

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause Number OP 24-0437

WESLEY and KAREN TUSCANO,

Petitioners,

vs.

MONTANA SIXTH JUDICIAL DISTRICT COURT, SWEETGRASS
COUNTY, Hon. Brenda R. Gilbert, Presiding,

Respondent.

On Petition from the Montana Sixth Judicial District court, Sweet Grass County
Cause No. DV-2021-39, the Honorable Brenda Gilbert, Presiding

**CONNER'S RESPONSE TO TUSCANOS' PETITION FOR WRIT OF
SUPERVISORY CONTROL, WRIT OF REVIEW, AND STAY OF
DISTRICT COURT CONTEMPT PROCEEDINGS**

APPEARANCES:

Michael F. McGuinness

Justin M. Oliveira

PATTEN, PETERMAN, BEKKEDAHL & GREEN, P.L.L.C.

2817 2nd Avenue North, Suite 300

Billings, MT 59101

Telephone: (406) 252-8500

Facsimile: (406) 294-9500

Email: mmcguinness@ppbglaw.com

joliveira@ppbglaw.com

Attorneys for Respondent Jacqueline Conner

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STATEMENT OF ISSUE

Whether Defendants, Wesley Tuscano and Karen Tuscano (the “Tuscanos”), can demonstrate that the District Court is proceeding under a mistake of law, which if left uncorrected, would cause a significant injustice for which an appeal is an inadequate remedy. The answer is no.

INTRODUCTION

As of June 12, 2023, Petitioners, Wesley Tuscano and Karen Tuscano (the “Tuscanos”) were fully aware that the district court found it necessary to consider the Respondents, Julian and Sidney Helviks’ (the “Helviks”) claims for declaratory relief and to quiet title to the property at issue. Petr. Appendix Ex. 4 at p. 1, ¶ 1. It is undisputed that the jury found that the “gift deed” at issue was the result of the Tuscanos’ exerting undue influence on the Helviks. Petr. Appendix Ex. 2 at p. 2, ¶ 6. It is also undisputed that the Tuscanos paid the Helviks *nothing* for the property the Tuscanos received based upon the undue influence they exerted. *Id.* at p. 2, ¶ 5; Petr. Appendix Ex. 4 at p. 6, ¶ 21. Wesley Tuscano testified that he never had an intention to pay the Helviks for the property at issue. True to his word, he never did. *Id.* at ¶ N.

As of the time of trial, the Tuscanos had encumbered the property at issue in the amount of \$136,113.66 for their sole benefit. The district court found that the “(...) jury’s verdict [did] not resolve all of the issues of in [the] case, nor was it

expected to do so. The issues raised by Helviks in their claims for declaratory judgment and quiet titled relief remain following the jury's verdict." *Id.* at p. 5, ¶ 19.

The district court, in its discretion, ordered that the Tuscanos were to accomplish and complete a release of the mortgage within sixty days from the Final Order and Judgment. The district court also ordered the Tuscanos to convey their title back to the Heviks within 10 days of securing the release. *Id.* at pp. 12-13. The Tuscanos did not comply. The Tuscanos also did not secure a supersedeas bond necessary for a stay of execution in order to excuse prevent required compliance. Rather, the Tuscanos admitted to increasing the pay-off amount of the encumbrance upon the Helviks' property by over \$100,000.00¹, which was admitted to ultimately benefit their attorney. *Id.* at 76:17-22; 77:23-78:04. Amazingly, the Tuscanos now take the position that they shouldn't be held responsible for their non-compliance or failure to secure a stay of execution.

The supreme court has supervisory control over all other courts and may, on a case-by-case basis, supervise another court by way of a writ of supervisory control. Supervisory control is an extraordinary remedy and is sometimes justified when urgency or emergency factors exist making the normal appeal process inadequate,

¹Petr. Appendix Ex. 9 at 37:01-7; 69:09-22.

when the case involves purely legal questions, and when one of the following circumstances exist:

- (a) the other court is proceeding under a mistake of law and is causing a gross injustice;
- (b) constitutional issues of state-wide importance are involved;
- (c) the other court has granted or denied a motion for substitution of a judge in a criminal case.

Mont. R. App. P. 14(3)(a)-(c). Supervisory control is an extraordinary remedy, reserved for extraordinary circumstances. *Stokes v. Montana Thirteenth Judicial Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754. Following an unfavorable trial and judgment the Tuscanos have not only failed to secure a stay of execution and failed to comply with the district court's judgment, but they have also actively taken steps to increase injury they've caused to the Helviks' property. The Tuscanos now seek a writ of supervisory control that is void of merit. No extraordinary circumstances exist here, save for those which the Tuscanos created.

ARGUMENT

I. The District Court Has Jurisdiction and Discretion to Hold the Tuscanos in Contempt. To Argue Otherwise is Non-Meritorious.

As an initial matter, the Tuscanos first argue the merits of their anticipated appeal: that the district court's Final Order and Judgment was in error and/or that it abused its discretion. The Tuscanos' arguments are not proper for analysis of whether a writ of supervisory control should be issued. Petitioner's Opening Br. at

pp. 5-6; Respondent's Br. at p. 10, ¶ 1. The Tuscanos arguments concerning the merits of their appeal must be ignored.

The Tuscanos also know (or should know) that the district court is a court of law and a court of equity. Mont. Code Ann. § 3-5-302(1)(c). The equitable power of a court may be invoked to aid an action at law by removing, for example, some obstruction to the legal title or by preserving the property pending ascertainment of the title. *Renz v. Everett-Martin*, 2019 MT 251, ¶ 15, 397 Mont. 398, 450 P.3d 892 (citing *State v. Chilinski*, 2016 MT 280, ¶ 10, 385 Mont. 249, 383 P.3d 236). A court sitting in equity is empowered to grant *all relief necessary* to the entire adjustment of the subject matter of the litigation. *Id.* (citing *City of Whitefish v. Troy Town Pump*, 2001 MT 58, ¶ 27, 304 Mont. 346, 21 P.3d 1026) (emphasis added). A district court may order a party to convey land, deliver a deed or other document or perform any other specific act if the judgment so requires. Mont. R. Civ. P. 70(a). The district court had the discretion to order the Tuscanos re-convey title they received through undue influence and remove the encumbrance they created.

A district court also has the authority to enforce its judgment pending an appeal. *Kuzara v. Kuzara*, 211 Mont. 43, 48, 682 P.2d 1371 (1984). It was the Tuscanos' responsibility to obtain the district court's approval of a supersedeas bond necessary for a stay of execution during appeal. Mont. R. App. P. 22; Mont. Unif. Dist. Ct. R. 7. The Tuscanos did not do so. Consequently, the district court may

hold the Tuscanos in contempt for disobedience of any lawful judgment or process of the court. Mont. Code Ann. § 3-1-501(1)(e). Contempt of court is a discretionary tool used to enforce compliance with a court's decisions. The power to inflict punishment by contempt is necessary to preserve the dignity and authority of the court. *Wolf v. Evans*, 264 Mont. 480, 483, 872 P.2d 777 (1994). A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to force the contemnor's compliance with a court order. Mont. Code Ann. § 3-1-501(3). That is the case here. Having failed or refused to secure a stay pending appeal, the district court found the Tuscanos to be in contempt seeking to force their compliance with its Final Order and Judgment.

As with any party who willfully fails or refuses to comply with a lawful order, Tuscanos may be found to be in contempt. Mont. Code Ann. § 3-1-501(1)(e). The following facts are undisputed: (1) the Tuscanos have abjectly failed to take *any* steps to attempt to comply with the district court's Final Order and Judgment; (2) the Tuscanos failed to secure a stay of execution pending an appeal; and (3) the Tuscanos had notice and a full opportunity to show cause why their actions and inactions did not constitute sanctionable conduct to the district court. Petr. Appendix Ex. 1. Put simply, the district court did not find the Tuscanos' claims that they could not comply due to circumstances beyond their control persuasive for obvious reasons. *Id.* at ¶¶ 21-26. The district court therefore had discretion to attempt to enforce the Tuscanos'

compliance with its decision. *Woolf* at 483. For the Tuscanos' to argue otherwise is non-meritorious.

Further, the Tuscanos' "homestead declaration" argument is very misguided. A homestead exemption serves to protect *the homes of debtors* from their creditors. *J&L Lands, LP v. Nezat*, 2022 MT 111, ¶ 7, 409 Mont. 45, 511 P.3d 303 (citing *Wall v. Duggan*, 76 Mont. 239, 246, 245 P. 953 (1926)); Mont. Code Ann. § 70-32-101. The first obvious problem with the Tuscanos' argument is that their exemption does not apply to the property at issue. The Tuscanos may have a homestead upon their *own* property as claimed² but not on the property that is the subject of the underlying dispute. The second obvious problem is that the district court's Final Order and Judgment does not attempt to impose a lien upon the Tuscanos' property. Petr. Appendix Ex. 1 at pp. 8-10. The Tuscanos' attempt to intertwine Montana's homestead exemption as supporting a claim that their constitutional rights are being violated is non-meritorious.

A district court has jurisdiction and discretion to hold a party in contempt when, as here, the party has willfully disobeyed a lawful order. The Tuscanos' argument to the contrary is void of applicable supporting authority and lacks merit. The district court is not proceeding under a mistake of law, the Tuscanos are. The Tuscanos are not the victims of a gross injustice, the Helviks are. Supervisory

² Petr. Appendix Ex. 9 at 20:19-20.

control is inappropriate under these circumstances and the Tuscanos' petition must be denied.

II. The Tuscanos Are in Contempt.

A party may defend against a contempt finding by showing that their compliance is factually impossible, except in the case when the persons charged *brought the disability upon themselves*. *State v. Dist. Ct. of Second Judicial Dist. of Mont., Silver Bow County*, 37 Mont. 485, 97 P. 841 (1908) (emphasis added); *see also, Fouts v. Mont. Eighth Judicial Dist. Ct.*, 2022 MT 9, ¶ 9, 407 Mont. 166, 502 P.3d 689. That is not the case here.

The Tuscanos ask this Court to ignore the fact that the circumstances they complain about are entirely of their own making as the district court correctly noted. Petr. Appendix Ex. 1 at p. 7, ¶ 11. The Tuscanos admitted that they increased the encumbrance upon the property at issue after the return of an unfavorable verdict and with full knowledge that the district court would further rule on a final order. The “(...) \$240,000.000 payment necessary to comply with the court’s order”³ is a result of them drawing loan funds on their line of credit⁴. To now complain of a situation they created strains credulity. The fact remains that the Tuscanos failed to offer evidence of any plan or attempt to comply at the show cause hearing and the

³ Petr. Opening Br. at p. 1, ¶ 4.

⁴ The loan funds that increased the payoff amount were admitted to have been ultimately received by their attorney.

district court determined that the Tuscanos failed to provide evidence of an inability to comply. Petr. Appendix Ex. 1 at p. 5, ¶¶ 24-29; p. 8, ¶ 12. The bottom line is that the Tuscanos could not demonstrate a factual showing that compliance was not possible due to circumstances beyond their control and the district court correctly found them to be in contempt.

CONCLUSION

The Tuscanos defied the October 2023 order of the district court and continue to act improperly, causing Helviks further harm and damages. This Court should deny the Tuscanos Petition.

DATED this 9th day of September, 2024.

PATTEN, PETERMAN, BEKKEDAHN & GREEN, PLLC

By: /s/ Michael F. McGuinness

Michael F. McGuinness

Justin M. Oliveira

Attorneys for Jacqueline Conner

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4) of the Montana Rules of Appellate Procedure, I certify the forgoing **RESPONDENT JACQUELINE CONNER'S RESPONSE TO TUSCANOS' PETITION FOR WRIT OF SUPERVISORY CONTROL, WRIT OF REVIEW, AND STAY OF DISTRICT COURT CONTEMPT PROCEEDINGS** printed with a proportionately spaced Times New Roman text typeface of 14-points; is double spaced; and the word count as calculated by Microsoft Word is **1,847** words, excluding Table Of Contents, Table Of Citations, Certificate of Compliance, and Certificate of Service.

DATED this 9th day of September, 2024.

PATTEN, PETERMAN, BEKKEDAHL & GREEN, PLLC

By: **/s/ Michael F. McGuinness**

Michael F. McGuinness

Attorneys for Respondent Jacqueline Conner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following persons on the 9th day of September, 2024 as follows:

Via E-Service Only

Hertha L. Lund

Ben F. Stormes

LUND LAW PLLC

Lund@Lund-Law.com

Stormes@Lund-Law.com

Via E-Service Only

Barbara C. Harris

MONTANA LEGAL SERVICES ASSOC.

616 Helena Ave., Ste. 100

Helena, MT 59601

bharris@mtlsa.org

Attorneys for Wesley & Karen Tuscano

Attorney for Sidney Helvik & Julian Helvik

Via Email Only

Hon. Brenda Gilbert

Kenzi.schnittgen@mt.gov

Sixth Judicial District Court Judge

PATTEN, PETERMAN, BEKKEDAHN & GREEN, PLLC

By: /s/ Danielle Jordan

Danielle Jordan, Paralegal

CERTIFICATE OF SERVICE

I, Michael Francis McGuinness, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 09-09-2024:

Justin Oliveira (Attorney)
2817 2nd Ave. N, Ste. 300
Billings MT 59101
Representing: Jacqueline Conner
Service Method: eService

Barbara C. Harris (Attorney)
616 Helena Avenue
Suite 100
Helena MT 59601
Representing: Julian Helvik, Sidney Helvik
Service Method: eService

Hertha Louise Lund (Attorney)
662 S. Ferguson Ave., Unit 2
Bozeman MT 59718
Representing: Karen Tuscano, Wesley Tuscano
Service Method: eService

Brenda R. Gilbert (Respondent)
Sixth Judicial District Court
PO Box 437
Livingston MT 59047
Service Method: E-mail Delivery

Electronically signed by Danielle Jordan on behalf of Michael Francis McGuinness
Dated: 09-09-2024