

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 23-0114

IN RE THE MATTER OF THE ESTATE OF C. PATRICIA FIELD

On Appeal from the Montana First Judicial District Court, Broadwater County
The Honorable Christopher D. Abbott, Presiding
Case No. DDP-2020-04

**SCOTT FIELD'S OBJECTIONS TO ESTATE'S AND GREG FIELD'S
PETITION FOR REHEARING**

APPEARANCES:

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The Estate's and Greg Field's (collectively, "Estate") Request for Rehearing of their Motion to Dismiss should be summarily DENIED. M.R.App.P. Rule 20(1)(d) requires "clearly demonstrated exceptional circumstances" to grant a petition for rehearing. The Estate has not met this burden. In addition, none of the grounds for rehearing identified in Rule 20(1)(a) apply and none were cited or supported by the Estate:

- i. This Court did not overlook some fact material to the decision. The Estate fails to point to any such overlooked fact;
- ii. This Court did not overlook any question presented by the Estate or Greg. Indeed, the Estate made the same arguments previously in their motion to dismiss. As such, this Court already considered and ruled on those arguments; and
- iii. This Court's decision does not conflict with a statute or controlling decision which the Court has not already addressed in its recent decision. The Estate cites several cases and attempts to create a conflict in this Court's decisions. However, no such conflict exists as shown below.

This Court's March 21, 2023, decision held as a matter of law:

1. The Court held Scott Field's appeal was *premature* on the following grounds:

- a. the appeal was filed prior to the District Court’s decision on the Estate’s fee motion citing M.R.Civ.P. 58(e) at ¶ 10 (a judgement is not final for purposes of appeal until the decision on fees and costs is made);
 - b. M.R.App.P. 4(5)(a)(iii) at ¶¶ 9 and 11 (notice of appeal filed prior to decision on fees and costs is subject to dismissal as premature); and
 - c. M.R.App.P. 4(1)(a) at ¶ 9 (final judgment includes “any necessary determination of the amount of costs and attorney fees awarded”);¹ and
2. The Estate’s motion to dismiss based on Rule 6(4) alone was insufficient to find the appeal was filed *untimely or late* as claimed by the Estate. Indeed, the Court’s decision is clear that *Scott’s appeal was not untimely or late but was, in fact, premature*. Nevertheless, because Rule 6(4)’s purpose in designating these types of orders as immediately appealable, the Court did not dismiss the appeal due to its premature status but instead is allowing this appeal to proceed so it can hear the merits of the appeal. Decision, ¶ 12.

These holdings are now the law of this case. Based on the above summary of this Court’s opinion, there is no ambiguity in this Court’s March 21, 2023, decision.

¹ The Court held neither party correctly interpreted the rules of procedure in this case. Scott argued his appeal was timely believing the Estate’s fee motion was deemed denied after 60 days, while the Estate argued Scott’s appeal was untimely pursuant to Rule 6(4). The Court ruled the appeal was actually premature.

Indeed, the decision establishes and confirms the rules of procedure for purposes of estate practitioners:

1. In the absence of a motion for fees, Rule 6(4) would require the immediate appeal of those estate matters identified therein; and
2. When a motion for fees is made, the Appellate and Civil Rules as a whole require the fee issue to be resolved by the District Court before the appeal is taken, unless a Rule 77(d) notice is filed.²

No clarification of the rules or of this Court's decision is needed because the Court's decision clearly makes Rule 6(4) subject to Rule 4(5)(a)(iii) if a motion for fees is made post-order or post-judgment. As such, the Estate's attempt to confuse Rule 6(3) with Rule 6(4) is unavailing.

The Estate's case citations also fail to satisfy the requirements for a petition for rehearing noted above. The case of *In Re Estate of Dower*, 2021 MT 245, ¶¶ 32-33, 405 Mont. 443, 495 P.3d 1083, is not applicable because it did not involve a motion for fees. It simply stands for the proposition Rule 6(4) and Rule 4(5)(a)(i) require an appeal to be made within 30 days from the date of the entry of the judgment or order. Id. It did not address any issue related to the timing of an appeal where a motion for fees is at issue and is, therefore, distinguishable.

Similarly, *In Re Guardianship of A.M.M.*, 2015 MT 250, ¶ 22, 380 Mont. 451, 356

² No Notice of Judgement or Order pursuant to Rule 77(d) was issued by the Estate in this case so this issue is not relevant here.

P.3d 474, does not address the issue whether an appeal is timely in light of a motion for fees and costs, because that issue was not present in that case. Further, the case of *Estate of Elliot*, DA 23-0031 (Jan. 23, 2023) is likewise distinguishable because it involved a Rule 60(b) motion for relief from judgment after a Rule 77(d) notice of entry of judgment had been filed. The Court in *Elliot* clearly denied that appeal based on case law and rules not applicable here.

The Estate then cites two non-cite memorandum opinions in support of its position.³ The case of *In Re Estate of Boland*, 2020 MT 30N, ¶ 9, 399 Mont. 551, 456 P.3d 588, is likewise not on point because it did not involve a motion for fees in relation to an appeal under Rule 6(4). In *In Re S.M.*, 2014 MT 101N, ¶ 8, 375 Mont. 552, 346 P.3d 1132, the Court cited Rule 6(4) to note an out-of-time appeal which did not involve a fee issue. Out-of-time appeals under Rule 6(4) are not *premature* as the Court found in the case at bar. As such, all of these cases are irrelevant and not applicable here.

The Estate also relies on *Estate of Cooper*, 2022 Mont. LLEXIS 302, DA 21-0656 (April 5, 2022) for the claimed proposition that an award of fees and costs is not immediately appealable under M.R.App.P. 6(4). The Estate fails to point out

³ “... we are compelled to point out the inappropriateness of citing a non-cite case. Non-cite cases should not be cited in appellate briefs.” City of Darby v. Grauberger, 2020 MT 180N, 401 Mont. 554, 466 P.3d 1239. In Worts v. Hardy Const. Co., 249 Mont. 477, 486, 817 P.2d 231, 237 (1991), the Court held, “We take this opportunity to remind counsel that such opinions shall not be cited as precedent.”

the fact that the Siblings in *Cooper* moved to dismiss Daughter’s appeal of the District Court’s decision on attorney’s fees and costs after Siblings had filed a Notice of Entry of Judgment/Order. After reviewing the entire matter, this Court found the record to be unclear whether the District Court intended its fees/costs order as its final judgment in the case or not. Id. As such, the Court dismissed the appeal as premature and remanded the case to the District Court for further determination whether its order was final. Id. This case does not create any conflict or raise any practical questions for practitioners. It stands for the proposition that, in light of the procedural history of that case, the District Court needed to affirm whether its fees/costs decision was final for purposes of appeal. It has nothing to do with interpretation of the appellate rules in light of a pending fees/costs motion. In fact, *Cooper* is consistent with this Court’s March 21, 2023, decision in this case because both cases found the appeals to be premature. *Cooper* is also distinguishable, however, from the present case. In *Cooper*, Daughter appealed an attorney’s fees/costs order within 30 days. Rule 6(4) did not apply at all because appeal of that fees order is not controlled by Rule 6(4). As such, there is no ambiguity or “unnecessary question for probate practitioners” as alleged by the Estate.

In conclusion, there are no “clearly demonstrated exceptional circumstances” which have been shown to grant a rehearing of this Court’s March

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4), Mont.R.App.P., I certify that SCOTT FIELD'S OBJECTIONS TO ESTATE'S AND GREG FIELD'S PETITION FOR REHEARING is double spaced, is a proportionately spaced 14 point Times New Roman typeface, and contains 1500 words.

/s/ Michael L. Rausch
BROWNING, KALECZYC, BERRY & HOVEN, P.C.

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of April, 2023, I mailed and emailed a true and correct copy of the foregoing SCOTT FIELD'S OBJECTIONS TO ESTATE'S AND GREG FIELD'S PETITION FOR REHEARING upon each attorney of record, by the U.S. Mail, first class, postage prepaid, and via email as noted below, addressed to:

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CERTIFICATE OF SERVICE

I, Michael L. Rausch, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Objection to Petition for Rehearing to the following on 04-12-2023:

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Dated: 04-12-2023