

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0410

CRAZY MOUNTAIN CATTLE CO., RICHARD JARRETT, and ALFRED
ANDERSON,

Plaintiffs and Appellants,

v.

WILD EAGLE MOUNTAIN RANCH, LLC, a Montana limited liability company;
ROCK CREEK RANCH I LTD., a Texas limited partnership; YELLOWSTONE
RIVER RANCH d/b/a DIANA'S GREAT IDEA, LLC, a Montana limited liability
company; ENGWIS INVESTMENT COMPANY, LTD., a Montana limited
partnership; and R.F. BUILDING COMPANY, LP, a Montana limited partnership.

Defendants and Appellees,

**DEFENDANTS/APPELLEES' MOTION FOR EXTENSION
OF TIME TO FILE ANSWER BRIEF
(EXCLUDING DEFENDANT WILD EAGLE MOUNTAIN RANCH, LLC)**

On Appeal from the Montana Sixth Judicial District Court
Park County, Cause No. DV-34-2020-0000142-OC
The Honorable Michael B. Hayworth, Presiding

APPEARANCES:

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COME NOW, Defendants/Appellees ROCK CREEK RANCH I, LTD., YELLOWSTONE RIVER RANCH, d/b/a DIANA'S GREAT IDEA, LLC; ENGWIS INVESTMENT COMPANY, LTD., and R. F. BUILDING COMPANY, LP (collectively herein, "Appellees"), by and through their undersigned counsel, and hereby respectfully move the Court, pursuant to Rules 16 and 26, M.R.App.P., to grant Appellees a thirty (30) day extension of time to file their Answer Brief in this matter.

The basis for this Motion is two-fold, one procedural, and one substantive.

Procedurally, the Appellants were granted an extension of time to file their opening Brief. Pursuant to the Court's Notice of Filing entered on September 29 2021, Appellants were given thirty days to file their opening Brief, and hence their opening Brief was due on October 29, 2021. Appellants failed to file their opening Brief as directed by the Court, and instead filed a document styled "Motion for

Briefing Schedule,” which seemed to suggest that there was no briefing schedule in effect, which was not the case.

On November 1, 2021, this Court issued an Order (copy attached as Exhibit “A”), which noted the Appellants’ failure to file a timely Brief, and their failure to move for an extension of time. This Court further noted that Appellants did not indicate in their defective Motion for Briefing Schedule whether opposing counsel had been contacted concerning their Motion, or whether there was an objection.

This Court concluded that Appellants’ opening Brief was overdue, but nonetheless granted the Appellants an extension until December 1, 2021, to file their opening Brief; essentially granting a 30-day extension to Appellants despite the Appellants’ failure to follow clearly established motion requirements.

The Appellees did not file an objection to Appellants’ Motion for Briefing Schedule, nor did Appellees object to Appellants’ effort to file an overdue Brief without properly seeking leave of this Court. Appellees withheld objection on the basis that 30-day briefing extensions are generally agreed to as a professional courtesy, and granted by this Court as a matter of course.

Despite the history of Appellants’ contorted maneuvers resulting in an effective 30-day extension, Appellees consulted Appellants regarding this extension, and were advised, surprisingly, that Appellants object to a 30-day extension. This fact is conveyed to the Court in accordance with the requirements of Rules 16 and

26, M.R.App.P., which require a movant to notify the Court of the opposing parties' position regarding the motion, which Appellants failed to do. As stated in Rule 16, "Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. Failure to include this statement may result in denial of the motion."

As a matter of due process and equal treatment by the Court, Appellees request a 30-day extension, despite Appellants' objection thereto.

Beyond the procedural issues outlined above, there is a substantive matter which justifies an extension of time as requested by Appellees. Two of the Appellees are in the final stages of settling out of this case upon terms that have been agreed to by the Appellants. It is anticipated that the paperwork for the settlement agreement between these parties will be finalized in the next several days, and, upon completion, a Stipulation for Dismissal with prejudice will be filed in this action by which the settling Appellees will be dismissed as parties to this appeal.

Insofar as the composition of the parties to this appeal will be changing as a result of the forthcoming settlement, there is a material change in circumstances in the litigation which will impact the nature of the briefing to be submitted to this Court. It would furthermore be an unnecessary expense and burden for the settling Appellees to have to file an Answer Brief when they will be dismissed from this action. M.C.A. §1-3-228 ("The law neither does nor requires idle acts.")

Therefore, as a matter of due process, equity, judicial efficiency and the economy of the parties, it would be proper for this Court to grant Appellees' Motion for an additional thirty (30) days to file their Answer Brief.

Defendant/Appellee WILD EAGLE MOUNTAIN RANCH, LLC, is not a party to this Motion, but has no objection to this Motion based on consultation with its counsel, Nicholas J. Lofing. Mr. Lofing has also advised undersigned counsel that Appellants' counsel has consented to a 30-day extension for the filing of Wild Eagle's Brief, which makes Appellants' objection to the instant request all the more perplexing.

WHEREFORE, Appellees respectfully request the Supreme Court to issue the Order submitted herewith, granting an additional thirty (30) days for the filing of their Answer Brief in this matter. The Answer Brief is currently due on December 23, 2021. Appellees request an extension until January 24, 2022, for the filing of their Answer Brief.

RESPECTFULLY SUBMITTED, this 14th day of December, 2021.

HUPPERT, SWINDLEHURST & WOODRUFF, P.C.

By: 

STEPHEN E. WOODRUFF

Attorneys for Appellees (excluding Wild Eagle
Mountain Ranch, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of December, 2021, he/she served the foregoing document upon the following persons, by electronic mail, addressed as follows:

Clerk of the Montana Supreme Court
clerkofsupremecourt@mt.gov

MONICA J. TRANEL
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Attorney for Plaintiffs/Appellants

NICHOLAS J. LOFING, ESQ
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Attorney for Defendant Wild Eagle Mountain Ranch, LLC

Two handwritten signatures in blue ink are positioned above a solid horizontal line. The signature on the left is stylized and appears to be 'L'. The signature on the right is more complex and appears to be 'N. J. Lofing'.

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DA 21-0410

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JARRETT, and ALFRED ANDERSON,

Plaintiffs and Appellants,

v.

WILD EAGLE MOUNTAIN RANCH, ROCK CREEK
RANCH I LTD., a Texas limited partnership,
YELLOWSTONE RIVER RANCH d/b/a DIANA'S
GREAT IDEA, LLC, a Montana limited liability
company; ENGWIS INVESTMENT COMPANY,
LTD., a Montana limited partnership; R.F. BUILDING
COMPANY, LP, a Montana limited partnership,

O R D E R

Defendants and Appellees.

The record was filed for purposes of this appeal on September 29, 2021. Under M. R. App. P. 13(1), the opening brief was due October 29, 2021. Appellants Crazy Mountain Cattle Co., Richard Jarrett, and Alfred Anderson did not file an opening brief on that date, nor did Appellants move for an extension of time. Instead, Appellants filed a Motion for Briefing Schedule on the day their brief was due.

Appellants did not indicate in their Motion for Briefing Schedule whether opposing counsel was contacted concerning the motion and whether opposing counsel objects to the motion, as required by M. R. App. P. 16(1). That motion is therefore denied. Appellant's opening brief is now overdue.

THEREFORE,

IT IS ORDERED that Appellant's Motion for Briefing Schedule is DENIED.

IT IS FURTHER ORDERED that Appellant shall prepare, file, and serve the opening brief on appeal no later than December 1, 2021. Failure to file the brief within that time will result in dismissal of this appeal with prejudice and without further notice.

The Clerk is directed to provide copies of this Order to all counsel of record.

Electronically signed by:

Mike McGrath

Chief Justice, Montana Supreme Court
November 1 2021

EXHIBIT

"A"

CERTIFICATE OF SERVICE

I, Stephen Eric Woodruff, hereby certify that I have served true and accurate copies of the foregoing Motion - Extension of Time to the following on 12-14-2021:

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Service Method: eService

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Electronically Signed By: Stephen Eric Woodruff
Dated: 12-14-2021