

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT CAUSE NO. DA 21-0390

RANDY LAEDEKE, and DARLA PRENN, for
THE ESTATE OF LILA M. LAEDEKE,

Plaintiffs/Appellants,

v.

BILLINGS CLINIC,

Defendant/Appellee.

APPELLEE BILLINGS CLINIC'S MOTION TO DISMISS

On appeal from the Montana Thirteenth Judicial District Court, In and for the
County of Yellowstone, Cause No. DV-18-0323

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STATEMENT OF ISSUE OR PROBLEM

Defendant and Appellee Billings Clinic respectfully submits this Motion to Dismiss Appeal pursuant to Rules 13(3) and 26, M. R. App. P. Following the Notice of Appeal, Appellants were required to file their opening brief no later than September 27, 2021. Appellants, through former attorney and pro se Appellant Randy Laedeke, have now received eight extensions of time. The Court twice notified Appellants that they have exhausted their extensions. The most recent order granted Appellants one more day to file their opening brief on or before April 28, 2022. Appellants have failed to file their opening brief despite the Court granting numerous extensions. Appellants have not acted with the requisite diligence to receive additional extensions and Billings Clinic respectfully asks the Court to dismiss this appeal.

PROCEDURAL BACKGROUND

This appeal stems from a medical malpractice claim following the death of Lila Laedeke in 2014. Four years later, Appellants filed their Complaint in Montana's Thirteenth Judicial Court in Yellowstone County. A snapshot of this matter's procedural history is below.

District Court

- March 5, 2018 Complaint filed (Dkt. 1)
- March 3, 2021 Summons issued (Dkt. 3)

- March 23, 2021 Motion to Dismiss filed (Dkt. 5)
- April 9, 2021 Stipulated Motion for Extension filed (Dkt. 9)
- April 19, 2021 Motion for Extension filed (Dkt. 11)
- April 23, 2021 Amended Motion for Extension filed (Dkt. 12)
- April 26, 2021 Second Amended Motion for Extension filed (Dkt. 14)
- April 27, 2021 Third Amended Motion for Extension filed (Dkt. 15)
- April 28, 2021 Fourth Amended Motion for Extension filed (Dkt. 16)
- June 30, 2021 Final Judgment entered (Dkt. 26)

Supreme Court

- Aug. 6, 2021 Notice of Appeal filed
- Sept. 27, 2021 Unopposed Motion for Extension filed
- Oct. 29, 2021 Motion for Extension filed
- Nov. 24, 2021 Motion for Extension of Time – Mediation filed
- Nov. 29, 2021 Grant of Extension until January 24, 2022 for mediation, no further extensions shall be granted.
- Jan. 31, 2022 Mediator’s Report filed
- Feb. 28, 2022 Motion for Extension filed
- March 28, 2022 Motion for Extension filed
- April 12, 2022 Motion for Extension filed
- April 12, 2022 Grant of Extension until April 26, 2022, no further extensions will be granted.

- April 26, 2022 Motion for Extension filed

This chronology provides a snapshot of Appellant Laedeke's pattern of dilatory behavior and belated requests for more time. Ample resources have been expended by the district court, the mediator, Billings Clinic, and the Montana Supreme Court in accommodating Laedeke's scheduling needs. As the Supreme Court is aware, this is not the first case in which Laedeke has employed dilatory tactics and wasted judicial resources. *See, e.g.,* Order, *State of Montana v. Randy S. Laedeke*, DA 21-0555 (Aug. 24, 2021) (dismissing because Appellant failed to file an opening brief after requesting an extension of time); Order, *State of Montana v. Randy S. Laedeke*, DA 19-0273 (Dec. 8, 2020) (noting that Laedeke failed to comply with district court order after being granted extension); Order, *City of Billings v. Randy S. Laedeke*, DA 17-0464 (Dec. 11, 2018) (affirming district court's dismissal for failure to comply with deadline after four extensions); Order, *In the Matter of Randy S. Laedeke*, PR 14-0471 (Aug. 18, 2015) (denying Laedeke's third motion for extension of time); Order, *In the Matter of the Suspension of the Driver's License of Randy S. Laedeke*, DA 06-0324 (Oct. 25, 2006) (dismissing because Appellant was ordered to file a brief within 30 days and failed to do so).

ARGUMENT

The Court should dismiss this appeal for Appellants' failure to file an opening brief. Where an appellant fails to file a brief within the time provided, an appellee may move for dismissal. Mont. R. App. P. 13(3). The Court's dismissal of an appeal is with prejudice unless otherwise ordered. M. R. App. 19(2). Here, the Appellants' failure to file their opening brief despite numerous extensions justifies dismissal.

The Rules of Appellate Procedure do not permit unlimited extensions of time. Rule 26 grants leave for one 30-day extension of time to file an opening brief. Mont. R. App. P. 26(1). There is otherwise a presumption against granting motions for extension of time to file briefs. Mont. R. App. P. 26(2). Any subsequent motion for extension of time to file a brief must be filed at least 7 days before expiration of the time prescribed for filing, must comply with Rule 16, and must be accompanied by an affidavit stating: (a) when the brief was due; (b) when the brief was first due; (c) the length of the requested extension; (d) the reason an extension is necessary; (e) an explanation establishing the movant has exercised diligence and has substantial need for the extension; and (f) whether any other party objects. M. R. App. 26.

There appears to be no limit to Appellant Laedeke's need for additional time. Throughout the underlying litigation and on appeal, there have been repeated

requests for additional time. While Billings Clinic and this Court graciously granted many extensions, the Court should reject any further excuses Appellant Laedeke presents and dismiss this appeal.

CONCLUSION

Appellants have not exercised the diligence required by Rule 26 of the Montana Rules of Appellate Procedure. Since Appellants failed to timely file an opening brief despite numerous extensions of time, this Court should dismiss this appeal with prejudice pursuant to Rule 13 of the Montana Rules of Appellate Procedure.

A proposed order is included herewith pursuant to Rule 16 for the Court's convenience.

RESPECTFULLY SUBMITTED this 29th day of April, 2022.

CROWLEY FLECK PLLP

By: /s/David P. Whisenand
David P. Whisenand
Attorneys for Defendant/Appellee
Billings Clinic

CERTIFICATION OF COMPLIANCE

I certify that this Motion to Dismiss Appeal is double spaced, proportionately spaced, typed in Times New Roman, has a typeface of 14 points and contains 913 words, excluding the caption, certificate of compliance and certificate of service.

/s/David P. Whisenand

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served upon the following parties, by the means designated below, this 29th day of April, 2022.

<input checked="" type="checkbox"/> Certified U.S. Mail <input type="checkbox"/> FedEx <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email	Randy Laedeke, 1148 Patriot Street Billings, MT 59105 Randylaedeke56@gmail.com
<input checked="" type="checkbox"/> Certified U.S. Mail <input type="checkbox"/> FedEx <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email	Darla Prenn 4097 E. Danby Ct. Winter Springs, FL 32708 dprenn@yahoo.com

Hilary Flanders

CROWLEY FLECK PLLP

CERTIFICATE OF SERVICE

I, David Patrick Whisenand, hereby certify that I have served true and accurate copies of the foregoing Motion - Dismiss to the following on 04-29-2022:

Randy S. Laedeke (Appellant)
1148 Patriot Street
Billings MT 59105
Service Method: E-mail Delivery

Electronically Signed By: David Patrick Whisenand
Dated: 04-29-2022