

IN THE SUPREME COURT OF THE STATE OF MONTANA

<p>MOORE FAMILY COMPANY and MOORE REVOCABLE LIVING TRUST DATED NOVEMBER 14, 2019, Appellants and Cross- Appellees, v. TIMOTHY C. KELLY AND MARTHA EVERT KELLY as TRUSTEES of the TIMOTHY C. KELLY AND MARTHA EVERT KELLY REVOCABLE TRUST, U/A/D DECEMBER 8, 2008, Appellees and Cross- Appellants.</p>	<p>Cause No. DA 24-0016</p> <p>FIFTH UNOPPOSED MOTION TO HOLD APPEAL IN ABEYANCE</p>
--	---

1

move this Court to hold this appeal in abeyance for an additional 30 days to enable the parties to finalize the anticipated settlement.

The parties mediated this case pursuant to Mont. R. App. P. 7 on April 2, 2024, and executed a memorandum of understanding at the conclusion of that mediation. C.J. Johnson filed a mediator's report confirming this on April 2, 2024. The parties have since moved for, and have been granted, four extensions to hold this appeal in abeyance. The last extension was granted by this Court on August 1, 2024, and allowed the parties until August 30, 2024, to file dismissal paperwork or stipulate a new briefing schedule.

As counsel for Appellants and Cross-Appellees have previously indicated to this Court, finalizing settlement documents in this case has been an extensive and time-consuming process. The settlement involves property and easement rights and negotiations have been delayed due to numerous intervening circumstances. The parties remain close to reaching a full resolution and executing the necessary agreements but require more time to complete this process. Specifically, the parties need additional time within which to engage a surveyor to complete a document necessary to the final implementation of the memorandum of understanding executed by the parties on April 2, 2024.

For these reasons, Appellees and Cross-Appellants respectfully request this Court hold the appeal in abeyance for an additional 30 days, until September 30, 2024. The parties anticipate that, on or before that date, they will file dismissal paperwork. If a settlement is not ultimately finalized, the parties anticipate stipulating to a new briefing schedule and will seek the Court's approval of the same by September 30, 2024.

Counsel for Appellants and Cross-Appellees do not oppose this motion.

Dated this 29th day of August, 2024.

CROWLEY FLECK PLLP

By: /s/ E. Lars Phillips

Jeffrey R. Kuchel

E. Lars Phillips

Attorneys for Appellees / Cross-Appellants

Declaration of E. Lars Phillips

I, E. Lars Phillips, declare under penalty of perjury:

1. I am an attorney for Appellees and Cross Appellants Timothy C. Kelly and Martha Evert Kelly as Trustees of the Timothy C. Kelly and Martha Evert Kelly Revocable Trust, U/A/D/ December 8, 2008.

2. The parties mediated this case on April 2, 2024. At the conclusion of that mediation, the parties executed a memorandum of understanding regarding the basic terms of a complex settlement agreement to be negotiated and executed thereafter.

3. Since that time, the parties have exchanged numerous drafts of two different, necessary agreements.

4. The process has been slowed due to the complicated nature of the settlement, and has also been delayed by medical emergencies suffered by both Robert and Betty More, the unprecedented storm and related damage which occurred in Missoula on July 24, 2024, an injury suffered by counsel for the Appellees and Cross-Appellants, and the need to hire a surveyor to complete a document necessary for the final implementation of the memorandum of understanding executed on April 2, 2024.

5. Despite these hurdles, the parties are close to finalizing the settlement documents, with only a few points remaining for negotiation. The parties remain confident they will be able to finalize the settlement within the deadline requested in this Fifth Motion to Hold Appeal in Abeyance.

I declare under penalty of perjury that the foregoing is true and correct. Mont.

Code Ann. § 1-6-105.

Dated this 29th day of August, 2024.

CROWLEY FLECK PLLP

By: /s/ E. Lars Phillips
E. Lars Phillips

Attorneys for Appellees / Cross-Appellants

CERTIFICATE OF SERVICE

I, E. Lars Phillips, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 08-29-2024:

Alyssa Lanae Campbell (Attorney)

PO Box 4947

620 High Park Way

Missoula MT 59806

Representing: Moore Family Company, Moore Revocable Living Trust Dated Nov.14, 2019

Service Method: eService

Liesel Dawn Shoquist (Attorney)

620 High Park Way

PO Box 4947

Missoula MT 59806

Representing: Moore Family Company, Moore Revocable Living Trust Dated Nov.14, 2019

Service Method: eService

Jeffrey R. Kuchel (Attorney)

Crowley Fleck PLLP

305 South 4th Street East

Suite 100

Missoula MT 59801

Representing: Timothy C. Kelly, Martha Evert Kelly, Timothy C. Kelly and Martha Evert Kelly
Revocable Living Trust Dated December 8, 2008

Service Method: eService

Electronically Signed By: E. Lars Phillips

Dated: 08-29-2024