

FILED

05/17/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 24-0310

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

No. \_\_\_\_\_

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ANDERSON TRUST,

*Petitioner,*

v.

JUSTICE COURT OF RECORD, MISSOULA COUNTY,  
ALEX BEAL, JUSTICE OF THE PEACE, PRESIDING,

*Respondent.*

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**PETITION FOR WRIT OF SUPERVISORY CONTROL**

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Kris Hawkins  
Trustee  
Anderson Trust  
4908 Rattlesnake Drive  
Missoula, MT 59802  
(406) 721-4106

FILED

MAY 17 2024

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Clerk of Supreme Court  
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Petitioner, Anderson Trust, by and through its Trustee, Kris Hawkins, hereby petitions this Court to exercise its supervisory control pursuant to Montana Rule of Appellate Procedure 14(3); to vacate the Justice Court's April 30, 2022 Order striking the Trust's filings in Case No. CV-610-2024-000581-LT, *HomeRiver Group, Plaintiff vs. Anders Business Solutions, LLC, Defendant*; and, to order that proceedings in that case be stayed during this Court's supervision.

The following is a summary of the facts of the case:

Anderson Trust is the member with a majority interest in the limited liability company (LLC) which is the Defendant in the above-referenced case. Section 25-31-601, MCA, states that "a member with a majority interest in a limited liability company...may act as attorney for the limited liability company" in Justice Court. Therefore, Anderson Trust, through its Trustee, filed an *Answer* and other papers with the Justice Court on behalf of the LLC.

On April 30, 2024 Respondent issued an Order striking the Trust's filings. Respondent stated that, because the Trust is "lacking in corporeal form, it is "not able to appear as an attorney for the LLC." Respondent held that the Trustee of the Trust was not able to appear on behalf of the Trust in order for the Trust to act as an attorney for the LLC. Respondent threatened to enter a default judgment against the LLC because he struck its *Answer* filed on its

behalf by the Trustee. He prohibited the Trust from filing the Trust's "Notice of Appeal" to the District Court and refused to honor the Trust's "Declaration of Disqualification" disqualifying him from acting further.

In support of her Petition, Petitioner provides the following information in conformance with Rule 14, M. R. App. P.

I. Question and Issue to be Raised in the Proceeding

Petitioner anticipates and expects the following question and issue to be raised in the proceeding:

Did Respondent err in holding that the Trustee of the Trust holding a majority membership interest in a limited liability company cannot act on behalf of the LLC in judicial proceedings in Justice Court?

II. The facts which render it necessary and proper that the writ should issue originally from the Supreme Court are that (1) Respondent, the validity of whose action is questioned, has exceeded his jurisdiction; (2) there is no appeal because Respondent refuses to file Petitioner's "Notice of Appeal"; (3) urgency and emergency factors exist and there is no plain, speedy, or adequate remedy other than supervisory control because the Respondent is threatening to default the LLC and immediately remove the third-party Lessee from the premises in question; (the non-party Lessee has been peacefully occupying the premises and paying rent to the non-party Lessor for over 28 years); (4) Respondent is

proceeding under a mistake of law and is causing a gross injustice; and, (5) the case involves purely legal questions.

This Court has the authority to entertain original proceedings and to exercise supervisory control under Article VII, Section 2 of the Montana Constitution and M. R. App. P. 14(3) and (4). *See Inter-Fluve v. Eighteenth Jud. Dist. Court*, 2005 MT 103, P 17, 327 Mont. 14, 112 P.3d 258; *Plumb v. Fourth Jud. Dist. Court*, 279 Mont. 363, 369, 927 P.2d 1011, 1015 (1996). In *Plumb*, the Court recognized that original jurisdiction may be exercised where constitutional issues of major statewide importance are involved; where the case involves purely legal questions of statutory and constitutional construction; and where urgency and emergency factors make the normal appeal process inadequate. *Plumb*, 279 Mont. at 369, 927 P.2d at 1015. It is not necessary for all three circumstances to be present for this Court to exercise jurisdiction. *Plumb*, 279 Mont. at 369, 927 P.2d at 1015. A court's striking of a Defendant LLC's pleadings, filed on its behalf by the Trustee of the Trust holding the majority membership interest in the LLC, poses serious detriment to all Montana citizens. This case involves issues of major statewide importance and the Court should accept jurisdiction of this petition.

### III. Summary of Authorities for Accepting Jurisdiction

The authorities for accepting jurisdiction are § 27-25-102(2), MCA, and those set forth above.

### IV: Summary of Authorities Pertaining to the Merits of the Questions and Issues Raised

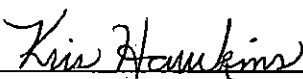
The controlling statutory authority pertaining to the questions and issues raised regarding the right of a majority member of an LLC to act as an attorney for the LLC is § 25-31-601, MCA. Section 25-31-601, MCA, states that “a member with a majority interest in a limited liability company...may act as attorney for the limited liability company” in Justice Court. Also controlling are § 72-38-816(6), MCA, (“with respect to the Trust’s interest in a limited liability company [like Defendant herein], the Trustees can take any action that may be taken by members of the LLC.”); and, § 72-38-816(24), MCA, (“a trustee of a trust can *defend an action, claim, or judicial proceeding* in any jurisdiction to protect trust property.”) The law holds that a trust is not an entity distinct from its trustees. 76 Am. Jur. 2d *Trusts* § 3 (2005) (citing *Roberts v. Lomanto*, 5 Cal. Rptr. 3d 866 (Ct. App. 2003); *Stevens Family Trust v. Huthsing*, 81 S.W.3d 664 (Mo. Ct. App. 2002); *Dennett v. Kuenzli*, 936 P.2d 219 (Idaho Ct. App. 1997)). For that reason, as well, the Trustees of the Trust

that is the member of the LLC with the majority interest have a right to appear for the LLC in Justice Court.

V. The Order striking the Trust filings is attached hereto.

Wherefore, Petitioner petitions this Court to issue a writ of supervisory control or other appropriate writ directed to the lower court commanding it to certify fully to this court a transcript of the record and proceedings in the matter, to the end that the proceedings may be supervised by this Court, and requiring the lower court in the meantime to desist from further proceedings in the matter to be supervised, and annulling and vacating the Order Striking Filings, and such action on the proceedings be taken as of right and according to law ought to be had and done, and granting such other and further relief as shall seem right and proper to the Court.


RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of May, 2024.

  
\_\_\_\_\_  
Kris Hawkins  
Trustee, Anderson Trust

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately-spaced Roman text typeface of 14 points or more; is double-spaced; and the word count does not exceed 4,000 words and does not exceed twelve (12) pages, excluding certificate of service and certificate of compliance.

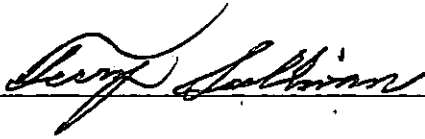
Dated this 15<sup>th</sup> day of May, 2024.

  
\_\_\_\_\_  
Kris Hawkins

CERTIFICATE OF SERVICE

I hereby certify that on the 15<sup>th</sup> day of May, 2024, I served upon the following a true and correct copy of the foregoing Petition by hand-delivery, to:

Alex Beal  
Justice Court  
Missoula County Courthouse  
200 W. Broadway  
Missoula, MT 59802

  
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