

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. DA 23-0431

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JULIUS A. WILSON and ANITA M. ANGELO,

Plaintiffs and Appellants,

v.

DOMINICA E. STAMPER, Personal Representative of the Estate of Priscilla A. Graham; and THERESA A. PRESLEY AND RONALD PRESLEY,

Defendants and Appellees.

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**DOMINICA E. STAMPER'S MOTION TO DISMISS APPEAL WITH  
PREJUDICE**

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On Appeal from the Montana First Judicial District Court, Lewis and Clark  
County,  
The Honorable Kathy Seeley Presiding.

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## APPEARANCES

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COMES NOW Appellee Dominica E. Stamper, Personal Representative of the Estate of Priscilla A. Graham (the “PR”), through counsel, and moves the Court to dismiss this appeal with prejudice pursuant to Rules 4(5)(a)(iii) and 4(5)(a)(i), M.R.App.P. Counsel for the PR attempted to contact counsel for the Appellants, Julius A. Wilson and Anita M. Angelo (collectively, “Wilson”), but did not hear back from him; he presumably opposes this motion. Counsel for Appellees Theresa A. Presley and Ronald Presley (collectively, the “Presleys”) has been contacted and supports this motion.

### **A. Facts**

On July 19, 2023, the District Court dismissed the first two counts of Wilson’s complaint and entered summary judgment against Wilson on the remaining counts. The District Court’s July 19 order also awarded the PR her attorney’s fees pursuant to her motion filed September 20, 2022. Ord. Mots. Consolidate or Dismiss for Lack of Sub. Mat. Jur. and for S. Jud., p. 11. In its July 19 order, the District Court ordered the PR to submit a statement of fees to the District Court and Wilson within 10 days, whereafter Wilson would have 5 days to request a hearing if Wilson contested the reasonableness of the fees. *Id.* On July 28, 2023, the PR filed and served her statement of attorney’s fees and costs.

Instead of responding, and prior to the District Court’s entry of its order on the amount of the PR’s fees and costs, on August 10, 2023, Wilson filed her Notice

of Appeal with this Court appealing the District Court's July 19 order. On August 11, 2023, the District Court entered its order approving the amount of the PR's attorney's fees and costs. On August 14, 2023, the PR filed and served on Wilson and the Presleys notice of entry of the District Court's July 19 and August 11 orders. Wilson failed to refile a notice of appeal within 30 days of the PR's service of notice of entry of the orders.

### **B. Argument**

Wilson filed the notice of appeal prematurely as the District Court had not yet entered its order approving the amount of the PR's attorney's fees and costs.

Rule 4(5)(a)(iii), M.R.App.P., states in its entirety:

A notice of appeal filed prior to the district court's ruling on any necessary determination of the amount of costs and attorney fees awarded, or sanctions imposed, may be dismissed sua sponte or *shall be dismissed upon the motion of any party*. The district court is not deprived of jurisdiction to enter its order on a timely motion for attorney fees, costs, or sanctions by the premature filing of a notice of appeal, in accordance with Rule 58(e), M. R. Civ. P.

(italics added for emphasis). According to the Rule, by this motion, the Court must dismiss the appeal. However, not only must the Court dismiss the appeal; Wilson's appeal must be dismissed with prejudice because, per Rule 4(5)(a)(i), M.R.App.P., the time for appeal ran on September 13, 2023, being 30 days after the PR served notice of entry of the July 19 and August 11 orders pursuant to Rule 77(d), M.R.Civ.P.

Prior to January 1, 2022 Rule 58(e), M.R.Civ.P., stated in its entirety:

A judgment, even though entered, is not considered final for purposes of appeal under Rule 4(1)(a), M. R. App. P., until any necessary determination of the amount of costs and attorney fees awarded, or sanctions imposed, is made. The district court is not deprived of jurisdiction to enter its order on a timely motion for attorney fees, costs, or sanctions by the premature filing of a notice of appeal. *A notice of appeal filed before the disposition of any such motions shall be treated as filed on the date of such entry.*

(italics added). However, on October 12, 2021, the Court issued an order eliminating the final sentence from Rule 58(e), effective January 1, 2022. *In the Matter of the Montana Rules of Civil Procedure*, AF 07-0157 (Order filed Oct. 12, 2023). Read in conjunction with Rule 4(5)(a)(iii) and Rule 4(1)(a), M.R.App.P., on and after January 1, 2022, a notice of appeal filed before the disposition of a motion for attorney's fees is no longer treated as if the notice were filed on the date the order on attorney's fees is entered.

In this case, the District Court's order did not become a final appealable order under Rule (4)(1)(a), M.R.App.P., until August 11, 2023, when the District Court approved the amount of the PR's attorney's fees and costs. The 30-day time limit for appeal began to run on August 14, 2023 when the PR filed and served her notice of entry of both the July 19 and August 11 orders. Since premature notices of appeal are no longer treated as if filed on the date of entry of orders on attorney's fees, under Rule 4(5)(a)(i), M.R.App.P., Wilson had until September 13,

2023 to timely file a notice of appeal. Since Wilson did not, this appeal must be dismissed with prejudice.

WHEREFORE, the PR requests the Court dismiss this appeal with prejudice pursuant to Rules 4(5)(a)(iii) and 4(5)(a)(i), M.R.App.P.

RESPECTFULLY submitted September 26, 2023.

SILVERMAN LAW OFFICE, PLLC



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Chris Walker  
*Attorney for Appellee Dominica E.  
Stamper*

## **CERTIFICATE OF COMPLIANCE**

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that this *Dominica E. Stamper's Motion to Dismiss Appeal with Prejudice* is printed with proportionately spaced typeface of 14 points, is double spaced except for lengthy quotations or footnotes, and does not exceed 1,250 words, excluding this Certificate of Compliance and the Certificate of Service.

DATED September 26, 2023.

SILVERMAN LAW OFFICE, PLLC



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Chris Walker

*Attorney for Appellee Dominica E.  
Stamper*

## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and accurate copy of the foregoing  
*Dominica E. Stamper's Motion to Dismiss Appeal with Prejudice* to the following  
on September 26, 2023:

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## **CERTIFICATE OF SERVICE**

I, David Christopher Walker, hereby certify that I have served true and accurate copies of the foregoing Motion - Dismiss to the following on 09-26-2023:

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Electronically Signed By: David Christopher Walker  
Dated: 09-26-2023