

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Case No. DA 22-0545

David F. Stufft
Attorney at Law
P.O. Box 2957
Kalispell, Montana 59903
Telephone: (406) 471-4819
david@stufftlaw.com
State of Montana Bar License #1501

Attorney for Lindsay B. Goudreau, Appellee

IN RE MARRIAGE OF**Lindsay B. Goudreau,****Petitioner and Appellee,****and****Jeffrey A. Goudreau,****Respondent and Appellant.**

**Lindsay B. Goudreau's
Responsive Brief to Motion
for Stay of Judgment**

Lindsay B. Goudreau, through her counsel of record, David F. Stufft, respectfully submits her *Responsive Brief* to the October 6, 2022, *Motion for Stay of Judgment*. Attached to Lindsay's *Responsive Brief* is her October 14, 2022, Affidavit which is incorporated and merged into this *Responsive Brief*.

- 1. The District Court has a *Pending Motion for Stay of Judgment* filed by Jeff Goudreau.**

On July 21, 2022, Jeff Goudreau filed his Motion for Stay of Judgment

in Flathead District Court. (Flathead County Ct Doc. #105). The District Court's *Motion for Stay of Judgment* filed by Jeff is the same *Motion* now filed with the Montana State Supreme Court. This no legal reasoning to have the same duplicate *Motions* pending in two Courts. In *Westmoreland Rosebud Mining LLC v. Mont. Sixteenth Judicial Dist. Court*, OP 21-0655, (Mont. Jan. 4, 2022). This *Motion for Stay of Judgment* has been filed prematurely, because the District Court has not issued a ruling on his pending District Court *Motion for Stay of Judgment*, and it should be dismissed. *In re Sawfer*, DA 21-0396, (Mont. Sep. 14, 2021).

2. On September 21, 2022, Lindsay filed her Contempt *Motion* for Jeff to be held in Contempt because of Jeff's failure to comply with the June 7, 2022, Decree.

Pending in Flathead District Court is Lindsay's September 21, 2022, *Motion for Contempt*. (Flathead County Ct Doc. #121). Shortly after the filing of *Contempt Motion*, Jeff filed his October 6, 2022, *Motion for Stay of Judgment* with the Montana State Supreme Court. The District Court should be allowed to determine whether Jeff is in violation of its June 7, 2022, Decree and Ordering Jeff to sign the listing agreement for the sale of their 1035 Oakmont Lane Property.

3. Jeff failed to cooperate and list the jointly owned 1035 Oakmont Lane Property as Ordered by Judge Allison on June 7, 2022.

It is undisputed that Jeff failed to comply with the June 7, 2022, *Decree* ordering the 1034 Oakmont property to be listed and sold. (Affidavit of Lindsay Goudreau).

**The Law
Rule 22. M.R.App.P.**

“Rule 22. Stay of Judgment or order pending appeal.

(1) Motion for stay in the district court.

- a. A party shall file a motion in the district court for any of the following relief.
 - i. To stay a judgment or order of the district court pending appeal;
 - ii. For approval of a supersedes bond; or....

**Rule 22(b) M.R.App.P. Stay
of Judgment or Order Pending Appeal**

Rule 22(b) M.R.App.P. states:

“If the appellant desires a stay of execution, the appellant must, unless the requirement is waived by the opposing party, obtain the district court's approval of a supersedeas bond which shall have 2 sureties or a corporate surety as may be authorized by law. The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. ... (emphasis added).

Lindsay has not waived this requirement. Lindsay’s October 14, 2022, *Affidavit* reflects:

- Lindsay has significant debts and is struggling financially and emotionally from this litigation. The marital estate property is the primary asset of value. Lindsay requires access to her equitable portion of the marital estate to avoid irreparable financial harm.
- Lindsay owes her grandmother \$169,000 for the loan she made so she

could acquire a small home at 801 2nd Ave. West, Columbia Falls to live in with their two children during the divorce proceedings. Lindsay has been unable to pay her grandmother who is 94 years old and struggling with multiple myeloma cancer. Lindsay's grandmother had to borrow against her property in Minnesota to help her and her grandmother is now paying on her HELOC loan without the ability of Lindsay to help.

- Lindsay owed delinquent property taxes for 2 years on her 801 2nd Ave. West Columbia Falls home in the amount, \$4,185.00. This past week, Lindsay's mother used her credit card to pay those taxes that Lindsay could not pay because Jeff and Lindsay's 1035 Oakmont Lane property has not been even listed for sale and sold as ordered by Judge Allison on June 7, 2022. This coming week Lindsay expects to have a new property tax bill in the mail which she will not be able to pay because Jeff refuses to comply with the District Court Order and list their property for sale.
- Lindsay is unable to purchase health insurance because Lindsay does not have the money. Her right knee needs to be totally replaced because it is grinding bone on bone. The cost is \$20,000.00. She can't have this needed operation until their 1035 Oakmont Lane property is listed for sale and sold.
- Lindsay needs dental care, including two crowns, which are \$2,000 each. Lindsay can't afford this necessary dental work because their 1035 Oakmont Lane property has not even been listed as ordered by Judge Allison, let alone sold.
- Lindsay drives a used 2008 Toyota Sequoia with 201,000 miles. The interest on her Sequoia loan is 15%. Lindsay is unable to pay this high

interest rate loan off because Jeff refuses to list their 1035 Oakmont Lane property for sale as ordered by Judge Allison which will permit it to be sold.

- Lindsay's monthly home mortgage payment is an interest payment only, in the amount, \$940 a month. Lindsay's banker is strongly pressuring Lindsay to begin making monthly interest and principal payments, which she does not have the ability until their 1035 Oakmont Lane property is sold. Lindsay's interest only mortgage loan comes due this November and Lindsay is fearful the loan will not be renewed because it has already renewed one time to allow for an interest only payment. Lindsay does not qualify for a new loan because the bank is waiting for the final ruling on the 1035 Oakmont Lane property. Lindsay will need to put additional money to down to qualify for a loan and Lindsay can't do that until the 1035 Oakmont Lane property is sold.
- During July and August, Lindsay rented her 801 2nd Ave. West home to vacationers in an attempt to earn monies so she could exist financially. Their children and Lindsay lived in a small trailer on a friend's lot.
- Lindsay is unable to pay her attorney for his fees and costs which now approximate \$78,000. Lindsay will have to go through mediation once again at a cost which will be between \$1,000 and \$1,500 for the mediator. Lindsay does not have the money to pay the mediator. Her attorney will have to fund and pay for the mediator.
- Jeff very seldom uses their 1035 Oakmont Lane property. He stays with his girlfriend at her large home in West Valley, some distance from the 1035 Oakmont Lane property and not even in the same town.

(Lindsay October 14, 2022, Affidavit, Bates Stamp #2-5).

Real Estate Broker, Mr. Brian Murphy, who has been assigned by Judge Allison to list the property believes that the listing should be for \$1,600,000 and that with the continued increase in interest rates, 1035 Oakmont Lane should be listed as soon as possible. (Lindsay *Affidavit*, which *Brian Murphy's Affidavit* is attached, *Bates Stamp #50*.) Lindsay should not have to bear the risk and financial loss if the real estate market in the Flathead declines because of the economy and higher interest rates.

“The purpose of a supersedeas bond as a condition for staying enforcement and execution on a judgment is to secure the rights of the judgment creditor during the appeal process.” *Safeco*, 697 P.2d at 1358 (citing *Poulsen v. Treasure State Industries, Inc.* (1979), 183 Mont. 439, 442, 600 P.2d 206, 208). *Rasmussen v. Lee*, 276 Mont. 84, 93 (Mont. 1996)

In *Rasmussen, supra.*, the only event preventing the closing of the sale to the third party was Lee's possession of the property. This Court affirmed the District Court which calculated the amount of interest the estate lost from its inability to reinvest any sale proceeds, the cost of taxes, and appeal expenses. The Montana State Supreme Court found there was a reasonable basis for the amount and the \$60,000 supersedeas bond. Lindsay is entitled as a matter of law to require Jeff posting a supersedeas bond protecting her for her inability to reinvest her sales proceeds, the risk of a lost sale because of the changing economy and appeal expenses.

In re Sawfer, DA 21-0396, (Mont. Sep. 14, 2021) the husband filed a motion seeking to stay of judgment for the sale of the marital home. The husband argued the sale of the family home in the current real estate market

would create additional pain and suffering to the three minor children that currently reside in the family home. He also claimed the children's best interests had been ignored. He further stated there would be significant irreparable harm to the children, their livelihoods, their 4H projects, their mental health and stability, as well as, their developmental needs. This Court denied the husband's emergency stay of execution because the District Court had denied his motion for stay pending appeal, providing detailed reasons and the supporting rationale. This Court affirmed District Court order, finding the husband would suffer no irreparable harm with the selling of the house, and the Court found the husband had ample opportunity to secure financing or propose alternative resolutions. This Court concluded that husband did not demonstrate good cause for a stay. This Court agreed that the wife required access to her equitable portion of the marital estate to avoid irreparable financial harm. Here, Jeff has presented no affidavits reflecting what he has done to apply for a loan to finance the money owed Lindsay or even propose an alternative resolution. Lindsay will experience irreparable financial harm unless Jeff is ordered to sign the listing agreement.

In *Westmoreland Rosebud Mining LLC v. Mont. Sixteenth Judicial Dist. Court*, OP 21-0655, (Mont. Jan. 4, 2022), this Court denied a *Writ of Supervisory Control* stating the Petitioners had a pending motion to stay the Order on Petition in the District Court and only if denied by the District Court, then M. R. App. P. 22(2) provides an avenue for Petitioners to seek review of that denial. Here, Jeff's Motion is premature. It is pending in Flathead County District Court.

Summary

It is respectfully requested that Jeff Goudreau's *Motion for a Stay of Judgment* be dismissed. This will permit the District Court to make its appropriate rulings including a ruling on the *Motion for Contempt* for Jeff's failure to comply with the June 7, 2022, Decree.

Dated: October 17, 2022.

/s/David F. Stufft
David F. Stufft, attorney
for Lindsay B. Goudreau

CERTIFICATE OF SERVICE

I, David F. Stufft, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-17-2022:

Penni L. Chisholm (Attorney)
PO Box 2034
516 First Ave W
Columbia Falls MT 59912
Representing: Jeffrey A Goudreau
Service Method: eService

Electronically Signed By: David F. Stufft
Dated: 10-17-2022