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STATE OF MONTANA
Case Number: DA 21-0343

No. DA 21-0343

IN THE

Supreme Court of the State of Montana

IN RE THE MATTER OF THE ESTATE OF ADA E. ELLIOT,

DECEASED.

ON APPEAL FROM THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY, HON. MARY JANE KNISELY
CASE NO. DDV-2015-939

SPECIAL ADMINISTRATOR AND LIQUIDATING PARTNER'S RESPONSE TO EMERGENCY MOTION FOR INJUNCTIVE RELIEF OR STAY PENDING APPEAL

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INTRODUCTION

This estate case has been pending for nearly four and a half years with no end in sight. One of the Estate's beneficiaries, Ian Elliot, continues to challenge the authority of the court-appointed special administrator, Joseph Womack, to act on the Estate's behalf even though this Court long ago affirmed Womack's appointment and the district court has consistently warned Ian not to interfere with Womack's duties.

On April 22, 2021, the district court held a full-day hearing on a host of motions. At the conclusion, the court confirmed yet again that Womack should continue serving as the Estate's special administrator and granted Womack—in his capacity as the liquidating partner of Starfire, LP, the limited partnership in which the Estate holds a 96.34% interest—permission to sell two parcels of real property in Gallatin County to pay necessary Estate administration expenses, including a forensic accounting. The court followed up with a written order on June 10, which unequivocally counseled Ian, "[a]s the Court instructed at the hearing, it does not intend to entertain further objections to or attempted interference with Womack's performance of his duties as the

Estate's Special Administrator and Starfire's liquidating partner." *See* Dist. Ct. Dkt. 161, ¶ 88.

Nevertheless, after Womack engaged a listing agent to sell Starfire's property, Ian sent the agent multiple e-mails claiming that Womack's authority remained in dispute and implying that Ian would take legal action against the agent. Consequently, on August 10, 2021, the district court held Ian in contempt. *See* Dist. Ct. Dkt. 174.

Meanwhile, Ian appealed the court's June 10 order and sought a stay pending appeal. The district court denied Ian's motion on August 11, 2021, holding that all the relevant legal factors weighed against a stay and that Ian had not posted a bond as required by Montana Rule of Appellate Procedure 22. *See* Dist. Ct. Dkt. 175. Now, Ian asks this Court to grant a stay on an emergency basis, repeating the same arguments the district court resoundingly rejected.

LEGAL STANDARD

A stay is an "intrusion into the ordinary processes of administration and judicial review," *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*per curiam*), and "is not a matter of right, even if irreparable injury might otherwise result to the appellant," *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926).

Instead, stays are "an exercise of judicial discretion," the propriety of which "is dependent upon the circumstances of the particular case." *Id*. Traditionally, courts are guided by four factors in consideration of a stay motion, with the first two being "the most critical": (1) whether the stay applicant has made a strong showing he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).[1]

ARGUMENT

I. Ian Has Not Made a Strong Showing that He Is Likely to Succeed on the Merits.

To start, Ian cannot satisfy the first factor by demonstrating a mere possibility that his appeal could succeed. *Id*. at 435. Rather, he must make a strong showing of a likelihood of success. *Id*. at 434. He has done no such thing.

[1] Although this Court has never expressly adopted those factors, Montana law has long paralleled federal law in recognizing that courts have inherent, discretionary power to grant a stay pending appeal. *See, e.g.*, *In re B.B.*, 2001 MT 285, ¶ 20, 307 Mont. 379, 37 P.3d 715.

First, Ian makes an unsupported argument that Womack colluded with Cindy Elliot's counsel to be appointed as special administrator.[2] This argument is frivolous; Womack was appointed by the court following a hearing at which Ian appeared. *See* Dist. Ct. Dkt. 174.

Second, Ian contends that the district court erred in allowing Womack to sell real property because Montana law requires a decedent's assets to be distributed in-kind to the extent possible. But Ian ignores that "[e]state devisees take devised property 'subject to' the estate's administration, § 72-3-101(2), MCA, and a personal representative has the power to sell estate property if necessary for the estate's administration." *Northland Royalty Corp. v. Engel*, 2014 MT 295, ¶ 11, 377 Mont. 11, 339 P.3d 599 (citing §§ 72-3-606(1), 613(6), MCA). Moreover, the sale here was subject to court approval and the district court's June 10 order spells out precisely why the sale is necessary.

Third, Ian insists that the district court wrongly denied him a jury trial and should not have credited Womack's testimony at the April 22 hearing over his own. The statute Ian invoked below regarding a jury

[2] Cindy is the Estate's other beneficiary.

trial—§ 72-1-208, MCA—provides for jury trials in testacy proceedings. This case has nothing to do with the validity of Ada Elliot's will and it is well-established in Montana that the primary issue raised by Ian's motions—removal of a personal representative for cause—"is within the sound discretion of the district court," not a jury. *In re Est. of Nelson*, 243 Mont. 276, 278, 794 P.2d 677, 678 (1990). Likewise, when the court is the fact finder, "the credibility of witnesses and the weight to be afforded their testimony is a matter left to the sound discretion of the district court." *Kovarik v. Kovarik*, 1998 MT 33, ¶ 30, 287 Mont. 350, 954 P.2d 1147.

II. The Other Factors All Weigh Against a Stay Too.

As to irreparable harm, Ian argues that the sale will reduce the remaining property's development potential and deprive him of his family's long-held real estate. The first of those arguments is "purely unsupported, unqualified conjecture." Dist. Ct. Dkt. 174. Ian has submitted no evidence to support such a theory at any stage. And, while there is no reason to doubt Ian's attachment to the property, the purpose of this case is not to continue to operate Starfire—which holds the property—indefinitely. Ian's own actions have contributed mightily to the administrative costs and need for a forensic accounting, which

the sale of the property is necessary to fund. Ian's preference to receive his distributive share of the Estate in real property is not irreparable harm.

As to injury to other parties, the only record evidence indicates that a stay could decrease the value of the Estate by as much as $300,000, which would significantly reduce Cindy's distributive share (as well as Ian's). *See id.* Ian's suggestion that he and Cindy can work together to create a capital account is fantasy. As the district court has repeatedly recognized, it was necessary to appoint Womack special administrator in the first place because Ian and Cindy are entirely incapable of working together.

As to public interest, Ian again launches unfounded attacks on Womack, accusing him of predatorily taking advantage of a family dispute in a case he has worked on for years now without being paid. The district court rightly rejected any such notion, reasoning that the public interest favors the efficient, expedient administration of all cases, Mont. R. Civ. P. 1, and allowing court-appointed special administrators to do their jobs.

Finally, Ian has not posted a bond or posted equivalent security in some other form as required by Rule 22.

CONCLUSION

For all the foregoing reasons, this Court should deny Ian's emergency motion and decline to grant a stay or issue injunctive relief.

Dated: September 17, 2021

Respectfully submitted,

/s/ Michael P. Manning

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Mont. R. App. P. 16(3), this response brief is proportionately spaced, has a typeface of 14 points or more, and contains 1,243 words, as determined by the undersigned's word processing program.

/s/ Michael P. Manning

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CERTIFICATE OF SERVICE

I, Michael Manning, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 09-17-2021:

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