

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT CAUSE NO. DA 23-0746

In the Matter of the Estate of Warren Dan Eddleman,

Deceased.

APPELLEE'S RESPONSE BRIEF

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, Cause No. DP 2022-0300,
the Honorable Thomas Pardy Presiding

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STATEMENT OF THE ISSUES

I. Whether the District Court abused its broad discretion in probate matters in issuing the Order Rescinding Order Granting Joint Stipulation For Second Extension of Time to Respond to Disallowance of Creditors' Claims ("Order").

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

This probate dispute turns on whether the District Court abused its broad discretion in issuing its Order rescinding a prior order extending the deadline for creditors to file petitions for allowance of disallowed claims. The effect of the Order barred the claims.

Warren Dan Eddleman ("Dan"), died in August 2022. Appellants the Madelyn Lue Eddleman Trust ("Trust"), the Eddleman Oar Lock Ranch, LLC ("LLC"), Jobey Eddleman ("Jobey"), Madelyn Eddleman ("Madelyn"), and Sandra Eddleman ("Sandra") (collectively, "Claimants") all filed creditor claims against the Estate of Warren Dan Eddleman ("Estate").

With respect to Jobey's claim, the Personal Representative ("P.R.") allowed the amounts of the claim paid for Dan's funeral and disallowed the remaining amounts for failure "to provide sufficient evidence". With respect to Sandra's claim, the P.R. allowed the amount owed under an Agreed Final Decree of Divorce and disallowed the remaining amounts for failure "to provide requisite evidence". The

P.R. also disallowed the LLC's, Trust's and Madelyn's claims in full for failure "to provide sufficient evidence".

The deadline to petition for allowance of the disallowed claims or commence a proceeding was April 23, 2023. Following a joint stipulation executed on behalf of the Claimants, the P.R., and the sole beneficiary, John Pinkerton ("John"), the District Court entered an order extending the deadline to June 23, 2023.

Thereafter, none of the Claimants filed a petition or commenced a proceeding by the June 23, 2023, deadline. On June 20, 2023, counsel for the P.R. circulated a draft of a proposed Joint Stipulation for Second Extension of Time to Respond to Disallowance of Creditor's Claims to the Claimants and John. On June 22, John's counsel notified counsel for the P.R. that John did not consent to another extension. The Claimants and the P.R. signed a Joint Stipulation for Second Extension on June 30, after the June 23 deadline. John was not a party to the Joint Stipulation for Second Extension. The Joint Stipulation for Second Extension, along with proposed order, was filed on July 3. On July 13, the District Court, unaware that John did not consent to the Joint Stipulation for Second Extension, entered an Order Granting Joint Stipulation For Second Extension of Time To Respond To Disallowance of Creditor's Claims. John filed a Motion for Reconsideration. On December 6, 2023, after the issue was fully briefed, the District Court entered the Order. The Claimants appeal therefrom.

II. STATEMENT OF FACTS.

1. Dan died on August 5, 2022. Doc. 1, ¶ 2. At the time of his death, Dan was unmarried and was domiciled in Worden, Yellowstone County. *Id.* ¶ 2.

2. By Application for Informal Probate of Will and Appointment of Personal Representative dated August 29, 2022, Tom Wagoner applied for the informal probate of Dan's will ("Will") and appointment as P.R. Doc. 1.

3. The Application was granted, and Tom Wagoner was appointed as P.R. of the Estate by order from the District Court on August 29, 2022. Doc. 3.

4. John is the sole beneficiary of the Estate pursuant to the Will. Doc. 2. After administration, all the assets and property in the Estate will pass to him. *Id.*

5. Upon information and belief, most of the Estate's property (by value) lies in a majority membership interest in the Eddleman Oar Lock Ranch, LLC ("LLC"). At the time of his passing, Dan was the majority member of the two-member LLC; the Trust was the minority member.

6. On August 29, 2022, the P.R. filed a Notice to Creditors which stated, "NOTICE IS GIVEN that Tom Wagoner has been appointed Personal Representative of the above-named estate. All persons having claims against the deceased are required to present their claims within four months after the date of the first publication of this notice or the claims will be forever barred." Doc. 6. The Notice to Creditors was published in The Billings Times, a weekly newspaper of

general circulation in Yellowstone County, for three consecutive issues, starting September 1, 2022, and ending September 15, 2022. Doc. 7; M.C.A. § 72-3-801(1).

7. Because the first publication of the Notice to Creditors was made on September 1, 2022, the four-month deadline to present claims against the Estate was Sunday, January 1, 2023. *Id.* Because the January 1, 2023, deadline was a holiday and Sunday, the deadline to file a claim was extended to January 2, 2023.

8. Relevant to this appeal, the following Claimants timely filed creditor claims against the Estate: Sandra, Madelyn, Jobey, the Trust and the LLC.

9. Sandra filed a creditor claim on December 27, 2022. The P.R. allowed the amount owed under Exhibit C of the Agreed Final Decree of Divorce entered *In the Matter of the Marriage of Sandra Nona Eddleman and Warren Dan Eddleman*, No. DV09420, 220th Judicial District Comanche County, Texas, and disallowed the remaining amounts by Notice of Partial Allowance of Claim on February 23, 2023, for failure “to provide requisite evidence” Dan incurred the alleged debt. Doc. 16.

10. Madelyn filed a creditor claim on December 28, 2022. The P.R. disallowed it in full by Notice of Disallowance on February 23, 2023, for failure “to provide sufficient evidence” Dan incurred the alleged debt. Doc. 13.

11. The LLC filed a creditor claim on December 29, 2022, and the P.R. disallowed it in full by Notice of Disallowance of Claim on February 23, 2023, for failure “to provide sufficient evidence”. Doc. 14.

12. Jobey filed a creditor claim on December 30, 2022. The P.R. allowed the amounts of the claim that were paid for funeral services and disallowed the remaining amounts by Notice of Partial Allowance of Claim on February 23, 2023, for failure “to provide sufficient evidence”. Doc. 15.

13. The Trust filed a creditor claim on December 30, 2022, and the P.R. disallowed it in full by Notice of Disallowance of Claim on February 23, 2023, for failure “to provide sufficient evidence”. Doc. 12.

14. The deadline to petition for allowance of the disallowed claims or commence a proceeding was, pursuant to M.C.A. § 72-3-805(1), 60 days after the Notice of Disallowance was mailed to the Claimants. Per the certificates of service, each Notice of Disallowance was mailed on February 23, 2023, thus, the deadline to petition for allowance or commence a proceeding was April 23, 2023.

15. In February 2023, John’s attorneys and some of the Claimants discussed the value of the Estate, the inventory of the Estate and discussed moving forward with a mediation to resolve issues. Doc. 25, Exhibit A.

16. With the understanding the parties agreed to mediate if their differences could not be resolved, on or about March 31, 2023, John, along with the Claimants and P.R. signed a Joint Stipulation for Extension of Time to Respond to Disallowance of Creditor’s Claims (“First Stipulation”). Doc. 17.

17. The P.R. filed the First Stipulation with a proposed order for the District Court's approval. The District Court entered an Order Granting Joint Stipulation for Extension of Time to Respond to Disallowance of Creditor's Claims stating "IT IS HEREBY ORDERED that Claimants shall have until June 23, 2023 to petition for allowance of their respective creditors' claims on file herein." Doc. 18.

18. None of the Claimants filed a petition for allowance or commenced a proceeding by the June 23, 2023, deadline. Accordingly, at that time, the creditor claims were barred as a matter of law. M.C.A. § 72-3-805(1).

19. Between the original deadline of March 31, 2023, and the June 23, 2023, extension deadline, there were several exchanges of correspondence between Claimants and John's counsel regarding the Estate, bookkeeping, tax returns, and accounting records of the LLC.

20. On May 5, 2023, John's attorneys sent the P.R., LLC and the Trust a letter outlining three suggestions for how the parties could move forward to settle the Estate. Doc. 25, Exhibit B. Mediation was one of the options and a course of action previously discussed. *Id.*

21. On May 8, 2023, Jobey sent an email to John's counsel suggesting a cash buy-out to John as well as disputing her liability as a guarantor under a secured promissory note between Sandra (the holder) and Dan and Jobey (the makers) related to Dan and Sandra's divorce. *See* Doc. 25, Exhibit C.

22. Jobey seemingly agreed to a mediation, but only if the promissory note guarantee issue was resolved first. Specifically, Jobey stated, “I think your idea of mediation would be a good next step provided the matter of the guarantee is first resolved.” *Id.* Jobey went on to write, “I will happily spend my personal money to sue the estate over this matter.” *Id.*

23. On May 18, 2023, John’s counsel sent another letter. *Id.* Exhibit D. The letter suggested a proposed buy-out amount, which considered the value of the LLC assets and the claims against the Estate. *Id.*

24. Jobey promptly replied to the letter by e-mail. *Id.* Exhibit E. In her email, she disagreed with the proposed buy-out amount and stated, “[y]es, I do think that mediation is a good next step. However, if y’all are going into it determined to keep such positions, then we will be going to court.” *Id.*

25. On May 19, 2023, Ron Williamson (“Ron”), Co-Manager of the LLC also responded to the May 18th letter and voiced disagreement with the proposed buy-out amount, stating “[y]ou leave no other option than to move forward with litigation.” *Id.* Exhibit F.

26. From that point forward to the June 23, 2023, deadline, John’s attorneys did not receive any other communication from the Claimants regarding mediation of the creditor claims. *Id.* Exhibit G.

27. On June 19, 2023, unbeknownst to John, Ron emailed counsel for the P.R. requesting another extension of the deadline to file a petition for allowance of claims. Appx. 45. Without first discussing with John, counsel for the P.R. responded shortly after, “No problem. I can prepare the extension.” *Id.*

28. At this point, it appears there was a misunderstanding between the P.R. and John; whereas John did not see a solution absent court intervention and did not agree to further delay or extension, the P.R. may have believed the parties could resolve their differences with additional time. Transcript pp. 35:17 – 35:20.

29. On the afternoon of June 20, 2023, counsel for the P.R. emailed a draft of a proposed Joint Stipulation for Second Extension of Time to Respond to Disallowance of Creditor’s Claims (“Second Stipulation”) to Claimants and John’s counsel. Appx. 44. The Second Stipulation included signature lines for John and the Claimants. Transcript pp. 37:19 – 37:23.

30. On June 22, 2023, John’s counsel notified counsel for the P.R. that John did not consent to the extension. *Id.* Exhibit G.

31. Thereafter, unbeknownst to John’s counsel, counsel for the P.R. revised the Second Stipulation to remove any mention of John or John’s counsel. Transcript pp. 37:19 – 37:23 (“because [John] decided he wasn’t going to partake, we reissued the order where we took [John] off the stipulation and sent it out to the creditors, and I think it probably took a week or so to get all of the creditors’ signatures on that.”).

32. On June 23, 2023, the extended deadline for the Claimants to petition for the allowance of their denied claims expired. Doc. 18. On June 30, 2023, the P.R. signed the Second Stipulation. Doc. 20. On July 3, 2023, the P.R. filed the Second Stipulation with the District Court, along with a proposed order. *Id.*

33. On July 18, 2023, the District Court, unaware that John did not consent, entered an Order Granting Joint Stipulation for Second Extension of Time to Respond to Disallowance of Creditor's Claims. Doc. 21; Transcript pp. 40:9 – 40:19.

34. The Second Stipulation certificate of service states it was mailed to John's counsel on June 30; however, John's counsel had no record of receiving the signed Second Stipulation. Doc. 26, pp. 11-12. The first time John's counsel learned of the Second Stipulation filing was upon receipt of the Order Granting Joint Stipulation for Second Extension (Doc. 21) by email from the P.R. on July 18. *Id.* John's counsel then obtained a copy of the Second Stipulation from the Clerk of Court. *Id.* Counsel is not suggesting anything improper; however, this is the reason John did not file an objection to the Second Stipulation at the time it was filed. *Id.*

35. On July 25, 2023, John filed a Motion to Reconsider Order Granting Stipulation for Second Extension of Time to Respond to Disallowance of Creditor's Claims. Doc. 26. The parties fully briefed the issue. Docs. 25, 26, 34 – 37, 39, 40.

36. On September 26, 2023, the Claimants each filed a Petition for Allowance of Claim. Docs. 45 - 49. On October 13, 2023, John filed a Response Objecting to Petitions for Allowance of Claim. Doc. 63.

37. On October 23, 2023, the parties participated in a status hearing. As the District Court noted, “All parties at the hearing stipulated and agreed to the fact that the [Second] Stipulation provided to the Court and upon which the Court issued its Order [granting second extension of time] was erroneous and was not stipulated to by all parties. Specifically, the sole beneficiary under decedent’s will, John Jay Pinkerton, did not stipulate to the ‘Stipulation’ for an extension of time to respond to disallowance of creditors’ claims. Consequently, the Court issued its Order based upon an erroneous misrepresentation of the Stipulation.” Doc. 77.

38. On December 6, 2023, the District Court entered an Order Rescinding Order Granting Joint Stipulation for Second Extension of Time To Respond To Disallowance of Creditor’s Claims (“Order”). Doc. 77. The Order stated:

1. The Court’s Order Granting Joint Stipulation for Second Extension of Time to Respond to Disallowance of Creditor’s Claims (Doc #21) is RESCINDED.

2. All Creditors’ Claims and all Petitions to challenge the denial or disallowance of creditors’ claims filed after June 23, 2023, the time allowed under this Court’s previous Order Granting Joint Stipulation for Extension of Time to Respond to Disallowance of Creditor’s Claims (Doc #18), are forever time barred and will not be heard.

39. The Claimants appeal from the Order.

STANDARD OF REVIEW

The District Court's Order is reviewed under the abuse of discretion standard. The District Court's discretion in probate matters is broad. *Matter of Estate of Counts*, 217 Mont. 350, 354, 704 P.2d 1052, 1055 (1985). Courts generally have authority to reconsider, modify, amend, rescind, set aside, or vacate a previous order, so long as it is prior to final judgment. 56 *Am. Jur.* 2d Motions, Rules, and Orders § 59 (2024). "As long as a district court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). Decisions regarding enlargement of time as well as orders rescinding prior orders are generally reviewed for an abuse of discretion. *Pesarik v. Perjessy*, 2008 MT 337, ¶ 9, 346 Mont. 236, 194 P.3d 665; *see, e.g., City of Billings v. Jordan*, 2009 MT 347N, ¶ 13, 354 Mont. 390, 222 P.3d 644 ("we hold that the District Court did not abuse its discretion in rescinding its order to dismiss and allowing the appeal to continue with a new briefing schedule.").

The District Court's legal conclusion that the Claims are time barred is reviewed for correctness. Statutory interpretation is a question of law and the trial court's interpretation is reviewed for correctness. *A.C.I. Constr., LLC v. Elevated Prop. Invs., LLC*, 2021 MT 246, ¶ 11, 405 Mont. 456, 462, 495 P.3d 1054, 1058.

SUMMARY OF ARGUMENT

The District Court did not abuse its broad discretion in issuing the Order. When the District Court learned no petitions were timely filed, the Second Stipulation and proposed order were filed after the deadline, and the sole beneficiary did not agree to the stipulation or extension, the District Court rescinded its prior order. The District Court did not abuse its broad discretion in probate matters.

LAW

Montana's Uniform Probate Code is intended to "promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors." M.C.A. § 72-1-101(2)(a)(iii). "This purpose is clearly supported by the presumed disallowance provision in § 72-3-805, MCA, and the non-claims bar in § 72-3-803, MCA." *Bozeman Deaconess Hosp. v. Estate of Rosenberg*, 225 Mont. 232, 237, 731 P.2d 1305, 1308 (1987). "Montana's Uniform Probate Code establishes a strong public policy to administer estates of decedents expeditiously and without unreasonable delay." *Matter of Estate of Taylor*, 207 Mont. 400, 404, 675 P.2d 944, 946 (1984), *overruled on other grounds In re Estate of Harris*, 2015 MT 182, 379 Mont. 474, 352 P.3d 20.

Consistent with this purpose, a personal representative has a duty to "settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent

with the best interests of the estate.” M.C.A. § 72-3-610. “The personal representative shall use the authority conferred ... for the best interests of successors to the estate.” *Id.* “Successors” are “persons, other than creditors, who are entitled to property of a decedent under the decedent's will” M.C.A. § 72-1-103(50).

All creditor claims that arise before the death of a decedent are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented within the earlier of: “(a) within 1 year after the decedent's death; or (b) within the later of 4 months of notice by publication or 30 days from mailed notice.” M.C.A. §§ 72-3-803; 72-3-801. In addition to being timely, creditor claims must include certain information. “If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated.” M.C.A. § 72-3-804(1).

After receiving a timely creditor claim, a personal representative may either allow or disallow a claim. M.C.A. § 72-3-805. If a personal representative denies a claim, the creditor may still seek to have the denied claim allowed in one of two ways. Both must occur within 60 days after the mailing of a claim’s disallowance (“60 Day Deadline”). M.C.A. § 72-3-805(1). First, a creditor may work with the personal representative to justify or explain its claim in the hope the personal representative will change his/her mind. To that end, a personal representative is

empowered to change a “disallowance” to an “allowance” in whole or part prior to the 60 Day Deadline. M.C.A. § 72-3-805(2).

Second, and alternatively, a creditor may file a petition for allowance or commence a proceeding against the personal representative. M.C.A. § 72-3-805(1). To avoid being time-barred, a petition must be filed not later than the 60 Day Deadline if the notice warns the claimant of the impending bar. *Id.* Petitions filed after the 60 Day Deadline are barred. *Id.*

The court has discretion to extend the 60 Day Deadline. M.C.A. § 72-3-804(3). The personal representative may, under only three circumstances, consent to an extension of time to file a petition. *Id.* To qualify for an extension, the claim must be contingent, unliquidated or not presently due. *Id.* In each such case, the claim *must* state that such circumstances are present. M.C.A. § 72-3-804(1). The law also requires “the consent of all successors whose interests would be affected” for a P.R. to “waive any defense of limitations available to the estate.” M.C.A. § 72-3-802(1).

ARGUMENT

I. The District Court did not abuse its discretion in issuing the Order.

“A district court abuses its discretion if the court acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason, resulting in substantial injustice.” *Unidentified Police Officers 1 v. City of Billings*, 2019 MT 299, ¶ 7, 398 Mont. 226, 229, 454 P.3d 1205, 1207–08. The abuse of discretion

standard is deferential to the trial court. *Kavon v. Kavon*, 2014 MT 100N, ¶ 11, 375 Mont. 551, 346 P.3d 1132. “We will not substitute our judgment for the district court's unless it clearly abused its discretion.” *Jarvenpaa v. Glacier Elec. Co-op., Inc.*, 292 Mont. 118, 121, 970 P.2d 84, 86 (1998).

Here, the Claimants and P.R. sought a court order for the approval of the Second Stipulation. The District Court has discretion to extend the 60 Day Deadline. M.C.A. § 72-3-804(3). The District Court, being unaware the 60 Day Deadline already expired and the sole beneficiary did not consent, granted the Second Stipulation. Once the District Court was informed the sole beneficiary did not consent, it entered its Order. Under the deferential abuse of discretion standard, the District Court’s Order clearly identified the rationale for its decision and the Order is well within the bounds of logic and reason. As the District Court noted:

Notwithstanding creditor claims, it’s clear to the Court there’s a sole heir, and that is Mr. [John] Pinkerton, correct? And it is clear also, I believe, that he did not stipulate to the <inaudible> of stipulation. And as I stated, it appears the PR made an error rather than intentional misrepresentation to the Court.

Transcript pp. 6:25 – 7:2. The District Court further reasoned:

You have a claims bar date, you have a statute that says your petition to challenge the denial must be filed within 60 days, and if not it’s denied. Judge Moses granted, based on [the First] stipulation [Doc. 17], an extension of that time [Doc. 18], to file those petitions, and zero were filed. End of story. Then a [Second] stipulation, the non-stipulation stipulation, my language, was filed and again, multiple days after that [June 23, 2023] expiration, I signed an order stating you can file your petitions. Okay. So, that’s problematic.

Transcript pp. 40:9 – 40:19. As the District Court detailed in its Order, “All parties at the hearing stipulated and agreed to the fact that the [Second] Stipulation provided to the Court and upon which the Court issued its Order [granting second extension of time] was erroneous and was not stipulated to by all parties.” Doc. 77. “Specifically, the sole heir under decedent’s will, John Jay Pinkerton, did not stipulate to the ‘Stipulation’ for an extension of time to respond to disallowance of creditors’ claims. Consequently, the Court issued its Order based upon an erroneous misrepresentation of the Stipulation.” *Id.*

Simply put, the District Court was unaware the sole beneficiary to the Estate did not consent to the extension of time. The District Court extended the deadline without that knowledge. When the District Court learned no petitions were filed by the 60 Day Deadline, the Second Stipulation was filed after the deadline and the sole beneficiary did not agree to the stipulation or extension, it rescinded the prior order. The District Court’s reasoning is based on conscientious judgment and does not exceed the bounds of reason, nor the broad discretion afforded in probate matters.

II. None of the Claimants filed a petition for allowance or commenced an action against the P.R. by the June 23 deadline.

The original Order Granting Joint Stipulation for Extension of Time to Respond to Disallowance of Creditor’s Claims stated, “IT IS HEREBY ORDERED that Claimants shall have until June 23, 2023 to petition for allowance of their

respective creditors' claims on file herein." Doc. 18. That date came and went without any Claimants filing a petition for allowance, commencing a proceeding or timely filing a request with the District Court for an extension. Accordingly, at that time, the disallowed creditor claims were barred as a matter of law. M.C.A. § 72-3-805(1) ("A claim that is disallowed in whole or in part by the personal representative is barred so far as it is not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days...."); *Bozeman Deaconess Hosp. v. Estate of Rosenberg*, 225 Mont. 232, 234, 731 P.2d 1305, 1306 (1987) (affirming district court award of summary judgment in favor of the estate, finding that the hospital's claim was barred for failure to meet the time limits contained in M.C.A. § 72-3-805).

III. Once a claim is time barred, M.C.A. § 72-3-802(1) requires the consent of the Successors in interest.

The Second Stipulation was not executed by the P.R. until June 30, 2023, one week after the June 23, 2023, deadline. Doc. 20. Nor was the Second Stipulation filed with the District Court until July 3, 2023, 10 days after the deadline. *Id.* Once the claim was time barred, it could not be resurrected. "The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred." M.C.A. § 72-3-805(1).

The law further states, “After it is barred, [a creditor claim] may be allowed and paid *only if* the estate is solvent and *all successors* whose interests would be affected consent.” M.C.A. § 72-3-805(2) (emphasis added). John, as the sole beneficiary of the Estate, is a successor. M.C.A. § 72-1-103(50). The creditor claims were automatically barred after June 23. Thus, the only way the claims can be allowed are if the Estate is solvent and if John consents. John does not consent.

Montana law further requires “the consent of all successors whose interests would be affected” for a personal representative to “waive any defense of limitations available to the estate.” M.C.A. § 72-3-802(1). A defense of limitations available to the Estate includes the limitations period governing when a creditor must file a petition on a claim, especially if that deadline has expired. *See Bozeman Deaconess Hospital*, 225 Mont at 237, (1987). John has not waived any limitations period defense. The P.R. and Claimants do not have authority to stipulate to extend the deadline on June 30, 2023, a week after the June 23 deadline expired. Because none of the Claimants filed a petition for allowance or commenced a proceeding by the June 23, 2023, deadline, the claims are barred.

Indeed, once a claim is time barred, the personal representative, and even the court, lacks the authority to revive the claim. As detailed in *In re Estate of Hockemeier*, 280 Neb. 420, 425, 786 N.W.2d 680, 685 (2010), which interpreted a statute identical to M.C.A. § 72-3-805(1), once a claim is time barred, the court lacks

jurisdiction to allow the claim. *Id.* (“where a properly presented claim against an estate is disallowed by a personal representative pursuant to § 30–2488(a) [identical to M.C.A. § 72-3-805(1)], and notice of a pending bar is given as provided therein, the filing of a petition for judicial allowance of the claim within the 60–day period specified in § 30–2488(a) is a jurisdictional requirement.”); *Mathieson v. Hubler*, 1978-NMCA-119, ¶ 69, 92 N.M. 381, 394, 588 P.2d 1056, 1069 (“the trial court had no authority, under 3-804(C) [analogous to M.C.A. § 72-3-805(1)], to extend the time for proceeding against the personal representative after the sixty-day period had expired. This holding is consistent with New Mexico decisions prior to enactment of the Probate Code which required actions based on the denial of a claim to be brought within the statutory time period.”); *see generally Baker Nat. Bank v. Henderson*, 151 Mont. 526, 529, 445 P.2d 574, 576 (1968) (“The appellant's failure to file its creditor's claim within the statutory period had the effect of barring the claim. Not only was the remedy destroyed, but the right itself wiped out, and the claim ceased to exist.”).

Once a claim is barred, it “no longer exists, [and] that which has terminated, cannot be extended.” *Mathieson*, 92 N.M. at 394, 588 P.2d at 1069; *In re Estate of Lienemann*, 277 Neb. 286, 290, 761 N.W.2d 560, 563 (2009) (petition filed on 61st day barred because it was not filed within 60 days as set forth in U.P.C.). Here,

because the claims were barred at the time the Second Stipulation was filed with the District Court, and without John's consent, the claims are barred.

IV. *Northland Royalty Corp. v. Engel* does not empower the P.R. the authority to toll statutory deadlines.

Claimants argue *Northland Royalty Corp. v. Engel*, 2014 MT 295, 377 Mont. 11, 14, 339 P.3d 599, 60 and M.C.A. § 72-3-618 grant the P.R. authority to toll statutory deadlines. This is incorrect. Review of the statute and case reveals limited, if any, application to the instant dispute. *Northland* considered whether a third-party purchaser of mineral rights who dealt with a P.R. in good faith was statutorily protected from devisees who asserted ownership interests in the minerals. *Northland* has nothing to do with creditor claims being barred or extending deadlines.

Likewise, the Official Comments to M.C.A. § 72-3-618 note, "This section qualifies the effect of a provision in a will which purports to prohibit sale of property by a personal representative." The statute makes no mention of tolling any statutory deadlines. Further, the statute pertains to someone who either (i) "assists a personal representative" or (ii) "deals with a personal representative for value." Neither applies here. Claimants were assisting themselves to find an attorney more than nine months after the probate was opened and buy more time to file their petitions and did not deal for anything with value with the P.R., such as purchasing estate assets from the P.R. as occurred in *Northland*. The case and the statute do not provide any authority to extend the 60 Day Deadline or other statutory deadlines.

V. *Boyer v. Sparboe* does not toll the 60 Day Deadline.

The Claimants rely on *Boyer v. Sparboe* 263 Mont. 289, 867 P.2d 1116 (1994) to toll the 60 Day Deadline. In *Boyer*, the Court held that an “under very limited circumstances” an estate cannot use M.C.A. § 72-3-803 to bar a creditor’s claim where the estate: (1) has actual notice of a claim; and (2) through a representation, gives assurances to the claimant that no creditor’s claim action is necessary to protect the claim. *Id.* at 294.

This case is distinguishable. In *Boyer*, the P.R. gave multiple assurances that no creditor claim was necessary and then sought to bar the untimely claim. Here, the P.R. did not seek to bar the claims as being untimely. In fact, directly opposite of *Boyer*, the P.R. took the position the claims were not barred. The issue here is whether the District Court abused its discretion in entering its Order rescinding the Second Stipulation. John never consented to the Second Stipulation or second extension. Nor is there any evidence John tricked the Claimants into believing they did not need to comply with the 60 Day Deadline. The District Court, being unaware John did not consent to the Second Stipulation, granted a further extension on July 18, weeks after the June 23 deadline expired. Once the District Court was made aware that the Second Stipulation was signed and filed after the deadline and that John, the sole beneficiary of the Estate did not consent (something the Claimants and P.R.

were aware of), the District Court entered its Order. Simply put, *Boyer* does not apply because the P.R. did not bar the claims, the District Court did.

VI. The Memorandum of Understanding did not waive any deadlines.

The Claimants argue a Memorandum of Understanding (“MOU”¹) entered between the Claimants, P.R. and John to provide a framework how to manage and operate the LLC’s Montana ranch waives statutory deadlines. This is factually and legally erroneous as demonstrated by the Claimants’ own conduct. Indeed, after entering the MOU in November 2022, the Claimants still filed creditor claims against the Estate in December 2022, within the four month deadline set by the Notice to Creditors. Had the Claimants truly believed the MOU was a waiver, they would not have filed claims.

Similarly, in February 2023, several months after the MOU was executed, the P.R. served and filed Notices of Disallowance against the Claimants. Docs. 12 -16. The Notices explicitly stated, “Failure to petition for allowance of claim in the Court, or to commence a proceeding against the Personal Representative on the claim, *within 60 days after the date of mailing of this Notice of Disallowance of Claim, will result in the claim being barred.*” *Id.* (emphasis added). The Claimants were aware and put on notice the MOU did not alter any statutory deadlines.

¹ The Claimants characterize to the MOU as a “stand down” agreement. The MOU makes no reference to any “stand down” or extension period and John has never agreed with and objects to such characterization. Doc. 39 pp. 2 – 6.

The Claimants' MOU waiver argument further crumbles considering the fact the Claimants signed the First Stipulation and the District Court entered an order extending the original April 24, 2023, 60 Day Deadline. Doc. 17. If the MOU "waived" the statutory deadlines, then the First Stipulation and order would be entirely superfluous. The Claimants requested the First Stipulation and sought court approval of the deadline extension precisely because they were aware the original deadline was going to expire on April 24, 2023. As detailed in the First Stipulation, "The Parties are working to resolve several issues concerning the Eddleman Estate... However, the resolution process, if successful, will likely take longer than *the 60 days required of the Claimants by statute to file petitions for allowance of the claims.*" Doc. 17 (emphasis added). Thus, the Claimants themselves stipulated and acknowledged they had 60 days to petition for allowance. *Id.* The First Stipulation further provided the parties agreed "to extend the deadline set forth in M.C.A. § 72-3-805(1) for Claimants to file petitions for allowance of their respective claims until June 23, 2023." *Id.* (original emphasis). The Claimants were plainly aware the deadlines were governed by M.C.A. § 72-3-805(1), not by the MOU, and the deadline was June 23. By the same logic, if the MOU was a waiver, the Claimants would not have requested the Second Stipulation either.

Under Montana law, waiver is a voluntary and intentional relinquishment of a known right or claim; it may be proven by express declarations or by a course of

conduct which induces the belief that the intent and purpose was waiver. *McKay v. Wilderness Dev., LLC*, 2009 MT 410, ¶ 28, 353 Mont. 471, 221 P.3d 1184. To establish a knowing waiver, the party asserting waiver must demonstrate the other party's knowledge of the existing right, acts inconsistent with that right, and resulting prejudice to the party asserting waiver. *Olsen v. Milner*, 2012 MT 88, ¶ 31, 364 Mont. 523, 529, 276 P.3d 934, 939.

The MOU makes no reference to any “waiver” “creditor claims”, “statutes of limitations”, “creditor claims periods”, “standdown periods” extensions of time to file claims, or any other stipulation to waive any statutory deadlines. Appx. 4 – 9. A plain review of the MOU demonstrates there are no express declarations by John or his agents of any intentional relinquishment of any creditor deadlines. John did not knowingly, voluntarily and intentionally relinquish any defenses or waive statutory deadlines. The MOU governed the continued management of the ranch after Dan died, not the extension of time periods for creditor claims against the Estate. The MOU was entered into for the express purpose “to continue running the operations of the Company and the Oar Lock Ranch located in Montana (‘Montana Ranch’), upon the terms and conditions stated herein, and with the intention to administer the Estate of Dan Eddleman.” As the MOU identified, “John will continue to act as the ranch manager of the Montana Ranch. John shall have broad authority over the day-to-day activities of the Montana Ranch. Such authority shall include exclusive

authority in raising and selling livestock in the ordinary course of business....” The MOU does not contain any waivers of any deadlines.

The Claimants argue that the inclusion of language that the parties act in good faith is tantamount to waiver. This is incorrect. Good faith and waiver are entirely distinct legal concepts. Simply because parties include a good faith provision in contract (implied in every contract) does not equate to a knowing, voluntary and intentional waiver. The record reflects John acted in good faith, seeking on multiple occasions to mediate and stipulated to extend the original 60 Day Deadline. During that extension period, John’s overtures to mediate were met with hostility or silence, including being told, “You leave no other option than to move forward with litigation.” At that point, any further extension was futile and delayed the process.

As the beneficiary of the Estate, John has a vested interest in the statutes being implemented as written and the Estate being administered in a timely manner. Simply because he is seeking to enforce a statutory deadline does not mean he is acting in bad faith or violation of the MOU. Ultimately, by entering the MOU, John reached an agreement on the practical issues of how to manage the ranch. He did not voluntarily and intentionally relinquish any known rights or privileges.

VII. The Claims at issue cannot be extended by the P.R.

A Personal Representative may consent to *an* extension of the 60 Day

Deadline under three limited circumstances: (1) a claim that is not presently due; (2) a claim that is contingent; or (3) a claim that is unliquidated. The law provides:

If a claim is presented under subsection (1), a proceeding on the claim may not be commenced more than 60 days after the personal representative has mailed a notice of disallowance, *but in the case of a claim that is [1] not presently due or [2] that is contingent or [3] unliquidated, the personal representative may consent to an extension of the 60-day period* or, the court, on petition, may order an extension of the 60-day period, but the extension may not run beyond the applicable statute of limitations.

M.C.A. § 72-3-804(3) (emphasis added). A creditor *must* state whether the claim is contingent or unliquidated or not presently due. M.C.A. § 72-3-804(1).

Here, the P.R. requested permission from the District Court to enter an order approving the Second Stipulation. Because the decision to approve the Second Stipulation and grant the extension was made by the District Court, as well as the decision to enter the Order rescinding the Second Stipulation, the central issue is whether the District Court abused its discretion, not whether the P.R. granted an extension. To the extent the Court evaluates whether the P.R. extended the June 23 deadline, the facts show the Second Stipulation was executed after the deadline.

Moreover, the claims do not fall into the classes of claims the P.R. can extend. The claims from Madelyn (Doc. 13a), Jobey (Doc. 15a), Sandra (Doc. 16a) and the LLC (Doc. 14a), by their own written sworn statements, do not meet any of three exceptions. The claims from Jobey and the LLC state, “All the above [claim] amounts are *justly currently due and payable*. For the avoidance of doubt, the

Claimant has given credit to the Estate for payments and offsets to which it is entitled and *the balance claimed above is justly due.*” Docs. 14a and 15a (emphasis added). Sandra’s claim similarly states, “All the above amounts are justly payable. For the avoidance of doubt, the Claimant has given credit to the Estate for payments and offsets to which it is entitled and the balance claimed above is justly due.” Doc. 16a. Madelyn’s claim also states, “All the above amount is justly currently due and payable. For the avoidance of doubt, with the adjustment set forth in #3 above, the Claimant has given credit to the Estate for payments and offsets to which it is entitled and the balance claimed above is justly due.” Doc. 13a.

In reviewing each of these claims, the first exception in M.C.A. § 72-3-804(3), “not presently due”, plainly does not apply. A claim that explicitly identifies as “currently due and payable” does not qualify as a claim that is “not presently due.” The second exception, a contingent claim is a “claim that has not yet accrued and is dependent on some future event that may never happen.” CLAIM, *Black's Law Dictionary* (11th ed. 2019). Because each of the claims are “currently due and payable” for alleged debts Dan incurred during his lifetime, the claims are not contingent on some future event or occurrence that may never happen.

The third and final limited exception also does not apply. An “unliquidated claim” is “[a] claim in which the amount owed has not been determined.” CLAIM, *Black's Law Dictionary* (11th ed. 2019). Each of the claims identify a specific

determined dollar amount that is alleged due and owing. Each of the claim computations give credit to the Estate for payments and offsets in reaching the calculated amount of the claim. Indeed, the claims from the LLC and Jobey include spreadsheets calculating the alleged amounts due and owing. Finally, none of these claims identified as “not presently due”, “contingent” or “unliquidated.” If these claims qualified under any of the three exceptions, the claimants were required to identify them as such. M.C.A. § 72-3-804(1). They did not. Because the claims do not fall into the categories of claims the P.R. may extend, they are barred.

Only one of the claims, the Trust claim, identifies as contingent. One portion of the Trust’s claim (for alleged legal fees) is “currently due and payable,” while a second portion, a restatement of the LLC claim, is expressed as “contingent.” Doc. 14a. Upon examination, the Trust claim is not contingent on any future event, it is simply a duplication of the LLC claim. The Trust claim states, “To the extent the Claimant’s fair market value of the LLC is not made whole via the LLC’s claims on the Estate, the Claimant hereby files a contingent claim against the Estate for such shortage, if any.” Doc. 12a. Because the LLC claim, by its own terms, is “currently due and payable” for a specific amount based alleged loans and improper distributions Dan withdrew from the LLC when he was alive, the LLC claim is not contingent on any future event that may or may not happen. The alleged right to payment exists presently to the LLC. Because the Trust claim is a duplication of the

LLC claim which is not uncertain and is based on alleged events that have already taken place given rise to a specific amount that is “currently due and payable”, the Trust Claim is not entitled to extension.

Moreover, the Trust claim, which is based on alleged unequal distributions Dan withdrew from the LLC when he was alive, is not valid against the Estate. Under Montana law, an LLC member is entitled to receive distributions from an LLC as specified in the operating agreement. M.C.A. § 35-8-601. Here, the applicable LLC Operating Agreement provided, “All distributions of cash or other property other than in liquidation of the [LLC] shall be made to the Members pro rata in proportion to their respective Ownership Percentages in the [LLC] on the date of such distribution.” Appx. 48. The Trust argues Dan took out more than his pro-rata share of the distributions, to the detriment of the Trust.

Only the LLC can make a claim against the Estate for improper distributions taken out of the LLC. As provided in the LLC Operating Agreement, “Except as set forth in the succeeding sentence, or as required by the [Montana LLC] Act, no Member shall have any liability to restore all or any portion of a deficit balance in such Member's capital account. Notwithstanding the foregoing, *a Member shall be obligated to pay to the Company* the Member's share of all Surplus Capital Accounts....” Appx. 48. When a member does not receive a proportionate distribution, that *member has a claim against the LLC*, not the member who received

the disproportionate distribution. M.C.A. § 35-8-606 (“Subject to 35-8-905, when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.”); *McCormick, Inc. v. Fredericks*, 2020 ND 161, ¶ 35, 946 N.W.2d 728, 736 (holding that majority member of LLC could not be required to pay minority member for unequal distributions from LLC; when majority member received his distributions, minority member also became entitled to distributions and had the status of a creditor of the LLC, not as a creditor of the majority member individually). To the extent the Trust argues Dan withdrew disproportionate amounts from the LLC, the Trust has the status of a creditor against the LLC, not the Estate. The P.R. did not have authority to extend the 60 Day Deadline for any of the Claims.

CONCLUSION

John respectfully requests the Court affirm the District Court.

DATED this 7th day of June, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that Appellee's Response Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double spaced, except for block quotations and footnotes, and the word count calculated by Microsoft Word is 7,518 words, excluding Table of Contents, Table of Authorities, and Certificate of Compliance.

Dated this 7th day of June, 2024.

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