IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0204

Appeal from Cause No. DV-24-600
Montana Eighteenth Judicial District Court, Gallatin County
The Honorable Judge Rienne J. McElyea

LAKEVIEW LOAN SERVICING, LLC; JASON J. HENDERSON AS TRUSTEE FOR LAKEVIEW LOAN SERVICING, LLC, and LOANCARE, LLC., Defendants/Appellants, vs. MARY LEANNE REEVES, Plaintiff/Appellee.	**APPELLANT'S OPENING BRIEF**

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Disclosure Statement

Appellant, LoanCare LLC ("LoanCare") files this Certificate of Disclosure, pursuant to Fed. R. Civ. P. 7.1 and hereby discloses the following persons and entities that may be financially interested in the outcome of the litigation:

LoanCare certifies that it is a non-governmental corporate party. LoanCare is a direct, wholly-owned subsidiary of ServiceLink NLS, LLC ("ServiceLink NLS"), which is a direct, wholly-owned subsidiary of ServiceLink Holdings, LLC. ServiceLink Holdings, LLC is a direct, wholly-owned subsidiary of ServiceLink Holdings, Inc. ServiceLink Holdings, Inc., is a direct, wholly-owned subsidiary of Fidelity National Financial, Inc., a publicly-traded Delaware corporation ("FNF") (NYSE:FNF). There are no known publicly held corporations that own 10% or more of FNF's stock.

Issue Presented

I. Whether, after complete satisfaction of all requested relief in the Appellee's Application for Declaratory Relief, Preliminary Injunction, Permanent Injunctive Relief and Court Review of Compliance with FHA Deed of Trust ("Application"), the District Court erred in failing to consider Appellants' Mont. R. Civ. P. 12(b)(1) arguments and not dismissing for lack of subject matter jurisdiction in light of the clear mootness of the entirety of this suit.

Statement of the Case

This appeal arises from the Montana Eighteenth Judicial District Court in Gallatin County (the "District Court")'s denial of Appellants' (collectively henceforth "Lakeview") Motion to Dismiss Appellee's Application for Declaratory Relief, Preliminary Injunction, Permanent Injunctive Relief and Court Review of Compliance with FHA Deed of Trust. On June 3, 2024, Appellee (henceforth "Reeves") filed her Application against Lakeview in order to prevent the sale of the Property located at 112 Jackrabbit Lane, Belgrade, Montana ("Property"). *See generally* Application. On June 4, 2024, the trial court entered a temporary restraining order ("TRO"). TRO p. 2. On June 26, 2024, Lakeview voluntarily agreed to postpone the sale of the Property and extend the TRO so the Parties could engage in the loan loss mitigation process, as Reeves desired. Status Update p. 2. The Parties' efforts were fruitful and, ultimately, Reeves' loan was reinstated and brought current. Brief in support of MTD p. 57. The loan remains current as of today. Foreclosure sale of the Property, which Reeves' Application sought to enjoin, has been permanently canceled, a fact which she cannot and does not dispute. Brief in support of MTD p. 64.

Though all of the relief sought in her Application was achieved, and thus moot, Reeves refused to dismiss her Application. And so, Lakeview filed a motion to dismiss the Application. *See generally* Motion to Dismiss. The District Court

erroneously determined only Count I moot and the remaining five counts to be live, justiciable issues without considering Lakeview's Mont. R. Civ. P. 12(b)(1) arguments and concerns that the trial court would be engaging in impermissible advisory opinion-making relative to past events rendered wholly moot by the Parties' joint and voluntarily acts in reinstating the loan. *See* Order on MTD p. 3-4. Lakeview timely filed this Appeal in order to challenge the denial on Mont. R. Civ. P. 12(b)(1) subject matter jurisdiction grounds. *See generally* Notice of Appeal. Pursuant to clear Montana precedent, Lakeview respectfully requests this Court reverse the ruling of the District Court and find that Reeves' Application no longer presents a live and justiciable controversy and, therefore, must be dismissed.

Statement of Facts

On or about May 1, 2022, Reeves defaulted on her loan after exiting a COVID forbearance, which ultimately resulted in foreclosure proceeding commencing. *See* Brief in support of MTD p. 1. On or about June 3, 2024, Reeves filed her Application against Lakeview. *See generally* Application. Reeves sought injunctive relief preventing Lakeview from "proceeding with the nonjudicial trustee sale of [112 Jackrabbit Lane, Unit B, Belgrade, MT 59714]" and requesting Lakeview "provide loss mitigation options" to Reeves. Application p. 2, 12. On June 4, 2024, Reeves obtained a temporary restraining order, and the

trustee sale did not go forward. *See generally* TRO. Lakeview and Reeves then agreed to postpone the sale of the Property in favor of allowing Reeves the opportunity to resolve her loan default through loss mitigation. Transcript p. 10. Lakeview reviewed Reeves's loan for loss mitigation options, as Reeves desired. *Id.* at 10-11. Reeves opted to reinstate the loan through Montana's Homeowner Assistance Funds ("HAF").[1] *Id.* Lakeview accepted the HAF funds and Reeves' loan then became current ("Reinstatement"). *Id.* at 7-12. Neither Reeves nor Lakeview dispute that the loan was fully reinstated and brought current. *Id.*

On August 28, 2024, the Trustee Sale was permanently cancelled. Brief in support of MTD p. 64. Neither Reeves nor Lakeview dispute that the sale had been cancelled. *See* Transcript p. 7. In light of the Reinstatement and the loan becoming current, Reeves's counsel acknowledged in written communication that the Application is moot; however, Reeves failed to dismiss her Application. *See* Response to MTD p. 2. On September 18, 2024, the District Court noted that the reason for the injunction, stopping the trustee sale, had been achieved. Transcript p. 12. The District Court denied Reeves' request for preliminary injunction as

[1] https://commerce.mt.gov/Housing/Homeownership/Homeowner-Assistance-Fund ("The American Rescue Plan Act passed by Congress and signed by the President contains $9.961 billion nationwide for a Homeowner Assistance Fund. That funding will help Montana homeowners, and homeowners across the country, remain in their homes. The Montana Homeowner Assistance Fund includes $50 million in federal funding allocated by Congress to the State of Montana through the American Rescue Plan Act and appropriated to the Department of Commerce through the passage of HB 632."). Appellee did not have to pay out of pocket to reinstate this loan.

moot at the September 18, 2024, Preliminary Injunction hearing ("Preliminary Injunction Hearing"). Transcript p. 12. The Court further explained that Reeves' Petition lacked specificity and failed to meet the statutory burden required under 27-19-201. *Id.*

On December 20, 2024, and because Reeves refused to dismiss despite acknowledging the mootness of her claims, Lakeview filed a Motion to Dismiss the Application. *See generally* Motion to Dismiss. On January 31, 2025, Reeves filed a Response to Lakeview's Motion to Dismiss, arguing that the Application was not moot. Response to MTD p. 3-4. Specific to this Appeal, Reeves argued the case remains a live controversy speculating that the HAF funds that reinstated Reeves' loan may have been applied to some sort of improper fees. *Id.* at 4.

On February 11, 2025, Lakeview filed a Reply to Reeves' Response reiterating that the Application was moot and that the Court could not offer any further relief beyond the Application's Prayer for Relief and facts which did not exist nor were plead in the Application. Reply p. 3-4. On February 21, 2025, The District Court issued an Order denying's Lakeview's Motion to Dismiss. *See* Order on MTD. The District Court found Count I to be moot. *Id.* at 3. However, the District Court ruled that Counts II through VI remained live controversies, capable of further adjudication in conclusory fashion. *Id.* On March 18, 2025, Lakeview timely filed a Notice of Appeal in accordance with Appellate Rules 4,

6(3)(c), and 10 arguing that the District Court erred in deciding that this matter was not moot under Mont. R. Civ. P. 12(b)(1). *See* Notice of Appeal.

Standard of Review

"Whether a court lacks subject matter jurisdiction to adjudicate a controversy is a question of law reviewed de novo for correctness." *Gottlob v. DesRosier*, 2020 MT 210, 401 Mont. 50, 470 P.3d 188, citing *Harrington v. Energy W. Inc*., 2015 MT 233, ¶ 7, 380 Mont. 298, 356 P.3d 441. "A district court's ruling on whether a justiciable controversy exists is a conclusion of law. *Northfield Ins. Co. v. Montana Ass'n of Counties*, 2000 MT 256, P8, 301 Mont. 472, P8, 10 P.3d 813, P8. We review the district court's conclusions on which its decision is based to determine whether they have been correctly decided. *Ridley v. Guaranty Nat. Ins. Co*. (1997), 286 Mont. 325, 329, 951 P.2d 987, 989." *Hilands Golf Club v. Ashmore*, 2002 MT 8, 308 Mont. 111, 115, 39 P.3d 697.

Summary of Argument

In denying Lakeview's Motion to Dismiss, the District Court erroneously allowed this matter to progress despite the complete satisfaction of Reeves' Application. Such satisfaction renders this entire matter moot with no live, justiciable controversy remaining. As such, the District Court has no jurisdiction to grant further relief to Reeves on the basis of her Application. Any further analysis from the District Court would be entirely advisory. Looking to the

purpose of the Application, the remaining counts, and the Prayer for Relief, the District Court erred in holding only Count I moot where Reeves has sought no further relief beyond what has already been achieved. Montana case law is clear that in such instances, the District Court has no subject matter jurisdiction to grant additional relief beyond what was sought by Reeves. Pursuant to this Court's precedent, the District Court's ruling to deny Lakeview's Motion to Dismiss should be overturned and the matter dismissed.

Argument

"The judicial power of Montana's courts is limited to justiciable controversies. *Plan Helena, Inc. v. Helena Regl. Airport Auth. Bd.*, 2010 MT 26, ¶ 6, 355 Mont. 142, 226 P.3d 567; *Gateway Opencut Mining Action Group v. Bd. of County Commrs.*, 2011 MT 198, ¶ 16, 361 Mont. 398, 260 P.3d 133; *State v. Benn*, 2012 MT 33, ¶ 9, 364 Mont. 153, 274 P.3d 47. A justiciable controversy is one upon which a court's judgment will effectively operate, as distinguished from a dispute invoking a purely political, administrative, philosophical, or academic conclusion. *Plan Helena*, ¶ 8 . . . At issue here is the question of mootness." *Progressive Direct Ins. Co. v. Stuivenga*, 2012 MT 75, 364 Mont. 390, 396, 276 P.3d 867. After the Reinstatement and permanent cancellation of the scheduled sale of the subject Property, Reeves' Application seeking a halt to the sale was

rendered moot, as there is no further relief that can or should be granted by the District Court.

A. The District Court's Denial of Lakeview's Motion to Dismiss was Erroneous Under the Mootness Doctrine.

The lack of a live, justiciable controversy renders the underlying matter entirely moot. "Mootness is the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness). *Greater Missoula*, ¶ 23. Thus, if the issue presented at the outset of the action has ceased to exist or is no longer 'live,' or if the court is unable due to an intervening event or change in circumstances to grant effective relief or to restore the parties to their original position, then the issue before the court is moot. *Greater Missoula*, ¶ 23; *Gateway Opencut*, ¶ 16; *Benn*, ¶ 9. Because the constitutional requirement of a "case" or "controversy" contemplates real controversies and not abstract differences of opinion or moot questions, courts lack jurisdiction to decide moot issues insofar as an actual case or controversy no longer exists. *Greater Missoula*, ¶ 23. Hence, mootness is a threshold issue which we must resolve before we may address the substantive merits of a dispute." *Griffith v. Butte Sch. Dist. No. 1*, 2010 MT 246, ¶ 23, 358 Mont. 193, 244 P.3d 321.

The trial court erred by failing to first assess the question of mootness. *See* Order on MTD p. 3. No live controversy remains, and there is no jurisdiction to

grant any further relief. The Application sought to prevent the nonjudicial trustee sale of the Property located at 112 Jackrabbit Lane, Unit B, Belgrade, MT 59714. Application p. 2. In the District Court's decision, the court held that only Count I was moot due to the permanent halting of the sale. Order on MTD p. 3. However, the District Court only assessed Counts II through VI on failure to state a claim grounds, as opposed to Mont. R. Civ. P. 12(b)(1) mootness grounds that is most applicable in this situation and the basis of this appeal. *Id.* The decision, per Montana precedent, was erroneous and requires reversal by this Court because no subject matter jurisdiction exists to grant Reeves any further relief.

i. Assessing the Application's Purpose Clearly Weighs in Favor of Mootness.

First, addressing the purpose behind Reeves' Application, we look to the four corners of the Application itself. *See Nowacki v. Schmechel*, 2019 MT 261N, 398 Mont. 445, 455 P.3d 454. The legal remedies pursued by Reeves were as follows: (1) a preliminary injunction on the nonjudicial trustee sale itself, (2) permanent injunctive relief regarding the nonjudicial sale, as well as (3) a declaratory judgment regarding the notice requirements prior to this sale. Application p. 12. This relief is stated clearly throughout the Application and prominently discussed at the very beginning of the introduction. *Id.* at 2. Specifically, Reeves stated that she seeks relief "to halt a nonjudicial trustee sale of her home, which is scheduled to occur imminently." *Id.* Foundationally, her

sole focus and the primary mover of this Application was to prevent the sale of the Property. That result was achieved. There was never a sale of the home, nor will there be one under the default that existed at the time of the Application due to the Reinstatement. “Any further ruling in such a case would constitute an impermissible advisory opinion, ‘i.e., one advising what the law would be upon a hypothetical state of facts or upon an abstract proposition, not one resolving an actual 'case or controversy.'” *Wilkie v. Hartford Underwriters Ins. Co*., 2021 MT 221, 405 Mont. 259, 261, 494 P.3d 892 quoting *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd*., 2010 MT 26, ¶ 12, 355 Mont. 142, 226 P.3d 567.

As of August 28, 2024, the nonjudicial trustee sale of the Property was permanently cancelled following the Reinstatement. Brief in support of MTD p. 64. Facially, this satisfies the entire relief sought in the Application in the first place. Reeves sought a halting of the sale, through both preliminary and permanent injunction and declaratory relief regarding the notice requirement prior to sale. Application p. 12. Without a sale, the avenues of relief sought become impossible to achieve. In *In re T.J.F.*, 229 Mont. 473, 475, 747 P.2d 1356, 1357 (1987) quoting 5 Am.Jur.2d, Section 762, *Appeal and Error* (1962) (“A case will become moot for the purpose of an appeal ‘where by a change of circumstances prior to the appellate decision the case has lost any practical purpose for the parties, for instance where the grievance that gave rise to the case has been

eliminated . . .'"). There remains no present purpose or basis upon which the District Court can or should grant further relief in this matter.

ii. Looking to Counts II Through VI, There is No Basis for Which This Court Can Grant any Further Relief.

The District Court further erred in holding Counts II through VI to still be live, justiciable issues.[2] As discussed above, no relief was sought on any of these counts in Reeves' Application outside of the Prayer for Relief. Rather, each of these remaining counts simply reads as a claim fully rendered moot by the Reinstatement of her loan, providing no avenue for granting further relief and cementing any further adjudication as an advisory opinion from the District Court. As in *Wilkie,* advisory opinions from District Courts are improper as they do not address or resolve the specific case or controversy before them. 405 Mont. at 261.

Specifically, in Count II of the Application, entitled "Declaratory Relief," Reeves states "Defendants' position makes it impossible for Plaintiff to reinstate her loan or obtain an accurate reinstatement quote." Application p. 6. Two paragraphs later, she "requests a declaratory judgment from this Court that failure to satisfy the condition precedent under the Deed of Trust makes the exercise of the notice of sale provision…unlawful." *Id.* at 7. As a result of the Reinstatement, the sale of the residence has been permanently cancelled, rendering the relief

[2] Lakeview recognizes this Appeal cannot raise a failure to state a claim argument. However, it is in recognition that with no developed claim remaining, no effective relief could be granted by the District Court.

sought in this claim entirely advisory to facts that no longer exist and are moot. Reeves then repeats the same claim in Count III, asking the trial court to "avail herself of the protections and *oversight* of this Court" of a now non-existent sale. *Id.* at 9 (emphasis supplied). Because there is no sale pending, the best a court could do is offer an advisory and hypothetical opinion as to whether a sale of the property that never occurred *would have been* proper, or perhaps not. This is the very type of advisory opinion-making this Court has declared the courts in Montana lack jurisdiction to entertain. And for good reason; the courts in Montana would be flooded with hypothetical litigation were it otherwise.

Counts IV and V, by solely quoting statutory language and alleging that Lakeview's "conduct violates" the statutes, fail to develop any claim on which relief could be granted as a live and justiciable controversy. *Id.* An alleged violation of pre-sale actions becomes irrelevant if the sale no longer exists.

Lastly, Count VI's contention that "Henderson has no authority to invoke the power of sale provision in the Deed of Trust" has equally been rendered moot by the Reinstatement and cancellation of the sale. *Id.* at 11. Any analysis by the District Court with regard to this alleged violation would provide no further relief to Reeves but rather offer merely an advisory opinion on a dead and gone issue.

Reading beyond the counts themselves, we can look back to the introduction of the Application itself, which provides essential context to the

remaining claims encapsulated within it. Specifically, the Application states, "**The sale** is unauthorized and in violation of the Deed of Trust, various federal laws and regulations." *Id.* at 2 (emphasis added). It is the sale itself that establishes these remaining claims in her Application and remains an essential condition precedent before said violations would arise. However, there never was a sale. These were not claims brought wholly independently from the pending sale (at the time of the Application). As this Court stated in *City of Deer Lodge v. Fox*, 2017 MT 129, ¶ 8, 387 Mont. 478, 480, 395 P.3d 506, 508 "[a] question is moot if the controversy at the outset of the action has ceased to exist, or if the court is unable to grant effective relief due to a change in circumstances." At the outset of this controversy was a forthcoming sale of the Property. There is neither harm generated from the sale that did not go forward nor from other independent claims otherwise derived. Not only did Reeves fail to identify any relief sought on any of these counts, but she did not raise them without the preceding sale. Fundamentally, absent any further claims for relief, the District Court lacks the jurisdiction to provide any relief on the remaining counts of the Application.

iii. Reeves' Prayer for Relief Completely Encompasses the Entire Breadth of Relief Sought by Appellee.

Turning to the Prayer for Relief in the Application, it further becomes clear that Reeves sought no further relief beyond halting the sale. In *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶¶ 10-146, 355 Mont. 142, 145-

146, 226 P.3d 567, 570, this Court held that "[i]f the issue presented at the outset of the action has ceased to exist or is no longer "live," or if the court is unable due to an intervening event or change in circumstances to grant effective relief or to restore the parties to their original position, then the issue before the court is moot." In this instance, the issue raised by the Application was resolved. Every single prong of the prayer has been wholly satisfied. The Relief sought was as follows:

A. Enter a preliminary injunction pursuant to Mont. Code Ann. § 27-19-201(1) and (2) enjoin Defendants from proceeding with the nonjudicial trustee sale of the Property pending a hearing on this Application;

B. Enter a preliminary injunction requiring Defendants Lakeview and Loancare to fulfill their duties to Plaintiff under all applicable law to provide loss mitigation options and to otherwise specifically enforce the 2023 loan modification agreement; offending action; enjoining Defendants from proceeding with the nonjudicial trustee sale of the Property;

C. A declaratory judgment that the notice requirements set forth in Section 22 of the Deed of Trust are a necessary condition precedent prior to exercising the notice of sale under the Deed of Trust;

D. Make an order requiring cause to be shown, at a specified time and place, why an injunction should be granted;

E. Set a scheduling order with deadlines and dates for additional briefings and motions; and

F. Grant such other any further relief as the Court deems just and proper.

Application p. 9.

Nothing in this Prayer for Relief remains or provides any live controversies capable of adjudication. Notably, Reeves' prayer does not request any monetary damages. In *Masonovich v. Sch. Dist*. (1978), 178 Mont. 138, 140-141, 582 P.2d 1234, this Court noted that when a "plaintiff's complaint was for injunctive relief" and "[sh]e did not specifically plead any damages. The rule in this jurisdiction is that the prayer for relief cannot enlarge the relief sought by the allegations of the complaint. *Murray et al. v. Creese et al*. (1927), 80 Mont. 453, 260 P. 1051." The simple stating of "any further relief" in the last prong of her prayer does not provide the District Court a blank check to proceed with anything it sees fit to enlarge the capable relief provided. Further, Reeves herself admitted that the permanent cancellation of the sale rendered her Application moot. Response to MTD p. 2. As such, the Prayer for Relief has been fully achieved and no further relief can or should be granted.

iv. Reeves' Arguments Seeking Additional Remedies are Both Improperly Raised and Provide no Bearing on this Application.

Setting aside Reeves' entirely speculative nature of the argument with respect to the propriety of fees associated with the Reinstatement, the problems with Reeves' arguments are multiple. First, she did not have to choose to reinstate

her loan using HAF funds (indeed, the sale was voluntarily postponed by Lakeview before it was ultimately canceled), but she did so voluntarily. The time for Reeves to raise issues regarding fees in the Reinstatement was before the funds were paid and Reeves received the benefit of the HAF funds, not after. This Court cannot "un-ring the bell" of the loan becoming current and the sale being cancelled (as was desired by Reeves all along). Second, Reeves did not actually pay any alleged charges associated with the Reinstatement. As mentioned above, the funds utilized to reinstate the loan were through the HAF program. Third, it simply defies all logic and common sense to suggest that Reeves' Application could possibly assert a live controversy about something (the Reinstatement) that was not even in existence at the time she filed her Application.

None of the arguments advanced by Reeves in the District Court to avoid dismissal were raised or even capable of being raised at the time of the original Application. As this Court said in *McJunkin v. Kaufman & Broad Home Sys*. (1987), 229 Mont. 432, 437-438, 748 P.2d 910, "[i]t is generally accepted that the appellant cannot recover beyond the case stated by him in his complaint . . . . This Court believes that fair notice to the other party remains essential, and pleadings will not be deemed amended to conform to the evidence because of 'implied consent' where the circumstances were such that the other party was not put on notice that a new issue was being raised . . . ."

Despite her best hopes at keeping her claim alive, developing further issues that were impossible to have been present at the time of her original Application is impermissible without ***any*** attempt to amend her filing. *Id.* All of the foregoing highlights the mootness of Reeves' Application. The District Court fundamentally erred in giving any credence to these issues in any way with regard to the denial of Lakeview's Motion to Dismiss. Foundationally, Reeves cannot backdoor her way into a live controversy by raising issues that did not exist at the time of the Application without seeking to amend her Application.

Conclusion

For the foregoing reasons, Lakeview respectfully requests that this Court reverse the decision of the District Court and grant Lakeview's Motion to Dismiss in its entirety as moot and dismiss this matter.

Dated this 22nd day of April, 2025.

*/s/ David F. Knobel*_____
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Attorney for Loancare LLC and Lakeview Loan Servicing, LLC

Certificate of Compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify this Opening Brief is printed and with appropriately spaced Times New Roman typeface in 14-point font, is double spaced, and the word count is calculated at 4094 words, excluding tables, certificates, and appendices.

Respectfully submitted this 22nd day of April, 2025.

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Certificate Of Service

I, David Francis Knobel, hereby certify that I have filed a true and accurate copy of the foregoing APPELLANT'S OPENING BRIEF with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing APPELLANT'S OPENING BRIEF upon the Clerk of the District Court, each attorney of record, each court reporter from whom a transcript has been ordered, and each party not represented by an attorney in the above-referenced District Court action, as follows:

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CERTIFICATE OF SERVICE

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