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,

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APPELLANT'S REPLY 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
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@wharperlaw.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 ..... **Error! Bookmark not defined.**

Table of Authorities ii

Summary of Argument.....1

Argument.....3

I. The District Court abused its discretion when it denied Katherine's Estate's Motion to Intervene.. 3

II. The District Court abused its discretion when it denied relief under the Order because the Settlement Agreement was a product of mutual mistake of fact and law, and the Order is void as a matter of law. 8

III. The District Court erroneously applied laches to this cause of action and abused its discretion in the application of laches factors. 13

Conclusion 14

Certificate of Compliance 15

Certificate of Service 16

Table of Authorities

Cases

Estate of Schwenke v. Becktold,
242 Mont. 127, 827 P.2d 808 (1992) 2, 4
In re Adoption of C.C.L.B.,
2001 MT 66, 305 Mont. 22, 22 P.3d 646 3
Kauffman-Harmon v. Kauffman,
2001 MT 238, 307 Mont. 45, 36 P.3d 408 13
Smith v. Lindemulder,
2022 MT 119, 409 Mont. 69, 512 P.3d 260 3,13

Statutes

Mont. Code Ann. § 1-3-208 13
Mont. Code Ann. § 72-3-122(1)(d) 12

Rules

Mont. R. Civ. P. 24(a) 1,2
Rule 1.7(a) of Montana Rules of Professional Conduct 5
Rule 11 of the Montana Rules of Appellate Procedure 16

IN THE SUPREME COURT
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SUMMARY OF ARGUMENT

The first issue before the Court is whether Appellant, the Estate of Katherine Grundhauser ("Katherine's Estate"), is entitled to intervention as a matter of right under Mont. R. Civ. P. 24(a). Such intervention is warranted if (1) the request is timely, (2) the applicant has an interest in the subject matter of the action, (3) the protection of that interest may be impaired by the disposition of the action, and (4) the interest is not adequately represented by the parties. *Id.* Appellee, the Estate of Lena Johnson ("Lena's Estate"), does not dispute that Katherine's Estate has an interest in the subject matter of the action; that Katherine's Estate's interest will be impaired by the disposition of the action; nor that Katherine's Estate's interest is not adequately represented by the parties. Lena's Estate only disputes that the motion for intervention was timely. (Appellee's Ans. Br. p. 13, May 29, 2024.) Accordingly, Katherine's Estate addresses only the disputed issue of timeliness in this reply.

Specifically, Lena's Estate claims that because the parties were aware of Lena's Will, which referenced the Grant Deed, as early as October 2020 or June 2021, Katherine's Estate has no right to intervene in this case. In support, Lena's

Estate relies on this Court's holding in *Estate of Schwenke v. Becktold*, 242 Mont. 127, 827 P.2d 808 (1992). However, *Schwenke* is notably distinguishable both legally and factually from this case, and its holding does not preclude Katherine's Estate's intervention. As explained in its opening brief, Katherine's Estate has satisfied the requirements for intervention as a matter of right under Mont. R. Civ. P. 24(a), and the District Court erred in holding otherwise.

The second issue before the Court is whether the District Court abused its discretion when it denied Katherine's Estate's Motion for Relief from Judgment. Without addressing the merits of Appellant's argument that the Settlement Agreement ("Agreement") is void, Lena's Estate instead relies on the fact that the parties to the action knew of the controlling Grant Deed. This argument overlooks the glaring fact that the District Court has ordered the Agreement to be binding on a non-party to the action. The District Court also erroneously conflates Petitioner Steven Grundhauser ("Steve") with Katherine's Estate. Under Montana law, Katherine's Estate is entitled to relief from the District Court's November 9, 2023 Order.

The final issue before the Court is whether the District Court abused its discretion when it applied laches as an equitable remedy and precluded Katherine's Estate from intervening and relief from its November 9, 2023 Order. Lena's Estate argues Katherine's Estate, an unrepresented non-party in the underlying action,

was "negligent in timely asserting any rights," but fails to address the factors a Court should consider when it applies the remedy. (Appellee's. Ans. Br. p. 15.) Though elapsed time is certainly relevant to a court's analysis, it is not dispositive. *Smith v. Lindemulder*, 2022 MT 119, ¶ 21, 409 Mont. 69, 512 P.3d 260. The District Court abused its discretion in its application of the factors, and the principal consideration of inequity of permitting a claim to be enforced weighs in favor of intervention and relief from the November 9, 2023 Order.

ARGUMENT

I. Katherine's Estate Emergency Motion to Intervene was timely. Therefore, Katherine's Estate is entitled to intervention as a matter of right pursuant to Mont. R. Civ. P. 24(a).

The four factors the majority of courts consider when deciding whether a motion to intervene is timely:

> (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). Appellant's Opening Brief addressed each of these factors. Importantly, none of these factors are, by themselves, dispositive. *Id*. Nevertheless, Appellee relies entirely on the first factor to support its argument and fails to address the

remaining three factors, namely prejudice to each party and the unusual mitigating circumstances.

Appellee relies on *Estate of Schwenke v. Becktold* to support its claim that the Emergency Motion to Intervene was not timely and maintains that a "reading of [*Schwenke*] almost mirrors that of this case." (Appellee's Answer Br., p. 9.) Notably, several circumstances in *Schwenke* distinguish it from this case, and it does not preclude Katherine's Estate from intervention. First, the moving party, State Farm, was actively involved in the underlying proceedings and was represented by counsel. Second, the district court in *Schwenke* did not issue any orders against a party compelling action from a party that had not been made a party to the action. Third, State Farm requested to intervene for the sole purpose of postponing a trial and requested not to be made a party. Fourth, State Farm actually did nothing until it moved for intervention within a week of trial despite State Farm's agent and attorney attending a discovery deposition for one of its insureds. These facts stand in stark contrast to the facts in this case.

Unlike in *Schwenke* where State Farm actively participated in the action, Katherine's Estate had not been opened, and therefore was not actively involved in the underlying proceedings nor present at the settlement conference where the parties reached an agreement that would have required Katherine's Estate's consent in order to bind Katherine's Estate. Steve, as a Petitioner (for the limited

purpose of seeking appointment as Personal Representative of Lena's Estate), was represented at the settlement conference despite having no interest in Lena's Estate. (Appellant's Opening Br. p. 3, April 29, 2024.) Katherine's Estate, however, was not represented, nor was its interest contemplated by the parties. Counsel for Petitioners could not have represented both the Petitioners and Katherine's Estate in the underlying action without violating counsel's duty of loyalty to one of the parties. Rule 1.7(a) of Montana Rules of Professional Conduct. Even if such representation could be imputed onto Katherine's Estate, Steve did not attend the settlement conference because both parties understood Steve held no interest in Lena's Estate (Appellant's Opening Br. p. 8).

Moreover, the District Court has issued an Order compelling Katherine's Estate to execute documents to effectively release its 50% interest in the property. This stands in contrast to *Schwenke* where State Farm, a non-party, was not ordered by the court to take any action. And unlike the facts in *Schwenke*, Katherine's Estate has requested to be made a party to this action. The purpose of the Emergency Motion to Intervene was not to further delay the proceedings or take a second bite at the apple. The purpose was to correct one of the many errors in the "cavalcade of errors" the District Court noted in its Order. (App. 1, Order Denying Mot. to Intervene and Mot. for Relief from the Judgment, p. 6.) Katherine's Estate has simply requested to engage in the process of resolving any

issues related to the property it owns. This is evidenced by Katherine's Estate's counsel's letter sent to both Petitioners and Lena's Estate. (App. 3, Decl. Colstad, ¶ 9; Ex. E, Ltr. Black to Miller and Harper, Oct. 3, 2023.)

Notably, the party objecting to the motion to intervene in *Schwenke* gave explicit notice of its claims against State Farm more than a year before trial and yet State Farm waited until one week before the trial to intervene. No such facts exist here. As is supported by the record, Lena's Estate was put on notice of the error and then failed to correct the error. (*See* App. 5, Decl. of Brian Miller, ¶¶ 5-6, Nov. 28, 2023; App. 3, Decl. Colstad, ¶ 9; Ex. E; and App. 6, Transcr. Proc. 21:3-16, Sept. 27, 2023.) In fact, even after Katherine's Estate had been opened, Lena's Estate was again provided notice of the error, and Lena's Estate simply ignored the opportunity to correct the mistake. (*See* App. 3, ¶ 9; Ex. E.) Rather than Katherine's Estate's failure to act, it was Lena's Estate's failure to act that resulted in, or at the very least contributed to, the prolonged delay.

Lena's Estate attempts to convey a timeline wherein Katherine's Estate failed to act for 17 years. But as explained in the Opening Brief, this ignores Lena's Estate contributing to the delay. Even taking Lena's Estate's argument as true, that Steve and his attorney had both actual and constructive notice of the deed as early as November 14, 2022 (after the settlement conference), Lena's Estate continued to suggest that Lena's Will was the controlling document. (App. 5, ¶ 6;

Ex. 2.) In reality, the following timeline more accurately portrays the events of this matter:

- August 2022 – A Settlement Conference was held in August 2022. (App. 1; Ex. A.)

- November 14, 2022 – Petitioners' counsel notifies Lena's Estate by letter of mutual mistake of fact and law as to controlling document. (App. 5; Ex. 1.)

- November 14, 2022 – July 2023 – Communications between parties reaching erroneous conclusion that Lena's Will controlled the disposition of the property. (App. 5; Exs. 1-5.)

- Approximately November 2022 – Title Company requests a deed from Katherine's Estate to Lena's Estate. (App. 3; Ex. A., p. 6:9-24.)

- June 15, 2023 – Counsel for Petitioners files motion to withdraw as Steve's attorney. (Mot. Withdraw as Counsel for Steve Grundhauser, June 15, 2023.)

- February - September 2023 – Steve seeks independent counsel in light of new information regarding title company's request for a deed from Katherine's Estate. (App. 5, ¶¶ 8-10.)

- September 19, 2023 – probate for Katherine's Estate is opened. (App. 8, Cause No. DP-23-104, Order of Informal Probate of Will and Appointment of Personal Representative, Sept. 19, 2023.)

- September 27, 2023 – Katherine's Estate seeks clarification on whether Agreement is binding on Katherine's Estate, a non-party to the action. The Court indicates that it is "not making a determination as to [Katherine's] estate." (App. 3; Ex. A., p. 23:10-23.)

- November 9, 2023 – Court issues order seeming to compel Katherine's Estate to execute documents necessary to complete transfer of property to Lena's Estate. (App. 9, Finding of Facts, Conclusions of Law and Order,

p. 6, Nov. 9, 2023.)

- December 1, 2023 – Katherine's Estate files Emergency Motion to Intervene. (App. 10 Emerg. Mot. to Intervene, Dec. 1, 2023.)

Under this timeline, Katherine's Estate was not negligent in asserting its rights. Any prejudice to the parties to the underlying action can also be attributed to their own actions and inactions.

Though timeliness is the only issue addressed in Lena's Estate's Answer Brief, this Court is not precluded from considering the other factors and mitigating circumstances that implicate Lena's Estate in any delay. The three factors not addressed in Appellee's Answer Brief are all addressed in the Opening Brief and weigh in favor of intervention. Considering the mitigating circumstances addressed above and in the Opening Brief, this Court should find that the District Court abused its discretion in denying the Emergency Motion to Intervene.

II. The Agreement is either a product of a mutual mistake of fact and law, or the parties to the underlying action failed to join a required party under M.R.Civ.P. 19. Under either circumstance, the District Court abused its discretion by denying relief from the November 9, 2023 Order, and the Order is void as a matter of law.

The second issue before the Court is whether the District Court abused its discretion in denying relief from the November 9th Order (1) concluding the Agreement was not a product of a mutual mistake of fact and law, and (2) compelling Katherine's Estate's compliance to an agreement in an action to which

it had never been made a party. 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).

Here, Lena's Estate claims that Appellant is attempting to "dupe" the Court into believing that "no one had ever read the Will or tried to settle the matter based upon full knowledge." (Appl. Answer Brief, p. 14.) Instead, Appellant's argument that the Agreement was a product of a mistake of fact and law is supported by the record—most notably that Katherine's Estate was never joined as a party and the Agreement does not mention Katherine's Estate. (*See* App. 5; Ex. 6, Settlement Agreement.) In fact, the language from the Agreement Appellee cites in its Answer Brief does not counter Appellant's position that Katherine's Estate is not mentioned in the plain language of the Agreement. (*See generally* Appellee's Br. p. 11; *see also* App. 5, Ex. 6.) Nor does it support Appellee's argument that Steve <u>is</u> a beneficiary to Lena's Estate, when the plain language of the Agreement shows otherwise:

1. **Recitals**
   a. Releasors are Petitioners in the above-titled action and beneficiaries under the Last Will and Testament of Lena Amelia Johnson, and have filed a petition for probate in Butte Silver-Bow County, Cause No. DP 20-83. Steve Grundhauser is listed on the petition for the sole purpose of petitioning to get appointed as personal representative of the Estate of Lena Amelia Johnson and is not listed as a beneficiary under the Last Will and Testament of Lena Amelia Johnson.

(App. 5, Ex. 6.) The plain language binds Releasors: Melissa Coffin, Brooke Mattsson, and Cindy Carver. *Id.* Any reference to "Releasors" seemingly refers to Steve's daughters:

RELEASE AND SETTLEMENT AGREEMENT

RELEASORS: MELISSA COFFIN, BROOKE MATTSSON, and CINDY CARVER

(*Id.*)

That said, even if this Court ignores those two facts, the parties nevertheless negotiated a binding contract without one of the necessary parties present and without joining them as a party to the action. Under either scenario, Lena's Estate and the Petitioners cannot benefit from their own failure to effectuate an enforceable settlement agreement.

Additionally, Lena's Estate argues that "Everyone knew the Deed existed,

but negotiated and mediated knowing the outcome would be the same," without citation to the record. (Appellee's Answer Br. p. 11.) The outcome, however, is quite different if all necessary parties had been joined:

Ownership interests under the existing Settlement Agreement

Lena's Estate as 100% owner

- Ken Johnson – 50%
- Cindy – 16.7% (by right of representation)
- Melissa – 16.7% (by right of representation)
- Brooke – 16.7% (by right of representation)

Ownership interests under Montana law

Lena's Estate as 50% owner

- Ken Johnson – 25%
- Cindy – 6.25% (by right of representation)
- Melissa – 6.25% (by right of representation)
- Brooke – 6.25% (by right of representation)
- Jason – 6.25% (by right of representation)

Katherine's Estate as 50% owner

- Steven Grundhauser 50%

As noted in Appellant's Opening Brief, "Montana Courts do not have the authority to order a non-party to engage in conduct, nor can they enforce such an order." Here, neither Jason Grundhauser nor Katherine's Estate—both necessary parties to effectuate the intent of the Agreement—voluntarily appeared, nor were they served by one of the existing parties. Steve's status as personal representative

of Katherine's Estate cannot now be imputed on Steve the petitioner out of convenience to the other parties. Katherine's Estate, a separate legal entity, had not been opened[1], nor joined as a necessary party to the underlying action. Appellee has not disputed these facts. Further, no order, pleading, or agreement in the underlying action contemplated Katherine's Estate's interest in the Property. Steve as a petitioner is not synonymous with Katherine's Estate. Such a conclusion is erroneous.

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

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[1] Both the District Court and Appellee have stated that Katherine's Estate was not opened properly. (Transcr. Proc. 7:14-8:24 and 17:10-17, Jan. 9, 2024; Appellee's Answer Brief, p. 12.) Under Mont. Code Ann. § 72-3-122(1)(d), an informal appointment proceeding may be commenced thereafter, if no proceedings, concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that to confirm title to property in the successors to the estate…] A formal probate was not required because Katherine had a will, its validity was not questioned, and there were not disputes as to Steve's appointment as personal representative or to the distribution of the assets requiring a formal probate for Katherine's Estate. Though Katherine and Steve's children are only contingent beneficiaries to Katherine's Estate, it is worth noting that Cindy, Melissa, and Brooke agreed to correct the errors of this case, and simply wanted both Estates administered correctly.

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." *Lindemulder*, ¶ 21.

Here, the District Court abused its discretion in its application of the factors considered when applying laches as an equitable remedy. (Appellant's Opening Br. p. 31.) Steve has not been negligent, and there are perfectly reasonable reasons for any delay. The District Court had the discretion to remedy the "cavalcade of errors" and instead disregarded the inconvenient fact that all parties involved contributed to any delay in intervention. The other parties did not have clean hands and should not benefit from their own wrongdoing. *See Kauffman-Harmon v. Kauffman*, 2001 MT 238, ¶ 19, 307 Mont. 45, 36 P.3d 408 ("The doctrine of clean hands provides that parties must not expect relief in equity, unless they come into court with clean hands." (internal citations and quotations omitted.)); *see also* Mont. Code Ann. § 1-3-208 ("a person may not take advantage of the person's

own wrong.") Any resulting prejudice to Petitioners and Lena's Estate would have been minimal in comparison to the resulting prejudice Katherine's Estate faces under the District Court's January 13, 2023 Order. Lena's Estate and its beneficiaries should not benefit from the parties' unilateral decision to exclude Katherine's Estate from the settlement conference and the underlying proceedings, nor should Lena's Estate benefit from its ignored opportunities to remedy the situation earlier in the proceedings.

CONCLUSION

For the reasons stated in the Opening Brief and this Reply Brief, reversal of the District Court's decision denying intervention and denying relief from the November 9th Order is warranted on three grounds: (1) the District Court abused its discretion when it denied Katherine's Estate's 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. Katherine's Estate is a non-party to this action and will be severely prejudiced by the Court's Order if it is upheld. Katherine's Estate respectfully requests this Court reverse the Court's Order and remand accordingly.

Dated this 12th day of June 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 2932 words, not averaging more than 280 words per page, excluding the certificate of service and certificate of compliance.

Dated this 12th day of June 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 June 12, 2024, a true and accurate copy of this brief was served on counsel for the Respondents/Appellees at the following addresses:

By Epass
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 Epass
W. Wayne Harper
HARPER LAW FIRM
49 North Main Street, Suite C
Butte, MT 59701
wayne@wharperlaw.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
kkrueger@mt.gov

_____/s/_____
Julie Ludwick

CERTIFICATE OF SERVICE

I, Erika Delane Colstad, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 06-12-2024:

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

Natalie Louise Black (Attorney)
321 W 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 Erika Delane Colstad
Dated: 06-12-2024