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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 21-0491

LILY M. SMITH and VERNON T.
LINDEMULDER

Petitioners and Appellees

v.

APPELLANT'S OPENING BRIEF

SAMUEL B. LINDEMULDER,
individually and as Trustee of the
Alice M. Lindemulder Trust,

Respondent and Appellant,

and
DANIEL G. LINDEMULDER,
Respondent and Appellee, individually
and as Trustee of the Alice M.
Lindemulder Trust,

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STATEMENT OF ISSUES

1. Did the district court err in determining Appellant violated the statute of limitations in attempting to enforce a Contract for Deed?
2. Did the district court err in determining Appellant's claim to enforce a Contract for Deed is barred by the doctrine of laches?
3. Did the district court err in determining Appellant waived his right to enforce a Contract for Deed?
4. Did the district court err in determining Appellant consented to the settlement agreement?

STATEMENT OF THE CASE

This matter was initiated by two beneficiaries of their mother's trust to have the district court appoint substitute trustees, sell the trust real property and distribute the sales proceeds in accordance with the trust.

The orders appealed from were issued by the Hon. Matthew Wald, District Court Judge, 22nd Judicial District, Stillwater County, Montana on June 30, 2021 and September 2, 2021.

These Orders were issued following Pre-Hearing briefing, a hearing/trial without a jury held on April 15, 2021 and Post-Hearing briefing. Judge Wald's June 30, 2021 Order approved a Settlement Agreement signed by the parties and their counsel, over the objection of Appellant Samuel B. Lindemulder (hereinafter 'Sam'). The Order also determined that Sam's claim to legal title to Sections 8, 9 and 20 of Township 1 North, Range 20 West failed on the basis of waiver, violation of the statute of limitations, laches and that he was competent to sign the Settlement Agreement.

The same day the Notice of Entry of Judgement was filed, Judge Wald issued an order expunging from the Stillwater County record the Warranty Deed Sam filed in February, 2021 giving him legal title to Sections 8, 9 and 20. This appeal followed.

STATEMENT OF FACTS

On February 7, 1990, Samuel B. Lindemulder (hereinafter Sam) signed a contract for deed. Sam agreed to buy approximately 1660 acres of land in Sections 8, 9 and 20 of Township 1 North, Range 20 West from his parents. The total purchase price for the contract was \$50,000.00. *See Attached as Appendix 1.*

The same day Sam and his parents signed a Notice of Purchaser's Interest that was recorded in Stillwater County on February 14, 1990 at Book 101, Page 941-942. *See Attached as Appendix 2.*

Records attached to the Contract for Deed confirm that Sam made regular payments to his parents at least until 2002 on the 15-year contract. Sam testified that he made regular payments to his parents, then his mother after his father passed away. *Trans, Pg. 24, ll. 11-25; Pg 26, ll. 1-5; Pg. 29, ll. 1-11.*

Sam paid the real property taxes on the contract property (*Trans. Pg. 43, ll. 24-25; Pg. 44, ll. 1-5.*) and ran a small cattle operation on the property, fixed fence and developed springs. *Trans, Pg. 44, ll. 10-14.*

No one questioned Sam's right to the contract property. Nobody made a claim to it. *Trans, Pg. 44, ll. 18-21.*

In 1997 Sam's mother, Alice M. Lindemulder, placed the property subject to the contract for deed in the Alice M. Lindemulder Revocable Trust, subject to Sam's contract for deed. *Trans Pg. 58, ll. 10-25; Pg. 59, ll. 1-13.*

Alice Lindemulder died on December 9, 2014. *See Petition as Appendix 3.* Some time prior to her death, Alice gave Sam a box saying he would need the contents some day. Sam put the unopened box on a shelf in a closet in his home. *Trans. Pg. 39, ll. 3-25.*

One of the envelopes in the box was labeled 'Sam'. Sam did not open the box or review the contents until February, 2021. In that envelope Sam found the executed Warranty Deed for the property he bought under the Contract for Deed. *Trans. Pg. 39, ll. 3-25.* Sam recorded the Deed on February 18, 2021 as document number 381908. *See Attached as Appendix 4.*

Sam and his brother, Daniel G. Lindemulder, were named as trustees of the Alice M. Lindemulder Revocable Trust. *See Attached as Appendix 5.* After his mother's death, Sam continued to pay the real property taxes on the property subject to the Contract for Deed, as well as Section 17, Township 1 North, Range 20 West. *Trans Pg. 43, ll. 24-25; Pg. 44, ll. 1-5.*

Sam recognized that Section 17 was owned by his parents, then his mother after his father passed away, and finally by the Alice M. Lindemulder Revocable Trust. In addition to paying the taxes on Section 17, Sam insured the property. *Affidavit, CR # 65, Appendix 6.*

Neither Sam nor his brother Daniel, took any action with respect to the Trust, as they were waiting for loans made by their mother to her children to be

repaid. *Dan Lindemulder Deposition, Pg. 17, ll 21-25, Pg. 18, ll. 1-2.* As a result of the inaction, his brother Vern and sister Lilly, filed suit to enforce the terms of the Trust.

On September 26, 2019, the Petition was filed by Lily M. Smith and Vernon T. Lindemulder. Sam and his brother Daniel were sued both as trustees and individually. *See Petition at Appendix 3.*

Sam and Daniel were represented by Bruce O. Bekkedahl and Daniel Snedigar of Patten, Peterman, Bekkedahl & Green, PLLC. *Trans. Pg. 16, ll. 17-20.* The Petition alleged that the corpus of the Trust included the real property Sam purchased through the Contract for Deed. Bekkedahl and Snedigar answered the Petition on behalf of Sam and Daniel as trustees only, not as individuals. *See Response at Appendix 7.*

Following an extended period of discovery, the parties and counsel participated in a mediation in an attempt to reach a global resolution. Mediation was held December 2, 2020. *Trans. Pg. 29, ll. 22-25; Pg. 30, l. 1.*

Sam contacted COVID-19 late in November, 2020. *Trans. Pg. 30, ll. 2-5.* He went to the hospital for treatment on November 29, 2020. *Trans. Pg. 30, ll. 7-19.* He received an IV and was told to rest. *Trans. Pg. 11, ll. 12-13.*

Sam contacted Bekkedahl and Snedigar to get the mediation date changed because he was so sick with COVID-19. However, he was told that the date couldn't be changed. *Trans. Pg.31, ll. 8-12.*

Sam attended the mediation from his home, in bed, by cell phone days after he received treatment at the hospital. *Trans. Pg. 32, ll. 2-13.* He couldn't hear a lot of the mediation and dozed off during the mediation. *Trans Pg. 31, ll. 22-25.*

Sam's wife described him the day of the mediation as running a high fever, lethargic, wasn't in his right mind and couldn't hear much of what was said. Sam was confused a lot and nodded off during the mediation. *Trans. Pg. 12, ll. 1-11; Pg. 13, ll. 20-25.*

Sam believed the mediation should have just been about Section 17, the Trust section of land. *Trans. Pg. 32, ll. 19-25.* Sam testified that because the 'proper paperwork' wasn't located, Sections 8, 9, and 20 were included. *Trans. Pg. 33, ll. 9-13.* But Sam didn't agree with that. *Trans. Pg. 33, ll. 2-6.* Sam testified that Bekkedahl and Petitioner's attorneys told him that Sections 8, 9 and 20 were included in the mediation. *Trans. Pg. 33, ll. 2-6.*

The Settlement Agreement was signed by Sam on January 22, 2021. Sam was not yet released to go back to work by a physician until February or late January, 2021. *Trans Pg. 30, ll. 11-25; Pg. 31, ll. 1-2.*

Sam felt coerced into signing the Agreement both by his counsel as well as his brother. *Trans. Pg. 19, 11. 1-5*. His counsel told him if he didn't sign the Agreement he would be sued. *Trans. Pg. 36*

STATEMENT OF STANDARD OF REVIEW

This Court in reviewing the results of a bench trial, reviews the evidence before the district court in a light most favorable to the prevailing party. *Only a Mile, LLP v. State*, 2010 MT 99, ¶ 10, 356 Mont. 213, 233 P.3d 320.

In reviewing the district court's findings of fact, this Court reviews such findings for clear error. *Shephard v. Widhalm*, 2012 MT 276 ¶ 21, 367 Mont. 166, 290 P.3d 712; *citing Karlson v. Rosich*, 2006 MT 290, ¶ 7, 334 Mont. 370, 147 P.3d 196. The Court reviews a district court's conclusions of law to determine if they are correct. *Shepard, supra*.

A district court's determination that legal authority exists is a conclusion of law that this Court reviews to determine if the district court interpreted the law correctly. *National Cas. Co. v. American Bankers Ins. Co.*, 2001 MT 28, ¶ 27, 304 Mont. 163, 19 P.3d 223. The Court reviews an award or denial of attorney fees for abuse of discretion. *Kuhr v. City of Billings*, 2007 MT 201, ¶ 14, 338 Mont. 402, 168 P.3d 615; *citing Denton v. First Interstate Bank of Commerce*, 2006 MT 193, ¶ 19, 333 Mont. 169, 142 P.3d 797.

SUMMARY OF ARGUMENT

Appellant Samuel B. Lindemulder (hereinafter ‘Sam’) appeals to this Court contending that the district court erred in determining that his title to Sections 8, 9 and 20 of Township 1 North, Range 20 West, Stillwater County, Montana failed on the basis of violating the applicable statute of limitations, laches and waiver. The district court further determined that Sam was competent when he attended the mediation conference and later signed the Settlement Agreement under protest. The district court rejected the assertion that Sam lacked the ability to consent to the proposed resolution reached at mediation and executing the Settlement Agreement.

With respect to the statute of limitations and laches elements of the district court’s Order, this Court has held that a person in possession of real property may wait until their possession is disturbed or title challenged before taking steps to vindicate their rights.

Sam never waived his claim to Sections 8, 9 and 20. Waiver is an unequivocal, voluntary and intentional relinquishment of a known right or claim. It can be proven by express declarations or by a course of acts and conduct which creates the belief that the intent and purpose was waiver. Sam’s actions and assertions throughout this litigation and post-settlement clearly establishes that his written ‘waiver’ was not voluntary.

Sam was not competent to attend mediation or to sign a settlement agreement. Sam contracted COVID-19 late in November, 2020. His condition deteriorated to the point his wife took him to the hospital on November 29, 2020 for treatment. Sam was given IV fluids and told to go home and rest and not return to work until he had a doctor's release.

Realizing his condition put him at a great disadvantage, he contacted his attorneys and asked to have the mediation scheduled for December 2, 2020 put off until he was well. He was told the mediation couldn't be put off.

For Sam, the mediation took place remotely, from his bed at his home. Sam attended by cell phone, couldn't hear much of the mediation and dozed off during the mediation. He ran a high fever that day, was lethargic and his wife testified that he wasn't in his right mind. During the mediation, Sam was threatened by his own counsel as well as that of the Petitioner's that if he didn't agree to the proposed resolution he would be sued. His brother too coerced him into agreeing, but all the while knowing that he shouldn't.

Several weeks later, just after he was released to return to work, Sam signed the Settlement Agreement under protest. The fact that he signed the agreement despite his firm belief that the Settlement Agreement wasn't right, that he owned the real property that the attorneys and his brother convinced him should be

relinquished to the Trust is clear evidence that Sam did not consent to the Settlement Agreement.

ARGUMENT

Appellant Samuel B. Lindemulder is the son of George and Alice M.

Lindemulder. In 1990 Sam's father asked all of his children if any of them wanted to buy the family ranch property. *Trans. Pg. 20, ll. 23-25.* After giving it some thought, Sam agreed and signed a contract for deed to buy Sections 8, 9 and 20 of Township 1 North, Range 20 West, Stillwater County, Montana. *Trans Pg. 21, ll. 1-3.* Sam made annual payments on the contract, paid real property taxes on the property he bought from his folks and even paid the real property taxes on the section of land his mother retained after his father passed away. *Trans. Pg. 24, ll. 11-15; ll. 25; Pg. 25, ll. 1-11; Pg. 29, ll. 1-11; Pg. 43, ll. 24-25; Pg. 44, ll. 1-7; Pg. 46, ll. 11-18.* Sam lived adjacent to the ranch property, ran a small cattle operation, fixed fence and developed springs on the property. *Trans. Pg. 44, ll. 11-14.*

In 1997 Sam's mother put the ranch property in a revocable trust, subject to Sam's contract for deed. *Trans Pg. 58, ll. 10-25; Pg. 59, ll. 1-13; See Quit Claim Deeds as Appendix 10.* Sam's mother named Sam and his brother Daniel as trustees of the trust.

When his mother passed away, Sam and his brother sent out letters to the siblings requesting that they pay back the money their mother lent to them during her lifetime. *Dan Lindemulder Depo. Pg. 17, ll. 21-25; Pg. 18, ll. 1-2; See*

Attached as Appendix 9. Time passed without result or action by the trustees.

Then in 2019 two of Sam's siblings sued Sam and Daniel both as trustees of their mother's trust as well as individually. *See Petition as Appendix 3.*

After an extended period of discovery, the parties mediated and an Agreement in Mediation was signed. *See unsigned Agreement in Mediation at Appendix 11.* Shortly after the Agreement in Mediation was signed, Sam found, the Warranty Deed to Sections 8, 9 and 20 in a box of papers his mother had given to him. *Trans. Pg. 39, 11. 3-25.* He recorded the deed to yet again affirm his contention that he owned those sections. *See February, 2021 Warranty Deed as Appendix 4.*

Following a bench trial or hearing to approve the Agreement in Mediation, the district court disallowed Sam's claim to the ranch property and ordered Sam's Warranty Deed expunged from the record. *See June 29, 2021 Order as Appendix 7 and September 3, 2021 Order as Appendix 8.*

This appeal followed.

I. The district court erred in determining Sam violated the statute of limitations in filing the Warranty Deed.

Sam signed a Contract for Deed with his parents on February 7, 1990. *See Appendix 1.* Several days later a Notice of Purchaser's Interest was filed, providing notice that Sam acquired an interest in Section 8, 9 and 20. *See Appendix 2.* Sam's mother retained the Warranty Deed and kept track of the

payments Sam made on the Contract. *See Appendix 1, Pgs. 7 & 8.* In 2014, all property to which she retained legal title was placed into a revocable trust by Sam's mother, subject to Sam's interest in the three sections of land as established in the Contract for Deed. *Trans. Pg. 58, ll. 10-25; Pg. 59, ll. 1-13.*

Sam's mother passed away in 2017. Before she passed away, she gave Sam a box stating that he might need it someday. Sam stored the box in his home. *Trans. Pg. 39, ll. 3-25.*

The litigation underlying this appeal began in September, 2019. Before that time, no evidence was presented to the district court that a notice of default had been served on Sam. Further, no evidence was presented to the district court that anyone had challenged Sam's possession of Section 8, 9 and 20. Eighteen months after litigation commenced, Sam opened the box and found the Warranty Deed, the Deed that was delivered to him by his Mother, and he filed it with the Stillwater Clerk and Recorder. *See Warranty Deed as Appendix 4.*

In the district court's order of June 29, 2021, the district court agreed with the Petitioner's that Sam's filing of the Warranty Deed violated the applicable statute of limitations. *See June 29, 2021 Order as Appendix 7, Pg. 7, ll. 9-11.*

Peterson v. Hopkins (1984), 210 Mont. 429, 437- 438, 684 P.2d 1061, 1065, clearly holds that Sam's filing of the Warranty Deed, and otherwise asserting his

ownership to Sections 8, 9 and 20, does not violate the statute of limitations. That decision states:

“In many jurisdictions, the right of a plaintiff to have his title to land quieted, as against one who is asserting some adverse claim, is not barred while the plaintiff or his grantors remain in actual possession of the land, claiming to be the owners. The reason for this rule is that while the owner in fee remains liable to an action upon the adverse claim, he or she has a continuing right to the aid of a court of equity to determine the nature of such claim and its effect on his or her title, or to assert any superior equity. Persons in possession may wait until their possession is disturbed or until their title is attacked before taking steps to vindicate their right. 65 Am. Jur. 2d Quieting Title Section 55 (1972); *Oates v. Nelson* (1969), 269 Cal. App.2d 18, 74 Cal. Rptr. 475.” *Peterson v. Hopkins* at 437-438. *See also Carter v. Badrock Rural Fire Dist.*, 2021 MT 280, ¶ 24, 406 Mont. 174.

The *Peterson* Court cited to §70-19-402, MCA and then held:

“Because Peterson was seized of the mineral interest within the five-year limitation period imposed by Section 70-19-402, MCA, she was entitled to wait until her title was questioned before filing an action to quiet title to the one-half mineral interest. Peterson’s cause of action was not, therefore, barred by the “applicable statute of limitation” and she is not estopped from asserting title to the one-half mineral interest.” *Peterson* at 438-439.

Therefore, although Sam did not file a quiet title action to vindicate his right, he did assert his right to ownership in the action underlying this appeal. Sam’s filing of the Warranty Deed 18 months after his possession was challenged does not violate the statute of limitations. As a result, the district court was wrong in determining Sam violated the statute of limitations.

II. The district court erred in determining Sam’s Warranty Deed, recorded in February 2021 violated the common law doctrine of laches.

The district court also held that Sam's assertion of ownership to Sections 8, 9 and 20 were barred by the doctrine of laches. *See June 29, 2021 Order as Appendix 7, Pg. 9-10.* The principles set forth above with regard to the statute of limitations also apply to the doctrine of laches.

Peterson v. Hopkins also addresses laches in a similar context to the instant matter. Peterson as plaintiff was seized of title to a mineral interest for 24 years before her title was challenged. Defendants in Peterson claimed she violated the doctrine of laches in not filing a quiet title action within a reasonable time after she obtained ownership of the mineral interest. *Peterson*, 201 Mont. at 438-439, 684 P.2d at 1066.

This Court, in *Peterson*, cited to *Mountain View Cemetery v. Granger* (1978) 175 Mont. 351, 574 P.2d 254. In *Granger*, the cemetery had property of Granger as access for about 45 years before Granger prevented the Cemetery from using the property. The Court held:

“... However, we see no duty imposed on the Cemetery to take action declaring its easement until such time as the Grangers threatened the actual enjoyment of the use of the road. The Cemetery had no duty to seek judicial enforcement of an easement until the easement's benefits were in jeopardy. 175 Mont. at 358, 574 P.2d at 258.” *Peterson* at 439.

The *Peterson* Court then determined that “Peterson was under no duty to seek a judicial determination of her right to title until that title was challenged.” 210 Mont. at 440.

The Court found similar results in *Carter v. Badrock Rural Fire Dist.*, 2021 MT 280, ¶ 24, 406 Mont. 174. “Badrock has been in continuous possession of the Property since 1993, and has made numerous open and notorious improvements to the Property in that time. . . As in *Peterson*, Badrock ‘was under no duty to seek a judicial determination of [its] right to title until that title was challenged. *Peterson*, 210 Mont. at 440, 684 P.2d at 1066.’”

As in *Peterson* and *Badrock*, Sam, because he was in possession of Section 8, 9 and 20 since 1990, had no legal duty to obtain a judicial determination of his ownership until his title was challenged. Therefore, the district court was wrong in determining that Sam could not file his Warranty Deed in 2021 on the basis of violating the doctrine of laches.

III. The district court erred in determining that Sam waived his right to assert ownership of the ranch property.

The district court also determined that Sam waived his right to title to Sections 8, 9 and 10. *See June 29, 2021 Order as Appendix 7, Pg. 8, ll. 13-28, Pg. 9, ll. 1-3.*

“Waiver is a voluntary and intentional relinquishment of a known right or claim. It may be proven by express declarations or by a course of conduct which induces the belief that the intent and purpose was waiver. To establish waiver, the party asserting waiver must demonstrate that the other party knew of the existing right, acted inconsistent with that right, and prejudice resulted to the party asserting

waiver. *Edwards v. Cascade County*, 2009 MT 229, ¶ 30, 351 Mont. 360, 202 P.3d 289 (citations omitted).” *McKay v. Wilderness Dev., LLC*, 2009 MT 410, ¶28, 353 Mont. 471, 221 P.3d 1184.

Waiver must be manifested unequivocally. *Tvedt v. Farmers Ins. Group of Cos.*, 2004 MT 125, ¶33, 321 Mont. 263, 91 P.3d 1.

As is argued in more detail below, Sam neither waived his right to object to the Agreement in Mediation nor his ownership of Sections 8, 9 and 20. Sam did sign the Agreement in Mediation without an understanding of its contents or purpose. Nevertheless, Sam’s actions and course of conduct before and after signing the Agreement overcome that signature and clearly demonstrate he did not voluntarily or intentionally waive his rights.

Sam’s course of conduct prior to signing the Agreement in Mediation leaves no doubt that, in his mind, he owned Sections 8, 9 and 20. He signed the Contract for Deed, made regular payments on the Contract, he possessed the property, ran a cattle operation on the property, he fixed fence and maintained the property including developing springs on the property for his cattle to water.

Sam signed the Agreement in Mediation under threat of a lawsuit, under pressure from his own counsel as well as his brother. When he submitted the signed Agreement in Mediation to his counsel, he included a note stating that he was signing under protest. Those actions are not voluntary.

Post signing of the Agreement in Mediation, Sam located and filed the Warranty Deed that gave him legal title to the property and continued to work the land and his cattle on the property. He testified at the April hearing that he was pressured into signing the Agreement in Mediation. He testified as to the payments he made on the property, the taxes he paid and the time that he possessed the property. Sam's actions both before and after signing the Agreement in Mediation are not those of a man who would voluntarily turn over three sections of land to his mother's Trust. Despite Sam's signature on the Agreement in Mediation, his signature was not voluntary and the decision of the district court must be reversed.

IV. The district court erred in determining that Sam consented to the Agreement in Mediation.

The district court determine that Sam was competent and, therefore, consented to the Agreement in Mediation. *See June 29, 2021 Order as Appendix 7, Pg. 5, ll. 20-26.* A settlement agreement is a contract subject to the provision of contract law. *Jarussi v. Sandra L. Farber Trust*, 2019 MT 181, ¶ 15, 396 Mont. 488, 445 P.3d 1226. "Consent is established when there has been an offer and an acceptance of that offer. More specifically, this Court has stated that in order to effectuate a contract there must be not only a valid offer by one party, but also an unconditional acceptance, according to its terms, by the other. *Keesun Partners v.*

Ferdig Oil Co., 249 Mont. 331, 337, 816 P.2d 417, 421 (1991).” *Jarussi*, 2019 MT at ¶ 17.

Undue influence must be proven by the person contesting the contract.

Undue influence negates the free consent necessary for the proper formation of a contract. *Adams v. Allen*, 209 Mont. 149, 153, 679 P.2d 1232, 1235, citations omitted.

Section 28-2-407, MCA defines undue influence as:

- 1) “the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over the other person of the confidence or authority for the purpose of obtaining an unfair advantage over the other person;
- 2) taking an unfair advantage of another person’s weakness of mind; or
- 3) taking a grossly oppressive and unfair advantage of another person’s necessities or distress.”

The district court determined that Sam consented to the Agreement in Mediation. By the very nature of that decision, the district court determined that Sam was competent and not unduly influenced to consent. Sam’s participation in the mediation and later signature on the Agreement in Mediation was rife with a lack of consent and undue influence.

Sam contracted COVID-19 and was taken by his wife to the local hospital days before the mediation was to take place. Due to his loss of weight and high fever, she was concerned for his health.

Sam contacted his then attorneys and asked that mediation be continued because he was unable to effectively participate. They told him no, the mediation

had to take place. Sam participated in the mediation via his cell phone from his bed at home. Sam complained to his wife that he couldn't hear much of what was being said. He and his wife both testified that Sam dozed off during the mediation. He ran a high fever and was not capable of participating in a mediation, let alone consenting to the relinquishment of three sections of land, the great bulk of his property. He was threatened with a lawsuit by the petitioner's counsel as well as his own. His own brother pressured him to agree to the mediated settlement out of fear of losing his brother's property.

After the mediation took place, Sam was told by his attorneys, again, that he had to sign the Agreement in Mediation. The effect of the Agreement was not explained to him. He was again pressured by his counsel to sign the Agreement under threat of a being sued. Under pressure from his counsel and his brother, Sam signed the Agreement in Mediation under protest.

Sam's signature cannot be considered consent. He was severely ill during the mediation, unable to hear much of the discussion and, as a result of his illness, slept during portions of the mediation. Sam was not capable of consenting or agreeing to the proposed resolution of the mediation. Any consent Sam gave at mediation was the result of undue influence and was not voluntary in the legal sense. Clearly any oral agreement Sam may have made at mediation was the result

of the parties and his counsel taking an unfair advantage of Sam's 'weakness of mind'.

The undue influence continued after the mediation, in that his attorneys pressured him to sign the Agreement in Mediation. His attorney failed to explain to Sam the consequences of his signature, but simply told him he had to sign it or be sued.

The district court erred in determining that Sam consented to the Agreement in Mediation. Because he did not consent, his signature on the Agreement in Mediation invalidates the Agreement with respect to Sam, and this Court should reverse the district court's order in that regard.

CONCLUSION

The district court erroneously determined that Sam violated the statute of limitations in filing for record the Warranty Deed establishing legal title to Sections 8, 9 and 20. The district court also erroneously determined that Sam violated the doctrine of laches in filing the Warranty Deed. Finally, the district court determined that Sam waived his right to object to the Settlement Agreement, dispossessing him of his property and that he voluntarily consented to it.

The district court was wrong in its decision to dispossess Sam of his property. Montana law simply does not require a person in possession of real property to anticipate the basis for the challenge of the person's possession. Sam was not required to take legal action confirming his ownership until his ownership was challenged. He did not violate the statute of limitations nor the doctrine of laches.

The district court erroneously determined that Sam waived his right to ownership of three sections of land when he signed the Settlement Agreement. Admittedly, Sam did sign the Agreement, but his actions before and after his signature overcome the notion that he signed voluntarily. His signature was not unequivocal.

What person in full control and competent would gratuitously dispossess himself of three sections of land? This is especially so when he holds the firm

belief that he had bought and paid for those sections, possessed those sections for 30 years, paid taxes on those sections for 30 years, insured the property and made improvements on the property. Sam didn't record the Warranty Deed in February 2021 because of remorse, he recorded it because it was consistent with his conviction that he owned the property.

The decision that Sam waived his rights to the property, that he consented to dispossessing himself of the property after he had done everything for 30 years consistent with ownership of the property is completely unbelievable and requires reversal of the district court's order of June 29, 2021 as well as the order of September 3, 2021 expunging the Warranty Deed Sam recorded.

Taking everything before this Court in light of the facts and law before it, Sam respectfully requests that the Court reverse the decision of the district court and order the Warranty Deed reinstated as a valid deed, that his signature on the Settlement Agreement did not constitute a waiver of his rights. Those actions by this Court would allow Sam to bring a quiet title action to firmly and finally establish his ownership of the three sections of land.

From 1990 to 2021, Sam possessed the property under contract: he ran cattle on the property, fixed fence, he paid taxes on the property, he insured the property. No one questioned his right to own or possess the property until Petitioner's filed

suit in September, 2019. Sam made payments on the contract for deed and was never found in default on the Contract. Sam even paid taxes on Section 17, property owned by his mother, after his father passed away.

Despite all Sam Lindemulder did, the district court found Sam's title to the property he worked and paid for was not his. The district court essentially deeded it to the Trust. This Court is in a position to right the wrong, dispossessing Sam Lindemulder of his property.

Sam respectfully asks this Court to reverse the June 29, 2021 and the September 3, 2021 district court orders and recognize that Sam possessed Sections 8, 9 and 20 for more than 30 years and give him the opportunity to prove his legal title to that property.

DATED THIS THE 12th day of January, 2022

/s/ Jim Lippert
Jim Lippert Attorney at Law, P.C.
Counsel for Appellant Samuel B. Lindemulder

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the forgoing APPELLANT'S OPENING BRIEF and that I have served true and accurate copies of the foregoing upon each attorney of record as follows:

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Electronically Signed by Jim Lippert
Dated January 12, 2022

CERTIFICATE OF COMPLIANCE

In accordance with Rule 11(4)(a) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed proportionately spaced Times New Roman, typeface 14 point, double spaced, and the number of words contained herein by Microsoft Word is 5,259 words, excluding the Table of Contents, Table of Citations, Certificate of Service and this Certificate of Compliance.

Dated this the 12th day of January, 2022

/s/ Jim Lippert

Jim Lippert Attorney at Law, P.C.

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CERTIFICATE OF SERVICE

I, James B. Lippert, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-11-2022:

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