

JIM LIPPERT
Jim Lippert Attorney at Law, P.C.
301 W. 1st St., Ste. B
P.O. Box 1636
Big Timber, Montana 59011
Phone: (406) 932-5410
Fax: (406) 932-5853
jimlippertlaw@itstriangle.com
Attorney for Appellee Sharon McDonald

Rodd A. Hamman & Alex Hamman
Calton Hamman & Wolff, P.C.
2075 Central Avenue, Suite 4
Billings, Montana 59102
Telephone: (406) 656-0900
Fax: (406) 656-8307
roddhamman@chwlawfirm.com
alexhamman@chwlawfirm.com
Attorneys for Appellees McDonald
Children

**IN THE SUPREME COURT OF THE STATE OF MONTANA
DA-22-0055**

DENNIS DEE MCDONALD, as a
general partner, managing partner and
limited partner, OPEN SPEAR RANCH
FAMILY LIMITED PARTNERSHIP

Counter-Defendant/Appellant,

-vs-

SHARON MCDONALD, as a general
partner, managing partner and limited
partner, KELLY MCDONALD FRASER,
as a limited partner, COURTNER
MCDONALD, as a limited partner, and
CASEY MCDONALD, as a limited
partner, OPEN SPEAR RANCH
FAMILY LIMITED PARTNERSHIP

Counter-Claimants/Appellees.

**APPELLEES' BRIEF AND
AFFIDAVIT OPPOSING
APPELLANT'S MOTION FOR
RELIEF FROM DISTRICT
COURT'S ORDER STAYING
DISTRIBUTION**

Brief.

Appellant, Dennis McDonald ("Dennis"), is the ex-husband of Appellee Sharon McDonald ("Sharon") and the father of Appellees Kelly McDonald Fraser,

Courtney McDonald and Casey McDonald (“children”). Dennis and Sharon are general partners in the Open Spear Ranch Family Limited Partnership (Partnership) holding 50% management rights and 26% each of the partnership interest. The children hold 16% each or 48% of the partnership as limited partners. After over seven years of litigation, the District Court entered a final decision ordering dissolution of the partnership and distribution of the assets. (Findings, ROA 486). Dennis appealed and requested a stay without a bond.

Sharon and the children agreed to the stay but requested the District Court impose restrictions under Rule 22(5)(a), M.R.App.P., in lieu of a bond for the reasons set forth in their brief and affidavit filed in opposition to Dennis’ motion. (See Brief, Affidavit and Exhibits, ROA 493-494). Basically, Sharon and the children agreed to a stay on the condition that the District Court impose restrictions requiring Dennis to get Sharon’s consent on decisions, and in particular, on spending money.

During the seven years of litigation, Dennis had control of the ranch and operated under judicial supervision including a condition requiring Dennis to obtain Sharon’s consent on management and to co-sign checks over \$3,000. (See ROA 107). Dennis pretty much ignored that and did whatever he wanted. This resulted in multiple motions and findings that Dennis had breached the District Court’s order. (See ROA 146). Sharon had initially tried to cooperate and

consented to Dennis signing checks as long as Dennis got Sharon's prior approval of the expense. Dennis then ignored that condition and spent money as he saw fit. So Sharon revoked that consent. But Dennis continued to ignore Sharon's right to approve expenses and ended up signing checks over \$3,000 by himself totaling \$704,095.18. (See Affidavit Exhibits B, C and D, ROA 494).

Dennis also charged \$7,406.59 of personal expenses on the Partnership credit card. Dennis used partnership funds to pay \$6,639.35 on his personal credit cards. Dennis deposited \$10,913.75 of partnership funds into his personal bank account. Dennis has also branded partnership horses with his personal brand. Then on the eve of a final distribution, Dennis sent Sharon an email proposing to purchase new equipment and build a new building, both of which would go to Dennis upon distribution. Obviously Sharon said no. (See Affidavit Exhibits A, E, F, G and H, ROA 494).

While the action had been pending, Dennis had demonstrated he would spend money as he saw fit regardless of Sharon's right to participate and regardless of the District Court's order. After the District Court entered a final order, Sharon took two actions to protect herself and her children. First, since 74% of the Partnership assets, including \$853,179.83 cash, had been ordered distributed to Sharon and the children, Sharon transferred \$853,179.83 to a new bank account and agreed to hold those funds while the appeal was pending.

Second, Sharon agreed to a stay on appeal on the condition that the District Court impose certain restrictions on Dennis' operation of the ranch. In particular, Sharon requested that control of the bank account be given to the Partnership CPA and that the Partnership credit card be canceled so that Dennis could not spend money without Sharon's review and approval. Dennis complained that he needed access to funds to pay bills at the ranch upon delivery. So Sharon agreed \$25,000 would be deposited in an account under Dennis' control. (See Affidavit, ROA 494). The District Court, noting that Dennis had breached her prior orders, granted Sharon's request for restrictions. (See Order, Appellant's Ex. 1).

Dennis has moved the Supreme Court to modify the District Court's Order by removing the following conditions:

- 2(a) – CPA Laura Turner will pay Partnership bills;
- 2(b) – the Partnership credit card will be cancelled;
- 2(h) – Dennis and Sharon agree on hiring employees;
- 2(i) – Sharon transferred \$853,197.83 to a bank controlled by her. She is to leave that amount in the bank account pending appeal unless the Partnership needs additional cash; and
- 2(j) – if the Partnership needs additional cash, Sharon and the children shall provide 74% of such cash from the account described above and Dennis shall provide 26%. (See Doc. 501).

The legal standard is clear. A District Court may grant a stay under such conditions as it deems proper. *Gilbert v. Gilbert* (1981), 192 Mont. 444, 448, 628 P.2d 1088, 1090. Under Rule 22(2)(a)(i), Dennis has to establish "good cause" to overturn the District Court's order.

Dennis argues good cause exists because the conditions will cause significant problems, unnecessary expense, and undue delay in the daily operation of the ranch. (See Dennis' Motion, p. 2). Dennis argues he has effectively managed the ranch and increased its value, the conditions are costly, unnecessary, and make it difficult to operate because submitting invoices to CPA Turner will delay payment of Ranch expenses damaging the Ranch's credit. He states no small business can operate without a credit card and he often uses the Ranch credit card to pay for everyday expenses to local vendors who require timely payment. Dennis then states he will abide by the other conditions and that Sharon has had access to ranch accounts. (See Dennis' Affidavit, ¶¶ 11, 16, 17 & ¶ 18).

Sharon and the children now have a judgment entitling them to a distribution of 74% of the Partnership assets. Prior to final judgment, Dennis was given the opportunity to operate the ranch on the condition he consult with Sharon and she co-sign checks over \$3,000. He refused to do so. Now while the appeal is pending, he again is asking for unrestricted access to the bank account and Partnership credit card so he can spend money, 74% of which belongs to Sharon and the children. Now he promises he will play by the rules. It is too late.

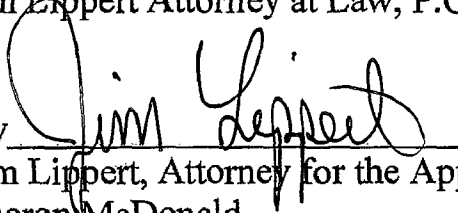
At its core, Sharon's proposal is simple and fair. She will hold the \$853,197.83 awarded to her and the children and will not spend the same during the appeal. In the unlikely event, the Partnership needs additional funds for routine

operations, those funds are available under the conditions set forth in the Stay. As Dennis operates, Sharon does not have to try to police Dennis after the fact. That process failed. Dennis needs to get prior approval from Sharon for sales and expenses. All money is deposited in the Partnership bank account and the CPA pays all bills upon approval. As to charges requiring a credit card, Dennis can put that on his personal card and seek reimbursement. Finally, for true emergency situations, Dennis still has access to a \$25,000 checking account.

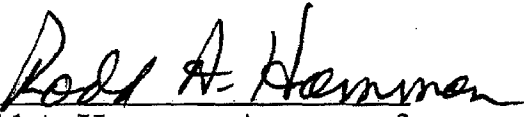
The District Court determined these conditions would allow Dennis to operate the ranch and protect the 74% distributional interest belonging to Sharon and the children during the appeal. Dennis has failed to show any "good cause" to overturn the District Court's conditions on the stay. The District Court has been living with this case for seven years. We respectfully submit the Supreme Court should respect the District Court's decision and deny Dennis' motion for relief.

RESPECTFULLY SUBMITTED this 28th day of March, 2022.

Jim Lippert Attorney at Law, P.C.

By 
Jim Lippert, Attorney for the Appellee
Sharon McDonald

CALTON HAMMAN & WOLFF

By 
Rodd A. Hamman, Attorneys for
Appellees McDonald children

Affidavit of Sharon McDonald

SHARON McDONALD, being first duly sworn deposes and says:

1. Dennis accuses me of pilfering \$161,000.00 from the Ranch account in 2014.

He made these allegations in the District Court but dropped them at trial and never introduced any evidence. The reason is the allegations were false. The period in question was June, July and August of 2014 and copies of those bank statements as well as copies of the checks issued for ranch business were furnished to Dennis. Dennis also wrote checks from the ranch account during that period, including payments to his attorney to represent him in an assault charge. Dennis was absent from the ranch due to a restraining order March, April, and May 2014. He returned to the ranch in June 2014, and the balance in the account was about \$150,000. My son and I didn't leave until mid-September. Dennis had full access to the Ranch checking account at all times and received monthly bank statements.

2. Dennis accuses me of abandoning the Ranch. In 2014, my son Casey and I were the only family members living on the Ranch property. Casey and I did not abandon the Ranch in 2014 without just cause. We had a protective order prohibiting Dennis from having contact with us so we found it impossible to live and work on the Ranch because of the underlying conditions resulting in the order.

3. Dennis insinuates that in 2014, I dismissed employees in his absence. His accusation is false. At the time, Casey and one other person were employed at the Ranch, aside from Dennis and me. I didn't fire my son, and the other employee quit because Dennis assaulted him. Prior to Casey and I leaving the ranch in September 2014, Dennis had already hired two employees. The animals were always properly cared for and Dennis' insinuation that they were not is false.

4. Dennis accuses the Ranch CPA of improperly preparing Ranch tax returns. Dennis has made the same accusations in the District Court, but those accusations were found to be baseless.


5. Dennis objected to my removal of \$853,179.83 from the Ranch account. But in its final order, the District Court adopted the distribution of assets recommended by the Special Master and the Master recommended we receive \$853,179.83 from the Ranch account. (See Findings, p. 18, ROA 486, and Crosby Report, p. 7, ROA 460). I simply followed that order and placed those funds in a separate account in my children and my names. I did this to prevent Dennis from spending money the Court had awarded to us. We agreed to hold those funds and make them available for Ranch expenses if needed. But the Ranch has an additional \$400,000 plus current income so it is unlikely the Ranch would need any additional money to cover simple operations.

6. Dennis claims the loss of the Ranch credit card would be an extreme imposition in conducting Ranch business. Dennis has a personal credit card he can use for purchases that cannot be invoiced and paid within 14 days. Since 2014 Dennis has often used the Ranch credit card for his personal expenses and refuses to reimburse the Partnership. Additionally, I only receive about half of the receipts for Dennis' credit card charges, so I have no way of knowing if they are legitimate Ranch expenses. Requiring Dennis to use his personal credit card and then submitting receipts to verify these were Ranch expenses is the only way to curb his abuse of the Ranch card. This is the same as any other business requiring submission of receipts as a condition of reimbursement for business expenses.

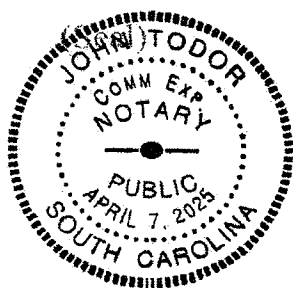
7. Dennis states that various suppliers must be paid immediately and his inability to write a check on the spot will eliminate Ranch discounts. This shouldn't be a problem as long as Dennis forwards the invoices in a timely manner to the CPA by the 15th and 30th of each month. The Ranch CPA will pay Ranch suppliers bi-monthly and will be able to take advantage of any discounts. Ranch employees would be timely paid by the Ranch CPA if not by check, then by direct deposit. Any supplier that requires immediate payment can be paid with Dennis' personal credit card. Also, I agreed to and have set up a \$25,000 account for Dennis to use for on-site expenses requiring immediate payment. So Dennis has ample funds to operate the Ranch.

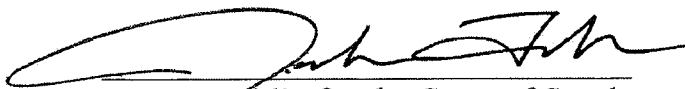
8. While the case was pending in the District Court, Dennis refused to include me in Ranch decisions as general partner. The details are set forth in my Affidavit Requesting Conditions in Lieu of a Bond. (See Appellees' Appendix, Ex. 2). Dennis says now he will include me, but I have no reason to trust him. More importantly, I don't want to be in the position of having to try to police Dennis' expenditures after the fact. We tried that and it did not work. The whole point of the conditions in the Stay Order is to limit Dennis' ability to spend money without prior approval. Dennis can operate the Ranch. But he will now have to get my prior approval for expenses. That is Dennis' real objection. He has had sole control since this suit started. He does not want give that up. But the District Court's conditions are reasonable and will protect me and my children while the appeal is pending.

Dated this 25th day of March, 2022.


Sharon McDonald

SUBSCRIBED AND SWORN TO before me this 25 day of
March, 2022.



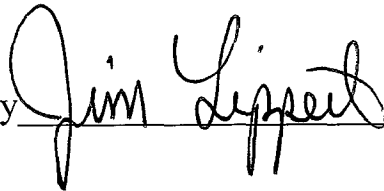

Notary Public for the State of South
Carolina

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing APPELLEES' BRIEF AND AFFIDAVIT OPPOSING APPELLANT'S MOTION FOR RELIEF FROM DISTRICT COURT'S ORDER STAYING DISTRIBUTION was served by email this 28th day of March, 2022, upon the following:

David B. Gallik
Gallik Law Office, PLLC
1124 Billings Avenue
Helena, MT 59601
dave@galliklaw.com

Hertha L. Lund
Lund Law, PLLC
662 S. Ferguson Avenue, Unit 2
Bozeman, MT 59718
lund@lund-law.com

By  _____

CERTIFICATE OF SERVICE

I, James B. Lippert, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 03-28-2022:

David B. Gallik (Attorney)
1124 Billings Avenue
Helena MT 59601
Representing: Dennis Dee McDonald, Open Spear Ranch Family Limited Partnership
Service Method: eService

Hertha Louise Lund (Attorney)
662 S. Ferguson Ave., Unit 2
Bozeman MT 59718
Representing: Dennis Dee McDonald, Open Spear Ranch Family Limited Partnership
Service Method: eService

Rodd A. Hamman (Attorney)
2075 Central Avenue, Suite 4
Billings MT 59102
Representing: Sharon McDonald, Kelly McDonald Fraser, Courtney McDonald, Casey McDonald
Service Method: eService

Electronically Signed By: James B. Lippert
Dated: 03-28-2022