

DA 24-0230

IN THE SUPREME COURT OF THE STATE OF MONTANA

2025 MT 23

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IN RE THE ESTATE OF

M.A.C.,

Deceased Minor.

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APPEAL FROM: District Court of the Eighteenth Judicial District,  
In and For the County of Gallatin, Cause No. DP-20-137C  
Honorable John C. Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Christopher W. Froines, Froines Law Office, PC, Missoula, Montana

For Appellee:

Danielle Shyne, Shyne Law Group, PLLC, Bozeman, Montana

Walter Clapp, Honor Coin Law, PLLC, Red Lodge, Montana

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Submitted on Briefs: November 20, 2024

Decided: February 4, 2025

Filed:



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Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Lisa Cole appeals the Eighteenth Judicial District Court, Gallatin County’s April 5, 2024 Findings of Fact, Conclusions of Law, and Order precluding her from inheriting the estate of her deceased minor child, M.A.C., who died intestate.<sup>1</sup> We address the dispositive issue on appeal as follows:<sup>2</sup>

*Did the District Court err by holding that § 72-2-124, MCA, precluded Lisa from inheriting on the basis that she refused to support M.A.C.?*

¶2 We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

¶3 On March 13, 2020, eleven-year-old M.A.C. tragically died in a car accident that severely injured her fifteen-year-old brother, Mythias Cole, and took the life of their adult half-sister, Samara Yanny. At the time of the accident, M.A.C. and Mythias resided with Samara in Bozeman and had lived with her for approximately six months. Lisa is the natural mother of M.A.C. and Mythias, as well as their five adult half-siblings, including Samara. Mythias and M.A.C.’s father died in 2017.

¶4 Bristol West Insurance Company, represented by attorney Shawn Cosgrove, insured the vehicle in which M.A.C. was a passenger and sought to convey a policy-limits settlement of \$100,000 to her estate (the Estate). Discovering that no estate had been

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<sup>1</sup> Although this is not a proceeding requiring the use of initials under M. R. App. P. 10(6), we refer to M.A.C. by her initials consistent with the District Court’s orders and the parties’ briefs.

<sup>2</sup> Lisa also argues that the District Court erred in its interpretation of § 72-2-125, MCA. Because we hold that the District Court properly precluded Lisa from inheriting on the grounds set forth in § 72-2-124, MCA, we need not address the arguments concerning § 72-2-125, MCA.

opened, Cosgrove attempted to contact Lisa by phone and mail to inform her of the funds and the necessity of probate. His attempts went unanswered. On June 1, 2020, Cosgrove drove to the address where he believed Lisa lived in Miles City and spoke to her in person. Cosgrove explained his role as the attorney representing the insurance company, and he informed Lisa that before he could distribute the policy funds, a probate proceeding had to be filed and a personal representative had to be appointed for the Estate. Cosgrove stated in an affidavit that he came away from his conversation with Lisa with the impression that she “did not parent her children, nor wanted to be involved in the . . . estate matter.” Cosgrove gave Lisa his business card, but Lisa neither contacted nor spoke with him again.

¶5 At some point after meeting Lisa, Cosgrove consulted with the Gallatin County Public Administrator—who also serves as the county’s Clerk of District Court—to seek appointment of a personal representative for the Estate. The Public Administrator referred Cosgrove to Sunny Yocom, a professional fiduciary. On October 21, 2020, Yocom filed an Application for Informal Appointment of Personal Representative in Intestacy. An unopposed motion for a hearing concerning the appointment accompanied the application. On November 23, 2020, Cosgrove questioned Yocom before the District Court about her professional qualifications and willingness to serve. At the end of the hearing, the District Court issued an order opening the Estate and appointing Yocom as the personal representative.

¶6 On December 13, 2021, the Estate petitioned the District Court to preclude Lisa from inheriting and approve distribution of the Estate to M.A.C.’s half-siblings and

Mythias in accordance with the intestate succession statutes (the Petition). On January 27, 2022, Lisa's counsel noticed his appearance in the case on her behalf. Over the next year, Lisa filed numerous motions seeking to remove Yocom as the personal representative and opposing the Petition, but she did not file any verified pleadings. During this period, the Estate amended the Petition without objection from Lisa.

¶7 The District Court set an evidentiary hearing to address the outstanding motions and the Petition. Lisa moved to appear remotely, which the Estate opposed on the grounds that Lisa's identity and credibility were critical to the case, and her examination would require the use of documentary evidence. The District Court denied the motion, requiring Lisa's in-person attendance if she wished to testify at the hearing.

¶8 On May 23, 2023, the District Court held the hearing. Lisa did not appear, but she was represented by her attorney. The District Court admitted without objection an affidavit submitted by Cosgrove in lieu of his live testimony. The District Court heard testimony from Bozeman school personnel familiar with M.A.C.'s enrollment; Jennifer Hoerauf, an administrator for the Department of Health and Human Services, Child and Family Services Division (the Department); Yocom; Mythias; and two of Mythias and M.A.C.'s adult half-siblings: Phoenix Nivens and Sierra Yanny.

¶9 Hoerauf testified about the family's history with the Department and authenticated the Department's reports concerning the family. Hoerauf did not author any of the reports. The Estate offered the reports into evidence. Lisa objected on grounds of hearsay and relevance. The District Court admitted the reports over Lisa's objections.

¶10 Mythias testified that in early September 2019, Phoenix retrieved M.A.C. and Mythias from Colorado at Mythias's request and with Lisa's consent. At the time, M.A.C. and Mythias were living in a minivan with Lisa, Lisa's partner, his two children, two dogs, and two cats. Mythias testified about their housing instability over the previous several years, Lisa's drug use, and Lisa's refusal to provide basic necessities to M.A.C. and him, such as medical care and a safe environment. Phoenix's testimony confirmed Mythias's account of the living conditions in Colorado, which he observed when he picked up the children, and the circumstances that led to their moving to Bozeman. Phoenix described Lisa as an addict and testified to the neglect he experienced growing up in her household. Sierra testified that she lived a few blocks away from the home Samara shared with M.A.C. and Mythias, and she visited frequently. Sierra testified that she had a very close relationship with Samara but did not speak to Lisa. All three siblings testified about their personal knowledge of Lisa's actions or inactions pertaining to her parenting of M.A.C.

¶11 At the time of their deaths, Samara was pursuing legal guardianship of M.A.C. Yocom read into the record a portion of Samara's March 6, 2020 affidavit filed in that proceeding. The District Court took judicial notice of the affidavit and other guardianship pleadings without objection from Lisa.

¶12 Yocom testified about and offered into evidence several letters from the Social Security Administration (SSA) addressed to Samara concerning Mythias and M.A.C.'s benefits. After their father died in 2017, SSA sent monthly survivor payments for the children's benefit to Lisa as their representative payee. Yocom obtained the letters from

SSA after requesting M.A.C.'s Social Security Number and information related to her benefits for the purposes of opening and valuing the Estate. The November 15, 2019 letter concerned Samara's application to become the children's representative payee, and the December 12, 2019 letter notified her that her application was approved. The February 18, 2020 letter informed Samara that SSA determined the "former representative payee [Lisa] misused \$1,569.00 of [M.A.C.'s] benefits," and it would replace the funds if Lisa did not pay back the money. The District Court admitted the letters over Lisa's hearsay and relevance objections.<sup>3</sup>

¶13 On April 5, 2024, the District Court entered its Findings of Fact and Conclusions of Law Re: Petitioner's Motion for Approval to Bar Parent from Inheriting, in which it granted the Petition to preclude Lisa from inheriting and directed the distribution of the Estate to M.A.C.'s half-siblings and Mythias pursuant to §§ 72-2-113 and 72-2-117, MCA. The District Court denied Lisa's motions to remove Yocom as the personal representative.

### **STANDARDS OF REVIEW**

¶14 We review a district court's evidentiary rulings for an abuse of discretion. *In re Conservatorship of H.D.K.*, 2021 MT 254, ¶ 16, 405 Mont. 479, 497 P.3d 1171. "To establish an abuse of discretion, the appellant must demonstrate that the district court acted arbitrarily without conscientious judgment or exceeded the bounds of reason." *Conservatorship of H.D.K.*, ¶ 16 (citation omitted). To the extent such a discretionary ruling is based on a conclusion of law, our review is plenary, and we must determine

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<sup>3</sup> On appeal, Lisa does not contest the admission of the SSA letters, or the testimony related to them.

whether the court correctly interpreted the law. *Puccinelli v. Puccinelli*, 2012 MT 46, ¶ 12, 364 Mont. 235, 272 P.3d 117.

¶15 We review a district court’s findings of fact for clear error. *In re Estate of Williams*, 2023 MT 72, ¶ 16, 412 Mont. 58, 528 P.3d 1087 (citation omitted). Findings are clearly erroneous if “they are not supported by substantial credible evidence, if the court has misapprehended the effect of the evidence, or if a review of the record leaves us with the definite and firm conviction that a mistake has been made.” *Estate of Williams*, ¶ 16 (citation omitted). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *In re S.S.*, 2022 MT 75, ¶ 12, 408 Mont. 238, 507 P.3d 1161. We review de novo a district court’s conclusions of law to determine whether the conclusions are correct. *Estate of Williams*, ¶ 16 (citation omitted).

## DISCUSSION

¶16 *Did the District Court err by holding that § 72-2-124, MCA, precluded Lisa from inheriting on the basis that Lisa refused to support M.A.C.?*

¶17 Section 72-2-124, MCA, provides in relevant part that “[i]nheritance from or through a child by either natural parent . . . is precluded unless that natural parent has openly treated the child as the parent’s and has not refused to support the child.” Section 72-2-124(3), MCA.

¶18 The District Court interpreted § 72-2-124(3), MCA, as abrogating a parent’s statutory right of intestate succession if that parent refused to support the child. Lisa does not contest the District Court’s statutory interpretation. Lisa asserts the District Court erred

because the admissible testimony and exhibits presented did not form a sufficient evidentiary basis for the District Court’s rulings as to the Petition and Lisa’s motions.<sup>4</sup>

¶19 Lisa argues the District Court committed reversible error by relying on inadmissible hearsay from the Department’s reports in its ruling. Lisa argues that without the reports, there was insufficient evidence to preclude Lisa from inheriting on the basis of nonsupport. Lisa specifically takes issue with the District Court’s findings and conclusions regarding her withholding consent for M.A.C.’s medical and dental care, her retention of M.A.C.’s survivor benefits, her refusal to financially support M.A.C., and her refusal to resume care of M.A.C.

¶20 The Estate concedes the Department’s reports are hearsay, but it contends the reports fall within the regularly conducted business activity and public records exceptions under M. R. Evid. 803(6) and 803(8). Alternatively, the Estate argues that Lisa fails to overcome the presumption that the District Court disregarded any inadmissible evidence in making its decision. The Estate asserts that the SSA letters—which are uncontested on appeal—as well as the testimony of Mythias, Sierra, and Phoenix, and Samara’s

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<sup>4</sup> The Estate urges us to dismiss this appeal on the grounds that Lisa failed to verify any of her filings below as required by § 72-1-310, MCA, and she did not testify at the evidentiary hearing. The Estate argues that without a verified pleading or testimony, Lisa cannot establish any facts in this proceeding. We have previously said that “a party cannot establish facts in a case by asserting them in a brief” because an attorney’s statements do not constitute evidence or proof of facts. *City of Helena v. Whittinghill*, 2009 MT 343, ¶ 21 fn. 2, 353 Mont. 131, 219 P.3d 1244. Because we hold the District Court did not err by granting the Petition and denying Lisa’s motions, we need not address this argument.



guardianship affidavit provide the same evidentiary foundation as the reports for the court's determination that Lisa refused to support M.A.C.

¶21 Regarding the admissibility of the Department's reports, Lisa notes that we have previously rejected the application of the business and public record exceptions to such reports when, as here, the author does not testify and is not subject to cross-examination. Lisa cites *Puccinelli* and *In re Swan*, 173 Mont. 311, 567 P.2d 898 (1977), in support of her argument. In *Puccinelli*, a guardian ad litem submitted a report that substantially revised her original custody recommendation, which the district court adopted wholesale in its findings and conclusions without holding a hearing. *Puccinelli*, ¶¶ 8–9. We held the inadmissible report and the district court's reliance on it violated the mother's due process rights and remanded the matter for another custody hearing. *Puccinelli*, ¶¶ 17–21. In *Swan*, we held that unsworn, out-of-court investigative reports written by a State social worker containing a “conglomeration” of statements from various individuals could not be admitted under either the business record or the public record exceptions. *In re Swan*, 173 Mont. at 314–15, 567 P.2d at 900–01. The Estate has not cited any authority applying these exceptions to investigative reports like those admitted in this case.

¶22 Nevertheless, the admission of the reports does not provide a basis for reversal under the circumstances of this case. In a case tried before the court without a jury, we presume the court disregarded all inadmissible evidence in reaching its decision. *In re Moyer*, 173 Mont. 208, 211, 567 P.2d 47, 49 (1977). In *Moyer*, the county attorney attached an investigative report prepared by a state social worker to a petition filed in a child-welfare

action. *In re Moyer*, 173 Mont. at 209, 567 P.2d at 48. After a hearing, the district court found the children were dependent and neglected and awarded permanent custody to the State. *In re Moyer*, 173 Mont. at 210, 567 P.2d at 48. While acknowledging that due process prohibited a custody decision based on an inadmissible investigative report, we held its admission did not require reversal because the hearing testimony provided substantial evidence supporting the court's findings and conclusions. *In re Moyer*, 173 Mont. at 211–12, 567 P.2d at 49.

¶23 In contrast to *Swan* and *Puccinelli*, where this Court reversed because the lower court's decision relied almost exclusively on the inadmissible reports, this Court declined to reverse in *Moyer* because the mother failed to show the report formed the basis of the court's rationale rather than the hearing testimony presented by individuals with personal knowledge of the family. *In re Moyer*, 173 Mont. at 211–12, 567 P.2d at 49; *In re Swan*, 173 Mont. at 314–15, 567 P.2d at 900–01; *Puccinelli*, ¶ 21. As in *Moyer*, the facts that required reversal in *Swan* and *Puccinelli* are not present in this case.

¶24 Disregarding the Department's reports, the District Court's findings are still supported by substantial testimony and evidence admitted without objection at the evidentiary hearing. Regarding the findings concerning Lisa's withheld consent for M.A.C.'s medical and dental care, Sierra testified that M.A.C. could not get treatment for cavities or make medical appointments because Lisa refused to consent, and Samara lacked legal guardianship over M.A.C. at the time. Mythias testified that they received no medical care in the year prior to M.A.C. and his move to Bozeman. Regarding the findings

concerning Lisa's retention of M.A.C.'s survivor benefits and refusal to provide financial support, Sierra testified that although M.A.C. and Lisa would occasionally speak on the phone, neither Samara nor M.A.C. received any funds from Lisa. Samara's guardianship affidavit stated that since September 2019, M.A.C. had not lived with Lisa, and Lisa "ha[d] not paid any form of financial support" towards M.A.C.'s care during the time M.A.C. resided with Samara. The February 18, 2020 SSA letter confirms that Lisa misused M.A.C.'s benefits and that SSA would replace the benefits if Lisa did not pay them back. Regarding the findings concerning Lisa's abandonment of M.A.C., Sierra described a pattern of Lisa "hardly [being] there," making it "difficult to get any sort of resources from [Lisa]." Both Mythias and Phoenix testified that Lisa consented to Mythias and M.A.C.'s removal from her care. After their removal, Mythias testified he never heard Lisa express any desire to retrieve him or M.A.C., nor was he aware of any plan for them to return to her care.

¶25 After a thorough review of the record, we conclude the District Court had ample evidence to support its determination that Lisa refused to support M.A.C. Notwithstanding her own hearsay argument that the Department's reports should not be considered, Lisa asks us to consider statements in the reports she contends provide evidence of her desire to care for M.A.C. Even if Lisa's contradictory position on the Department's reports had merit, in reviewing a district court's findings we do not consider whether the evidence could support a different finding, nor do we substitute our judgment for that of the district court regarding the weight given to the evidence. *In re V.F.A.*, 2005 MT 76, ¶ 7,

326 Mont. 383, 109 P.3d 749. “It is the district court’s responsibility to weigh the evidence presented and ascertain witnesses’ corresponding credibility.” *In re V.F.A.*, ¶ 7. The District Court’s findings were not clearly erroneous, and it correctly determined that Lisa refused to support M.A.C.

¶26 Finally, we address Lisa’s arguments concerning Yocom’s appointment and the denial of Lisa’s motion to appear remotely at the evidentiary hearing. Lisa argues that the District Court erred when it appointed Yocom on the grounds that she did not receive proper notice of the initial application for informal probate, nor notice of the November 23, 2020 hearing at which the court appointed Yocom to administer the Estate. Lisa contends she was an interested person entitled to notice of the appointment pursuant to § 72-1-301, MCA. She also avers to a violation of her constitutional right to due process after being “denied” an opportunity to be heard at the appointment and evidentiary hearings, and she alleges Yocom had a conflict of interest.

¶27 Section 72-1-301, MCA, provides in relevant part:

(1) *If* notice of a hearing on any petition is required and except for *specific notice requirements as otherwise provided*, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person’s attorney if the person has appeared by attorney or requested that notice be sent to the person’s attorney.

Section 72-1-301(1), MCA (emphasis added).

¶28 There are two pertinent statutes that provide specific notice requirements as contemplated by § 72-1-301(1), MCA. Section 72-3-211, MCA, addresses when notice

must be given of an application for informal probate. Section 72-3-221, MCA, addresses when notice must be given by a party seeking an appointment informally.

¶29 Section 72-3-211, MCA, which applies to notice of an application for informal probate, provides:

(1) The moving party shall give notice, as described by 72-1-301, of the application for informal probate:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any personal representative of the decedent whose appointment has not been terminated.

(2) No other notice of informal probate is required.

Section 72-3-211, MCA.

¶30 Section 72-3-221, MCA, which applies to notice of a party's intention to seek an appointment informally, provides:

(1) The moving party shall give notice, as described by 72-1-301, of the party's intention to seek an appointment informally:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required.

Section 72-3-221, MCA.

¶31 Lisa does not contend she demanded notice. Lisa cites no supporting authority for her contention that the notice requirements in § 72-1-301, MCA, apply despite the express language excepting from the rule specific notice provisions imposed by the statutes

governing informal proceedings. She does not offer any legal analysis placing the proceeding below outside the ambit of an informal proceeding and within § 72-1-301, MCA.<sup>5</sup> Her claims concerning due process and Yocom's alleged conflict of interest are similarly unsupported.

¶32 As to the denial of her motion to appear remotely, the Estate correctly observes that the case Lisa cites in support has no bearing on the issue of remote appearances. The discussion relates to a district court's findings of fact and discretion to terminate parental rights; it does not even mention remote testimony. *See In re V.F.A.*, ¶¶ 3–19. Lisa cites no other authority supporting this claim.

¶33 This Court is not obligated to develop legal analysis supporting a party's position, to guess at the party's precise position, or to conduct legal research on the party's behalf. *M. R. App. P. 12(1)(g)*; *In re Estate of Bayers*, 1999 MT 154, ¶ 19, 295 Mont. 89, 983 P.2d 339. We “will not consider unsupported issues or arguments.” *In re Estate of Spencer*, 2002 MT 304, ¶ 20, 313 Mont. 40, 59 P.3d 1160. Accordingly, we decline to further address the merits of Lisa's challenges to Yocom's appointment and the denial of her motion to appear remotely and affirm the District Court as to these issues.

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<sup>5</sup> Lisa also does not dispute that Cosgrove personally spoke with her in Miles City and advised her of the need to open a probate proceeding and appoint a personal representative for the Estate. Although we need not decide in this case whether or not such contact satisfies the notice requirements of § 72-1-301, MCA, we note it is uncontroverted that Lisa was well aware probate proceedings would be necessary to distribute the insurance proceeds.

## **CONCLUSION**

¶34 The District Court did not err by holding § 72-2-124(3), MCA, precluded Lisa from inheriting on the basis that she refused to support M.A.C. The District Court's April 5, 2024 Findings of Fact, Conclusions of Law, and Order is affirmed.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON

/S/ JIM RICE