

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0075

---

VERNON K. STENSVAD,

Plaintiff and Appellee,

v.

NEWMAN AYERS RANCH, INC.

Defendant and Appellant.

---

ON APPEAL FROM ORDER GRANTING PRELIMINARY INJUNCTION  
ENTERED IN THE SEVENTH JUDICIAL DISTRICT COURT OF  
PRAIRIE COUNTY IN THE STATE OF MONTANA  
BEFORE HONORABLE OLIVIA RIEGER

---

**BRIEF OF APPELLANT NEWMAN AYERS RANCH, INC.**

---

Shandor S. Badaruddin  
SHANDOR S. BADARUDDIN, PC  
736 South Third Street West  
Missoula, Montana 59801  
Telephone: (406) 728-6868  
Facsimile: (406) 728-7722  
shandor@shandorlaw.com  
tricia@shandorlaw.com

*Attorney for Appellant*

Albert R. Batterman  
Batterman Law Offices, P.C.  
PO Box 985  
Baker, MT 59313  
Telephone: (406) 778-3006  
Facsimile: (406) 778-3007  
rbatterman@midrivers.com

*Attorney for Appellee*

## TABLE OF CONTENTS

Table of Contents .....	ii
Table of Authorities .....	iv
I. Statement of the Issues Presented for Review. ....	1
II. Statement of the Case. ....	1
III. Statement of the Facts Relevant to Issues Presented for Review. ....	2
a. Summary of the Facts. ....	3
b. Statement of the Facts With Citation to the Record. ....	3
IV. Statement of the Standard of Review. ....	10
a. Standard of Review for Grant of Injunction. ....	10
b. Standard of Review For Findings of Fact and Conclusions of Law. ....	11
c. Standard of Review for Mixed Questions of Law and Fact. ....	11
V. Argument. ....	11
a. Summary of the Argument. ....	11
b. Argument. ....	13
1. Issue One: The District Court Issued An Injunction Based on an Erroneous Conclusion of Law that Mont. Code Ann. § 27-19-201(1) Authorized an Injunction if the Applicant Satisfied Only One Subsection of Mont. Code Ann. § 27-19-201(1).....	13
2. Issue Two: Stensvad was not Entitled to an Injunction for Disputes Arising Under an Agister’s Contract and to Grant one was Contrary to the Public Interest. ....	18

3. Issue Three: Stensvad had and still has an Adequate Remedy at Law. ....	20
VI. Conclusion. ....	24
Certificate of Compliance .....	25
Appendix .....	26

## TABLE OF AUTHORITIES

### CASES

<i>American Music Co. v. Higbee</i> , 1998 MT 150, 289 Mont. 278, 961 P.2d 109 .....	22
<i>Boyer v. Karagacin</i> , 178 Mont. 26, 582 P.2d 1173 (1978) .....	21
<i>Davis v. Westphal</i> , 2017 MT 276, 289 Mont 251, 405 P.3d 73 .....	11
<i>Dicken v. Shaw</i> , 255 Mont. 231, 841 P.2d 1126 (1992) .....	22
<i>Doe v. Cmty. Med. Ctr., Inc.</i> , 2009 MT 395, 353 Mont. 378, 221 P.3d 65 .....	15, 20
<i>Driscoll v. Stapleton</i> , 2020 MT 247, 401 Mont. 405, 473 P.3d 386 .....	10
<i>Foster v. Realty Title Co.</i> , 209 Mont. 183, 680 P.2d 323 (1984) .....	23
<i>Goldie’s Bookstore, Inc. v. Superior Court</i> , 739 F.2d 466 (9 <sup>th</sup> Cir. 1984) .....	22
<i>Heckman &amp; Shell v. Wilson</i> , 158 Mont. 47, 487 P.2d 1141 (1971) .....	18
<i>In re Estate of Bolinger</i> , 1998 MT 303, 292 Mont. 97, 971 P.2d 767 .....	18
<i>In Re S.T.</i> , 2008 MT 19, 341 Mont. 176, 176 P.3d 1054 .....	11
<i>In Re: L.H.</i> , 2007 MT 70, 336 Mont. 405, 154 P.3d 622 .....	11
<i>Maguire v. State</i> , 254 Mont. 178, 835 P.2d 755 (1992) .....	11
<i>Reier Broad Co. v. Kramer</i> , 2003 MT 165, 316 Mont. 301, 72 P.3d 944 .....	21
<i>Sampson v. Murray</i> , 415 U.S. 61 (1974) .....	22
<i>Shammel v. Canyon Resources Corp.</i> , 2003 MT 372, 319 Mont. 132, 82 P.3d 912 .....	10, 15, 21
<i>Stop Over Spending Montana v. State of Montana</i> , 2006 MT 178, 333 Mont. 42, 139 P. 3d 788 .....	17

<i>Sweet Grass Farms, Ltd v. Board of County Commissioners</i> , 2000 MT 147, 300 Mont. 66, 2 P.3d 825 .....	13
<i>Virginia Petroleum Jobbers Assn. v. FPC</i> , 259 F.2d 921 (D.C. Cir. 1958) .....	22
<i>Walker v. Warner</i> , 228 Mont. 162, 740 P.2d 1147 (1987) .....	10
<i>Wilson v. Harris</i> , 21 Mont. 374 54 P. 46 (1898) .....	23

**STATUTES**

Mont. Code Ann. § 1-2-101 .....	15
Mont. Code Ann. § 1-2-201 .....	14
Mont. Code Ann. § 27-1-311 .....	23
Mont. Code Ann. § 27-19-201 .....	1, 2, 11-17, 21
Mont. Code Ann. § 27-19-314 .....	2
Mont. Code Ann. § 71-3-102 .....	19
Mont. Code Ann. § 71-3-1211 .....	3, 12, 18
Mont. Code Ann. § 71-3-1213 .....	3, 19

**RULES**

M. R. App. P. 12 .....	1, 2 10, 11, 24
------------------------	-----------------

**OTHER**

Senate Bill 191 of the 68 <sup>th</sup> Montana Legislature .....	14
---	----

## **I. Statement of the Issues Presented for Review.**

Pursuant to M. R. App. P. 12(1)(b) Appellant Newman Ayers Ranch, Inc. (hereinafter “Ayers Ranch”) states the issues presented for review are as follows:

**Issue One:** Whether the District Court made an incorrect conclusion of law when it held Mont. Code Ann. § 27-19-201(1) authorized the issuance of an injunction if the applicant satisfied one and only one subsection of Mont. Code Ann. § 27-19-201(1).

**Issue Two:** Whether the District made an incorrect conclusion of law when it Issued an Injunction or Order inconsistent with Chapter 3 of Title 71 and its statutory provisions regarding the enforcement of Agister’s Contracts and Agister’s Liens and without a determination that doing so would not be Contrary to the Public Interest.

**Issue Three:** Whether the District Court made an incorrect conclusion of law when it ruled Appellee Stensvad (hereinafter “Stensvad”) did not have an Adequate remedy at law.

## **II. Statement of the Case.**

Pursuant to M. R. App. P. 12(1)(c), Ayers Ranch briefly indicates the nature of the case and the procedural disposition in the district court below, and states as follows:

Stensvad applied for a preliminary injunction pursuant to Mont. Code Ann. § 27-19-201. *See* Verified Application for Preliminary Injunction and Temporary

Restraining Order, at page 1, (Record at Register of Actions Document Sequence No. 1, hereinafter “R. [document sequence no.]”) R. 1, (hereinafter referred to as “Application.”). Stensvad also applied for a Temporary Restraining Order pursuant to Mont. Code Ann. § 27-19-314. The District Court provided Notice to Ayers Ranch and conducted a hearing on December 20, 2023. The District Court issued an order to preserve the status quo until it could issue a written ruling. *See* Excerpts of Transcript on Appeal, December 20, 2023, Hearing on Motion for Preliminary Injunction and Temporary Restraining Order, attached as App. 2 (hereinafter referenced as “T. [page:line]”) at T. 166:16-167:13. The District Court instructed the parties to submit proposed Findings of Fact, Conclusions of Law, and Order. *Id.* The Court issued an Order Granting Preliminary Injunction on January 8, 2024, attached as App. 1. Ayers Ranch timely filed a Notice of Appeal in this Court on February 5, 2024, 2019. R. 19.

### **III. Statement of the Facts Relevant to Issues Presented for Review.**

Pursuant to M. R. App. P. 12(1)(d) Ayers Ranch states the facts relevant to the issues presented for review, with references to the pages or parts of the record at which material facts appear, are as follows:

**a. Summary of the Facts.**

Ayers Ranch and Stensvad entered into a contract in July of 2022 for the care and feed of livestock. Payment was due at the beginning of each month. Almost immediately, Stensvad stopped making payments. In October of 2023, Stensvad advised he was going to collect his cattle and sell them and use the proceeds to pay any amount due. At or about the same time, Ayers Ranch asserted an Agister's Lien and advised it was going to retain the cattle until the bill was paid, or possibly sell the cattle pursuant to Mont. Code Ann. §§ 71-3-1211 and 1213. Stensvad applied for an injunction and/or restraining order and the Seventh Judicial District Court granted his application. The District Court found Stensvad had made prima facie showing he would suffer irreparable injury and ordered the cattle returned to the Appellee.

**b. Statement of the Facts With Citation to the Record.**

1. Stensvad and Ayers Ranch entered into a Grazing Lease Contract. The Grazing Lease Contract was admitted per stipulation as Exhibit 1. *See* App. 2 at T. 7:4-8:12.<sup>1</sup> *See* R.12, Exhibit 1.

a. All parties admitted the Grazing Lease Contract was genuine and authentic and represented the terms of their written agreement.

---

<sup>1</sup> The parties stipulated to the admission of Exhibits 1, 3, 4, 5, 6, 8, A, B, and C at the beginning of the hearing.

App. 2 at T. 25:1-25:5 (Stensvad's admission) and T:102:15-104:7 (Ayers Ranch admission).

b. The Grazing Lease Contract began on or about July 5, 2022 and continued month to month. *See* R. 12, Exhibit 1.

2. The Grazing Lease Contract has several relevant provisions:

a. Stensvad agreed to make payment at the beginning of each month *See* R. 12, Exhibit 1, at page 1;

i. Stensvad made payment on August 1, 2022. *See* App. 2 at T. 58:4-58:14.

ii. Thereafter, from September 1, 2022 until the hearing on December 20, 2023, or any time thereafter, Stensvad did not pay any sum of money to Ayers as required by the Grazing Lease Contract. *See* App. 2 at T. 58:20-59:7.

1. Exhibit 2 was admitted. *See* App. 2 at T. 32:7. *See also* R. 12, Exhibit 2. It was a bill dated 11/16/22 from Ayers to Stensvad. Stensvad did not pay this bill. *See* App. 2 at T. 32:8-32:10.

iii. The Grazing Lease Contract did not contain any condition prerequisite to payment that required a bill be generated or

transmitted to Stensvad from Ayers Ranch. *See* R. 12, Exhibit 1.

iv. The Grazing Lease Contract simply provided “Payment is due at the beginning of each month.” R. 12, Exhibit 1, page 1.

b. The charge for “grazing” was \$45/month/pair<sup>2</sup> or bull. The Grazing Lease further provided Stensvad “...would be responsible for winter rates.” *Id.* The winter rate was not specified.

i. The cattle were to be kept on grass, weather permitting, and to be given feed in the event grass was not available.

*Id.*

c. The contract began with approximately 84 head of cattle. *Id.*

d. Ayers Ranch agreed to provide Stensvad with all the cattle under the contract at the end of the contract period, less any cattle that had died. *Id.*

i. At the time of the December 20, 2023 hearing, Ayers had the cattle under the contract at his ranch/pasture, less all

---

<sup>2</sup> A “pair” was understood in the industry to be a cow, or a cow and its calf, or as the District Court summarized, “Mama and baby come together.” App. 2 at T. 60:16-61:4.

cattle that had died. *See App. 2 at T. 141:24-142:6; T. 160:22-161:5.*

- e. Any changes in the Grazing Lease Contract would be agreed upon in writing by all parties before any changes were made or any modification was effective. *See R. 12, Exhibit 1, page 2.*
  - i. Stensvad presented a purported modification in the Contract which was admitted into evidence as Exhibit 10. *See App. 2 at T. 35:4-36-1. See also R. 12, Exhibit 10.*
  - ii. Exhibit 10 purports to be created by the President of Newman Ayers Ranch, Inc., Courtney Ayers.
  - iii. The testimony at the hearing demonstrated Mr. Ayers did not create the document and was not aware of its existence until a dispute arose and each party acted through counsel.
    - 1. Jim Altenhofen operated a consulting firm named Yellowstone Ag Services. *See App. 2 at T. 76:7-76:12.*
    - 2. Someone at Yellowstone Ag Services created Exhibit 10. *See App. 2 at T. 85:1-85:10.*
    - 3. Courtney Ayers, President of Ayers Ranch did not create Exhibit 10, and he did not know it existed or

authorize it to be issued. *See* App. 2 at T. 110:18-111:15.

4. No officer or agent of Ayers Ranch signed or agreed to Exhibit 10. *See* R. 12, Exhibit 10, (no signature by any Ayers Ranch officer or agent is on the document).

5. Altenhofen did not assert he had authority on behalf of Ayers Ranch to negotiate any modifications to the Grazing Lease Contract on behalf of Ayers Ranch. (*See* App. 2 at T. 75-85). He did not assert Ayers Ranch ever agreed to the purported modification. *Id.* Altenhofen did not describe the services, if any, he provided to Ayers Ranch. *Id.* Generally, Yellowstone Ag and Altenhofen "...[did] financial statements and record keeping for farmers and ranchers..." App. 2, T. 76:18-76:20. They also, if possible, "...help just make sure that operations go smoothly with ranches..." App. 2, T. 76:21-76:24.

f. Nothing in the Grazing Lease Contract identifies a specific cost or fee associated with the care and feed of horses. *See* R.12, Exhibit 1.

- i. Stensvad left his two horses on the property of the Ayers Ranch, and Ayers Ranch provided feed and care for the horses.
3. The nature of the dispute between the parties is a breach of contract claim.
4. On or about October 13, 2023, Stensvad advised Ayers Ranch he would pay all sums due under the Grazing Lease Contract after collecting the cattle and after some or all were sold. *See* App. 2 at T. 44:12-44:21; 71:23-72:7. *See Also*, R. 12, Exhibit 3<sup>3</sup>.
  - a. This payment proposal was not consistent with the payment terms of the Grazing Lease Contract. *See* R. 12, Exhibit 1.
5. On or about October 13, 2023, Ayers Ranch asserted an Agister's Lien in the about of \$78,662.50, effective September 30, 2023, and alleging the amount due continued to accrue at a rate of \$105 per day. The Agister's Lien was introduced into evidence as Exhibit 4. *See* R. 12, Exhibit 4.
6. A reasonable amount for winter rates will exceed the summer rate. The Summer Rate is specified and is calculate as follows:

---

<sup>3</sup> Exhibit 3 was admitted per stipulation at the December 20, 2023 hearing. Exhibit 3 was a text message from Stensvad to Ayers informing them that he wanted to take the cattle and sell some or all of them to pay his bill.

- a. The evidence at the hearing was that Stensvad had between 66 and 84 cow/calf pairs, and 4 bulls;
- b. Using the \$45 per cow/pair or bull agreed to in the Grazing Lease Contract. The sum due for summer feed would be:
  - i. \$180/month for the bulls; and
  - ii. \$2970 to \$3780 per month for the cow/calf pairs.
- c. Ignoring the higher rate for winter, or occasions when the weather does not permit grazing on grass, the amount of grazing fees for 18 months from July 2022 to January, 2024, would be no less than:
  - i. If there were as few as 66 cow/calf pairs and 4 bulls, the amount of fees would be \$53,460 plus \$3240 for the bulls for a total of \$56,700;
  - ii. If there were 84 cow/calf pairs and 4 bulls, the amount of fees due under the contract would be \$68,040 plus 3240 for the bulls for a total of \$71,280;
    1. These figures would increase for each winter month for which grass was not available (winter rates).
  - iii. The actual sum due for under the Grazing Lease Contract is no less than an amount between \$56,700 and \$71,280

(depending on the number of animals), plus whatever additional sum, if any, was due for increased winter rate months.

7. An additional and reasonable sum would also be due for the care and feed of the horses for the same 18 month period.
8. The cost to feed and care for the cattle would eventually exceed the market value of the stock.

#### **IV. Statement of the Standard of Review.**

Pursuant to M. R. App. P. 12(1)(e) Ayers Ranch states the standard of review for each issue presented is as follows:

##### **1. Standard of Review for Grant of Injunction.**

The grant or denial of injunctive relief is a matter within the broad discretion of the district court based on applicable findings of fact and conclusions of law. *Shammel v. Canyon Resources Corp.*, 2003 MT 372, ¶ 11, 319 Mont. 132, 82 P.3d 912; *Walker v. Warner*, 228 Mont. 162, 166, 740 P.2d 1147, 1149-50 (1987). The standard of review of a grant or denial of injunctive relief is whether the court manifestly abused its discretion. *Shammel*, ¶12. A manifest abuse of discretion is an “obvious, evident, or unmistakable” abuse of discretion. *Shammel*, ¶12.

## **2. Standard of Review For Findings of Fact and Conclusions of Law.**

“The standard of review of lower court findings of fact and conclusions of law is whether the findings of fact are clearly erroneous and whether the conclusions of law are correct.” *Davis v. Westphal*, 2017 MT 276, ¶10, 289 Mont 251, 405 P.3d 73. “A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence or if, upon reviewing the record, this Court is left with the definite and firm conviction that the district court made a mistake.” *In Re S.T.*, 2008 MT 19, ¶ 8, 341 Mont. 176, 176 P.3d 1054 citing *In Re: L.H.*, 2007 MT 70, ¶13, 336 Mont. 405, 154 P.3d 622.

## **3. Standard of Review for Mixed Questions of Law and Fact.**

Mixed questions of law and fact are reviewed de novo for correctness. *Maguire v. State*, 254 Mont. 178, 181-182, 835 P.2d 755, 757-758 (1992)(cited with approval in *Driscoll v. Stapleton*, 2020 MT 247, note 4, 401 Mont. 405, 473 P.3d 386.

## **V. Argument.**

Pursuant to M. R. App. P. 12(1)(f) and (g), Ayers Ranch makes its Argument and precedes same with a summary of the argument.

### **a. Summary of Argument.**

The District Court mistakenly or erroneously applied caselaw no longer applicable to the statute at issue, Mont. Code Ann. § 27-19-201. Under the current

statute, the elements set forth in the statute are conjunctive, employ the connector “and” and each element must be demonstrated and found by the District Court. The District Court expressly, and erroneously, found only one element had been met in the case below, Mont. Code Ann. § 27-19-201(1)(b), and did not find, and Stensvad did not establish, the remaining elements set forth in § 27-19-201(1)(a), (c) and (d). This was an erroneous conclusion of law that this Court should review for correctness.

The District Court made an erroneous conclusion of law when it found it did not have to honor or enforce the Agister Lien provisions and rights set forth in Chapter 3 of Title 71 and committed an erroneous conclusion of law when it issued an injunction or order that did not permit Ayers to retain possession of the stock until the amount due was paid as granted by Mont. Code Ann. § 71-3-1211(2)(b). The District Court further erred in failing to consider whether the issuance of an injunction inconsistent with the Agister Lien Statutory enforcement provisions were contrary to the public interest.

The District Court arrived at an erroneous conclusion of law when it found Stensvad did not have an adequate remedy at law.

**b. Argument.**

**1. Issue One: The District Court Issued an Injunction Based on an Erroneous Conclusion of Law that Mont. Code Ann. § 27-19-201(1) Authorized an Injunction if the Applicant Satisfied Only One Subsection of Mont. Code Ann. § 27-19-201(1).**

The District Court below made a conclusion of law that Stensvad was entitled to an injunction pursuant to Mont. Code Ann. § 27-19-201(1)(b), because he had made prima facie showing he would suffer irreparable injury before his rights had been fully litigated<sup>4</sup> and quoting and applying *Sweet Grass Farms, Ltd v. Board of County Commissioners*, 2000 MT 147, ¶27, 300 Mont. 66, 2 P.3d 825 as follows: “... findings that satisfy only one subsection are sufficient. Consequently, only one subsection need be met for an injunction to issue’ ...”<sup>5</sup>, effectively concluding Mont. Code Ann. § 27-19-201(1) (2023) was written in the disjunctive. The conclusion Mont. Code Ann. § 27-19-201 is written in the disjunctive and that a petitioner need only meet the requirements of one subsection for an injunction to issue is a conclusion of law. This Court reviews this conclusion of law de novo for correctness.

The District Court accurately recited the holding of *Sweet Grass Farms*. However, *Sweet Grass Farms* interpreted the version of Mont. Code Ann. § 27-19-

---

<sup>4</sup> See Order at App. 1, Conclusions of Law Section, ¶5, at page 6:1-6:3.

<sup>5</sup> See Order, App. 1, Conclusions of Law Section, at ¶4, page 5:21-5:25.

201 in effect in the year 2000, which was enacted in 1995 and remained unchanged until March 2, 2023. Mont. Code Ann. § 27-19-201(1995) is attached as App. 3. In 2023, the 68<sup>th</sup> Montana Legislature passed Senate Bill No. 191, attached as App. 4. Senate Bill No. 191 later became Mont. Code Ann. § 27-19-201 (2023). It became effective March 2, 2023<sup>6</sup>. Appellee Stensvad initiated this action on November 28, 2023, the District Court below conducted the hearing on Petition for Preliminary Injunction and Temporary Restraining Order on December 20, 2023, and issued its Order on January 8, 2024. *See* R. 1 (Petition date); T. 5:1 (hearing date); App. 1 (Order filing date). Mont. Code Ann. § 27-19-201(2023) was in effect at all relevant times.

Since 2023, this Court has not issued any opinions regarding the conjunctive or disjunctive nature of Mont. Code Ann. § 27-19-201 (2023), but subsection 201(1) is clearly written in the conjunctive and employs the term “and” between subsection 201(1)(c) and 201(1)(d), indicating that each subsection of 201(1) must be satisfied and does not suggest that meeting less than all subsections would comply with the

---

<sup>6</sup> Mont. Code Ann. § 1-2-201(1)(a) provides statutes adopted after January 1, 1981, take effect on the first day of October following passage and approval unless a different time is prescribed in the enacting legislation. The enacting legislation prescribed a different time, and provided the Act would be effective upon passage and approval. The Governor signed Senate Bill 191 on March 2, 2023. *See* Montana Legislature LAWS Detailed Information Page on SB 191, attached as App. 5.

requirements of the statute<sup>7</sup>. Conversely, Subsection 201(2) employs the disjunctive “or” indicating only one of subsections of 201(2), 201(2)(a) *or* 201(2)(b), need be satisfied under subsection 201(2), (so long as, in either circumstance, the parties are “persons” as required by the preface in Subsection 201(2)).

Mont. Code Ann. § 1-2-101, (Role of the Judge) provides, “[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted or to omit what has been inserted.” Even though the District Court below correctly quoted the provisions and language of the current and effective version of Mont. Code Ann. § 27-19-201, including Subsection 201(1) in its Order Granting Preliminary Injunction<sup>8</sup>, the ruling in essence omitted the word “and” in subsection 201(1) and inserted the word “or” in its place, in violation of Mont. Code Ann. § 1-2-101 and all other rules of statutory construction. Additionally, the applicable version of Mont. Code Ann. § 27-19-201(3) provides the applicant for an injunction “bears the burden of demonstrating the need for an injunction order.” To meet that burden the applicant must meet all elements under Subsection 201(1). Previous

---

<sup>7</sup> The Legislative History does not affirmatively indicate, but Mont. Code Ann. § 27-19-201(1) appears to be a codification of the four factors articulated by this Court in *Doe v. Cmty. Med. Ctr., Inc.*, 2009 MT 395, ¶19, 353 Mont. 378, 221 P.3d 65 citing *Shammel v. Canyon Resources Corp.*, 2003 MT 372, ¶17, 319 Mont. 132, 82 P.3d 912.

<sup>8</sup> See Order, App. 1, ¶2, pages 4:24-5:10.

versions of Mont. Code Ann. § 27-19-201 contain no such provision for burden of proof, rather the applicant only had to “appear” to be entitled to relief. *See generally* Mont. Code Ann. § 27-19-201 (1995) at App. 3. The District Court may not have violated the rules of statutory construction, but simply mistakenly and unintentionally applied the law applicable to the former version of the statute, to the new, revised, and clearly different text of the current statute. In any case, the District Court’s conclusion of law that only one subsection of Mont. Code Ann. § 27-19-201(1) need be satisfied to authorize the issuance of a preliminary injunction was incorrect and should be reversed by this court.

Similarly, the District Court below only found Stensvad had made prima facie showing of irreparable harm under Mont. Code Ann. § 27-19-201(1)(b), and nothing else, and he was therefore entitled to preliminary injunction. *See* Order, App. 1, Conclusions of Law Section, ¶5, pages 6:1-6:7. This was a conclusion of law, or a mixed question of law and fact, and was also not correct.

An applicant for preliminary injunction bears the burden of demonstrating the need for an injunction and must therefore establish more than just irreparable harm to be entitled to a preliminary injunction under Mont. Code Ann. § 27-19-201 (2023). Stensvad had to demonstrate (1) he was likely to succeed on the merits; (2) he was likely to suffer irreparable harm; (3) the balance of the equities tipped in his favor; **and** (4) the injunction/order was in the public interest. *See* Mont. Code Ann.

§ 27-19-201(1) (2023). The District Court impliedly concluded Stensvad failed to make showing of 1, 3 and 4, and nevertheless ordered an Injunction. This was an incorrect and an erroneous conclusion of law. To the extent it was a mixed question of law and fact, whether a set of facts satisfy a statutory standard<sup>9</sup>, it was also incorrect.

The District Court manifestly abused its discretion when it applied inapplicable case law<sup>10</sup> regarding a defunct statute and granted injunctive relief to the Stensvad despite the absence of a showing and absence of a factual finding, that the prerequisites to injunctive relief set forth in Mont. Code Ann. § 27-19-201(1)(a), (1)(c) and (1)(d) and (3), had been made. Applying interpretive caselaw regarding a former statute and omitting words and language critical to application of the effective statute is an abuse of discretion that is obvious, evident and/or unmistakable.

---

<sup>9</sup> See generally, *Stop Over Spending Montana v. State of Montana*, 2006 MT 178, ¶10, 333 Mont. 42, 139 P. 3d 788.

<sup>10</sup> All cases cited by the District Court referred to or applied a version of Mont. Code Ann. § 27-19-201 in effect in 1995 or earlier.

**2. Issue Two: Stensvad was not Entitled to an Injunction for Disputes Arising Under an Agister’s Contract and to Grant one was a Contrary to the Public Interest.**

An “agister” is one who takes in cattle, horses, or other livestock animals to pasture at certain rates or fees. “The term agistment is characterized by an agreement in which one person agrees to care for and feed animals of another for a consideration, either at a named price or for the reasonable value of the services rendered.” *Heckman & Shell v. Wilson*, 158 Mont. 47, 57, 487 P.2d 1141, 1146 (1971). An Agister’s Lien is based on a contract, either express or implied. *See In re Estate of Bolinger*, 1998 MT 303, ¶46, 292 Mont. 97, 971 P.2d 767. Ayers is and was an “Agister” and had asserted an Agister’s Lien as alleged by Stensvad. *See R. 12 at Exhibit 4.*

Mont. Code Ann. § 71-3-1211 provides:

- (1) The Legislature finds that agisters’ liens require expeditious action to protect the welfare of the stock and to ensure that the cost to feed and care for the stock covered by the lien does not exceed the market value of the stock.
- (2)(a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has an agister's lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock.

(2)(b) A person holding an agister's lien pursuant to subsection (2)(a) may retain possession of the stock until the amount due is paid.

Ayers Ranch was an Agister as that term is defined by Montana Law. It had both an express contract for keeping, feeding, herding, and pasturing cattle, and an implied contract for keeping, feeding, and pasturing horses. It had expressed its desire an intent to execute on Agister's Lien which was created by operation of law. *See* Mont. Code Ann. § 71-3-102(2). The District Court overruled and countermanded the Legislature's policy finding and ignored the other provisions of Chapter 3 of Title 71, as well as struck down the Agister's Lien enforcement provisions of Mont. Code. Ann. § 71-3-1213 (Sheriff's Sale/Auction) as they applied to Ayers Ranch, and instead employed a new and different procedure. The District Court manifestly abused its discretion in doing so. It was an obvious, evident and/or unmistakable abuse of discretion to ignore the Agister Lien Provision and substitute the District Court's judgment for that of the Montana Legislature, and not allow Ayers Ranch to retain possession of the stock until the amount due was paid or employ the Sheriff's Sale or Public Auction provisions of Mont. Code Ann. § 71-3-1213 to satisfy its lien.

Instead, the District Court issued an Injunction against the application of the Agister's Lien provisions of the Montana Code and returned the cattle to Stensvad. Irreparable harm could not result from compliance or enforcement with Montana Statutory Provisions and the District Court erred in finding otherwise. Even if it

could, to issue an injunction contrary to the Statutory Agister's Lien provisions was not in the public interest because the Legislature had already determined by virtue of Chapter 3 of Title 71 that allowing Ayers Ranch to retain possession of the stock and sell them after more than thirty days at a Sheriff's sale, and complying with all other statutory provisions, was in the public interest.

The District Court did not specifically address the applicability of the Agister Lien statute, but the Order Granting Preliminary Injunction impliedly found the District Court possessed the legal authority to impose exceptions to the treatment of Agister's Contracts and Lien enforcement provisions. This was a legal conclusion this Court reviews *de novo*. The statute contains no such exceptions and no such grant of authority to district courts and the District Court's finding otherwise below, was not correct.

### **3. Issue 3: Stensvad had and still has an Adequate Remedy at Law.**

"...[I]njunctive relief is not available when monetary damages will afford an adequate remedy..." *Doe v. Cmty. Med. Ctr., Inc.*, 2009 MT 395, ¶19, 353 Mont. 378, 221 P.3d 65. Stensvad alleged a breach of contract. In general, contract damages provide an adequate remedy at law, and more specifically, in the context of the claims asserted by Stensvad, Montana Statutes prescribe a procedure and a remedy. Stensvad had an adequate remedy for breach of contract and/or tort.

Stensvad was not entitled to an injunction as a matter of law. Montana Courts rarely grant injunctions to enforce contract rights or prevent breaches of contract. *See Reier Broad Co. v. Kramer*, 2003 MT 165, ¶15, 316 Mont. 301, 72 P.3d 944. “[E]quity will not interfere by way of injunction where the law can furnish all the relief to which the complaining party is entitled, as by monetary damages.” *Boyer v. Karagacin*, 178 Mont. 26, 31, 582 P.2d 1173, 1177 (1978). That this is the law makes perfect sense - otherwise, every breach of contract action could include the time-consuming and demanding procedures of an injunction request at the outset, (like this one). Except in rare circumstances, Montana courts do not allow applicants to seek injunctive relief when monetary damages will compensate harm. *See Shammel*, 319 Mont. at ¶17, 82 P.3d at ¶17. This Court has identified a narrow exception, in tort actions, which allows parties to enjoin a transfer of monetary assets “when a party’s monetary judgment may be made ineffectual by the actions of the adverse party thereby irreparably injuring the applicant.” *Id.*<sup>11</sup>.

This exception was completely inapplicable in this case below, and even if the District Court had intended to extend the *Shammel* holding to matters beyond the tort action context, there was no allegation by Stensvad, and no factual finding by the District Court, that Ayers Ranch was dissipating its assets to avoid satisfying a

---

<sup>11</sup> This exception also now has a statutory basis in Mont. Code Ann. § 27-19-201(2)(a) (2023).

future judgment. Quite the opposite, Ayers Ranch was feeding Stensvad's cattle despite Stensvad having missed 18 months of payments. Presuming Stensvad could have prevailed on his various claims (which was a matter in dispute), pecuniary compensation would have afforded adequate relief. Stensvad intended to sell the cattle in question (the calves) at market which indicated they had a pecuniary value. *See* App. 2, T. 60:8-60:9. The entire herd also had an identifiable monetary value. *See* App. 2, T. 118:13-118:16. "Money damages are not considered irreparable harm, because money damages may be recovered in an action at law without resort to equity." *American Music Co. v. Higbee*, 1998 MT 150, ¶15, 289 Mont. 278, 961 P.2d 109, *citing Dicken v. Shaw*, 255 Mont. 231, 236, 841 P.2d 1126, 1129 (1992).

Other jurisdictions, like Montana, have held injunctive relief to be inappropriate in the context of contract disputes. "Mere financial injury, however, will not constitute irreparable harm if adequate compensatory relief will be available in the course of litigation." *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 471 (9<sup>th</sup> Cir. 1984). "The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974), *quoting Virginia Petroleum Jobbers Assn. v. FPC*, 259 F.2d

921, 925 (D.C. Cir. 1958). Thus, in breach of contract cases, a suit for breach of contract is an adequate remedy. *See Foster v. Realty Title Co.*, 209 Mont. 183, 680 P.2d 323 (1984)(contract remedies found adequate and injunction not appropriate).

“If plaintiffs had a plain, adequate and complete remedy at law, a court of equity should refuse to take jurisdiction; and, indeed, it would be without jurisdiction, for equity may act in those matters only in which no remedy is afforded in the ordinary course of law, or in which the remedy at law is deficient.” *Wilson v. Harris*, 21 Mont. 374, 385, 54 P. 46, 48 (1898). Stensvad had a plain, adequate, and complete remedy at law (if he could prevail on the merits which are obviously in dispute). Mont. Code Ann. § 27-1-311 provides for remedies arising from a breach of contract as “... the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom.” This remedy is in no way deficient and no injunction should have issued.

The District Court made an incorrect conclusion of law in issuing an injunction when Stensvad had an adequate remedy at law.

#### **IV. CONCLUSION.**

Pursuant to M. R. App. P. 12(1)(h) Ayers Ranch states its conclusion and the precise relief sought.

Ayers Ranch requests the following relief, (1) the judgment of the district court as articulated in its Order Granting Preliminary Injunction be reversed; (2) the Application for Injunction be denied; and (3) for such other and further relief as the Court deems appropriate.

Respectfully submitted this 19<sup>th</sup> day of April, 2024.

/s/ Shandor S. Badaruddin

---

Shandor S. Badaruddin

*Attorney for Appellant Newman Ayers Ranch, Inc.*

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word for Mac version 16.47 is 5,177 words, excluding table of contents, table of citations, certificate of service, certificate of compliance and the appendices per M. R. App. P. 11(4)(d).

So certified this 19<sup>th</sup> day of April, 2024.

/s/ Shandor S. Badaruddin

---

Shandor S. Badaruddin

Shandor S. Badaruddin  
SHANDOR S. BADARUDDIN, PC  
736 South Third Street West  
Missoula, MT 59801  
Telephone: 406-728-6868  
Facsimile: 406-728-7722  
Email: shandor@shandorlaw.com  
tricia@shandorlaw.com

*Attorney for Appellant Newman Ayers Ranch, Inc.*

**APPENDIX A**

Pursuant to M. R. App. P. 12(1)(i)

<b>Table of Contents</b>	
App. 1	Order Granting Preliminary Injunction – January 8, 2024

**APPENDIX B**

Pursuant to M. R. App. P. 12(5)

<b>Table of Contents</b>	
App. 2	Excerpts from Transcript of December 20, 2023 Hearing
App. 3	Mont. Code Ann. § 27-19-201 (1995)
App. 4	Senate Bill 191, 68 <sup>th</sup> Legislature, 2023
App. 5	Montana Legislature LAWS Detailed Bill Information Page, re: Senate Bill 191

## **CERTIFICATE OF SERVICE**

I, Shandor Badaruddin, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 04-19-2024:

Albert R Batterman (Attorney)  
P.O. Box 985  
Baker MT 59313  
Representing: Vernon K Stensvad  
Service Method: eService

Electronically signed by Tricia Lynn Treichel on behalf of Shandor Badaruddin  
Dated: 04-19-2024