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IN THE SUPREME COURT OF THE STATE OF MONTANA
No. 25-0392

SIDNEY and JULIAN HELVIK,
Plaintiffs, Counter-Defendants,
and Appellees,

v.

WESLEY and KAREN TUSCANO,
Defendants, Counter-Plaintiffs, and
Appellants.

WESLEY and KAREN TUSCANO,
Third-Party Plaintiffs, and
Appellants,

v.

JACQUELINE CONNER,
Third-Party Defendant, and
Appellee.

TUSCANOS' RESPONSE TO
MOTION TO DISMISS

Appellants, Wesley and Karen Tuscano (Tuscanos), by and through their attorney of record, hereby oppose Helviks' Motion to Dismiss Appeal (Helviks' Motion).

BACKGROUND

The district court in addition to determining the contempt issue, also found that “[p]ursuant to Mont.R.Civ.P. 70(a) this Court has the power to sign a Quitclaim Deed ... showing the Helviks as grantees...” Findings of Fact, Concl. of Law [Doc. 322], May 21, 2025, p. 9, ¶ J, attached as Exhibit 1. Further, the court found that “[g]iven the Tuscanos’ failure to act as ordered, this Court is required to use the power provided by Montana law to enforce its Judgment.” *Id.*, ¶ M. Additionally, the court ordered “the undersigned District Judge will sign a Quitclaim Deed showing Julian and Sidney Helviks as grantees of the real property. *Id.*, p. 10. Additionally, based on 25-13-203, MCA, the court determined that it could execute judgment during the contempt proceedings.

ARGUMENT

A. The District Court’s Utilizing Its Contempt Jurisdiction to Act Pursuant to the Enforcement of Judgment Statute is Legal Error

Title 25, Chapter 13, MCA, provides many legal steps providing due process that the court must follow and adhere to in order to execute judgment. Nowhere in the statute relating to execution on a judgment is there a provision allowing the court to sign a deed without following that statute.

The statute specifically provides: “(2) Where a judgement directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require

the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.” 25-13-203(2), MCA. In order to utilize the execution of judgment statute, the court must retain jurisdiction, which will be discussed further below. Also, the court must follow the execution of judgment statutes’ due process and procedure protections.

For instance, if the sheriff or levying officer were to execute upon the property, a notice of seizure must be served upon the party whose property is being executed upon. 25-13-211, MCA. Further, the statute requires a hearing so the party upon whom the judgment is being executed can claim exemptions. 25-13-212, MCA. Part 8 of the Execution of Judgment statute provides an elaborate means for debtor to redeem the property conveyed within a year. 25-13-801, *et seq.*, MCA. None of these legal issues have been addressed here because the court did not provide the process required to invoke the execution of judgment statute.

Helviks stated their contempt Motion was also based on Rule 70 and the court followed Helviks’ request. Helviks’ Mot. for Contempt Or. and Req. for Show Cause Hearing [Doc. 287], Jan. 11, 2024, pp. 7-8; Findings of Fact, Concl. of Law, p. 9, ¶¶ H-J, Ex. 1. Utilizing Rule 70 and the statute governing execution of a judgment in a contempt matter is outside the court’s jurisdiction. Currently, the court only retains jurisdiction for contempt proceedings.

The court no longer has any jurisdiction to rule on matters between the parties:

The argument that after a proper appeal is taken the District Court may still retain jurisdiction of the cause and continue to hear and rule on pending matters is not the law in Montana. There is no need to burden this opinion with argument, but we merely point out that this court has been consistent in its rulings that upon a *proper* appeal being taken, jurisdiction of the cause passes from the District Court to the Supreme Court, subject, however, to the right of the District Court to correct clerical errors.

N. Plains Res. Council v. Bd. of Health & Env'tl. Scis., 184 Mont. 466, 472, 603 P.2d 684, 688 (1979). “[I]t is axiomatic that when notice of appeal has been filed, jurisdiction passes from the District Court and vests in the Supreme Court.”

Powder River Cnty. v. State, 2002 MT 259, ¶ 27, 312 Mont. 198, 60 P.3d 357, as cited in Tuscanos’ Resp. to Mot. for Contempt [Doc. 305], Jan. 22., 2025, attached as Ex. 2. Nothing in the Montana Rules of Appellate Procedure or the Montana Rules of Civil Procedure provide that district courts may rule on matters interpreting how to enforce a judgment pursuant to Rule 70 while the case is on appeal. Currently, this case is on appeal to the Supreme Court and has been assigned to a five-judge panel. Order, DA 23-0656, June 18, 2025.

CONCLUSION

On October 15, 2024, this Court denied Tuscanos petition seeking a writ of review and alternate writ of supervisory control over the Sixth Judicial District Court. Further, the Court found that “[s]ince the court ordered no tangible

sanctions, it did not exceed the sanctions authorized in § 3-1-520, MCA.” Order, OP 24-0437, Oct. 15, 2024, attached as Ex. 3.

The district court’s latest order did not follow 3-1-520, MCA to compel performance, which was in the court’s jurisdiction, and if utilized would have triggered Tuscanos’ refiling of a petition seeking a writ of review and alternate writ of supervisory control to address the court’s legal and factual errors in utilizing such sanctions against Tuscanos. Instead of staying within the district court’s jurisdiction and in opposition to Tuscano’s briefing, the court jumped into the execution of judgment statute, which is currently outside the court’s jurisdiction. Further, since the matter was being decided pursuant to a contempt proceeding, the court failed to provide Tuscanos the due process and notice protections provided by adherence to 25-13-200, *et seq*, MCA.

Similar to the district court overriding the jury verdict to grant Helviks relief outside of the court’s authority, this Court seems bound and determined to grant Helviks relief beyond the court’s jurisdiction and the law. Therefore, based on the law governing the district’s court lack of jurisdiction for any issue beyond contempt, and the court’s failure to follow the enforcement of judgment statutes’ protections of due process in a contempt proceeding, this Court should deny Helvik’s Motion to Dismiss and decide the matter on the merits after full briefing.

Respectfully submitted on this 4th day of July, 2025.

Lund Law, PLLC

By: /s/ Hertha L. Lund
Hertha L. Lund
Attorney for Appellants

Certificate of Compliance

I, Hertha L. Lund, herby certify that the Response to Motion to Dismissfiled in this case:

1. Is prepared in Times New Roman, a proportionally spaced typeface of 14 points.
2. Is double-spaced.
3. Contains 1,028 words as calculated by Microsoft Word, excluding table of contents, table of authorities, signature line, certificate of service, certificate of compliance.

Lund Law, PLLC
Respectfully submitted,

Dated: July 4th, 2025

By: /s/ Hertha L. Lund

Certificate of Service

I, Hertha L. Lund, hereby certify that I have served true and accurate copies of the foregoing Response to Motion to Dismiss to the following on July 4th, 2025:

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Service Method: eService

Lund Law, PLLC
Respectfully submitted,

Dated: July 4th, 2025

By: /s/ Hertha L. Lund

CERTIFICATE OF SERVICE

I, Hertha Louise Lund, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 07-04-2025:

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Service Method: eService

Electronically Signed By: Hertha Louise Lund
Dated: 07-04-2025