

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-22-0671

IN RE THE MARRIAGE OF:

SHERRI L. FROST,

Petitioner/Appellant

v.

KEVIN ROY FROST

Respondent/Appellee/Cross-Appellant

v.

FROST LIMITED PARTNERSHIP,

Respondent/Appellee/Cross-Appellant

On appeal from the Montana Twenty-First Judicial District Court, Ravalli County
Cause No. DR-15-165; Honorable Howard F. Recht, Presiding

**APPELLEE/CROSS-APPELLANT'S
OBJECTION TO PETITION FOR REHEARING**

Marybeth M. Sampsel
MEASURE LAW, P.C.
128 2ND STREET EAST
Kalispell, MT 59903-0918
(406) 752-6373
mbs@measurelaw.com

*Attorneys for Petitioner/Appellant
Sherri Frost*

David B. Cotner
Natalie Hammond
COTNER RYAN LAW, PLLC
321 W. Broadway, Suite 500
Missoula, MT 59802
Telephone: (406) 541-1111
Email: dcotner@cotnerlaw.com
nhammond@cotnerlaw.com

*Attorneys for Respondent/Appellee
Kevin Frost*

Reid J. Perkins
WORDEN THANE P.C.
321 W. Broadway St., Ste. 300
Missoula, MT 59802
(406) 721-3400
rperkins@wordenthane.com

*Attorneys for Respondent/Appellee
Frost Limited Partnership*

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INTRODUCTION

Appellee and Cross-Appellant, Kevin Frost (“Kevin”) objects to the Petition for Rehearing filed by Appellant Sherri L. Frost (“Sherri”) on March 6, 2024. Sherri has not satisfied any of the criteria for a rehearing set forth in M.R. App. P.20 and her Petition should be denied as discussed below. This Court neither overlooked a fact material to its decision, nor did it overlook some question that would have proven decisive. Instead, the alleged factual discrepancies and issues Sherri raises in her Petition would not have changed this Court’s Opinion. Sherri’s Petition should therefore be denied.

STATEMENT OF ISSUE PRESENTED

Do grounds exist for a rehearing of Sherri’s appeal of the District Court’s determination of the value of Frost Limited Partnership (“FLP”)?

SUMMARY

Sherri’s Petition simply repeats the same arguments made at trial and on appeal and should be denied. Specifically, Sherri asserts that the Court overlooked evidence that the value of FLP had increased since the original date of valuation, failed to value the property as a of date of dissolution, and failed to provide a basis for its valuation. The Court did not overlook any material facts or arguments presented by Sherri on appeal or at trial. To the contrary, the Court simply rejected

Sherri's argument as to increase in value because there was no evidence in the record to support Sherri's assertions of increased value and the Court addressed the issue entirely in its Opinion.

ARGUMENT

"A petition for rehearing is not a forum in which to rehash arguments made in the briefs and considered by the Court." *State ex rel. Bullock v. Philip Morris, Inc.*, 2009 MT 261, 352 Mont. 30, 45, 217 P.3d 475. Under M. R. App. P. 20(1)(a), this Court will consider a petition for rehearing only under the following limited circumstances:

- (i) The Court overlooked some fact material to the decision;
- (ii) The Court overlooked a question presented by counsel that would have proven decisive to the case;
- (iii) The Court's decision conflicts with a statute or controlling decision not addressed by the Court.

Furthermore, "[a]bsent clearly demonstrated exceptional circumstances, the supreme court will not grant petitions for rehearing of its orders disposing of motions" M. R. App. P. 20(1)(d). As reflected in the rule, such exceptional circumstances require a showing that this Court omitted or failed to recognize either clear facts or law which would have been critical to a proper decision. None of these circumstances exist here.

Sherri's Petition merely raises the same arguments previously briefed by the parties and rejected by this Court. One of Sherri's primary quarrels in her appeal

and her Petition is that the district court failed to value the property at the time of dissolution and thus failed to find the value of FLP had increased post appraisal. Here the issue regarding the value of FLP was thoroughly argued in briefs and considered by the Court. Sherri's Petition ignores the comprehensively briefed issue regarding the value of FLP and the fact that no substantial credible evidence was presented at trial as to an upward adjustment.

Sherri contends the district court failed to provide an adequate basis for its determination of value. Sherri never fully presented this issue on appeal and is now trying to seek a rehearing on an issue she failed to fully develop or address. M. R. App. P. 20(1)(a) requires petitioners to identify or establish issues this Court overlooked "a question presented by counsel that would have proven decisive to the case[,]" because "it is axiomatic that new arguments cannot be raised in a petition for rehearing." *Junkermier v. Alborn*, 2020 Mont. LEXIS 2244, *2-3, (Mont. Aug. 18, 2020). This Court has long held that issues not raised before the district court will not be permitted on appeal and Sherri failed to fully present an issue on appeal regarding the district court failing to provide a basis for its determination of value.

CONCLUSION

In issuing its unpublished Memorandum Opinion, this Court considered the entire record in this matter and in issuing its Opinion, it did not establish precedent, but was complete and clear as to Montana law. Sherri has presented no evidence

entitling her to a rehearing. For the foregoing reasons, Kevin respectfully requests that this Court deny Sherri's Petition for a rehearing.

DATED this 21st day of March 2024.

COTNER RYAN LAW, PLLC

/s/ Natalie A. Hammond

David B. Cotner

Natalie A. Hammond

Attorney for Kevin Roy Frost

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word is 715 words, excluding Certificate of Compliance

/s/ Natalie A. Hammond

CERTIFICATE OF SERVICE

I, Natalie Anna Hammond, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Objection to Petition for Rehearing to the following on 03-21-2024:

Reid J. Perkins (Attorney)
321 W. Broadway St., Ste. 300
Missoula MT 59802
Representing: Frost Limited Partnership
Service Method: eService

David Brian Cotner (Attorney)
321 W. Broadway
Suite 500
Missoula MT 59802
Representing: Kevin R. Frost
Service Method: eService

Mary-Elizabeth Marguerite Sampsel (Attorney)
128 2ND STREET EAST
KALISPELL MT 59901
Representing: Sherri Frost
Service Method: eService

Electronically Signed By: Natalie Anna Hammond
Dated: 03-21-2024