



FILED

02/07/2023 -

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0031

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA ~~2~~**3**-0031

IN THE MATTER OF THE ESTATE OF: IAN RAY ELLIOT, Deceased.

On Appeal From The Montana Thirteenth Judicial District Court,
Yellowstone County, Hon. Rod Souza
Case No. DP-22-0034

APPELLANTS' OBJECTION TO PARTIAL MOTION TO DISMISS

APPELLANTS:

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ARGUMENT

A. Rule 4 (6) Allows the Out-Of-Time Appeal in the Extraordinary Circumstances

Appellees Joseph Womack and Cindy Elliot were correct in citing *Donovan v. Graff*, 248 Mont. 21, 24, 808 P.2d 491, 493 (1991), *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124) and other cases that our appeal of the 5/23/2022 order was untimely.

We understand that we made a mistake (we did not know that Rule (60) relief must be filed within 30 days since the language of Rule (60) stated that relief can be filed in one year). However, “ignorance of the law is no excuse”. (*Donovan and Greenup*)

However, our reasons for the Rule 60 relief are not purely our “ignorance of the law”. We believe attorneys’ dishonest acts in handling Ada Elliot and Ian Elliot estates’ probate constituted fraud on the court.

The precedent case law allows the untimely appeal to be reviewed under extraordinary circumstances. *Koch v. Billings School Dist. No. 2*, 833 P. 2d 181 MT 1992; *Maulding v. Hardman*, 847 P. 2d 292 MT 1993. *Maulding* especially mentioned that plaintiff attorney’s non-disclosure of certain facts as one of the two reasons to justify this Court’s review and the relief.

Rule 4(6) of the Montana Rule of Appeal Procedure gives the Montana Supreme Court discretion to review the out-of-time appeal “[i]n the infrequent

harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice". Our case satisfies this extraordinary circumstances.

Rule 4(6) requires the out-of-time appeal be filed by a petition with the supporting documents and evidence. Since we are unable to retain an attorney, we ask this Court's direction whether we need to file a separate petition for a permission to review the 5/23/2022 order, if this Court grants Appellees' motions.

Because this Court stated that Ian's filing a writs and an emergency motion were inappropriate and duplicate when Ian already filed his notice of appeal, we want to make sure that we do not make the same mistake as Ian did, before we file a petition after we filed an appeal notice.

We need to explain that we do not choose to represent ourselves. After Womack took Ian's long time counsel David A. Duke, Ian waited for Womack to release the funds for him to retain Attorney Russ Fagg or Attorney Jock West who agreed to represent Ian in the actions against Cindy's fraud and breaches. Both attorneys were unable to represent Ian after Ian and Womack had conflicts because they personally knew Womack.

Ian and his partner Jenny then contacted dozens of law firms throughout Montana. They were told that the law firms did not practice in the legal liability area, or the case was too complicated, or the firm had conflict of interest because Womack is a chapter 7 trustee in Montana and the law firms had work relationship

with him.

Our ability to retain an attorney is even more difficult after this Court's opinion affirmed District Court's order denying Ian's request to remove Womack.

B. The Fraud On the Court By Attorney Womack's Dishonest Acts Justifies the Review

Because of the 1,250 words limit in our objection to Appellees' motions, we are unable to present the detailed facts, supporting documents, evidence and arguments in this objection. We therefore submit the additional documents of our Rule 60 motions submitted to the District Court, in addition to Womack submitted our original Rule 60 relief motion.

Attachment 1 and 2 present only partial facts and our arguments but will give this Court some understanding of Attorney Womack's dishonest acts.

Although Ian's previous appeals failed, the substantial facts and issues were not examined in the district court's interlocutory orders yet. Womack's actions blocked Ian's estate from submitting its reply brief, prevented Ian's estate from presenting its case fully to this Court. To review our appeal will help this Court to know the facts that,

1. Womack misrepresented in his report to the district court that there was no property transfer in Ada's life time. Whether Ada's property transfers to Starfire were caused by Cindy's fraud was not examined by the district court so as to decide whether the properties titled to Starfire should be restituted to Ada's estate

as heirs property. This involves whether Womack should follow the procedures mandated in the Uniform Partition of Heirs Property Act, or advise the district court to liquidate Starfire's properties and punish Ian's oppositions;

2. Womack's accounting was still in the process, so Ian argued "warning signs" instead of clear evidence at the time, that Womack colluded with Cindy to cover-up Cindy's breaches;

3. We now have the evidence of Womack's manipulating the result and the process of his accounting to cover-up for Cindy after Womack produced his final accounting report. We were unable to obtain this information before the district court's 5/23/2022 order. Womack's final accounting were provided to us on 6/26/2022. We received Womack's supporting documents for his accounting on 9/8/2022. The timing that we were able to obtain this information was late already.

C. Reviewing Court Officers' Conducts Will Help This Court To Examine And Correct The Loopholes In Court's Supervision

The matters of Ada Elliot/Ada's estate are extraordinary. For 8 years as of today under the court supervisions, the trustees and attorneys avoided reporting and accounting of more than \$2 million Ada's personal asset transactions.

Ada's former fiduciary Cindy placed Ada to live in a caregiver's basement after Ada's husband died. Ada lived on her social security and teacher's retirement fund of \$2,000 as her residential care fees. Cindy herself lived on the income

generated from Ada's assets.

After Ada experienced two emergency room treatments from the injuries in this caregiver's home, Ian and his partner Jenny took Ada back home and became Ada's 24/7 caregivers for more than 6 years.

After Ada's death, for nearly 3 years, Ian also lived on his approximately \$1,000 monthly social security and retirement fund. Cindy unilaterally paid herself approximate \$3,000 monthly "management expenses" and left Starfire with less than \$100 balances monthly, ignoring Gallatin County Court Order that any payment must have both Cindy's and Ian's written approval.

Despite the extremely simple administrations for Ada's estate and Starfire, and more than \$100,000 available cash for their administrations, the trustees of Ada/Ada's estate, used Cindy's assistance, delayed accounting and inflated their expenses for their purpose to cash in approximately \$ 2 million Ada's remaining properties.

Ian and his partner Jenny opposed these trustees' actions and saved Ada's/Starfire's properties. Ian's oppositions resulted in the properties enjoyed substantial market appreciations during 2020-2022.

Relying on Womack's suggestions and misrepresentations, Ada estate's probate court punished Ian for his oppositions. Ian expressed his misery and died of heart failure, during his efforts to prevent Womack's unnecessary sale of his

family's historical ranch and farmhouse.

Womack was also instrumental for district court order's clear erroneous fact-findings and harsh treatment to Jenny. The orders ignored Jenny provided evidence, and the nearly a dozen other witnesses' testimonies which supported Ian and Jenny.


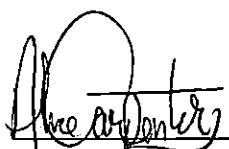
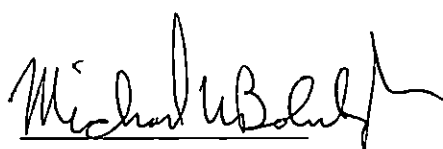
CONCLUSION

The tragedies happened to Ada and Ian are a wake up call to the Courts regarding some attorneys' manipulations and misrepresentations in the Courts' proceedings. Reviewing these court officers' conducts will prevent the gross injustice from happening again to other Montana families.

DECLARATION

I declare under penalty of perjury that the information I set forth herein is true and correct to the best of my knowledge.

Respectfully submitted: 2/4/2023

 ,  , 
Jenny Jing Alice Carpenter Mike Bolenbaugh
Appellants, Pro Se

CERTIFICATE OF COMPLIANCE

I certify that this document is in compliance with Mont. R. App. P. 16(3):
proportionately spaced, has a typeface of 14 points, and counts 1,245 words by
word program, excluding cover page, certificate of compliance and certification of
service.

Jenny Jing, Alice Carpenter, Mike Bolenbaugh
Jenny Jing Alice Carpenter Mike Bolenbaugh

CERTIFICATION OF SERVICE

I certify that on the 4th day of February, 2023, I served a true copy of this
document, via emails or USPS First Class Mail, addressed to:

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