

## SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA 24-0084

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FAYE JACKSON, an individual, and as Personal  
Representative of the Estate of Edna Balkoski,  
Deceased,

Plaintiff, and Appellant

vs.

STEVEN BALKOSKI, an individual,

Defendant, and Appellee.

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**APPELLANT'S NOTICE OF FILING ORDER ON APPEAL**

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On Appeal from the Montana 18th Judicial District, Gallatin County  
Cause No. DV 2019-726C  
Before Hon. John Brown

## Appearances:

<p>Michael L. Rabb (#13734) Jeffrey Driggers (#56597084) THE RABB LAW FIRM, PLLC 3950 Valley Commons Drive, Suite 1 Bozeman, MT 59718 Telephone: (406) 404-1747 Facsimile: (406) 551-6847 Email: <a href="mailto:service@therabblawfirm.com">service@therabblawfirm.com</a></p> <p><i>Attorneys for Appellant</i></p>	<p>Barbara C. Harris MONTANA LEGAL SERVICES ASSOCIATION 616 Helena Ave., Suite 100 Helena, MT 59601 Telephone: (406) 442-9830 Email: <a href="mailto:bharris@mtlsa.org">bharris@mtlsa.org</a></p> <p><i>Appellant</i></p>
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Appellant, by and through undersigned counsel and pursuant to this Court's Order of April 16, 2024, provides this notice of filing the attached Order (**Exhibit 1**) from which this appeal is taken.

Dated: April 16, 2024

Respectfully submitted,

THE RABB LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Michael Rabb", written in a cursive style.

Michael L. Rabb  
*Attorney for Appellee*

# **EXHIBIT 1**

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT  
GALLATIN COUNTYFAYE JACKSON, as Personal  
Representative of the Estate of  
EDNA M. BALKOSKI,

Plaintiff,

v.

STEVEN J. BALKOSKI,

Defendant.

Cause No. DV 2019-726C

**AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

Now this matter having come before the Court and the pleadings filed, the arguments of Counsel, testimony of the parties, and the applicable law having been duly considered by the Court, it is hereby determined as follows:

Plaintiff Estate of Edna Balkoski was represented in this case by Michael Rabb and Jeffrey Driggers. Defendant Steven Balkoski was represented by Barbara C. Harris. A complaint filed June 21, 2019, with a First Amended Complaint filed September 13, 2019, and a Second Amended Complaint filed January 24, 2020.

A non-jury trial was held wherein testimony of the deceased original Plaintiff, Edna Balkoski, presented during a deposition, was presented as well as live testimony of other witnesses and exhibits presented.

Upon consideration of the evidence in the case, the Court issued its Findings of Fact, Conclusions of Law and Order on November 1, 2023. Thereafter the Court was advised by the parties that the November 1, 2023 Findings of Fact, Conclusionn of Law and order failed to address the Estate's claim for a constructive trust.

1 Therefore upon consideration of the evidence in the case, the Court hereby issues its  
2 Amended Findings of Fact, Conclusions of Law and Order pursuant to Rule 52, M.R.Civ.P.

3  
4 **FINDINGS OF FACT**

5 As stated in the Pretrial Order filed September 4, 2020, the **following facts numbered 1**  
6 **through 7 were agreed upon by the parties:**

- 7 1. Defendant Steven J. Balkoski is Plaintiff Edna M. Balkoski's son.
- 8 2. Faye Jackson is Edna M. Balkoski's daughter and the Personal Representative of the Plaintiff  
9 Estate of Edna M. Balkoski.
- 10 3. The property at issue is described as 2411 Milkhouse Avenue, Bozeman, Montana. The  
11 property is situated in Gallatin County, Montana.
- 12 4. A Warranty Deed executed December 20, 2013, and filed with the Gallatin County Clerk and  
13 Recorder on December 27, 2013, granted Plaintiff ownership in the property.
- 14 5. The Quit Claim Deed was recorded in the Official Records of Gallatin County January 15,  
15 2016, as Document 2535490.
- 16 6. At the time the Quit Claim Deed to the property at issue was signed on January 14, 2016,  
17 Plaintiff was ninety-two (92) years old.
- 18 7. At all times relevant to the signing of the Quit Claim Deed, Plaintiff was a resident of Gallatin  
19 County, Montana.
- 20 8. Defendant is a resident of the state of Washington.
- 21 9. The parties lived in Great Falls, Montana, during the childhood years of Defendant  
22 (Steven) and his sister, Faye Jackson (Faye). The other members of their immediate  
23 family at that time were their parents Edna and Stanley Balkoski. Stanley died in 1995.  
24 Edna died during the pendency of this action which she had filed.
- 25 10. Steven resides with his wife and his two children in Vancouver, Washington. His two  
26 children are Adria and Michael.
- 27

- 1 11. During the course of his lifetime, Steven experienced head trauma in at least three vehicle  
2 accidents, including one as a child and two as an adult. According to evidence presented, he  
3 always has had limited capabilities related to reading and writing, although he signs his name  
4 without problems.
- 5 12. Edna continued to reside in Great Falls for a time after her husband's death, later moved to  
6 Denver and resided with Faye for a time, and then moved to Bozeman and resided with Faye  
7 before purchasing her own home which is the subject property of this lawsuit.
- 8 13. The decision to buy the property at issue was Edna's. Faye provided information as to  
9 property for sale, locations, logistics of buying, etc. Steven provided transportation to view  
10 properties.
- 11 14. Edna resided by herself at 2411 Milkhouse Avenue. Edna could walk, dress herself, feed  
12 herself, use a personal computer and laptop computer, use a phone, read, drive, and generally  
13 take care of herself in the year 2015. Some of these things she continued to do until she was  
14 deposed in November 2019, including paying her own bills and filling out her own tax  
15 returns.
- 16 15. On January 14, 2016, Edna signed a Quit Claim Deed at Security Title Company in Bozeman.  
17 Her signature was notarized by Kenlynn Erickson of Security Title. The deed states that Edna  
18 transfers rights to the property to herself and Steven Balkoski "as joint tenants with right of  
19 survivorship (not tenants in common), forever."
- 20 16. There is no writing other than the Quit Claim Deed signed January 14, 2016, relevant to the  
21 voluntary transfer of property rights by Edna.
- 22 17. Edna identified her signature on the deed during her deposition taken November 7, 2019, but  
23 claimed she did not remember the circumstances of it being completed. She stated that she  
24 forgot about the deed until the year 2019, when she wanted to sell the property.
- 25 18. Steven did not draft or provide the Quit Claim Deed to Edna.
- 26 19. Steven did not advise Edna regarding any legal effect of the Quit Claim Deed.
- 27

- 1 20. Steven testified that Edna transferred the property as a gift to Steven, to avoid probate and to  
2 balance the cash gifts she had previously given to Faye.
- 3 21. At Edna's request, in 2019, Steven did building and maintenance projects at 2411 Milkhouse  
4 Avenue, Bozeman, Montana, which increased the value of the property, including  
5 landscaping, patio work, and sheet-rocking and painting the garage.
- 6 22. In the year 2019 Edna, through direct communication with Steven as well as through Faye and  
7 through an attorney, requested that Steven sign a new deed to the property transferring all  
8 ownership back to Edna. He declined to do so.
- 9 23. Edna did not request that Steven pay any of the expenses related to the property until after the  
10 request in 2019 that he sign a new deed.
- 11 24. Steven was denied all access to 2411 Milkhouse Avenue starting in March 2019.
- 12 25. Steven's testimony at trial regarding a plan for the proceeds of a sale of the property during  
13 Edna's lifetime was hypothetical as no specific sale was negotiated, and no sale occurred.
- 14 26. Steven's veto of a possible sale of the property in 2019 does not constitute misconduct  
15 because he was an owner of the property pursuant to the Quit Claim Deed. Steven's intent in  
16 this regard was to preserve Edna's assets, and to prevent them from being dissipated by Faye.
- 17 27. Any conclusions of law stated in the preceding finds of fact are incorporated into the  
18 following conclusions of law.

19  
20 **CONCLUSIONS OF LAW**

- 21 1. This Court has jurisdiction over this case pursuant to § 3-10-301, MCA. The venue is proper  
22 pursuant to § 25-2-121, MCA;
- 23 2. The Quit Claim Deed signed by Edna Balkoski on January 14, 2006, and recorded  
24 January 15, 2026, in Gallatin County, Montana, constitutes a voluntary transfer by Edna  
25 to Steven Balkoski. Section 70-1-501, MCA. The terms of the voluntary transfer are  
26 stated in the deed and it shows no mistake or ambiguity. Sections 28-2-905, 70-20-202,  
27 MCA.

3. A voluntary transfer is an executed contract subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity. Therefore, there was no requirement that Edna receive some benefit from Steven regarding her agreement to transfer property ownership to Steven. Section 70-1-502, MCA.
4. The voluntary transfer by Edna vested in Steven actual title to the real property as a joint owner. Sections 70-1-509, 70-1-519, MCA; *Morin v. Mapston*, 217 Mont. 403, 407, 705 P.2d 118, 121 (1985); *State Board of Equalization v. Cole*, 122 Mont. 9, 14, 195 P.2d 989, 992 (1948).
5. It is presumed that Edna knew the contents of the deed at issue when she signed it. *Gliko v. Permann*, 2006 MT 30, ¶ 35, 331 Mont. 112, 130 P.3d 155 (“One who executes a written contract is presumed to know the contents of the contract and to assent to those specified terms...”); *aff’d Lenz v. FSC Secs. Corp.*, 2018 MT 67, ¶ 22, 391 Mont. 84, 414 P.3d 1262. A party to a clear and unambiguous written contract cannot avoid its legal consequences simply by later claiming that she did not understand the legal consequences of the plain language of the contract. *Lenz*, 2018 MT 67, ¶ 22.
6. Undue influence consists of:
  - (1) the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over the other person of the confidence or authority for the purpose of obtaining an unfair advantage over the other person;
  - (2) taking an unfair advantage of another person’s weakness of mind; or
  - (3) taking a grossly oppressive and unfair advantage of another person’s necessities or distress. Section 28-2-407, MCA.
7. There is no evidence that Steven exerted any undue influence resulting in the execution of the deed by Edna. The burden of proof in showing undue influence falls upon the shoulders of the Estate, as it is claiming undue influence. The Estate must show substantial evidence of undue influence. Mere suspicion is not enough; evidence of specific acts by Steven are essential to such proof and evidence of Edna's kinship with the



Steven is not evidence of specific acts. *Larson v. Larson*, 2017 MT 299, ¶ 21, 389 Mont. 458, 406 P.3d 925. There is no evidence of such specific acts.

8. The Estate has alleged fraud. To establish this claim it must prove:

- 1) A representation was made;
- 2) The representation was false;
- 3) The representation was material;
- 4) The defendant knew the representation was false or was ignorant of whether it was true;
- 5) The defendant intended the plaintiff would rely upon the representation;
- 6) The plaintiff was ignorant of the falsity of the representation;
- 7) The plaintiff relied upon the representation;
- 8) The plaintiff had a right to rely on the representation; and
- 9) The plaintiff was damaged by reliance on the representation.

*N.W. Trust and Trailer Sales v. Dvorak*, 269 Mont. 150, 154, 887 P.2d 260, 262 (1994); *Van Ettinger v. Pappin*, 180 Mont. 1, 10, 588 P.2d 988, 994 (1978); *aff'd Cartwright v. Equitable Life Assur. Soc'y of the United States*, 276 Mont. 1, 23, 914 P.2d 976, 994 (1996).

9. There is no evidence of fraud perpetrated on Edna resulting in the execution of the deed at issue. To prove fraud with regard to the deed signed by Edna on January 14, 2006. The Estate must prove that Steven acted with the intent to deceive Edna. Section 28-2-405, MCA. No such actions or intentions have been shown and the elements of fraud have not been established.

10. There can be no rescission of a contract unless the consent of the party rescinding was given by mistake or obtained through fraud or undue influence. Section 28-2-1711(1); *Eissinger v. Mullin Trucking*, 263 Mont. 38, 42, 865 P.2d 300, 302 (1993). As stated above, there was no mistake, fraud, or undue influence as alleged and the voluntary transfer by Edna should not be rescinded.

11. The creation of a constructive trust requires proof of unjust enrichment. Section 72-38-123. MCA. To prove unjust enrichment. The plaintiff must establish; (1) the defendant received a benefit; (2) the defendant knew about or appreciated the benefit; and (3) the defendant the defendant accepted or retained the benefit under circumstances where it was inequitable for

1 the defendant to do so. *Darcy v. Grauman*, 2018 MT 129, ¶ 11, 391 Mont. 393, 419 P.3d 116.

2 12. Steven acknowledges that he received title to the property at issue pursuant to the Quit Claim  
3 Deed, which he was aware of and appreciated. This satisfies the first two elements of unjust  
4 enrichment. *Id*

5 13. As stated above, however, the Estate failed to prove that the Quit Claim Deed was induced by  
6 mistake, fraud, or undue influence. Therefore, the Estate has failed to prove that Steven  
7 received and accepted the transfer of the property at issue under inequitable circumstances.  
8 The Estate has thus failed to establish its claim for a constructive trust. *Id* ¶ 12.

9 14. As to any acts in 2019, Steven had no legal obligation to sign a new deed or to agree to any  
10 sale of the property, including a sale he believed would disadvantage Edna.

11 15. In sum, the Estate has failed to establish each legal claim pled against Steven in this case  
12 arising from Edna's voluntary transfer of the property at issue to Steven.

13 16. The parties' rights as to the property at issue are as stated in the Quit Claim Deed signed by  
14 Plaintiff on January 14, 2016, i.e., Edna and Steven Balkoski held the property as joint tenants  
15 with rights of survivorship; with the death of Edna, Steven has sole rights to the property.  
16 Sections 70-20-105 and 70-20-310, MCA.

17 17. Because the parties held the property as joint owners, there is no basis on which to  
18 require Steven to pay expenses.

19 18. No obligation regarding expenses related to the property at issue has been established.

20 The voluntary transfer accomplished by the deed does not relate to such expenses. Edna  
21 enjoyed the possession of the property exclusively purchase. Because no obligation  
22 exists, there is no right of recovery of damages. And where there is no injury related to  
23 the actions of a party, there is no right of recovery of damages. Sections 27-1-104, 107,  
24 201, 202, MCA.

25 19. Any finding of fact stated in the above conclusions of law is incorporated into the  
26 preceding findings of fact.  
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SIGNED AND DATED ELECTRONICALLY BELOW.

## **CERTIFICATE OF SERVICE**

I, Michael Lloyd Rabb, hereby certify that I have served true and accurate copies of the foregoing Notice - Other to the following on 04-16-2024:

Barbara C. Harris (Attorney)  
616 Helena Avenue  
Suite 100  
Helena MT 59601  
Representing: STEVEN BALKOSKI  
Service Method: eService

Electronically Signed By: Michael Lloyd Rabb  
Dated: 04-16-2024