

BARBARA C. HARRIS
Montana Legal Services Association
616 Helena Avenue, Suite 100
Helena, MT 59601
(406) 442-9830
bharris@mtlsa.org

Attorney for Appellee
Steven J. Balkoski

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 24-0084

FAYE JACKSON, as Personal)	
Representative of the Estate of)	
EDNA M. BALKOSKI,)	
)	CORRECTED OBJECTIONS
Plaintiff and Appellant,)	TO PETITION
)	FOR REHEARING
)	
v.)	
)	
STEVEN J. BALKOSKI,)	
)	
Defendant and Appellee.)	

Appellee Steven J. Balkoski (Steven) hereby objects to Appellant FAYE JACKSON, as Personal Representative of the Estate of EDNA M. BALKOSKI's (the Estate's) petition for rehearing in this case, filed September 25, 2024. The petition is without merit and should be denied. *This corrected version includes a correction on page three - correction as to the year of the bench trial.*

A petition for rehearing in this Court must adhere to M. R. App. P. 20, which

provides in relevant part:

- (1) Criteria for petitions for rehearing.
 - (a) The supreme court will consider a petition for rehearing presented only upon the following 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.
 - (b) The clerk of the supreme court will not accept a petition for rehearing for filing if the supreme court orders that remittitur, peremptory writ, or judgment issue immediately.
 - (c) The clerk of the supreme court will not accept a petition for rehearing for filing after remittitur has issued or after the time for filing such a petition has expired in a proceeding filed under rule 14.
 - (d) Absent clearly demonstrated exceptional circumstances, the supreme court will not grant petitions for rehearing of its orders disposing of motions or petitions for extraordinary writs.
 - (e) Petitions for rehearing will not be argued orally.

Appellant's claims that this Court improperly ruled in this case are based on an erroneous and incomplete statement of the case. That is, the Estate ignores the fact that it never presented to the District Court the claim (or evidence thereof) that is now the basis of its argument.

First, any reference the Estate makes to documents not before the District Court during the factfinding portion of the trial is improper. The Montana Rules of Evidence require procedure necessary to acceptance of evidence (including as to reliability and authentication), none of which have been applied to the documents now asserted by the Estate. Thus, reference to this Court overlooking a fact is a

gross misstatement, as no such "fact" has been established pursuant to the Montana Rules of Evidence or Montana Rules of Civil Procedure.

Second, the District Court was never presented with the claim the Estate now makes. The summarized timeline of this lawsuit includes:

June 2019 - Lawsuit filed by Edna Balkoski, now represented by the Estate; included her request for quiet title;

February and March 2019 2021 - Bench trial of the case;

November 2023, January 2024 - District Court issued findings, conclusions, and order in favor of Steven; and

February 2024 - The Estate asserted current claim.

Appellant first referred to the documents it now relies on in its Motion to Stay pending appeal filed in the District Court February 8, 2024 (D. C. Doc. 138), **three (3) years after the trial of the case**. The District Court never issued an opinion as to the Estate's claim years after the trial. And, properly, this Court did not address the claim in its opinion on appeal found at 2024 MT 203N.

This Court properly refused to consider a claim or issue not raised to the District Court. *Cleveland v. Ward*, 2016 MT 10, ¶ 28, 382 Mont. 118, 364 P.3d 1250; *Unified Indus., Inc. v. Easley*, 1998 MT 145, ¶ 15, 289 Mont. 255, 961 P.2d 100 (citing *Day v. Payne*, 280 Mont. 273, 276, 929 P.2d 864, 866 (1996)). This is because "it is fundamentally unfair to fault the trial court for failing to rule

correctly on an issue it was never given the opportunity to consider." *Easley*, ¶ 15 (quoting *Day*, 280 Mont. at 276-77, 929 P.2d at 866). See also *Peters v. Hubbard*, 2020 MT 282, ¶ 11, 402 Mont. 71, 475 P.3d 730; *Tai Tam, LLC v. Missoula Cnty.*, 2022 MT 229, ¶ 21, 410 Mont. 465, 520 P.3d 312; *Nielsen v. Hornsteiner*, 2012 MT 102, ¶ 13, 365 Mont. 64, 277 P.3d 1241.

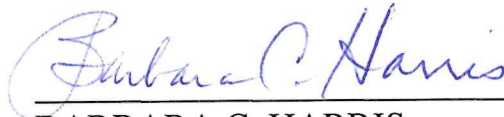
Consistent with the judicial policy of preventing collateral attacks and favoring a definite end to litigation, this Court's decision should not be revisited. See *Adams v. Two Rivers Apts., LLLP*, 2019 MT 157, ¶¶ 7 - 9, 396 Mont. 315, 444 P.3d 415. See also *Poplar Elem. Sch. Dist. No. 9 v. Froid Elem. Sch. Dist. No. 65I*, 2020 MT 216, ¶ 33, 401 Mont. 152, 471 P.3d 57 ("Collateral estoppel applies if: (1) the identical issue raised was previously decided in a prior adjudication; (2) a final judgment on the merits was issued in the prior adjudication; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom preclusion is now asserted was afforded a full and fair opportunity to litigate the issue.") ; *Gibbs v. Altenhofen*, 2014 MT 200, ¶ 10, 376 Mont. 61, 330 P.3d 458.

The timeline above is undisputed and there is no basis on which to revisit the District Court's or this Court's decision. A claim never addressed by the District Court not a valid basis for the petition for rehearing and the petition should be summarily denied.

CONCLUSION

The Estate brought this lawsuit and had full opportunity to present claims. It has received full due process in the District Court and this Court. There is no basis on which the Estate can now seek Court reconsideration of this case. This petition for rehearing is not meritorious under the standards of M. R. App. P. 20 and should be denied.

Respectfully submitted this 30th day of September, 2024.

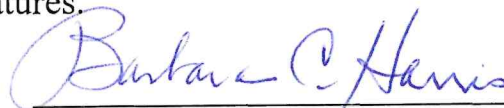


BARBARA C. HARRIS

Attorney for Appellee Steven J. Balkoski

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 20 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1038 words, excluding certificate of service, certificate of compliance, and signatures.



BARBARA C. HARRIS

CERTIFICATE OF SERVICE

Pursuant to Rule 6 of the Temporary Electronic Filing Rules of the Montana Supreme Court, adopted November 18, 2014, I hereby certify that an electronic copy of the foregoing was sent electronically to the following by means of the electronic filing system currently in place for the Montana Supreme Court:

Michael Rabb
Jeffrey Driggers
Attorneys for Appellants

DATE: 9-30-24 Barbara P. Harris

CERTIFICATE OF SERVICE

I, Barbara C. Harris, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Objection to Petition for Rehearing to the following on 09-30-2024:

Michael Lloyd Rabb (Attorney)
3950 Valley Commons Drive
Suite 1
Bozeman MT 59718
Representing: Faye Jackson
Service Method: eService

Electronically Signed By: Barbara C. Harris
Dated: 09-30-2024