

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court No. DA 24-0118

---

In the Matter of the Estate of Lena Ameila Johnson, Deceased,

---

**APPELLANT'S OPENING BRIEF**

---

On Appeal from the Montana Second Judicial District Court,  
the Honorable Judge Kurt Krueger, Presiding  
State of Montana, District Court Cause No. DP-21-76

Appearances:

Natalie Black  
Erika Colstad  
WORDEN THANE P.C.  
321 W. Broadway, Ste. 300  
Missoula, MT 59802  
[nblack@wordenthane.com](mailto:nblack@wordenthane.com)  
[ecolstad@wordenthane.com](mailto:ecolstad@wordenthane.com)

*Attorneys for Third-Party Intervenor/Appellant*

W. Wayne Harper  
HARPER LAW FIRM  
49 North Main Street, Suite C  
Butte, MT 59701  
Helena, Montana 59691  
[wayne@wharperlaws.com](mailto:wayne@wharperlaws.com)  
*Attorneys for Respondent/Appellees*

Brian J. Miller  
MORRISON, SHERWOOD, WILSON, AND DEOLA, P.L.L.P.  
401 North Last Chance Gulch  
Helena, Montana 59691  
*Attorneys for Petitioners/Appellees*

## Table of Contents

Table of Contents .....	ii
Table of Authorities .....	ii
Issues Presented .....	1
Statement of the Case.....	1
Relevant Facts .....	5
Standards of Review .....	115
Summary of Argument.....	16
Argument.....	18
I. The District Court abused its discretion when it denied Katherine’s Estate’s Motion to Intervene.. .....	19
II. The District Court abused its discretion when it denied relief under the Order because the Agreement was a product of mutual mistake of fact and law, and the Order is void as a matter of law. ....	30
III. The District Court erroneously applied laches to this cause of action and abused its discretion in the application of laches factors. ....	36
Conclusion .....	39
Certificate of Compliance .....	39
Certificate of Service .....	40
Index to Appendix.....	41

## Table of Authorities

Case	Page
<i>Am. Express Nat’l Bank v. Born</i> , 2023 MT 252, 414 Mont. 360, 540 P.3d 1042.....	16
<i>Aspen Trails Ranch, LLC v. Simmons</i> , 2010 MT 79, 356 Mont. 41, 230 P.3d 808.....	21
<i>City of Missoula v. Mt. Water Co.</i> , 2016 MT 183, 384 Mont. 193, 378 P.3d 1113.....	35
<i>Clark Fork Coal. v. Mont. Dept. of Env’t Quality</i> , 2007 MT 176, 338 Mont. 205, 164 P.3d 902.....	19
<i>Cole v. State ex rel. Brown</i> , 2002 MT 32, 308 Mont. 265, 42 P.3d 760.....	36
<i>Deich v. Deich</i> , 136 Mont. 566, 323 P.2d 35 (1958).....	32
<i>El Dorado Heights Homeowners’ Ass’n v. Dewitt</i> , 2008 MT 199, 344 Mont. 77, 186 P.3d 1249.....	16
<i>Essex Ins. Co. v. Moose’s Saloon, Inc.</i> , 2007 MT 202, 338 Mont. 423, 166 P.3d 451.....	16
<i>In re Adoption of C.C.L.B.</i> , 2001 MT 66, 305 Mont. 22, 22 P.3d 646.....	20, 22, 26
<i>In re Marriage of Schoenthal</i> , 2005 MT 24, 326 Mont. 15, 106 P.3d 1162.....	30
<i>In re Marriage of Weber</i> , 2004 MT 211, 322 Mont. 341, 96 P.3d 716.....	30
<i>In re Marriage of Wendt</i> , 2014 MT 174, 375 Mont. 388, 329 P.3d 567.....	31
<i>In re P.H.R.</i> , 2021 MT 231, 405 Mont. 334, 495 P.3d 38.....	32
<i>Kruzich v. Old Republic Ins. Co.</i> , 2008 MT 205, 344 Mont. 126, 188 P.3d 983.....	25
<i>Locke v. Estate of Davis</i> , 2015 MT 141, 379 Mont. 256, 350 P.3d 33.....	32
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	35
<i>Matter of Estate of Burns</i> , 2023 MT 253, 414 Mont. 365, 540 P.3d 1029.....	15

<i>Murphy v. Home Depot</i> ,	
2012 MT 23, 364 Mont. 27, 270 P.3d 72.....	25
<i>Peeler v. Rocky Mountain Log Homes Canada, Inc.</i> ,	
2018 MT 297, 393 Mont. 396, 431 P.3d 911.....	25
<i>Reed v. Woodmen of the World</i> ,	
94 Mont. 374, 22 P.2d 819 (1933).....	32
<i>Reservation Operations Ctr. LLC v. Scottsdale Ins. Co.</i> ,	
2018 MT 128, 391 Mont. 383, 419 P.3d 121.....	16
<i>S.W. Ctr. for Biological Diversity v. Berg</i> ,	
268 F.3d 810 (9th Cir. 2001).....	19
<i>Shilhanek v. D-2 Trucking, Inc.</i> ,	
2000 MT 16, 298 Mont. 101, 994 P.2d 1105.....	15
<i>Smith v. Lindemulder</i> ,	
2022 MT 119, 409 Mont. 69, 512 P.3d 260.....	36
<i>Smithers v. Hagerman</i> ,	
244 Mont. 182, 797 P.2d 177 (1990).....	37
<i>Sportsmen for I-143 v. Mont. Fifteenth Jud. Dist. Court, Sheridan Cnty.</i> ,	
2002 MT 18, 308 Mont. 189, 40 P.3d 400.....	19
<i>Wicklund v. Sundheim</i> ,	
2016 MT 62, 383 Mont. 1, 367 P.3d 403.....	16

## Statutes

Article II, Section 17 of Montana’s Constitution .....	23, 35
Mont. Code Ann. § 72-3-103 .....	24, 34
Mont. Code Ann. § 72-3-601(1) .....	24
Mont. Code Ann. § 72-2-712(3) .....	6, 9
Mont. Code Ann. § 72-2-712(3)(a)(i) .....	27

## Rules

Fed. R. Civ. P. 24 .....	19, 20
Montana Rule of Civil Procedure 4(b)(2).....	32
Montana Rule of Civil Procedure 24 .....	20
Montana Rule of Civil Procedure 24(a).....	19, 20
Montana Rule of Civil Procedure 24(a)(2) .....	17, 19
Montana Rule of Civil Procedure 60 .....	30

Montana Rule of Civil Procedure 60(b) .....	15, 16, 30
Montana Rule of Civil Procedure 60(b)(4).....	31, 35
Rule 1.7(a) of Montana Rules of Professional Conduct .....	34
Rule 11 of the Montana Rules of Appellate Procedure .....	39

IN THE SUPREME COURT  
OF THE STATE OF MONTANA

Supreme Court No. DA 24-0118

---

**Issues Presented**

1. The District Court ordered the non-party Estate of Katherine Grundhauser to surrender certain real property under a settlement agreement for which it was not a party. Did the District Court abuse its discretion in denying the Estate of Katherine Grundhauser's motion to intervene?
2. Did the District Court abuse its discretion when it ordered Katherine's Estate was bound by the settlement agreement even though Katherine's Estate was not present at the settlement conference, did not sign the agreement, nor joined as a necessary party to the action?
3. Is laches a valid defense to bar Katherine's Estate from intervening despite none of the parties involved were aware of the need for the Estate to intervene until 2023?

**Statement of the Case**

This case involves a controversy between the personal representative and beneficiaries of the Estate of Lena Amelia Johnson ("Lena's Estate") and, on appeal, between the non-party Estate of Katherine Grundhauser ("Katherine's

Estate”). Below, the beneficiaries and the personal representative attempted to resolve their dispute via a settlement agreement. The heart of the issue on appeal stems from a potential sale of real property pursuant to the settlement agreement in which one of the joint owners—Katherine’s Estate—(1) was not joined in the action prior to settlement, (2) did not participate in the settlement conference, (3) was denied intervention, and (3) will be stripped of its interest in the real property if the settlement agreement is enforced against it.

The property in dispute is located at 1801 Holmes Avenue, Butte, Montana (the “Property”). The Property is currently owned by Katherine’s Estate and Lena’s Estate as tenants in common, with each estate owning a 50% interest. The parties to the underlying action include (1) beneficiaries of Lena’s Estate<sup>1</sup>, Melissa Coffin (“Melissa”), Brooke Mattson (“Mattson”), and Cindy Carver (“Carver”), (2) Kenneth Johnson (“Johnson”), personal representative of Lena’s Estate, and (3) Steven Grundhauser (“Grundhauser”), in his individual capacity as a petitioner.<sup>2</sup> In

---

<sup>1</sup> Jason Grundhauser is a beneficiary to Lena’s Estate and was never added as a necessary party to this action nor given notice of the proceedings.

<sup>2</sup> Grundhauser was involved to the extent his daughters petitioned for his appointment as personal representative of Lena’s Estate. He was subsequently listed as a “Petitioner” on all pleadings but did not meaningfully participate in the action after the District Court declined his appointment and instead appointed Johnson. He is not a beneficiary of Lena’s Estate.

an action opened to administer Lena's Estate, these parties entered into a settlement agreement ("Agreement") for the sale of the Property on August 29, 2022. Katherine's Estate was not present nor represented at the settlement conference, nor was it mentioned in the Agreement itself.

Although Katherine's and Lena's Estate each hold a 50% interest because of a Grant Deed recorded on October 26, 1979, the parties and their attorneys mistakenly operated under the assumption that Lena's Estate owned the entirety of the Property because of a provision in Lena's Will stated the Grant Deed should be disregarded. As such, no one in the underlying action joined Katherine's Estate. A probate was not opened for Katherine's Estate until a title company requested a representative of Katherine's Estate to execute a deed and/or buy sell agreement to transfer the Property in the summer of 2023. The parties requested Steven Grundhauser execute the deed on behalf of Katherine's Estate—an estate that had not been opened and one to which he held no power of appointment as personal representative. Grundhauser, learning that the parties and their attorneys had not realized, or at worst, ignored, the controlling document (the Grant Deed), retained counsel for Katherine's Estate, and a probate was opened on September 19, 2023. Counsel for Katherine's Estate addressed the mistake of fact and law with the attorneys who had been operating under the mistaken assumption that Lena's Will controlled the disposition of the Property, and it notified the District Court.



Katherine’s Estate argued that the Agreement was (1) a product of mutual mistake and fact, and (2) unenforceable against Katherine’s Estate because it was not a party to the action or the Agreement.

The Court concluded at a September 27, 2023, hearing that the Agreement was enforceable against the “parties.”<sup>3</sup> The parties effectuated the Agreement in October 2023, including Mr. Grundhauser signing the Agreement in his individual capacity as a Petitioner to be appointed as personal representative of Lena’s Estate, although he had no beneficial interest in Lena’s Estate. On November 9, 2023, the Court issued its Findings of Fact, Conclusions of Law, and Order (“November 9<sup>th</sup> Order”) in which it directed the Petitioners<sup>4</sup> to “execute all documents necessary to transfer the property commonly referred to as 1801 Holmes Avenue, Butte, Montana to the Respondent and/or his assigns. . .” (App. 9, Finding of Facts, Conclusions of Law and Order, p. 6, Nov. 9, 2023.)

Though not directly stated, Katherine’s Estate assumed this to include Katherine’s Estate, as it was a necessary party to execute any document that would transfer the Property. Katherine’s Estate filed an Emergency Motion to Intervene

---

<sup>3</sup> Katherine’s Estate was not a party.

<sup>4</sup> Katherine’s Estate was not a Petitioner.

and a Motion for Relief from Judgment and Motion to Amend Judgment, twenty-one days after the Court's November 9<sup>th</sup> Order.

On January 31, 2024, the District Court denied both motions, effectively enforcing the terms of the Agreement on Katherine's Estate, a non-party.

Katherine's Estate appeals from the District Court's January 31, 2024 Order ("January 31<sup>st</sup> Order").

### **Relevant Facts**

Katherine Grundhauser ("Katherine") and Lena Johnson ("Lena") tragically passed away in a car accident on June 15, 2006. (App. 1, Order Denying Mot. to Intervene and Mot. for Relief from the Judgment, ¶ 1, Jan. 31, 2024.) Lena Johnson had two children: Kenneth Johnson and Katherine. *Id.* Katherine was married to Steve Grundhauser. *Id.* Together, Katherine and Grundhauser had four children. *Id.* A family tree with relevant parties to Katherine's and Lena's Estates is set forth in Appendix 2.

At the time of their death, Lena and Katherine owned the Property as joint tenants with right of survivorship. (App. 3, Decl. Erika Colstad, Ex. B, Grant Deed, Oct. 26, 1979.) Neither Katherine nor Lena survived the other in the accident and were determined to have died simultaneously. (App. 3, Decl. Colstad, Ex. C, Death Certificates of Lena Johnson and Katherine Grundhauser, June 21, 2006.) As a result, Lena and Katherine owned the Property as tenants in common pursuant to

Mont. Code Ann. § 72-2-712(3).<sup>5</sup>

Kenneth Johnson petitioned for appointment as personal representative of Lena's Estate, and an informal intestate probate was opened on August 18, 2006. (App. 1, ¶ 2.) Johnson was appointed personal representative with all rights, obligations, and duties of a personal representative under the Montana Probate Code. (*See id.*) Over the next several years, assets were distributed from Lena's Estate to Johnson's children,<sup>6</sup> who were not beneficiaries of Lena's Estate, and to Cindy, Brooke, and Melissa. (*See id.* at ¶ 3 and App. 4, Pet. for Informal Probate and Appointment of Personal Representative, ¶¶ 13-14, Oct. 21, 2020.) Johnson and Grundhauser split the remainder of the property. (App. 1, ¶ 3). "At some point, the parties reached a tentative agreement over how to distribute Lena's home, the

---

<sup>5</sup> The Property has consistently been mischaracterized as Lena's property. (*See* App. 1, ¶ 3). Katherine and Grundhauser helped Lena purchase the property and Katherine has always been on the title of the Property. At no point did Lena own the Property as a sole owner.

<sup>6</sup> The Order states that approximately \$190,000 in assets were distributed to Lena's grandchildren and the rest was split between Johnson and Grundhauser. (App. 1, ¶ 3.) Though Johnson's actions and inactions as personal representative are not directly at issue on appeal, this fact was improperly relied upon by the Court and it mischaracterizes Johnson's fiduciary obligations to the beneficiaries of the Estate, which did not include his children. Johnson's children have received assets under Lena's Estate they were not entitled to and have continued to live in the Property rent-free.

only piece of real property in the Estate, but never followed through.” (*Id.*) The matter was closed on December 16, 2011, due to failure to prosecute. (*Id.*, ¶ 4.) Johnson’s children remained living in the house rent-free free (App. 4, ¶¶ 13-14).

In June 2020, Grundhauser, Cindy, Melissa, and Brooke (“Petitioners”) notified the District Court that Lena’s Will had been discovered. (App. 1, ¶ 6.) The Will bequeathed the entirety of Lena’s Estate to Johnson and Katherine and directed that “all property, real and personal” be divided equally between them, or if they do not survive Lena, such property was to be held in trust “for his or her children...” (Last Will and Testament (Lena Amelia Johnson); *see also* App. 3, Ex. D.) On October 21, 2020, Petitioners filed a *Petition for Informal Probate and Appointment of Personal Representative* alleging that Johnson had failed to collect rent on the Property and was being negligent in administering Lena’s Estate. (App. 1, ¶ 9; *see* App. 4, ¶¶ 13-14.) They petitioned for Steve Grundhauser’s appointment as personal representative. (*See generally*, App. 4.) The District Court denied the appointment. (App. 1, ¶ 9.) The parties continued to dispute the administration of the Estate, and specifically the valuation and sale of the Property. (Mot. Permitting Petitions to Value Estate’s Real Property and Requiring Distribution of Rental Income, July 9, 2021; Mtn. for Sale of Estate Property, Mar. 7, 2022.)

On August 29, 2022, the parties held a mediation. (App. 1, ¶ 10.) An attorney represented the Estate of Lena Johnson. Another attorney represented

Melissa, Brooke, and Cindy as beneficiaries of Lena’s Estate and Grundhauser, individually, as a petitioner. Grundhauser was named as a petitioner in this action for the sole purpose of petitioning the Court for his appointment as personal representative of Lena’s Estate. (App. 5, Decl. of Brian Miller, ¶ 2, Nov. 28, 2023; *See* App. 4, p. 3-4.) He was never appointed as such, but the same attorney continued to represent Grundhauser as a petitioner.<sup>7</sup> Grundhauser did not attend the mediation because he held no interest in Lena’s Estate—a fact both parties knew. (App. 5, ¶¶ 2-3.) Katherine’s Estate was not present nor represented at the settlement conference because the parties were operating under a mistake of fact and law that the Property was owned entirely by Lena’s Estate. (*See id.* and *id.* at ¶ 13.) The parties reached an agreement, and the Agreement was memorialized. (App. 5, Exhibit 6, Settlement Agreement.) The parties believed that all necessary parties were present and had full authority to execute an agreement regarding the sale of the Property,<sup>8</sup> evidenced by the fact that no party joined Katherine’s Estate

---

<sup>7</sup> That attorney did not have an attorney-client relationship with Grundhauser. There was no engagement letter between the two, however, the attorney continued to name Grundhauser in his pleadings. Katherine’s Estate does not dispute the District Court’s conclusion that it appeared Grundhauser was represented in this matter in his individual capacity as a petitioner.

<sup>8</sup> As explained further below, the parties were operating under a mutual mistake that the Property was owned entirely by Lena’s Estate. They were

as a party to the action and Katherine’s Estate was not mentioned in the Agreement. (*Id.*) The title of the Agreement reads: “Release and Settlement Agreement” and the Description of Claim reads: “Dispute regarding the amount of Releasors’ interest and claim in the Estate of Lena Amelia Johnson.” (*Id.*) The Agreement is expressly written to settle claims related to Lena’s Estate, and Katherine’s Estate was not included or contemplated as a party in the written Agreement.<sup>9</sup> (*Id.*)

At no point prior to September 19, 2023, did anyone represent Katherine’s Estate, nor make representations that they did.

Subsequent to the settlement conference, the parties learned that the title company would require the personal representative of Katherine’s Estate to execute closing documents to transfer the Property, because it held a one-half interest in the Property. (App. 6, Transcr. Proc. 6:9-18, Sept. 27, 2023; App. 5, ¶ 4 and corresponding Ex. 1, Brian Miller Letter, Nov. 14, 2022.) Upon such

---

operating under a mistake of law believing Lena’s Will was the controlling document, and disregarded the Grant Deed, which conveyed title to Lena and Katherine as joint tenants with the right of survivorship. Under Mont. Code Ann. § 72-2-712(3), Lena’s and Katherine’s Estates own the Property as tenants in common.

<sup>9</sup> It also did not include Jason Grundhauser, a necessary party to this action.

realization, counsel for the parties requested that Steve Grundhauser execute the necessary documents on behalf of Katherine's Estate. (*See id.* at ¶ 5 and corresponding Ex. 2, Email requesting signature.) No probate had been opened for Katherine's Estate, and Steve did not have the authority to sign documents on behalf of the Estate. (*See* App. 7, Mot. for Relief from J., Mtn Amend J. and Br. at ¶ 7, Dec. 1, 2023.) Steve sought and retained counsel to represent Katherine's Estate in light of the information. (*Id.*) A probate was opened for Katherine's Estate on September 19, 2023. (App. 8, Cause No. DP-23-104, Order of Informal Probate of Will and Appointment of Personal Representative, Sept. 19, 2023.) A status hearing was scheduled for September 27, 2023 on the enforceability of the Agreement (Or. Setting Hrg., Jun 21, 2023).

Counsel for Katherine's Estate contacted counsel for both parties by phone prior to the September 27, 2023, status hearing on the enforceability of the Agreement to determine how the Agreement had been reached without Katherine's Estate's involvement. Attorney for the petitioners maintained that there had been a mutual mistake of fact that Lena's Will was the controlling document and neither party realized Katherine's Estate was a necessary party. (App. 5, ¶ 2.) Attorney for Lena's Estate, without explanation as to why Katherine's Estate was not made a

party, agreed that the Grant Deed would control.<sup>10</sup> After counsel for Katherine's Estate pointed out that Katherine's Estate should, in that case, have been made a party to the action, counsel for Lena's Estate pivoted, and took the position that an agreement had been reached and would argue at a hearing that it should be enforced. (*See* App. 5, ¶ 6 and App. 6, Transcr. Proc. at 21:13-19.)

A hearing was held on Agreement's enforceability on September 27, 2023. At the hearing, counsel for Katherine's Estate argued the Agreement could not be enforced as intended by the parties because necessary parties with ultimate settlement authority had not been present at the settlement conference.

**Ms. Black:** I am not trying to point fingers at anybody, . . . [O]ur position [is] that that settlement is not binding upon Katherine Grundhauser's Estate because [her estate] was not represented at that settlement. And it's not just her estate but it's also Jason Grundhauser . . . who is also not present with that settlement. . . . Again, I'm not trying to point fingers. I'm just recognizing that there are two parties here that have an ownership in this house that were not part of that settlement.

(App. 6, Transcr. Proc. at 17:6-18.)

---

<sup>10</sup> Counsel for Lena's Estate agreed by phone with Counsel for Katherine's Estate that the Grant Deed would control, which contradicts the Court's January 31, 2024 Order at ¶ 11. The Court was advised of this in its Emergency Motion to Intervene. Counsel for Lena's Estate has claimed both that Lena's Will controls and the Grant Deed controls. (*See* App. 5, Decl. Miller, ¶ 6; App. 6, Transcr. Proc. at 21:13-19.)



Counsel for Lena's Estate's position at the Hearing was unclear. After reading Clause Four of Lena's Will (a document that does not control the disposition of the Property) for the record, counsel seemed to agree that a deed is the controlling document:

**Mr. Harper:** The reason I point that [Clause Four] out to the Court is I guess I don't know how this home and the new deed that says, oh, by the way, it's a deed of convenience. And I agree a filed deed will trump a will. With that said, when that's in there, to come up to the settlement conference and then say we didn't know there was a deed out there, another – I'm a little lost on that.<sup>11</sup>

(*Id.* at 21:13-19.)

Counsel for petitioners argued the Agreement should not be enforced because the parties had reached an agreement on mistake of fact and law. (*Id.* at 6:2-21.) The Court concluded at the hearing that there was an enforceable settlement agreement. (*Id.* at 18:6-13.) Before the hearing concluded, attorney Black again asked for clarification:

**Ms. Black:** I would like clarification on which parties that [settlement agreement] will be enforced upon.

---

<sup>11</sup> Counsel for petitioners never argued that the Grant Deed did not exist. The record and communications between counsel for Petitioners, Lena's Estate, and Katherine's Estate reflect that the deed was known by both parties but that both Lena's Estate and the Petitioners were operating under the understanding that Lena's Will controlled and therefore Lena's Estate solely owned the Property. (App. 5, Decl. Miller.)

**Court:** It will be enforced upon all of them, including Mr. Grundhauser.

**Ms. Black:** Okay. Will that also include Katherine's Estate?

**Court:** I haven't – it will be the terms and conditions of that settlement, and I don't know – see, you're asking me – I don't know. I'm not making a determination as to her estate. I'm making a determination as to the settlement agreement in relation to this and into the parties. And by the enforcement of this matter by the parties, it could have an impact in relation to Katherine, but that's not what's before this Court. What's before this Court is that settlement.

(*Id.* at 23:10-24:2.)

The Court ordered the parties to determine how to enforce and execute the Agreement and stated that if the parties could not, a hearing would be held. (*Id.* at 22:24-23:6.)

On October 3, 2023, pursuant to the Court's verbal order at the September 27<sup>th</sup> hearing, Ms. Black sent a letter to the other attorneys explaining the issues with enforcing the Agreement if the parties intended to sell the Property. (App. 3, Decl. Colstad, ¶ 9; Ex. E, Ltr. Black to Miller and Harper, Oct. 3, 2023.) Notably, Katherine's Estate agreed to enforce the Agreement on Lena's Estate as written or suggested renegotiating the terms of the Agreement under the correct law and facts. Counsel for petitioners responded to Ms. Black's letter and stated that he took no position on whether Grundhauser signed the Agreement in his capacity as personal representative of Katherine's Estate but agreed that he should sign as a

petitioner per the Court’s Order. Grundhauser did sign the Agreement as a petitioner—in the capacity for which he had been represented, and not as the personal representative of Katherine’s Estate. (App. 5, ¶ 11, Ex. 6.)

Counsel for Lena’s Estate failed to respond to the letter and did not return follow-up calls and messages regarding Ms. Black’s letter. Instead, on November 6, 2023, counsel for Lena’s Estate filed an Objection to Petitioners’ Notice of Compliance. (Obj. Pet’rs’ Notice of Compliance, Nov. 6, 2023.) He stated to the Court: “Petitioners have NOT complied with the Agreement in any way shape or form. Rather, they have simply continued their position that Petitioner, Steve Grundhauser, was NOT represented in the Court Ordered Mediation and therefore is NOT part of the Settlement, other than as a Petitioner.” (*Id.* at 1.)

This position is incorrect, both factually and legally. The Agreement had been signed by all of the parties who participated in the settlement conference, in the capacity for which they were a party to Lena’s Estate. Katherine’s Estate did not allege that Grundhauser had been unrepresented—only that Katherine’s Estate was not represented—and therefore, the parties had fully complied with the order. The Agreement simply was not reached nor drafted in a way that could effectuate the intended outcome.

Instead of holding a hearing on the matter, the Court issued its November 9<sup>th</sup> Order in which it directed the Petitioners to “execute all documents necessary to

transfer the property commonly referred to as 1801 Holmes Avenue, Butte, Montana to the Respondent and/or his assigns. . .” (App. 9, p. 6.) The November 9<sup>th</sup> Order failed to directly state whether the Court intended to bind Katherine’s Estate—a non-party to the action, Agreement, and settlement conference—to the terms of the Agreement. Katherine’s Estate filed its Emergency Motion to Intervene (App. 10 Emerg. Mot. to Intervene, Dec. 1, 2023) and, simultaneously, its Motion for Relief from Judgment and Motion to Amend Judgment to protect its interest in the Property. (App. 7.)

The Court issued its Order Denying the Motion to Intervene and Motion for Relief from Judgment from which the Appellant now appeals.

### **Standards of Review**

This Court reviews a District Court’s grant or denial of a motion to intervene for abuse of discretion. *Matter of Estate of Burns*, 2023 MT 253, ¶ 9, 414 Mont. 365, 540 P.3d 1029 (citations omitted). A court abuses its discretion when it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason, resulting in a substantial injustice. *Id.* ¶ 9 (citing *Shilhanek v. D-2 Trucking, Inc.*, 2000 MT 16, ¶ 24, 298 Mont. 101, 994 P.2d 1105).

The standard of review for a district court’s ruling on a motion pursuant to M. R. Civ. P. 60(b) “depends on the nature of the final judgment, order, or proceeding from which relief is sought and the specific basis of the Rule 60(b)

motion.” *Am. Express Nat’l Bank v. Born*, 2023 MT 252, ¶ 6, 414 Mont. 360, 540 P.3d 1042 (citing *Reservation Operations Ctr. LLC v. Scottsdale Ins. Co.*, 2018 MT 128, ¶ 7, 391 Mont. 383, 419 P.3d 121 (quoting *Essex Ins. Co. v. Moose’s Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451)). “As a general rule, the district court’s ruling is reviewed for abuse of discretion.” *Id.* (quotation omitted). However, where “the specific basis of the motion is a conclusion of law,” this Court reviews the motion’s denial de novo. *Id.* (citing *El Dorado Heights Homeowners’ Ass’n v. Dewitt*, 2008 MT 199, ¶ 14, 344 Mont. 77, 186 P.3d 1249).

Laches is an equitable doctrine that may apply when a person is negligent in asserting a right. *Wicklund v. Sundheim*, 2016 MT 62, ¶ 9, 383 Mont. 1, 367 P.3d 403 (citation omitted). In reviewing a district court’s exercise of its equitable power, this Court reviews “all questions of fact arising upon evidence presented in the record to determine if the court’s findings are clearly erroneous” and whether the court’s interpretation of the law is correct. *Id.* (citations omitted).

### **Summary of Argument**

This Court should reverse the District Court’s decision denying intervention and denying relief from the November 9<sup>th</sup> Order on three grounds: (1) the District Court abused its discretion when it denied Katherine’s Estate timely Emergency Motion to Intervene; (2) the District Court abused its discretion when it denied Katherine’s Estate’s Motion for Relief from Judgment; and (3) the District Court

erroneously applied the doctrine of laches and abused its discretion in its application of the laches factors.

The Emergency Motion to Intervene was timely and the District Court abused its discretion under the four factors that are to be considered under M.R.Civ.P. 24(a)(2). As written, the District Court's January 31<sup>st</sup> Order impairs and impedes Katherine's Estate's ability to protect its interest, despite the Motion being timely and Katherine's Estate's interest not being represented by an existing party.

The District Court also erred in concluding the Agreement was not a product of mutual mistake of fact and law. The record shows that the parties were negotiating under the premise that Lena's Estate solely owned the Property, which is a mutual mistake of fact and law. If this wasn't the case, and one or both of the parties knew Katherine's Estate held a one-half interest in the Property pursuant to the Grant Deed, and Katherine's Estate should have been added as a necessary party. Under either scenario, Katherine's Estate has been prejudiced. Lena's Estate has not disputed that it failed to join a necessary party. It has simply argued that the parties were "all in agreement that the parties were negotiating in good faith to sell the entire home."

The District Court also abused its discretion by ordering Katherine's Estate's compliance in an action to which it had never been made a party. The November

9<sup>th</sup> Order is void for lack of personal jurisdiction and due process.

Finally, the District Court erroneously applied the doctrine of laches and further abused its discretion in its application of the factors. There was not a gross delay in Katherine's Estate prosecuting its rights, and the primary factor to be considered—the inequity of allowing a claim to be enforced—weighs heavily in favor of Katherine's Estate.

### **Argument**

This Court should reverse and remand the District Court's January 31<sup>st</sup> Order because, under the applicable standard for intervention, due process, and contract law, intervention was warranted. As a result, Katherine's Estate has been deprived of meaningful participation in the disposition of the Property for which it holds a one-half interest. And the District Court erred by ordering the Estate to surrender the Property despite not having been a party to the action and despite not having participated in the negotiations of, or signed the settlement agreement requiring, the Property's disposal. As a result, this Court should reverse the District Court's decision denying intervention and denying relief from the subject judgment.

**I. The District Court abused its discretion when it denied Katherine's Estate's Motion to Intervene.**

Montana Rule of Civil Procedure 24(a) sets forth the circumstances under which a party *must* be permitted to intervene. Rule 24(a)(2) states that a party must be permitted to intervene who:

claims an interest relating to the property or transaction which is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest.

The Rule governing intervention is designed to protect nonparties from having their interests adversely affected by litigation conducted without their participation. *Clark Fork Coal. v. Mont. Dept. of Env't Quality*, 2007 MT 176, ¶ 10, 338 Mont. 205, 164 P.3d 902 (quotation omitted). The underlying policy for intervention is best stated in Rule 24's federal advisory committee notes, which provide that "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *S.W. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (citing Fed. R. Civ. P. 24 Advisory Committee's notes). Montana's Rule 24 is essentially identical to the Federal Rule, which is interpreted liberally. *Sportsmen for I-143 v. Mont. Fifteenth Jud. Dist. Court, Sheridan Cnty.*, 2002 MT 18, ¶ 7, 308 Mont. 189, 40 P.3d 400 (citation omitted). Because Montana's Rule 24



is modeled on Rule 24 of the Federal Rules, the Montana Supreme Court may look to the interpretation of the Federal Rules for guidance.

Upon motion, courts must permit a party to intervene under Rule 24(a) if: (1) the motion is timely, (2) the party claims an interest relating to property or a transaction that is the subject to the action; (3) disposing of the action would, as a practical matter, impair their ability to protect their interest; and (4) existing parties do not adequately represent their interest. M.R.Civ.P. 24. The District Court dedicated the majority of its Order to the timeliness of Katherine's Estate's intervention; however, the remaining three factors shed light on larger constitutional issues that require intervention. Appellant addresses each of the four factors for intervention in turn.

**A. The Motion to Intervene was timely.**

When considering the timeliness of a motion to intervene, the majority of courts look to four factors:

(1) the length of time the intervenor knew or should have known of its interest in the case before moving to intervene; (2) the prejudice to the original parties, if intervention is granted, resulting from the intervenor's delay in making its application to intervene; (3) the prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances mitigating for or against a determination that the application is timely.

*In re Adoption of C.C.L.B.*, 2001 MT 66, ¶ 24, 305 Mont. 22, 22 P.3d 646 (citation omitted). None of these factors are, by themselves, dispositive. *Id.* Under these

four factors, Grundhauser's motion to intervene was timely.

### **1. Length of Time**

The majority of courts consider the length of time the intervenor knew or should have known of its interest in the case before moving to intervene. (*Id.*) This Court has upheld the granting of a motion to intervene after judgment has been entered. *Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 35, 356 Mont. 41, 230 P.3d 808. Here, the length of time that Katherine's Estate knew of its interest is reasonable, even though it happened after the District Court entered its November 9<sup>th</sup> Order. The District Court's application of an 18-year delay is misplaced and ignores the fact that Lena's Estate also waited 18 years to administer Lena's Estate and assumes that the administration of Lena's Estate revealed the correct ownership of the Property eighteen years ago. Johnson, the personal representative of Lena's estate, maintained control over the house during this time. And, despite the probate of Lena's Estate, not a single party was aware the Grant Deed controlled the disposition of the Property until 2023 when a title company caught what two sets of attorneys and Lena's Estate's personal representative had failed to catch. Though Grundhauser arguably had a duty to investigate on behalf of Katherine's estate, the facts of this case demonstrate that Grundhauser did not lack due diligence. Two attorneys were already involved in the administration of Lena's Estate both in 2006 and 2020. Grundhauser

mistakenly relied on the attorneys in Lena's Estate who concluded that Lena's Will was the controlling document and not the Grant Deed. Such reliance is not unreasonable. His failure to act was only in failing to question counsel's interpretation of the Grant Deed and Lena's Will, not in determining Katherine's Estate's ownership in the Property. Upon such realization, a probate for Katherine's Estate was opened, and an Emergency Motion for Intervention was filed upon the District Court's first indication that the Agreement would bind Katherine's Estate. The Court's November 9<sup>th</sup> Order was the first time the Court, or the parties, seemingly brought Katherine's Estate into the mix when the Court directed that "Petitioners shall execute all documents necessary to transfer the property commonly referred to as 1801 Holmes Avenue, Butte, Montana to the Respondent and/or his assigns." (App. 9, p. 6.)

## **2. Prejudice to Original Parties.**

"The prejudice to the original parties to the litigation that is relevant to the question of timeliness is only that prejudice which would result from the would-be intervenor's failure to request intervention as soon as he or she knew or reasonably should have known about his or her interest in the action." *In re C.C.L.B.*, ¶ 30 (citation omitted). Lena's Estate essentially suffers no prejudice as there was no delay from the point in time the parties (including Grundhauser) realized Katherine's Estate was required to sell the Property. The error was realized in the

summer of 2023, and all parties had an opportunity to mitigate their damages when counsel for Katherine's Estate contacted counsel for Lena's estate and counsel for Cindy, Melissa, and Brooke. Further, Lena's Estate is still being probated, having been opened in 2006, and the Property has not yet been transferred. Further, any prejudice was caused by their own failure to identify the correct controlling document. Katherine's Estate cannot be held at fault for such failure. Any alleged delay in intervention has not, on its own, caused any prejudice.

### **3. Prejudice to Katherine's Estate**

The court must also consider the prejudice to the intervenor if the motion is denied. *Id.* ¶ 24. The prejudice to Katherine's Estate that would result if the Estate were not permitted to intervene far exceeds any prejudice that would result for the current parties to this action if this appeal fails. Disallowing intervention while enforcing the Court's Order violates basic principles of due process, contract law, and personal jurisdiction.

The Montana and the United States Constitutions prohibit taking of property without due process. Article II, Section 17 of Montana's Constitution provides that no person shall be deprived of their property without due process of law. Here, Katherine's Estate has a property interest that is protected by due process. The record does not show that Katherine's Estate was afforded any process of law,

much less due process. It was not joined as a party<sup>12</sup> and, as a result, a settlement agreement was reached for the sale of Property in which Katherine's Estate owned an interest without its consent or consultation. The Court abused its discretion when it concluded: "it is clear to the Court that [Grundhauser] participated in the handling of these two estates in one form or another since the beginning" and "it strains belief to imagine how the Estate, through Grundhauser, has not been adequately represented in this proceeding or would be prejudiced by enforcement of the settlement agreement..." (App. 1, p. 4.) The Court has conflated Grundhauser with Katherine's Estate, which is a misapplication of the Montana Probate Code. Under Montana law, "[t]he duties and powers of a personal representative commence upon appointment." Mont. Code Ann. § 72-3-601(1); *see also* Mont. Code Ann. § 72-3-103 ("Administration of an estate is commenced by the issuance of letters."). Grundhauser did not have authority to bind or act on behalf of Katherine's Estate until he was appointed as personal representative on September 19, 2023.

---

<sup>12</sup> Jason Grundhauser is another necessary party to this action as one of Lena Johnson's grandchildren beneficiaries. He has never been made a party to this action or given notice of its proceedings. The settlement agreement also cannot legally be enforced without his involvement.

The attorney for petitioners could not and did not advise Grundhauser regarding Katherine's Estate. He did not represent the Estate. Moreover, the Court's Order acknowledges that Katherine's Estate was not a party to the underlying action. (App. 1, p. 4.) As such, the Court does not have the authority to order the Estate, a non-party, to engage in conduct, nor can it enforce such an order without violating constitutional due process requirements. The Court did not have personal jurisdiction over Katherine's Estate. Accordingly, the Order is void as a matter of law, and this Court should enter an order remanding accordingly.

The attorneys to this action either knew or should have known that Katherine's Estate owned a one-half interest in the Property and should have joined her Estate upon realization of that fact. Fault for their failure to do so cannot fall on a party that was never made a party to the action.

Katherine's Estate is further prejudiced under basic principles of contract law. A settlement agreement is a contract and is subject to the provisions of contract law. *Murphy v. Home Depot*, 2012 MT 23, ¶ 8, 364 Mont. 27, 270 P.3d 72. A contract is generally binding only on and against the actual parties to an agreement, and the parties to a contract must give their consent to enter into that contract. *Peeler v. Rocky Mountain Log Homes Canada, Inc.*, 2018 MT 297, ¶ 45, 393 Mont. 396, 431 P.3d 911; *Kruzich v. Old Republic Ins. Co.*, 2008 MT 205, ¶ 24, 344 Mont. 126, 188 P.3d 983. Here, Katherine's Estate was not a named party

to the action let alone a named party in the written settlement agreement. (App. 5, Decl. Miller Ex. 6.) Moreover, a probate for the Estate had not been opened at the time the settlement was reach, and a personal representative had not been appointed. Therefore, no person could have consented to enter into the settlement agreement on behalf of Katherine's Estate. Because Katherine's Estate was not a party to the Agreement, the Agreement cannot bind Katherine's Estate. Any other interpretation would permit parties to contract to sell property that they do not own. Here, Lena's Estate has attempted to sell property owned by Katherine's Estate. Enforcement of such a sale, or the Agreement, upon Katherine's Estate results in prejudice. Under such circumstances, Katherine's Estate should have been permitted to intervene.

#### **4. Unusual Mitigating Circumstances**

The court must consider the final factor, whether there is any unusual circumstances mitigating for or against a determination that the application is timely. *In re C.C.L.B.*, ¶ 24. The unusual mitigating circumstances of this case have already been addressed but require consideration from the Court. Under the unique circumstances, Katherine's Estate should be permitted to intervene to protect its interest in the Property. At a minimum, basic principles of fairness and due process should apply to ensure that Lena's Estate cannot benefit from its own failure to diligently and properly inventory Lena's Estate. Furthermore, the District

Court should have considered the fact that everyone involved was unaware, until 2023, that the Grant Deed controlled.

**B. Katherine's Estate has an interest in the subject matter of the action.**

Mont. Code Ann. § 72-2-712(3)(a)(i) controls under these circumstances. As a matter of law, Lena Johnson and Katherine Grundhauser became co-owners of the Property when William W. Fuller and Sandra M. Fuller (Grantors) granted the Property to Lena Johnson and Katherine Grundhauser as joint tenants with right of survivorship in 1979. (App. 3, Decl. Colstad, Ex. B (Grant Deed).) Accordingly, Katherine's one-half interest vested with her Estate upon the simultaneous deaths of Lena and Katherine. (*Id.*, Decl. Colstad, Ex. C (Death Certificates of Lena Johnson and Katherine Grundhauser).) Because Lena Johnson and Katherine Grundhauser died simultaneously in a car accident, and neither survived the other by 120 hours, their estates now each own a 50% interest in the Property as tenants in common. Mont. Code Ann. § 72-2-712(3)(a)(i). At no time either prior to or after her passing, did Lena solely own the Property. This is true regardless of the language in Clause Four of Lena's Will, which attempts to bequeath property that Lena did not own at her death. (App. 3, Decl. Colstad, Ex. D, Will.) Katherine's Estate holds a one-half interest in the Property.



**C. Katherine's Estate's interest in the Property will be impaired by the disposition of this action.**

Katherine's Estate's interest in the property will inevitably be impaired by the disposition of this action without the Estate being permitted to intervene. The parties have reached a settlement agreement that is devoid of any mention of Katherine's Estate and her interest in the property. (App. 5, Decl. Miller, Ex. 6, Settlement Agreement.) If Katherine's Estate is not permitted to intervene, and the agreement is enforced, Katherine's Estate's interest in the Property is effectively terminated, harming the beneficiaries of Katherine's Estate. As explained in Katherine's Estate's Motion for Relief, and below, the interest will have been terminated without due process of law. Under the circumstances, the Estate faces severe prejudice to its interests if this action is conducted without its participation. Therefore, intervention is unquestionably appropriate.

**D. Katherine's Estate's interest in the Property is not adequately represented by an existing party.**

The parties to this action have not and will not protect Katherine's Estate's interests as is evidenced by the settlement agreement. Even after the issue was brought to counsel for both parties' attention, neither took the necessary action to correct their mistake. Counsel for Katherine's Estate contacted counsel for the parties both prior to and after the hearing held on September 27, 2023, notifying the parties of their error. (App. 3, Decl. Colstad, ¶ 9.) Counsel for Petitioners

maintains that Lena's Will controls. Counsel for Lena's Estate has represented both that the Will controls this determination and that the Grant Deed controls this determination in conversations with counsel for Katherine's Estate and to the Court. (App. 6, Transcr. Proc. at 21:13-16.) Regardless, Lena's Estate has been unwilling to correct the mistake and has simply ignored Ms. Black's October 3 letter. It is unclear whether the Estate was intentionally left out of these proceedings, but it is clear that the parties entered into a settlement agreement under an incorrect presumption of fact and are unwilling to correct the mistake to protect Katherine's Estate's interest.

The Court concluded in its Order that "it is clear to the Court that [Grundhauser] participated in the handling of these two estates in one form or another since the beginning." (App. 1, p. 4.) However, this assumes that because Grundhauser was aware of and participated in Lena's Estate that Grundhauser should have known the Grant Deed controls. And this ignores the fact that Grundhauser and Katherine's Estate are not one in the same. Moreover, Katherine's Estate was not an opened probate, did not have a personal representative appointed for it, and did not have counsel. The Agreement on its own, which does not include Katherine's Estate, proves the parties cannot, and have not, adequately represented Katherine's Estate's interests.

**II. The District Court abused its discretion when it denied relief under the Order because the Agreement was a product of mutual mistake of fact and law, and the Order is void as a matter of law.**

Rule 60 of Montana’s Rules of Civil Procedure governs relief from a judgment. In pertinent part, a court may grant relief from a final order for: (1) mistake, inadvertence, surprise, or excusable neglect; ... (4) the judgment is void ... or (6) any other reason justifying relief from the operation of the judgment. M.R.Civ.P. 60(b). Rule 60(b) is designed to apply as an exception to the finality of a judgment where a party was wronged through no fault of its own. *In re Marriage of Weber*, 2004 MT 211, ¶ 26, 322 Mont. 341, 96 P.3d 716. Here, the subject judgment is based entirely on a mistake because the Agreement was entered on the misplaced confidence that the Grant Deed did not control. Further the order is void for lack of jurisdiction and because it ignores the Estate’s right to due process.

**A. The District Court abused its discretion when it concluded the Agreement was not reached by a mutual mistake of fact and law.**

A “mistake” is defined, for purposes of the rule allowing a judgment to be set aside as “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 (quotation omitted) (emphasis added).

Here, the record supports that the parties reached an agreement under a mutual mistake of fact and law based on misplaced confidence that Lena’s Will

controlled the disposition of the Property rather than the Grant Deed. (App. 5, Decl. Miller.) Despite Lena's presumed intention under Clause Four of her Will, a decedent cannot will away what they do not own. The fact that the parties were operating under a mistake of law and fact is supported by the undisputed facts that the written settlement agreement between the parties does not contemplate Katherine's Estate's interest in the subject Property, nor does it *mention* Katherine's Estate. The parties and the Agreement only contemplated Lena's Estate's interest. The parties' misplaced confidence is further supported by the fact that Katherine's Estate was never made a party to this action. Had the parties been operating under the Grant Deed, the parties would have realized that Katherine's Estate was a necessary party to effectuate any agreement to sell the Property.

**B. The District Court abused its discretion in denying Katherine's Estate relief from the Order because it is void for lack of personal jurisdiction and due process.**

*Lack of Personal Jurisdiction*

A party is entitled to relief from a judgment under Rule 60(b)(4) when the judgment is void. *In re Marriage of Wendt*, 2014 MT 174, ¶ 11, 375 Mont. 388, 329 P.3d 567. A judgment is void if the court lacked jurisdiction over the parties or if it "acted in a manner inconsistent with due process of law." *Id.* (citation omitted).

A court may exercise its power over or compel the action of only parties under the court’s jurisdiction. *In re P.H.R.*, 2021 MT 231, ¶ 11, 405 Mont. 334, 495 P.3d 38 (citing *Reed v. Woodmen of the World*, 94 Mont. 374, 381-82, 22 P.2d 819, 821 (1933); *Locke v. Estate of Davis*, 2015 MT 141, ¶ 32, 379 Mont. 256, 350 P.3d 33 (where Safeco was not a named party, was not represented by counsel, and did not appear before the district court, the court erred in making findings against it)). “Montana Courts do not have the authority to order a non-party to engage in conduct, nor can they enforce such an order.” *Id.* ¶ 12. A person becomes a party to an action through her or his voluntary appearance before the court or through legal service of summons. *Id.* ¶ 11 (citing M. R. Civ. P. 4(b)(2); *Deich v. Deich*, 136 Mont. 566, 577, 323 P.2d 35, 41 (1958)).

Prior to Katherine’s Estate’s Motion to Intervene, Katherine’s Estate had never been made a party to this case, nor did it voluntarily submit itself to the jurisdiction of the District Court.<sup>13</sup> In fact, Katherine’s Estate did not exist at a legal entity until a probate was opened on September 19, 2023. Furthermore, no action was required of Katherine’s Estate prior to the Court’s Order. No order,

---

<sup>13</sup> Katherine’s Estate did appear at a hearing on September 27 but only for the limited purpose of clarifying whether the Court was ordering the Estate to take action.

pleading, or agreement contemplated Katherine's Estate's interest in the Property. And yet, both the Court's Order and Lena's Estate seem to conflate Steve Grundhauser's role as a petitioner in this action with his role as a court-appointed personal representative of Katherine's Estate. (App. 1, p. 4; Obj. Pet'rs' Notice of Compliance.)

Conclusions of law #3 and #4 of the District Court's November 9<sup>th</sup> Order hold that the Petitioners and Respondent entered into and are bound by the settlement agreement. (App. 9, p. 4.) The Order directs the parties to "execute all documents necessary to transfer the property . . . ." (*Id.* at 6.) The "parties" to this action do not have the authority to execute the necessary documents. Similarly, Lena's Estate asserts in its Objection to Petitioners' Notice of Compliance: "Rather, they have simply continued their position that Petitioner, Steve Grundhauser, was NOT represented in the court Ordered Mediation and therefore is NOT part of the Settlement; other than as a Petitioner. . . .Petitioners were represented at the Mediation by Mr. Miller . . . ." (Obj. Pet'rs' Notice of Compliance.)

Grundhauser, the petitioner, *was* represented at the settlement conference—no party is disputing that. Katherine's Estate, a separate legal entity, was not present and was not represented.

These statements and the Court's Order seem to conclude that Grundhauser as a petitioner is synonymous with Katherine's Estate. Such a conclusion is erroneous. Steve Grundhauser's role as a petitioner (and the Court's personal jurisdiction over him as a petitioner) cannot be imputed on Katherine's Estate simply because Grundhauser had priority to serve as personal representative to his late wife's estate. (*See App. 3, Decl. Colstad, Ex. F, (Last Will and Testament of Katherine Grundhauser).*) By way of example, a family friend, rather than Grundhauser, could have been named as personal representative of Katherine's Estate. In such an instance, no party could reasonably claim that Katherine's Estate—or the family friend serving as personal representative—had been represented in this action. The same logic must apply here when Grundhauser is serving as personal representative. A person must be appointed by order of the court or clerk, qualify, and be issued letters before administration of an estate can occur. Mont. Code Ann. § 72-3-103. Someone's actions as an individual cannot be imputed to an estate when it does not exist. Further, one attorney or firm cannot ethically act as counsel to Grundhauser, the petitioner in Lena's Estate, and as the personal representative of Katherine's Estate. Necessarily the two party's interest are adverse because Petitioners and Katherine's Estate may have different or competing interests. Rule 1.7(a) of Montana Rules of Professional Conduct.

### *Lack of Due Process*

Further, both the Montana and the United States Constitutions prohibit the taking of property without due process. Article II, Section 17 of Montana's Constitution provides that no person shall be deprived of their property without due process of law. This Court has held that while the phrase "due process" cannot be precisely defined, the phrase expresses the requirements of "fundamental fairness". *City of Missoula v. Mt. Water Co.*, 2016 MT 183, ¶ 25, 384 Mont. 193, 378 P.3d 1113 (quotation omitted). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted).

The record does not show that Katherine's Estate was afforded any process of law, much less due process. A settlement agreement was reached for the sale of Property in which Katherine's Estate owned an interest, without its consent, consultation, or meaningful participation in the matter.

As such, the Court does not have the authority to order the Estate, a non-party, to engage in conduct, nor can it enforce such an order without violating constitutional due process requirements. Accordingly, the judgment is void as a matter of law and Katherine's Estate is entitled to relief from the judgment under Rule 60(b)(4). The District Court abused its discretion when it concluded otherwise.



### **III. The District Court erroneously applied laches to this cause of action and abused its discretion in the application of laches factors.**

The doctrine of laches is an equitable remedy—a judicial remedy founded on notions of fairness and justice. It applies “when a party has been negligent in asserting a right, and where there has been an unexplained delay of such duration as to render enforcement of the asserted right inequitable.” *Smith v. Lindemulder*, 2022 MT 119, ¶ 21, 409 Mont. 69, 512 P.3d 260 (quotation omitted) (emphasis added). The elements to laches include “(1) the party against whom the defense is asserted lacked diligence in asserting a claim; and (2) that lack of diligence resulted in prejudice to the party asserting the defense.” *Id.* (quotation omitted). The purpose of the doctrine is to discourage gross delay in prosecuting rights. *Id.* “Although elapsed time is relevant in considering laches’ elements, the principal consideration is the inequity of permitting a claim to be enforced.” *Id.* (citing *Cole v. State ex rel. Brown*, 2002 MT 32, ¶ 25, 308 Mont. 265, 42 P.3d 760.) (Emphasis added.) “Laches is not a mere matter of elapsed time, but rather, it is principally a question of the inequity of permitting a claim to be enforced. *Cole*, ¶ 25 (citations omitted).

The District Court failed to acknowledge the role the alleged “prejudiced parties” played in this matter. Though Grundhauser arguably had a duty to investigate on behalf of Katherine’s estate, the facts of this case demonstrate that

two attorneys were already involved in the administration of Lena's Estate.

Grundhauser did not lack due diligence. Grundhauser, mistakenly, relied on the attorneys' interpretation of the law asserting that Lena's Will was the controlling document rather than the Grant Deed. Such reliance is not unreasonable. The Order states that "[l]aches is appropriate where a party is actually or presumptively aware of his rights but fails to act," and the party is "considered aware when circumstances they know about are such as to put an ordinary person on inquiry." (Citing *Smithers v. Hagerman*, 244 Mont. 182, 190, 797 P.2d 177, 182 (1990).) An ordinary person should be allowed to rely on two attorneys' interpretation of the law. As soon as the title company alerted Grundhauser of Katherine's Estate's ownership interests, he sought independent counsel and promptly attempted to seek redress.

Any delay since 2006 is fully explained by the fact that Johnson asserted control of the Property for over fifteen years and failed to inventory and distribute Lena's estate expeditiously and efficiently despite a probate being opened in 2006. Johnson was appointed personal representative of Lena's Estate twice and had a fiduciary duty to accurately inventory the probate assets. The District Court abused its discretion by placing the onus on Grundhauser to clarify ownership of the Property rather than the already-appointed personal representative, Johnson, and his attorney. Affirming such a conclusion would uphold poor public policy that (1)

we can contract to deed property we do not own, and (2) a personal representative can benefit by failing to conduct the fiduciary obligations placed on them by well-established Montana law and which Johnson testified he would uphold. (Order Requiring Formal Probate to be filed and Appointment of Personal Representative, May 20, 2021.) Lena's Estate and its beneficiaries should not benefit from Johnson's own failure to properly inventory Lena's Estate.

Further, even without the poor administration of Lena's Estate, there is no evidence that Katherine's Estate has been negligent in asserting a right; instead, the record shows that none of the parties knew that the Grant Deed controlled until 2023.

Any alleged lack of diligence did not prejudice Lena's Estate. Here, Katherine's Estate is merely seeking to enforce its constitutional right to due process. The only inequity or injustice to Lena's Estate is having to properly categorize and distribute the Property according to the law—which it should have done in the first place. Lena's Estate is losing nothing; it merely is not benefiting from a windfall resulting from the application of the wrong law and the parties' mistake about the Grant Deed. Such inequity pales in comparison to the prejudice Katherine's Estate now faces if the District Court's Order is upheld. No claim of laches can be justly made here without first evaluating the inequity resulting from a represented party benefitting from its own error. The District Court erred in

applying laches to the facts of this case and abused its discretion in the application of the laches elements.

### **Conclusion**

The Property is currently owned by Katherine's Estate and Lena's Estate as tenants in common, with each estate owning a 50% interest. The Order, as written, impairs and impedes Katherine's Estate's ability to protect its interest, and Petitioners do not have the authority to execute the documents to comply with the Order. Therefore, Appellant requests the Court reverse the District Court's order denying intervention and relief from judgment and remand for proper distribution of the Property pursuant to the correct law.

Dated this 29<sup>th</sup> day of April 2024.

/s/ Erika Colstad  
Erika Colstad  
WORDEN THANE P.C.  
321 W. Broadway St., Ste. 300  
Missoula, MT 59802  
*Attorneys for Appellant, the Estate of  
Katherine Grundhauser*

## **Certificate of Compliance**

Under Rule 11 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 is 9689 words, not averaging more than 280 words per page, excluding the certificate of service and certificate of compliance.

Dated this 29<sup>th</sup> day of April 2024.

/s/ Erika Colstad

Erika Colstad

WORDEN THANE P.C.

321 W. Broadway St., Ste. 300

Missoula, MT 59802

*Attorneys for Appellant, the Estate of  
Katherine Grundhauser*

## Certificate of Service

I certify that on April 29, 2024, a true and accurate copy of this brief and the accompanying appendix was served on counsel for the Respondents/Appellees at the following addresses:

*By Mail*

Brian J. Miller  
Morrison, Sherwood, Wilson, and Deola, P.L.L.P.  
401 North Last Chance Gulch  
Helena, Montana 59691  
*Attorneys for Petitioners/Appellees*

*By Email and Mail*

W. Wayne Harper  
HARPER LAW FIRM  
49 North Main Street, Suite C  
Butte, MT 59701  
[wayne@wharperlaws.com](mailto:wayne@wharperlaws.com)  
*Attorneys for Respondent/Appellees*

*By Email*

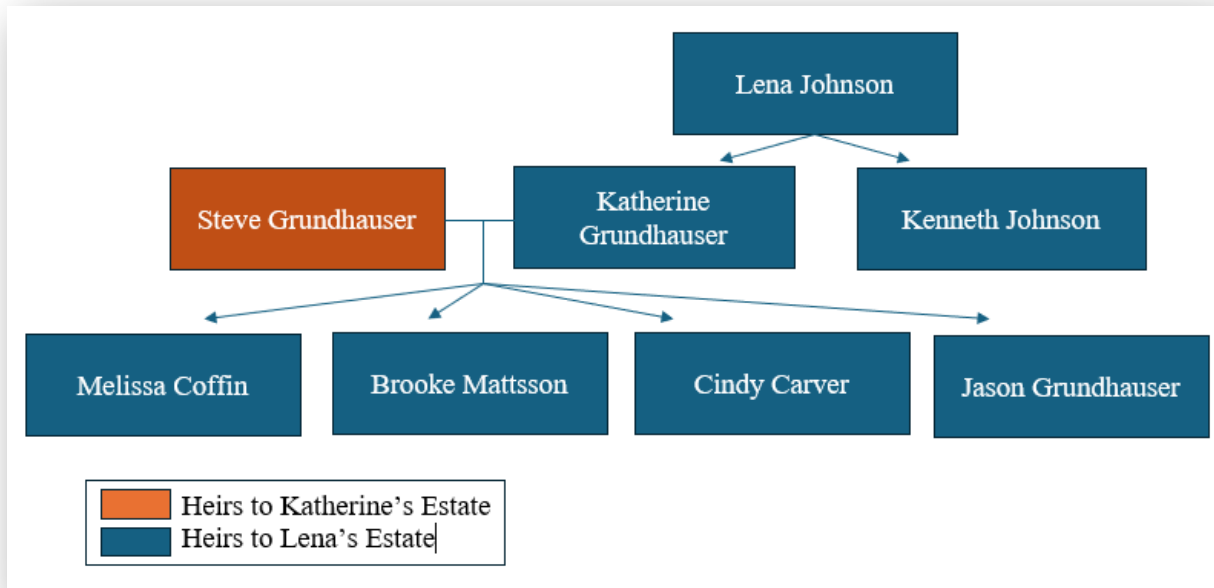
Sherri Kennedy, Judicial Assistant  
c/o Hon. Kurt Krueger  
Silver Bow County Courthouse  
155 West Granite Street  
Butte, MT 59701  
[kkhueger@mt.gov](mailto:kkhueger@mt.gov)

\_\_\_\_\_/s/\_\_\_\_\_  
Julie Ludwick

## Index to Appendix

Appendix 1 – Order Denying Mot. to Intervene and Mtn. for Relief from the Judgment, ¶ 1, Jan. 31, 2024

Appendix 2 – A family tree with relevant parties to Katherine’s and Lena’s Estates



Appendix 3 – Decl. Erika Colstad, Exhibits A-F, Dec. 1, 2023.

Appendix 4 – Pet. for Informal Probate and Appointment of Personal Representative, Oct. 21, 2020

Appendix 5 – Decl. of Brian Miller, Nov. 28, 2023

Appendix 6 – Transcript of Proceedings, Sept. 27, 2024

Appendix 7 – Mot. for Relief from Judgment, Motion to Amend Judgment. and Br., Dec. 1, 2023

Appendix 8 – Order of Informal Probate of Will and Appointment of Personal Representative, Sept. 19, 2023

Appendix 9 – Findings of Fact, Conclusions of Law, and Order, Nov. 9, 2023

Appendix 10 – Emergency Mot. To Intervene, Dec. 1, 2023

## **CERTIFICATE OF SERVICE**

I, Natalie Louise Black, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 04-29-2024:

Brian James Miller (Attorney)  
PO Box 557  
Helena MT 59624  
Representing: Cindy Carver, Melissa Coffin, Brooke Mattson  
Service Method: eService

Erika Delane Colstad (Attorney)  
Worden Thane P.C.  
321 West Broadway, Ste. 300  
Missoula MT 59802  
Representing: Estate of Katherine Grundhauser, Steven Grundhauser  
Service Method: eService

Warren Wayne Harper (Attorney)  
49 North Main Street  
Suite C  
Butte MT 59701  
Representing: Estate of Lena Ameila Johnson, Kenneth Johnson  
Service Method: eService

Electronically signed by Julie Ludwick on behalf of Natalie Louise Black  
Dated: 04-29-2024