IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 24-0645

IN THE MATTER OF THE ESTATE OF
CAROL A. HUDSON, a/k/a
CAROL ANN KELLER

Deceased.

ALAN LEE JOHNSON,

Plaintiff and Counter-Defendant/Appellant

v.

DOUGLAS J. NAIL,

Defendant and Counterclaimant/Appellee

APPELLANT'S OPENING BRIEF

On appeal from the Montana Eighteenth Judicial District Court, Gallatin County
Cause No. DP-19-10 & DV-412C; Honorable Judge John C. Brown

Attorneys for Plaintiff and Counter-Defendant/Appellant:

David B. Cotner
Kyle C. Ryan
Sherine D. Blackford
COTNER RYAN BLACKFORD, PLLC
321 W. Broadway, Ste. 500
Missoula, MT 59802
Telephone: (406) 541-1111
Email: dcotner@cotnerlaw.com;
kryan@cotnerlaw.com
sblackford@cotnerlaw.com

Attorneys for Defendant and Counterclaimant/Appellee:

Ben Alke
CRIST, KROGH, ALKE & NORD, PLLC
209 S. Willson Ave.
Bozeman, MT 59715
Telephone: (406)255-0400
Email: balke@cristlaw.com

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in determining the parties entered into a marital relationship confirmed by mutual consent where one party told her family and friends that she never wanted to marry again and signed or filled out 33 separate documents identifying herself as single and/or unmarried?

2. Whether the District Court erred in determining that the parties confirmed a marital relationship by public repute where one party consistently held herself out as unmarried to her family, friends, medical providers, accountants, bankers, investment firms, life insurance providers, and the government?

STATEMENT OF THE CASE

This appeal arises out of the Estate of Carol A. Hudson, a/k/a Carol Ann Keller initiated on January 10, 2019 in the Eighteenth Judicial District Court of Gallatin County, Cause Nos. DP-19-10C & DV-412C. Carol A. Hudson ("Carol") passed away on October 7, 2018. Douglas J. Nail ("Doug"), Carol's boyfriend, has alleged the existence of a common law marriage and, by virtue thereof, entitled to an elective share of Carol's Estate.

On April 18, 2019, Alan Johnson ("AJ"), Carol's eldest son, filed a Complaint and Demand for Trial by Jury asserting various claims against Doug, including a claim for declaratory relief that Doug was not the common law spouse of Carol. On May 17, 2019, Doug filed his Answer to Complaint & Counterclaim asserting a

single counterclaim for declaratory relief that he was the common law husband to Carol[1]. On June 12, 2019, the Court entered its *Order for Consolidation*, which consolidated the probate matter and the affirmative claims asserted by AJ against Doug relating to the question of whether common law marriage existed.

A bench trial was held before Hon. John C. Brown on June 3-6, 2024 solely on the issue of whether a common law marriage existed between Carol and Doug. On October 22, 2024, Judge Brown issued his Findings of Fact, Conclusions of Law and Order (the "*Order*"). Appx. "1". Therein, Judge Brown found that a common law marriage had been formed between Carol and Doug on May 17, 2010, the date Doug's second dissolution was finalized. This appeal followed.

STATEMENT OF FACTS RELEVANT TO THE ISSUES

After meeting years earlier, Carol and Doug reconnected in approximately 2007 and soon began dating. (Tr. Exh. 433; Tr. Trans. 1-43:22-44:11)[2]. They were both living in the San Diego area and owned/maintained separate residences. (Tr.

[1] In his Answer, Doug initially maintained that his relationship with Carol "transitioned from one of dating and cohabitating to a marriage" in August 2006. The evidence demonstrates Carol and Doug had not even begun dating by this date.

[2] The trial of this matter occurred over four days, June 3-6, 2024 and because the transcripts do not have continuous pagination, citations to the record herein will be preceded with "1," "2," "3," or "4" to identify the day of trial for the Court's convenience. For instance, a citation to testimony from the third day of trial would appear as "Tr. Trans. 3-XX:XX".

Trans. 1-45:7-8). Carol owned a home in Del Mar, while Doug lived in a home in Encinitas[3]. *Id*.

Prior to dating Doug, Carol had been married twice before. Her first marriage was to Lee Johnson ("Lee"), who is the father of her two sons, AJ and Jeff Johnson ("Jeff"). (Tr. Trans. 2-160:2-161:7). Carol and Lee held a formal marriage ceremony. Carol took Lee's last name and wore a wedding ring. *Id*. The marriage ended in approximately 1991 after a difficult divorce. (Tr. Trans. 2-161:15-21). In the divorce, Carol received title to a convalescent center in California, which provided income to support herself[4]. (Tr. Trans. 2-169:13-14; Tr. Trans.1-156:20-157:16).

Soon after her first marriage ended, Carol began a relationship with Mike Keller, who would become her second husband. (Tr. Trans. 2-161:22-162:17). Carol and her second husband participated in a held marriage ceremony, Carol took his last name, and she wore a wedding ring. (Tr. Trans. 2-163:2-15). Carol's second marriage quickly ended after another difficult divorce. *Id*.

Doug had also been married twice before dating Carol. Doug married his first wife in 1981 and together they had two children. (Tr. Exh. 402). In Doug's first marriage, a formal marriage ceremony was held, his wife took his last name, and he

[3] Doug's Encinitas home became the subject of lengthy litigation with his second wife, which relates to evidence in this case.

[4] During her relationship with Doug, Carol received $63,000 per month in income from the convalescent center. (Tr. Trans. 1-157:13-16).

wore a wedding ring. (Trial Tr. 1-139:3-24). In 1989, Doug went through a difficult divorce with his first wife, which involved Doug's ex-wife obtaining a "Stay-Away Order". (Tr. Exh. 402).

After several difficult years in which he was convicted on federal bribery charges, lost his job, and served a prison term, Doug married his second wife. (Trial Tr. 1-140:7-10; 1-249:7-19). Doug's second marriage was held at a courthouse, his wife took his last name, and his wife wore a wedding ring. (Trial Tr. 1-140:14-141:2). Doug separated from his second wife on January 22, 2007, but the marriage did not formally end until May 17, 2010, when the Decree of Dissolution was entered. (Tr. Exh. 403). Even after the divorce was finalized, disputes over property continued until 2018. (Tr. Exh. 409). Notably, the Court found that Doug was not credible. *Id*. (AJ024676).

Approximately two years into their relationship, Doug and Carol moved to Bozeman on October 1, 2009. (Tr. Trans. 1-48:11-19). Upon moving to Montana, Carol first rented a house at 118 Falling Star Road, located in Bridger Canyon. (Tr. Trans. 1-49:2-19). Carol eventually purchased the residence at 118 Falling Star Road with her separate assets and titled it in her name, alone. (Tr. Trans. 1-50:18-20).

Doug claims that the move to Montana marks the relationship milestone in which he and Carol decided they were married. (Tr. Trans. 1-47:17-48:15; 1-55:5-

11). However, Doug was still married to his second wife until May 17, 2010. (Tr. Exh. 403). Unlike both of their prior marriages, there was no marriage ceremony. (Tr. Trans. 2-34:22-35-9). They did not celebrate an anniversary date. *Id*. Carol did not take Doug's last name and neither wore wedding rings. *Id*.; (Tr. Trans.2-184:23-185:11). Doug claims that two bracelets he gave Carol served as a symbol of their marriage but acknowledges one of the bracelets was given while they still lived in California, which is before he claims they were married. (Tr. Trans. 1-55:19-25; 2-40:10-41:7).

During the relationship, Doug and Carol relied entirely on Carol's income. Aside from Doug's self-serving testimony, there was no evidence he made any financial contributions during the relationship. Doug was not employed at any time between 2008 to 2018. (Trial Tr. 2-9:24-10:23). Although Doug claims he received income from investments, he acknowledged he has not filed a tax return since before 2008. *Id*. Doug could not recall when he last held a bank account in his own name. (Tr. Trans. 2-44:24-45:5).

Doug took control of most aspects of Carol's financial affairs. (Tr. Trans. 1-155:7-21). Doug was identified as an "agent/signer" on one of Carol's Stockman Bank accounts. (Tr. Exh. 413). Doug used his access to Carol's money to pay the substantial monthly balances on his American Express "Black" credit card, pay for

his children's expenses, make risky investments, and lend her money to his family and friends. (Tr. Trans. 158:14-23; Tr. Exh. 435).

Doug's failure to contribute and excessive spending soon became a problem. In a December 11, 2012 email, Carol contacted her friend, Maggie Stein, a Montana attorney, to seek advice with regard to a $200,000 loan Doug made with her money to his daughter. (Tr. Exh. 35). Carol noted her concern that she made the loan, but the payments were still going to Doug. *Id*. The email also noted other money owed by Doug:

> I also have an accounting for other monies owed to me by Doug. Doug acknowledges he owes me the money but at this point nothing is in writing and if something should happen to Doug I have nothing legally to stand on so I would like to discuss how to handle this situation.

Id. One week later, Carol wrote to another friend and attorney, Shelley Patton, regarding the same issues. (Tr. Exh. 36). Carol wrote in relevant part:

> To secure the money he owes Doug purchased a million dollar term life insurance policy to cover the debt until he can make some money to pay me back. Doug understands I am no longer paying for his expenses and to reduce his debt I will be taking on the Pure Barre loan only if I get the right security of which Becca will be drawing up those docs. Doug was not please (sic) with my decisions but he knows this is the only way our relationship has a chance to work. You would be proud of me…. I stood my ground….the thought of losing our friendship was enough to make me strong.

Id.

Carol eventually shared her concerns with her son, AJ. Carol disclosed that she had prepared a spreadsheet showing Doug had spent $966,000 in credit card

charges that she paid for. (Tr. Trans. 4-103:14-22). On January 11, 2013, AJ emailed Doug to detail the specific ways Doug was financially exploiting and mistreating his mother. (Tr. Exh. 435). The email references the $966,000 Doug spent on the credit card, as well as his use of Carol's money to fund his children's university tuitions in Germany, his son's medical school tuition, and his daughter's wedding. *Id*.

Doug continued to use his access to Carol's financial resources to exploit her throughout the relationship. Using Carol's money, Doug invested $100,000 to purchase an interest in property in Costa Rica (Tr. Trans. 1-160:13-161:7), between $125,00 and $200,000 in a Mexican business venture in which Doug was involved (Tr. Trans. 1-158:14-23), and approximately $450,000 in property located outside of Big Sky. (Tr. Trans. 1-106:4-7). Doug did not obtain any paperwork to document the Costa Rican and Mexican investments and testified those investments were total losses. (Tr. Trans. 1-229:19-23; 1-160:22-161:2). Doug had never seen the Costa Rica property and only knew that it was located somewhere outside of San Jose. (Tr. Trans. 1-161:3-7).

Conveniently, Doug refers to the Costa Rica and Mexico investments—both total losses—as "our" investments but identifies the Big Sky investment, which has appreciated significantly, as belonging to solely him. (Tr. Trans. 2-16:19-17:10). Doug has claims pending before the District Court asserting that the Big Sky

investment was given to him by Carol and, therefore, his separate asset regardless of whether a common law marriage existed. (Tr. Trans. 1-102:3-6).

Doug made certain he was involved in all aspects of Carol's financial life. During the relationship, Doug prepared all of Carol's financial statements. (Tr. Trans. 1-163:9-12). Each financial statement identifies Carol as unmarried and/or single. In Carol's July 23, 2012 Personal Financial Statement, she indicated she was unmarried and under "Spouse Name:" again noted she was unmarried. (Tr. Exh. 33). Carol signed an October 2, 2012 Personal Financial Statement for Wells Fargo identifying herself as "Unmarried", which Doug filled out in his handwriting (Tr. Exh. 34). Additionally, in the 2013, 2014, 2015, and 2016 Personal Financial Statements, Carol similarly indicated she was unmarried and under "Spouse Name" she again identified herself as unmarried. (Tr. Exhs. 410, 411, 46, and 51).

Doug also handled the preparation of Carol's taxes by organizing the necessary information and meeting with her accountant. (Trial Tr. 1-156:6-19). In Carol's 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 tax returns, Carol identified her filing status as "Single," as opposed to "Married Filing Jointly" or "Married Filing Separately." Each of Carol's tax returns was filed under oath. (Tr. Exhs. 440, 441, 37, 41, 44, 48, 53, and 54). In handling Carol's financial affairs, Doug stated one of the couple's goals was to minimize Carol's tax liability. (Trial Tr. 1-156:16-19). Doug acknowledged that if Carol had filed her tax returns as a married

individual, there likely would have been a tax savings. (Trial Tr. 1-174:18-22). Doug, who has not a filed a tax return since before 2008, claims he and Carol decided to not file joint tax returns because they "didn't know what do to do" and did not file as married "to be safe". (Tr. Trans. 2-10:18-23; Tr. Trans. 1-173:23-174:5). However, as noted, Doug worked with Carol's accountant to prepare each return. (Tr. Trans. 1-108:19-109:1).

Between 2008 and 2018, Carol signed 6 separate loan applications with Stockman Bank, all of which she identified herself as unmarried. On October 27, 2010, Carol signed a Loan Application identifying her marital status as single. (Tr. Exh. 412). On December 11, 2012, Carol signed a Loan Application identifying herself as unmarried. (Tr. Exh. 416). On January 16, 2013, Carol submitted another Loan Application identifying herself as unmarried. (Tr. Exh. 417). On April 9, 2014, Carol presented another Loan Application again identifying herself as unmarried. (Tr. Exh. 418). On August 14, 2015, Carol submitted another Loan Application again identifying herself as unmarried. (Tr. Exh. 419). Carol also filled out a Request for Information for Government Monitoring Purposes, in which her marital status was listed as "Unmarried (include single, divorced, widow)". (Tr. Exh. 415).

Carol also represented herself as single with other financial institutions. On May 5, 2016, Carol submitted a Loan Application with J.P. Morgan Chase identifying her marital status as unmarried. (Tr. Exh. 49). On October 2, 2018—just

five (5) days prior to her death—Carol executed a Mortgage, identifying herself as both "unmarried" and "single." (Tr. Exh. 58).

While Carol intended to leave some funds to Doug upon her death, those documents serve as additional evidence that they were not married. In a November 28, 2014 change of beneficiary form, Carol listed Doug as her primary beneficiary on a life insurance policy, but identified him as a "Partner"—not as her "husband" or "spouse." (Tr. Exh. 43). Further, in a November 6, 2017 Individual Retirement Account Application, Carol again identified herself as single and, in the beneficiary designation, she identified Doug as her "Sig Other." (Tr. Exh. 421). While Carol signed the life insurance and IRA beneficiary designations, Doug filled out both documents in his handwriting.

Aside from the life insurance and IRA, Carol intended for all other assets to go to her sons. Carol prepared a Will (Tr. Exh. 30), which identifies her as a single woman, and a Revocable Trust (Tr. Exh. 401), leaving everything to her sons and nothing to Doug. Carol had amended her Revocable Trust Agreement 7 separate times, demonstrating Carol understood how to make changes. (Tr. Exh. 401). Carol could have provided for Doug in her estate plans but chose not to. Carol engaged an attorney on August 14, 2014 to review her estate plan, but did not make changes to provide for Doug. (Tr. Exhs. 248 and 249).

Carol's medical forms offer further support for how she identified her marital status. In a March 17, 2015 medical record, Carol listed herself as "currently single." (Tr. Exh. 423). In a December 5, 2016 medical record, Carol identified her marital status as single twice in the same record. Additionally, under her Emergency Contacts, Carol listed Doug but identified his relation as "Other Relation," and not as "husband" or "spouse." (Tr. Exh. 422). In an August 17, 2018 Patient Information Form filled out at skincare facility, just two months prior to her death, Carol again identified herself as single. (Tr. Exh. 424). Again, in a September 13, 2018 medical record—less than a month prior to her death—Carol listed her marital status as single. (Tr. Exh. 422, AJ000343).

Doug also held himself out as unmarried to his doctors, lawyers, a California court, and Carol's financial institutions. In a medical registration form filled out by Doug on September 26, 2018—just 11 days prior to Carol's death—Doug identified himself as unmarried. (Tr. Exh. 247). In the same form, Doug identified his marital status as "single" and also as "divorced". Although Carol was listed as his emergency contact, he listed her relationship to him as "Sig Other". *Id*. In 2015 and 2016, Doug was involved in litigation with his second wife relating to the marital property settlement. In the litigation, Doug's attorney and the Court, all referred to Carol as his "girlfriend"—not his wife. (Tr. Exh. 405 (AJ 25391, 25540-25541, and 25568) and Tr. Exh. 407 (AJ 25219, 25278, and 25279). As noted above, Doug filled

out several of Carol's financial documents that list her as "single" and/or "unmarried. (Tr. Exhs. 34, 43, 421).

In pursuing her passion for design and architecture, Carol purchased a lot adjacent to 118 Falling Star Road home and built her dream home at 200 Falling Star Road. The construction of the home at 200 Falling Star Road took place from approximately 2015-2017. (Tr. Trans. 4-23:2-12; 1-76:21-77:7). Carol titled the new house only in her name and paid the entire cost of construction with her separate assets. (Tr. Trans. 1-258:125; Tr. Exh. 58).

The people closest to Carol all testified she was never married to Doug. Carol shared a very close relationship with her sons, AJ and Jeff. (Tr. Trans. 2:158:22-159:12; 4-83:20-22). AJ and Jeff talked regularly with their mother and shared with each other their life events. (Tr. Trans. 2:158:22-159:12; 4-91:6-8). Carol never wanted to be married again after two extremely difficult divorces. Carol told her sons that there was no reason for her to ever remarry as she would always have them in her life. (Tr. Trans. 137:2-8). Neither Jeff nor AJ ever heard their mother refer to Doug as her husband. Likewise, neither Jeff nor AJ ever heard Doug refer to their mother as his wife. (Tr. Trans. 2-184:3-25; 4-135:23-136:18). Jeff testified that if his mother had agreed to marry Doug, she would have told him. (Tr. Trans. 2-184:3-25).

While Jeff occasionally referred to Doug as "Grandpa D", he explained that he often referred to friends as "aunt" or "uncle" for the sake of his young daughters.

(Tr. Trans. 2-178:16-24). Jeff's reference to "Grandpa D" was not because he considered Doug to be his daughter's grandfather, but because it was easier than trying to explain relationship dynamics to a child. (Tr. Exh. 66). In fact, while he claimed to love Jeff's children as his own grandchildren, Doug could not recall their names or their birthdays and acknowledged that he had not seen them since 2018. (Tr. Trans. 2-17:19-18:18).

Carol also confided in her closest friends, including Nikki Labauve. Carol told Ms. Labauve that she never wanted to be married again because she had gone through two difficult divorces, she was financially independent, and she had her sons in her life. (Tr. Trans. 3-137:24-138:5). Carol never described Doug as her husband and made clear that she was not married to Doug. (Tr. Trans. 3-158:6-21). Carol told Ms. Labauve that Doug mistreated her and took advantage of her financial resources. (Tr. Trans. 3-140:13-142:5).

Ms. Labauve described in detail a trip she took to Montana to visit Carol in August 2017. (Tr. Trans. 3-142:22-24). Ms. Labauve stayed with Carol and Doug at the 200 Falling Star Road home. (Tr. Trans. 3-145:14-21). Although the trip was meant to be an opportunity for Carol and Ms. Labauve to spend time together, Doug never left Carol alone with Ms. Labauve. (Tr. Trans. 3-145:22-146:12). Carol alerted Ms. Labauve it was not safe for her to email or text because Doug had access to her phone and her email and would read her messages. (Tr. Trans. 3-166:1-9). Ms.

Labauve observed that Carol seemed very unhappy, mentally broken, and scared for the entirety of her trip. (Tr. Trans. 3-148:9-19; 3-154:19-155:7).

During Ms. Labauve's trip, she only had two opportunities to talk with Carol outside of Doug's presence. (Tr. Trans. 3-148:2-149:23). On a night when Doug had fallen asleep, Carol explained how poorly Doug treated her and described the ongoing problems arising from his excessive drinking and spending. (Tr. Trans. 3-148:2-151:1). Carol told Ms. Labauve she had contacted an attorney to make certain Doug could not claim a common law marriage, if anything should happen to her. *Id*. Carol stated she feared how Doug would react if she ended the relationship. (Tr. Trans. 3-148:8-149:12). They discussed a plan for Carol to end the relationship. (Tr. Trans. 3-3-148:20-149:23. On the drive to the airport, Carol broke down and told Ms. Labauve that she was scared and felt all alone. (Tr. Trans. 3-154:17-155:7). From Ms. Labauve's perspective, Carol was desperate to end the relationship but lacked the mental strength and self-esteem to act. *Id*.

Carol also confided in Igor Olenicoff. Carol viewed Mr. Olenicoff as a mentor and sought his guidance on life issues. (Tr. Trans. 4-60:6-21). When Carol returned to California, she would reach out to Mr. Olenicoff and they would take long walks to talk. *Id*. Carol shared how Doug was abusive and was misusing her money. It bothered Carol that Doug was using her financial resources to fund his lifestyle, while he contributed nothing to the relationship. (Tr. Trans. 4-62:11-64:21). She told

Mr. Olenicoff that Doug was using Carol's money to make questionable investments, including an investment in a business in Mexico. *Id*. She confided that she wanted to end her relationship with Doug but did not how. (Tr. Trans. 4-68:10-69:7). Carol told Mr. Olenicoff that she was a captive and could not leave him while he owed her so much money. (Tr. Trans. 4-68:10-70:3).

Mr. Olenicoff encouraged Carol to end the relationship and worked with her on a plan. (Tr. Trans. 68:10-22; 4-63:22-64:13). He told Carol that she could stay with him if she needed a place to escape and offered any other support he could provide. (4:68:23-69:7). He advised that her happiness was more important than the money Doug owed, and they could figure out how to get the money back afterward. *Id*. However, as Mr. Olenicoff testified, Carol never followed through on the plans because she lacked the self-confidence and mental strength to act. (Tr. Trans. 68:10-22). Carol was afraid of Doug. *Id*.

Mr. Olenicoff knew that Carol was not married to Doug. (Tr. Trans. 68:10-22). He testified that Carol told him that she never wanted to get married again and there was no point. (Tr. Trans. 4-67:17-68:3). Mr. Olenicoff's discussions with Carol regarding Doug were in the context of how poor the relationship was and how Carol wanted to end the relationship. (Tr. Trans. 4-60:22-64:21).

Doug and Carol had a relatively small group of friends that had frequent interactions with both of them. Those friends that knew both Doug and Carol—as

opposed to just Doug—knew they were not married. Jeff and Suzy Wetmore knew both Doug and Carol well and knew that they were not married. Mr. and Mrs. Wetmore considered Doug and Carol to be close friends. (Tr. Trans. 3-196:14-198:4). In fact, when Carol had her medical emergency, the Wetmores ended their vacation and drove from Oregon to Salt Lake City, where Carol was receiving medical treatment to be with her. (Tr. Trans. 3-201:21-202:17).

Ms. Wetmore was a close friend of Carol's and someone she regularly confided in, while Mr. Wetmore was one of Doug's close friends, meeting up or talking once a week. (Tr. Trans. 3-195:11-196:13)[5]. Doug and Mr. Wetmore frequently fished and hunted together. (Tr. Trans. 3-197:22-198:9). Mr. Wetmore never believed Doug and Carol to be married. (Tr. Trans. 3-200:6-19). Doug and Carol never told him that they were married, and they never referred to one another as husband and wife. (Tr. Trans. 3-200:20-25). According to Mr. Wetmore, the fact that Doug and Carol were unmarried was "understood" by anyone that knew them well. (Tr. Trans. 3-200:6-19).

The Wetmore's daughter, Maggie Stein, also formed a close relationship with Carol through her parents. (Tr. Trans. 3-170:11-12). Ms. Stein, a Montana-licensed attorney. (Tr. Trans. 3-170:3-4). Carol told Ms. Stein that she did not want to get

[5] Unfortunately, Ms. Wetmore was experiencing serious medical issues at the time of trial and advised by her doctor to not testify. (Tr. Trans. 3-196:3-7).

married again late in life. (Tr. Trans. 3-172:19-173:5). Carol admitted to Ms. Stein that Doug mistreated her and that he was taking advantage of her. (Tr. Trans. 3-174:7-175:9).

Carol approached Ms. Stein twice with legal questions related to Doug. The first time, as previously noted, was in a December 11, 2012 email in which Carol sought guidance to make certain she was repaid for a loan that Doug had made to his daughter and on "other monies owed to me by Doug[.]" (Tr. Exh. 35). The second instance occurred when Carol was constructing the home at 200 Falling Star Road. (Tr. Trans. 3-174:7-18). Carol told Ms. Stein her relationship with Doug was having serious problems, she was nervous about what he would allege, and she wanted to make sure she was protected if the relationship ended. *Id*. Specifically, Carol wanted to make certain Doug could not claim a common law marriage and claim a right to her assets. (Tr. Trans. 3-187:10-188:23). Ms. Stein referred Carol to a family law attorney because she does primarily transactional work. *Id*. Ms. Stein testified that Carol seemed scared and intimidated. (Tr. Trans. 3-174:7-18; 3-182:6-14). She further noted Carol was not a strong person and lacked the ability to stand up for herself. (Tr. Trans. 3-182:9-14).

On October 5, 2018, Carol suffered a pulmonary embolism. (Tr. Exh. 422). She was flown to Bozeman Health and then transported to the Salt Lake City, Utah, where she tragically died on October 7, 2018. (Tr. Exh. 55). Upon Carol's death,

Doug immediately took action to assert a common law marriage—just as Carol had predicted he would do. He identified himself as Carol's husband on her Death Certificate. (Tr. Exh. 55) and in a State of Utah Department of Health Cremation/Burial-Transit Permit. (Tr. Exh. 65).

Shortly after Carol passed away, Doug began dating a wealthy widow. (Tr. Trans. 2-42:10-21). Doug eventually moved in with his new girlfriend at her home at 261 Falling Star Road—just 200 yards up the street from the 200 Falling Star Road home he shared with Carol. (Tr. Trans. 2-43:6-18).

STANDARD OF REVIEW

A district court's findings of fact are reviewed under a clearly erroneous standard of review. *In re Est. of Sartain*, 2132 Mont. 206, 209, 686 P.2d 909, 911 (1984). A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the district court has misapprehended the effect of the evidence, or if a review of the record leaves the reviewing court with a definite and firm conviction that a mistake has been committed. *In re Marriage of Swanner-Renner,* 2009 MT 186, ¶ 13, 351 Mont. 62, 209 P.3d 238.

A district court's conclusions of law are reviewed de novo to determine whether they are correct. *Giambra v. Kelsey*, 2007 MT 158, ¶ 28, 338 Mont. 19, 162 P.3d 134. (citations omitted).

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SUMMARY OF ARGUMENT

In the case at bar, Doug bears the burden of proof in establishing the existence of a common-law marriage between the parties. To do so, he must prove by a preponderance of the evidence that (1) the parties were competent to enter into a marriage; (2) the parties assumed a marital relationship by mutual consent and agreement; and (3) the parties confirmed their marriage by cohabitation and public repute. *Barnett v. Hunsaker*, 1998 MT 279, ¶ 32, 291 Mont. 412, 968 P.2d 281 (citing *In re Marriage of Geertz*, 232 Mont. 141, 145, 755 P.2d 34, 37 (1988)). All three elements must be present.

The evidence propounded at trial clearly establishes that Carol did not consent to a marriage with Doug. The District Court erred in finding that Doug had met his burden in providing that Carol and Doug assumed a marital relationship by mutual consent or agreement. The evidence establishes Carol repeatedly told her family and close friends that she would never marry again, as she had gone through two difficult divorces and already her two sons. Carol confided in her close friends that Doug was financially abusing her and that she wanted to find a way to end the relationship, but she was scared of Doug. Carol even reached out to an attorney to make certain that Doug could not claim a common law marriage, if something were to happen to her.

Over the course of their relationship, Carol signed and/or filled out 33 separate documents in which she identified herself as "single" and/or "unmarried". These documents establish that Carol considered herself single from the start of the relationship until just days prior to death. Similarly, Doug also prepared documents in which he also identified himself as "single" and/or "unmarried" throughout the relationship. These documents include a medical registration form filled out by Doug in his own handwriting on September 26, 2018—just 11 days prior to Carol's death—in which he identified himself as both "single" and "divorced" and further identified Carol merely as his "Sig Other". Doug did not consistently identify himself as married until Carol passed away and he sought to benefit from her estate.

The District Court further erred in determining that Doug had met his burden in proving that Carol and Doug confirmed a marital relationship by public repute. Unlike both of their prior marriages, there was no marriage ceremony. Carol never took Doug's last name and neither wore wedding rings. Carol represented herself as single and unmarried to everyone in her life—her family, friends, bankers, financial advisors, life insurance representatives, accountants, medical providers, and the United States Government.

Doug also represented himself as single and unmarried to his medical providers, his attorneys, a California court, as well as Carol's bankers, accountants, financial advisors, and life insurance providers. Doug acknowledged that he did not

tell everyone that he was supposedly married and admitted he and Carol kept the alleged marriage a secret from Carol's son, AJ. As this Court has repeatedly made clear, public repute "cannot be partial, it must be complete and sincere[.]" *Miller v. Sutherland*, 131 Mont. 175, 182, 309 P.2d 322, 326 (1957). There is no evidence that Carol or Doug consistently held themselves out to the community as married.

The District Court clearly erred in finding that Doug had met his burden of establishing that he and Carol assumed a marital relationship by mutual consent and agreement and confirmed such relationship by public repute. The decision should be reversed.

ARGUMENT

Montana recognizes common law marriage. M.C.A. § 40-1-403. "Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential." M.C.A. § 40-1-103. In Montana, common law marriage "is an equitable doctrine used to ensure people are treated fairly once a relationship ends." *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 24, 325 Mont. 148, 104 P.3d 445 (explaining the concept is "designed, in part, to prevent unjust economic harm to couples who have held themselves out as [spouses]").

The party asserting the existence of a marriage bears the burden of proving the elements of a common law marriage. *In re Estate of Vandenhook*, 259 Mont. 201, 204, 855 P.2d 518, 520 (1993). To establish a common law marriage, the party

asserting the existence of the common law marriage must prove that the parties: (1) were competent to enter into a marriage; (2) assumed a marital relationship by mutual consent and agreement; and (3) confirmed their marriage by cohabitation and public repute. *In re Marriage of Hansen*, 2019 MT 284, 398 Mont. 64, 453 P.3d 1210 (citing *Barnett v. Hunsaker*, 1998 MT 279, ¶ 32, 291 Mont. 412, 968 P.2d 281).

There must be an agreement between the parties that they will hold toward each other the relation of husband and wife, with all the responsibilities and duties which the law attaches to such relation, otherwise there can be no lawful marriage." *Miller v. Towsend Lumber Co.*, 152 Mont. 210, 216-17, 448 P.2d 148, 151 (1968), overruled on other grounds by *In re Marriage of Swanner-Renner*, 2009 MT 186, 351 Mont. 62, 209 P.3d 238.

Here, it is undisputed Carol and Doug were competent to enter into a marriage after Doug's second divorce was finalized on May 17, 2010, and that they cohabited from at least 2009 until Carol's death on October 7, 2018. However, the parties never assumed a marital relationship by mutual consent or agreement and never confirmed a marriage by public reputation. The mere consent of one individual in the relationship is not sufficient to establish mutual consent. Nor is evidence that one party to the relationship occasionally held themselves out to the community as married sufficient to confirm a marriage by public repute.

The District Court clearly erred in finding the existence of a common law marriage where it improperly placed the burden of proof on AJ and further misapprehended the overwhelming weight of the evidence.

I. The District Court Erred in Finding Carol and Doug Assumed a Marital Relationship by Mutual Consent or Agreement.

To establish consent, the party asserting a common law marriage must present evidence of an agreement between the parties that they would be husband and wife. *Miller*, 131 Mont. at 182, 309 P.2d at 326. Although consent may be implied from conduct, consent must be mutual, and "must always be given with such an intent on the part of each of the parties that marriage cannot be said to steal upon the unawares." *Hunsaker*, ¶ 34. Thus, one "cannot become married unwittingly or accidentally" and the "consent required must be seriously given with the *deliberate intention* that marriage result . . . ." *Miller*, 131 Mont. at 182, 309 P.2d at 326 (emphasis added). "Mutual consent must be based on deliberate action by *each* party. *Adami v. Nelson (In re J.K.N.A.)*, 2019 MT 286, ¶ 28, 398 Mont. 72, 454 P.3d 642 (emphasis added). Where the facts fail to show any specific agreement between the parties concerning marriage no marriage can be found. *Matter of Peltomaa's Estate*, 193 Mont. 74, 78, 630 P.2d 215, 217 (1981).

A. Carol Never Consented to Marriage.

Carol and Doug did not have a wedding ceremony—or any celebration that could be interpreted as a wedding ceremony—even though both had ceremonies in

their prior marriages. They never celebrated an anniversary date on which their marriage supposedly began. Carol did not take Doug's surname or wear a wedding ring, as she had done in her two prior marriages. Although Doug suggests that he gave two bracelets to Carol as a symbol of their marriage, he acknowledged that he gave one of the bracelets to Carol while they were living in California, which was before he claimed that they considered themselves married. Moreover, Jeff testified that he believed that Carol bought the two Cartier bracelets for herself, as a symbol for her two sons. (Tr. Trans. 2-194:24-195:8).

The people closest to Carol confirmed that Carol was unequivocal about not getting married again. Carol's sons, who shared a very close relationship with their mother, both testified that their mother told them there was no need for her to marry again because she had them in her life. Carol shared this same sentiment with her closest friends and confidants. Carol told Ms. Labauve and Ms. Stein she never wanted to be married again because she had her sons, she had already endured two difficult divorces, she was financially independent, and there was no need at her age. (Tr. Trans. 3-137-138; 3-172:19-173:5).

Not only did Carol not consent to a marriage during the relationship, but she was also actively seeking advice as to how to end the relationship. In approximately 2015 or 2016, Carol reached out to Ms. Stein, an attorney, because "[s]he wanted to make sure she was protected, her assets were protected if she were to leave Doug."

(Tr. Trans. 3-174:7-18). Specifically, Carol wanted to make certain Doug could not claim a common law marriage:

> …I think she was worried that if she, you know, wanted to leave him, if she could stay in her house that she paid for, and if he could, you know, if there was anyway, because he was a signer on the accounts, that he could argue it was his money[.]

(Tr. Trans. 3-189:11-18). While Ms. Stein told Carol she did not believe Doug had an argument that a common law marriage existed, she advised Carol to contact a family law attorney. (Tr. Trans. 1-187:10-189:18). Carol followed Ms. Stein's advice. Ms. Labauve testified:

> She talked to – she told me she had talked to an attorney in – I believe it was in Bozeman – and she just had a consultation with somebody because she wanted to make sure that their relationship was not defined as a common law. So she talked with him. She wanted to make sure what that really – how Montana really defined it and they told her that as long as she didn't wear a ring, didn't call each other husband and wife, then she was okay.

(Trial Tr. 3-149:15-23).

The objective evidence confirmed that Carol was unequivocable about not being married. Except for a single insurance form, Carol's sworn tax returns, loan documents, personal financial statements, and medical records all consistently demonstrate Carol's clear intent to identify herself as single and unmarried. In total, Carol identified herself as single and/or unmarried in 33 separate records. Those documents span from 2010, when the District Court found that a marriage arose, until October 2, 2018—just 5 days prior to Carol's death.

The District Court, citing to *In re Estate of Ober*, 2003 MT 7, 314 Mont. 20, 62 P.3d 114 and *In re Alcorn*, 263 Mont. 353, 868 P.2d 629 (1994), reasoned there is no legal requirement that the parties use the same last name or that they list each other as beneficiaries on insurance, retirement, or health forms. *Order*, p. 12. While accurate, the District Court failed to recognize that the Montana Supreme Court has never found a marriage to exist where there were dozens of documents in which the parties repeatedly identified themselves as unmarried, as in this case. In fact, the District Court's Findings do not even acknowledge that Carol identified herself as single and/or unmarried in 33 separate records[6]. Nor do the Findings address critical evidence that demonstrates Doug identified himself as unmarried and Carol as his "Sig Other" just 11 days prior to Carol's death. The District Court relieved Doug of his burden to prove the assumption of a marital relationship by mutual consent or agreement.

In cases such as this, this Court looks beyond the self-serving testimony of the person trying to prove the existence of a common law marriage and looks to objective evidence that the decedent had consented to a marital relationship. For instance, in *Alcorn*, the Court attributed significant weight to evidence that the decedent had given the surviving spouse a ring with a horseshoe design and that

[6] If the District Court's Order seems one-sided it is because it is. The District Court adopted Doug's proposed Findings of Fact and Conclusions of Law and Order nearly in its entirety, including typos within the proposed draft. The District Court adopted the Conclusions of law in their entirety and only made a few minor changes to the Findings of Fact. *See* D.C. Doc. 277.

same horseshoe design was etched into the concrete on the walkway to the marital home. *Alcorn*, 263 Mont. 357, 868 P.2d at 631. In *Ober*, evidence was introduced that the couple had created address labels which read "John or Selma Ober" and decedent kept a picture of surviving spouse in his wallet, with the words "my wife" written in the husband's handwriting. *Ober*, ¶ 12. In *Hunsaker*, the Court relied on evidence that the decedent had given the surviving spouse a ring and the couple displayed a grandfather clock, which was engraved with their first initials over the letter "H" for their last name. *Hunsaker*, 1999 MT 279 at 7, 36.

Here, unlike *Alcorn*, *Ober*, and *Hunsaker*, there is no objective evidence Carol agreed to marry Doug. As noted above, Carol deliberately established her clear intent to identify herself as single and unmarried in 33 separate documents. Doug did the same when he filled out a medical registration form just 11 days prior Carol's death in which he identified his marital status as "single" and "divorced" and further identified Carol as his "Sig Other". (Tr. Exh. 247). Aside from Doug's self-serving testimony and post-death actions, he can only rely on circumstantial evidence to argue that Carol consented to a marital relationship and this evidence can be explained by witness testimony and/or reason.

For instance, because Doug and Carol were avid skiers, in August 2014, a "Family Membership" for air ambulance insurance was purchased. (Tr. Exh. 212). Doug was listed in the paperwork summarizing the covered insureds as the "common

law husband", as were Carol's adult sons. *Id*. Logically, it follows that it would be cheaper for Carol to purchase a single policy under a family membership than to purchase two separate policies.

In another example, the 200 Falling Star Road residence was profiled in the Big Sky Journal. (Tr. Exh. 208). Prior to the article being published, on March 1, 2018, the author emailed Carol and specifically asked her how she should refer to Carol and Doug in the article. (Tr. Exh. 209). The author noted "[u]sually when we don't mention owners' names we refer to them as 'the husband' and the 'wife' or some such. I am wondering how to refer to you and Doug?" Instead of responding to the author that they were married, Carol forwarded the email on to Doug, asking "How do you think we should handle this?" *Id.* If Carol and Doug had truly been married since 2010, as Doug maintained, there would have been no need for Carol to send the email.

However, the District Court only focused on a parenthetical on the last page of the article, where the author referred to Doug as the "husband". The District Court further ignored Doug's acknowledgement that the subject parenthetical was not even factually correct as it misidentified Doug's first car as a 1966 Ford Bronco, when it was not. (Tr. Trans. 1-85:19-86:1). Moreover, the rest of the 9-page article refers to Doug and Carol as a couple, but not as "husband" or "wife." (Tr. Exh. 208).

The District Court found Ms. Patton's testimony Carol that told her in approximately 2012 or 2013 that she consented to a common law marriage with Doug "particularly persuasive" because she was an attorney. *Order*, p. 13. However, the District Court arbitrarily ignored contradicting testimony from Ms. Stein, also an attorney, who testified Carol had sought her advice to make certain Doug could not claim a common law marriage if she ended the relationship, in a conversation in approximately 2016 or 2017. The District Court's Findings do not even address Ms. Stein's testimony. In fact, aside from Carol's sons, the District Court's *Order* makes no mention whatsoever of the five other witnesses that all testified that Carol was not married to Doug.

B. <u>There are no Objective Indicia of Consent to Marriage.</u>

Nor is there any evidence that allowed the District Court to imply that Carol and Doug were married, other than their mere cohabitation. Mutual consent can also be implied from the conduct of the parties and does not to be expressed in any particular form. *Hunsaker*, ¶ 34.

Carol kept all of her assets titled in her name only. The 118 Falling Star Road home and the 200 Falling Star Road home were both titled in Carol's name only. All vehicles were titled solely in her name. In addition, although Carol listed Doug as an "agent/signer" on one of her Stockman Bank Accounts, she remained the owner

of the account and did not designate Doug as a beneficiary on the account. (Tr. Exh. 413).

Although Carol intended to leave a life insurance policy and her IRA to Doug upon her death, those documents serve as additional evidence that they were not married. In a November 28, 2014 change of beneficiary form, Carol listed Doug as her primary beneficiary on a life insurance policy, but identified him as a "Partner"—not as her "husband" or "spouse." (Tr. Exh. 43). In a November 6, 2017, Individual Retirement Account Application, Carol listed Doug has the beneficiary designation, but identified him as her "Sig Other." (Tr. Exh. 421).

Aside from the life insurance policy and IRA, Carol intended for all her assets to go to her sons. Carol's Will and Revocable Trust, leaves everything to her sons—and nothing to Doug. (Tr. Exhs. 30 and 401). Carol amended her Revocable Trust Agreement 7 separate times, demonstrating Carol understood how to make changes. Carol could have provided for Doug in her estate plans but chose not to. Carol's decision not to list Doug as a beneficiary in her estate planning documents is further evidence that would suggest Carol did not consent to marriage with Doug.

The District Court relied on evidence Carol and Doug "shared" finances, including bank accounts and credit cards, as indicative of Carol's consent to a marital relationship. *Order*, Finding #5. However, the District Court misapprehended the effect of this evidence. Carol's close friends, Ms. Labauve, Ms. Stein, and Mr.

Olenicoff all testified that Doug's use of Carol's financial resources was a significant point of contention in the relationship. As evidenced by her emails to Mr. Stein and Ms. Patton, Carol kept an accounting of the money Doug owed to her and which she sought reimbursement for. (Tr. Exhs. 35 and 36). Ms. Labauve, Ms. Stein and Mr. Olenicoff each testified that Carol explained, in great detail, how Doug financially exploited her.

Therefore, not only did Carol and Doug not expressly consent or agree to a marital relationship with Doug, but there is also no other evidence that would imply that they had consented to a marital relationship.

II. The District Court Erred in Finding Carol and Doug Confirmed a Marriage by Public Repute.

The District Court further erred in finding that Carol and Doug confirmed their alleged marriage by public repute, where both Carol and Doug consistently held themselves out as single and/or unmarried in their community. The District Court misapprehended the evidence presented and improperly placed the burden of proof on AJ to prove that there was no marriage confirmed by public repute.

To establish a valid common-law marriage, the couple must hold themselves out to the community as husband and wife. *Hunsaker*, ¶ 38. The course of conduct establishing public repute "cannot be partial, it must be complete and sincere, [and] when we speak of repute, we mean reputation, being the character and status commonly ascribed to one's actions by the public." *Sutherlan*d, 131 Mont. at 184,

309 P.2d at 328. In analyzing public repute, the Court views the "public" as the people in the couple's community "whose knowledge would establish reputation." *Sutherland*, 131 Mont. at 185, 309 P.2d at 328.

The District Court improperly placed the burden of proving the essential element of public repute on AJ—not Doug. Aside from briefly referencing "certain documents list[ing] Carol as single" (*Order*, Conclusion #8), the District Court ignores the overwhelming weight of evidence establishing that Carol held herself out as unmarried to everyone involved in her life on a personal, financial, and professional level. She held herself out as single and unmarried to her family and friends. She identified herself as unmarried to her health care and wellness providers. (Tr. Exhs. 422, 423, 424). She identified herself as unmarried to her accountants, the IRS, and the government. (Tr. Exhs. 37, 41, 44, 46, 48, 53, 54, 440, 415, and 441). She held herself out as unmarried to her bankers. (Tr. Exh. 32, 58, 412, 416, 417, 418, 419). She told her investment advisors and life insurance providers she was unmarried. (Tr. Exhs. 43, 67, 420, 421). Carol's written representations span the entirety the time the District Court found a marriage to exist, from October 27, 2010 (Tr. Exh. 412) until October 2, 2018 (Tr. Exh. 58)—just 5 days prior to her death.

Doug also routinely held himself out as single and unmarried to his medical providers, his attorneys, and a California court. In the 2015 and 2016 litigation with his second wife, Doug's attorneys repeatedly refer to Carol as Doug's "girlfriend."

(Tr. Exhs. 405 and 407). Notably, Doug made no effort to correct his attorney or the Court. The District Court also ignored Doug's medical registration form he filled out on September 28, 2018—11 days prior to Carol's death. (Tr. Exh. 247). In this form, Doug identifies his marital status as both "single" and "divorced" and then proceeds to identify Carol as his "Sig Other." The District Court makes no mention of this contradictory evidence in its *Order*.

Doug further acknowledged there was no marital relationship in the documents he filled out with Carol's bankers, accountants, financial advisors, and life insurance providers. When specifically asked whether he was holding himself out as unmarried when he made representations of being single in these documents, Doug admitted "Yes, to people that don't personally know us." (Tr. Tran. 1-198:15-23). Doug further explained, "I don't think it really mattered with regard to how we considered ourselves as married people." (Tr. Tran. 1-197:24-25). The evidence and Doug's own admission establish the absence of a marriage confirmed by public repute.

Indeed, Doug plainly acknowledged that he did not tell everyone that he was supposedly married to Carol. (Tr. Trans. 1-56:22-57:1). A common-law marriage cannot exist if the parties have kept their marital relationship a secret. *Hunsaker*, ¶ 38. Doug admitted that neither he nor Carol told AJ of their supposed marriage. (Tr.

Trans. 1-57:4-11. Additionally, while Doug claims he told Jeff about the marriage, Jeff adamantly denies this. (Tr. Trans. 2-166:6-13, 2-184:3-22).

Although Doug presents limited evidence that he occasionally held himself out as married, this is not sufficient to meet his burden in proving the existence of a marriage confirmed by public repute. The course of conduct establishing public repute "cannot be partial, it must be complete and sincere[.]" *Miller*, 131 Mont. at 184, 309 P.2d at 328. Thus, the law does permit an individual to claim marriage when convenient. There is no evidence Doug consistently held himself out to the community as married. At best, the only evidence presented that would support the element of public was partial and inconsistent. For instance, Doug presented two isolated medical records in which he identifies himself as married (Tr. Exh. 439 (Nail 6036 and Nail 6290[7])); yet, those records are directly contradicted by his September 28, 2018 medical registration form (Tr. Exh. 247).

The testimony from Doug's witnesses, who either did not spend time with Carol or had infrequent communication with Carol, was also partial and inconsistent. Doug's long-time friend, Shepard Casey, testified he only considered Doug and Carol to be married after specifically asking him in 2016 or 2017[8], "[A]re you ever

[7] Even the evidence Doug and the District Court relied on is inconsistent. Tr. Exhibit 439 (Nail 6290) notes Doug is "[m]arried, lives up Bridger Canyon, ski[ed] (sic) 100 days per year", but on the same page lists his marital status as "single."

[8] Mr. Casey testified that this conversation took place at the construction site for the 200 Falling Star Road home, which was under construction in 2016 and 2017. (Tr. Trans. 3-96-7-17).

just going to get married[?]" (Tr. Trans. 3-96:7-17). The fact Mr. Casey had to ask his close friend whether he was married demonstrates a lack of public repute. *Id*. Mr. Casey further acknowledged he never heard Carol say she was married. (Trans. 3-105:7-9). Doug's boxing coach, Joe Diaz, also testified Doug and Carol held themselves out as married. (Tr. Trans. 4-15:10-15). However, although Mr. Diaz claimed Doug and Carol were like family to him, he acknowledged he had only met Carol on two occasions. (Tr. Trans. 4-17:21-18:22).

Furthermore, even the testimony from the witnesses that knew Carol well was inconsistent and/or remote in time. Ms. Patton recalled a specific conversation at Carol's Del Mar home where Carol told her she was common law married. (Tr. Trans. 2-65:11-19). That was the last time she spoke with Carol on the subject. *Id*. Notably, Carol sold her Del Mar home in either 2012 or 2013. *Order*, Finding #12. Doug's daughter, Kaitlyn Costanti, testified Doug and Carol held themselves out as married, and Carol referred to her as her stepdaughter. However, as Ms. Costanti acknowledged, she had no communication with her father and limited communication with Carol between 2014 and Carol's death[9]. (Tr. Trans. 3-61:22-63:12). Ms. Costanti further commented that Carol never wore a wedding ring, but she "wanted one bad, though." (Tr. Trans. 3-64:13-14). Carol's ski instructor, Birgit

[9] In 2016, Ms. Costanti fought with her father over a piece of property that he transferred into her and her brother's names. When asked why she did not want to transfer the property back to her dad, she indicated "Money is money." (Tr. Trans. 3-59:10-61:2)

Hance, considered the parties to be married, but acknowledged that she similarly considered her daughter married on the day she moved in with her fiancé. (Tr. Trans. 2-130:19-24). In the years Ms. Hance had known Carol and Doug, she never heard either refer to the other as their spouse. (Trans. 2-128:5-11).

As this Court has repeatedly made clear, public repute "cannot be partial, it must be complete and sincere[.]" *Miller*, 131 Mont. at 182, 309 P.2d at 326. There is no evidence that Carol or Doug consistently held themselves out to the community as married. The District Court erred in concluding that Carol and Doug had confirmed a marriage by public repute.

CONCLUSION

Carol did not want to be married. She made it clear to her family, friends, and the community around her. Carol repeatedly identified herself as "single" and/or "unmarried" in numerous documents that span the length of the relationship. She told her family and close friends that she would never marry again. She further confided in her close friends that Doug was mistreating her, taking advantage of her financial resources, and she wanted to end the relationship. Carol even reached out to an attorney to make certain that Doug could not claim a common law marriage, if something were to happen to her.

The District Court committed clear error in finding that a marital relationship existed. Doug failed to meet his burden in proving that Carol and Doug assumed a

marital relationship by mutual consent or agreement and that they confirmed such marriage by public report. The Court should reverse the District Court's October 22, 2024 *Order*.

Dated this 10th day of March 2025.

COTNER RYAN BLACKFORD, PLLC

/s/ Kyle C. Ryan
Kyle C. Ryan

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that Appellants' 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 Office Word, is not more than 10,000 word excluding Certificate of Compliance.

Dated this 10th day of March 2025.

COTNER RYAN BLACKFORD, PLLC

/s/ Kyle C. Ryan
Kyle C. Ryan

APPENDIX

Findings of Fact, Conclusions of Law and Order dated October 22, 2024

CERTIFICATE OF SERVICE

I, Kyle Clark Ryan, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-10-2025:

David Brian Cotner (Attorney)
321 W. Broadway
Suite 500
Missoula MT 59802
Representing: Alan Lee Johnson
Service Method: eService

Sherine Diane Blackford (Attorney)
321 W. Broadway, Suite 500
Missoula MT 59802
Representing: Alan Lee Johnson
Service Method: eService

Benjamin J. Alke (Attorney)
2708 1st Avenue North, Suite 300
Billings MT 59101
Representing: Douglas J. Nail
Service Method: eService

Electronically Signed By: Kyle Clark Ryan
Dated: 03-10-2025