

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Case No. DA 22-0545

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IN RE MARRIAGE OF

Lindsay B. Goudreau,

Petitioner, Appellee and
 Cross-Appellant

and

Jeffrey A. Goudreau,

Respondent, Appellant
 Cross-Appellee.

Lindsay B. Goudreau's
 Responsive Brief to Second
 Motion for Stay of Judgment
 & Waiver of Supercedeas
 Bond

Introduction

Lindsay B. Goudreau, through her counsel of record, David F. Stufft, respectfully submits her *Responsive Brief* to the November 25, 2022, *Motion for Stay of Judgment and Waiver of Supercedeas Bond*. Attached to Lindsay's *Responsive Brief* are both her December 5, 2022, Affidavit and Renee Howe's December 4, 2022, Affidavit which are incorporated and merged into this *Responsive Brief*. This is the second time Jeff has sought a *Motion to Stay the Judgment* having originally been denied by this Court on October 24, 2022.

Subsequently, On November 14, 2022, the Honorable Judge Allison, denied the *Motion to Stay* which Jeff had filed in District Court, stating:

“...Lindsay is struggling and without assets whereas Jeffrey has continued dominance over the bulk of the marital estate. Additionally, market forces beyond the parties’ control may have altered in a way that could be disadvantageous to both parties...” (November 14, 2022, Order, p.2 attached to Jeff’s *Motion*).

The required District Court bond is \$407,000.00. Jeff has had since June 7, 2022, to buy out Lindsay’s marital interest for \$407,000.00. Jeff did not and as a result the next step is to list the property for sale. There is presently a *Motion for Contempt* filed in District Court requiring Jeff to list the marital estate home for sale.

Jeff’s *Motion for Stay of Judgment and Waiver of Supersedeas Bond* is factually and incorrect in the following non-exclusive list of ways:

- Jeff’s *Motion* and *Affidavit* fails to demonstrate good cause. (M.R.App.P. 22(2)(a)(i)).
- Because the stay benefits the appellant to the detriment of the appellee, a full supersedeas bond covering the costs of the appeal, interest, and damages for delay should be required in normal circumstances as discussed by Judge Molloy. It is not the burden of the judgment creditor to initiate contrary proof. *Ansel Capital Investment, LLC v. U.S.*, CV 08-57-

M-DWM, CV 08-93-M-DWM, (consolidated), at *3-5 (D. Mont. June 25, 2010).

- Jeff’s *Motion* and *Affidavit* fails to produce documents showing that he attempted to finance a buyout of Lindsay’s District Court Order \$407,000 payment after the June 7, 2022, *Decree* was issued.
- Jeff’s delayed seeking a *Supersedeas Bond* from a reputable bonding company from the date of Judge Allison’s November 14, 2022, *Order*, until November 21, 2022, a period of 7 days out of 11 permissible days.
- Jeff’s only “application” for a *Supersedeas Bond* failed to correctly disclose the amount of the judgment, the amount of the required bond and the value of the Oakmont property or his financial statement.
- Jeff, contrary to his *Motion* and affidavit has not delivered Lindsay her personal property. Her personal property is part of Lindsay’s Cross-appeal.
- Jeff, contrary to his *Motion* has not made available Lindsay’s share of the two marital estate Quadros because the value of those two Quadros are part of Lindsay’s cross-appeal. (Lindsay December 6, 2022, Affidavit).

Background

On June 7, 2022, the District Court issued its *Findings of Fact, Conclusions of Law, and Decree*. (June 7, 2022, *Decree*, attached to Jeff’s *Motion*). Judge Allison allowed Jeff the opportunity to purchase the Oakmont

marital estate residence from Lindsay by paying her \$406,900, within 45 days from the date of *Decree*. If Jeff didn't make the payment, Judge Allison ordered the 1035 Oakmont Lane home sold and the proceeds to be distributed. Judge Allison retained jurisdiction to modify the conditions of sale and the proceeds obtained from the sale. (*Decree, Findings of Fact* 29 and 30, pp. 15, 16 attached to Jeff's *Motion*).

Judge Allison denied Jeff's *Motion* expressly stating that he was "well versed" with the multiple pleadings relating to the proposed stay. He granted the stay subject to Jeff posting a supersedeas bond for \$407,000 and provided the supersedeas bond was to be filed with the clerk of Court no later than November 29, 2022. If the bond was not filed by that date, the stay would be denied. Jeff had ample opportunity to demonstrate an ability to refinance the Oakmont residence and would not do it.

The marital estate home is jointly owned. Jeff and Lindsay filed a homestead exemption for their jointly held home. They worked together to build their home. They lived in a trailer through two Montana winters while building their home. Virtually all of the marital estate is tied up in the marital estate residence, 103 Oakmont Lane. The longer Lindsay goes without access to her rightful portion of the marital estate, the more likely she is to sustain lasting harm to her credit and financial future. Jeff completely overlooks the

damage being caused to Lindsay. Jeff's desire to drag his fight on is emotionally and financially abusive and is significantly impeding Lindsay's ability to move forward in becoming financially self-sustaining. As recently as November 14, 2022, Jeff once again showed his true colors by emailing Lindsay. She suggested using a parenting coach because of a recent issues including a school lunch box. His email meanly stated:

"Nov 14, 2022 at 10:15 AM Jeff Goudreau <jgou442@gmail.com> wrote: **Once you solve the evil in your soul and truly want a descent relationship with me I would attempt something like that.** It's clear you can't put your greed and nastiness aside to better parent our kids together. You have continually made baseless accusations about me to gain control of the kids and minimize me to inflate your ego. For now I am not wasting my time, you would simply use the person as someone to spread your lies and manipulation over. I don't care to waste my life fighting with you, hopefully you can wake up and realize life is too short and it doesn't solve a thing. Move on from wanting to fight with me, the kids need parents who can communicate well.

Solve the evil in your heart first, then let's talk." (December 5, 2022 Lindsay Goudreau Affidavit).

Lindsay financial situation has not changed since submitting her October 25, 2022, affidavit with this Court. 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. Her December 5, 2022, *Affidavit* states:

- “I owe my grandmother \$169,000 for the loan she made so I could acquire a small home at 801 2nd Ave. West, Columbia Falls to live in with our two children. I have been unable to pay my grandmother who is 94 and struggling multiple myeloma cancer and recently developed pneumonia. My grandmother had to borrow against her property in Minnesota to help me purchase my residence at 801 2nd Ave. West, and she is now paying on her own loan. My grandmother is also suffering financially due to her borrowing money on her home, to help me buy my home and not having any money being paid her because I don’t have the financial resources. She now has a renter in her home to help pay her bills. I don't have enough to pay my mortgage if I buy groceries and I can't make my car payment. On October 27, 2022, I borrowed \$300 from my mother. On November 7, 2022, I had to borrow an additional \$700 from my mother.
- I am self-employed, doing real estate photography. This business is extremely competitive, having now to compete with an out of state corporate business that has been undercutting local professionals such as me.
- I'm worried that I may need to sell my car, which I still owe on, or sell my 801 2nd Ave. West home, and move back into the camper. Usually at this time of year, I have money saved up to get me through December through March. Those are my slow months. Right now, I'm trying to figure out what I can sell to exist.
- I owed delinquent property taxes for 2 years on my 801 2nd Ave. West Columbia Falls home in the amount, \$4,185.00. On October 13, 2022, my mother used her credit card to pay those taxes that I could not pay because our 1035 Oakmont Lane property has not been even listed for sale as ordered by Judge Allison on June 7, 2022, let alone sold.

- My property taxes on 801 2nd Ave. West, Columbia Falls became delinquent on November 30, 2022. I owe the Flathead County Treasure \$1,774.51. I will owe a similar amount on May 30, 2023. I am unable to pay my property taxes until our Oakmont property is sold.
- I am unable to purchase health insurance because I do not have the money. My right knee needs to be totally replaced because it is grinding bone on bone. The cost is \$20,000.00. I have to wait until our Oakmont property is sold to purchase health insurance.
- I need dental care, including two crowns, which are \$2,000 each. I can't afford this necessary dental work because our 1035 Oakmont Lane property has not even been listed as ordered by Judge Allison, let alone sold.
- I drive a used 2008 Toyota Sequoia with 201,000 miles. The interest on my Sequoia loan is 15%. I am unable to pay this high interest rate loan off because Jeff refuses to list our property for sale as ordered by Judge Allison.
- My monthly home mortgage payment is an interest payment only, in the amount, \$940, a month. I do not have the ability to pay any of the principal on this loan for my current residence, 801 2nd Ave. West, Columbia Falls until our 1035 Oakmont Lane property is sold. I was able to obtain a renewal of my loan for one additional year but have been informed by my banker that is the last time. I do not qualify for a new loan because the bank is waiting for the final ruling in this case. I will need to put additional money down to qualify for a loan and I can't do that until the 1035 Oakmont Lane property is sold.

- During July and August, I rented my 801 2nd Ave. West home to vacationers in an attempt to receive monies so I can exist. Our children and I lived in a small trailer on a friend's lot.
- I am unable to pay my attorney for his fees and costs which now approximates \$90,000. My mother with a credit card pays \$500 a month on this bill. On December 5, 2022, I went through mediation once again at a cost which will be between \$1,000 and \$1,500. I do not have that money to pay the mediator. My attorney will have to fund and pay for the mediator. Every month the interest owed on my legal bill increases.
- Jeff does not owe any legal fees let alone a legal fee statement that increases every month because of accruing interest. He is able to fund his case by cash as evidenced by his financial statement attached as Exhibit 1 to his November 25, 2022, *Second Motion for Stay of Judgment & Waiver of Supersedeas Bond.*"

Jeff's did not seek a loan to buy out Lindsay's interest. His "attempt" to obtain a Supersedeas bond was feeble at best. His "application" failed to reflect the true amount of the required bond, the amount of the actual judgment and his financial statement. And, Lindsay is still waiting personal property and a determination of equitable share of the two marital estate Quadros. (Lindsay's Affidavit).

Argument

"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." *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). *Poulsen*, *supra* denied a stay stating it has neither the duty or expertise to monitor collateral and if a bonding company denied coverage, the Court has no justification to accept security in lieu of a supersedes bond. Similarly, the person's attempt to secure a supersedeas bond have been neither prompt nor thorough. *Poulsen v. Treasure State Industries, Inc.*, 183 Mont. 439, 443 (Mont. 1979). 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. 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 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.

Finally, the claim of mootness if the property is sold is misplaced. That argument failed in *Ansel Capital Investment, LLC v. U.S.*, CV 08-57-M-DWM, CV 08-93-M-DWM, (consolidated), at *3-5 (D. Mont. June 25, 2010) with Judge Molloy stating there was no assurance made by the moving party that the property would not devalue during the appeal, that they could cover any loss in the value as a result of the stay and that there was no identifying statute or case to support the conclusion supporting the claim of mootness.

This is especially critical when Jeff has underinsured the home for only \$296,000 and the garage/shop for only \$26,800. (Lindsay Goudreau Affidavit and Renee Howe Affidavit).

Summary

The District Court sat as a Court of Equity. It made the equitable decision requiring a supercedas bond. It is respectfully requested that Jeff Goudreau's *Motion for a Stay of Judgment and Waiver of Supercedas Bond* be dismissed. This will permit the District Court to make its appropriate ruling on the *Motion for Contempt*. The equities speak for the ending of the financial and emotional hardships directed by Jeff to Lindsay.

/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 12-06-2022:

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