IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 24-0321

IN RE THE MARRIAGE OF:

MITCHELL BURGARD,

Petitioner/Appellee,

and

STACY JACOBSEN,

Respondent/Appellant.

ANSWER BRIEF OF APPELLEE

On Appeal from the Montana Eleventh Judicial District Court, Flathead County
Before the Honorable Heidi J. Ulbricht

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RE-STATEMENT OF THE ISSUES

1. Whether the doctrine of law of the case bars this appeal where this Court already determined the underlying February 15, 2024, Order is not appealable.

2. Whether the District Court properly exercised its discretion in denying contempt based on findings that Appellee complied with the MPSA and Appellant abandoned her rights through nine years of inaction.

STATEMENT OF THE CASE

This case involves a dispute over a seventeen-year-old cat named Yasmine, arising from the parties' 2015 divorce. On November 16, 2023, Appellant Stacy Jacobsen filed a Motion for Contempt, alleging Appellee Mitchell Burgard violated their Marital Property Settlement Agreement (MPSA) by failing to transfer Yasmine to her possession. (Doc. 24).

Following a hearing on January 16, 2024, the District Court issued its Findings of Fact, Conclusions of Law and Order on February 15, 2024, denying Stacy's contempt motion regarding the cat. (Doc. 34). The District Court found that Mitchell had properly provided notice in 2016, that Stacy understood the notice, and that despite extensions, she "was never prepared to take possession of Yasmine." (Doc. 34, ¶¶ 3-6).

Stacy failed to timely appeal the February 15, 2024 Order. Instead, she filed a Petition for Out of Time Appeal on March 18, 2024, which this Court denied on

March 26, 2024, finding the order was not appealable. (Supreme Court Cause No. DA 24-0164).

Subsequently, the District Court issued a Notice and Order to Close Matter on May 2, 2024. (Doc. 52). Appellant then filed the present appeal, ostensibly from the May 2 Order; but actually seeking review of the February 15 Order.

STANDARD OF REVIEW

Orders denying contempt in family matters are reviewed for abuse of discretion. *In re Marriage of Baer*, 1998 MT 29, ¶ 45, 287 Mont. 322, 954 P.2d 1125. However, this Court will not reverse a District Court's decision not to hold a party in contempt "absent a blatant abuse of discretion." *Id*.

The *Baer* court emphasized that contempt "is a discretionary tool of the court to enforce compliance with its decisions" and that a District Court's "power to inflict punishment by contempt is necessary to preserve the dignity and authority of the court." *Id*. Where a District Court "has found that there is no such need to enforce compliance with its order or that the actions of a party do not present a challenge to its dignity and authority, [this Court] will not reverse its decision absent a blatant abuse of discretion." *Id*.

Even when factual allegations of a violation are established, "the District Court's decision to find [a party] in contempt would still be a matter within its discretion, based upon its perceived need to enforce its order or the threat to its

authority." *Baer*, ¶ 46. Under such a highly deferential standard, this Court should affirm unless Stacy demonstrates that the District Court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice.

Property settlement agreements in marital dissolutions are governed by contract law. *In re Marriage of Mease*, 2004 MT 59, ¶ 20, 320 Mont. 229, 92 P.3d 1148; Mont. Code Ann. § 40-4-201(5). Such agreements are interpreted the same as any other contract in that the plain language controls. *Heath v. Heath*, 272 Mont. 522, 527, 901 P.2d 590, 593 (1995). Courts must enforce the provisions as drafted and cannot rewrite contracts under the guise of interpretation.

STATEMENT OF FACTS

Stacy and Mitchell dissolved their marriage on December 17, 2015, after a relationship that produced no children but included a shared life with their cat, Yasmine. (Doc. 14). The parties acquired Yasmine together in December of 2008 from the Flathead County Animal Shelter. As part of their divorce proceedings, the parties executed a Marital Property Settlement Agreement (MPSA) on November 23, 2015, which specifically addressed Yasmine's ownership and care. (Doc. 11).

The MPSA's provisions regarding Yasmine were carefully drafted to address the practical realities of the parties' post-divorce circumstances. The agreement stated:

> Wife shall be awarded possession of the parties' cat (Yasmine). Husband agrees to care for said cat until Wife requests possession thereof. Following the sale of the marital home as set forth under ¶ 9(d) below, if Husband's new residence does not allow cats, he shall notify Wife and Wife shall make arrangements to either take the cat or make other arrangements for the care of the cat within 20 days following Wife's acknowledged receipt of said notice from Husband. If Wife fails to take the cat or make arrangements for care, Husband shall be allowed to give the cat to an appropriate caregiver.

(Doc. 11, ¶ 9(c)).

This provision reflected the parties' understanding that Stacy would eventually take Yasmine, but that Mitchell would provide temporary care until she was able to do so.

Following the divorce, the parties' respective circumstances dictated the immediate care arrangements for Yasmine. Stacy did not have stable housing suitable for a pet and was unable to take immediate possession of Yasmine. (1/16/24 Tr. Vol. 1 (hereinafter Tr. 1) at 11-12). During this period, Stacy relocated to San Francisco for work opportunities, living in temporary housing that did not permit pets. (Tr. 1 at 22). Meanwhile, Mitchell continued residing at the marital home with Yasmine, providing her daily care, veterinary needs, and a stable environment. (Tr. 1 at 11-12, 61).

In 2016, the marital home was sold. Mitchell's counsel formally notified Stacy's attorney on June 30, 2016, that the marital home was being sold and

requested that Stacy retrieve Yasmine pursuant to the MPSA's terms. (Tr. 1 at 19, Ex. C). The District Court found as a matter of fact that "Petitioner gave Respondent notice in 2016 to retrieve Yasmine pursuant to the terms of the MPSA, and Respondent understood the notice." (Doc. 34, ¶ 3).

Stacy acknowledged receiving and understanding this notice but faced practical obstacles to taking possession of Yasmine. (Doc. 34, ¶ 3). At that time, Stacy remained in San Francisco, still residing in temporary housing unsuitable for pets. (Tr. 1 at 22). She immediately began but was unsuccessful in securing a temporary alternative caregiver who could care for Yasmine until she obtained pet-appropriate housing. (Tr. 1 at 21-23). As the District Court later found, this was "corroborated through Exhibit D, which was then Stacy posted on Facebook trying to find somebody to take the cat." (Tr. 2 at 43).

Rather than strictly enforcing the MPSA's 20-day deadline, Mitchell showed flexibility and compassion for Stacy's circumstances. On July 29, 2016, when Stacy requested additional time to make arrangements, Mitchell responded the same day with an accommodation that went well beyond the agreement's requirements. He stated he was "okay with it being longer than exactly 21 days, as long as there is momentum and progress towards a solution," and agreed to extend the timeline for "weeks or months but not years." (Doc. 34, ¶ 4; Tr. 1 at 28-29, Ex. G).

Importantly, after the sale of the marital home, Mitchell moved to an apartment that allowed cats. (Tr. 1 at 61). This meant the condition precedent in the MPSA, that his new residence not allow cats, never materialized. Nevertheless, Mitchell had already provided notice to Stacy and continued to work with her regarding Yasmine's eventual transfer.

What was intended as a temporary arrangement extended far beyond what anyone anticipated. Mitchell continued caring for Yasmine from 2015 through the time of trial in 2024, a period of approximately nine years. During this time, Yasmine aged from approximately seven to 16 years old, spending more than half her life in Mitchell's exclusive care. (Doc. 34, ¶ 5).

Throughout these nine years, Mitchell provided Yasmine with consistent veterinary care, daily feeding and attention, and a stable home environment. (Tr. at 1 at 83; Tr. 2 at 5). Stacy did not provide any financial support for Yasmine during this period. (Tr. 2 at 7). Mitchell did not transfer Yasmine to a third-party caregiver as the MPSA would have permitted, instead choosing to continue providing her care himself when Stacy never retrieved her. (Tr. 1 at 83).

The District Court made crucial findings about Stacy's actions during this extended period: "during those nine years [Stacy] was never prepared to take possession of Yasmine. Any follow up from [Stacy] was only to visit Yasmine." (Doc. 34, ¶ 6). This finding, supported by substantial evidence, demonstrates that

Stacy's interactions with Yasmine over nearly a decade were limited to occasional visits, prior to the spring of 2016, rather than any genuine effort to assume responsibility for her care.

The status quo continued without incident for nearly seven years until February 2023, when Stacy suddenly contacted Mitchell from an unknown phone number and demanded immediate possession of Yasmine. (Doc. 28 at 7; Tr. 1 at 78-79). This demand came without warning and without any change in circumstances that would explain why Stacy was suddenly prepared to take possession after years of inaction.

Mitchell refused Stacy's demand because Stacy's extended delay had forfeited any right she might have had to reclaim Yasmine. From Mitchell's perspective, after providing Yasmine with a loving home for eight years while Stacy showed no genuine interest in taking possession, it would be cruel to both him and Yasmine to suddenly uproot the elderly cat.

Following Mitchell's refusal, Stacy filed her Motion for Contempt on November 16, 2023, alleging that Mitchell had violated the MPSA by failing to transfer Yasmine to her. (Doc. 24). The matter proceeded to a hearing on January 16, 2024, where both parties presented evidence regarding the history of Yasmine's care and the communications between them.

At that hearing on Stacy's contempt motion, both parties presented testimony and exhibits regarding the history of Yasmine's care. After hearing all evidence, the District Court made detailed oral findings from the bench. (Tr. 2 at 43-47.)

The District Court began by acknowledging the conditional nature of the MPSA provision: "the property settlement agreement awarded the cat to the wife, but it was conditional. In this case the house did sell." (Tr. 2 at 43). The Court then made specific factual findings based on the evidence presented:

> The Court does find that Mitch gave Stacy notice. Stacy understood that notice. That was corroborated through Exhibit D, which was then Stacy posted on Facebook trying to find somebody to take the cat. Stacy did not provide any financial support for the cat. Mitch did give an extension of weeks and months, but not years.

(Hearing Tr. 2 at 43.)

Most significantly, the Court found a complete absence of evidence that Stacy was ever prepared to take possession of Yasmine during the relevant time period. "The Court sees no evidence today that Stacy ever said on this such and such date I'm prepared to take Yasmin, to get Yasmin to herself or to another party. Any follow-up contact from Stacy to Mitch had to do with visitation." (Hearing Tr. 2 at 43-44.) Based on these findings, the Court concluded: "And so, in regards to the cat, the Court will deny the contempt." (Hearing Tr. 2 at 44.) The Court also recognized the emotional toll this dispute had taken on both parties, observing that "obviously from today's hearing, these parties -- we need to be done and should not be in contact

with one another in the future. They both have testified the emotional distress and triggering one another causes to the other." (Hearing Tr. 1 at 46.) The District Court concluded that "Mitch doesn't have any obligation as far as the cat to provide any updates to Stacy." (Hearing Tr. 2 at 47.)

Following the hearing, the District Court issued its written Findings of Fact, Conclusions of Law and Order on February 15, 2024, which formalized the oral findings made at the hearing. (Doc. 34). The written order found that "Petitioner gave Respondent notice in 2016 to retrieve Yasmine pursuant to the terms of the MPSA, and Respondent understood the notice." (Doc. 34, ¶ 3). "Petitioner granted an extension of weeks and months to the Respondent, but not years to retrieve Yasmine." (Doc. 34, ¶ 4). "Yasmine is currently 16 years old and has been in the Petitioner's home for 9 years." (Doc. 34, ¶ 5). "Respondent was not prepared to take the cat. During those nine years Respondent was never prepared to take possession of Yasmine. Any follow up from Respondent was only to visit Yasmine." (Doc. 34, ¶ 6). Based on these findings, the District Court denied Stacy's contempt motion regarding Yasmine, concluding that Mitchell had not violated the MPSA under the circumstances presented. (Doc. 34). The Court's order reflected its recognition that enforcing the strict terms of the MPSA after nine years of Stacy's inaction would be neither equitable nor in Yasmine's best interests.

Following the February 15, 2024, Order, Stacy engaged in a series of procedural attempts to collaterally attack and circumvent the District Court's ruling. First, on February 27, 2024, Stacy filed a "Motion for Consideration of Additional Evidence, Including Instances of Misleading Testimony from Opposing Party" pursuant to Montana Rules of Civil Procedure 59 and 60. (Doc. 35.) In this motion, she claimed to have discovered "additional evidence that further substantiates her claims and provides new insights into the Petitioner's conduct and intentions, including evidence of misleading testimony." She sought to introduce new evidence pertaining to the cat and requested the Court reconsider its previous rulings in light of this purported new evidence. This motion was deemed denied by operation of law when 60 days elapsed without a ruling from the District Court. See M. R. Civ. P. 59(g), 60(c).

Then, Stacy failed to timely appeal the February 15, 2024, Order on contempt. The deadline to file a notice of appeal was March 18, 2024, thirty days after entry of the order. See M. R. App. P. 5(b)(1). Instead of properly filing a notice of appeal, Stacy filed a Petition for Out-of-Time Appeal on March 18, 2024, the day her deadline expired. (Supreme Court Cause No. DA 24-0164).

This Court denied Stacy's petition on March 26, 2024, making two critical determinations. First, the Court found that the February 15 Order was not an appealable order, stating:

> Jacobsen seeks to appeal an improper judgment. A party may appeal from a certain, specified final judgment in a district court action. M. R. App. P. 6(1)... Jacobsen appeals a lone order that does not affect her substantial rights; the order denied her motion for contempt, does not compel her to do anything, and comes nine years after she was to seek possession of the cat.

(Order in Supreme Court Cause No. DA 24-0164 at 2.)

This Court's Order, dated March 26, 2024, definitively established that the February 15 Order was not appealable. Following this Court's denial of her petition and the deemed denial of her motion for additional evidence, the District Court issued a routine Notice and Order to Close Matter on May 2, 2024. (Doc. 52). This administrative order simply closed the court file and contained no substantive rulings or determinations.

Stacy then filed the present appeal on May 31, 2024, ostensibly from the May 2 closure order but seeking review of the same February 15 Order that this Court already determined was not appealable. Notably, Stacy's Opening Brief makes no mention of this Court's March 26, 2024, Order, her prior unsuccessful attempt to appeal the February 15, 2024, Order, or her motion for additional evidence that was deemed denied.

SUMMARY OF THE ARGUMENT

This appeal should be dismissed because Appellant is attempting to circumvent this Court's prior ruling and established appellate procedures. On March

26, 2024, this Court specifically determined that the February 15, 2024, Order denying Stacy's contempt motion "does not affect her substantial rights" and is not appealable. Under the doctrine of the law of the case established in *Watchtower*, that determination is binding and cannot be relitigated through the procedural maneuver of appealing an administrative closure order.

Additionally, the February 15 Order constitutes a "lone contempt order" under *Marez* that lacks the ancillary determinations necessary for appealability. Stacy's transparent attempt to manufacture jurisdiction, after missing her appellate deadline and having her petition denied, would eviscerate the carefully crafted rules governing contempt appeals if permitted.

Should this Court reach the merits, the District Court's denial of contempt was well within its broad discretion. The evidence established that Mitchell fulfilled his obligations under the MPSA by providing notice in 2016 when the marital home was sold. When Stacy requested additional time, Mitchell went beyond the agreement's 20-day requirement by granting extensions of "weeks or months." Despite this accommodation, the District Court found, based on substantial evidence including Stacy's own Facebook posts seeking someone else to take Yasmine, that she "was never prepared to take possession" during the entire nine-year period. Under *Baer's* highly deferential standard requiring a "blatant abuse of discretion" to reverse, these factual findings and the District Court's exercise of discretion must be affirmed.

The MPSA's plain language supports the District Court's interpretation. Mitchell satisfied the agreement's notice provision following the home's sale, and Stacy's nine-year delay constitutes abandonment of any enforcement rights. The agreement's permissive language, that Mitchell "shall be allowed" to rehome Yasmine if Stacy failed to act, gave him discretion to continue providing care when his residence permitted it. Montana law recognizes that rights may be forfeited through prolonged inaction and enforcing the MPSA after Stacy's decade of disengagement while Mitchell provided sole financial and daily care would be inequitable and contrary to the agreement's purpose of ensuring Yasmine's welfare.

ARGUMENT

I. THE DOCTRINE OF THE LAW OF THE CASE, AND THIS COURT'S PRIOR ORDER, PRECLUDE THIS APPEAL.

This appeal represents Stacy's second attempt to appeal the District Court's February 15, 2024, Order. On March 18, 2024, she filed a Petition for Out-of-Time Appeal seeking to appeal the same order. (Supreme Court Cause No. DA 24-0164). This Court denied that petition on March 26, 2024, specifically finding:

> Jacobsen seeks to appeal an improper judgment. A party may appeal from a certain, specified final judgment in a district court action. M. R. App. P. 6(1)... Jacobsen appeals a lone order that does not affect her substantial rights; the order denied her motion for contempt, does not compel her to do anything, and comes nine years after she was to seek possession of the cat.

(*Order* in Supreme Court Cause No. DA 24-0164 at 2.)

This Court's determination that the February 15 Order is not appealable is entitled to preclusive effect under the doctrine of the law of the case. As the Montana Supreme Court explained in *Watchtower Bible*, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Watchtower Bible & Tract Society of New York, Inc. v. Montana Twentieth Judicial District Court*, 2021 MT 13, ¶ 11, 403 Mont. 57, 479 P.3d 946 (citing *Norbeck v. Flathead County*, 2019 MT 84, ¶ 26, 395 Mont. 294, 438 P.3d 811; *Arizona v. California*, 460 U.S. 605, 618, 103 S. Ct. 1382, 1391, 75 L.Ed.2d 318 (1983)). Notably:

> The judgments of appellate courts are as conclusive as those of any other court. They not only establish facts, but also settle the law, so that the law as decided upon any appeal must be applied to *all the subsequent stages of the cause*, and they are res judicata *in other cases* as to every matter adjudicated.

Cent. Mont. Stockyards v. Fraser, 133 Mont. 168, 187, 320 P.2d 981, 991 (1957) (quoting 2 Abraham Clark Freemen, *A Treatise on the Law of Judgments*, § 639, 1345-46 (5th Ed. 1925)) (emphasis added).

The doctrine of the law of the case "refers to instances where rulings made at a stage in litigation that are not appealed from when the opportunity to do so exists, become the law of the case for the future course of that litigation and the party that does not appeal is deemed to have waived the right to attack that decision at future points in the same litigation." *Watchtower*, ¶ 11. Here, Stacy had the opportunity to

seek further review of this Court's March 26 Order but declined to do so. Instead, she waited for an administrative closure and now seeks a second bite at the apple, attempting to relitigate the same issue this Court plainly determined.

While the *Watchtower* Court noted that the law of the case "is normally decisive, it does not have the same binding force as the doctrine of res judicata," it nonetheless emphasized that the doctrine "should continue to govern the same issues in subsequent stages in the same case." *Watchtower*, ¶ 11 (citing *Norbeck*, ¶ 26). This Court's prior determination that the February 15 Order "does not affect her substantial rights" and is, therefore, not appealable must govern here.

Stacy cannot circumvent this Court's prior ruling simply by waiting for an administrative closure and then claiming to appeal from that "final judgment." The doctrine of the law of the case prevents relitigation of issues already decided by an appellate court. Stacy's failure to acknowledge this Court's March 26, 2024, Order, in her Opening Brief, much less distinguish it, is telling. Had Appellant mentioned the Order, she would have been forced to confront the express determination that the February 15 Order "does not affect her substantial rights" and is therefore not appealable

II. REGARDLESS OF THE PRIOR RULING BY THIS COURT, THE FEBRUARY 15 ORDER IS SUBSTANTIVELY NOT APPEALABLE.

Even setting aside from this Court's prior determination, the February 15 Order is not appealable under controlling Montana precedent. "A 'lone contempt

order' is not subject to direct appeal. *In re Marriage of Marez & Marshall*, 2014 MT 333, ¶ 25, 377 Mont. 304, 340 P.3d 520 (citing *Lee v. Lee*, 2000 MT 67, ¶ 37, 299 Mont. 78, 996 P.2d 389). Absent an "ancillary order determining the substantive rights of the parties" the order cannot be appealed. Mont. Code Ann. § 3-1-523(2); *Grounds v. Coward*, 2000 MT 128, ¶ 6, 300 Mont. 1, 2 P.3d 822.

Despite this black letter law, Stacy made no attempt to distinguish the holding or argue the Order was something other than a "lone contempt order." Remarkably, her Opening Brief fails to even cite *Marez*, despite it being the controlling authority on the appealability of contempt orders in family law proceedings. This omission suggests either inadequate research or a deliberate attempt to avoid unfavorable precedent.

In *Marez*, this Court distinguished between appealable and non-appealable contempt orders. The order in *Marez* was appealable because it "was issued following a show cause hearing that addressed nine separate motions and ordered father's parenting time reinstated, set a location for future visitation exchanges, granted mother's motion to change venue...and determined that mother had influenced child's decision not to visit with father." *Marez*, ¶ 25. In other words, the *Marez* order contained multiple ancillary orders that affirmatively changed the parties' rights and obligations.

Here, the District Court's February 15 Order did none of these things. It simply denied Appellant's contempt motion, made factual findings supporting that denial, and maintained the status quo.

Unlike *Marez*, no parenting time was modified, no exchanges were relocated, no venues were changed, and no affirmative relief was granted. The District Court's factual findings that Mitchell gave proper notice in 2016 and that Stacy "was never prepared to take possession" were merely the basis for denying contempt, not independent orders affecting the parties' rights.

Importantly, this is long standing precedent in Montana. In *Lee*, this Court addressed the "family law" exception to appeal of contempt orders, noting that Mont. Code Ann. § 3-1-523 was a verbatim codification of § 93–9814, RCM (1947), and its precursor, § 9921, Rev.C. (1921 & 1935). *Lee*, ¶ 27. As *Lee* explains, under current statutory law, its precursor the RCM and its predecessor as well, an order is only appealable "when, and only when, the judgment appealed from includes an ancillary order which effects the substantial rights of the involved parties." *Lee*, ¶ 37.

As *Lee* emphasized, in family law, only contempt orders containing ancillary rulings that change or determine rights are appealable. The District Court's February 15 Order contains no such provisions or ancillary orders. It merely denied relief, leaving the parties' rights exactly as they were before the motion was filed.

Appellant cannot transform routine factual findings into "ancillary orders" simply by disagreeing with them. If that were the rule, every order denying contempt would be immediately appealable, eviscerating the legislature's clear intent under Mont. Code Ann. § 3-1-523.

A. Stacy's Citations to *Lutes* is Misplaced.

While Stacy cites *Marriage of Lutes* for the general proposition that certain contempt orders are appealable, that case actually demonstrates why this appeal must be dismissed. *Lutes v. Lutes*, 2005 MT 242, 328 Mont. 490, 121 P.3d 561. In *Lutes*, the contempt order "adjudicated additional matters relating to federal preemption of division of VA disability benefits[,]" a substantive legal issue that affected the parties' property rights going forward. *Lutes,* ¶ 11. Citing to *Lee* and its progeny, *Lutes* emphasized that direct appeal is only appropriate where the contempt order includes "an ancillary order within [the court's] jurisdiction in determining the rights of the parties." *Lutes,* ¶ 10.

To be appealable, an order must do more than simply deny contempt; it must adjudicate substantive rights or create new obligations. The District Court's February 15 Order did neither. Unlike *Lutes*, where order on appeal substantively determined the ongoing enforceability of a property division, the District Court here simply found that Mitchell had already complied with the MPSA in 2016. The court made no prospective rulings, created no new obligations, and adjudicated no

ongoing rights. Finding that Mitchell gave notice in 2016 and that Stacy "was never prepared to take possession" were factual findings supporting the contempt denial, not ancillary orders affecting substantial rights. (Doc. 34 at 2.)

This distinction is crucial. *Lutes* involved a determination about future enforcement of an agreement; this case simply involves backward-looking factual findings about past compliance. Here, the District Court's finding that Mitchell had already satisfied his obligations in 2016 does not constitute the type of ancillary order that makes a contempt denial appealable under *Lee*, *Lutes*, *Marez*, and Mont. Code Ann. § 3-1-523.

B. Stacy's Citation to *Marriage of Stevens* is Misplaced.

Likewise, Appellant's reliance on *Marriage of Stevens* undermines rather than supports her position. In *Stevens*, and consistent with the other case law discussed, this Court found a contempt order appealable because it "affected substantive provisions of the decree of dissolution" by "effectively modif[ying] the decree's provisions directing the distribution of property without any request by either party for such a modification." *In re Marriage of Stevens,* 2011 MT 124, ¶ 20, 360 Mont. 494, 255 P.3d 154. The *Stevens* court emphasized that the District Court had exceeded its authority by changing property rights without notice or a hearing. *Stevens*, ¶ 21.

Stevens is distinguishable from the present circumstances in several critical ways. First, there the District Court entered a $21,000 judgment against the ex-wife rather than simply denying contempt which created new financial obligations and fundamentally altered the parties' rights. Here, the District Court merely denied contempt based because Mitchell had already complied with the MPSA in 2016. No new obligations were created, no property was transferred, and no rights were modified.

Second, *Stevens* involved a modification of property distribution that occurred during the contempt proceeding itself. The District Court in *Stevens* changed who would receive property going forward. Here, the District Court only made backward-looking factual findings about events from 2016, determining that Mitchell had already satisfied his obligations years earlier.

Third, and most importantly, *Stevens* is based on the well-established proposition that a District Court cannot modify property distribution without proper notice and opportunity to be heard. *Stevens*, ¶¶ 20-21. Ironically, what *Stevens* prohibits is precisely what Stacy seeks here: to have this Court modify property rights that were settled in 2016 without ever filing a motion to modify the decree.

If anything, *Stevens* counsels against entertaining this untimely appeal that seeks to relitigate property rights nine years after the fact. *Stevens'* concern was protecting parties from procedurally irregular modifications of their property rights.

Here, no modification occurred because no motion to modify was ever filed or before the District Court. Instead, the determination was limited to the finding that the MPSA's requirements were satisfied in 2016. This maintained the status quo rather than altering any rights.

C. Stacy's Attempts to Circumvent Proper Appellate Procedure Should not be Rewarded.

According to Stacy's Notice of Appeal, she is appealing the District Court's order dated May 2, 2024. The entirety of that order, captioned "NOTICE AND ORDER TO CLOSE MATTER" is as follows:

> Upon Respondent's "Motion for Consideration of Additional Evidence, Including Instances of Misleading Testimony from Opposing Party" and more than sixty days having passed since said motion was filed,
>
> Notice is hereby given that, pursuant to M.R.Civ.P. 60(c)(1), the motion and all related filings, including but not limited to Respondent's motion for a contested hearing and Supplemental Affidavit, must be deemed DENIED.
>
> The Clerk of Court is ordered to close the matter.

(Doc. 52.)

Importantly, as a matter of law, the Notice did not deny Stacy's motion. That occurred by operation of law on April 29, 2024. See M. R. Civ. P. 60(c)(1) and 59(f). The notice of deemed denial was exactly that: a notice. It did not serve to deny the motion for relief from judgment or order, it only informed that parties that an operation of law had previously occurred and directed the Clerk of Court to

administratively close the file; an action directed to the technical status of the file in case management rather than the substantive rights of the parties. That is the sum total of the order Stacy now appeals.

Nonetheless, undeterred by procedural requirements or black letter law, Stacy's Opening Brief characterizes her appeal as arising "

> from the District Court's February 15, 2024 Findings of Fact, Conclusions of Law and Order on Respondent's Motion to [sic] Contempt … and the subsequent May 2, 2024, Notice and Order to Close Matter … denying Appellant Stacy Jacobsen's motion to enforce a divorce decree awarding her possession of the parties' cat, Yasmine.

This is a blatant misrepresentation of her own Notice of Appeal as well as the procedural record herein. The implication that the February 15 Order and the May 2 Order have anything to do with one another is specious, misleading, and in bad faith.

The history of this case reveals Stacy's persistent attempts to circumvent proper appellate procedures:

> **February 15, 2024**: District Court denies Stacy's contempt motion.
>
> **March 18, 2024**: Stacy files her Petition for Out-of-Time Appeal.
>
> **March 26, 2024**: This Court denies the petition, finding the order denying contempt is not appealable.
>
> **May 2, 2024**: District Court issues a routine administrative closure.

> **May 21, 2024**: Appellant files this appeal, ostensibly from the administrative closure notice but then seeking review of the February 15 Order in her *Opening Brief*.

This pattern demonstrates either a fundamental misunderstanding of appellate procedure or a deliberate attempt to manufacture appellate jurisdiction where none exists.

This Court should not reward such procedural gamesmanship. Allowing parties to circumvent this Court's rulings by simply waiting for administrative orders would undermine the finality of judicial decisions and encourage endless litigation. The fact that Stacy represented herself during the first appeal is no excuse. "While pro se litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules." *Seymour v. State*, 2025 MT 88, ¶ 20, 421 Mont. 434, 567 P.3d 917 (citing *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124).

Prior to full briefing, this Court held on May 6, 2025, that the May 2 closure order constituted a "final judgment." Respectfully, that determination does not transform the non-appealable February 15 Order into an appealable one. The May 2 Order was purely administrative, it contained no substantive rulings, made no determinations about rights, and simply closed a dormant file.

Accepting Stacy's theory would mean that any party dissatisfied with a non-appealable order could simply wait for an administrative closure and then appeal. This would eviscerate the carefully crafted rules distinguishing appealable from non-appealable orders in contempt proceedings.

Moreover, Appellant's brief confirms she is not actually appealing the May 2 Order. She seeks no relief from that order and makes no argument about it. Her entire brief addresses the February 15 Order, which this Court has already determined is not appealable.

III. THE DISTRICT COURT'S DECISION TO DENY CONTEMPT IS ENTITLED TO A HIGH DEGREE OF DEFERENCE.

Contempt is a discretionary tool of the court to enforce compliance with its decisions. *In re Marriage of Jacobson*, 228 Mont. 458, 464, 743 P.2d 1025, 1028 (1987). A District Court's power to inflict punishment by contempt is necessary to preserve the dignity and authority of the court. *Id*. (see also *Woolf v. Evans*, 264 Mont. 480, 483, 872 P.2d 777, 779 (1994)). "Accordingly, where a district court has found that there is no such need to enforce compliance with its order or that the actions of a party do not present a challenge to its dignity and authority, we will not reverse its decision absent a blatant abuse of discretion." *Marriage of Baer*, ¶ 45 (emphasis added).

The record here readily satisfies that deferential standard. After hearing testimony and reviewing the exhibits, the District Court made specific, credibility-

infused findings: "Mitch gave Stacy notice. Stacy understood the notice. Mitch did give an extension of weeks and months, but not years." (Hearing Tr. 2 at 43; Doc. 34, ¶¶ 3-4.) It further found that, despite years of accommodation, Stacy "was never prepared to take possession of Yasmine." (Doc. 34, ¶¶ 3-6.) Those findings are supported by substantial, concrete evidence, including Stacy's own acknowledgment that she received and understood the 2016 notice and her contemporaneous efforts to find someone else to take the cat rather than arranging to retrieve Yasmine herself. (Hearing Tr. 2 at 43; Doc. 34, ¶ 3.)

Under the governing standard, this Court does not reweigh that evidence or second-guess the District Court's credibility determinations. See *Marriage of Baer*, ¶ 45. The question is not whether Stacy can posit an alternative narrative; it is whether the District Court acted arbitrarily, without conscientious judgment, or exceeded the bounds of reason. *Id.* The District Court's thorough oral findings and written order reflect the opposite: a careful assessment of years of communications, repeated extensions, and the practical realities facing an elderly animal that had lived in Mitchell's care for nearly a decade. (Hearing Tr. 2 at 43–47; Doc. 34, ¶¶ 4-6.)

Contempt is a coercive tool designed to address present defiance of a court order, not to revisit long-dormant disputes when the party seeking enforcement has never taken the steps necessary to comply with the agreement's conditions. The District Court reasonably concluded that, after nine years of inaction despite notice

and multiple accommodations, contempt was neither equitable nor warranted on this record. (Hearing Tr. 2 at 47; Doc. 34, ¶¶ 4-6.) That determination falls squarely within the discretion *Baer* protects.

Ultimately, Stacy's challenge asks this Court to substitute its view of the facts and credibility for the District Court's. That is precisely what the "blatant abuse of discretion" standard forbids. *Marriage of Baer*, ¶ 45. Because the District Court applied conscientious judgment to a fully developed record and reached a reasoned conclusion supported by the evidence, its denial of contempt must be affirmed.

IV. THE DISTRICT COURT PROPERLY APPLIED THE TERMS OF THE MPSA.

Should this Court reach the merits of Stacy's contempt appeal, the District Court should be affirmed. The District Court correctly applied the MPSA's plain language and reached the only conclusion the evidence would permit: Mitchell complied with its notice provisions in 2016, and Stacy abandoned any right to enforce them through her years of inaction. The MPSA required Mitchell to notify Stacy that she could retrieve Yasmine "following the sale of the marital home." The District Court found as a matter of fact that "Petitioner gave Respondent notice in 2016 to retrieve Yasmine pursuant to the terms of the MPSA, and Respondent understood the notice." (Doc. 34, ¶ 3).

Property settlement agreements, like all contracts, must be interpreted according to their plain language. *Heath*, 272 Mont. at 527, 901 P.2d at 593. Courts

are not free to rewrite such agreements under the guise of interpretation. Here, the plain language of the MPSA required only that, upon sale of the marital home, Mitchell notify Stacy so she could arrange to take Yasmine or make other arrangements within 20 days.

Stacy's condition precedent argument fails both legally and factually. Even accepting her interpretation arguendo, three independent grounds defeat her claim: First, the condition's purpose was satisfied. The MPSA's evident purpose was ensuring Yasmine's welfare and giving Stacy notice when circumstances changed. Both occurred, Yasmine received excellent care and Stacy received actual notice. Second, strict compliance was waived. Mitchell's express written waiver combined with nine years of performance without objection eliminated any right to demand strict compliance. Third, Stacy is estopped from claiming non-compliance after accepting the benefits of Mitchell's continued care for nine years while making no effort to retrieve Yasmine or contribute financially.

Moreover, Mitchell went beyond the MPSA's requirements by granting extensions "of weeks or months" when Stacy claimed she needed more time. (Doc. 34, ¶ 4). The MPSA only required a 20-day notice period, yet Mitchell accommodated Stacy's requests for additional time.

The District Court's finding that Stacy "was never prepared to take possession of Yasmine" during the nine years following the divorce is fatal to her contempt

claim. (Doc. 34, ¶ 6). This finding, supported by substantial evidence, demonstrates that Stacy abandoned any right to enforce the MPSA's provisions regarding Yasmine.

Nine years is not a reasonable time to retrieve a pet after receiving notice. The MPSA contemplated 20 days, which Mitchell extended to "weeks or months but not years." (Doc. 34, ¶ 4). Stacy's failure to act for nearly a decade constitutes abandonment of her rights under the agreement. The facts paint a clear picture: For nine years, Mitchell has been Yasmine's sole caregiver, feeding her daily, taking her to veterinary appointments, comforting her through the ailments of old age. During this time, Stacy never contributed to expenses, never scheduled a veterinarian appointment, and never demonstrated she had suitable housing ready. Her "follow-ups" were requests for social visits when convenient, not attempts to fulfill the responsibilities of pet ownership.

The District Court correctly recognized this reality, finding that "any follow up from Respondent was only to visit Yasmine." (Doc. 34, ¶ 6). This finding underscores that Stacy treated Mitchell as Yasmine's permanent caretaker, not as a temporary custodian holding the cat for her eventual retrieval.

Mitchell has provided a stable, loving home for Yasmine for nine years. The cat is now 16 years old and has spent more than half her life in Mitchell's care. (Doc.

34, ¶ 5). Under these circumstances, the District Court properly exercised its discretion in denying the contempt motion.

The MPSA's provision allowing Mitchell to "give the cat to an appropriate caregiver" if Stacy failed to retrieve her within 20 days did not require him to rehome Yasmine. It permitted him to do so. Given that his new residence allowed cats and Yasmine was thriving in his care, Mitchell's decision to continue caring for her was entirely reasonable.

Enforcing the MPSA to require Mitchell to surrender Yasmine after 17 years of ownership, and 11 years as her sole caretaker, would be inequitable and contrary to the agreement's purpose. The MPSA was designed to ensure Yasmine had proper care, not to enable Stacy to reclaim her after abandoning her for over a decade.

A. Stacy's Citation to *Hart* is Misplaced.

Stacy cites *Hart v. Honrud* for the broad proposition that any breach of a contract provision prohibits the breaching party from enforcing other terms. *Hart v. Honrud*, 131 Mont. 284, 309 P.2d 329 (1957). This fundamentally mischaracterizes *Hart*'s holding and fails to acknowledge the critical distinction that made *Hart* applicable: bad faith. In *Hart*, the Montana Supreme Court held that a vendor who acted in bad faith by contracting to sell land he did not own could not rely on the contract's limitation of liability provisions. The court specifically stated: "Parties to contract for sale of land may stipulate in their contract what measure of liability shall

be in case of failure of vendor to perform; but this rule does not apply where vendor has been guilty of bad faith." *Hart*, 131 Mont. at 291.

The *Hart* ruling was explicitly premised on the vendor's bad faith: he knowingly contracted to sell his brother's land without authority, made false representations about his ability to convey title, and failed to make good faith efforts to obtain the necessary deed. The court found "fraud as a matter of law." *Id*. 131 Mont. at 289.

No such bad faith exists here. Mitchell's decision to continue caring for Yasmine when his new residence allowed cats was entirely reasonable and consistent with the MPSA's purpose of ensuring Yasmine's welfare. The MPSA provision stating Mitchell "shall be allowed to give the cat to an appropriate caregiver" was permissive, not mandatory. Unlike the vendor in *Hart* who acted fraudulently, Mitchell acted in good faith to provide continued care for an elderly cat who had lived with him for nine years.

Moreover, *Hart* is inapposite because the relevant obligations here were executed in 2016. Mitchell performed by giving notice; Stacy acknowledged receipt. The contractual dance was complete. *Hart*'s bad faith doctrine cannot retroactively void performed obligations nine years later.

Stacy's attempt to transform *Hart*'s narrow bad faith exception into a broad rule that any alleged breach bars enforcement of other contract terms is simply

incorrect. Montana law does not support such an expansive reading. Without evidence of bad faith, which is entirely absent from this record, *Hart v. Honrud* has no application to this case.

B. Stacy's Citation to *Davidson* is Misplaced.

Stacy misapplies *Davidson v. Barstad*, which addressed pre-auction bid requirements for contract formation, not post-performance enforcement of executed agreements. *Davidson v. Barstad*, 2019 MT 48, ¶ 24, 395 Mont. 1, 435 P.3d 640. That case turned on whether an auctioneer's acceptance of non-certified funds waived strict compliance with pre-bid requirements, finding the auctioneer had actual and ostensible authority to modify those requirements. *Id*.

Davidson supports Mitchell, not Stacy. The case recognizes that parties' conduct can waive strict contractual requirements. *Id*., ¶ 24. Here, the relevant conduct is Stacy's nine-year pattern of inaction after receiving notice and being granted extensions. Just as the *Davidson* court found waiver through the auctioneer's acceptance of alternative performance, Stacy's decade-long acquiescence to Mitchell's continued care of Yasmine waived any right to demand strict compliance with the MPSA.

Moreover, *Davidson* involved executory obligations, requirements that had to be met before a contract could form. Here, Mitchell's obligations were fully executed in 2016 when he provided notice that Stacy acknowledged receiving and

understanding. The District Court found this as fact. (Doc. 34, ¶ 3). What remained was Stacy's obligation to retrieve Yasmine within the specified timeframe, an obligation she never fulfilled despite Mitchell's accommodations.

The critical point is this: *Davidson* teaches that waiver occurs through conduct inconsistent with insisting on strict compliance. Stacy's conduct, accepting Mitchell's extensions in 2016, making no arrangements for nine years, providing no financial support, and treating Mitchell as Yasmine's permanent caretaker, waived any right to claim breach. She cannot now invoke the MPSA's strict terms after benefiting from Mitchell's forbearance and care for nearly a decade.

C. Stacy's Citation to *Heath* is Misplaced.

Appellant's citation to *Heath* reinforces, rather than undermines, Mitchell's position. *Heath* establishes that property settlement agreements in marital dissolutions are governed by contract law and must be interpreted according to their plain language. *Heath,* 272 Mont. at 527, 901 P.2d at 593 (citing Mont. Code Ann. § 40-4-201(5)). As the *Heath* court emphasized: "If language used in a contract is clear and explicit, so is the contract's interpretation." *Id*. (citing Mont. Code Ann. § 28-3-401). Applying *Heath*'s principles here compels affirmance: First, the plain language of the MPSA is clear and explicit. Mitchell was to provide notice "Following the sale of the marital home... if Husband's new residence does not allow cats." This language unambiguously created a temporal marker (the sale) and a

conditional trigger (if the residence doesn't allow cats). The District Court correctly found that Mitchell satisfied this provision by providing notice in 2016, which Stacy acknowledged and understood.

Second, *Heath* emphasizes that once obligations under a decree become "fixed and absolute," the burden is on the obligor to make "a positive act if he desires to modify these obligations." *Heath*, 272 Mont. at 527-28, 901 P.2d at 593. Here, Mitchell's obligations became fixed in 2016 when he provided notice. Stacy's burden was to act within the prescribed timeframe or seek modification. She did neither for nine years.

Third, *Heath* recognizes that parties must follow proper procedures to modify agreements they find unreasonable. As the court stated: "If the parties find the terms of an agreement unreasonable... the proper procedure is to move the court to modify the agreement." *Id*., 272 Mont. at 527, 901 P.2d at 593. Stacy never filed a motion to modify the decree or the MPSA's provisions regarding Yasmine. Instead, she waited nine years and then filed a contempt motion—an improper attempt to circumvent the modification requirements.

Fourth, *Heath*'s standard of review supports affirmance. *Heath* confirms that contempt orders in family law cases are reviewed only to determine "whether district court acted within its jurisdiction and whether evidence supports district court's findings with respect to contempt." *Id*., 272 Mont. at 525, 901 P.2d at 592. The

evidence overwhelmingly supports the District Court's findings that Mitchell complied with the MPSA in 2016 and that Stacy was never prepared to take possession of Yasmine.

CONCLUSION

Appellant seeks review of an order this Court already determined "does not affect her substantial rights." After failing to timely appeal the February 15, 2024, Order and having her petition denied by this Court on March 26, 2024, Appellant now attempts an end-run around appellate rules by nominally appealing an administrative closure. The doctrine of the law of the case bars this transparent attempt to relitigate what this Court has already decided.

Even if this Court reaches the merits, the result is clear. The District Court found, based on substantial evidence, that Mitchell provided proper notice in 2016, granted generous extensions, and that Stacy "was never prepared to take possession of Yasmine" for nine years. These findings, made after hearing testimony and reviewing exhibits, should be afforded the "blatant abuse of discretion" deference *Baer* requires.

The equities are stark: Mitchell has been Yasmine's sole caregiver for almost 11 years, providing daily care, veterinary treatment, and a stable home without any financial contribution from Stacy. By contrast, Stacy last saw Yasmine in the Spring of 2016 and only lived with her for six years. Her sporadic visits do

not create grounds for contempt when she never fulfilled the basic responsibilities of pet ownership.

The District Court properly exercised its discretion in denying contempt. This Court should not reward procedural gamesmanship or permit the disruption of an elderly cat's life after a decade of abandonment.

For these reasons, the Court should deny this appeal as an untimely attempt to challenge an unappealable order or, in the alternative, affirm the District Court's order on the merits.

DATED: August 11, 2025.

MEASURE LAW, P.C.

By: /s/ Marybeth M. Sampsel
Marybeth M. Sampsel

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellee's Answer 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 not more than 10,000 words, excluding the certificate of service and the certificate of compliance.

MEASURE LAW, P.C.

By: /s/ Marybeth M. Sampsel
Marybeth M. Sampsel

CERTIFICATE OF SERVICE

I, Mary-Elizabeth Marguerite Sampsel, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-11-2025:

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Dated: 08-11-2025