

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

DA No. 25-0240

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MONTANA DEPARTMENT OF  
PUBLIC HEALTH AND HUMAN  
SERVICES,

Appellant/Petitioner,

v.

MINTA Y. JOHNSON,

Appellee/Respondent.

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**APPELLEE'S ANSWER BRIEF**

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On appeal from the Montana Fourth Judicial District Court  
Missoula County, Cause No. DV-2024-399  
Honorable John W. Larson Presiding

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## **ISSUES PRESENTED**

- I. Whether the Missoula District Court erred in granting Appellee Johnson's Motion for Summary Judgment based upon issue preclusion or collateral estoppel.
- II. Whether DPHHS is barred from seeking recovery against Appellee Johnson under Mont. Code Ann. § 53-6-167(2), because of DPHHS' failure to comply with Mont. Code Ann. § 53-6-167(1).

## **STATEMENT OF THE CASE**

On September 13, 2023, the Montana Department of Public Health and Human Services ("DPHHS") filed a creditor claim ("Claim") in the Eleventh Judicial District Court sitting in probate seeking payment for Medicaid services provided to Florence Pound ("Pound") during her lifetime. (Appendix "App." A at 1:25-2:2). A Notice of Disallowance of Claim was mailed by Pound's Estate ("Estate") to DPHHS denying payment for failure to file the creditor claim timely. *Id.* at 2:2-3. On November 20, 2023, DPHHS filed a Petition for Allowance of Claim, seeking court approval for payment of the Claim by the Estate over the Notice of Disallowance of Claim. *Id.* at 2:4-7. The probate court entered an Order of Disallowance of Claim on March 28, 2024 holding that DPHHS failed to timely file its claim in accordance with Mont. Code Ann. § 72-3-803. *Id.* at 2:7-8. No appeal was taken by DPHHS regarding the probate court's March 28, 2024 order. (App. B

at 2, ¶ 6). The probate administration was subsequently closed on April 30, 2024. *Id.* at 36-38. Once more, no appeal was taken by DPHHS regarding the probate court's April 30, 2024 closing order. *Id.* at 4, ¶ 10. On May 1, 2024, DPHHS filed a Complaint against Minta Johnson ("Johnson") in the Fourth Judicial District Court, Missoula County, Cause No. DV-2024-399, seeking recovery for the Medicaid benefits paid to Pound. (App. A at 2:8-9). The District Court granted summary judgement in favor of Johnson on the basis of issue preclusion and collateral estoppel stemming from DPHHS' creditor claim that was untimely filed in Pound's probate administration and dismissed the case with prejudice. *Id.* at 4:2-12. No portion of DPHHS' claim to recover the medical benefits paid on behalf of Florence Pound has been paid. (App. B at 5, ¶ 12). This appeal by DPHHS follows.

### **STATEMENT OF THE FACTS**

Pound died intestate on April 4, 2023. (App. B at 2, ¶ 4). During her lifetime, she received recoverable Medicaid benefits from DPHHS totaling to the amount of \$5,360.89. *Id.* at 1, ¶ 2. Pound's estate consisted solely of real property located at 418 7<sup>th</sup> Avenue W., Kalispell, Montana, 59901<sup>1</sup>. (App. A at 1:22-24).

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<sup>1</sup> The date of death value of the real property was \$289,000.00. Three days prior to Pound's death, the balance of the mortgage on the residence was \$89,959.93. The approximate value of the net estate distributed to Johnson was \$200,000. (App. B at 4, ¶ 11).

Johnson, Pound's only child and sole heir of the Estate, was appointed personal representative of the Estate on May 1, 2023. (App B. at 1, ¶ 1). Thereafter, in accordance with Mont. Code Ann. § 72-3-801, Johnson caused to be filed and published over three successive weeks a Notice to Creditors in the Daily Interlake – a newspaper of general circulation in Decedent's serving Flathead County – on May 12, May 19, and May 26, 2023<sup>2</sup>. *Id.* at 37, ¶ 5. Under Mont. Code Ann. § 72-3-803(1)(b), the expiration date for creditors to timely file creditor claims against the Estate was Tuesday, September 12, 2023. *Id.*

On September 13, 2023 – one day after the statutory expiration date – DPHHS filed its Claim against the Estate, seeking payment for Medicaid services provided to Pound during her lifetime<sup>3</sup>. (App. A at 1:25-2:3). The probate court concluded that DPHHS was required to timely file its creditor claim within 4 months of the first date of publication – i.e. by September 12, 2023 – and because DPHHS failed to do so, the Claim was deemed untimely, and thus forever barred pursuant to Mont. Code Ann. § 72-3-801. (App. B at 37-38). No appeal was taken by DPHHS regarding the probate court's denial of the Claim filed by DPHHS. *Id.* at 2, ¶ 6. The Estate was subsequently closed on April 30, 2024, with the probate court noting the denial of

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<sup>2</sup> DPHHS made no objections regarding the Estate's form, content, sufficiency or publication of Johnson's Notice to Creditors or allegations of noncompliance with Mont. Code Ann. § 72-3-801. (App. B).

<sup>3</sup> Pursuant to Mont. Code Ann. § 53-6-167(1).

the DPHHS in its closing order. *Id.* at 38, ¶¶ 10-12. No appeal was taken by DPHHS regarding the probate court’s closing order. *Id.* at 4. ¶ 10.

On May 1, 2024 – one day after the entry of the probate court’s closing order approving the termination of the probate administration – DPHHS filed a Complaint against Johnson in the Missoula County District Court, seeking recovery from Johnson personally for the Medicaid benefits paid to Pound, citing Mont. Code Ann. § 53-6-167(2) as the relevant authority for pursuing this collateral recovery against Johnson. (App. A at 2:8-9). DPHHS argued to the District Court that they should have prevailed on its claim made under Mont. Code Ann. § 53-6-167(2) because all it had to show were the following and that judgment should be awarded as a matter of law: (1) that the decedent received Medicaid benefits; (2) that the decedent was older than 55 years of age at the time Medicaid benefits were provided; (3) that immediately prior to the decedent’s death, the decedent owned or had an interest in an asset; which (4) passed to the defendant(s) through some “arrangement,” including through a probated estate. (App. C at 4). The Estate countered that DPHHS’ claim against Johnson was barred based upon the legal defenses of issue preclusion and collateral estoppel. (App. A at 3:18-4:7).

The District Court agreed with Johnson and found that all elements for issue preclusion and collateral estoppel were satisfied. *Id.* Accordingly, the District Court denied DPHHS’ Motion for Summary Judgement, and instead granted summary

judgment in favor of Johnson, dismissing the case with prejudice. *Id.* The District Court referenced the Estate's argument in the probate administration, affirming the denial of DPHHS' late filed claim and affirming the application of Mont. Code Ann. § 72-3-803. *Id.*

### **STANDARD OF REVIEW**

The de novo standard of review is applied by appellate courts in Montana when reviewing a district court's grant or denial of summary judgment. *Motarie v. Northern Mont. Joint Refuse Disposal Dist.*, 274 Mont. 239, 242, 907 P.2d 154, 156 (1995). The appellate court uses the same criteria as the district court under Rule 56 of the Montana Rules of Civil Procedure ("M.R.Civ.P."), which governs summary judgment. *Id.* The appellate court will only grant summary judgment if the court determines: 1) there is an absence of genuine issues of material fact; and 2) the moving party is entitled to judgment as a matter of law. *In re Estate of Prescott*, 2000 MT 200, ¶ 21, 300 Mont. 469, 8 P.3d 88; *Brinkman & Lenon, Architects & Eng'rs v. P & D Land Enters.*, 263 Mont. 238, 241, 867 P.2d 1112, 1114 (1994). In the present case, the parties do not dispute any facts; only the application of the law to those facts. Consequently, the District Court's conclusion of law should be reviewed de novo and, even so, Appellee Johnson remains entitled to judgment as a matter of law.

## **SUMMARY OF THE ARGUMENT**

The District Court properly granted summary judgment to Appellee Johnson under a plain reading of the applicable statutes. DPHHS' arguments for reversal fail for three critical reasons. First, the doctrines of issue preclusion and collateral estoppel bar DPHHS from bringing an identical issue before the court upon which the parties were in privity in both actions and to which judgment was previously rendered on the merits. Secondly, DPHHS failed to comply with the statutory requirements of Mont. Code Ann. § 53-6-167(1) to timely file its Claim, thereby barring DPHHS from seeking recovery under Mont. Code Ann. § 53-6-167(2). Third, DPHHS' strained argument under Mont. Code Ann. § 53-6-167(2) runs afoul of long-standing judicial rules of statutory interpretation.

## **ARGUMENT**

When properly implemented, Mont. Code Ann §§ 53-6-167(1) and (2) provides DPHHS with alternate routes to recover Medicaid benefits paid to a deceased recipient during the recipient's lifetime. Subsection (1) states that "after the death of a recipient, the department shall execute and present a claim against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient." (emphasis added). Subsection (2) states that "the department may execute and present a claim against a person who has received

property of the recipient by distribution or survival . . .” (emphasis added). Subsection (6)(a) provides that “[t]he department may seek recovery under subsection (1) or (2), or both, with respect to a deceased recipient until its claim is satisfied in full.”

**I. Rules of statutory interpretation support the lower courts’ construction of the law.**

Courts in Montana are guided by principles that emphasize interpreting statutes in their entirety to ascertain legislative intent and avoid isolating specific terms from their context. *Mont. Sports Shooting Ass’n v. State*, 2008 MT 190, ¶¶ 11-15, 344 Mont. 1, 185 P.3d 1003; *City of Missoula v. Pope*, 2021 MT 4, ¶¶ 9-10, 402 Mont. 416, 478 P.3d 815. Pursuant to Mont. Code Ann. § 1-2-101, the law requires that judges ascertain and declare what is contained in the statute without inserting or omitting content, and that construction should aim to give effect to all provisions, avoiding interpretations that render any part superfluous.

Additionally, courts are instructed to harmonize related statutes and avoid absurd results, further supporting a non-sequential, comprehensive approach to statutory interpretation. *Mont. Sports Shooting Ass’n*, ¶¶ 11-15. In *Mont. Sports Shooting Ass’n*, the court highlighted the importance of construing statutes without isolating specific terms and ensuring that the interpretation aligns with legislative

intent. Similarly, in *City of Missoula*, the court reiterated that statutory construction must account for the statute's overall structure and purpose.

In evaluating DPHHS', their narrow, isolated interpretation of subsections of Mont. Code Ann. § 53-6-167 to justify its pursuit of recovery against Johnson as a recipient of assets from a duly administered probate estate invalidates multiple sections of the same statute as well as multiple statutes under Mont. Code Ann. § 72-3-801 et. seq. Adopting DPHHS' position means that DPHHS may ignore the Mont. Code Ann. § 53-6-167(1) mandate to file its creditor claim "within the time specified in the published notice to creditors in the estate proceeding." The mandatory creditor claim filing requirement upon DPHHS becomes meaningless and without legislative effect if DPHHS can simply bypass subsection (1) and go right to subsection (2) and sue the heirs of a probate estate directly. As further explained below, this interpretation also negates multiple sections of Mont. Code Ann. § 72-3-801 et. seq.

DPHHS' position to selectively adopt subsections of Mont. Code Ann. § 53-6-167 as a means to justify its ends runs counter to the legislature's efforts to establish a body of law for both procedural and substantive due process regarding Medicaid recovery. In the context of a probate administration, DPHHS' requirement to comply with subsection (1) allows for a cohesive statutory application of Mont. Code Ann. § 72-3-801 et. seq. Mont. Code Ann. § 72-3-801 states that after the

proper notices to creditors has been made, a creditor must “present their claims within 4 months after the date of the first publication of the notice or be forever barred.” Mont. Code Ann. § 72-3-803(1) states that:

(1) All claims against a decedent’s estate that arose before the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees and nonprobate transferees of the decedent unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent’s death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. (emphasis added).

It is not disputed that the Estate properly complied with the requirements Mont. Code Ann. § 72-3-801. It is also undisputed that DPHHS filed its Claim late. DPHHS has made no showing that it or its Claim is exempt from the requirements of Mont. Code Ann. § 72-3-801 and the statutes that follow. Adopting DPHHS’ argument nullifies DPHHS’ requirement as representative of the State of Montana and/or subdivision thereof to timely file its Claim and furthermore negates the procedural due process protections for the Estate and its Personal Representative, dispensing the substantive due process protections for the estate, the personal representative, and the heirs and devisees from collateral attack directly by DPHHS on its invalid creditor claim.

DPHHS cites *State Dep't of Human Res. v. Estate of Ullmer*, 120 Nev. 108, 87 P.3d 1045 (2004) for the proposition that Medicaid recovery as matter of public policy should override Johnson's inheritance from her mother's Estate because of the expanded definition of "estate." Whatever the policy of congress or a state's legislature may be regarding Medicaid recovery, *Ullmer* does not excuse DPHHS from complying with state law in pursuing Medicaid recovery. In fact, *Ullmer* states the exact opposite.

In *Ullmer*, the Nevada Department of Health and Human Resources filed a lien against a surviving spouse for recoverable Medicaid benefits paid on behalf of her deceased husband – the Medicaid recipient. The lien claimed by the Nevada Department of Health and Human Resources was contested by the Medicaid recipient's surviving spouse as an impermissible "recovery" under federal law, which violated the surviving spouse's right to not be impoverished as a result of her spouse's Medicaid benefits liability upon his death. A Medicaid lien may be filed against a recipient's and surviving spouse's residence when the recipient's benefits relate to institutional care. The Nevada Supreme Court ruled that the mere recording of a Notice of Lien and a Lien against a Medicaid recipient's and surviving spouse's residence was not a "recovery" under Nevada law because Department regulations allowed for the removal of such recordings upon request of the surviving spouse.

The background of *Ullmer* is important because the Nevada Supreme Court recognized the importance of Medicaid recovery by the state as a matter of public policy. However, *Ullmer* stands not for the proposition that Medicaid recovery should be championed on the basis of public policy, but instead declares that the state's Medicaid recovery efforts are subject to laws of the state regarding such recovery.

Though the facts in *Ullmer* deal with Medicaid recovery by the State of Nevada of a non-probate asset (the Medicaid recipient's and surviving spouse's residence), the Nevada Supreme Court was explicit in its messaging to the state regarding its recovery efforts. Both Nevada and Montana have adopted the broadened definition of "estate" for Medicaid recovery, meaning both legislatures deemed it important to give their respective Medicaid recovery agencies the widest net to cast to recapture assets of a deceased Medicaid recipient to the extent of Medicaid benefits paid.

*Ullmer* did not discount or nullify the state's other applicable laws in the interest of public policy when it evaluated the Nevada Department of Human Services Medicaid recovery efforts. Rather *Ullmer* made the point that the government "takes the property subject to the States' interest granted by the estate recovery statutes," and cited Nev. Rev. Stat. § 422.29032(3). That subsection states that "[e]xcept as otherwise provided by federal law, if a transfer of real or personal

property by a recipient of Medicaid is made for less than fair market value, the Department may pursue any remedy available pursuant to chapter 112 of NRS with respect to the transfer.” (emphasis added.) The “any remedy available” was qualified to that constrained under Chapter 112 of the Nevada Revised Statutes. What is most-telling about the Nevada Supreme Court’s reference to Nev. Rev. Stat. § 422.29032(3) is found in the succeeding subsection at Nev. Rev. Stat. § 422.29032(4), which states that “[t]he amount of Medicaid paid to or on behalf of a person is a claim against the estate in any probate proceeding only at a time when there is no surviving spouse or surviving child who is under 21 years of age, blind or disabled.” (emphasis added.) Just like in Montana through Mont. Code Ann. § 53-6-167(1), the Nevada Department of Human Services is required to timely file its claim for recovery of Medicaid benefits in accordance with Nevada law; i.e. satisfying the requirements of Nev. Rev. Stat. Chapter 147 – the Chapter governing the administration of creditor claims in probate in Nevada.

Aside from Nev. Rev. Stat. § 147.070(7) giving the Nevada Department of Human Services special authority to amend a timely filed claim in a probate administration prior to the filing of the estate’s final accounting, neither Nevada nor Montana treats creditors of their respective Medicaid recovery agencies any differently under a probate administration. Laws are not applied in vacuum and should be examined as a whole, and the Ullmer court agrees: “No part of a statute

should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can be properly avoided.” *Ullmer*, 120 Nev. at 117, 87 P.3d at 1051 (citing *Paramount Ins. v. Rayson & Smitley*, 86 Nev. 644, 649, 472 P.2d 530, 533 (1970)). DPHHS applications of Mont. Code Ann. § 53-6-167 runs afoul of this concept.

Keeping in mind the *Ullmer* concepts, the same broad powers allowed by DPHHS under Mont. Code Ann. § 53-6-167 are likewise not without limits on DPHHS’ Medicaid recovery efforts. Johnson argues that in the context of a probate administration, DPHHS cannot proceed against Johnson as an heir of her mother’s estate and recipient of property from her probate estate because of DPHHS’ own failure to comply with Montana law. Failure to comply exercise of those powers against an estate, personal representative, heirs and devisees, and/or nonprobate transferees of the deceased Medicaid recipient is not without limits. DPHHS cannot exercise its Medicaid recovery powers under Mont. Code Ann. § 53-6-167(2) and (6) because it does not have the “right” to do so because of its noncompliance with Mont. Code Ann. § 53-6-167(1). In other words, just because DPHHS has the “power” to pursue Medicaid recovery against an heir of a probate estate, does not mean it has the “right” to do so. DPHHS first must comply with Mont. Code Ann. § 53-6-167(1) before pursuing recovery against an heir of a probate estate. DPHHS concludes that it has the “power and right” to pursue Johnson for Medicaid recovery

under Mont. Code Ann. §§ 53-6-167(2) and (6) without compliance of Mont. Code Ann. § 53-6-167(1). Neither Mont. Code Ann. §§ 53-6-167(2) and (6) states anywhere that DPHHS may be excused from complying with Mont. Code Ann. § 53-6-167(1) when pursuing Medicaid recovery under those sections.

DPHHS cites no authority that subsection (1) may be excused when there is a probate administration for the Medicaid recipient. If DPHHS is allowed to disregard the mandate of Mont. Code Ann. § 53-6-167(1), the procedural and substantive due process protections in Mont. Code Ann. §§ 72-3-801 and 72-3-803 no longer apply to the state or DPHHS as its agency. Such reading of Mont. Code Ann. § 53-6-167 effectively guts the probate claims administration statutes, running afoul of the state's right to Medicaid recovery being subject to Montana's recovery statutes. Instead, DPHHS would have no circumstances upon which it would be required to comply with Mont. Code Ann. §§ 72-3-801 and 72-3-803.

Neither the Probate Court in the Eleventh Judicial District Court nor the Fourth Judicial District Court erred in their conclusions by dismissing DPHHS' claims for Medicaid recovery. Both courts arrived at the same statutorily harmonious conclusions: DPHHS is forever barred from pursuing recovery of Medicaid benefits from Johnson because of its failure to comply with the statutory claims filing mandates.

**II. The Missoula District Court properly applied the legal concepts of “issue preclusion” and “collateral estoppel” in granting Appellee’s Motion for Summary Judgment and dismissing DPHHS’ Complaint.**

This Court has repeatedly stated that a party claiming issue preclusion or collateral estoppel must show

- (1) that the issue decided in the prior suit is identical to the presented in the action in question;
- (2) that there was a final judgment on the merits in the prior suit; and
- (3) that the party against whom the plea is not asserted was a party or in privity with a party to the prior suit.

*In re Raymond W. George Trust*, 1999 MT 223, ¶42, 296 Mont. 56, 986 P. 2d 427.

The Missoula County District Court found that all of the elements of issue preclusion and collateral estoppel had been satisfied by Johnson, holding that “[t]his Court agrees with [Appellee Johnson] that the issues are identical in that [Appellant DPHHS] seeks to recover medical expenses paid in the amount of \$5,360.89, there was a final judgment in the probate matter barring [Appellant DPHHS], and [Appellee Johnson] is in privity with the decedent.”

DPHHS argues that the issue addressed in the probate court was the untimeliness of the filing of its creditor claim and that the issue in the district court against Johnson was Medicaid recovery against a person who received assets from a probate estate. Therefore, according to DPHHS, the issues are different and do not satisfy the concept of issue preclusion. However, DPHHS’ “tunnel vision” on the

separation of Mont. Code Ann. §§ 53-6-167(1) and (2) prevents it from admitting that the issues and parties in both actions are indeed exactly the same.

DPHHS argues that Johnson is not in privity to the prior suit because Johnson was serving in her capacity as fiduciary for the Estate in the probate action and was sued in her individual capacity as an heir of the Estate in the second action. DPHHS cites no authority in support of this proposition regarding capacity and privity. The Court has addressed issue preclusion and parties in privity in *Denturist Ass'n of Montana v. State Dept. of Labor and Industry*, stating “[t]he concept of privity in the context of a judgment ‘applies to one whose interest has been legally represented at trial.’” *Denturist Ass'n of Montana v. State, Dept. of Lab. and Indus.*, 2016 MT 119, ¶ 14, 383 Mont. 391, 372 P.3d 466 (quoting *Taylor v. Sturgell*, 553 U.S. 880, 892-93, 128 S.Ct. 2161. The Court concluded that “[p]rivity exists where ‘two parties are so closely aligned in interest that one is the virtual representative of the other....’” *Denturist Ass'n of Montana*, ¶ 14 (quoting *Nordhorn v. Ladish Co.*, 9 F.3d 1402, 1405 (9<sup>th</sup> Cir. 1993)).

In *Denturist Ass'n of Montana*, the case involved two claims: one brought by every dentist in Montana on behalf of the profession of dentistry and the other brought forward by a smaller group of dentists including dentist Carl Brisendine. *Denturist Ass'n of Montana*, ¶¶ 3-6. The Court noted that “[e]ven though not a dentist at the time of the earlier litigation, Brisendine's interests are ‘closely

aligned’, if not *exactly* aligned, with the previously representing] denturists who made the same challenge that Brisendine now makes....” *Id.* at ¶ 15 (internal citation omitted). Similarly, Johnson as fiduciary for the Estate and Johnson as an heir who received probate assets of a Medicaid recipient, are ‘closely aligned,’ if not *exactly* aligned in both actions. Johnson, as the sole heir of the Estate and only child of Pound, acted as the personal representative in the probate proceeding. Johnson, as the sole heir of the Estate and only child of Pound, is the party in the case before the Court. Johnson was not acting in her individual capacity as an heir in the Estate’s administration regarding the administration of DPHHS’ creditor claim, for she had no standing to do so. That was the province solely for Johnson as fiduciary for the Estate. The interests of Johnson, regardless of capacity within the two cases, is so “closely aligned” that they are “virtually representative of [each] other.” *Denturist Ass’n of Montana*, ¶ 14 (quoting *Nordhorn v. Ladish Co.*, 9 F.3d 1402, 1405 (9<sup>th</sup> Cir. 1993)). As both parties in both actions are one and the same person, Johnson is unmistakably in privity.

The Missoula District Court was clear in its reasoning regarding Johnson’s applications of issue preclusion and collateral estoppel: “This Court agrees with [Defendant Johnson] that the issues are identical in that [Plaintiff DPHHS] seeks to recover medical expenses paid in the amount of \$5,360.89, there was a final judgment in the probate matter barring [Plaintiff DPHHS], and [Defendant Johnson]

is in privity with the decedent.” DPHHS’ claim for lack of privity of party is without merit.

DPHHS argument that the probate court lacked jurisdiction regarding the applications of Mont. Code Ann. § 53-6-167 is also without merit. In Appellant’s Opening Brief at p. 5, DPHHS cites *In re Estate of Cooney*, 2019 MT 293, 398 Mont. 166, 454 P.3d 1190, for a discussion of limited jurisdiction of probate courts. Appellee does not disagree with Appellant that probate courts in Montana are indeed courts of limited jurisdiction. But what is at issue on this appeal is the administration of a creditor claim in probate, not the merits of the underlying claim; i.e. the claimed Medicaid expenses totaling \$5,360.89. In fact *Cooney* is in direct support of Johnson’s position.

In *Cooney* the Court was determining if the district court had subject matter jurisdiction to enforce a Separation Agreement when sitting in probate. The Court stated that “[a] probate court has authority to settle claims against the estate, such as creditor claims,” but the probate courts lack “jurisdiction to consider matters equitable in nature.” *In re Estate of Cooney*, ¶¶ 7, 12 (internal citations omitted). The Court explained that “[t]he administration of an estate is ‘neither an action at law nor a suit in equity[;] it is a special proceeding.’” *In re Estate of Cooney*, ¶ 7 (citing *State ex rel. Reid v. Fifth Judicial Dist. Court*, 126 Mont. 586, 591, 256 P.2d 546, 549 (1953)). The issue on appeal before this Court concerns the administration of a

creditor claim in probate, not the equitable nature or merits of the underlying expenses giving rise to the claim. Appellee has never objected to regarding the actual expenses incurred and charged to her mother for Medicaid benefits paid to her during her lifetime. There is no disagreement concerning the underlying merits of DPHHS' Claim.

DPHHS' creditor claim in the probate administration and Medicaid recovery efforts directly against Johnson under Mont. Code Ann. § 53-6-167(2) are identical as to the parties in interest and within the limited jurisdictional boundaries statutorily prescribed to the probate court. The subject matter is exactly the same in both cases. Mont. Code Ann. § 53-6-167(2) states that "[t]he [Department of Public Health and Human Services] may bring an action in district court to collect upon a claim under this subsection (2)." (emphasis added). This particular language, i.e. using "may" versus "shall", gives the option for DPHHS to bring the claim under subsection (2) before the district court, but does not strip the probate courts of hearing said claims. Consequently, the argument made by DPHHS in regard to the probate court's inability to hear a claim under Mont. Code Ann. § 53-6-167(2) is unsupported by both statutory authority and the case law upon which DPHHS relies.

**III. DPHHS is barred from seeking recovery against Appellee under Mont. Code Ann. § 53-6-167(2) when this Court's rules of statutory interpretation are applied.**

Mont. Code Ann. § 53-6-167(1) states as follows:

Except as provided in subsection (7) or (9)(b), after the death of a recipient, the department shall execute and present a claim against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient. The department is not required to initiate probate proceedings in order to present a claim in a case in which no proceeding has been commenced to probate the estate of the deceased recipient.

In DPHHS' Statement of Position at 4:2, Appellant's counsel states that "[the] creditor claim under subsection (1) was filed, but unsuccessful." This statement is troubling, intentionally misleading, and a disingenuous representation of a material fact to the Court. DPHHS attempts to trivialize the fatal error of its skewed statutory interpretation. It warrants mentioning that [counsel before the court has a duty of candor]. Mont. R. Prof. Conduct, Preamble: A Lawyer's Responsibilities §§ 1, 3, 6.

The reality is that DPHHS never filed its Claim in compliance with Mont. Code Ann. § 53-6-167(1). It was untimely; it was late. It wasn't just "unsuccessful," it was barred as a matter of law. Mont. Code Ann. § 72-3-801. There is no discretion in the estate, the personal representative, heirs, devisees or other interested parties regarding the administration of a barred claim. It is simply barred as a matter of law if it is untimely filed. Consequently, DPHHS was without right whatsoever to pursue a collateral claim against Johnson. Furthermore, Johnson as an heir of a probate estate (in this case the sole heir) is granted statutory protection from DPHHS as a failed creditor claimant of the Estate via Mont. Code Ann. § 72-3-803(1).

Courts in Montana are guided by principles that emphasize interpreting statutes in their entirety to ascertain legislative intent and avoid isolating specific terms from their context. *Mont. Sports Shooting Ass'n*, ¶¶ 11-15; *City of Missoula*, ¶¶ 9-10. Montana law requires that statutes be construed to give effect to all provisions, avoiding interpretations that render any part superfluous. For example, Mont. Code Ann. 1-2-101 *Role of the Judge* — preference to construction giving each provision meaning., explicitly states that judges must ascertain and declare what is contained in the statute without inserting or omitting content, and that construction should aim to give effect to all provisions where possible. Additionally, courts are instructed to harmonize related statutes and avoid absurd results, further supporting a non-sequential, comprehensive approach to statutory interpretation. *Mont. Sports Shooting Ass'n*, ¶¶ 11-15; *Matter of U.A.C.*, 2022 MT 230, ¶ 16, 410 Mont. 493, 520 P.3d 295. This Court has consistently applied these principles, emphasizing that statutory language must be read in context and interpreted as a whole.

At the risk of repeating Appellee's argument, the summary is succinct and logical: (1) DPHHS was required by Mont. Code. Ann. § 53-6-167(1) to timely file its Claim in the Estate probate administration; (2) DPHHS failed to comply with Mont. Code. Ann. § 72-3-801; and as a consequence of this failure, DPHHS is now forever barred from recovery against "the estate, the personal representative, and the

heirs and devisees and nonprobate transferees of the decedent” under Mont. Code. Ann. § 72-3-803(1).

Mont. Code. Ann. § 53-6-167(1) isn't the only subsection that explains the critical task of DPHHS following Montana's probate administration claims statutes. Mont. Code. Ann. § 53-6-167(4)(a) states, “[n]otwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.” Thus, even if a probate administration were undertaken years after the death of a deceased Medicaid recipient and to where other statutes of limitation or claims presentation deadlines may have expired, DPHHS would still not be barred from pursuing its Medicaid claim so long as it filed its creditor claim within the time prescribed in the published notice to creditors. It stands to reason, conversely, if DPHHS does not timely file its claim in the probate administration, DPHHS will then be forever barred by Mont. Code. Ann. § 72-3-803(1). Unlike other creditors of a decedent, DPHHS is given extraordinary opportunity for recovery of Medicaid benefits from a deceased Medicaid recipient long after other creditors' claims of the deceased would have expired through other applicable statutes of limitations. This extraordinary relief is premised upon DPHHS to timely filing its Medicaid recovery claim.

When viewed through a lens of where DPHHS timely files its creditor claim, the application of each and every provision of Mont. Code. Ann. § 53-6-167 operates harmoniously with Mont. Code. Ann. § 72-3-801 et. seq. But when DPHHS fails to timely file its creditor claims in probate administrations, the narrow, selective and skewed statutory interpretation of Appellant creates statutory conflict among legislative Chapters 53-6 and 72-3, and nullification/conflict among subsections within Mont. Code. Ann. § 53-6-167. Appellant's position violates long standing rules of rules of statutory construction and interpretation. Appellant presents no authority, support or logic to reconcile the conflicts, nullifications, and superfluidity among the statutes it creates through the adoption of its position and should be rejected by the Court.

### **CONCLUSION**

For the reasons set forth above, Appellee Johnson respectfully submits that she is entitled to judgement in her favor and the decision of the Missoula County District Court should be affirmed.

DATED this 22nd day of July, 2025.

TANKO LAW OFFICE

/s/ Brian C. Tanko  
BRIAN C. TANKO, ESQ.

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I, Brian C. Tanko, hereby certify that the foregoing brief is printed with proportionally spaced, Times New Roman text typeface of 14 points; and the word count calculated by Microsoft Word for Windows is 5,542 words, excluding Certificate of Compliance and Certificate of Service.

/s/ Brian C. Tanko  
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## CERTIFICATE OF SERVICE

**IT IS HEREBY CERTIFIED** by the undersigned, a secretary for Brian C. Tanko, Esq. of Tanko Law Office, that true and accurate copies of the foregoing Brief – Appellee’s Response have been served to the following on 07-22-2025:

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I, Elizabeth Ann Franklin, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 09-27-2024:

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