20, 2014. Trial Exhibit B.

In relevant part, the James and [H.D.K.] Trust states:

b. **Specific Distributions at Survivor's Death.** Upon the death of the surviving Settlor, the Trustee shall distribute:

i. all of the trust's interest in South First 615, LLC and Dara Properties, LLC to our son, Tony Koures, outright and free of trust. If Tony fails to survive us, the Trustee shall hold, administer and distribute the trust's interest in South First 615, LLC and Dara Properties, LLC to Tony's descendants, per capita at each generation, subject to Article XI; and

ii. all of the trust's interest in Victor Properties, LLC to our daughter, Sofeea, outright and free of trust. If Sofeea fails to survive us, the Trustee shall hold, administer and distribute the trust's interest in Victor Properties, LLC to Sofeea's descendants, per capita at each generation subject to Article XI.

Trial Exhibit B, p. 8, b(i-ii).

The distribution portion of the trust is based on specific properties being distributed through specific LLCs, not by percentage. Percentages are not discussed anywhere in any properly executed estate document, including H.D.K.'s pour over will. Trial Exhibit B; *see also* Exhibit 2 filed contemporaneously with CR 50). A distribution of 60% Tony and 40% Sofeea is not contemplated by any properly executed estate document, and the court refused requested production of contemporaneous foundational documents, if any, providing proper context and weight, or lack thereof, to Williams's report and/or testimony. (*See*, CR, 50). The court denied Tony procedural due process and abused its discretion when it precluded Tony's right to be heard by not following Rule 2, Montana Uniform District Court Rules, by not applying its options under Rule 45, M. R. Civ. Pro.,

and by allowing Williams to submit and testify to his report to the court without providing access to the foundational documents referenced therein. The court's abuse of discretion prevented Tony access to material evidence, thereby prejudicing his case.

**3. Tony is legally entitled to due process rights in H.D.K.'s conservatorship action.**

Sofeea and H.D.K. mischaracterized the reference to adult children not having constitutional due process rights in their interpretation of *In re Guardianship & Conservatorship of A.M.M.*, 2016. A.M.M. had eight adult children and was the protected person in a guardianship and conservatorship. *In re Guardianship & Conservatorship of A.M.M.*, 2016 MT 213, ¶ 3, 384 Mont. 415, 380 P. 3d 737. Due to questionable behaviors, the district court granted a preliminary injunction to A.M.M.'s guardian restricting the visitation, among other things, of Timothy and Genet, two of the adult children, with A.M.M. *Id.* at ¶ 7. Timothy and Genet appealed this issue citing both a violation of A.M.M.'s constitutional rights and their own due process and equal protection constitutional rights "by granting the preliminary injunction." *Id.* at ¶¶ 11-13.

In its decision, the Court did not state adult children do not have standing to assert their own constitutional rights. More precisely, the Court found Timothy and

Genet did not have standing to assert A.M.M.’s constitutional rights and did not successfully “advance any authority for their proposition ... the constitutional rights of adult children are implicated in the guardianship and conservatorship proceedings of an incapacitated parent.” *Id.* at ¶¶ 12-13. Unlike in contested custody cases involving minor children where there is a rebuttable presumption parents and children have a fundamental constitutional right to visitation and association (*See, Troxel et vir. V. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *See also, Hardwick v. Cnty. Of Orange*, 980 F.3d 733 (9th Cir. 2020), *citing to Smith v. City of Fontana*, 818 F.2d. 1411, 1418 (9th Cir. 1987)), no such right exists between adults. This distinction along with the lack of standing to assert the constitutional rights of a third party generally (even if related in kinship) seems legally obvious.

In A.M.M., 2016, the Court found the district court did provide Timothy and Genet their due process rights regarding the temporary injunction because it held a show cause hearing in which both parties were provided the right to be heard on the matter. *Id.* at ¶ 18. Timothy and Genet failed to show why the preliminary injunction was a constitutional violation and why they should not be enjoined from unrestricted contact with A.M.M. *Id.* Tony’s right to be heard has been severely abridged by the district court’s numerous violations of the Montana Rules of Civil Procedure. Sofeea and H.D.K. misstated the meaning of the Court’s decision in

A.M.M. If Tony's right to be heard had not been abridged by the district court's procedural errors and trial truncation, Tony and other witnesses would have testified to Tony's monetary investments in his parents' rental business, the promises made by his parents regarding Tony's ownership in the business causing his family to relocate to Missoula, and the fact Tony has present interest in some of the properties wrongfully transferred by H.D.K. on advice of Dirk Williams as described later in this brief. (*See*, CR, 50).

Sofeea, citing *In re Estate of Bayers*, (1999), and H.D.K., citing Mont. Code Ann. § 72-5-401, each offer their respective recitals regarding the purpose of a guardianship or conservatorship, which is to provide a non-adversarial proceeding in which the focus is on the management of the protected person's affairs within the scope of the protected person's best interests. Sofeea, RB, p.13; H.D.K., RB, p. 15. In *Bayers*, the Court was settling the issue of whether a guardian's attorney's fees should be paid from the ward's estate. *In re Estate of Bayers*, 1999 MT 154, ¶¶ 17, 20, 983 P.2d 342, 343. The Court further held,

As discussed above, payment of a guardian's attorney's fees by the conservator of the ward's estate is relief to which the guardian would otherwise be entitled if, ..., the court determines that the petition was brought in good faith and the appointment of a guardian was in the best interest of the protected person.

*Id.* at ¶ 20; (Emphasis added).

In this case, Sofeea’s petition for conservatorship was not brought in good faith, nor was it brought as a non-adversarial action. In her petition recitals, Sofeea complained H.D.K. was unable to complete her estate plan due to the undue influence of “other family members,” which became a clear reference to Tony and his extended family during the subsequent hearing. (CR, 1, ¶¶ 8-9). Sofeea asserted H.D.K.’s “assets are at immediate risk” due to said undue influence but failed to state the particulars. *Id.* at ¶ 15. In fact, H.D.K. was at financial risk from Sofeea, not Tony as implied in the petition. To grasp Sofeea’s unauthorized money grabs from H.D.K.’s financial resources, including money taken from H.D.K. and her husband’s accounts right after James died, as well as a loan taken out for Amalia Huffman’s (Sofeea’s daughter) business interests, the Court needs to review Cyndy Koures’s affidavit with its attached exhibits. This will help the Court understand H.D.K.’s finances in the context of this case. (*See*, CR, 61, with all attached exhibits). It is because of the district court’s abuse of discretion when it prematurely closed the proceedings it is now necessary for this Court to review such voluminous information.

Sofeea requested an institutional conservator (Western Montana Chapter) be appointed while then illogically and incorrectly stating there would be no need for the appointment of a physician or visitor “because the need for a conservator arises from undue influence and not from any lack of capacity on the part of [H.D.K.].”

*Id.* at ¶ 16; *See* Mont. Code Ann. § 72-5-408(3). Sofeea made her desire to mediate “to assist with the efficient resolution of the issues,” a priority from the outset. *Id.* at ¶ 12. Sofeea was not concerned about the best interests of H.D.K., only about using the conservatorship as a smokescreen to accuse Tony and his family of wrongdoing and to rebalance the estate plan drawn up by Dirk Williams more to her preference.

The district court issued its order extending the Temporary Conservatorship for six months and for the parties to “attend a mediation of this dispute ...” Feb. 21, 2020, a full five months after ordering the appointment of the temporary conservator and well before complying with the mandatory appointment of a physician and visitor under § 72-5-408(3). (CR 14; CR 2). The ordered mediation was held March 4, 2020. The mediation was held to settle the estate plan dispute between Sofeea and Tony as alleged by Sofeea. It happened before statutory requirements of defining the scope of the conservatorship and completing an inventory were met as set forth in Montana Title 72 designed to protect the interests of H.D.K. (CR 18, CR 23, ¶¶ 2-6, Brief in Support, pp. 2-3); *See*, § 72-5-421(1); *See also*, § 72-5-424(1). On Aug. 3, 2020, more than one year after appointing the Western Montana Chapter as temporary conservator for H.D.K., the district court issued its order appointing the physician and visitor, defining the conservator’s powers and giving the conservator the authority “to inventory and

account for the Protected Person’s property, both real and personal . . . .” (CR 30, ¶¶ 1-4). The “inventory and account” were supposed to be completed pending the hearing set for Sept. 18, 2020. *Id.* at ¶ 3(a-f). The court’s failure to enforce this provision constitutes an abuse of discretion.

Sofeea filed her petition for conservatorship in bad faith to engage in an adversarial process designed to cause a material change, to her preference, in the estate plan originally crafted by Dirk Williams on behalf of H.D.K. Tony and H.D.K. were forced into a mediation doomed to failure partly because the mediation was not about focusing on H.D.K.’s best interests, but about Sofeea attempting an end run around the normal due process generally afforded by the court system. The mediation was also doomed because the crux of the matter was about property subject to a botched estate plan that would have necessarily been cleared up if a proper accounting and inventory had been completed within the 90-day requirement and H.D.K.’s capacity had been determined in a timely manner. However, the conservator did not file any accounting or inventory until well after the close of trial and notice of this appeal. The district court filed its *Findings of Fact, Conclusions of Law and Order* on Dec. 3, 2020, almost a year and a half after appointing a temporary conservator. Sofeea and the court focused their efforts on litigating Sofeea’s disgruntlement over H.D.K.’s estate plan rather than focusing on “the purpose of a conservatorship, [which] is to promote the effective

management of the property and affairs of the person to be protected.” H.D.K., RB, p. 15 *citing to* (CR 16, p. 12); § 72-5-401.

Importantly, H.D.K.’s abbreviated rendition of the pertinent code above is somewhat incomplete. Stated precisely, it says the original petitioner may be:

The person to be protected, any person who is interested in that person's estate, affairs, or welfare, including that person's parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order.

Mont. Code Ann. § 72-5-401.

The term, “Adversely” appearing in the code taken within its total context and interpreted as to its plain language, allows a petitioner to file based on adversarial grounds. Sofeea cannot have her cake and eat it too. Sofeea attempted to claim, incorrectly, Tony has no due process rights because she again misstated the rulings in *A.M.M.* and *Bayers*. Sofeea, RB, p. 13. More precisely, the Court states:

“Guardianship for an incapacitated person may be used only as is necessary to promote and protect the well-being of the person.” Section 72-5-306, MCA. We have stated that “a petition to appoint a guardian is not an adversarial proceeding, but rather a proceeding to promote the best interests of the person for whom guardianship is sought.”

*In re Guardianship & Conservatorship of A.M.M.*, 2016 MT 213, ¶ 13, 384 Mont. 418, 380 P. 3d 739-740, *citing to In re Estate of Bayers*, 1999 MT 154, ¶ 14, 295 Mont. 89, 983 P.2d 339 (citation omitted).

The plain language of *A.M.M.*, *Bayers*, and § 72-5-306, MCA applies to guardianships, not conservatorships. *A.M.M.* involved both a guardianship and conservatorship, whereas *Bayers* involved only a guardianship. The case before this Court is distinctly a conservatorship matter; therefore, § 72-5-306, MCA does not apply.

Notwithstanding Tony's assertion Sofeea's petition was made in bad faith, § 72-5-401, MCA clearly allows a petition for conservatorship to be filed citing matters of an adversarial nature for the purpose of protecting the petitioner from adversarial affects. Sofeea's petition asserted contentious claims known to the court against "other family members" and then proceeded to insist on a premature mediation to settle H.D.K.'s estate plan in her favor. Tony was clearly entitled to due process.

**i. The district court violated Tony's right to property without due process.**

H.D.K. incorrectly states there is no dispute the property at issue in this case is H.D.K.'s property. H.D.K., RB, p. 15. On the contrary, the district court has reallocated H.D.K.'s estate plan in such a way it takes, in part, Tony's present interest in particular real property from him without due process of law for all the reasons set forth above, and because it cut short the trial proceedings preventing

Tony from being heard on the matter through the testimony of other witnesses against objection. Tr. Oct. 6, 2020, 56: 9-25; 57: 1-25; 58: 1-17. (*emphasis added*).

In its final order the district court provided in part,

II. The Western Montana Chapter, as conservator for [H.D.K.], shall assist [H.D.K.] as needed in transferring the following properties to Victor Koures Properties, LLC, with the intention that the same shall pass to Sofeea upon [H.D.K.'s death:

330 Tremont

612 S. 1<sup>st</sup> Street

400 Rollins

535 S. 2<sup>nd</sup> St. W

800 Chestnut

Cramer Creek

923 Simons

(CR, 72, Order II).

Tony attached several exhibits to the affidavit he filed with the court after it closed the hearing proceedings on Oct. 05, 2020. (CR 50, Exhibit 21.5 (Quitclaim Deed).

The provision above means Sofeea will acquire 535 S. 2<sup>nd</sup> St. W. upon H.D.K.'s death. However, Tony and Sofeea legally share a present property right in the real property at that address. The Quitclaim Deed recorded in Book 340, page 877 in Missoula County reflects Joint Tenancy ownership between Tony, his sister, his deceased father, and H.D.K. (CR, 50, Exhibit 21.5) Had the district court had access to an inventory and accounting from the Western Montana Chapter before

issuing its final order, the court would have known about Tony's present property interest in 535 S. 2<sup>nd</sup> St. W, which has now been misallocated because of the misapprehension by the court. The same would be true if the court had allowed Tony to put his wife, Cyndy, on the stand to testify about H.D.K.'s finances and the current disposition of real property ownership. *See*, Tr. Sept. 18, 2020, 17:5-25; 18:1-25; 19:1-6.; *See also*, Tr. Oct. 10, 2020, 56: 9-25; 57: 1-24. Dirk Williams ignored Tony's property rights when he transferred certain deeds in which Tony has current property rights to Victor Properties without any signature or other authority from Tony. (CR, 50; Exhibit 22 attached).

The district court, by additional misapprehension for the same reasons, also deprived Tony of his present property right in Cramer Creek. (CR, 72, Order II). The current Warranty Deed recorded in Book 296 on page 1909, (physical description in part: East Half Northwest Quarter, Southeast Quarter ....), reveals a portion of the Cramer Creek property to be owned in Joint Tenancy by the same parties noted above. (CR, 50, Exhibit 21.22). When Dirk Williams funded the *[H.D.K.] and James Koures Trust* (the Trust), he wrongfully assisted James and *[H.D.K.]* in putting "Cramer Creek E 20" into the trust without Tony's permission because as previously noted, Tony has a present interest in that portion of the Cramer Creek property. The court has further ordered 923 Simons go to Sofeea and 919 Simons go to Tony upon H.D.K.'s death. (CR, 72, Order II). Alas, Tony

and Sofeea are owners in Joint Tenancy of 923 Simons and 919 Simons with their deceased father and H.D.K. according to a Warranty Deed recorded in book 313 on page 1493 in Missoula County (*see*, CR, 50, Exhibit 21.42; lot 1 is 923 Simons and lot 2 is 919 Simons). In *Redies v. Cosner*, (2002), the Court ruled, “We cannot agree that the 90 day inventory requirement in § 72-5-424(1), MCA, is discretionary for Montana’s trial courts or for conservators as a matter of law.” *Redies v. Cosner*, 2002 MT 86, ¶ 18, 384 Mont. 315, 48 P.3d 701. If the district court had enforced the non-waivable requirement the Conservator file an inventory, its repeated misapprehension of how H.D.K.’s properties were currently titled need not have happened. In its misapprehension of the facts the district court committed clear error which deprived Tony of his constitutional right to property without due process of law. *See*, Tony, OB, p. 20; *citing*, *In re Eldorado Coop Canal Co.*, 2016 MT 94, ¶ 17, 383 Mont. 205, 369 P.3d 1034 (citations omitted).

Again, Tony has been deprived of his constitutional right to property without due process of law. In *Bayers*, the Court states,

Due process is defined as the constitutional guaranty that no one shall be arbitrarily deprived of her life, liberty or property. The essence of substantive due process is that the State cannot use its police power to take unreasonable, arbitrary or capricious action against an individual.

*In re Estate of Bayers*, 1999 MT 154, ¶¶ 22, 983 P.2d 343, 344; *citing*, *Matter of C.H.* (1984), 210 Mont. 184, 193, 683 P.2d 931, 936.

More particular to citizens of Montana, “No person shall be deprived of life, liberty, or property without due process of law.” Constitution of Montana, Article II, Section 17. Although the appellant in Bayers did not properly assert a constitutional due process right, Tony does so in this case. The district court had at least two opportunities to discover Tony’s current property interests: 1. Through the testimony of Cyndy Koures who was denied the opportunity to take the stand twice even after Tony made an offer of proof twice as to the intended content of said testimony. If Tony had been given more time to testify, he would have corroborated the same. *See*, Tr. Sept. 18, 2020, 17:5-25; 18:1-25; 19:1-6.; *See also*, Tr. Oct. 10, 2020, 56: 9-25; 57: 1-24; and 2. By actual examination of the aforementioned property deeds which were admitted to the record after the close of hearing proceedings. (CR, 50, all exhibits attached).

The court’s failure to enforce the mandatory language of § 72-5-424(1), MCA and allow Tony to submit material evidence through Cyndy and Eleni Koures was a violation of Tony’s procedural due process rights. The court’s denial of these rights led it to order a division of property estate plan fraught with clear error resulting in the deprivation of Tony’s constitutional right to property without due process of law. When the district court detrimentally affected Tony’s substantial right to property it abused its discretion. *See* Tony, OB, pp. 19-20; *citing*, *City of Missoula v. Mountain Water Co.*, 2016 MT 183, ¶ 18, 384 Mont.

193, 378 P.3d 1113; *In re Eldorado Coop Canal Co.*, 2016 MT 94, ¶ 17, 383 Mont. 205, 369 P.3d 1034.

**B. The district court incorrectly found H.D.K. retained testamentary capacity.**

Before providing legal analysis regarding testamentary capacity, Tony will bring to the Court's attention several material errors asserted by the district court and the other parties. Sofeea and the district court mistakenly assert Tony and Cyndy transported H.D.K. to her neuropsychological examination in Butte. Sofeea, RB, p. 9; (CR, 72, FOF, ¶ 13). The court further asserts Dr. Bolyard interviewed Tony. *Id.* In fact, the following is true:

[H.D.K.] was seen alone for the clinical interview and formal assessment. Her daughter-in-law and adult granddaughter (Cyndy and Eleni) were present for the discussion of informed consent only – and Cyndy provided a number of informal and formal documents that I reviewed prior to and following meeting the patient. She also scheduled all appointments. Both Cyndy and Tony ... accompanied her to the feedback of test results.

(CR, 23; Neuropsychological Evaluation attached as Exhibit A, p. 1).

Dr. Bolyard did not speak with or meet Tony until he accompanied Cyndy to the follow-up meeting which took place after H.D.K.'s examination. Dr. Bolyard also had direct communications with Dirk Williams (H.D.K.'s estate attorney and court appointed attorney for conservatorship) on Aug. 23 and 24, 2019 to discuss her findings and "provide preliminary feedback." *Id.* Any insinuation by Sofeea, (*See,*

Tr. Sept. 23, 2020, 25:10-25; 26: 1-25; 67:1-25; 68: 1-13), H.D.K. and the court Tony somehow manipulated a licensed neuropsychologist to conjure up a biased evaluation goes beyond the pale. *See*, Tr. Oct. 5, 2020, 28: 10-25; 29-34; 35: 1-19.

The court misstates the context of what H.D.K. stated to Dr. Bolyard during her clinical interview as follows:

Dr. B[o]lyard's report indicates [H.D.K.] also made unusually derogatory statements regarding herself and Sofeea to Dr. Bolyard, including stating that she and Sofeea were "empty headed." This statement was contradicted by [H.D.K.] in her testimony to the Court on September 23, 2020, when she testified that she considers both herself and Sofeea to be intelligent.

(CR, 72, FOF, ¶ 14).

The proper context of H.D.K.'s statement can only be gleaned from reading it verbatim:

... [H.D.K.] said she has always been "a little vulnerable ... I mean I kinda believe things people tell me, I don't know, I guess I'm gullable, naïve." She added, "my kids can talk me into anything ... they are my kids, I trust them." Later she said "I tend to listen to Tony because he's smart, you know he's an attorney ... Sofie is more [like me, she's empty headed."

(CR, 23; Neuropsychological Evaluation attached as Exhibit A, p. 3).

These remarks are made in the context of a person being self-reflective about individual vulnerabilities during a clinical interview in the privacy of a psychologist's office. Notably, only the court described these statements as unusually derogatory, not Dr. Bolyard.

H.D.K.'s testimony occurred in the Missoula County District Court with a Judge and three attorneys present, and it was in response to direct examination by Sofeea's counsel. *See*, Tr. Sept. 23, 2020, 2:00 p.m., 26: 4-25. H.D.K.'s court testimony, although different from what she stated to Dr. Bolyard, does not controvert the fact she said it. Nor should it come as a surprise when considering the state of H.D.K.'s cognitive impairment. In summary:

With a reasonable degree of neuropsychiatric certainty, it is my opinion that [H.D.K.'s] cognitive deficits render her completely incapable of managing all aspects of her financial affairs and other personal matters at this time. Her prognosis is considered poor and she will require increasing levels of support across time to manage all aspects of her activities of daily living. As such, it is my opinion that she requires a full guardian and conservator to safeguard her assets and to preserve her best interests for the foreseeable future.

Regardless of who represents [H.D.K.], it certainly seems important to review any and all financial and legal decisions made in the ... past year, as my discussions with her and formal tests results indicate that her lack of capacity could undoubtedly extend back that amount of time.

(CR, 23; Neuropsychological Evaluation attached as Exhibit A, p. 11).

Even if this Court concludes the district court did not misapprehend the evidence as Tony asserts here, when taken on the whole, the court below clearly made a mistake. *See, In re Eldorado Coop Canal Co.*, 2016 MT 94, ¶ 17, 383 Mont. 205, 369 P.3d 1034 (citations omitted).

Dr. Bolyard's report was issued on Aug. 23, 2019, which means H.D.K.'s decision making was affected at least beginning Aug. of 2018. The district court

ignored the seriousness of H.D.K.'s cognitive condition when it decided to give the letter written by H.D.K. in Dec. 2018 under the control and supervision of Sofeea substantial weight. (CR, 72, FOF, ¶¶ 16, 25; COL, ¶ E); Tr. Oct. 5, 2020, 16: 13-22. Had Tony been allowed to finish his testimony and Eleni Koures been allowed to testify at trial, the Court would have been informed about Sofeea's success in isolating, controlling, and influencing H.D.K. at the time the Dec. 2018 letter and Feb. 2019 trust amendment, (CR, 72, FOF, ¶ 23; COL, ¶ E), were drafted. (CR, 50; CR, 62). The district court abused its discretion by refusing to continue the hearing and not consider the evidence admitted after close of trial. This resulted in the court misapprehending the effect of the evidence, thereby committing clear error. *See, Tony, OB, p. 19-20.*

The district court misstated the evidence presented at trial when it found, “[H.D.K.] reiterated her intentions to convey 60% of her estate to Tony, and 40% to Sofeea.” (CR, 72, FOF, ¶ 16. H.D.K. never “reiterated a 60/40 split on the record definitively. Although H.D.K. verified the letter (Exhibit 1) as “... something I wrote” and that the letter still reflects the way she feels, she did not remember the letter until after it was presented to her by Sofeea's counsel. Tr. Sept. 23, 2020, 13:17-25; 14: 1-18. In fact, her final answer was tentative: “Q. ...Those are your opinions today, as well? A. I think so, yeah.” *Id.* at 14: 17-18.

The court's findings regarding this testimony were inaccurate, and therefore, constitute clear error.

Regarding testamentary capacity, Sofeea stated Tony “demonstrated some modicum of conflicting evidence, but this comes nowhere near a showing of clear error.” Sofeea, RB, p. 20. In reviewing [H.D.K.'s] testimony at trial, she named many of her real estate properties, but only after direct prompting from Sofeea's counsel. For example, counsel asked H.D.K. about her “rental properties” and later asked, “and other than your rental properties.” Tr. Sept. 23, 2020, 2:00 p.m., 7: 14-25; 8: 1-25; 9:1-10; 11: 11-25; 12: 1-2. In pertinent part, the Court in *Quirin*, (2015) stated,

The testator must have sufficient strength and clearness of mind and memory to know, in general, without prompting, the nature and extent of the property of which he is about to dispose, and the nature of the act which he is about to perform, and the names and identity of the persons who are to be the objects of his bounty, and his relation towards them.

*In re Estate of Quirin*, 2015 MT 132, ¶ 14, 379 Mont. 176, 177, 348 P.3d 661, (other citations omitted).

The Court further asserted it is retaining the aforementioned testamentary capacity test while restating it. *Id.* Although the Court chose to no longer consider “the testator's strength and clearness of mind and memory to know the elements,” it remained silent on whether a testator should meet the elemental standards of testamentary capacity “without prompting.” *See, Id.* at ¶¶ 14,15. Tony asserts prompting was not at issue in *Quirin*; however, it remains a material condition for

testamentary capacity. H.D.K. had her memory prompted by Sofeea's counsel several times during her hearing testimony as noted above.

When [H.D.K.] was asked about the names of her banking institutions, she answered in part, "I think it's Western Bank, or First National Bank or – what's that other one? Anyway ...." Tr. Sept. 23, 2020, 2:00 p.m., 10: 12-14. These banks don't exist in Missoula, and H.D.K. does not have accounts at these banks. This would have been known to the district court if an inventory and accounting had been timely filed as required by statute and previously ordered by the court. With regard to her properties, H.D.K. also claimed ownership over a property she does not own, 310 South Sixth West. *Id.* at p. 8: 12. H.D.K. was unable to satisfy the test for awareness of the nature and extent of her property without repeated prompting and she answered incorrectly about some of her holdings. Again, H.D.K.'s difficulties should not be surprising given her cognitive state as diagnosed by Dr. Bolyard in August of 2019, more than a year prior to H.D.K.'s testimony. (CR, 23; Neuropsychological Evaluation attached as Exhibit A, p. 11).

Importantly, the district court held an in-chambers meeting with H.D.K. with Trent Baker present on Sept. 23, 2020 at 1:30 p.m., only thirty minutes prior to H.D.K.'s testimony given in court. *See*, Tr. Sept. 23, 2020, 1:30 p.m.; *See also*, Tr. Sept. 23, 2020, 2:00 p.m. This in-chambers meeting was held against Tony's objection based on the rules against ex parte communication and with the

understanding from the Court it would not seek substantive information relevant to the case at bar. (CR, 32); *See*, Tr. Sept. 18, 2020, 11: 3-13. Notwithstanding the objection and the district court’s overreach in this matter, it is clear from the transcript of the in-chambers meeting the court intended and did attempt to evaluate H.D.K.’s testamentary capacity, a substantive issue in this case. Tr. Sept. 18, 2020, 1-32. Because of the “on the record” hearing immediately following the in-chambers meeting and Tony’s belief nothing substantive was discussed in-chambers, Tony was deprived of his procedural due process right to cross-examine H.D.K. on her answers to the Court in-chambers. This was the exact reason Tony had objected to such an ex parte meeting.

Nevertheless, while in-chambers and when the court asked H.D.K. if she and her deceased husband had an estate plan, H.D.K. claimed “Well, I think so, kind of. But I – we didn’t really write it down.” Tr. Sept. 23, 2020, 1:30 p.m., 13:13-25; 14: 1-8. When the court asked H.D.K. if she and her husband spoke with “Anybody else?” or if H.D.K. spoke with an attorney about the estate plan, H.D.K. said No.” *Id.* at 14: 4-15. This demonstrates H.D.K.’s profound lack of awareness regarding the nature and the extent of the property to be disposed of. In *Quirin*, the Court noted:

Quirin’s awareness of the nature and extent of her property was ... supported by substantial evidence. During the months surrounding execution of the 2010 will, Quirin had several interactions with her

banks, withdrawing money and changing the names on accounts. She kept large amounts of money in her house but was able to recall where the money was kept and approximately how much money was hidden. When discussing with Moe the changes to make to her will, Quirin was able to identify her assets, including her cash, the amount of money she had given to Fankell for her care, her bank accounts, and her house.

*In re Estate of Quirin*, 2015 MT 132, ¶ 20, 379 Mont. 178, 348 P.3d 662.

When the court held its in-chambers meeting with H.D.K., every purported estate document that had been or would be admitted to the court had already been drafted, yet H.D.K. indicated to the court she did not have a written estate plan and had not sought an attorney to help her draft one. Bear in mind H.D.K., with her deceased husband, retained Dirk Williams for the purpose of drafting an estate plan in 2009, signed the *James and [H.D.K.] Trust* and pour over will in 2014, various LLC organizational documents and various deed transfers in 2015, a letter to her adult children in 2018 (*note*: signed your mother), and a *Beneficiary Deed* in 2019. *See*, (CR, 10, pp. 5-11); Trial Exhibit D; (CR 50, Exhibits 2, 5, 18, 21 attached); Trial Exhibit 1. H.D.K. did not recall a single written document when questioned by the district court in-chambers. When the court asked H.D.K. how she might distribute her estate, H.D.K. answered, “Well, Tony would probably get most of it, but Sofee would get some.” Tr. Sept. 23, 2020, 1:30 p.m., 15: 12-13. Upon further inquiry by the court, “... how much goes to Tony and how much goes to Sofeea?”

H.D.K. responded, “I don’t know. It’s – maybe, 60/40. .... 65/35. .... I don’t know for sure yet.” *Id.* at 15: 14-24.

Upon inquiry from the court regarding money and income, H.D.K. told the court she doesn’t know how much rental income she gets each month and further explained Cyndy, (Cyndy Koures, Tony’s wife) does the books. *Id.* at 17: 10-25; 18:1-3. Only thirty minutes later at trial in the courtroom, H.D.K. stated, without certainty, she receives “Uhm, maybe, 13,000.” Tr. Sept. 23, 2020, 2:00 p.m., 9: 16-23. There is no reliability in this testimony. It was a guess. H.D.K. did identify monthly income from Social Security in the amount of \$1000 per month. Tr. Sept. 23, 2020, 1:30 p.m., 18: 7-10. Clearly outside the scope of the district court’s statement it would not be using this in-chambers meeting to inquire on substantive issues, the court insinuates Cyndy Koures may need supervision because she is keeping the books and taking in the rent. “The Court: .... Cindy is taking in all of the rent, and taking care of it, but it seems to me that you are not supervising Cindy, are you?” *Id.* at 18: 19-25; 19: 1-7.

Tony takes exception to the court furthering the insinuation against Cyndy by discussing with H.D.K. how it manages properties for its own elderly mother and makes sure she knows “on a regular basis what money is coming in. And, of course, she can ask me at any time, too.” *Id.* at 19: 9-24. Contrary to the court’s apparent suspicion of Cyndy Koures’s intentions, Cyndy submitted her affidavit on

the record explaining how she routinely met with H.D.K, when H.D.K. was available, each month and the fact H.D.K. would forget within hours. Cyndy further explained her concerns about Sofeea's influence over H.D.K. As noted previously however, Cyndy was precluded from testifying at trial on two occasions and her sworn affidavit, not referenced in the court's FOF, was ignored by the court in its opinion. It is clear from H.D.K.'s testimony in-chambers Dr. Bolyard's opinion about H.D.K.'s memory is accurate.

... [C]onsistent with her presentation during the clinical interview, her performance revealed profound deficits in her ability to remember information following any delay. In fact, she had no recollection of having heard or seen information after about 25 minutes ....

(CR, 23; Neuropsychological Evaluation attached as Exhibit A, p. 10).

H.D.K.'s inability to remember material facts without prompting, her inability to give consistent or reliable testimony, and the plethora of inconsistent purported estate documents filed on the record corroborates Dr. Bolyard's professional opinion of not only the serious nature of H.D.K.'s cognitive condition at least one year prior to the August 2019 report, but H.D.K.'s inevitable decline regarding testamentary capacity.

Unlike in *Quirin*, as stated above, there was no substantial evidence supporting H.D.K.'s awareness of the nature and extent of her property. H.D.K. admitted Cyndy Koures was taking in the rental income and keeping the books. H.D.K. Tr. Sept. 23, 2020, 1:30 p.m., 17: 7-14. H.D.K. did not know how much

money she had in the bank, claimed to have accounts at non-existing banks, denied in chambers she had a written estate plan and stated she had not seen a lawyer for such purposes. H.D.K. and James first met with Dirk Williams in 2009 and H.D.K. met with Williams off and on well into 2019.

In *Quirin*, the Court reasoned,

... Quirin's awareness of the nature of the will execution was supported by substantial evidence. Quirin arranged, specifically and on her own volition, to meet a lawyer and have her will changed. She then kept track of and persisted in the process for almost a month. The three people present when the will was executed testified that Quirin understood what she was doing. Also, several months after the 2010 will was executed, Quirin discussed the will, the changes she had made, and expressed her desire to leave the will unchanged.

*In re Estate of Quirin*, 2015 MT 132, ¶ 20, 379 Mont. 178, 348 P.3d 662.

Except for the *Beneficiary Deeds* signed May 6, 2019 and the Feb. 8, 2019 amendment to the Trust, none of the documents filed on the record qualify as a revocation or amendment to the *James and [H.D.K.] Trust* (the Trust) signed by H.D.K. and her deceased husband on Aug. 24, 2014. In pertinent part. "The settlor may revoke or amend a revocable trust: (a) by substantial compliance with a method provided in the terms of the trust; or (b) if the terms of the trust do not provide a method, by a writing delivered to the trustee manifesting clear and convincing evidence of the settlor's intent." Mont. Code Ann. § 72-38-602. H.D.K. has not presented a properly executed amendment to the Trust. *See*, Trial Exhibit B, ¶ V.

The Beneficiary Deeds executed on May 6, 2019 were not executed at H.D.K.'s behest, but rather Dirk Williams and Sofeea Huffman after Huffman accompanied H.D.K. to Williams's office and with Huffman present and participating in the meeting. Tr. Sept. 23, 2020, 3:05 p.m., 69: 4-25; 70: 1-25; 71: 1-6. The FOF states Sofeea took H.D.K. on an extended visit "beginning in Oct. 2018 ... returning ... to Missoula for short visits for Thanksgiving and again in February 2019, before returning in May 2019." (CR, 72, FOF at ¶ 23). Importantly, H.D.K.'s granddaughter (Eleni Koures) filed an affidavit with the court after the close of trial proceedings in which she testified to how H.D.K. was pressured, through a phone campaign by Sofeea and Amalia, to take a short trip to San Diego against H.D.K.'s resistance. (CR, 62, ¶¶ 9-10). Eleni testified further how the trip became extended, how H.D.K. was either monitored during or isolated from regular contact with her while out of town. *Id.* Eleni also testified in her affidavit to how Sofeea attempted to pressure H.D.K. into giving her more property and raised the idea of a 60/40 split. *Id.* at ¶¶ 11-12. Most importantly, Eleni then testified Sofeea "sleeps in bed with my grandmother almost every night she is in Missoula." *See, Id.* at ¶¶ 13-14. The day after H.D.K. returned to Seattle, also being the day after the parties attended their ordered mediation, Eleni looked under the mattress of H.D.K.'s bed on the side where Sofeea sleeps with H.D.K. and found the purported amendment to the trust. *Id.* at ¶ 14.

Unlike in *Quirin*, (2015), H.D.K.'s awareness of the nature of the documents relied on by the district court in this case, were not supported by substantial evidence. Therefore, the court misapprehended the effect of the evidence. H.D.K. did not arrange meetings (at least not on her own volition) with her attorney to discuss either the Dec. 6, 2018 letter, or the Feb. 8, 2019 trust amendment. H.D.K. did not keep track of or persist in an estate plan change. H.D.K. not only did not understand what she was doing, she did not remember, without prompting, any written document regarding her estate plan. In other words, both documents were drafted with the help of Sofeea during extended visits and times of isolation, and without any advice from her estate attorney. H.D.K. does not have testamentary capacity.

In its FOF's, the district court stated:

On October 28, 2020, Tony filed a *Motion to Admit Evidence of [H.D.K.'s] Testamentary Intent* (Dkt #58) requesting the admission of Exhibit TK1. The Court has admitted Exhibit TK1. However, the Court finds Exhibit TK1 to be suspect and unhelpful in determining [H.D.K.'s] testamentary intent. First, Tony secured [H.D.K.'s] validation of Exhibit TK1 after the hearing on this matter and without the involvement of [H.D.K.'s] court-appointed attorney, Trent Baker, Given the parties agreement, and the Court's finding, that [H.D.K.] is susceptible to the influence of her children, [H.D.K.'s] signature(s) on Exhibit TK1 seems a product of influence and highly suspicious. Second, Exhibit TK1 does little to explain its purpose and the context of its creation. Although Tony attempts to explain the purpose and context, his statements are not subject to cross-examination.

(CR, 72, FOF, ¶ 40.

The court stated Tony did not attempt to have the spreadsheets submitted at trial, that they were completely unreliable and would be disregarded by the court. *Id.* This is not true. Notwithstanding it makes no sense to admit a document to which no weight will be given, Tony tried to have the exhibit admitted at trial. *See*, Tr. Oct. 6, 2020, 14-18:7. Given the fact Tony identified H.D.K.'s handwriting at trial and later had H.D.K. verify her own handwriting by notary, the nature of the exhibit speaks for itself.

Had the court allowed Eleni Koures testify at trial, or read her affidavit, it might have given more pause to the nature of the 2018 letter and the 2019 trust amendment, as well as Sofeea's involvement in their creation. The district court's hyper-criticism of Tony coupled with its failure to allow trial testimony from Eleni Koures constitutes a material abridgement of Tony's substantial right to be heard and supports the "evidence in question was of such character as to have affected the outcome at trial." *City of Missoula v. Mountain Water Co.*, 2016 MT 183, ¶ 18, 384 Mont. 193, 378 P.3d 1113. The court abused its discretion.

**C. The district court incorrectly found H.D.K. intended to divide her estate 60/40 between Tony and Sofeea.**

Sofeea Huffman states,

Tony ... points to an occasion when H.D.K. indicated she might decide on a different split or when, after two hours in a car with Tony,

H.D.K. told a neuropsychologist (among other odd assertions) that she had no intention to divide her estate 60/40. Sofeea, RB, p.22, *citing to*, Tony, OB., p. 40.

For reasons already discussed above, it is patently false Tony had any contact with Dr. Bolyard prior to H.D.K.'s examination, and he did not ride in a car with H.D.K. for two hours prior to the exam. Dr. Bolyard, simply reported the statements made to her by H.D.K. the day of the examination. H.D.K. Upon inquiries made by Dr. Bolyard referencing the Dec. 6, 2018 letter, H.D.K. responded she may have had help with the letter in Seattle and Sofeea "dreamed up" the purported 60/40 split. (CR, 23; Neuropsychological Evaluation attached as Exhibit A, p. 5). The court appears to ignore the significance of Dr. Bolyard's report and its own examination of [H.D.K.] in chambers when determining the legitimacy of the intended 60/40 split. This was a misapprehension of the effect of the evidence and, as such a commission of clear error.

As asserted by both Sofeea and H.D.K., the court relied heavily on Williams's report and testimony in supporting the theory of a 60/40 split. H.D.K., RB, p. 20; Sofeea, RB, p. 21. Williams's report is unreliable and contradictory as was his testimony. Williams did not make just one mistake. In summary, Williams transferred 535 S. 2<sup>nd</sup> without signatures from Tony or Sofeea. He transferred the Cramer Creek lots to the Trust without signatures of Tony or Sofeea. Williams's attempt to fund Victor Properties LLC (register with secretary of state) was

rejected due to name duplication. Trial Exhibit C. Williams quitclaimed the deeds placed in Victor Properties back to the original owners except 535 S. 2<sup>nd</sup>, which would have required signatures from Tony and Sofeea. Trial Exhibit F. Williams's attempt to transfer Cramer Creek and 307 S. 6<sup>th</sup> W was rejected for defective descriptions. (CR, 50, Exhibit 4.6 attached). On Aug. 6, 2015, Williams transferred all Cramer Creek lots to the Trust. Again, he failed to get signatures from Tony and Sofeea. (CR, 50, Exhibit 21 attached).

Additional mistakes by Williams included his failure to address the transfer issue with 307 S. 6<sup>th</sup> W even though H.D.K. signed it over to the Trust in July 2015. (CR, 50, Exhibit 4 attached). Williams was aware of the transfer issues on 535 S. 2<sup>nd</sup> and the Simons lots, yet he did nothing to remedy the situation. (CR, 50, Exhibits 3, 50 attached). Williams mislead the court when he stated H.D.K. never authorized him to file both the articles and the deeds for Victor Koures Properties, LLC. (CR, 10, ¶ h). Williams filed the articles on Oct. 5, 2015. (CR, 50, Exhibit 6 attached). Significantly, Williams set up Victor Properties and Victor Koures Properties exactly the same. (CR, 10, ¶ h). Williams's report stated if Dara Properties stayed intact, the property division would "be 72.74% to Tony and 27.26% to Sofeea." *Id.* Why didn't Williams discover his mistake in 2015? Because there wasn't one. Had he formalized all the documents which were executed in July and October of 2015, everything but the two empty Simons lots

would have been distributed in the Trust. The Simons lots, having been titled to James, H.D.K., Sofeea and Tony originally would have been distributed one to Tony and one to Sofeea.

Williams mislead the court when he testified he did not offer H.D.K. a refund for some of his inadequate work and when he testified he did not refer H.D.K.'s case to attorney Andrew George. Tr. Sept. 23, 2020, 3:05 p.m., 55: 21-25; 56: 1-18; *See* in their entirety (CR, 49; CR 59 with Aff. of Andrew George attached). Williams mischaracterized Tony's chagrin with his services and the subsequent bar complaint filed by Tony. (CR, 10, ¶ 1). Williams did nothing but botch H.D.K.'s estate plan for approximately ten years. A lawyer himself, why would Tony not file a bar complaint against Williams? Tony was cleared of the ridiculous elder abuse claim made by Williams. (CR, 50, Exhibit 7 attached). Although Williams claims in his report Tony committed elder abuse, he failed to disclose his collusion with Sofeea regarding H.D.K.'s estate plan. *See*, (CR 50, Exhibit 3 attached (a string of emails between Williams and Sofeea regarding property distribution)).

Given the multitude of errors committed by Dirk Williams, his false allegations against Tony, his absolute denial under oath of his contact with Andrew George, and his apparent collusion with Sofeea Huffman regarding H.D.K.'s estate plan, Williams's report and testimony lack any reasonable credibility. Williams's

evidence is not substantial. The court's reliance on Williams's report and testimony is clearly erroneous. *See, Nielson v. State Comp Ins. Fund*, 2003 MT 95, ¶ 37, 315 Mont. 194, 69 P.3d 1136; *See also, Eldorado Coop*, 2016 MT 94, ¶ 18, 383 Mont. 205, 369 P.3d 1034.

The Dec. 6, 2018 letter, and the Feb. 8, 2019 trust amendment signed by H.D.K. subsequent to the Trust and pour over wills signed by James and H.D.K. in 2014 and the deed transfers and LLC documents signed by H.D.K. in 2015 were completed under the influence of Sofeea Huffman. Unlike in *In re Estate of Ramirez*, (1994), H.D.K. did not draft these purported estate documents from the isolation of her jail cell. *See, In re Estate of Ramirez*, 264 Mont. 37, 869 P.2d 263, 265 (1994). If this Court strictly construes testamentary intent as defined in *Ramirez*, then H.D.K.'s most recent enforceable will was drafted June 20, 2019 and should control. *Id.*; Trial Exhibit J; CR, 60. H.D.K. drafted, signed and contemplated multiple property distribution plans after her cognitive functioning became impaired. The courts truncation of trial testimony and failure to consider evidence submitted to the record after trial was an abuse of discretion because "the evidence in question was of such character as to have affected the outcome of the trial." *See, City of Missoula v. Mountain Water Co.*, ¶ 18.

## CONCLUSION

Tony requests this Court reverse the District Court's Order entirely, and remand with instructions the properties be divided as provided in the Trust and 2015 Deed. If this Court determines the District Court correctly found H.D.K. intended a 60/40 division, the case should be remanded to determine whether the ordered division correctly reflects the properties' values.

DATED this 11<sup>th</sup> day of August 2021.

Dugger Law Firm, PLLC

BY: 


Elliott Dugger  
*Attorney for Appellant*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing REPLY BRIEF OF APPELLANT T.K. is proportionately spaced, printed with the typeface Times New Roman, 14 point font, is double spaced, and contains approximately 9746 words, excluding the Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service.

DATED this 11<sup>th</sup> day of August 2021.

Dugger Law Firm, PLLC

BY:   
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have filed a true and accurate copy of the foregoing  
REPLY BRIEF OF APPELLANT T.K. with the Clerk of the Montana Supreme  
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I, John Elliott Dugger, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 08-13-2021:

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