

SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA 24-0084

FAYE JACKSON, an individual, and as Personal  
Representative of the Estate of Edna Balkoski,  
Deceased,

Plaintiff, and Appellant

vs.

STEVEN BALKOSKI, an individual,

Defendant, and Appellee.

**APPELLANT’S PETITION FOR REHEARING**

On Appeal from the Montana 18th Judicial District, Gallatin County  
Cause No. DV 2019-726C  
Before Hon. John Brown

Appearances:

<p>Michael L. Rabb (#13734)          Jeffrey Driggers (#56597084)          THE RABB LAW FIRM, PLLC          3950 Valley Commons Drive, Suite 1          Bozeman, MT 59718          Telephone: (406) 404-1747          Facsimile: (406) 551-6847          Email: <a href="mailto:service@therabblawfirm.com">service@therabblawfirm.com</a></p> <p><i>Attorneys for Appellant</i></p>	<p>Barbara C. Harris          MONTANA LEGAL SERVICES          ASSOCIATION          616 Helena Ave., Suite 100          Helena, MT 59601          Telephone: (406) 442-9830          Email: <a href="mailto:bharris@mtlsa.org">bharris@mtlsa.org</a></p> <p><i>Appellant</i></p>
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## INTRODUCTION

Edna Balkoski purchased a home at 2411 Milkhouse Avenue in Bozeman (the “Property”) in 2013. In 2016, Edna transferred ownership of that home to herself and her son Steven Balkoski as joint tenants with rights of survivorship (the “Joint Tenancy”). After a dispute arose regarding Edna and Steven’s joint ownership of the home, in early 2020 Edna severed the Joint Tenancy. She also filed the underlying lawsuit in 2019, seeking rescission of the 2016 deed that had established the joint tenancy as to the home (the “Quitclaim Deed”).

Edna’s severance of the Joint Tenancy and her lawsuit against Steven were parallel efforts to protect her home: According to the 2016 Quitclaim Deed, Edna owned a 50% interest in the home while Steven owned the other 50% interest—call these “Edna’s Share” and “Steven’s Share,” respectively. The severance of the Joint Tenancy sought to protect Edna’s Share from Steven by extinguishing the right of survivorship, while Edna’s lawsuit sought to recover Steven’s Share for Edna by asking the District Court to rescind the Quitclaim Deed that granted Steven ownership of Steven’s Share. Unfortunately, Edna died before her suit concluded, and the District Court eventually ruled that the Quitclaim Deed could not be rescinded. By law, this should have left Edna’s estate with a 50% ownership interest in the Property. Edna’s severance of the Joint Tenancy in 2020 had ensured that

Edna's Share would pass to her estate. Meanwhile, the District Court had ruled the Quitclaim Deed valid, so Steven retained Steven's Share.

The District Court could not properly rule on title to Edna's Share of the Property. Only the ownership of Steven's Share was in dispute in this matter— the parties agreed that Edna owned Edna's Share up until her death; they disagreed about whether she *also* owned Steven's Share. Moreover, the Declaration of Severance of Joint Tenancy and Quitclaim Deed that Edna recorded in February 2020 (Doc. 60, Exhibits A & B; Doc. 139, Exhibit A; hereafter jointly the "Severance Documents") had severed the Joint Tenancy. So, if the District Court *did* rule on title to Edna's Share, it could not rely solely on the 2016 Quitclaim Deed to determine the parties' rights at the time of Edna's death.

Despite these two obstacles, the District Court ruled in its Amended Findings of Fact, Conclusions of Law, and Order (Doc. 132; hereafter the "District Court's Order") that ownership of the Property following Edna's death was controlled by the 2016 Quitclaim Deed, and that "with the death of Edna, Steven has sole rights to the property." (Doc. 132, Concl. of Law ¶ 16) The District Court thus wrongly granted sole ownership of Edna's home to Steven, ignoring the Severance Documents and ruling on title to Edna's Share of the Property without jurisdiction to do so. Then, when Edna's estate appealed, the Supreme Court overlooked the fact that the District Court's ruling on title to Edna's Share of the Property was improper and again

ignored the Severance Documents, ruling that “since the [District Court] did not rescind the Quitclaim Deed, title to the Milkhouse property passed to Steven upon Edna’s death.” (Opinion 2024 MT 203N, ¶ 23)

The Courts’ refusal to acknowledge the Severance Documents is a clear and reversible error: Montana law provides that a joint tenant may sever a joint tenancy during her lifetime. Edna severed the Joint Tenancy in 2020 through the Severance Documents. Consequently, at the time of Edna’s death in 2020 title to Edna’s Share did not pass to Steven but was retained by her estate. Appellant respectfully requests rehearing by the Supreme Court to correct this error.

### **STANDARD OF REVIEW**

The Montana Supreme Court will consider a petition for rehearing presented only upon the following three grounds:

- (i) That it overlooked some fact material to the decision;
- (ii) That it overlooked some question presented by counsel that would have proven decisive to the case; or
- (iii) That its decision conflicts with a statute or controlling decision not addressed by the supreme court.

(Rule 20(1), Mont. R. App. P.)

A District Court’s findings of fact are reviewed to determine if they are clearly erroneous. See *Matter of Estate of Starkel*, 2023 MT 218, ¶ 8, 414 Mont. 65, 67, 538 P.3d 1126, 1127; *JTL Group, Inc. v. New Outlook, LLP*, 2010 MT 1, ¶ 30, 355 Mont.

1, 223 P.3d 912. A District Court’s conclusions of law are reviewed for correctness. *Estate of Starkel*, ¶ 8; *JTL Group, Inc.*, ¶ 30.

**ARGUMENT & AUTHORITIES**

After establishing the Joint Tenancy in 2016, Edna Balkoski attempted to get her Property back: She extinguished the right of survivorship for Edna’s Share of the Property by severing the Joint Tenancy in 2020. Meanwhile, she disputed the ownership of Steven’s Share of the Property, suing for rescission of the 2016 Quitclaim Deed and asking the District Court to quiet title to Steven’s Share of the Property in her name.

Because the dispute in Edna’s suit concerned only the ownership of Steven’s Share of the Property and not that of Edna’s Share, the District Court was precluded from ruling on title to Edna’s Share. And because Edna severed the Joint Tenancy in 2020, that Joint Tenancy no longer controlled the parties’ rights to the Property at the time of Edna’s death. The District Court nonetheless wrongly ruled on title to Edna’s Share of the Property, and wrongly concluded that the Joint Tenancy controlled the parties’ rights, awarding Steven ownership of Edna’s Share of the Property as well as his own share. On appeal, the Montana Supreme Court similarly ignored the fact that Edna’s interest in the Property was never brought into dispute and that Edna severed the Joint Tenancy in 2020.

**I. APPELLANT’S PETITION FOR REHEARING IS APPROPRIATE PURSUANT TO MONTANA RULE OF APPELLATE PROCEDURE 20.**

The Montana Rules of Appellate Procedure limit petitions for rehearing to cases where the party seeking rehearing can demonstrate that the Supreme Court either “overlooked some fact material to the decision,” “overlooked some question presented by counsel that would have proven decisive to the case,” or filed a decision that “conflicts with a statute or controlling decision not addressed by the supreme court.” (Rule 20(1), Mont. R. App. P.)

Here, the Supreme Court’s Opinion overlooked the fact that Edna Balkoski severed the Joint Tenancy prior to her death. This fact is material because the severance extinguished the right of survivorship between Edna and Steven, affecting both Edna’s and Steven’s rights to the Property upon Edna’s death. The Supreme Court’s Opinion also overlooked a question presented by counsel as to whether Edna’s recording of the Severance Documents severed the Joint Tenancy. This question would have proven decisive to the Court’s treatment of the District Court’s wrongful conclusion that Steven has sole rights to the Property.

Finally, The Supreme Court’s Opinion conflicts with this Court’s holding that title to real property “must be resolved in proper proceedings instituted for that purpose.” *Matter of Estate of Thomas*, 216 Mont. 87, 90, 699 P.2d 1046, 1048 (1985). Although the proceedings here were instituted for the purpose of resolving title to Steven’s Share of the Property resulting from the 2016 Quitclaim Deed, they were not instituted for the purpose of resolving title to Edna’s Share. The fact that

Edna had an ownership interest in the Property was undisputed amongst the parties, Steven never asked the District Court to resolve title to that share, and neither Edna nor Steven undertook to prove title to Edna's Share as would have been required of a plaintiff seeking to quiet title. As the District Court's proceedings were not intended to address title to Edna's Share of the Property, its conclusion vesting title to Edna's Share in Steven was inappropriate, and the Supreme Court's affirmation of that conclusion thus conflicts with prior decisions that control here.

**II. REHEARING OF APPELLANT'S CASE IS WARRANTED BECAUSE BOTH THE DISTRICT COURT AND THE SUPREME COURT OVERLOOKED EDNA'S SEVERANCE OF THE JOINT TENANCY.**

This Court has consistently held that a joint tenancy in real property may be severed, and the right of survivorship extinguished, by a single joint tenant acting alone. A cotenant may sever the joint tenancy either "by a conveyance on the part of a joint tenant" or by any other act which "destroys one or more of [the joint tenancy's] necessarily coexisting unities." *In re Matye's Estate*, 198 Mont. 317, 320, 645 P.2d 955, 957 (1982); *Barrett v. Ballard*, 191 Mont. 39, 43, 622 P.2d 180, 183 (1980). Here, the Declaration of Severance of Joint Tenancy which Edna recorded in 2020 destroys unity of title as to the Property, stating, in part, that Edna's interest shall be held "as a tenant in common." (Doc. 60, Ex. A) Moreover, the Quitclaim Deed she recorded in 2020 destroys the unities of time, possession, and title: the deed conveys an interest acquired February 20, 2020; it does not give the grantee the

right of survivorship; and it does not specify a joint tenancy vesting. (Doc. 60, Ex. B) Accordingly, there can be no doubt that Edna severed the Joint Tenancy prior to her death.

There can likewise be no doubt that the District Court failed to consider the Severance Documents in its ruling. Although these Documents were filed with the District Court prior to entry of its Order, the Order makes no reference to the Severance Documents and treats the 2016 Quitclaim Deed as definitive of title to the Property at the time of Edna's death. As the Order states, "the parties' rights as to the property at issue are as stated in the Quit Claim Deed [*sic*] signed by Plaintiff on January 14, 2016." The Court thus took a snapshot of title on the Property at a single moment in time and allowed that snapshot to stand in for the Property's entire subsequent chain of title. In doing so, it overlooked the Severance Documents and wrongly granted sole ownership of Edna's house to Steven.

Finally, the Supreme Court overlooked Edna's severance of the Joint Tenancy in deciding Edna's appeal. In its briefing, Appellant called attention to the Severance Documents and noted that the District Court's conclusion granting Steven sole rights to the Property "was simply incorrect in light of Edna's severance of the joint tenancy." (App. Br., 30) Despite this, the Supreme Court's Opinion repeats the District Court's error, finding that "since the [District Court] did not rescind the Quitclaim Deed, title to the Milkhouse property passed to Steven upon Edna's

death,” and that therefore “[Edna’s] Estate never had an ownership interest” in Edna’s home. (Opinion 2024 MT 203N, ¶ 23) While it is true that the District Court upheld the Quitclaim Deed, it does not follow that title to Edna’s Share in the Property passed to Steven, because Edna’s severance of the Joint Tenancy extinguished the right of survivorship benefitting Steven.

Edna severed the Joint Tenancy as to her Property before her death. The District Court overlooked this and wrongly concluding that Steven had sole rights to the Property following Edna’s death, and the Supreme Court likewise overlooked Edna’s severance of the Joint Tenancy in affirming the District Court’s wrongful conclusion.

**III. REHEARING OF APPELLANT’S CASE IS WARRANTED BECAUSE THE DISTRICT COURT’S RULING QUIETING TITLE IN STEVEN’S NAME MERITS REVERSAL FROM THIS COURT.**

Deciding title to a property as the District Court did here—based on a single conveyance, without careful review of the property’s chain of title—is a clear error. The District Court’s approach here is inconsistent with Montana law. See Mont. Code Ann. §33-25-214, MCA; More pointedly, it is inconsistent with established precedent regarding the proper scope of inquiry in an action to quiet title. See *Schumacher v. Cole*, 131 Mont. 166, 169, 309 P.2d 311, 313 (1957).

Had Steven sought to quiet title to Edna’s Share of the Property in his name, the Court would have been protected against its error because Steven would have

borne the burden of proving his absolute ownership, as required by the Supreme Court's prior holdings. *Id.*, see also *Tester v. Tester*, 2000 MT 130, ¶ 23, 300 Mont. 5, 12, 3 P.3d 109, 114. Here, however, neither party provided the District Court with proof of title to Edna's Share in the Property because title to Edna's Share was not an issue in the case. Edna sought only rescission of the 2016 Quitclaim Deed, and therefore focused the District Court's attention on that instrument alone.

As Edna's estate noted in its prior briefing to this Court, the District Court's ruling granting sole ownership of the Property to Steven was unexpected because title to Edna's Share of the Property was not an issue before the District Court. Had the issue of title to Edna's Share been before the Court, Edna's estate could and would have presented evidence demonstrating clear title. Edna did not present such evidence (and nor did Steven) because Edna's ownership of her interest in the Property was undisputed. Accordingly, the parties were "denied" an opportunity to be heard as to the issue of title to Edna's Share in the Property only because the District Court ruled on that issue *sua sponte* after the trial concluded without either party raising it. Title to Steven's Share of the Property was of course a central issue in the District Court proceedings as Edna's estate sought to remove Steven's claim to that Share, but this should not obscure the fact that title to Edna's Share was never at issue.

### **CONCLUSION**

By law, title to Edna's Share of her property at 2411 Milkhouse Avenue did not pass to Steven upon Edna's death because Edna severed the Joint Tenancy between herself and Steven during her lifetime. Had the Supreme Court considered the Severance Documents, the Court could not have concluded that Edna's Share passed to Steven upon her death or that Edna's estate never had an ownership interest in the property. Because the Supreme Court overlooked the Severance Documents, sole ownership of the Property has been wrongly granted to Steven despite Edna taking appropriate action before her death to prevent precisely that outcome.

Additionally, Edna's filing of an action to rescind the 2016 Quitclaim Deed and to remove Steven's claim to title in the Property did not give the District Court jurisdiction to remove Edna's ownership interest in the Property when no action or request was made to do so: such an action would constitute a taking of real property without due process. Appellant, therefore, requests rehearing of this matter to correct these clear errors.

Dated: September 25, 2024

Respectfully submitted,  
THE RABB LAW FIRM, PLLC



Michael L. Rabb  
*Attorney for Appellee*

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 20(3) of the Montana Rules of Appellate Procedure, I hereby certify that this petition is 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 not more than 2,500 words in that it consists of 2,428 words, excluding certificate of service and certificate of compliance.

Dated this 25th day of September, 2024.



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Michael L. Rabb

*Attorney for Appellant*

## **CERTIFICATE OF SERVICE**

I, Michael Lloyd Rabb, hereby certify that I have served true and accurate copies of the foregoing Petition - Rehearing to the following on 09-25-2024:

Barbara C. Harris (Attorney)  
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Service Method: eService

Electronically Signed By: Michael Lloyd Rabb  
Dated: 09-25-2024