

## IN THE SUPREME COURT OF THE STATE OF MONTANA

\*\*\*\*\*

CHRIS TAVENNER and GRETCHEN  
TAVENNER,*Plaintiffs and Appellees*

vs.

JOEL ANDREWS, TRACI ANDREWS,  
and MTWEB, LLC,*Defendants and Appellants*

SUPREME COURT CASE NO.

DA 25-0181

## APPELLEES' MOTION TO DISMISS AND BRIEF IN SUPPORT

On Appeal from the Montana Fifth Judicial Court  
Honorable Luke Berger, Judge Presiding  
Cause No. DV-22-2023-84

## APPEARANCES:

Jordan P. Helvie  
KASTING, KAUFFMAN &  
MERSEN, P.C.  
716 S. 20<sup>th</sup> Ave., Suite 101  
Bozeman, MT 59718  
(406) 586-4383  
Fax: (406) 587-7871  
jhelvie@kkmlaw.net  
*Attorney for Appellees*

Paul Moses II  
Attorney at Law, PLLC  
222 East Main Street  
Ennis, MT 59729  
Phone: 406-630-3032  
[Paul@AttorneyPaulMoses.com](mailto:Paul@AttorneyPaulMoses.com)  
*Attorney for Appellants*

## **I. INTRODUCTION**

Plaintiffs and Appellees, Chris and Gretchen Tavenner (collectively, “Tavenners”), through counsel, Kasting, Kauffman & Mersen, P.C., hereby respectfully move the Court to dismiss this appeal with prejudice due to Defendants and Appellants, Joel Andrews, Traci Andrews and MTWEB, LLC’s (collectively, “Appellants”) repeated failures to satisfy the deadlines provided by the Montana Rules of Appellate Procedure.

Appellants filed their Notice of Appeal on March 10, 2025. Since that time, Appellants have taken no substantive action to prosecute their appeal. As such, Appellants are in violation of at least four (4) separate deadlines mandated by the Montana Rules of Civil Procedure. Those deadlines are:

- (a) M.R.App.P. Rule 7(5)(d) – Mandating that Appellants submit their required statement of position to the mediator and Tavenners within 15 days from appointment of the mediator.
- (b) M.R.App.P. Rule 7(3)(a) – Mandating that the parties attend appellate mediation within 75 days from the Notice of Appeal.
- (c) M.R.App.P. Rule 9(3)(b) – Mandating that preparation of transcripts for the record take no longer than 90 days from filing of the Notice of Appeal.

(d)M.R.App.P. Rule 13(1) – Mandating that Appellants file their opening brief within 30 days after the record is filed.

Given the foregoing violations, all demonstrative of a substantial lack of diligence to prosecute this appeal, Tavenners respectfully request the Court to dismiss this appeal with prejudice.

## **II. ARGUMENT**

- a. Appellants Violated M.R.App.P. Rule 7(5)(d) and the Court’s April 25, 2025, Order.

Montana Rule of Appellate Procedure Rule 7(5)(d) states, “The appellant...shall submit the required statement of position to the mediator and to the responsive party within 15 days of...order of appointment of the mediator is filed under section (4) of this rule.” In addition, Montana Rule of Appellate Procedure Rule 7(8) provides, “Substantial noncompliance with this rule may, on motion of a party or by the supreme court sua sponte, result in the assessment of mediator fees, imposition of monetary sanctions, costs, dismissal of the appeal, or such other sanction as the supreme court deems appropriate.”

This Court issued its Third Order of Mediator Appointment on April 8, 2025, in which it appointed Mr. Michael Connor Doggett as mediator. Mr. Doggett

accepted that appointment. Therefore, Appellants mediation statement of position was due on April 23, 2025.

Appellants violated their deadline to submit their mediation position statement, and Appellants filed their Motion for Extension of Time on April 24, 2025. Appellants Motion for Extension of Time requested an extension to the deadline for Appellants to file their mediation position statement. On April 25, 2025, the Court issued its Order, denying Appellants' motion and ordering that, "Appellants shall file their mediation statement on or before May 5, 2025."

As of the date of this Motion, it is 69 days since the date that the Court appointed the mediator and 42 days since the Court mandated Appellants to submit their position statement. Appellants have still not submitted a mediation position statement. Tavenners are still unaware of what is at issue in this appeal. Appellants actions constitute substantial noncompliance with Montana Rule of Appellate Procedure Rule 7, and the Court should dismiss this appeal as allowed by Montana Rule of Appellate Procedure Rule 7(8).

b. Appellants Violated M.R.App.P. Rule 7(3)(a).

Montana Rule of Appellate Procedure Rule 7(3)(a) states, "[u]pon filing a notice of appeal..., the parties and the mediator shall have 75 days within which to complete the [mediation] process required by this rule." In addition, Montana Rule

of Appellate Procedure Rule 7(8) provides, “Substantial noncompliance with this rule may, on motion of a party or by the supreme court sua sponte, result in the assessment of mediator fees, imposition of monetary sanctions, costs, dismissal of the appeal, or such other sanction as the supreme court deems appropriate.”

Appellants filed their Notice of Appeal on March 10, 2025. The deadline to complete the appellate mediation process was May 25, 2025. To date, Appellants have failed to submit their mediation position statement, failed to schedule mediation, and failed to otherwise complete the requirements of Montana Rule of Appellate Procedure Rule 7. Appellants actions constitute substantial noncompliance with Montana Rule of Appellate Procedure Rule 7, and the Court should dismiss this appeal as allowed by Montana Rule of Appellate Procedure Rule 7(8).

c. Appellants Violated M.R.App.P. Rule 9(3)(b).

Montana Rule of Appellate Procedure Rule 9(1) states, “The record on appeal, including any transcript in the format required by rule 8(4)(b), shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal.” Furthermore, Montana Rule of Appellate Procedure Rule 9(3)(b) provides, “a motion for extension of time for transmission of the record may be filed with the district court by the appellant or the court reporter...but the motion must be filed

within the 40-day time for transmission of the record. The district court may grant the motion for a period not to exceed 90 days from the filing of the first notice of appeal.”

Appellants filed their Notice of Appeal on March 10, 2025. That same day, Appellants filed with the District Court a Notice of Transcripts Deemed Necessary for Appeal. The record for the appeal was required to be transmitted to this Court by April 20, 2025 (40-days from the Notice of Appeal). To the extent additional time was needed to prepare transcripts, Appellants were required to file a motion for extension with the District Court before April 20, 2025, and the District Court had discretion to grant such extension provided it was no longer than June 9, 2025 (90-days from the Notice of Appeal).

To date, Appellants have not filed a motion for extension of time to receive transcripts with the District Court. As such, these transcripts do not form a part of the record. On April 11, 2025, this Court otherwise provided its Notice of Filing stating that final record materials were provided from the District Court, and deadlines for briefs would should be calendared from April 11, 2025. Accordingly, Tavenners’ request that this Court deem the record fully submitted as of April 11, 2025.

d. Appellants Violated M.R.App.P. Rule 13(1).

Montana Rule of Appellate Procedure Rule 13(1) states “[t]he appellant shall serve and file a brief within 30 days after the date on which the record is filed.” Montana Rule of Appellate Procedure Rule 13(3) additionally provides, “If an appellant fails to file a brief within the time provided by this rule, or within any extended time, an appellee may move for dismissal of the appeal.”

As addressed in the preceding section, the record was filed on April 11, 2025. Appellants’ opening brief was therefore due on May 12, 2025. To date, Appellants have failed to file their opening brief, and it is 35 days past their deadline to do so. Accordingly, the Court should dismiss this appeal pursuant to Montana Rule of Appellate Procedure Rule 13(3).

### **III. CONCLUSION**

For the reasons set forth above, the Tavenners respectfully request that the Court dismiss this appeal with prejudice due to Appellants’ substantial non-compliance with the Montana Rules of Appellate Procedure.

### **RULE 16 CERTIFICATION**

The text of this Motion consists of 1167 words typed in font Times New Roman (Size 14) and double spaced. Counsel for Appellants was contacted on May 28, 2025, and June 13, 2025 with regards to whether his clients would oppose this

Motion. As of the date of filing, Appellants' counsel did not state his clients' position.

DATED this 16th day of June, 2025.

KASTING, KAUFFMAN & MERSEN, P.C.

By:   
Jordan P. Helvie  
*Attorney for Plaintiffs/Appellees*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of June, 2025 a true and correct copy of the foregoing was served by (X) US mail; ( ) email; ( ) facsimile; ( ) Hand Delivered; upon all the parties or opposing attorneys of records at their addresses as follows:

Paul Moses II  
Attorney at Law, PLLC  
222 East Main Street  
Ennis, MT 59729  
Phone: 406-630-3032  
Email: [Paul@AttorneyPaulMoses.com](mailto:Paul@AttorneyPaulMoses.com)

By: 



## **CERTIFICATE OF SERVICE**

I, Jordan P. Helvie, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 06-16-2025:

Paul Moses (Attorney)  
222 East Main Street  
Suite 1F  
Ennis MT 59729  
Representing: Joel Andrews, Traci Andrews, MTWeb, LLC  
Service Method: eService

Jane Mersen (Attorney)  
716 S. 20th Ave. #101  
Bozeman MT 59718  
Representing: Chris Tavenner, Gretchen Tavenner  
Service Method: eService

Electronically Signed By: Jordan P. Helvie  
Dated: 06-16-2025