

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

Cause No. DA 24-0566

**DAVID STANHOPE, Appellant,****v.****BREANNA SIMPSON, Appellee,****In the Matter of the Conservatorship of  
S.H.C.****BRIEF OF APPELLEE SHARON STANHOPE**

**On Appeal from the Montana Sixteenth Judicial District Court, Custer County  
Cause No. DG 2022-04  
Before the Honorable Michael Hayworth**

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## **STATEMENT OF ISSUES**

**ISSUE I:** Substantial evidence supports BreAnna's appointment as conservator.

**ISSUE II:** There is no conflict between the district court's appointment of co-guardians and the appointment of the conservator.

**ISSUE III:** David lacks standing to object to BreAnna's appointment.

## **STATEMENT OF THE CASE**

On October 13 and November 29, 2022, the district court held hearings on Appellant David Stanhope's (David) petition seeking permanent appointment as guardian and conservator for S.H.C. Appellee Sharon Stanhope (Sherry) opposed David's request and sought her own appointment. Following that hearing, and based on the parties' stipulation, the district court appointed Sherry and her brother, Randy Stanhope (Randy), as permanent full guardians for S.H.C.

On December 5, 2022, S.H.C. executed a durable power of attorney in favor of his granddaughter, BreAnna Simpson (BreAnna), authorizing her to assist in the management of S.H.C.'s property.

On August 26, 2024, the Court held a hearing on BreAnna's petition for appointment as S.H.C.'s conservator, which David opposed. Following the hearing the Court appointed BreAnna as S.H.C.'s permanent conservator.

David appealed, alleging that the Court improperly relied on the durable power of attorney, and that it had deviated from the statutory appointment priority of Section 72-5-410, MCA.

### **STATEMENT OF FACTS**

S.H.C. is 89 years old and has four stepchildren: David, Sherry, Randy Stanhope (Randy), and Shelly Weger (Shelly). Doc. 60, p.2. S.H.C. also has three biological children: Scott Clelland, Steve Clelland, and Stanley Clelland. **Id.** S.H.C. is widowed, but lived independently in Miles City until 2022, when he was placed at the Eastern Montana Veterans Home (EMVH) in Glendive due to his physical condition and medical needs.

On April 25, 2022, David was appointed as temporary guardian for S.H.C., asserting that Sherry, who had been serving as S.H.C.'s agent under a durable power of attorney, was not adequately providing for S.H.C.'s care and was believed to be exploiting him. Doc. 1. Sherry sought dismissal of David's petition, or, alternatively, seeking appointment herself as S.H.C.'s guardian. Doc. 11.

The district court held an evidentiary hearing on October 13, 2022. S.H.C.'s counsel advised the court that S.H.C. opposed the appointment of a guardian and conservator, asserting that he needed only limited assistance. S.H.C. also wished to have input into any appointments. Tr. p. 6, l. 6-15. S.H.C. requested that Sherry be appointed as his guardian and that BreAnna be appointed as his conservator. Tr.

p. 8, l. 20-25, p.9, l. 1-10. The district court continued its temporary appointments pending a medical evaluation of S.H.C.

On November 22, 2022, S.H.C. was evaluated by the Court-appointed physicians, Dr. Joseph Leal, M.D., and Ryann Smelser, N.P. Doc. 40. The physician noted that S.H.C. was originally admitted due to his generally poor physical condition, but that he had rallied and his condition was tremendously improved in the eight months following his admission. Doc. 40. The physician recommended that S.H.C. remain at EMVH but concluded that he could manage his own medical care. No recommendation was made that S.H.C. needed a conservator. Doc. 40.

The district court held a second hearing on November 29, 2022, at which time the parties stipulated to appoint Sherry and Randy as co-guardians, and to dismiss David's request for a conservatorship. This was done to allow all parties to communicate more effectively with one another for S.H.C.'s benefit

David acknowledged that S.H.C. would appoint a "fiduciary" after the hearing. S.H.C.'s attorney clarified that this would involve aiding S.H.C. with financial matters like bill-paying and writing checks, and that S.H.C. would execute "a new power of attorney". Tr. p. 8, l. 2-17. The district court dismissed David's petition and entered an order appointing co-guardians. Doc. 45. S.H.C. signed a power of attorney in BreAnna's favor on December 5, 2022.

On July 2, 2024, BreAnna sought appointment as S.H.C.'s conservator after an investment company would not recognize her authority under the power of attorney. Doc. 60. The district court held another hearing on August 26, 2024, at which time David objected to her appointment. David was critical of his niece's performance under the power of attorney, and he nominated himself as conservator, to which S.H.C. and Sherry objected. The Court appointed BreAnna as conservator pursuant to S.H.C.'s request and the evidence of BreAnna's existing appointment under the power of attorney. Doc. 73. The district court offered David the opportunity to consult with BreAnna with respect to S.H.C.'s investments, but he flatly refused, stating "I won't need to talk to her. Period. I have done my part." Tr. p. 69, l. 22-23. David appealed, seeking BreAnna's removal as conservator.

### **STANDARD OF REVIEW**

A district court's appointment of a guardian and conservator is reviewed for a clear abuse of discretion. **In re Guardianship & Conservatorship of A.M.M.**, 380 Mont. 451, 356 P.3d 474 (2015). A district court abuses its discretion if it acts arbitrarily, without the employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. **Mercer v. Mont. HHS**, 420 Mont. 201, 562 P.3d 502 (2025). The Court determines de novo whether the

district court correctly interpreted and applied the relevant guardianship and conservatorship statutes. **In re J.A.L.**, 376 Mont. 18, 329 P.3d 1273 (2014).

A district court's findings of fact are reviewed for clear error, which is a lack of substantial evidence, misapprehension of the effect of the evidence, or if the Court is left with a definite and firm conviction that the district court made a mistake; the evaluation of witness testimony and weighing of evidence is given great deference. **Whitehorn v. Whitehorn Farms, Inc.**, 346 Mont. 394, 195 P.3d 836 (2008); **Hallenberg v. Gen. Mills Operations, Inc.**, 333 Mont. 143, 141 P.3d 1216 (2006). Substantial evidence is evidence reasonably sufficient to support a conclusion; it is more than a scintilla of evidence but may be less than a preponderance. **Barret v. Asarco, Inc.**, 245 Mont. 196, 799 P.2d 1078 (1990). The Court reviews a district court's conclusions of law for correctness. **Hidden Hollow Ranch v. Fields**, 311 Mont. 505, 92 P.3d 1185 (2004).

### **SUMMARY OF THE ARGUMENT**

The district court correctly appointed BreAnna as conservator for S.H.C. She was his choice to serve in that role and had assisted him in the management of his finances for nearly two years under the power of attorney. Maintaining the status quo was in S.H.C.'s best interest. David holds no priority to be appointed as conservator as S.H.C. He previously waived his right to be a part of the management of S.H.C.'s financial affairs and acknowledged that S.H.C. was

competent to appoint BreAnna in 2022. The district court's appointment of a conservator should be affirmed.

## **ARGUMENT**

### **I. Substantial evidence supports BreAnna's appointment as conservator.**

#### **A. BreAnna's power of attorney is valid.**

The court recognizes the priority of a protected person's nominee for appointment as conservator if the district court determines that the party had "sufficient mental capacity to make an intelligent choice." Section 72-5-410(1)(b), MCA. Ample evidence supported the court's determination that S.H.C. was competent to nominate BreAnna as his conservator.

In 2022 the court-appointed physician stated that S.H.C.'s mental functioning was improved and his cognition "intact". As discussed *infra* the physician's report documented repeated testing that showed that S.H.C. had appropriate cognition, memory, and ability to sign medical documents, participate in his own care, and engage with other people. It was suggested that S.H.C. did not even require a guardian at that time.

The parties agreed that S.H.C. was competent to execute the power of attorney document. David acknowledged through his attorney that S.H.C. would appoint a fiduciary and did not object when S.H.C.'s counsel stated that he would be executing a power of attorney. All parties recognized S.H.C.'s capacity to execute

the power of attorney, and no objection was made to that appointment for nearly two years, until BreAnna sought a conservatorship that David wanted for himself.

David waived any objection to the power of attorney. The doctrine of waiver is a voluntary and intentional relinquishment of a known right or claim. **Olsen v. Milner**, 364 Mont. 523, 276 P.3d 934 (2012). To demonstrate waiver a party must show the other party's knowledge of the existing right, acts inconsistent with that right, and resulting prejudice to the party asserting waiver. Waiver may be proven by express declarations or by a course of conduct which induces the belief that the intent and purpose was waiver. **Id.** David sought to be appointed S.H.C.'s guardian and conservator, then stipulated to dismiss his conservatorship petition and agreed that S.H.C. would appoint a conservator under a power of attorney document. David stipulated that S.H.C. could sign a power of attorney, something he would do only if he believed that S.H.C. was competent to do so. David failed to challenge the power of attorney for nearly two years, although he was aware that BreAnna was acting under its auspices. To allow David to challenge S.H.C.'s competency after his representations in court and following such a significant delay is inequitable as it would disrupt the consistency of S.H.C.'s care, jeopardize the status of his estate, and open BreAnna to potential liability.

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**B. The appointment of co-guardians did not limit  
S.H.C.'s ability to execute the power of attorney document.**

The district court's appointment of Sherry and Randy as co-guardians does not support the belief that S.H.C. lacked capacity to sign the durable power of attorney. The appointment of a guardian or conservator is not a determination of a protected person's capacity. **In re Estate of West**, 269 Mont. 83, 887 P.2d 222 (1994); **Mont. Conf. of Seventh-Day Adventist Church v. Estate of Miller**, 192 Mont. 468, 628 P.2d 1100 (1981). A guardianship and conservatorship should maximize the protected person's self-reliance, and it must be tailored to the person's actual mental and physical limitations. A protected person retains all legal and civil rights except as specifically limited by the court. Section 72-5-306, MCA. The basis of the guardianship was S.H.C.'s physical condition; the court-appointed physician noted that he was of sound mind. S.H.C. signed his own medical admission paperwork, twice demonstrated that he had "intact cognition" in medical tests, and his mental status had markedly improved during his stay at EMVH:

"He has made great attempts to improve his memory function, his intellectual ability is intact for his current lifestyle, his reasoning is accurate and appropriate to his current situation, his social skills are pleasant and appropriate, his normal emotional reactions are appropriate for his situation."

Doc. 40. The physician concluded that S.H.C. did not need a personal guardian, but S.H.C.'s insight was such that he acknowledged that he would benefit from assistance in making major decisions. Based on the physician's report and

S.H.C.'s request the district court appointed co-guardians, but did not limit S.H.C.'s ability to manage his own finances. The district court ordered that:

“ . . . all financial records and authority over Stan's assets of Stan's estate [shall be returned] to Stan **or a fiduciary appointed by Stan pursuant to an executed Montana Statutory Durable Power of Attorney.**”

Doc. 45, p.3, Para. 2 (emphasis added). Not only did the court recognize S.H.C.'s capacity, it authorized him to execute of the power of attorney document. David did not challenge this order for almost two years.

### **C. David has no priority for appointment as conservator.**

The statutory priority for appointment of a conservator is clear. For purposes of this proceeding, the relevant categories are: (a) prior appointed conservators; (b) the protected person's nominee; (c) the protected person's spouse; (d) an adult child of the protected person; (e) a parent of the protected person; (f) a relative with whom the protected person has resided for six months prior to the petition; (g) the nominee of the protected person's caregiver. Section 72-5-410(1)(a-g), MCA. BreAnna was serving as S.H.C.'s agent and was his nominee. She had statutory priority to appointment as conservator.

David has no status that supersedes BreAnna's right to appointment. He did not file to be appointed as S.H.C.'s conservator after 2022, when he dismissed his petition for appointment. At the hearing in August, 2024, David declined to accept

any role in the management of S.H.C.'s property. David told the district court and the parties that he didn't want to be involved.

David is S.H.C.'s stepson, a relationship which is not within the definition of "child" under the Uniform Probate Code. Section 72-1-103(5), MCA. Since David neither sought to be appointed as conservator and refused any role in S.H.C.'s care, his objections to BreAnna serving as conservator ring hollow.

BreAnna's appointment is in S.H.C.'s best interests. The record is replete with recriminations among David, Sherry, and their respective supporters. The district court may deviate from the statutory priority list "for good cause", including strife between family members. Section 72-5-410(3), MCA; **In re Guardianship and Conservatorship of J.F.R.**, 418 Mont. 185, 557 P.3d 45 (2024). BreAnna was a compromise candidate of sorts. S.H.C. wanted help with his property but wanted to avoid the strife and hostility that he had experienced between and among his various family members. The district court's appointment properly protect S.H.C. from internecine strife and empowers a qualified person willing to focus on S.H.C.'s needs.

## **II. There is no conflict between the district court's appointments of co-guardians and the appointment of the conservator.**

The district court properly defined the scope of Sherry and Randy's authority in its Decree Appointing Guardian and Dismissing Conservator dated December 22, 2022. A full guardian has broad authority "except as limited by order of the

court.” Section 72-5-321(2), MCA. The district court ordered that “all financial records and authority” were to be returned to S.H.C. or his duly appointed agent under a durable power of attorney document. Doc. 45, p.3, Para. 2. Sherry and Randy had no authority or responsibility to manage S.H.C.’s finances. The district court placed all financial responsibility with S.H.C. and BreAnna, his duly appointed agent.

The order appointing BreAnna as conservator is limited to management of S.H.C.’s finances and property and does not interfere with any legal duty of his guardians. Her authority is within the scope of Section 72-5-427, MCA. The district court properly allocated responsibility for S.H.C.’s care between his co-guardians and conservator in a manner that will not disrupt the support that he has enjoyed for almost three years.

### **III. David lacks standing to object to the appointments in this case.**

David seeks to remove BreAnna as S.H.C.’s conservator and requests remand to determine a different appointment. This request is properly brought under Section 72-5-413(1)(d), MCA, but David never filed a petition to remove BreAnna as conservator. The district court never had an opportunity to consider his request.

Only a person interested in the welfare of a protected person may seek to remove a conservator. **In re Estate of Engellant**, 387 Mont. 313, 400 P.3d 218 (2017); Section 72-5-413, MCA. David is not an interested person. He never

filed notice with the district court that he was interested in the proceeding and never sought appointment as conservator after 2022. As a stepchild David's relationship with S.H.C., is not within the definition of Section 72-1-103(25), MCA, which limits interested persons to "heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against . . . the estate of . . . [a] protected person." David fits none of these categories. David lacks standing to object to BreAnna's appointment or to seek her removal.

**In re Estate of Engellant, supra.**

### **CONCLUSION**

The district court correctly appointed BreAnna as S.H.C.'s conservator. She was his choice to serve in that capacity, and she had been his legal fiduciary for financial matters for nearly two years. All parties have acknowledged S.H.C.'s capacity to appoint BreAnna, and no challenge is made that her performance is lacking. This appeal is brought only to harass and intimidate BreAnna, S.H.C., and his co-guardians. Sherry requests that the Court affirm the district court's order.

DATED this 9<sup>th</sup> day of April, 2025.



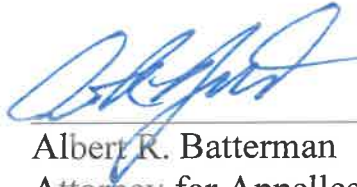
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### **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing Respondent's Brief complies with Rule 27, M.R.App.P. The brief is double-spaced, except for indented material that has been single spaced. The brief is proportionately spaced using Microsoft Word 2003, using a 14-point Times New Roman font. The total word count is 2,837. The page count of the brief is 12 pages, exclusive of covers, Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendix.

DATED this 9<sup>th</sup> day of April, 2025.



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## CERTIFICATE OF SERVICE

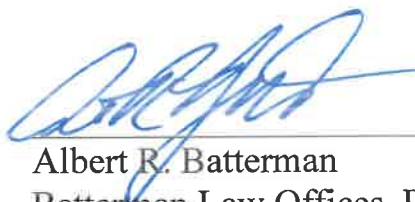
I HEREBY CERTIFY that I sent a true and correct copy of the foregoing  
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## **CERTIFICATE OF SERVICE**

I, Albert R Batterman, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 04-09-2025:

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