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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No.
DA 23-0198

GARDINER-PARK COUNTY WATER AND SEWER DISTRICT, Plaintiff/Counter-Defendant, and Appellee and Cross-Appellant v. DONALD KNIGHT, GINA M. KNIGHT, LONDON KNIGHT, and JOHN DOES 1-10, Defendants/Counter-Plaintiffs, And Appellants.	APPELLEE’S BRIEF IN RESPONSE TO APPELLANT’S MOTION TO DISMISS CROSS- APPEAL
DONALD KNIGHT and GINA M. KNIGHT Third-Party Plaintiffs, v. PARK COUNTY, a political subdivision of the State of Montana, acting by and through its County Commissioners, Bill Berg, Steve Caldwell, and Clint Tinsley, Third-Party Defendants.	
GARDINER-PARK COUNTY WATER AND SEWER DISTRICT,	

Third-Party Plaintiff and, Cross-Appellant v. STANDISH EXCAVATION, LC, Third-Party Defendant.	
DONALD KNIGHT, GINA M. KNIGHT, and LANDON KNIGHT, Third-Party Plaintiffs and, Appellants, v. THOMAS E. STONE, DONALD L. CLARK, VICTOR D. BEERS, and BRAD A. HARBACH, Third-Party Defendants, and Appellees.	

COMES NOW, Appellee and Cross-Appellant GARDINER, PARK COUNTY WATER & SEWER DISTRICT (hereinafter the “District”), by and through its Attorney of record, and submits this brief in response to the Appellant’s Motion to Dismiss the District’s Cross-Appeal.

INTRODUCTION

The Knights’ motion requests the dismissal of the District’s Cross-Appeal before any substantive briefing on the cross-appeal takes place. The Knights’ motion is based on their claim that the District’s Notice of Cross-Appeal and its Amended Notice of Cross-Appeal – both of which were accepted for filing by this Court – were procedurally improper. The Knights’ motion is meritless.

STATEMENT OF FACTS.

The Knights' statement of facts is unnecessarily confusing, incomplete, and inaccurate. The undisputed facts are straightforward and are set forth below.

The Knights filed a Notice of Appeal with this Court on March 29, 2023. The appeal pertained to an interlocutory Order which the District Court certified for appeal. On April 12, 2023, the District timely filed a Notice of Cross-Appeal which was accepted for filing by the Clerk of the Supreme Court.

The Knights then contacted the District and questioned the District's Notice of Cross-Appeal insofar as it also reserved the right to appeal earlier District Court Orders that had not been certified as appealable. Following this, the District's counsel and the Knights' counsel had discussions in May 2023 concerning the District's Notice of Cross-Appeal. (See attached Supporting Declaration of Counsel.) On May 30, 2023, the District advised the Knights via e-mail that the District would file a Revised Notice of Cross-Appeal removing the portions the Knights objected to. (See Declaration.) The Knights did not respond to that email, nor did they ever assert prior to filing their current motion that the District was required to file a motion to amend their Notice of Cross-Appeal, or obtain the Knights' consent prior to filing its Amended Notice of Cross-Appeal. (See Declaration.)

On August 1, 2023, the District filed an Amended Notice of Cross-Appeal. The Clerk of the Supreme Court then issued a notice that the Amended Notice of Cross-Appeal had been accepted for filing.

Prior to filing its Amended Notice of Cross-Appeal, the District's counsel called the Montana Supreme Court Clerk's Office in connection with its upcoming Amended Notice of Cross-Appeal. (See Declaration.) The Clerk's Office advised that it was not permitted to provide legal advice but noted that amended notices of appeals and cross-appeals are routinely filed without a motion. Along these lines, a review of the Supreme Court's online dockets reveals that amended notices of appeals and cross-appeals are routinely filed without a motion. This office could not locate within the Supreme Court's online dockets any amended notices of appeals or cross-appeals that were accompanied by a motion. (See Declaration.)

LEGAL ARGUMENT.

The Knights' motion is not supported by any applicable law. Indeed, the rules cited by the Knights contradict their request that the District's Cross-Appeal be dismissed on the merits at this point. For instance, Rule 4(e), M.R.App.P. provides that the Clerk of the Supreme Court shall issue a written notice directing either the appellant or cross-appellant to file an amended notice of appeal or cross-appeal if the filing party fails to comply with certain requirements of the notice of appeal or cross-appeal. Further, Rule 4(e), M.R.App.P. goes on to state that any such notice

from the Clerk of the Supreme Court “shall not affect the original filing date of the notice of appeal or cross-appeal.” Additionally, 4(f), M.R.App.P. states that “[a]n appeal or cross-appeal shall not be dismissed for informality of form or title so long as the information required in section (4) of this rule is contained in the notice of appeal or cross-appeal.”

In this case, the Clerk of the Supreme Court accepted both the District’s Notice of Cross-Appeal and its Amended Notice of Cross-Appeal for filing, and never issued a notice that the District’s filings did not meet the requirements under the governing rule. Moreover, even if the Knights’ arguments had any merit as noted above the governing rule provides that any alleged defect in the District’s filings “would not affect the original filing date” and the District’s filings “shall not be dismissed for [any alleged] informality of form....”

The Knights’ motion argues that the District’s Notice of Cross-Appeal “should be dismissed” because it reserved the right to cross-appeal other District Court Orders which had not been certified as appealable. (See Knights’ brief, p. 5.) Leaving aside the fact that the District’s Amended Notice of Cross-Appeal removed its reservation to appeal District Court Orders which had not been certified as appealable, the Knights’ request that the District’s Notice of Cross-Appeal be dismissed is made without any supporting law. The Notice of Cross-Appeal was timely filed and accepted for filing by the Clerk of the Supreme Court.

The Knights also request that the Court dismiss the District's Amended Notice of Cross-Appeal based upon far-fetched and legally unsupported arguments. First, the Knights claim that the Amended Notice should not relate back to the Notice of Cross-Appeal. (See Knights' brief, p. 6.) This argument is made without any legal support and also flies in the face of Rule 4(e), M.R.App.P., which is referenced above. Second, the Knights claim without any legal support that the District was required to seek judicial permission to file the Amended Notice of Cross-Appeal. This is not accurate. Third, the Knights complain that they were not asked for a stipulation in connection with the Amended Notice of Cross-Appeal. (See Knights' brief, p. 6.) The Knights did not request this, nor is it required. Fourth, the Knights argue that the District's Amended Notice of Cross-Appeal should be dismissed because the Clerk of the Supreme Court did not instruct that an Amended Notice be filed. (See Knights' brief, p. 6.) The Clerk of the Supreme Court never made this request because it was not privy to the Knights' correspondence with the District concerning any alleged defect to the Notice of Cross-Appeal. Stated differently, there would be no reason for the Clerk of the Supreme Court to instruct the District that an Amended Notice of Cross-Appeal had to be filed.

Leaving all of the above meritless arguments aside, even if the District's Amended Notice of Cross-Appeal was somehow procedurally improper, the filing of the Amended Notice of Cross-Appeal does not somehow render the District's

timely filed Notice of Cross-Appeal subject to dismissal as the Knights have requested.

Finally, the Knights' motion points out that there was a typographical error in the District's Amended Notice of Cross-Appeal in that it referred to page two when it should have referred to page three. (See Knights' brief, p. 7.) At the same time, the Knights argue that the District's Amended Notice of Cross-Appeal is "inherently inconsistent" based on this typographical error. (See Knights' brief, p. 7.) Particularly in light of the Knights' pointing out this innocuous typographical error, there was nothing inherently inconsistent within the District's Amended Notice of Cross-Appeal. If anything, the District took the extra step in its Amended Notice of Cross-Appeal to clarify what portion within the Notice of Cross-Appeal was being deleted.

CONCLUSION

The Knights' Motion to Dismiss the District's Cross-Appeal is meritless. The District respectfully requests that this Court deny the Motion.

DATED this 17th day of August 2023.



Thomas ("Todd") D. Shea, Jr.
Attorney for Gardiner, Park County
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(e), M.R.App.P. I certify that this *Response Brief* is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Word, is 1,219 words long, excluding Caption, Certificate of Compliance, and Certificate of Service.

/s/ Todd Shea

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Water and Sewer District

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing document with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing document upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, on the 17th day of August 2023, as follows:

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A handwritten signature in blue ink that reads "Todd Shea". The signature is written in a cursive, flowing style.

Thomas ("Todd") D. Shea, Jr.

CERTIFICATE OF SERVICE

I, Thomas D. Shea, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 08-17-2023:

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