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

IN THE MATTER OF THE ESTATE OF WARREN DAN EDDLEMAN

APPELLANTS' REPLY BRIEF

On Appeal from the Montana Thirteenth Judicial District Court, Yellowstone County, Docket No. DP 22-0300, the Honorable Judge Thomas Pardy, Presiding

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APPEARANCES:

Mark D. Parker
Michael L. Dunphy
Parker, Heitz & Cosgrove, PLLC
P.O. Box 7212
Billings, MT 59103-7212
Telephone: (406) 245-9991
Facsimile: (406) 245-0971
markdparker@parker-law.com
mdunphy@parker-law.com

Gary W. Bjelland
Jardine, Stephenson, Blewett & Weaver, P.C.
P.O. Box 2269
Great Falls, MT 59403
Telephone: (406) 731-5510
Facsimile: (406) 761-4273
Email: gbjelland@jardinelaw.com

Attorneys for Appellants Jobey Eddleman and Ron Williamson, Trustees of the Madelyn Lue Eddleman Trust, Ron Williamson, Co-Manager of Eddleman Oar Lock Ranch, LLC, Jobey Eddleman, Madelyn Eddleman, and Sandra Eddleman

Joseph L. Breitenbach
Christensen Fulton and Filz, PLLC
19 36th St. W #3
Billings, MT 59102
jlb@cfflawfirm.net

Attorneys for Personal Representative

Jared M. LeFevre
Aaron W. Nicholson
Madeline M. Clarke
Crowley Fleck PLLP
P.O. Box 2529
Billings, MT 59103-2529
jlefevre@crowleyfleck.com
anicholson@crowleyfleck.com
mclarke@crowleyfleck.com

Attorneys for John Jay Pinkerton

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The Appellants reply to the Response Briefs of the Appellees as follows:

I. ALL PARTIES CORRECTLY ASSERT THAT THE APPLICABLE STANDARD OF REVIEW IS "DE NOVO."

The parties all agree that the present analysis—the District Court's conclusion the claims are time barred—is in practice subject to *de novo* review because it involved a mixed question of facts and law. This, too, was the case in *Northland Royalty Corp. v. Engel* where this Court reversed a district court's decision that an innocent third party could not rely on the promises of a personal representative. 2014 MT 295, ¶ 13, 377 Mont. 11, 339 P.3d 599; *see also Boyer v. Sparboe*, 263 Mont. 289, 294, 867 P.2d 1116, 1119–20 (1994) (reversing a district court's decision that refused to allow a creditor relief from the personal representative's representations that filing a creditor claim was unnecessary). Nothing in John Pinkerton's ("Pinkerton") nor in personal representative Tom Wagoner's ("Wagoner") response briefs does anything to "unsay" what the personal representative said the claims "would not be time barred as a result thereof": a failure to get the stipulation signed.

II. APPELLEES FAIL TO DISTINGUISH IN ANY MATERIAL WAY THE CASES CITED BY APPELLANTS.

Pinkerton, the sole heir to the estate of Warren Dan Eddleman, attempted but failed to distinguish *Northland Royalty Corp. v. Engel*, 2014 MT 295, 377 Mont. 11, 339 P.3d 599, and *Boyer v. Sparboe*, 263 Mont. 289, 867 P.2d 1116 (1994), from the present case. Nonetheless, Pinkerton did not and could not dispute that

Northland and *Boyer* comprise the bulk of Montana's controlling precedent on the specific issue presently before the Court: the effect of a personal representative's conduct and a good faith third party's reliance thereon. As further detailed below, *Northland* and *Boyer* clearly compel the results urged by the Appellants.

In *Northland*, a fairly sophisticated land man and purchaser of mineral royalties relied solely on the implied powers of a personal representative to purchase a substantial basket of mineral interests in complete contradiction to the black letter testamentary provisions in the will. *Northland*, ¶ 5. Pinkerton argues the *Northland* holding is limited to land sales. Pinkerton Resp. Br. p. 20. *Northland* indeed concerned land, more precisely, royalty interests. However, the Montana Supreme Court made clear its analysis in *Northland* was an outgrowth of the general scheme of the Uniform Probate Code ("UPC"), that third parties could deal with personal representatives in good faith. *Northland*, ¶ 9.

The claimant in *Boyer* clearly did not file a timely claim because it was undisputed the personal representative said multiple times that doing so was unnecessary if the claimant could produce an "original" document showing the bailment of gold and silver. *Boyer*, 263 Mont. at 290–92, 867 P.2d at 1117–18. Here, like the circumstances from *Boyer*, we have in the King's English a specific promise to allow a claim to be filed after the deadline.

The various additional factors which Pinkerton contends distinguish the present matter are easily dismissed as unpersuasive. Pinkerton argues there is no "evidence [Pinkerton] tricked the Claimants into believing they did not need to comply with the 60 Day Deadline." Pinkerton Resp. Br. p. 21. The Response Brief essentially argues: "Why should Pinkerton suffer? He did nothing wrong." However, in all the applicable case law, *Boyer* and *Northland* included, this Court applied the UPC and issued orders benefiting third parties at the expense of the devisees/heirs. Lastly, Pinkerton argues, "*Boyer* does not apply because the P.R. did not bar the claims, the District Court did." *Id*., p. 22. But, in *Boyer*, this Court reversed the district court's ruling finding the claim to be untimely. The law is crystal clear: if personal representatives deviate from their authority, they may be personally responsible. Whether it's selling mineral interests subject to a specific devise or waiving the obligation to file a claim, the third party does not suffer.

III. APPELLEES ARGUE "ONCE A CLAIM IS TIME BARRED IT NO LONGER EXISTS." HOWEVER, THESE CLAIMS WERE NEVER TIME BARRED.

Pinkerton says more than once in his brief, that a time barred claim does not exist. Although they were not attorneys and were unrepresented by legal counsel, the Appellants in these cases knew that much. Thus, the Appellants feverishly sought *and received* reassurance that the deadline would be extended. Appellants thought they received this assurance from the personal representative whose powers

were set forth in the letters, not curtailed by any bar on extending the statutes of limitations.

Appellants in this case are not arguing that a time barred claim should be resurrected. Rather, their argument—which is strongly supported by the applicable law, the undisputed facts, and equity—is that the claims were never time barred because the statute was tolled by an explicit promise from the personal representative. Pinkerton relies heavily on *Bozeman Deaconess Hosp. v. Est. of Rosenberg*, 225 Mont. 232, 731 P.2d 1305 (1987), for the proposition that a time barred claim is barred. However, *Rosenburg* actually supports the Appellants' position.

In *Rosenburg*, the district court and the Supreme Court certainly entertained the argument that a personal representative could be estopped from asserting the time bar when the facts warranted such a result. 225 Mont. at 236–37, 731 P.2d at 1308. This Court, in *Rosenburg*, found the factual basis for the specific estoppel claim to be undetermined without further analysis, but recognized Montana law may permit such an estoppel claim in these instances, citing *Nw. Bank of Lewistown v. Est. of Coppedge*, 219 Mont. 473, 713 P.2d 523 (1986).

In *Coppedge*, the Supreme Court "remand[ed to the district court] for a hearing to determine whether the estate, by or through its attorneys, represented to [the] Bank that it need not file a creditor's claim." *Coppedge*, 219 Mont. at 478, 713

P.2d at 527. Such an idle act is unnecessary here because no party suggests that the attorney for the estate did not promise to forgo enforcing the time bar.

IV. THE DIFFERENCE BETWEEN A TIME BARRED CLAIM AND A TOLLING PROMISE IS PROFOUND AND NEEDS EMPHASIS HERE.

Daily, lawyers, parties, and insurance carriers enter into tolling agreements which are enforced. Universally, the law treats a request for permission as a far different creature than a request for forgiveness. For instance, requesting extensions of filing pleadings, court appearances, or court imposed mandatory injunctions all find gentler receptions if time is sought before the deadline has come and gone instead of doing so after.

Where, as here, the promise NOT to enforce the time bar comes before the clock runs out, the only loss to the estate is the psychic pleasure of watching the opposing party scramble like mad and rush to the courthouse as the final minutes tick away. However, entering into agreements to waive a statute of limitations which has already run is a profoundly different issue. To allow a claimant to resurrect a time barred claim is truly a dissipation of the estate and a wholly different analysis should and does apply.

V. A WORD ABOUT THE APPELLEES' "FACTS."

The Appellees' Response Briefs recite all manner of facts which bear no relevance to the issues at hand and seem designed largely to cast the Appellants in a

negative light. Appellants are quite convinced that if the Court were to—contrary to well settled law on this issue—concert itself with the pushing and shoving predating this controversy, it would make no judgment on the matter at all. Nonetheless, if forced to engage, Appellants would come out the winner.

For example, the P.R.'s Response Brief states "two days before the deadline, Ron Williamson ("Ron"), the other Co-Trustee of the Trust, sent an email to counsel for the Personal Representative requesting another extension." In fact, Ron had reached out to attorney Tim Filz, a senior partner of the firm that is counsel of record, requesting an extension and, at Tim's request, Ron delayed this request until Monday, June 19, 2023, when Mr. Breitenbach returned from a twelve-day vacation, to request the extension from Mr. Breitenbach. (D.C. Doc. 36, Ex. 1). If Ron waiting until Mr. Breitenbach returned from vacation created a situation that "made it almost impossible to timely extend the deadline with Court approval," the P.R. and his counsel are responsible.

The P.R.'s Response Brief further states that "[t]he Personal Representative made no representations or guarantees as to the position of John [Pinkerton] or his counsel . . . ." However, this statement fails to provide the needed context that, until recently, the P.R. held the position that "[t]he Personal Representative possessed the authority to grant the extension without the consent of Pinkerton" and had communicated said position to the Appellants. (D.C. Doc. 36). Additionally, the

P.R. communicated to the Appellants the belief that, while "Pinkerton did not consent [to the second extension, they] did not indicate an opposition [to such an extension]." *Id.*

Lastly, Pinkerton makes numerous inappropriate references to the parties' willingness to mediate and to settlement offers. *See, e.g.*, Pinkerton Resp. Br., *Statement of Facts*, ¶¶ 15–16, 27. Indeed, Jobey Eddleman ("Jobey") did say she would "happily spend [her] personal money to sue the estate over this matter." Pinkerton quoted this to suggest Jobey as unreasonable or litigious. But the "matter" was the personal representative reversing course on honoring a one-million dollar claim that had been previously approved. Appellee correctly points out that the Appellants (claimants) were exasperated with negotiations and were begrudgingly headed toward litigation. This prediction turned out to be quite true when these Appellants were lulled into letting their claims arguably lapse and were forced to bring this appeal. We assume the Court is wholly unconcerned with who has the moral high ground on the give and take of these negotiations.

Moreover, in addition to being irrelevant, all of this is inadmissible under Montana Rule of Evidence 408. Appellants trust the Court will quickly and without much urging by the Appellants, compartmentalize and ignore these efforts to inject confidential mediation/settlement discussions into a substantive analysis.

DATED this 24th day of July, 2024.

PARKER, HEITZ & COSGROVE, PLLC

/s/ *Mark D. Parker*
Mark D. Parker

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and quoted and indented material; and the word count calculated in Microsoft Word is 1,685 words excluding the Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service.

DATED this 24th day of July, 2024.

PARKER, HEITZ & COSGROVE, PLLC

/s/ *Mark D. Parker*
Mark D. Parker

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing Appellant's Reply Brief with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing Appellant's Reply Brief upon each attorney of record in the above-referenced District Court action as follows:

Joseph L. Breitenbach
Christensen Fulton and Filz, PLLC
19 36th St. W #3
Billings, MT 59102
jlb@cfflawfirm.net

Attorneys for Personal Representative

Jared M. LeFevre
Aaron W. Nicholson
Madeline M. Clarke
Crowley Fleck PLLP
P.O. Box 2529
Billings, MT 59103-2529
jlefevre@crowleyfleck.com
anicholson@crowleyfleck.com
mclarke@crowleyfleck.com

Attorneys for John Jay Pinkerton

Dated this 24th day of July, 2024.

PARKER, HEITZ & COSGROVE, PLLC

/s/ *Mark D. Parker*
Mark D. Parker

CERTIFICATE OF SERVICE

I, Mark D. Parker, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 07-24-2024:

Gary W. Bjelland (Attorney)
PO Box 2269
Great Falls MT 59403
Representing: Jobey Eddleman, Madelyn Lue Eddleman, Ronald Williamson, Madelyn Lue Eddleman Trust, Oar Lock Ranch, LLC
Service Method: eService

Madeline Marie Clarke (Attorney)
490 N. 31st St Suite 500
Billings MT 59101
Representing: John Jay Pinkerton
Service Method: eService

Aaron William Nicholson (Attorney)
490 N. 31st Street, Ste 500
Billings MT 59101
Representing: John Jay Pinkerton
Service Method: eService

Joseph Loren Breitenbach (Attorney)
19 36th Street West, Suite 3
Billings MT 59102
Representing: Tom Wagoner
Service Method: eService

Jared M. Le Fevre (Attorney)
490 North 31st Street, Suite 500
Billings MT 59101
Representing: John Jay Pinkerton
Service Method: eService

Sandra Eddleman (Other)
734 E FM 1188
Bluff Dale TX 76433
Service Method: E-mail Delivery

Electronically signed by Larissa Sikel on behalf of Mark D. Parker
Dated: 07-24-2024