No. DA 23-0031

IN THE

Supreme Court of the State of Montana

IN RE 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

ANSWER BRIEF FOR JOSEPH V. WOMACK

JENNY JING
10 Alpine Pl.
Kearny, NJ 07032
jennyianmt@gmail.com

Pro Se Appellant

ALICE CARPENTER
P.O. Box 22702
Billings, MT 59104
up2u2do@gmail.com

Pro Se Appellant

MIKE BOLENBAUGH
2351 Solomon Ave., Apt. 334
Billings, MT 59102
m.bolenbaugh@gmail.com

Pro Se Appellant

MICHAEL P. MANNING
RITCHIE MANNING KAUTZ PLLP
175 North 27th Street
Suite 1206
Billings, MT 59101
(406) 601-1400
mmanning@rmkfirm.com

Counsel for Appellee Joseph V. Womack, Special Administrator of the Estate of Ada E. Elliot and Liquidating Partner of Starfire, LP

JEFFREY A. HUNNES
JOSEPH A. SOUEIDI
FELT MARTIN PC
2825 3rd Ave. N., Suite 100
Billings, MT 59101
(406) 248-7646
jhunnes@feltmartinlaw.com
jsoueidi@feltmartinlaw.com

Counsel for Appellee Cindy Elliot

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STATEMENT OF THE ISSUES

Despite the lengthy list of alleged errors in the opening brief filed by Appellants Jenny Jing, Alice Carpenter, and Mike Bolenbaugh, this appeal presents only a single, limited issue:

Whether the district court abused its discretion by denying the Appellants' Rule 60 motion, which asked the court to (a) vacate its earlier order appointing attorney Andrew Billstein as Special Administrator of the Estate of Ian Elliot, (b) approve an independent action to investigate fraud on the court, and (c) consolidate this probate case with other pending cases.

STATEMENT OF THE CASE

A. Nature of the Case

When Ada Elliot died more than six and a half years ago, she left her estate to her children Ian and Cindy in equal shares.[1] Ada's estate is relatively simple; it consists primarily of Ada's 96.34% interest in StarFire, L.P., a limited partnership organized for holding and managing valuable Gallatin Valley real estate. Yet the estate is still not settled.

[1] Ada, Ian, and Cindy are referred to by their first names to avoid confusion.

Aided heavily by his domestic partner, Jenny Jing, Ian employed a scorched earth litigation approach in numerous estate-related proceedings filed in various courts. Across every aspect of the case, virtually any professional who took a position adverse to Ian was the subject of repeated motions alleging wrongful conduct, was sued personally, or both. Joseph Womack, the court-appointed special administrator of Ada's estate and StarFire's liquidating partner, was the most frequent target, but he was hardly alone. And since Ian's untimely death in December 2021, Jing has continued the same approach with respect to Ian's own estate.

There have been three prior cases before this Court alone, several of which also involved motions practice. First, when Justice Gustafson was still a district court judge, the Court affirmed her order denying Ian's application for appointment as the personal representative of Ada's estate and granting Cindy's petition for the appointment of a special administrator. *See In re Est. of Elliot* (*Elliot I*), 2018 MT 171N, 393 Mont. 358, 421 P.3d 795 (Table). Second, the Court denied Ian's petition for a writ of supervisory control over Judge Knisely in Ada's probate case, a petition he filed while both an appeal over the same issues and an emergency motion for relief in the district court were

already pending. *See Elliot v. Womack* (*Elliot II*), OP 21-0473 (Sept. 21, 2021). Third, in a comprehensive, albeit unpublished opinion, the Court affirmed multiple orders issued by Judge Knisely, holding the following: (1) Judge Knisely did not err by ordering the dissolution of StarFire and appointing Womack its liquidating partner; (2) although "Ian obstructed Womack's administration with constant litigation and unfounded accusations," Womack "nonetheless acted professionally as special administrator and liquidating partner," and there was no evidence warranting his removal; (3) Womack and Cindy have not wrongfully colluded; (4) Judge Knisely properly ordered several pieces of property to be sold to pay StarFire and estate expenses; (4) "Ian's interference objectively and significantly increased costs and delays;" (5) the Uniform Partition of Heirs Property Act is inapplicable; (6) Ian had no right to a jury trial; (7) Judge Knisely did not violate Ian's due process rights; and (8) Judge Knisely demonstrated no bias. *See In re Est. of Elliot* (*Elliot III*), 2022 MT 91N, 508 P.3d 1294 (Table).

The nature of this fourth appellate proceeding should be limited. It involves only Judge Souza's decision to order supervised administration of Ian's estate, and the appeal itself is limited to Judge Souza's denial of the Appellants' Rule 60 motion. Nevertheless, the

Appellants inappropriately raise a host of issues far beyond the scope of their Rule 60 motion, many of which were already decided in earlier cases. Properly considering the lone issue preserved for appeal, the district court's reasoning was thorough, well-supported by both facts and law, and did not come close to constituting an abuse of discretion.

B. Course of Proceedings and Disposition Below

Following Ian's death, Womack filed a petition seeking an adjudication that Ian died intestate, a determination of heirs, an order for supervised administration of Ian's estate, and appointment of Ian's nephew, Adrian Olson, as personal representative. *See* Doc. 1.[2] As Womack's petition described, although Jing had advised Womack that she had a "true copy" of Ian's will, she initially refused to provide it and Womack thus had only an unsigned copy at that time. *Id*., ¶ 11; *see also* Mar. Trans., 77:17-79:16, 129:13-130:21; Hearing Ex. R.[3] Womack's petition also alleged that he was an interested person entitled to seek supervised administration of Ian's estate because Ian was an heir of Ada's estate, and had filed multiple motions and an appeal in Ada's

[2] Citations to "Doc." refer to the district court docket number.

[3] Citations to "Mar. Trans." refer to the transcript of the March 7, 2022 hearing. Citations to "Apr. Trans." refer to the transcript of the April 1, 2022 hearing.

probate case, all of which required resolution so that Ada's probate could be concluded. *Id*., ¶ 4.

In response, Jing and Ian's ex-wife, Ann Taylor Sargent, filed a response and petition of their own, attaching as an exhibit a copy of Ian's signed will nominating Jing and Sargent as co-personal representatives. *See* Doc. 7, at Ex. B. Their petition opposed supervised administration, sought appointment as co-personal representatives, and argued that neither Womack nor Cindy was an interested person in Ian's estate. *See generally* Doc. 7.

Cindy also filed a responsive pleading addressing the allegations in both Womack's petition and Jing and Sargent's response. *See* Doc. 9. Cindy's pleading included an application for the appointment of a special administrator under §§ 72-3-701 *et seq*., MCA, due in part to Jing's involvement in Ian's vexatious litigation and questions involving Jing's control over Ian and his financial affairs. *Id*. at 7-10.

Meanwhile, Jing and Sargent moved to dismiss Womack's petition, arguing that he lacked standing because he was not an interested person, *see* Doc. 8, and filed two separate responses to Cindy's application for appointment of a special administrator, making similar arguments. *See* Docs. 11, 13. Womack then joined Cindy's

request for appointment of a special administrator, *see* Doc. 14, after which Jing and Sargent filed an emergency motion seeking temporary appointment as the estate's personal representatives prior to a hearing, *see* Doc. 18.

The district court eventually held an evidentiary hearing over the course of two days in the spring of 2022 to determine whether supervised administration of Ian's estate was appropriate. The length of the hearing—which included testimony from 13 witnesses and admission of more than 30 exhibits—was necessitated largely by Jing repeatedly asking argumentative questions about issues that had little or nothing to do with supervised administration of Ian's estate. *See generally* Mar. Trans. and Apr. Trans. Indeed, late into Jing's presentation of her case on the second day of the hearing, the court cautioned her that it had "heard virtually no relevant information to the issue before me." *See* Apr. Trans., 386:8-24. The reason was not surprising—Jing represented to the court that what she really wanted from the hearing was for Womack's actions as the special administrator of Ada's estate to be investigated and that one of the reasons she was seeking appointment as Ian's co-personal representative was to prove

the merits of Ian's litigation strategy. *See* Mar. Trans., 236:7-237:16; Apr. Trans., 346:14-23.

After yet another emergency motion from Jing and Sargent seeking temporary appointment as the estate's co-personal representatives, *see* Docs. 38, 41, the district court issued a comprehensive order on May 23, 2022 granting Womack's petition for supervised administration of Ian's estate and appointing attorney Andrew Billstein as the estate's special administrator. *See* Doc. 45. The court detailed its reasoning in 65 findings of fact and 35 conclusions of law, holding, among other things, that: (1) Jing was closely involved in Ian's litigation strategy, which involved a willingness to make arguments unsupported by fact or law, and an unwillingness to accept adverse court rulings or comply with court orders; (2) Jing's conduct revealed she would frustrate the administration of Ian's estate, including by continuing unwarranted attacks on Womack rather than working with him in his role as StarFire's liquidating partner; and (3) Jing has a conflict of interest due to a dispute about the amount of her debt to Ian's estate. *Id.* Given those problems and others, the court held that "only ready remedy is to grant special administration." *Id.* at 27.

No party immediately appealed the district court's order and Womack served a Rule 77(d) notice of entry on July 11, 2022. *See* Doc. 49. More than three months later, Jing, joined by Carpenter and Bolenbaugh, filed a motion under Rules 42 and 60, asking the court to (1) vacate its May 23, 2022 order, (2) allow them to institute an independent action to investigate fraud on the court, and (3) consolidate three pending cases related to Ada's and Ian's estates.[4] *See* Doc. 59. The district court granted Jing, Carpenter, and Bolenbaugh leave to file a corrected exhibit, but otherwise denied their motion in a December 9, 2022 order. *See* Doc. 80. Again, the court's order was thorough and well-reasoned, painstakingly walking through each of the Appellants' arguments, including their extensive citations to non-Montana case law. *Id.*

In response, Appellants filed a notice of appeal purporting to appeal not only the district court's denial of their Rule 60 motion, but also the court's underlying order appointing Billstein as special administrator of Ian's estate. *See* Doc. 82. On March 7, 2023, this Court granted Womack's partial motion to dismiss the appeal, limiting

[4] Sargent did not join the Rule 60 motion or this appeal.

the Appellants to arguing that the district court's denial of their Rule 60 motion was error under the appropriate legal standards. *See* DA 23-0031, Order (Mar. 7, 2023). The Court also synthesized their Rule 60 arguments as follows: "that Appellant Jing had made several testimonial and procedural mistakes during the evidentiary hearings that constituted excusable neglect; that Jing did not realize she could object to the court's taking of judicial notice; and that Womack and opposing counsel had perpetrated a fraud upon the court." *See id*. at 1.

STATEMENT OF THE FACTS

Ian died on December 19, 2021, leaving his estate in various shares to seven named beneficiaries in his Last Will and Testament, with two trusts to receive undistributed properties. *See* Doc. 7, at Exs. A, B. It is undisputed that Ian's will is self-proving under Montana law and that no party is challenging it. *See* Mar. Trans., 5:20-8:1. Although Ian's estate may have other assets, its most important one for purposes of this appeal is its 50% interest in Ada's estate, which for all practical purposes consists nearly entirely of Ada's majority interest in StarFire. *See* Mar. Trans., 17:5-20:13.

As the Court is well-aware, the parties have been fighting over Ada's estate and StarFire for years. Much of the relevant background

was included in *Elliot III*, in which this Court affirmed that Womack has acted professionally despite Ian's consistent obstruction. *See Elliot III*, ¶¶ 3-12. The district court's underlying order also contains a detailed recitation of the facts, the vast majority of which are not properly challengeable on appeal. *See* Doc. 45, at 1-15.

To avoid unnecessary repetition, Womack does not include lengthy background facts that have already been accurately recounted in numerous court orders. Still, because the Appellants continue to accuse Womack of committing fraud on the court for nearly every action he has taken since 2019, the summary below attempts to address specific facts relevant to the limited issues properly preserved in this appeal.

A. Jing's Purported Mistakes

At the hearing, Jing initially testified that Ian probably transferred about $2,000 to her during the year preceding his death, disputing the $21,000 figure suggested by Cindy's counsel. *See* Mar. Trans., 208:13-210:10. During the second day, Cindy's counsel introduced three exhibits revealing multiple electronic transfers or checks from Ian's bank account to Jing or her company, Win Win Star, as well as one payment related to Jing's house in New Jersey. *See* Apr. Trans., 445:1-450:17; Hearing Exs. V, W, X. Specifically, Hearing

Exhibit V reflects a total of $21,900 in transfers between Jing and Ian in approximately the twelve months before his death—all of which are highlighted in the exhibit—and the district court found that Jing was indebted to Ian's estate in that amount. *See* Hearing Ex. V; Doc. 45, at FOF ¶ 59.

In their Rule 60 motion, the Appellants pointed out that some of the transfers were credits to Ian's account, indicating a transfer from Jing, not to her. *See* Doc. 59, at 6-7. That is true; Exhibit V indicates that Jing made transfers to Ian of $1,000 on June 8, 2021, $500 on June 17, 2021, and $5,000 on December 10, 2021. *See* Hearing Ex. V. Thus, of the $21,900 in total transfers between Ian and Jing, the record reflects that $15,400 was transferred from Ian to Jing. *See id*.

The Appellants, however, argued in the Rule 60 motion that Jing received only $8,900—insisting that her mistaken initial testimony reflected only a $6,900 difference and not an attempt to minimize $21,900 in transfers down to $2,000—although the basis for using $8,900 rather than $15,400 is unclear. *Id*. In any event though, the Appellants do not dispute that Jing received at least $8,900 in transfers from Ian in the year before his death. *See* Doc. 80, at 2-3.

The next "mistake" the Appellants cited in their Rule 60 motion included evidence that a co-signer to Ian's mortgage testified that Jing promised both before and after Ian's death to repay the loan. *See* Doc. 59, at 7. But the Appellants did not actually suggest any error on the district court's part related to that testimony, referencing only the vague notion that the court had "an impression that Jenny did something wrong." *Id*.

Finally, the Appellants invoked "other mistakes Jenny made such as her zoom connection sometimes froze and she was too embarrassed to keep asking the court or the witness to repeat what she did not hear well, and she did not know she could object to judicial notice, etc." *Id*. But the Appellants did not develop those arguments either and represented that their "motion is rather focused on Rule 60(d), attorney's [sic] fraud on the court." *Id*. In particular, the Appellants did not elaborate on any alleged error related to the district court's decision that it was proper to take judicial notice of the multiple other judicial proceedings described in the court's order. *See id*.

B. The Rule 60 Motion's Unfounded Allegations of Fraud on the Court

This is the most difficult case Womack has encountered in his nearly 40 years of practice. *See* Apr. Trans., 458:16-459:2. Despite this

Court's prior affirmation that he has acted in the best interest of Ada's estate and StarFire, he continues to face allegations—first from Ian and now from Jing—that he is predatory, criminal, and fraudulent, to the point that Jing testified that he has hurt people and will hurt others. *See, e.g.*, Mar. Trans., 53:11-54:3, 65:20-67:23, 213:16-214:4, 235:4-237:12; Hearing Ex. N. Frankly, given the scope of the Appellants' fraud arguments, recounting all the relevant facts would require detailing years' worth of various legal proceedings. Below are limited, relevant facts from this proceeding, given the arguments preserved in the Rule 60 motion.

1. False Accusations that Womack Was Untruthful

Factually, Appellants' Rule 60 motion first accused Womack of being untruthful during the hearing by telling "the court that he conducted Ada's accounting" and having an "inability to tell the court where in his accounting report was Ada's estate accounting." *See* Doc. 59, at ¶ 38. In reality, Womack testified that he had just received the accounting back from Wipfli, the firm that conducted the forensic accounting, not that he conducted it himself:

Q. So what is the status of the Ada Elliot estate?

A. Well, we've made a lot -- we've made progress, it hasn't been easy. But I have completed the accounting, I just got the accounting back from Wipfli, it's a forensic accounting, that was done --

THE COURT: I'm sorry, who did the forensic?

THE WITNESS: Sorry?

THE COURT: Who did the forensic accounting?

THE WITNESS: Wipfli. And, yeah, the guy who was the forensic accountant had -- he had a lot of letters past his name, I will say. He -- did you have a question, Judge?

THE COURT: No.

THE WITNESS: Okay. So in any event, that finally got completed. It took a fair amount of time to get that done.

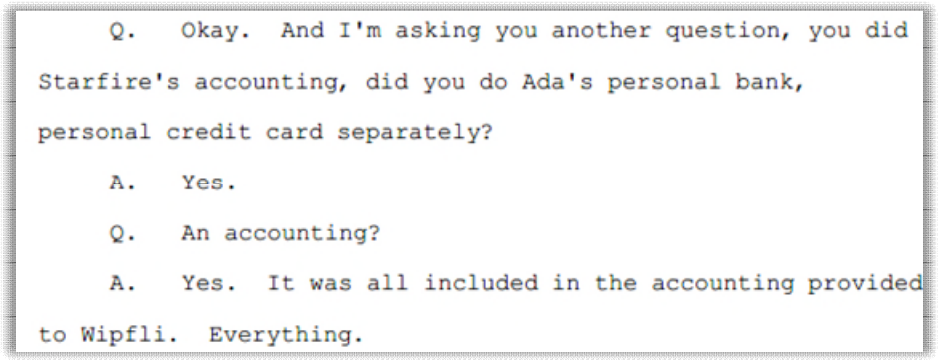
Mar. Trans., 34:7-21. He also explained to Jing why the accounting was necessary, although that should have been irrelevant because this Court already affirmed Judge Knisely's order authorizing it:

Q. -- how about Ada's estate? And I mean -- how about Ada's finance? Personal?

A. There's -- there's two different -- I think we're getting confused. There's two different things, okay? There's Ada's income and expenses, all right? And then there's Starfire. Ada had some income from her teacher's retirement, things like that.

I don't -- I really didn't -- so from -- from my point of view, I had to get an accounting of Starfire from its inception because I had -- there had never been one done, and Ian said Cindy had misused and misappropriated funds, that meant that I had to get an accounting done to deal with that.

Id. at 106:6-17. And finally, he confirmed that Wipfli's accounting included both StarFire and Ada's personal accounts:



Q. Okay. And I'm asking you another question, you did Starfire's accounting, did you do Ada's personal bank, personal credit card separately?

A. Yes.

Q. An accounting?

A. Yes. It was all included in the accounting provided to Wipfli. Everything.

Id. at 107:8-14; *see also id.* at 108:4-13.

Second, the Appellants' Rule 60 motion accused Womack of misleading the district court about whether Sargent was willing to talk to him. *See* Doc. 59, at ¶ 39. Specifically, the motion argued, "Womack also testified that Jenny talked Ann to refused converse with him [sic] while what Ann actually said was she would like to talk via email." *Id.* On that topic, Womack explained that when he initially called Sargent after Ian died, she said would only communicate in writing, so he got her e-mail address and that was the end of their conversation:

> And, frankly, when this thing started, I thought that Ann and Jenny would end up being the personal representatives because they said that they had a Will. So I called Ann and I said, my name is Joe Womack and she said -- she basically said, I will not talk to you. You -- we will only -- I will only communicate with you in writing. And so I got her email address. And that was pretty much the end of the conversation.

Mar. Trans., 67:16-23. From that conversation, Womack initially inferred that Sargent would be difficult to work with, but admitted that his inference could have been incorrect. *Id*. at 141:12-142:16.

Third, the Appellants' Rule 60 motion accused Womack of falsely giving the district court "an impression that Jenny was planning something sinister" because he testified that she refused to give him a signed copy of Ian's will while omitting that Jing and Sargent had informed him that they would provide the will after they received Ian's death certificate. *See* Doc. 59, at ¶ 40. Womack, however, admitted during his testimony that Jing told him she was waiting for a death certificate, but explained that he interpreted her response as a refusal because she was obtuse, he did not know if she really had a signed copy of the will, there is no requirement in Montana to obtain a death certificate to file a will, and even when she attempted to file her own

petition, she still did not serve him with the will. *See* Mar. Trans., 129:13-131:4.

2. Meritless Accusations Regarding Womack's Litigation Positions

Fourth, the Appellants' Rule 60 motion accused Womack of making misrepresentations to this Court regarding whether Ian obstructed his administration. *See* Doc. 59, at ¶ 42. That motion was filed more than five months after this Court had already held in *Elliot III* that, "[t]he record demonstrates that, however sincere he may have been, Ian obstructed Womack's administration with constant litigation and unfounded accusations." *See Elliot III*, ¶ 19.

Fifth, the Appellants' Rule 60 motion accused Womack of fraud for providing "advice" both to this Court and the district court that Jing and Sargent should not be permitted to file a *pro se* reply brief in *Elliot III*, and that Womack's actions improperly "blocked" their ability to do so. *See* Doc. 59, at ¶¶ 43-44. In this Court, Womack successfully opposed Jing's and Sargent's motion to intervene in *Elliot III*, which they filed well after the Court had already *sua sponte* ordered that they could not file a *pro se* reply brief. *See* DA 21-0343, Special Administrator and Liquidating Partner's Response to Motion for Leave to Intervene and Motion for Extension (Apr. 28, 2022). In the district

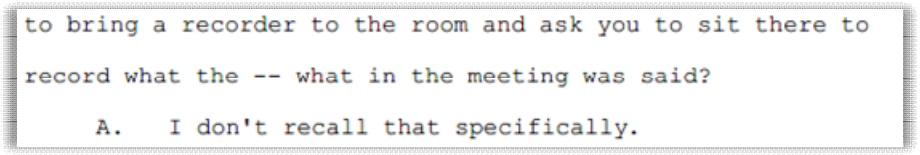
court, Womack successfully opposed Jing's and Sargent's second emergency motion to be appointed temporary personal representatives, which was filed after the evidentiary hearing but before the court issued its ruling on supervised administration. *See* Docs. 39, 41.

3. Baseless Accusations of Misrepresentations, Withholding Evidence, and Suborning Perjury

Sixth, the Appellants' Rule 60 motion vaguely referenced "Womack's misrepresentations and his withheld/destroy the audio record [sic]." *See* Doc. 59, at ¶ 46. In support, the Appellants cited a separate motion they filed in Judge Harada's court to intervene Ian's pending lawsuit against Womack, which is premised broadly on the same alleged misrepresentations this Court rejected in *Elliot III*. *See* Doc. 59, at Ex. A; Doc. 80, at 7. Their motion did not elaborate on their allegation regarding withholding or destruction of an audio record, but they subpoenaed Lynsey Ross—who is Womack's former paralegal and now an Assistant United States Attorney—to testify on that issue at the hearing. Jing asked Ross only one question on the topic, and Ross could not recall the meeting in question:

BY MS. JING:

Q. Did you remember one of the -- so you remember some, did you remember one of the meeting that Mr. Womack asked you


to bring a recorder to the room and ask you to sit there to record what the -- what in the meeting was said?

A. I don't recall that specifically.

Apr. Trans., 304:23-305:3. There is no other evidence in the record on that point.

Finally, the remainder of the misconduct allegations in Appellants' Rule 60 motion accuse "opposing counsels" of soliciting false testimony from Adrian Olson at the hearing. *See* Doc. 59, at ¶¶ 47-57. The motion accuses counsel of preparing Olson to give false testimony with no supporting facts other than that the Appellants believe that portions of Olson's testimony were inconsistent with their theory of the facts. *See id*.

The only other argument in the Rule 60 motion was a request to consolidate cases. *See id*., at 13-14. The Appellants have not challenged that issue on appeal.

STATEMENT OF THE STANDARD OF REVIEW

"The standard of review of a trial court's decision to grant or deny a Rule 60(b) motion depends on the issues involved." *In re Marriage of Hopper*, 1999 MT 310, ¶ 19, 297 Mont. 225, 991 P.2d 960. "Where, as here, there is a discretionary appraisal or weighing by the district court of the facts of the case," this Court review the district court's

determination for abuse of discretion. *Id.*; *see also Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451.

Rule 60(d) "grants a court the discretionary power to entertain an independent action to relieve a party from a judgment." *Tucker v. Tucker*, 2014 MT 115, ¶ 16, 375 Mont. 24, 326 P.3d 413. "The term 'independent action' in Rule 60(d), however, does not guarantee any right to bring a separate and distinct complaint, but rather, refers to an independent cause of action 'in equity to obtain relief from judgment.'" *Id.*, ¶ 18 (quoting reference omitted). "An independent action in equity may not be used to obtain further review of issues already decided in the previous action." *Id.*

SUMMARY OF THE ARGUMENT

This appeal is a microcosm of the problems that have plagued the Elliot estate cases for years now. Rather than confining their arguments to the discrete issue preserved for review, the Appellants filed an opening brief comprised primarily of baseless accusations against Womack that have not only been repeatedly rejected by this Court and others, but which have nothing to do with the issue presented. Addressing the real issue, this Court should affirm the district court's denial of the Appellants' Rule 60 motion. Both the

district court's underlying order and its order denying the Rule 60 motion are detailed, well-reasoned, and serve as an excellent roadmap for the issues in this case.

First, the district court undoubtedly had jurisdiction to consider Womack's petition for supervised administration of Ian's estate and Womack's and Cindy's request for special administrator. Under Montana law, any "interested person" may petition for supervised administration or a special administrator and "interested person" is statutorily defined. That definition is expansive, and Womack easily satisfies it. Foremost, Womack is a fiduciary of StarFire and the record is clear that StarFire is a creditor of Ian's estate. Additionally, Ian's estate is one of two primary beneficiaries of Ada's estate—which Womack is tasked with administering—and Ian has consistently litigated against Womack, including suing him personally. Thus, Womack plainly has an interest in the administration of Ian's estate.

Second, the Appellants' argument that they were entitled to a jury trial is unpreserved and meritless. Not only did they fail to include the argument in their Rule 60 motion, the applicable statute expressly permits courts to appoint a special administrator after a hearing, not a trial.

Third, the alleged mistake in Jing's hearing testimony about the amount of her debt to Ian's estate does not warrant Rule 60(b) relief. Even if the district court was mistaken about the precise amount of the debt, Jing does not dispute that Ian transferred money to her in the year before his death and an estate's *potential* claim against a personal representative is sufficient to create a conflict of interest under Montana law. Moreover, the amount of the debt is irrelevant. The district court's reasoning was premised on the fact that a disputed debt exists, not the amount of the debt. Additionally, the debt was just one of many reasons that the court found that supervised administration was warranted.

Fourth, the Appellants' fraud arguments are frivolous. Most of them are unpreserved, many have already been considered and rejected in other cases, including by this Court in *Elliot III*, and few, if any, bear on the issue of supervised administration of Ian's estate. To the extent that the Appellants preserved discrete fraud arguments in their Rule 60 motion, each is completely meritless. Their arguments are demonstrably inaccurate from a factual standpoint and do not come close to satisfying the legal standard for fraud on the court under

Rule 60(d). This Court should summarily reject them for all the same reasons as the district court.

Finally, this Court should declare Jing a vexatious litigant in all cases related to or stemming from the administration of Ada's and Ian's estates. She meets all the requisite factors: (1) as detailed in the district court's underlying order, there is a long history of vexatious, harassing, or duplicative lawsuits that Jing has expressed an intent to continue; (2) Jing has no objective expectation of success given every court ruling to date; (3) Jing has no intent to retain counsel; (4) Ian's and Jing's litigation-by-attrition strategy has caused significant needless expense and delay to the administration of both Ada's and Ian's estates; and (5) other sanctions are inadequate given Jing's consistent refusal to abide by any court ruling she does not like. Absent a vexatious litigant order, Jing is substantially likely to continue frustrating and delaying the administration of these estates for the foreseeable future.

ARGUMENT

I. The District Court Had Jurisdiction to Order Supervised Administration and Appoint a Special Administrator.

As a threshold issue, the Appellants argue that the district court lacked jurisdiction and should have dismissed Womack's petition

seeking supervised administration of Ian's estate. *See* Open. Br., at 11-13. Specifically, they argue that because Womack was not an "interested person" under Montana law, he lacked standing to file his petition. *Id*. Although this argument was not included in the Appellants' Rule 60 motion, Womack acknowledges that because standing is a fundamental, jurisdictional requirement, it may be raised at any time. *See Johnson v. Booth*, 2008 MT 155, ¶ 16 n.2, 343 Mont. 268, 184 P.3d 289.

On the merits, however, the Appellants' standing argument is groundless. Under Montana's version of the Uniform Probate Code (UPC), "a petition for supervised administration may be filed by any interested person . . . at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding." § 72-3-402(1), MCA. Likewise, a special administrator may be appointed "in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances where a general personal representative cannot or should not act." § 72-3-701(2), MCA. In other words, the requisite

standing requirement for both Womack's initial petition seeking supervised administration and Cindy's subsequent application seeking appointment of a special administrator—which Womack later joined—is that the petition was filed by an "interested person."

That determination is not a close call. The UPC defines an "interested person" expansively to include "heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons." § 72-1-103(25), MCA. The definition also contemplates flexibility, adding that, "[t]he meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding." *Id.*

Here, the analysis can begin and end with Womack's status as the court-appointed liquidating partner of StarFire. The record is replete with evidence that StarFire loaned at least $117,500 to Ian while the legal battles over Ada's estate have been ongoing. *See, e.g.*, Mar. Trans., 59:8-60:14, 79:20-82:8; Hearing Exs. L, S, Z. Consequently,

StarFire is a creditor of Ian's estate and Womack is a fiduciary of that creditor. Thus, he fits squarely within the definition of "interested persons" entitled to petition for supervised administration under the UPC. *See* § 72-1-103(25), MCA.

The Appellants' attempt to recharacterize StarFire's loans as partial distributions of Ada's estate is incorrect. As a minority shareholder, Ian is not entitled to actual distributions from StarFire. *See* Mar. Trans., 79:25-80:2. Nor is it possible for Ada's estate to simply distribute her interest in StarFire to Ian and Cindy given that their ongoing dispute about each's respective share of StarFire has necessitated a court-ordered forensic accounting, which is still subject to future legal challenge before Ada's estate can be settled. *See id*. at 80:3-19; *see also* Apr. Trans., 420:2-16. Accordingly, Judge Knisely authorized Womack to make *loans* from StarFire to Ian and Cindy, for which they remain responsible. *See* Apr. Trans., 442:23-444:11; Hearing Ex. Z. Indeed, in correspondence with Womack, Ian referred to the transactions as loans, thanking Womack for "agreeing to loan me the $3,000 loan" and asking him to "[p]lease loan me an additional $2,000 as emergency relief." *See* Hearing Ex. L.

Creditor status aside, the larger battle over Ada's estate also makes Womack an interested person under the last sentence of § 72-1-103(25), MCA. Because Ian's estate is one of the two primary beneficiaries of Ada's estate, Womack will necessarily have to work closely with whomever administers Ian's estate. That alone is enough to make him an interested person, and that result is particularly true where Ian not only engaged in extensive litigation over Womack's actions in his fiduciary capacities, he sued Womack personally for fraud, constructive fraud, breach of fiduciary duty, and negligence. *See* Doc. 45, at FOF ¶¶ 34-35. Simply put, it would make no sense whatsoever to hold that Womack is not an interested person in the administration of Ian's estate given his role as the special administrator of Ada's estate. Recognizing that someone not expressly enumerated in the definition may nevertheless constitute an "interested person" given the circumstances is precisely why the last sentence of § 72-1-103(25) exists.

The Appellants' other arguments widely miss the mark. First, they suggest that "Womack should not be allowed to file a petition because the heirs could have filed their own petition." *See* Open. Br., at 12. But the law simply does not contain any such requirement. The

fact that one interested person—including an heir—is entitled to file a petition seeking formal testacy proceedings, supervised administration, or a special administrator does not somehow preclude another interested person from filing. Second, neither *In re Hoffman's Est.*, 132 Mont. 387, 318 P.2d 230 (1957) nor any of the other cases the Appellants cite limit the district court's jurisdiction to testacy proceedings initiated by heirs or those entitled to a distribution from an estate, as they seem to believe. No lengthy discussion of the cases is necessary—they are all pre-UPC cases discussing pre-UPC statutes, and to the extent they are even on point in the first place, they do not supersede the current Montana statutes allowing interested persons to file petitions.

Simply put, there is no viable argument that the district court lacked jurisdiction to consider supervised administration of Ian's estate or to appoint Billstein as the estate's special administrator. The Appellants' argument to the contrary misunderstands current Montana law.

II. The District Court Did Not Violate the UPC or the Appellants' Right to a Jury Trial.

The Appellants' second argument is fatally lacking for multiple reasons. First, their Rule 60 motion did not preserve any argument

that the district court was required to proceed through formal testacy proceedings with a jury trial before ruling on special administration and this Court has already ordered that this appeal is limited to the arguments raised in that motion. *See CBI, Inc. v. McCrea*, 2012 MT 167, ¶ 21, 365 Mont. 512, 285 P.3d 429 (accommodations for *pro se* litigants do not extend to considering arguments raised for the first time on appeal in violation of multiple civil and appellate procedural rules). Second, § 72-3-701(2), MCA permitted the district court to appoint a special administrator "after notice and hearing," with no requirement for a jury trial. *Compare Elliot III*, ¶ 26 (no right to a jury trial for removal of a personal representative where the applicable statute requires only a hearing). Thus, the Court need not consider this argument and should summarily reject it if it does.

III. There Was No Mistake, Inadvertence, or Excusable Neglect Warranting Rule 60(b) Relief.

The Appellants next argue that the district court's underlying order was based on clearly erroneous fact findings. *See* Open. Br., at 14-17. On this issue, the Appellants misstate the scope of the appeal. They are not permitted to challenge the district court's underlying findings for clear error or otherwise. Rather, they are limited to

arguing that the court erred in denying their Rule 60 motion under the applicable Rule 60 standards. *See* DA 23-0031, Mar. 7, 2023 Order.

A. Jing's Erroneous Testimony About the Amount of Her Debt to Ian's Estate Does Not Undermine the District Court's Order in Any Way.

To be sure, at least some of the Appellants' argument is directed to an alleged mistake in Jing's testimony about how much she owes Ian's estate, which was, in fact, included in the Rule 60 motion. Preservation of the issue, though, does not mean that it warrants relief.

For Rule 60(b) purposes, a mistake is "some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence." *In re Marriage of Schoenthal*, 2005 MT 24, ¶ 33, 326 Mont. 15, 106 P.3d 1162 (quoting reference omitted). "Mistake, inadvertence, and excusable neglect require some justification for an error beyond mere carelessness or ignorance of the law on the part of the litigant or his attorney." *Id*. And, "[o]f course, not every 'mistake' will justify amending the order or granting the particular relief requested by the moving party." *Zetor North America, Inc. v. Rozeboom*, 2018 WL 4026756, at *2 (W.D. Ark. Aug. 23, 2018) (interpreting corollary federal rule).

There is significant doubt whether "a witness's mistaken or confused testimony qualifies as the type of mistake under Rule 60(b)(1) on which relief may be granted." *Coleman v. Dunlap*, 402 S.E.2d 181, 184 (S.C. Ct. App. 1991) (Cureton, J., concurring). The Appellants have not cited any authority supporting that position. But even if the Court liberally construes the Appellants' argument to mean that the "mistake" was not Jing's erroneous testimony that she owed Ian's estate only about $2,000, but rather the district court's conclusion that the debt was $21,900, the mistake is certainly not one that warrants relief from the court's decision to appoint a special administrator.

Regardless of whether the district court's order slightly overstated Jing's debt by misreading several credit entries in Exhibit V as debits, there is no dispute that Jing received at least $8,900 from Ian which she did not repay. *See* Hearing Ex. V; *see also* Open. Br., at 14-16. And, under Montana law, the existence of a *potential* claim by an estate against its personal representative is sufficient to create a conflict of interest. *In re Est. of Anderson-Feeley*, 2007 MT 354, ¶ 13, 340 Mont. 352, 174, P.3d 512. Thus, the precise amount of Jing's debt to Ian's estate is irrelevant. The district court's finding that Jing's debt to the estate—and her denial of the extent of the debt—incentivized her to

delay the estate's administration had nothing to do with the scope of the debt. *See* Doc. 45, at FOF ¶ 58. As the court made clear in denying the Appellants' Rule 60 motion, its analysis would have been the same whether Jing's debt was $2,000, $8,900, or $21,900 because it is the potential of a claim by Ian's estate against Jing that matters, not the amount of that claim.[5] *See* Doc. 80, at 2-3.

To avoid that result, the Appellants focus heavily on case law from other jurisdictions in support of the notion that Jing does not truly have a conflict of interest because Ian knew about her potential debt when he executed his will. *See* Open Br., at 16-19. Their discussion on that point, however, is just an inappropriate attack on the court's refusal to appoint Jing as a personal representative in its initial order, not a Rule 60 argument. Specifically, the Appellants are arguing that the district court incorrectly interpreted and applied the law regarding conflicts of interest, and should have concluded both that the amount of Jing's potential debt to the estate was immaterial and that she did not have a conflict. *See* Open. Br., at 18. That is entirely different than

[5] While Jing believes her debt is limited to $8,900, Hearing Exhibit V reflects that it is $15,400, meaning that Jing continues to deny the extent of the debt, just as the district court found.

arguing that a testimonial or evidentiary mistake about the amount of the debt warranted vacating the court's order under Rule 60, which is the only issue they preserved. Basically, the Appellants are using the guise of a "mistake" to try to resurrect an argument they forfeited by failing to file a timely notice of appeal challenging the court's underlying order.

Properly analyzed, the district court's order makes clear that the estate's potential claim against Jing was just one of many reasons that the court declined to appoint her as a personal representative of Ian's estate and appointed a special administrator instead. *See, e.g.*, Doc. 45, at COL ¶¶ 13-17. Thus, even if there was a mistake—either in Jing's testimony or in the court's order—about the amount of Jing's debt, that mistake does not come close to warranting vacating the court's order under Rule 60. Accordingly, the court did not abuse its discretion by denying the Appellants' Rule 60 motion on that point.

B. Evidence About Jing's Intent to Repay Ian's Mortgage Is Irrelevant.

In both their Rule 60 motion and their opening brief, the Appellants include a paragraph recounting that Jing testified that she promised before Ian's death to pay off his mortgage when her own home sold and reiterated her intent to do so after he died. See Doc. 59, at

¶ 31; Open. Br., at 14. It is unclear why they believe that testimony warrants Rule 60(b) relief, asserting only that "[t]hese facts and evidence indicated Jenny's integrity, instead of lack of integrity." *See* Open. Br., at 14.

The Court should simply ignore this line of argument. It is not tied to the Rule 60 standards in any way. At best, the Appellants appear to be suggesting that the district court should not have drawn any adverse inference about Jing's credibility from testimony about the amount of her debt to Ian's estate. But this Court has consistently held that it "will not second-guess a district court's determinations regarding the strength and weight of conflicting testimony." *Point Service Corp. v. Myers*, 2005 MT 322, ¶ 28, 329 Mont. 502, 125 P.3d 1107. There is no reason to depart from that rule here simply because Jing considers herself a more trustworthy witness than did the district court.

IV. The Appellants' Fraud on the Court Arguments Are Frivolous.

The remainder of the Appellants' opening brief is dedicated to a litany of allegations that Womack committed fraud on the court. All are utterly frivolous.

To start, Womack emphasizes that many of the Appellants' arguments attempt to relitigate allegations that this Court already

rejected in *Elliot III*. For instance, the Appellants complain at length about alleged collusion on Womack's part to be appointed special administrator of Ada's estate and liquidating partner of StarFire, as well as the timing and manner of the forensic accounting of StarFire, even though Ian unsuccessfully advanced those same arguments in seeking to have Womack removed several years ago. *See, e.g.*, Open. Br, at 20-37; *see generally Elliot III*, 2022 MT 91N. Others are meritless complaints about legal arguments, such characterizing Womack's opposition to Jing's and Sargent's request to file a *pro se* reply brief on behalf of Ian's estate in *Elliot III* as "obstruction" even though this Court expressly ordered that they could not file such a brief. *See* Open. Br., at 34-36. And still others are attempts to litigate issues that remain pending in other district courts, such as the outcome of Wipfli's forensic accounting. *See* Open. Br., at 29-31.

To be clear, Womack emphatically denies that he has committed fraud or wrongdoing of any kind. As he testified—and as this Court has previously found—he has consistently attempted to be fair and to exercise his court-appointed fiduciary responsibilities in a professional manner. *See, e.g.*, Apr. Trans., 458:14-460:25; *Elliot III*, ¶¶ 19-24. That aside, most of the Appellants' arguments were not raised in the Rule 60

motion and all of them—including the few that were properly preserved—are legally deficient, factually inaccurate, or both.

"Only the most egregious conduct will rise to the level of fraud upon the court." *Falcon v. Faulkner*, 273 Mont. 327, 332, 903 P.2d 197, 200 (1995) (quoting reference omitted); *see also Salway v. Arkava*, 215 Mont. 135, 141, 695 P.2d 1302, 1306 (1985) ("Fraud upon the court should, we believe, embrace only that species of fraud which does or attempts to subvert the integrity of the court itself, or is fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner in its impartial task of adjudicating cases that are presented for adjudicating."). Even false or fraudulent "representations or concealments made during . . . court proceedings" constitute only intrinsic fraud, which is "not grounds for reopening a decree or judgment." *Falcon*, 273 Mont. at 327, 903 P.2d at 200. Only extrinsic fraud such as "bribery, evidence fabrication, and improper attempts to influence the court by counsel" constitute fraud upon the court. *Id.*

Here, the allegations of fraud contained in the Appellants' Rule 60 motion fall into four categories. The first category consists of allegations that Womack provided misleading testimony at the

hearing—about who conducted the accounting of StarFire, whether Sargent would speak to him, and a dispute about whether Jing refused to give him a signed copies of Ian's will. *See* Doc. 59, at ¶¶ 38-40. All those allegations are patently false. Even a brief review of the record reveals that Womack testified that Wipfli conducted the accounting, that the accounting included both StarFire and Ada's personal accounts, that Sargent indicated that she wanted to speak with him only via e-mail and his inference about her from that conversation could have been wrong, and that while Jing told him she would give him a signed copy of the will after receiving Ian's death certificate, he had no evidence that a signed copy even existed at the time he filed his petition seeking supervised control. *See* Mar. Trans., 34:7-21, 67:16-23, 106:6-17, 107:8-14, 108:4-13, 129:13-131:4, 141:12-142:16.

This first category is a perfect example of Jing's continuation of Ian's obstructionist tactics. More than a year after Womack provided honest, straightforward testimony at an evidentiary hearing, Jing continues to use semantics and cherry picking to turn unobjectionable statements into allegations of fraud even where her position is flatly contradicted by the record. For instance, there is no reason whatsoever that Womack should be forced to spend Ada's estate's money defending

an allegation that he committed fraud by testifying that he, not Wipfli, conducted the StarFire accounting simply because Jing is taking a single sentence of testimony entirely out of context. The bottom line is that Jing has and seemingly will continue to characterize as fraudulent any position Womack takes that is adverse to her own view about the case.

The second category of alleged fraud in the Appellants' Rule 60 motion is "advice" Womack gave to both this Court and the district court regarding Ian's obstruction tactics and Jing's and Sargent's attempts to file a *pro se* reply brief in *Elliot III*. *See* Doc. 59, at ¶¶ 42-44. If possible, these accusations may be even more frivolous than the last. Belaboring the point is unnecessary, but there is not the least bit of authority suggesting that making meritorious legal arguments to a court is fraudulent. *Elliot III* expressly found that Ian obstructed Womack's administration and this Court *sua sponte* alerted Jing and Sargent that they could not file a *pro se* brief after Ian's death.

The third category of alleged fraud in the Rule 60 motion consists of undefined accusations of misrepresentation and withholding or destroying an audio record. *See* Doc. 59, at ¶ 46. To the extent that the Appellants are attempting to use a generic assertion of

"misrepresentations" as a catch-all to make wide-ranging arguments about nearly every aspect of nearly every related case—both pending and concluded—the Court should reject their attempt to do so. The opening brief is strewn with fraud arguments that were not developed in any fashion in the Rule 60 motion and are thus waived. *See Danelson v. Robinson*, 2003 MT 271, ¶ 17, 317 Mont. 462, 77 P.3d 1010. Consequently, Womack does not waste the Court's time or Ada's estate's resources refuting each of them one-by-one. Suffice it to say that even if they were not waived, they are meritless and most, if not all, were previously rejected in *Elliot III*.

The Appellants' argument that Womack concealed or destroyed an audio recording of a meeting fares no better. In their Rule 60 motion, the Appellants included only a single sentence about "an audio record," with no context or discussion about what it is or why it matters. And at the hearing, the only evidence on the issue was that Ross did not recall any specifics about a meeting in which she was asked to bring a recorder. *See* Apr. Trans., 304:23-305:3. In the opening brief, the Appellants now cite conflicting evidence from Womack and Mike Bolenbaugh about an audio record for a 2020 meeting and suggest that it constitutes evidence that Womack was retaliatory toward Ian three

years ago and that he made false denials under oath. *See* Open. Br., at 8-9, 21. Aside from the fact that they do not have a shred of evidence to support their position, the Appellants still do not explain why this issue bears in any way on the district court's decision to order supervised administration of Ian's estate or why it would warrant vacating that decision under the Rule 60 standards.[6]

The last category of alleged fraud in the Appellants' Rule 60 motion is that "opposing counsels" solicited false testimony from Adrian Olson. *See* Doc. 59, at ¶¶ 47-57. On appeal, the Appellants assert that they "did not go further" with this argument below because "Womack made so many misrepresentations of his own already." *See* Open. Br., at 36. This argument is again wholly frivolous. First, the Appellants have no evidence of any kind that Womack or Cindy's counsel solicited perjury. Indeed, they do not even attempt to develop that argument. Second, "'fraud between the parties, such as perjured testimony at trial,

[6] This issue was also subsumed in Ian's attempt to remove Womack as special administrator and liquidating partner in *Elliot III*. Although Ian's appellate brief did not reference the issue directly, it complained about his inability to obtain information from meetings in which Ross was present and accused Womack of making false statements. To the extent necessary, Womack requests that this Court take judicial notice of the pleadings in DA 21-0343 and the underlying district court record.

does not rise to the level of fraud upon the court." *In re Marriage of Hopper*, ¶ 24. Third, there is no indication that Olson was untruthful in any way. The district court's order provided a detailed explanation of why the Appellants' evidence does not indicate that Olson testified untruthfully, *see* Doc. 80, at 7-8, and judging Olson's credibility was soundly within the district court's purview. *See Point Service Corp.*, ¶ 28. Finally, some of the Appellants' argument is simply nonsensical. For example, the fact that Ian sent an e-mail to a realtor indicating his attachment to his family's ranch—a fact that is hardly in dispute—has nothing to do with Olson's testimony, and certainly does not provide justification for vacating the district court's supervised administration order under Rule 60. *See* Open. Br., at 37.

In sum, there is not even the slightest hint of merit in any of the Appellants' fraud on the court arguments. They are all factually and legally unsupported, many of them are unpreserved, and this Court should resoundingly reject them for what they are—frivolous attempts to avoid legally sound decisions by the district court or re-litigate issues already resolved by other tribunals, including this one.

V. This Court Should Declare Jing a Vexatious Litigant in All Estate-Related Proceedings.

Womack has a currently pending motion before the district court to declare Jing a vexatious litigant in this case,[7] and Judge Harada has already ruled that the parties may not file any additional pleadings in *Elliot v. Womack*, DV 21-811, Yellowstone County, which is the second case in which Ian sued Womack personally for actions he has taken on behalf of Ada's estate. But more widespread relief is warranted.

Bluntly, it is time for the frivolous and burdensome litigation to stop. Ian's and Jing's tactics have already caused significant delay and expense to the detriment of the other beneficiaries of both Ada's and Ian's estates and Jing has indicated that she intends to pursue her current litigation strategy indefinitely. Given the history of the various cases and Jing's refusal to accept numerous court orders, Womack respectfully requests that this Court declare Jing a vexatious litigant in any Montana case related to or stemming from the administration of Ada's or Ian's estates, including any lawsuits in which Ian separately sued fiduciaries. *See, e.g.*, *Wallace v. Law Offices of Bruce M. Spencer,*

[7] Womack assumes that the district court has not yet ruled due to jurisdictional concerns created by the pendency of this appeal.

PLLC, 2021 MT 253, ¶ 10, 405 Mont. 473, 495 P.3d 1047 (declaring an attorney to be a vexatious litigant on a statewide basis).

Although Article II, Section 16 of the Montana Constitution guarantees every person access to Montana's courts, that right "is not absolute, and may be limited with the showing of a rational relationship to a legitimate state interest." *Stokes v. First Am. Title Co. of Mont., Inc.*, 2017 MT 275, ¶ 3, 389 Mont. 245, 406 P.3d 439. While Montana "does not have any statute specifically authorizing the imposition of restrictions upon vexatious litigants, our common law includes such authority." *Id.*, ¶ 4 (citing *Motta v. Granite City Comm'rs*, 2013 MT 172, ¶¶ 19-23, 370 Mont. 469, 304 P.3d 720)).

In *Motta*, the Court adopted a five-factor test used by the Ninth Circuit to analyze whether a vexatious litigant order is justified: (1) the litigant's history of litigation and, in particular, whether it has entailed vexatious, harassing, or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, *e.g.*, whether the litigant has an objective, good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to

protect the courts and other parties. *Motta*, ¶ 20. If those factors are met, an order imposing pre-filing requirements is consistent with the Montana Constitution and "has a direct relationship to the state interest of protecting other parties from the unnecessary expense of litigating . . . and protecting the courts from the unnecessary expenditure of judicial resources." *Stokes*, ¶ 13.

Under the first factor, there should be no question that Jing assisted Ian in engaging in vexatious, harassing, and duplicative lawsuits and has continued his litigation strategy since his death. The extensive history of litigation was well-detailed by the district court, *see* Dkt. 45, FOF ¶¶ 24-47, and the duplicative, harassing nature of Ian's and Jing's approach is readily apparent. They repeatedly request the same relief that has already been denied, seek to remove judges that rule against them, sue any professional who opposes their position, and consistently initiate separate lawsuits seeking to relitigate issues they have already lost, including issues this Court has affirmed. *See id*. With respect to Womack alone, Ian filed three separate motions to remove him as the special administrator of Ada's estate, sought to disqualify Judge Knisely when she denied his motions, filed a separate original proceeding in the Montana Supreme Court while his appeal of

Judge Knisely's order was already pending, and sued Womack individually twice, including refiling his claims before Judge Harada after Judge Knisely dismissed them in the first case. *Id*. Jing was intimately involved in all those cases and has picked up where Ian left off, most recently by seeking to institute another independent action to investigate the same alleged fraud this Court has already rejected and then rehashing her fraud accusations in this appeal.

On the second factor, Jing has no objective expectation of success. As this Court held, Womack has "acted professionally as special administrator and liquidating partner," notwithstanding Ian's constant obstructive litigation and "unfounded accusations." *See Elliot III*, ¶ 19. Simply put, Jing's continued pursuit of her fraud theory is in bad faith. Over a span of years, different cases, hundreds (if not thousands) of pages of briefing, and at least two full evidentiary hearings, multiple district court judges and this Court have rejected as baseless every attempt by Ian and Jing to pursue their litigation. Under *Stokes*, there should be no question that serious, unsupported accusations of fraud are "harassing and vexatious." *See Stokes*, ¶ 6.

While the third factor is simple, it is also important. *Id*., ¶ 10. Ian proceeded *pro se* with Jing's assistance for years and Jing has

proceeded *pro se* since Ian's death. *See, e.g.*, Dkt. 45, FOF ¶¶ 11, 15-22, 54. Even when the Court granted Jing and Sargent 60 days to obtain appointment as personal representatives of Ian's estate and secure counsel to continue participating in the appeal of Judge Knisely's order in *Elliot III*, they instead sought to intervene by substituting themselves for Ian on a *pro se* basis. Now, they contend that their actions were not only Womack's fault, but that he committed fraud on the court by opposing them. *See* Open. Br., at 34-36; *see also* Doc. 59, at ¶¶ 42-43. Jing plainly has no intent to obtain counsel and, as the district court explained, the *pro se* nature of Ian's and Jing's litigation is problematic for multiple reasons. *See* Dkt. 45, FOF ¶ 47.

Fourth, there can be no real dispute that Ian's and Jing's litigation tactics have caused needless expense to other heirs of Ada's and Ian's estate and an unnecessary burden on the courts. In nearly every case, Ian and/or Jing have filed serial contested motions and have sought reconsideration of nearly every issue. No matter how frivolous, the vast majority of those filings have to be addressed by Womack in his fiduciary capacities and often require a response by other interested parties as well. All of that costs time, money and court resources. Tellingly, Ada's estate has not been fully settled more than six years

after her death due to the extensive litigation pursued by Ian with Jing's assistance. All the while, the estate is incurring legal fees, reducing the amount that can ultimately be distributed to the beneficiaries. *See, e.g.*, *Elliot III*, ¶ 23; *see also* Dkt. 45, FOF, ¶ 47.

Finally, it is clear at this point that other sanctions are inadequate. Ian and Jing have been instructed by multiple courts countless times to stop their obstructionist conduct. *See* Dkt. 45, FOF ¶¶ 25-26, 37-38, 40. But none of the warnings have worked. Jing continues to assert arguments unsupported by law or facts and remains unwilling to accept adverse court rulings or comply with court orders. *Id.*, FOF ¶ 47. Absent a vexatious litigant order, her unfounded litigation will only continue to delay resolution of both Ada's and Ian's probate cases to the detriment of the various beneficiaries.

For all those reasons, this Court should declare Jing a vexatious litigant and issue a pre-filing order with the following terms: (1) before Jing can file any pleading *pro se* in any case related to or stemming from the administration of Ada's estate or Ian's estate, she is required to obtain pre-filing approval from the court in which she seeks to file; (2) the court may prohibit any such filing upon a determination that the claims or arguments in the filing are harassing, frivolous, or legally not

cognizable; and (3) courts should not permit Jing to engage in vexatious litigation tactics by assisting or directing other beneficiaries such as Carpenter or Bolenbaugh with filings Jing herself cannot make due to the court's order. *See Stokes*, ¶ 14.

CONCLUSION

For the foregoing reasons, Womack respectfully requests that the Court affirm the district court's order denying the Appellants' Rule 60 motion and enter an order declaring Jenny Jing a vexatious litigant.

Dated: August 23, 2023.

Respectfully submitted,

/s/ Michael P. Manning
Michael P. Manning
RITCHIE MANNING KAUTZ PLLP

Counsel for Appellee Joseph V. Womack, Special Administrator of the Estate of Ada E. Elliot and Liquidating Partner of Starfire, LP

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Mont. R. App. P. 11(4), this response brief is proportionately spaced, has a typeface of 14 points or more, and contains 9,969 words, as determined by the undersigned's word processing program, supplemented by a hand count of the words included in pictures in the Statement of Facts containing excerpts of hearing testimony.

/s/ Michael P. Manning

Michael P. Manning
RITCHIE MANNING KAUTZ PLLP
175 N. 27th St.
Suite 1206
Billings, Montana 59101

Counsel for Appellee Joseph V. Womack, Special Administrator of the Estate of Ada E. Elliot and Liquidating Partner of Starfire, LP

CERTIFICATE OF SERVICE

I, Michael Manning, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-23-2023:

Jeffery A. Hunnes (Attorney)
2825 3rd Avenue North
Suite 100
Billings MT 59101
Representing: Cindy Elliot
Service Method: eService

Joseph Andre Soueidi (Attorney)
2825 3rd Ave. N
Suite 100
BILLINGS MT 59103
Representing: Cindy Elliot
Service Method: eService

Adrianna Potts (Attorney)
1555 Campus Way
Suite 202
Billings MT 59102
Representing: Andrew T. Billstein
Service Method: eService

Jenny Jing (Appellant)
10 Alpine Place
Kearny NJ 07032
Service Method: Conventional

Alice Carpenter (Appellant)
P.O. Box 22702
Billings MT 59104
Service Method: Conventional

Mike Bolenbaugh (Appellant)
2351 Solomon Avenue, Apt. 334
Billings MT 59102
Service Method: Conventional

Electronically signed by Amy Martin on behalf of Michael Manning
Dated: 08-23-2023