SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA 24-0632

RUSSELL WADDELL and CASEY MAGAN,

Plaintiffs, and Appellants

vs.

PAUL STUDER, RACHAEL STUDER, and SUMMER RIDGE HOMEOWNERS' ASSOCIATION,

Defendants, and Appellees.

APPELLEES PAUL AND RACHAEL STUDER'S OPENING BRIEF

On Appeal from the Montana 18th Judicial District, Gallatin County
Cause No. DV 16-2020-1267A
Before Hon. Peter Ohman

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ISSUES PRESENTED FOR REVIEW

Appellants appeal from five orders entered by the District Court, as explained below. Appellants' Opening Brief purports to identify the following issues presented for review:

1. Whether the District Court erred in denying Appellants' request for a Temporary Restraining Order in its order entered November 20, 2020.

2. Whether, following a Show Cause hearing held December 4, 2020, the District Court erred in denying Appellants' request for a Preliminary Injunction in its order entered December 31, 2020.

3. Whether the District Court erred in interpreting the applicable covenants for Summer Ridge subdivision in its orders granting summary judgment in favor of Appellees on January 4, 2022, and April 25, 2022, respectively.

4. Whether the District Court erred in granting attorney's fees to Appellees in its final judgment entered October 18, 2024.

The Studers dispute whether Waddell and Magan have properly identified any one or more appealable issues. Further, the Studers dispute whether Waddell and Magan's purported issues presented for review have been properly preserved in the record.

STATEMENT OF THE CASE

Appellants Russell Waddell and Casey Magan ("Waddell and Magan") and Appellees Paul and Rachael Studer (the "Studers") own adjacent parcels of real property within the Summer Ridge subdivision, and are members of Appellee Summer Ridge Homeowners Association ("SRHOA"). On November 20, 2020, Waddell and Magan filed suit asking the District Court to enjoin the Studers from building a house on the lot next to Waddell and Magan's own. (*See* Doc. 1, Complaint for Preliminary Injunction, Declaratory Judgment, Permanent Injunction, and Request for Temporary Restraining Order and Show Cause Hearing.) Waddell and Magan subsequently amended their complaint and joined SRHOA as a defendant on December 1, 2020. (*See* Doc. 4, Amended Complaint and Amended Petition for Declaratory Judgment.)

On November 20, 2020, The District Court denied Waddell and Magan's request for a temporary restraining order and set a Show Cause hearing on their request for a preliminary injunction for December 4, 2020. (*See* Doc. 2, Order Denying Motion for Temporary Restraining Order; Order to Show Cause.) Following that hearing, the District Court denied Waddell and Magan's request for a preliminary injunction on December 31, 2020. (*See* Doc. 23, Order Re Plaintiffs' Motion for Preliminary Injunction.)

The Studers moved for summary judgment on April 19, 2021, seeking dismissal of Waddell and Magan's claims for Declaratory Judgment, Breach of Contract and Covenant of Good Faith, and Nuisance. Following a hearing on the motion held August 25, 2021, the District Court granted summary judgment in the Studers' favor on January 4, 2022. (*See* Doc. 184, Order Re Defendants Paul and Rachael Studer's Motion for Summary Judgment.) Similarly, SRHOA moved for summary judgment on August 30, 2021, seeking dismissal of Waddell and Magan's claims for Declaratory Judgment and Breach of Contract and Covenant of Good Faith. Following a hearing on the motion held March 28, 2022, the District Court granted summary judgment in SRHOA's favor on April 25, 2022. (*See* Doc. 231, Order Re Defendant Summer Ridge Homeowners Association's Motion for Summary Judgment.)

Between April of 2022 and May of 2023, Waddell and Magan filed numerous motions seeking to relitigate the claims on which the Studers and SRHOA had been granted summary judgment. The District Court finally resolved all claims raised in this matter in favor of the Studers and SRHOA, and thereafter granted both the Studers and SRHOA their reasonable attorney's fees incurred pursuant to the applicable covenants for Summer Ridge Subdivision on January 4, 2024. (*See* Doc. 360, Order Re: Attorneys' Fees.) Following an evidentiary hearing held August 1, 2024, the District Court entered Final Judgment on October 18, 2024.

On appeal, Waddell and Magan contend that the District Court erred in denying their initial request for a Temporary Restraining Order; in denying their request for a Preliminary Injunction; in granting summary judgment in favor of both the Studers and SRHOA; and in granting the Studers and SRHOA their reasonable attorney's fees.

STATEMENT OF THE FACTS

1. In 2004, Waddell and Magan became the owners of Lot 7 in the Summer Ridge Subdivision. (Doc. 184, p. 2)

2. In 2018, the Studers became the owners of Lot 6 in the Summer Ridge Subdivision. (Doc. 184, 2-3)

3. The Studers' property lies immediately to the east of Waddell and Magan's property. (Doc. 184, 2-3)

4. The Summer Ridge Subdivision is subject to a Declaration of Protective Covenants and Restrictions recorded December 21, 1993, in the official records of Gallatin County under Film 139, Pages 1112-1131 (hereafter the "Covenants"). (Doc. 184, 3; and see Appellants' Appendix 2, Exhibit 1)

5. The Covenants state, in part, "Declarant does hereby establish, dedicate, publish, and impose upon the premises, the following protective and restrictive covenants which shall run with the land...and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use, and development of the premises and all improvements placed or erected thereon, unless otherwise specifically excepted as herein mentioned." (Covenants, 1)

6. Article IV of the Covenants, which addresses architectural control of construction within Summer Ridge Subdivision, provides that the "plans and specifications showing the design, nature, kind, size, shape, height, material, use,

and location" of any proposed construction shall be "submitted to a Design Review Committee consisting of three Members appointed by the Board of Directors" of SRHOA; and shall not begin without "approval in writing by the Committee as to compliance with the covenants and the Uniform Building Code." (Covenants, 4-5)

7. Article V of the Covenants, which addresses minimum building and use restrictions, states, in part, "the Design Review Committee shall consist of 3 members and is delegated to review and approve drawings and specifications of new construction or alterations to existing structures." (Covenants, 6)

8. Article V of the Covenants states, in further part and with regard to siting of structures, "Placement should take into consideration the location of roads and neighboring dwellings, with allowance for views and solar gains." (Covenants, 7)

9. Article V of the Covenants states, in further part and with regard to architectural regulations, "no structure more than two (2) stories shall be constructed. Approval of size and height shall take into consideration unusual designs, blocking views, and solar effects of existing dwellings." (Covenants, 10)

10. In September of 2020, the Studers submitted information to the SRHOA Design Review Committee for review and approval prior to construction of their residence on their property. SRHOA, through its Design Review Committee,

approved the Studers' proposed plans for construction of their residence on October 7, 2020. (Doc. 184, 3)

11. On October 15, 2020, the Studers submitted revised plans reducing the square footage of their residence to the Design Review Committee. SRHOA, through its Design Review Committee, approved the Studers' proposed plans a second time on October 15, 2020. (Doc. 184, 3-4)

12. On October 26, 2020, Waddell and Magan sent correspondence to SRHOA objecting to the Studers' proposed construction and requesting that SRHOA rescind its approval of the Studers' proposed plans. (Appellants' Appendix 2, Exhibit 5 at 24-30)

13. On October 30, 2020, the Studers received a letter from SRHOA's Board of Directors stating, in part, "The Board has rescinded the approval letter issued by the Design Review Committee to build on your lot. No further action regarding construction on your lot is allowed until this matter is resolved." (Doc. 184, 4; Appellants' Appendix 2, Exhibit 2 at 1)

14. After being apprised of Waddell and Magan's concerns regarding the proposed location of their residence, the Studers consulted with their general contractor to explore the possibility of moving their residence to the south. (Doc. 184, p. 4; Studers' Appendix 1, Exhibit 1 at 1)

15. After being apprised of Waddell and Magan's concerns regarding the proposed location of their residence and prior to starting excavation, the Studers on November 12, 2020, also offered to relocate their residence 20 feet to the south of its previously-approved location. (Doc. 184, 4; Studers' Appendix 1, Exhibit 1 at 1; Appellant's Appendix 2, Exhibit 5 at 59)

16. Upon being informed of the Studers' offer to relocate their residence 20 feet to the south, Waddell and Magan rejected the offer on November 17, 2020. (Doc. 184, 4; Appellant's Appendix 2, Exhibit 5 at 59)

17. On November 17, 2020, the Studers received an email communication from SRHOA's Board of Directors reinstating SRHOA's approval of the Studers' proposed plans for their residence. The email communication stated, in part, "No further action, in terms of revising the plan is necessary as far as the Board is concerned and your approval to proceed with construction is reinstated." (Doc. 184, 4; Appellant's Appendix 2, Exhibit 4)

18. SRHOA's email communication of November 17, 2020, further stated XXXXX (offer to pay cost of re-staking)

19. Following the District Court's denial of Waddell and Magan's requests for a temporary restraining order and a preliminary injunction, the Studers constructed their residence in its originally-proposed location. (Doc. 184, 4)

20. The Studers' residence blocks some, but not all, views of the Bridger Mountains from Waddell and Magan's property. (Doc. 184, 4)

21. The Studers' residence is serviced by a septic tank with a drain field. The approved placement of the drain field for the Studer's residence, as approved by the Montana Department of Environmental Quality and recorded in the office of the Gallatin County Clerk and Recorder, is located on the southern portion of the Studers' property. (Doc. 184, 4-5)

22. A structure cannot be constructed on, or within ten feet of, a septic tank drain field. (Doc. 184, 5)

23. Due to the approved location of the septic tank drain field for the Studers' property among other reasons, there is no way to design and construct the Studers' residence that would not impact at least some views, including views of the Bridger Mountains, from Waddell and Magan's property. (Doc. 184, 4)

SUMMARY OF THE ARGUMENT

Waddell and Magan's scattershot appeal attempts to place the District Court's entire proceedings before this Court on appeal. Despite this, the central issue they raise on appeal concerns the District Court's interpretation of the Covenants for Summer Ridge subdivision, in which the Studers own one lot while Waddell and Magan own the adjacent lot to the west. Summer Ridge Covenants. The Covenants for Summer Ridge include a provision stating that the siting of new construction "should take into consideration the location of...neighboring dwellings, with allowance for views and solar gains." (Covenants, 7) Waddell and Magan argue in their Opening Brief that this provision "is unambiguously *obligatory*, not merely discretionary," that the District Court failed to appreciate the duty imposed by this provision, and that this failure led the District Court into error—first, in wrongly denying Waddell and Magan's request for a preliminary injunction; and second, in wrongly granting summary judgment in favor of both the Studers and SRHOA. (Op. Br., 39; 25-26)

The District Court interpreted the Covenants correctly, and Waddell and Magan offer no coherent argument to show otherwise. But even if Waddell and Magan could show this, the factual record demonstrates that the Studers did take the location of Waddell and Magan's house into consideration, and made allowance for their views: Before the underlying litigation even began, the Studers were informed

of Waddell and Magan's objection to the location of their planned home and offered to move the home 20 feet to the south in response. (Studers' Appendix 1, Exhibit 1 at 1; Appellant's Appendix 2, Exhibit 5 at 59) Consequently, even if the Court were to agree with Waddell and Magan that the District Court misinterpreted the Covenants, summary judgment in favor of the Studers and SRHOA would *still* be appropriate because the undisputed facts before the District Court established that both the Studers and SRHOA took Waddell and Magan's views into consideration—and the Covenants cannot be read to require more than this.

Waddell and Magan identify three further purported issues in their Opening Brief, but none of the other three issues are any more compelling: First, they claim that the District Court erred in denying their request for a Temporary Restraining Order ("TRO") at the outset of this litigation. Over four years later and with the Studers' home long since built, an appeal of this denial is untimely. Moreover, the District Court rightly denied Waddell and Magan's request for a TRO because their original complaint failed to allege sufficient well-pled, non-conclusory facts to establish irreparable harm, as their Opening Brief demonstrates.

Second, Waddell and Magan claim that the District Court erred by interpreting the Covenants in its order denying their request for an injunction, contending that this amounted to "determining ultimate issues of fact at the preliminary injunction stage." (Op. BR., 28) This willfully misrepresents the Court's order. The Court did

interpret the Covenants in its order denying the injunction, but this was necessary to determine whether Waddell and Magan had established a likelihood of success on the merits. The Court was required to determine this under Montana's preliminary injunction statute, and Waddell and Magan do not show that the Court went beyond this determination in its order.

Third, and finally, Waddell and Magan claim that the District Court erred by awarding reasonable attorney's fees to the Studers and SRHOA. But they do not identify any basis in law for this claim, nor do they point to any flaw in the District Court's reasoning supporting the awards. Rather, they simply opine that the award of attorney's fees is improper because the Studers "precipitated and necessitated" the underlying litigation—by seeking to build their home in compliance with the Covenants and with the approval of SRHOA—and that the District Court's judgment amounts to a reward for "bad faith behavior."

STANDARD OF REVIEW

A district court's ruling on a request for a temporary restraining order is not appealable under the Montana Rules of Appellate Procedure ("M.R.App.P.") and this Court's prior holdings. *See* M.R.App.P. 6(3); *Guardian Life Insurance Co. of America v. State Board of Equalization*, 134 Mont. 526, 335 P.2d 310 (1959); *Wetzstein v. Boston & Montana Consolidated Copper & Silver Mining Co.*, 25 Mont. 135, 63 P. 2043 (1901).

"District Courts are afforded a high degree of discretion to grant or deny preliminary injunctions." *BAM Ventures, LLC v. Schifferman*, 2019 MT 67, ¶ 7, 395 Mont. 160, 164, 437 P.3d 142, 144; *Planned Parenthood of Montana v. State by & through Knudsen*, 2024 MT 227, ¶ 10, 418 Mont. 226, 233, 557 P.3d 471, 478. Accordingly, a district court's decision on a request for a preliminary injunction is reviewed for manifest abuse of discretion. *Id.* "A manifest abuse of discretion is one that is 'obvious, evident, or unmistakable.'" *Driscoll v. Stapleton*, 2020 MT 247, ¶ 12, 401 Mont.405, 413, 473 P.3d 386, 391; *Planned Parenthood v. Knudsen*, ¶ 10. However, where a district court's decision on a request for a preliminary injunction is based on conclusions of law, the decision is reviewed *de novo* for correctness. *Id.*

The Montana Supreme Court reviews a district court's ruling on a motion for summary judgment *de novo*. *Lewis v. Puget Sound Power & Light Co.*, 2001 MT 145, ¶ 16, 306 Mont. 37, 40, 29 P.3d 1028, 1031; *Montana Environmental Info.*

Center v. Montana Dep't of Environmental Quality, 2025 MT 3, ¶ 11, 420 Mont. 150, 160, 561 P.3d 1033, 1039. As such, a district court's grant of summary judgment will be affirmed where the record reveals no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Lewis*, ¶ 16, citing Mont. R. Civ. P. 56. A district court's decision may be affirmed on appeal "for any reason supported by law and the record that does not expand the relief granted by the lower court." *Peeler v. Rocky Mountain Log Homes Canada, Inc.*, 2018 MT 297, ¶ 28, 393 Mont. 396, 413, 431 P.3d 911, 922.

Finally, as to the district court's award of attorney's fees to the Studers and SRHOA, "[a] district court's conclusion regarding the existence of legal authority to award attorney's fees is reviewed for correctness." *Jorgensen v. Trademark Woodworks, LLC*, 2018 MT 291, ¶ 14, 393 Mont. 381, 384-85, 431 P.3d 29, 33. If legal authority exists, the district court's grant or denial of attorney's fees is reviewed for abuse of discretion. *Id.* Where a contract requires an award of fees, however, "a district court lacks discretion to deny the request." *Lewis & Clark County v. Wirth*, 2022 MT 105, ¶ 15, 409 Mont. 1, 10, 510 P.3d 1206, 1212, citing *Hill County High School District No. A v. Dick Anderson Construction, Inc.*, 2017 MT 20, 386 Mont. 223, 390 P.3d 602.

ARGUMENT AND AUTHORITIES

I. WADDELL AND MAGAN'S APPEAL OF THE DISTRICT COURT'S ORDER DENYING THEIR REQUEST FOR A TEMPORARY RESTRAINING ORDER SHOULD BE DISMISSED BECAUSE THE ORDER IS NOT APPEALABLE UNDER MONTANA'S RULES OF APPELLATE PROCEDURE, AND BECAUSE THE DISTRICT COURT RIGHTLY CONCLUDED THAT WADDELL AND MAGAN'S COMPLAINT FAILED TO ESTABLISH IRREPARABLE HARM.

a. The District Court's denial of Waddell and Magan's Request for a Temporary Restraining Order is not appealable.

A district court's ruling on a request for a TRO is not appealable pursuant to Rule 6, M.R.App.P. Rule 6 provides that an aggrieved party may appeal from a District Court's decision on a request for an injunction only if "the order is the court's final decision on the referenced matter." M.R.App.P. 6(3). This Court has repeatedly held that a ruling on a request for a TRO "extends only to such reasonable time as may be necessary to have a hearing on an order to show cause why an injunction should not issue," and that such a ruling therefore *cannot be* the court's final decision on the requested injunction. *Guardian Life Insurance Co.*, 134 Mont. at 529, 335 P.2d at 311-12; see also *Wetzstein*, 25 Mont. at 135, 63 P. at 1044. Here, the record clearly shows that the District Court's order denying the TRO was a temporary, and was not the District Court's final decision on the matter of Waddell and Magan's requested injunction: The District Court entered its order setting a show cause hearing on the requested injunction on the same day that it denied Waddell and Magan's request for a TRO. (Doc. 1) The hearing was held 14 days later on

December 4, 2020, and the District Court entered its order denying Waddell and Magan's request for a preliminary injunction 27 days later on December 31, 2020, superseding the order on the TRO. Accordingly, Montana law and this Court's prior holdings dictate that the District Court's order denying Waddell and Magan's request for a TRO is not appealable, and their appeal of this order is properly dismissed.

b. Waddell and Magan's Complaint does not allege facts sufficient to support granting of a Temporary Restraining Order.

Waddell and Magan sought a TRO pursuant to Mont. Code Ann. §27-19-315 (2019), which provides that a TRO may be granted without notice to the adverse party only if "it clearly appears from specific facts shown…by the verified complaint" that the applicant will suffer "immediate and irreparable injury." This is consistent with this Court's prior holding that an applicant for a TRO must provide "a statement of material facts establishing irreparable injury." *Boyer v. Karagacin*, 178 Mont. 26, 31, 582 P.2d 1173, 1176 (1978), overruled on other grounds by *Shammel v. Canyon Resource Corp.*, 2003 MT 372, 319 Mont. 132, 82 P.3d 912. This requirement "is not met by statements of the legal conclusions of the pleader or of mere matters of opinion, unsupported by specific facts sufficient to show the opinion to be well grounded." *Emery v. Emery*, 122 Mont. 201, 214, 200 P. 2d 251, 259 (1948), overruled on other grounds by *Libra v. Libra*, 157 Mont. 252, 484 P.2d 748 (1971); *Cook v. Cook*, 159 Mont. 98, 495 P.2d 591 (1972).

Here, the District Court found that Waddell and Magan's Complaint "[did] not set forth a sufficient factual basis for the Court to find that Plaintiffs' [*sic*] will suffer immediate and irreparable injury if a temporary restraining order is not issued." Waddell and Magan assert that this was error, but their Opening Brief locates the factual basis of their request for a TRO in their allegations that the Studers intended to "erect their two-story home as a permanent fixture on the property, forever blocking Plaintiffs' view," that this would "[cause] permanent injury to Plaintiffs from the resulting devaluation of their home and Plaintiffs' enjoyment of their property," and that they had "no adequate remedy at law" to address the Studers' blocking of their view. (Op. Br., 26-27) Only the first of these three allegations states a non-conclusory fact: that the Studers intended to build a home on their property. The other two allegations state legal opinions rather than well-pled facts. And the one factual allegation Waddell and Magan point to does not imply any injury unless the Court *assumes* that Waddell and Magan have a right to the view with which the Studers' planned construction would interfere. In short, Waddell and Magan failed to set forth sufficient well-pled, non-conclusory facts to support their request for a TRO. The District Court then correctly applied the appropriate standard for applications seeking a TRO and denied their request.

The District Court's order denying Waddell and Magan's request for a TRO is not appealable, and in any case the District Court correctly applied Montana law

in denying Waddell and Magan's request. For these reasons, the Studers respectfully request that this Court dismiss Waddell and Magan's appeal of the District Court's order entered November 20, 2020, denying their request for a temporary restraining order.

II. WADDELL AND MAGAN'S APPEAL OF THE DISTRICT COURT'S ORDER DENYING THEIR REQUEST FOR A PRELIMINARY INJUNCTION SHOULD BE DISMISSED BECAUSE THE APPEAL IS UNTIMELY AND MOOT, AND BECAUSE THE DISTRICT COURT'S INTERPRETATION OF THE COVENANTS WAS NECESSARY TO DETERMINE WHETHER WADDELL AND MAGAN HAD MET THEIR EVIDENTIARY BURDEN UNDER MONTANA'S PRELIMINARY INJUNCTION STATUTE.

a. Waddell and Magan's appeal of the District Court's Order denying their request for a preliminary injunction is untimely.

Montana law provides that an appeal may be taken "by timely filing a notice of appeal…in the office of the clerk of the Supreme Court." M.R.App.P. 4(2)(a). Further, "the timely filing of a notice of appeal or cross-appeal is required in order to invoke the appellate jurisdiction of the supreme court." M.R.App.P. 4(2)(c). In civil cases, such a notice of appeal "shall be filed with the clerk of supreme court within 30 days of entry of the judgment or order from which the appeal is taken." M.R.App.P. 4(5)(a)(i). And where notice of entry of the relevant judgment or order is required, "the 30 days…shall not begin to run until service of the notice of entry of judgment or order." *Id.* Finally, although an order granting or refusing to grant an

injunction is not a final judgment, such an order is immediately appealable. *See* M.R.App.P. 6(3)(e).

Here, the District Court issued its order denying Waddell and Magan's request for a preliminary injunction on December 31, 2020, and the Studers subsequently served Waddell and Magan with a Notice of Entry of Order on January 8, 2021. (Doc. 23; Doc. 25) Accordingly, the District Court's order denying the preliminary injunction could be appealed timely no later than February 7, 2021. Waddell and Magan did not file notice in the instant appeal until October of 2024—over three and a half *years* after the deadline for timely filing an appeal had passed.

Admittedly, the Rules of Appellate Procedure do provide that on an appeal from a final judgment, the Montana Supreme Court may review "all previous orders and rulings excepted or objected to, which led to and resulted in the judgment" M.R.App.P. 6. Waddell and Magan appeal from the District Court's final judgment here, and they clearly (if belatedly) object to the District Court's order denying their request for a preliminary injunction. But this does not make review of the order appropriate because the preliminary injunction order neither 'led to' nor 'resulted in' the final judgment. This case was decided on summary judgment. The Studers and SRHOA moved the District Court for summary judgment in the middle of 2021, months after the preliminary injunction order was issued in December of 2020. (Doc.XXX; Doc. XXX) And the District Court did not enter its orders granting

summary judgment until 2022. (Doc. 184; Doc. 231) In those orders, the District Court considers the full record of the case, including facts revealed through discovery conducted after the preliminary injunction order was issued and evidence and testimony presented at two separate evidentiary hearings. The orders provide the District Court's complete interpretation of the Covenants for Summer Ridge as those bear on the issues raised in this litigation, and they fully set forth the basis for the District Court's rulings granting summary judgment to both the Studers and SRHOA. As such, these summary judgment orders led to and resulted in the final judgment from which Waddell and Magan appeal, and this Court need not consider more than these orders here.

Waddell and Magan claim that the District Court granted summary judgment in favor of the Studers and SRHOA "based on" its preliminary injunction order. (Op. Br., 28) This misrepresents the District Court's orders, however. The Court's summary judgment orders in no way rely upon the findings and conclusions in its preliminary injunction order. Both summary judgment orders do quote language from the preliminary injunction order stating that the Covenants do not create an obligation to protect neighbors' views, but they do so only in order to note that the facts material to the case "have not changed." (Doc. 184, 9; Doc. 231, 14) This indicates that the Court carefully reviewed evidence not before it during the preliminary injunction proceedings *rather than* relying on its findings from the

preliminary injunction order. Moreover, the Court does not rely on the quoted language to establish any conclusion regarding the Covenants in the summary judgment orders; rather, the Court provides a complete interpretation of the relevant portions of the Covenants in each of its summary judgment orders. Each of these orders also considers evidence and argument developed only after the Court issued the preliminary injunction order. Accordingly, there is no basis in the record for Waddell and Magan's claim that the District Court's rulings granting summary judgment were "based on" its order denying their request for a preliminary injunction. Given this, appeal of the latter order is not provided for under M.R.App.P. 6, and dismissal of Waddell and Magan's appeal as to the District Court's denial of the preliminary injunction is appropriate.

b. The District Court's interpretation of the Covenants in its order denying Waddell and Magan's request for a preliminary injunction was necessary in order to determine whether Waddell and Magan had met their evidentiary burden under Montana's preliminary injunction statute.

As Waddell and Magan's Opening Brief notes, the Montana Supreme Court has long held that a court considering whether to issue a preliminary injunction shall not determine the underlying merits of the case. *See Driscoll*, ¶ 12; *City of Whitefish v. Board of County Commissioners of Flathead County ex. rel. Brenneman*, 2008 MT 436, ¶ 18, 347 Mont. 490, 496, 199 P.3d 201, 206. However, "the grant or denial of injunctive relief is a matter within the broad discretion of the district court based

on applicable findings of fact and conclusions of law." *Davis v. Westphal*, 2017 MT 276, ¶ 10, 389 Mont. 251, 256, 405 P.3d 73, 80; *Planned Parenthood of Montana v. State*, 2024 MT 228, ¶ 10, 418 Mont. 253, 264, 557 P.3d 440, 450. During the preliminary injunction proceedings in this case in 2020 and as applicable here, Montana law required that an applicant for a preliminary injunction make a *prima facie* showing establishing at least one of the following:

> (1) […] that the applicant is entitled to the relief demanded and the relief or any party of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
> (2) […] that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;
> (3) […] that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual

Mont. Code Ann. §27-19-201 (2019); *Montanans Against Irresponsible Densification, LLC v. State*, 2024 MT 200, ¶ 11, 418 Mont. 78, 84-85, 555 P.3d 759, 764.

Here, Waddell and Magan's Complaint alleged that the Studers and SRHOA were in violation of the Covenants, and sought a preliminary injunction alleging that if the Studers were not enjoined from proceeding with construction, their planned home would cause Waddell and Magan irreparable injury because it would block the latter's views in violation of the Covenants. (Doc. 4, ¶¶ 79-91; 69-70) Accordingly,

the District Court could not determine whether Waddell and Magan had met the evidentiary burden set forth in the preliminary injunction statute without interpreting the Covenants. In particular, the District Court could not determine whether Waddell and Magan had made a sufficient showing of entitlement to the relief sought in their complaint without considering whether they had made a *prima facie* showing that the Studers and SRHOA had violated the Covenants by failing to sufficiently protect Waddell and Magan's view. This, and no more, is what the District Court did.

In its order on the preliminary injunction, the District Court identifies the language in the Covenants relating to the impact of new construction on existing homes' views. It interprets this language in the context of the Covenants as a whole, and concludes that the Covenants "do not create an obligation on members to build a new residence in a manner which does not infringe on another member's view shed," and likewise do not require the Design Review Committee to deny approval of building plans if the planned construction will infringe on a neighbor's views. (Doc. 23, 8) The District Court then uses this interpretation of the covenants to assess whether Waddell and Magan have met their evidentiary burden under the preliminary injunction statute:

> the Court concludes that neither the Studers nor the Association have breached a duty or obligation within the Covenants with regard to the Studers' building plans, or deprived Plaintiffs of any expected benefits under the same. As a result, the Court further concludes Plaintiffs have not established they are entitled to the relief demanded or that the

> planned actions of the Defendants will violate Plaintiffs' rights. ***See §27-19-201(1) and (3), MCA***.

(Doc. 23, 10, emphasis added)

Given that Waddell and Magan claimed rights and injury pursuant to the Covenants, the District Court could not have determined whether they were entitled to relief, whether they would suffer injury, or whether their rights were being violated without interpreting the Covenants. And while the Court's interpretation of the Covenants in the preliminary injunction order agrees with its interpretations in the two later orders granting summary judgment in finding no duty that the Studers or SRHOA have failed to perform, this agreement alone does not show that the District Court relied on the interpretation in the preliminary injunction order in making its later rulings on summary judgment—rather, the simplest explanation is that the interpretation in all three orders is correct.

Finally, the District Court does no more in its preliminary injunction order than is necessary to its task of determining whether an injunction may be granted consistent with the applicable statute. It neither makes findings and conclusions on all of Waddell and Magan's claims nor award the Studers and SRHOA their costs, as the district court did in *Knudson v. McDunn*, 271 Mont. 61, 64, 894 P.2d 295, 297 (1995). It does not import definitions of key terms in the covenants from unrelated Montana statutes, as the district court did in *Fox Farm Estates Landowners Association v. Kreisch*, 285 Mont. 264, 268, 947 P.2d 79, 82 (1997). It does not make

findings on disputed facts material to the litigation, or make conclusions of law depending on such facts, as the district court did in *Yockey v. Kearns Properties, LLC*, 2005 MT 27, ¶ 17, 326 Mont. 28, 32, 106 P.3d 1185, 1188. And it does not rule on the validity of the Covenants as a whole, and base its decision as to the injunction on such a ruling, as the district court did in *City of Whitefish*, ¶ 18. In short, here the District Court did not determine ultimate issues of fact or decide the merits of the case at the preliminary injunction stage. Its order denying the preliminary injunction thus accords with Montana law, and Waddell and Magan's claim to the contrary is without merit.

Waddell and Magan's appeal of the District Court's order denying their request for a preliminary injunction is untimely; the order did not lead to or result in the District Court's final judgment in this matter; and the order did not determine the merits of the case or go beyond applicable findings of fact and conclusions of law appropriate to deciding the request for an injunction. For these reasons, the Studers respectfully request that this Court dismiss Waddell and Magan's appeal of the District Court's order entered December 31, 2020, denying their request for a preliminary injunction.

III. THE DISTRICT COURT'S ORDERS GRANTING SUMMARY JUDGMENT TO THE STUDERS AND SRHOA SHOULD BE AFFIRMED BECAUSE THE DISTRICT COURT PROPERLY INTERPRETED THE COVENANTS AND THE UNDISPUTED FACTS ESTABLISH THAT THE STUDERS AND SRHOA CONSIDERED WADDELL AND MAGAN'S VIEWS.

a. The District Court interpreted the Covenants correctly.

Montana courts employ principles of contract law when interpreting restrictive covenants. *See Lewis & Clark County v. Wirth*, ¶ 16; *Bordas v. Virginia City Ranches Association*, 2004 MT 342, ¶24, 324 Mont. 263, 269, 102 P.3d 1219, 1223. "The construction and interpretation of a contract is a question of law." *Mary J. Baker Revocable Trust v. Cenex Harvest States, Cooperatives, Inc.*, 2007 MT 159, ¶ 19, 338 Mont. 41, 50, 164 P.3d 851, 857. Accordingly, "whether an ambiguity exists in a contract is a question of law." *Id.* "If the language of a contract is unambiguous—i.e., reasonably susceptible to only one construction—the duty of the court is to apply the language as written" *Id*.; *see also Craig Tracts Homeowners' Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 9 402 Mont. 223, 226–27, 477 P.3d 283, 285. Courts properly read declarations of covenants "on their four corners as a whole, and terms are construed in their ordinary or popular sense." *Bordas*, ¶ 24. Similarly, "[r]estrictive covenants should be read together, 'each clause helping to interpret the others,' where '[p]articular clauses of the agreement are subordinate to the general intent of the contract.' *Lewis & Clark County v. Wirth*, ¶ 16.

Here, the District Court reviewed the Covenants and determined that the sole part relevant to Waddell and Magan's claims against the Studers is the provision in Article V stating "Placement should take into consideration the location of roads and neighboring dwellings, with allowance for views and solar gains" (hereafter the "Placement Provision") (Doc. 184, 7; citing Covenants, 7) The Court then interpreted the phrase "should take into consideration" according to the ordinary and popular sense of those terms. (Doc. 184, 7, 6; citing *Creveling v. Ingold*, 2006 MT 57, ¶ 8, 331 Mont. 322, 132 P.3d 531.) Relying on Merriam-Webster, the Court notes that *should* "can be used to express an obligation, propriety, or expediency"; and that *consider* "means 'to think about carefully' or 'take into account.'" (Doc. 184, 7) Noting that *should* "is not 'shall' or 'must' or any of the other legal terms which connote a mandatory act or forbearance," and that *consider* does not specify any course of action that must follow a party's careful thinking or taking into account, the Court interpreted the key phrase is discretionary rather than obligatory, and concluded on this basis that the Covenants "do not establish the right to a view based on the discretionary terms 'should' and 'consider' when discussing the submission and approval of building plans." (Doc. 184, 8)

At each step here, the District Court properly applied Montana law regarding the interpretation of covenants. The District Court's narrow focus on the Placement Provision is consistent with a reading of the Covenants on their four corners as a

whole. This provision is one of two places in the Covenants where "views" are mentioned. The other references views as a factor to be considered in relation to "Approval of size and height" of houses, and the Covenants elsewhere clearly indicate that "approval" of architectural plans is the province of SRHOA's Design Review Committee. (Covenants, 10; *and see* Covenants, 6) Any instructions or obligations relating to 'approval' are therefore reasonably interpreted as addressed to SRHOA and the Design Review Committee, and *not* to individual lot owners such as the Studers. Consequently, if there is any provision in the Covenants that creates an obligation for the Studers to protect Waddell and Magan's views, it must be this one.

The District Court's second step is likewise proper according to Montana's principles of covenant interpretation. The Court's interpretation of the phrase "should take into consideration" clearly construes those terms in their ordinary and popular senses insofar as it relies on their definitions as provided in an authoritative dictionary of American English. Further, the Court here relies on a contrast between *should* and 'shall' or 'must' to specify the appropriate sense of the term; this accords with the principle stated in *Lewis & Clark County v. Wirth* that restrictive covenants "should be read together, 'each clause helping to interpret the others,'" because the Covenants elsewhere state that approval of architectural plans by the Design Review Committee "s*hall* take into consideration unusual designs, blocking views, and solar

effects of existing dwellings." (Covenants, 10; *and see* Doc. 231, 21-2) In order to give effect to all provisions of the Covenants as required by Montana law, the Court must attend to the contrast between the Placement Provision's discretionary "should" and the clearly imperative "shall" in the later provision relating to approval of homes' size and height. (Covenants, 7; 10) Combined with its attention to the open-ended character of *consider*, the Court's focus on this contrast strongly supports its conclusion that the phrase "should take into consideration" in the Placement Provision is discretionary rather than obligatory.

Waddell and Magan contend that the District Court failed to read the Covenants together as required under *Lewis & Clark County v. Wirth*. (Op. Br., 33) The analysis above demonstrates otherwise, and Waddell and Magan's Brief provides no support for this claim: the only provisions of the Covenants Waddell and Magan rely on to establish the purported obligation that the Studers and SRHOA are alleged to have violated are the two provisions mentioning views—precisely the provisions which distinguish between the obligation that the Design Review Committee "shall" consider neighbors' views in the approval process and the discretionary request that individual lot owners "should" consider the location of neighbors' homes. (Op. Br., 5 et. seq.)

Waddell and Magan also contend that the District Court "arbitrarily chose a discretionary usage" of shall even though " 'should' may be obligatory, or it may be

discretionary" depending on the context. (Op. Br. 34) As explained above, however, the District Court's choice here was not 'arbitrary' but rather responsive to the text of the Placement Provision *and* the text of the Covenants as a whole. Waddell and Magan try to undermine the District Court's reasoning that *should* stands in contrast to *shall* by noting that "according to Merriam-Webster, 'should is the past tense of shall.'" (Op. Br., 34) But this is entirely irrelevant—whatever else may be true, *should* as used in the Placement Provision cannot be the past tense of *shall* if it is to constitute any sort of request or instruction addressed to lot owners.

Third, Waddell and Magan contend that the Placement Provision creates an obligation to protect their home's views because it must be read as subordinate to the Covenants' stated purposes to "maintain a uniform and stable value, character, architectural design, use and development of the premises." (Op. Br., 5 et. seq.; citing Covenants, 1) They argue that these purposes entail an obligation to protect the value of, and their personal enjoyment of, their home by protecting its views from encroachment. Here, however, Waddell and Magan fail to acknowledge that whatever protections these purposes—and the Covenants as a whole--entail must protect the Studers and all other lot owners equally. Accordingly, the Covenants must protect the value, use, and development of the Studers' property just as much as it does Waddell and Magan's. Although this point is fundamental to the nature of protective covenants, Waddell and Magan insist that it does not apply here because

they "were here first." (Op. Br., 37) Absurdly, this point is purportedly in support of Waddell and Magan's claim that the District Court erred because it "did not balance the rights of the parties," even as the substance of their argument is that their alleged right to an open view across the Studers' property trumps the Studers rights to develop their property simply because Waddell and Magan's house was built first.

Finally, Waddell and Magan contend that the District Court should have considered extrinsic evidence including the "reasonable expectations" of other Summer Ridge homeowners and three prior court decisions relating to the Covenants. But consideration of such extrinsic parol evidence is prohibited under Montana law: "'Where the language of a covenant is clear and explicit,' extrinsic evidence is not considered, and 'the Court must apply the language as written.'" *Lewis & Clark County v. Wirth*, ¶ 17. Here, the District Court found that the language of the Covenants was clear and unambiguous. (Doc. 184, 9; 11) As such, the Court's obligation was to apply the language as written, and to forbear from consideration of extrinsic evidence.

In sum, the District Court's interpretation of the Covenants accords with Montana's canons of contract interpretation, as those have been specifically applied to restrictive covenants by the prior decisions of this Court. Waddell and Magan fail to identify any error in the District Court's interpretation of the Covenants, and Waddell and Magan's arguments that the District Court should have looked beyond

the Covenants in deciding the rights of the parties are contrary to Montana law. Accordingly, the Covenants do not impose a duty on the Studers to construct their home in a way that protects the views from Waddell and Magan's house. The District Court's order granting summary judgment in favor of the Studers should therefore be affirmed.

b. **The Studers and SRHOA met any obligation they may have had under the Covenants.**

Waddell and Magan contend that the Covenants' language regarding consideration of neighbors' views "is unambiguously *obligatory*, not merely discretionary," and that the Studers and SRHOA violated the obligation created by that language. (Op. Br., 39) This contention cannot stand up to scrutiny, however, because the undisputed facts before the District Court in this matter establish that both the Studers and SRHOA considered Waddell and Magan's views.

As noted above, Waddell and Magan locate the obligation that the Studers and SRHOA allegedly violated in two provisions of the Covenants: The first addresses siting, and states that placement of new construction "should take into consideration the location of…neighboring dwellings, with allowance for views and solar gains." (Covenants, 7) The second addresses architectural requirements, and states that "[a]pproval of size and height shall take into consideration unusual designs, blocking views, and solar effects of existing dwellings." (Covenants, 10) Leaving aside the fact that the first sentence uses 'should' while the second uses 'shall,' the imperative

in both provisions is to "take into consideration" certain factors—the location and views of neighboring houses in one case, and the possibility that the size and height of one house may cause it to block neighbors' views in the other. Accordingly, even if one grants *ad arguendo* Waddell and Magan's claim that these provisions are 'unambiguously obligatory,' the obligation they create cannot require more than that an owner and the HOA *consider* the impact that proposed construction may have on neighbors' views.

On November 12, 2020—after being informed of Waddell and Magan's concerns about the location of their planned home but before breaking ground on construction—the Studers sent a written offer to Waddell and Magan proposing to relocate their home 20 feet to the south. (*See* Statement of Facts ¶ 15 above; Studers' Appendix, Exhibit 1 at 1) The Studers sent this offer in response to Waddell and Magan's expressed concerns about interference with their views, after consulting with their builder about how they might accommodate those concerns. (*See* Statement of Facts ¶ 14 above; Studers' Appendix, Exhibit 1 at 1) Waddell and Magan refused the Studers' offer. (*See* Statement of Facts ¶ 16 above; Appellants' Appendix 2, Exhibit 5 at 59) These facts are undisputed in the record, and they unmistakably demonstrate that the Studers both considered Waddell and Magan's views and made allowance for those views. Indeed, they offered to relocate their planned home for the sole and explicit purpose of allowing Waddell and Magan to

preserve a greater portion of the views they had previously enjoyed. Thus, even if the Covenants were to create an obligation for the Studers to consider or allow for Waddell and Magan's views, the Studers would clearly have fulfilled such an obligation here.

The same is true for SRHOA: Waddell and Magan expressed their concerns regarding the Studers' planned home on October 26, 2020. (*See* Statement of Facts ¶ 12 above; Op. Br., 10) In response, SRHOA rescinded its approval of the Studers' planned construction on October 30, 2020, reevaluated the Studers' already-twice-approved architectural plan, and discussed the impact of the Studers' planned construction on Waddell and Magan's views with both parties. (*See* Statement of Facts ¶ 13 above; Op. Br., 11) Further, when the Studers offered to relocate their house out of consideration for Waddell and Magan, SRHOA offered to pay the cost of re-staking the Studers' build site to facilitate this allowance for Waddell and Magan's views. (*See* Statement of Facts ¶ 17 above; Appellant's Appendix 2, Exhibit 4) Here again, the undisputed facts before the District Court establish that SRHOA took Waddell and Magan's views into consideration. Indeed, SRHOA took actions over and above the review and approval process required by the Covenants, including proposing to spend SRHOA funds, out of consideration for Waddell and Magan's views. As such, SRHOA clearly would have fulfilled any obligation to

consider or allow for Waddell and Magan's views that the Covenants might be interpreted to create.

Waddell and Magan insist the Studers and SRHOA each had a duty under the Covenants to consider their views. But both the Studers and SRHOA undisputedly *did* consider Waddell and Magan's views. Thus, the undisputed material facts demonstrate that both the Studers and SRHOA are not in violation of the Covenants, and summary judgment is appropriate.

The District Court properly interpreted the Covenants in concluding that the Covenants did not impose an obligation on the Studers to consider Waddell and Magan's views prior to constructing their home. Further, in the event the Covenants had imposed an obligation on the Studers to consider Waddell and Magan's views, the Studers would have satisfied that obligation. For these reasons, the Studers respectfully request that this Court affirm the District Court's order entered January 4, 2022, granting summary judgment in their favor on Waddell and Magan's claims for Declaratory Judgment, Breach of Contract and Covenant of Good Faith and Fair Dealing, and Nuisance.

IV. THE DISTRICT COURT PROPERLY AWARDED ATTORNEY'S FEES TO THE STUDERS AND SRHOA AS THE PREVAILING PARTIES PURSUANT TO THE COVENANTS.

As noted above, Montana courts apply principles of contract law when interpreting covenants. *Lewis & Clark County v. Wirth*, ¶ 16. Among these is the

rule that courts "must award attorney fees if 'a contract provides for their recovery,'" *Lewis & Clark County v. Wirth*, ¶ 40. Here, the Covenants expressly provide for recovery of attorney's fees, stating: "In the event of any action to enforce these Covenants, the prevailing party shall be entitled to costs and reasonable attorney's fees to be set by the court." (Covenants, 17)

The District Court appropriately found that the Studers and SRHOA are prevailing parties in this action, and that as such both are entitled to recover their attorney's fees. (Doc.360, 5) Upon review of competent evidence given at an evidentiary hearing and proper application of the factors set forth by this Court in *Plath v. Schonrock*, 2003 MT 21, 314 Mont. 101, 64 P.3d 984, the District Court further found that awards of attorney's fees in the amount of $98,971.96 to the Studers and $ 318,636.41 to SRHOA were reasonable. On appeal, Waddell and Magan do not contest the District Court's conclusion that the Covenants provide for recovery of attorney's fees by a prevailing party or the ruling that the Studers and SRHOA are prevailing parties in this action. Nor do Waddell and Magan contest the District Court's assessment of the evidence or its application of *Plath* in determining the amounts of reasonable attorney's fees awarded. As such, both the Studers and SRHOA are entitled to their reasonable attorney's fees as set by the District Court. The Studers therefore respectfully request that the District Court's award of their

reasonable attorney's fees be affirmed, and Waddell and Magan's appeal of the attorney's fees award dismissed.

Despite Waddell and Magan's failure to identify any error in the attorney's fees proceedings before the District Court, they purport to appeal the amount of attorney's fees awarded. (*See* Op. Br., 1; 26) The stated basis of this appeal is that the District Court failed to consider "Defendant's bad acts" and/or actions "that precipitated and necessitated this litigation." (Op. Br., 44; 1) Waddell and Magan's position here appears to be that the attorney's fees awards should be reduced because they were forced to sue in order to defend their rights in the face of the Studers and SRHOA's (unspecified) "bad acts," thus it is the Studers and SRHOA's own fault that the fees were incurred. (*See* Op. Br., 44) But Waddell and Magan provide no basis in law for this claim, nor do they adduce any specific facts establishing the alleged "bad acts" by the Studers or SRHOA. Waddell and Magan having failed to do so, it is not this Court's role to develop a legal analysis in support of their position. *See Community Association for North Shore Conservation, Inc. v. Flathead County*, 2019 MT 147, ¶ 24, 396 Mont. 194, 208, 445 P.3d 1195, 1204. Accordingly, the Studers request that this Court affirm the District Court's award of their attorney's fees, and dismiss Waddell and Magan's appeal of the attorney's fees award.

Following the District Court's determination that the Studers and SRHOA are entitled to their reasonable attorney's fees as the prevailing parties in the underlying

litigation, Waddell and Magan have not identified any error in the District Court's rulings regarding either the legal authority for an award of attorney's fees or the amount of attorney's fees to be awarded. Further, they have identified no basis in fact or law for the claim that the District Court erred by failing to consider any alleged "bad acts" or improper acts necessitating the underlying litigation. For these reasons, the Studers respectfully request that this Court dismiss Waddell and Magan's appeal of the District Court's Final Judgment entered October 18, 2024, and affirm the District Court's award granting the Studers their attorney's fees and costs in full.

CONCLUSION

Waddell and Magan's appeal of the District Court's order denying their request for a temporary restraining order should be dismissed because a District Court's decision on a request for a temporary restraining order is not appealable under Montana law, and because the District Court correctly applied Montana law in denying Waddell and Magan's request.

Waddell and Magan's appeal of the District Court's order denying their request for a preliminary injunction should be dismissed because the appeal is untimely, and the order did not lead to or result in the District Court's final judgment in this matter. Further, the District Court order did not determine the merits of the case or go beyond applicable findings of fact and conclusions of law appropriate to deciding the request for an injunction.

The District Court's order granting summary judgment in favor of the Studers should be affirmed because the District Court properly interpreted the Covenants in concluding that the Covenants did not impose an obligation on the Studers to consider Waddell and Magan's views prior to constructing their home. Moreover, the Studers *did* consider Waddell and Magan's views, sufficient to satisfy an obligation to consider Waddell and Magan's views were the Covenants to have imposed such an obligation.

Finally, the District Court's Final Judgment awarding the Studers and SRHOA their reasonable attorney's fees and costs should be affirmed because the Covenants provide for recovery of reasonable attorney's fees by a prevailing party in an action under the Covenants. Further, Waddell and Magan's appeal of the District Court's Final Judgment should be dismissed because they identify no basis in fact or law for their claim that the District Court erred in granting Final Judgment to the Studers and SRHOA.

For the reasons stated above, Appellees Paul and Rachael Studer respectfully request:

1) that Appellants Waddell and Magan's appeal be dismissed in all respects;
2) that the District Court's orders granting summary judgment in favor of the Studers and SRHOA be affirmed;
3) that the District Court's Final Judgment awarding the Studers and SRHOA their reasonable attorney's fees and costs be affirmed in full; and
4) that the Studers and SRHOA be awarded their attorney's fees and costs incurred in defending this appeal, as appropriate under Article VII, Section 2 of the Covenants.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is not more than 10,000 words, excluding certificate of service and certificate of compliance.

Dated this 10th day of March, 2025.

Michael L. Rabb
Attorney for Appellees Paul and Rachael Studer

SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA 24-0632

RUSSELL WADDELL and CASEY MAGAN,

Plaintiffs, and Appellants

vs.

PAUL STUDER, RACHAEL STUDER, and SUMMER RIDGE HOMEOWNERS' ASSOCIATION,

Defendants, and Appellees.

[Pleading Title]

On Appeal from the Montana 18th Judicial District, Gallatin County
Cause No. DV 16-2020-1267A
Before Hon. Peter Ohman

Appellees Paul and Rachael Studer's APPENDIX 1

App. 1, Exhibit 1: Correspondence
(The Rabb Law Firm to Summer Ridge HOA, Nov. 12, 2020)

CERTIFICATE OF SERVICE

I, Michael Lloyd Rabb, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-10-2025:

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