

ORIGINAL

FILED

06/03/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0248

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 25-0248

IN RE ESTATE OF RICHARD BRUCE NEAL,
SR., a/k/a RICHARD B. NEAL, SR., RICHARD
NEAL SR., RICHARD B. NEAL, and/or
RICHARD NEAL:

DONALD NEAL,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY, STANDING MASTER
CHARLOTTE BEATTY, Presiding,

Respondent.

FILED

JUN 03 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Petitioner Donald Neal, via counsel, has petitioned this Court for a writ of supervisory control pursuant to Article II, Section 2(2), of the Montana Constitution and M. R. App. P. 14(3). Donald asks this Court to vacate the Standing Master's January 28, 2025 Order on Motion for Clarification in the Eighth Judicial District Court, Cascade County, Cause No. DP-23-281. At our request and pursuant to M. R. App. P. 14(7), Standing Master Charlotte Beatty and the Honorable John Kutzman have responded.

The underlying matter is a probate proceeding under Title 72, MCA. Donald's father, Richard Neal, died in August 2022 in Cascade County. In November 2023, Donald filed a Petition for Formal Probate of Will, Determination of Testacy, and Heirs and Appointment of Personal Representative (Petition). Copies of Richard's 2018 Last Will and Testament (2018 Will) and 2015 Last Will and Testament (2015 Will) were attached to the Petition.

The Petition requested the court invalidate the 2018 Will and probate the 2015 Will instead.¹ The 2015 Will named Donald as an heir and nominated him as personal representative of Richard's estate (Estate). The 2018 Will named April Mancini as an heir and nominated her as personal representative of the Estate. April died in November 2022, a few months after Richard's death but before any proceedings regarding his Estate were initiated. Donald's Petition identified the Estate of April Mancini and April's purported children, Faith Miller and Aaron Mancini a/k/a Aaron Miller, as interested parties. The Petition stated Aaron's true legal name and contact information remained unknown despite a diligent search.

A hearing was set for January 31, 2024. Pursuant to § 72-1-301, MCA, and § 72-3-305, MCA, Donald filed Proof of Service by Mail, stating he sent the Petition and notice of the January 31, 2024 hearing via first-class mail to the Estate of April Mancini, c/o Faith Miller, and Faith Miller, to a specific address in Torrington, Connecticut. Donald also filed Proof of Publication showing that the *Great Falls Tribune* published notice of the hearing and Petition for three consecutive weeks. No objections or notices of appearance were filed in the case, and the hearing proceeded on the court's uncontested docket.

Although the matter had not yet been referred to the Standing Master, the Standing Master conducted the hearing on January 31, 2024. The Standing Master refused to consider the merits of the Petition during that hearing based on her belief that the Petition was contested. The Standing Master stated she would consult the District Court to determine the next steps. On February 20, 2024, the District Court referred the matter to the Standing Master for consideration and disposition of all outstanding issues pursuant to § 3-5-124, MCA. On March 18, 2024, Donald moved to set a hearing before the District

¹ Donald alleged in his Petition that the 2018 Will is invalid because (1) Richard lacked testamentary capacity at the time it was executed, and (2) Richard was unduly influenced by April. April was charged criminally in Teton County District Court for exploitation of an older person, incapacitated person, or person with developmental disability, alleging she exploited Richard by appropriating his personal funds and assets for her own benefit. April died before the prosecution concluded.

Court. The District Court reaffirmed its referral to the Standing Master and denied the motion.

Following a status hearing, the Standing Master issued the April 29, 2024 Order (First Order). The First Order commanded Donald to “prove to the Court he has made a diligent effort to locate” April’s heirs. In his supplemental brief, Donald reiterated his contention that he satisfied the notice requirements of § 72-1-301, MCA, by mailing the documents to Faith’s last known address and publishing notice in the *Great Falls Tribune* for Aaron, whose address and identity could not be confirmed after a reasonably diligent search.

On June 5, 2024, the Standing Master ordered Donald to complete additional due diligence (Second Order). The Second Order concluded it was insufficient to mail the documents to Faith’s last known address and publish notice in the *Great Falls Tribune*. Rather, the Second Order specified that Donald should have contacted the funeral home to find out who collected April’s ashes. It further stated that, in the Standing Master’s opinion, “almost anyone” can be located using social media and other online search engines. The Second Order provided Donald with “one more chance to prove due diligence and show that he has exercised reasonable efforts in locating” April’s heirs.

On June 25, 2024, in response to Donald’s filing another Proof of Service by Mail evidencing additional addresses to which Donald sent mail intended for Faith, the Standing Master issued an order (Third Order) concluding § 72-1-301, MCA, granted the court authority to impose additional methods of notification. The Third Order required Donald to “locate and personally serve” Faith and Aaron and suggested Donald “hire a process server, search social media sites, use an online service that searches for people, contact the tax assessor’s office or recorder’s office and search property records, and contact the Garden City Funeral Home where Ms. Mancini was apparently cremated,” or risk court-imposed sanctions.

The next day, Donald filed two affidavits detailing the efforts taken to locate April’s heirs and provide them notice, which were signed by his counsel’s paralegal and a private investigator hired by his counsel’s firm in an effort to locate April’s heirs. The private

investigator used two information databases, idiCORE and Tracers, to determine Faith's phone number, email address, and mailing address, but was unable to determine Aaron's identity or contact information after performing similar searches. The paralegal left Faith voicemails and sent emails and first-class mail to the addresses identified by the private investigator. As for social media, the paralegal detailed her attempts to find Aaron and Faith through Google, Facebook, Whitepages.com, and Numlookup.com, to no avail.

On July 24, 2024, Donald submitted a status report informing the court he engaged a process server to serve Faith and that the funeral home refused to release any information to him. The report reiterated Donald's position that he had already made reasonable efforts to locate Aaron. On December 6, 2024, the Standing Master ordered (Fourth Order) the funeral home to release the information to Donald and threatened to exercise supervisory control or appoint a public administrator if Donald "continues to drag his feet in attempting to locate" April's heirs.

Donald filed his second status report on December 26, 2024. Certified mail sent to Faith at the Torrington, Connecticut, address was not returned as undeliverable. The Garden City Funeral Home records listed Faith's address as the same Torrington, Connecticut, address, and the phone number and email it had on file for Faith matched the contact information counsel used in the attempts to contact Faith. The phone number listed on the records for Aaron was no longer in service.

A copy of an affidavit of service indicated the Petition and notice documents were personally delivered by a process server to Faith's Torrington, Connecticut, address. The affidavit stated the process server "delivered documents to Gene Anderson, who identified themselves as the co-resident with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a brown-haired white male contact 35-45 years of age." No information was gleaned from tax and land records. Donald requested a hearing on the Petition and proposed adoption of a notice plan. Under the notice plan, Donald would personally serve Faith with notice of the hearing at the same Torrington, Connecticut, address. Aaron would be noticed via publication.

The Standing Master issued the January 28, 2025 Order (Fifth Order), in which she concluded substitute service on Faith by leaving the documents with Gene Anderson at the Torrington, Connecticut, address was “not acceptable given the complexity of the case.” The Fifth Order required Donald to effectuate personal service on Faith again, “complete a Facebook search of Ms. Miller and provide supporting evidence that he did or did not locate her,” and “provide evidence that he attempted to contact [Faith and Aaron] via Facebook messenger.” Finally, the Fifth Order directed Donald to publish notice to Aaron in an unidentified Connecticut newspaper, attempt another search for Aaron “through a better search engine such as Truthfinder,” and “focus on Connecticut where his alleged sister” resides. After the Standing Master’s Fifth Order, Donald petitioned this Court for a writ of supervisory control.

Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 36 Mont. 279, 259 P.3d 754 (citations omitted).

Donald asserts that the legal questions presented by this case are whether the District Court properly referred this case to the Standing Master pursuant to § 3-5-124, MCA, and whether § 72-1-301, MCA, provides authority for a court to deny a request for a hearing and impose additional methods of notification. He argues that the normal appeal process is inadequate as he has no remedy on appeal if the Standing Master acted outside of her authority by requiring him to undertake expensive, time-consuming efforts to locate Aaron and Faith. He maintains that this alleged error is causing him a gross injustice as it has precluded him from proceeding on the merits of the Petition and probating the Estate more than a year after filing the Petition and two years after Richard’s death.

In its response, the District Court and Standing Master do not disagree that this case presents a purely legal issue or that Donald has no remedy on appeal. The District Court limited its response to the Standing Master referral procedure issue. The Standing Master argues that supervisory control is not warranted because it is not operating under a mistake of law.

Section 3-5-124, MCA, provides in relevant part that a “party may object to a reference to a standing master within 20 days after the date the matter was referred to the standing master but before the first meeting with the standing master.” Section 3-5-124(2), MCA. Donald contends he could not object to the referral within the statutorily prescribed 20 days because the “first meeting” with the Standing Master occurred at the uncontested hearing on January 31, 2024, before the District Court referred the matter by written order on February 20, 2024. The Standing Master presiding over the January 31, 2024 uncontested hearing did not constitute a “first meeting” within the meaning of § 3-5-124(2), MCA. The statute plainly states the 20-day period begins to run after referral to the standing master. If Donald intended to object to the referral via his March 18, 2024 motion requesting a hearing before the District Court, then that objection fell outside the 20-day period and was untimely. The District Court did not err by denying Donald’s March 18, 2024 motion.

Pursuant to § 72-3-305(2), MCA, a petitioner in a formal testacy proceeding must give notice of a hearing on the petition in the manner prescribed by § 72-1-301, MCA. The Standing Master maintains § 72-1-301(2), MCA, allows a court to deny a request for a hearing and sua sponte impose additional methods of notification in a probate proceeding if the court concludes such methods are necessary. Section 72-1-301, MCA, provides:

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

(a) by mailing a copy of the notice at least 14 days before the time set for the hearing by certified mail or ordinary first-class mail addressed

to the person being notified at the post-office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known;

(b) by delivering a copy of the notice to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing the notice in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication. There must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice must be made on or before the hearing and filed in the proceeding.

The Standing Master was incorrect as a matter of law when she denied Donald's requests for a hearing and imposed additional notification methods on the basis that § 72-1-301, MCA, authorized such action. The plain language of the statute allows the court "for *good cause shown* may provide for a *different method* or time of giving notice." Section 72-1-301(2), MCA (emphasis added). The Standing Master is bound by the statute's plain meaning. Section 1-2-101, MCA. After a party has demonstrated compliance with § 72-1-301(1)(a)–(c), MCA, the statute does not authorize the court to require a party to repeat the *same* methods of giving notice because the court has deemed the previous efforts at giving notice inadequate, even though they complied with the statute.

Even to the extent that the statute allows for the court to provide for a *different* method of giving notice, that allowance is granted only when there is good cause shown why the methods prescribed by § 72-1-301(1)(a)–(c), MCA, do not suffice for their intended purpose in a particular case. Regarding Faith, the record reflects that Donald sent notice to Faith's last known address in Torrington, Connecticut, via first-class mail, certified mail, and personal service accepted by Gene Anderson, who affirmed Faith lived

there and accepted the documents on Faith's behalf. The record similarly reflects Donald published notice in the *Great Falls Tribune* for three consecutive weeks after conducting a reasonably diligent search for Aaron, including enlisting the services of a private investigator. While the Standing Master certainly had her own ideas and suggestions as to how the search for Faith and Aaron should have been conducted, the record does not support a showing of good cause to require Donald to repeatedly attempt giving notice after having already complied with the methods prescribed by § 72-1-301(1)(a)–(c), MCA.

A purpose of the Uniform Probate Code, Title 72, chapter 1, MCA, is to “promote a speedy and efficient system” for liquidating a decedent's estate and distributing assets to the decedent's successors. Section 72-1-101(2)(b)(iii), MCA. Despite Donald's requests for a hearing after having complied with the methods prescribed by § 72-1-301(1)(a)–(c), MCA, seventeen months have passed since the filing of the Petition without any determination by the Standing Master as to the Petition's merits. Donald has personally incurred \$17,060 in fees and expenses pursuing formal probate and defending against the Standing Master's repeated rejection of his methods of providing notice to April's heirs. Under the facts and circumstances of this case, the Standing Master is proceeding under a mistake of law and is causing a gross injustice.

Having considered the petition and responses filed, we conclude the Standing Master erred as a matter of law by denying Donald's request for a hearing and ordering Donald to undertake additional efforts to notify Faith and Aaron of the hearing on the Petition. Therefore, supervisory control is warranted pursuant to M. R. App. P. 14(3).

IT IS THEREFORE ORDERED that this Petition for Writ of Supervisory Control is ACCEPTED and GRANTED.

IT IS FURTHER ORDERED that the Standing Master's January 28, 2025 Order on Motion for Clarification is VACATED.

IT IS FURTHER ORDERED that this matter is REMANDED to the Standing Master for further proceedings consistent with this Order. The Standing Master is directed to set a hearing on the Petition for Formal Probate of Will, Determination of Testacy, and Heirs and Appointment of Personal Representative.

DATED this 3rd day of ~~May~~ June, 2025.

James J. [Signature]
[Signature]

Katherine M. Bidegaray

John Rice
Justices