

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT CAUSE NO. DA-24-0485

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

Unrepresented by counsel, pro-se

**Daren Engellant, individually and
acting as Personal Representative of
THE ESTATE OF GREGORY
ENGELLANT**

Plaintiff/Appellant

VS

**CROWLEY FLECK, PLP, a Montana
Professional Liability Partnership and
DANIEL MCLEAN, an individual**

Defendants/Appellees/Cross

Appellants/ Third Party Plaintiffs

VS

**DAREN ENGELLANT,
INDIVIDUALLY, PRO SE
RESPONSE TO COUNSEL'S
MOTION TO ACCEPT
EXHIBIT A AND/OR EXHIBIT
B OR TO WITHDRAW**

**KENNETH ENGELLANT and
SHANA DIEKHANS, Third party**

Defendants

Kevin Engellant, Intervenor

Appellant

INTRODUCTION

I, Daren Engellant, individually, and respectfully submit this pro se response to the pending motion filed by James Reavis, counsel for me in my role as Personal Representative of the Estate of Gregory Engellant. That June 16, 2025 filed motion by Mr. Reavis was in response and pursuant to this court's order of June 2, 2025.

Here, the court ordered an "extension of time to prepare, file, and serve the Appellant's opening brief, or (emphasis added) to file a motion concerning Appellant's ongoing representation by counsel. In compliance with the order, Mr. Reavis has motioned the court and asked for requests that the Court (1) accept and adopt either "Exhibit A" and/or "Exhibit B" as the opening brief in this appeal, or (2) grant counsel's request to withdraw.

Since the filing of that motion, this Court has recognized my standing to appear in this matter in my individual capacity, outside of my capacity as the duly appointed Personal Representative of the Estate of Gregory Engellant (represented by counsel). In light of this dual standing, I now file this response to formally adopt and endorse Exhibit A as my pro se opening brief in my individual capacity, and to object to Exhibit B because it omits the single most urgent legal issue in this case: Jury Instruction No. 35, and the dangerous precedent it sets for the exploitation of protected persons in Montana.

I. Exhibit A Should Be Accepted as My Pro Se Opening Brief

I hereby adopt Exhibit A as my opening brief in my individual capacity. I personally authored that brief and stand behind the arguments it contains, which I believe are essential to a just review of the district court's judgment. It raises several fundamental errors, including the central issue of whether a protected person under a court-ordered conservatorship can legally make multi-million-dollar gifts without oversight—a theory that creates a pathway for financial exploitation of vulnerable people like my uncle Gregory Engellant.

Although Exhibit A was submitted prematurely by counsel before final proofreading, I nonetheless adopt it as my opening brief. While it contains a few

citation and formatting errors—particularly in the Table of Authorities—it accurately presents the factual and legal issues. I respectfully ask this Court to focus on the substance of the brief, which has not changed.

Exhibit A complies with the Montana Rules of Appellate Procedure, falls within the word count limits, and presents issues of significant public importance.

II. Exhibit B Should Not Be Treated as the Appellant's Opening Brief

While I appreciate counsel's efforts, Exhibit B omits Jury Instruction No. 35 entirely and the doesn't cite MCA 72-3-317 which is the foundation of my standing to bring the case to court in the first place. These are not a minor oversights— Jury Instruction No. 35 is the gravest legal error in the case and will undoubtedly lead to more cases like this one in the future. The will contest that took place at trial is not allowed under MCA 72-3-317 and is the core basis for this appeal. These omission are not simply matters of strategy, but a failure to present the central injustices that occurred to my Uncle Gregory and at trial.

Jury Instruction No. 35 stated:

"A person does not lack capacity to make a gift during their lifetime or through a will merely because they are a protected person under

a guardianship or conservatorship or because they have previously been adjudicated to be incapacitated.”

This instruction, and the trial court's decision to issue it, invited the jury to believe that my severely brain injured Uncel could sign a simple document validating a \$2 million stock transfer— Gregory was a protected person under full guardianship and conservatorship—and this transfer occurred without court approval, without conservator consent, and without any legal safeguards. In this particular case, Gregory's multi-million dollar gift was unwitnessed, unnotarized, and facilitated by an attorney working with the conflicted conservator. The trial court's misunderstanding of the very purpose of a "protective conservatorship order" and ensuing jury instruction cannot be accepted by the legal system. The court's ruling and misstatement of the law enabled the resulting financial exploitation of my Uncle Gregory and undermines the very protections to my Uncle Gregory and all legally incapacitated and vulnerable adults are given with a lawfully issued protective order. Such an order which restricts the unencumbered access to the conservatee's assets, isn't given to punish the conservatee, it is given as a safeguard so this exact situation does not occur to a vulnerable and incapacitated individual, like an unintentional multi-million dollar transfer of assets with no oversight by the court and only a conflicted attorney and conservator overseeing

the transaction, which is exactly what occurred to my Uncle Gregory and is precisely what a conservatorship is designed to prevent.

III. The Trial Court's Legal Rationale Was Flawed and Reckless

The danger of Jury Instruction No. 35 is confirmed by the June 11, 2024 jury instruction conference (p. 40 ¶ 2, Exhibit 1 to this brief), during which the district judge explicitly stated:

"So my tentative thoughts are on the question of can a protected person in a conservatorship on their own make a gift assuming they have capacity and assuming it's free of undue influence, my tentative conclusion to the answer to that question is yes, they do."

The judge further declared apprehension and lack of clarity when he reiterated similar sentiments a few minutes later (June 11, 2024, P 41 ¶ 3):

"So it seems to me my tentative thoughts are that we need to come up with some way of distilling all that. What I'm tentatively inclined to say is that a conservatee can make a transfer assuming capacity and lack of undue influence. A ward can make conveyances or engage in contracts subject to a right of disaffirmance unless they have a complete lack of understanding or

an unsound mind, which I think is what that—when I look at all the statutes that's what it seemst to kind of distill into. I could be wrong about that."

These statements fundamentally misinterpret Montana law and allow for the circumvention of the protective order based on circumstantial and unsupported evidence of conflicted witnesses or lay people claiming Gregory's mental capacity at different occasions to fit self-serving positions of Gregory's capacity. This undermines the very purpose of the protective order assuming incapacity and invites exploitation and other ways of taking advantage of such mentally vulnerable people like my Uncle Gregory was. The court:

- Misread § 72-5-409, MCA, which vests all authority over a protected person's property in the conservator;
- Misconstrued Estate of West, which required court review before allowing any gifts;
- Ignored the entire purpose of conservatorship law: to protect vulnerable individuals from financial dissipation and undue influence.

The court refused to give instructions that would have clarified that protected persons lack authority to unilaterally transfer property. Instead, it constructed Jury Instruction No. 35, creating legal ambiguity where none exists.

IV. This Case Raises a Matter of Statewide Importance: Preventing the Exploitation of Protected Persons

Montana law is clear in its intent to protect incapacitated people from abuse. § 45-6-333, MCA defines that a person commits the crime of Exploitation of an Incapacitated Person or Vulnerable Adult if he or she:

“Purposely or knowingly obtains, or uses or attempts to obtain or sue an incapacitated person’s or vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the incapacitated person or vulnerable adult of their use, benefit, or possession of funds, assets, or property or to benefit someone other than the incapacitated person or vulnerable adult by means of deception, duress, menace, fraud, undue influence, or intimidation; (b)(1) and stands in the position of trust or confidence with the incapacitated person or vulnerable adult”

That is precisely what occurred here. Gregory Engellant’s \$2 million interest in Engellant Ranch Co. was transferred via a single-page document, unwitnessed, unnotarized, and processed outside the purview of the conservatorship court. It was

orchestrated by his conflicted conservator (my father Kenneth Engellant) and attorney Dan McLean—who failed to seek or obtain court approval.

By issuing Jury Instruction No. 35, the district court fundamentally misapplied the law and effectively instructed the jury that even individuals under full guardianship and conservatorship—who have been legally deemed incompetent—may unilaterally transfer away their assets. In doing so, the court invited the jury to treat the exploitation of vulnerable people as legally valid, despite clear statutory prohibitions, longstanding fiduciary principles, and basic standards of decency and common sense. According to longstanding Montana law:

- § 72-5-409, MCA: The conservator manages all of the protected person's property;
- §§ 72-5-428 & 72-5-446, MCA: Gifts must receive prior court approval and be in the best interest of the protected person;
- Estate of West, 887 P.2d 222 (Mont. 1994): Court approval is required for gifts by a protected person—even if they appear willing.

This Court must not allow the interpretation offered at trial to stand. It is not “unsettled law,” as suggested by attorney Mikel Moore and accepted by the trial

court. It is a misstatement of law, and if left uncorrected, it will expose protected persons across Montana to exploitation disguised as estate planning.

V. Attorney Dan McLean's Contradictory Conduct Confirms Exploitation and Conflicted Representation

This case exemplifies exploitation not only in conduct but in legal strategy. In 2012, attorney Dan McLean met with Gregory Engellant once—under the supervision of Gregory's conservator and brother Kenneth—and drafted a new will and a stock transfer that gave away Gregory's \$2 million interest in Engellant Ranch Co. This transaction was unwitnessed, unnotarized, and occurred without court approval, medical clearance, or conservator petition, all while Gregory was under full guardianship and conservatorship due to a traumatic brain injury.

Two years later, in a stunning reversal, McLean filed a Motion for Protective Order on July 31, 2015 (See Exhibit 2, to this brief), seeking to prevent Gregory from being deposed. In that filing, McLean argued that Gregory:

- Suffered from “substantial memory issues,”
- Was “susceptible to suggestion,”
- Would be “subject to embarrassment and undue burden” if questioned under oath,

- And had a mental condition such that he could not reliably track events or understand complex matters.

McLean's justification relied on formal neuropsychological evaluations—exactly the kind of assessments that should have been conducted *before* the gift was ever executed. But instead of questioning Gregory's ability to make an irrevocable \$2 million transfer, McLean used his incapacity *after the fact* to silence him and protect the transaction.

Even more damning, McLean testified under oath that Gregory did not want the gift to occur. Yet he moved forward anyway, drafted the document, and later acted as though the transfer reflected Gregory's intent. Once the transaction was challenged, McLean—without being lawfully retained by Gregory and without legal authority to represent him—claimed to be Gregory's personal attorney and took steps to shield the transaction from judicial scrutiny.

This is not just a conflict of interest—it is exploitation. McLean's shifting positions on Gregory's capacity were dictated by convenience:

- Gregory had capacity when McLean needed to justify the gift,
- But was too incapacitated when a court might hear Gregory's own view.

This pattern of manipulation fits squarely within the meaning of § 45-6-333, MCA, which defines exploitation of an incapacitated person as obtaining or using their property through “deception, undue influence, or intimidation,” especially by someone in a position of trust or confidence.

A fiduciary and legal advocate cannot ethically or legally speak for a protected person only when it benefits their own defense. McLean’s conduct exemplifies the very danger conservatorship laws were designed to prevent.

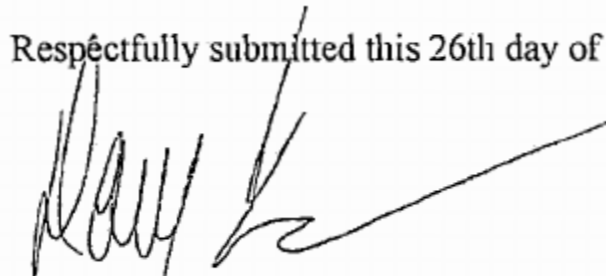
V. Relief Requested

Accordingly, I respectfully request that this Court:

1. Accept Exhibit A as my pro se Opening Brief in my individual capacity;
2. Reject Exhibit B, or recognize that I do not authorize it and that it omits the central legal issue;
3. Permit Mr. Reavis to remain as counsel for the Estate of Gregory Engellant if he so chooses, but clarify that I am independently appearing in this appeal as an individual;
4. Review Jury Instruction No. 35 and the legal reasoning underlying it, as revealed in the June 11, 2024 jury instruction conference;

5. Hold that under Montana law, a protected person under full conservatorship may not make substantial gifts without court or conservator approval;
6. Clarify this issue of statewide legal importance to protect all vulnerable Montanans from financial exploitation.

Respectfully submitted this 26th day of June, 2025.

A handwritten signature in black ink, appearing to read 'Daren Engellant', with a long horizontal flourish extending to the right.

Daren Engellant
Individually, pro-se

CERTIFICATE OF COMPLIANCE

Adhering to Rule 11 of the Montana Rules of Appellate Procedure, I certify this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2189 words.

Certificate of Service

I, Daren Engellant, do hereby certify that I have served a copy of the foregoing document in the above matter by mailing and/or emailing a copy thereof to the following:

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