

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 23-0253

JOSHUA T. PATTERSON a/k/a JOSH
PATTERSON, as an individual and d/b/a
PATTERSON ENTERPRISES, INC., also
d/b/a ROCKY MOUNTAIN EQUIPMENT,
INC., p/k/a ROCKY MOUNTAIN JCB,
INC., also d/b/a ROCKY MOUNTAIN
RENTAL SPECIALISTS, LLC, also d/b/a
ROCKY MOUNTAIN EQUIPMENT also
d/b/a ROCKY MOUNTAIN RENTAL, also
d/b/a ROCKY MOUNTAIN EQUIPMENT
OF MISSOULA MONTANA,

Defendants/Appellants,

vs.

ADAM PUMMILL, an individual, and
ADAM PUMMILL and KURTIS
ROBERTSON as a member of Black Gold
Enterprises, LLC, members of, and on
behalf of BLACK GOLD ENTERPRISES,
LLC,

Plaintiffs/Appellees.

APPELLANTS' RESPONSE TO MOTION TO DISMISS

On Appeal from the Fourth Judicial District Court, Missoula County
Cause No. DV-18-1450
The Honorable John W. Larson, Presiding

Appellants Joshua T. Patterson et al. filed a Notice of Appeal (May 4, 2023)
appealing the Order Granting Receiver's Motion for Summary Judgment

Regarding Fixture Filing and Denying Defendant's Motion to Alter or Amend the Court's March 8, 2023 Order and Stay Dispersal of Funds and an Amended Notice of Appeal (May 18, 2023) appealing the Amended Order Allowing Professional Fees. The District Court determined that disputed issues of fact preclude final judgment respecting the disputed sum on deposit with the Court but approved immediate payment of professional fees from the deposited fund. The deposited amount is \$312,833.63 while the professional fees are \$249,423.79. Payment of professional fees from the deposited fund depleted 80% of the deposited amount.

The Receiver has interjected himself into this appeal and filed a Motion to Dismiss Appeal, contending the subject Order does not fit within Mont. R. App. P. 6(3)(g). That is incorrect. Moreover, the Receiver has not shown that it has standing to seek dismissal of the appeal.

DISCUSSION

A. Scope of Rule 6(3)

Rule 6 of the Montana Rules of Appellate Procedure provides:

3) Orders appealable in civil cases. In civil cases, an aggrieved party may appeal from the following, provided that the order is the court's final decision on the referenced matter:

* * *

- (g) From an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver;

- (h) From an order directing the delivery, transfer, or surrender of property;

“District court orders granting or denying appointment, directing, or refusing to dissolve appointments of receivers are immediately appealable.” *Gottlob v. DesRosier*, 401 Mont. 72, ¶7, 470 P.3d 194, 2020 MT 212 (citing M. R. App. P. 6(3)(g)) “M. R. App. P. 6(3)g. specifically authorizes an appeal from ‘an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership....’” *Johnson v. Booth*, 343 Mont. 268, fn. 4, 184 P.3d 289, 2008 MT 155.

The Receiver’s contention that only District Court Orders that “direct” a Receiver are within the scope of Rule 6(3)(g) is not well taken. Appeal lies from an Order that is “with respect” to a receivership. For example, in *PF2 Leasing, LLC v. Galipeau*, 404 Mont. 53, 485 P.3d 188, 2021 MT 93, this Court denied dismissal of appeal from an Order on objections to a Special Master’s determination, which this Court addressed under the receivership standard. The appealed order did not “direct” the Special Master but was “with respect to” the Special Master. In *Johnson v. Booth* this Court accepted appeal from a District Court order that “redesignated the custodian as a receiver.” *Johnson*, ¶ 2. The challenged Order did not “direct” the receiver but was “with respect to” a receivership. In *State v. Banking Corporation of Montana*, 80 Mont. 49, 257 P. 1020 (1927), this Court

entertained an appeal of a District Court order that determined claimants' respective entitlement to disputed funds in bank receivership proceedings. ("The court figured up the total amount of claims in Class D, and apportioned to Mrs. Fay \$306.08, which it determined to be her share in the fund.... An order giving directions with respect to a receivership is appealable [T]he order of the district court of December 14th was erroneous with respect to the amount to which Mrs. Fay is entitled.") *Id.*

"The phrase 'with respect to' means 'with reference to'" *Mills v. State Board of Equalization*, 97 Mont. 13, 33 P.2d 563 (1934). The challenged Order of the District Court here, directing disbursement of 80% of disputed funds to the Receiver, certainly is one that is "with respect to" the receivership within the scope of Mont. R. App. P. 6(3)(g).

Appellate review is particularly appropriate here. "Due to their extraordinarily drastic and severe nature, receiverships are an auxiliary remedy subject to even more equitable restriction than preliminary injunctions." *Gottlob*, ¶10 (citations omitted). Receivership requires "extraordinary circumstances where no other legal or equitable remedy is adequate to prevent a manifest risk of imminent or irreparable harm or loss prior to final judgment on the merits of the underlying claim for relief." *Id.* (citations omitted) "Montana's rule interpleader is an equitable remedial device that exists in order to avoid the unfairness that may

result to some claimants who have competing claims to the interpleader res, but who lose the ‘race to judgment.’” *Associated Dermatology and Skin Cancer Clinic of Helena v. Fitte*, 2016 MT 349, ¶16, 386 Mont. 150, 388 P.3d 632. Rather than disburse virtually all interpleaded funds, the lower Court could have stayed payment of professional fees and granted Defendants opportunity in which to post a supersedeas bond or other security. *In re Marriage of Harris*, 2006 MT 63, ¶14, 331 Mont. 368, 132 P.3d 502 (“Jim was granted a thirty-day stay of execution of the judgment to allow him time to obtain a supersedeas bond to secure the judgment on appeal.”) Defendants here were given no such opportunity.

B. Order to Transfer Property

Rule 6(3)(h) authorizes appeal from an order directing the transfer of property. In *Estate of Snyder*, 2007 MT 146, 337 Mont. 449, 162 P.3d 87 this Court held that a District Court order “compelling Lois to quitclaim her interest in the Flathead County property” was an appealable order “directing the delivery, transfer, or surrender of property...” *Id.* ¶¶ 20-21. In *Graveley v. MacLeod*, 175 Mont. 338, 573 P.2d 1166 (1978), the challenged Order “directed defendants to transfer the property covered by the purchase option to plaintiff by means of a contract for deed.” This Court held that, “[a]lthough denominated interlocutory,

the judgment therefore was appealable.” *Gravelly*, 175 Mont. at 342.¹ In *Estate of Murphy*, 183 Mont. 127, 132–33, 598 P.2d 612 (1979), this Court held that an order authorizing a personal representative to transfer an estate's “cash and personal property” to an estate creditor constituted an appealable order. The challenged order here, directing payment of interpleaded funds for the Receiver’s use in paying professional fees, is akin to an order directing a personal representative to transfer an estate’s property to a creditor, and is likewise subject to appeal under Rule 6(3)(h).

C. Standing to Seek Dismissal

The Receiver is not a party defendant or a party plaintiff. The Receiver added himself to the Court caption on his Motion to Dismiss Appeal. However, the Receiver neither cites authority for the proposition he may insert himself into this appeal to seek dismissal of the appeal nor motioned for the ability to intervene. The Receiver could also seek leave of the Court to submit an amicus brief or could coordinate with a party litigant to present his position. For the proposition the Receiver may assert the rights of a party litigant – such as seeking to dismiss an appeal – no authority is cited by the Receiver.

¹ *Hennen v. Omega Enterprises, Inc.*, 264 Mont. 505, 508, 872 P.2d 797, 798 (1994) (when party validly exercises right of appeal from an appealable order, the Supreme Court “reviews the entire case,” including order denying partial summary judgment). *See also* Mont. R. App. P. 2 (“Upon appeal from a judgment in a civil case, the court may review ... any intermediate order or decision ... which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken”)

For the foregoing reasons, the Receiver's Motion to Dismiss should be denied.

DATED this 9th day of June, 2023.

BROWN LAW FIRM, P.C.

/s/ Shane A. MacIntyre
Shane A. MacIntyre
Robert L. Sterup
Attorneys for Defendants/Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I hereby certify that Appellants' Response to Motion to Dismiss is printed proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office 365, is 1241 words long, excluding Caption, Certificate of Service and Certificate of Compliance.

/s/ Shane A. MacIntyre
Attorney for Appellants

CERTIFICATE OF SERVICE

I, Shane Alexander MacIntyre, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 06-09-2023:

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Dated: 06-09-2023