

Mark J. Hartwig
Law Office of Mark J. Hartwig
P.O. Box 2330
Livingston, MT 59047
Tel.: 520.604.8184
Email: mjhartwig@montana.net
Attorney for Plaintiff

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0144

MEGHAN MERKER,

Plaintiff and Appellee,

vs.

JESSICA ZIMMERMANN a/k/a JESSICA DEAN
a/k/a JESSICA HEIMER,

Defendant and Appellant.

**Appellee's Motion To Dismiss
Appeal With Prejudice**

Comes now the Appellee, Meghan Merker ("Meghan"), by and through her counsel, undersigned, and prays this Court for an Order Dismissing this Appeal with Prejudice.

This Motion is brought pursuant to M.R. App. P. 12 and M.R. App. P. 13 and is based upon the files of record with this Court.

The Notice of Appeal was filed in this case on February 18, 2025. On May 28, 2025, this Court issued an Order noting that Appellant, Jessica Zimmermann's ("Jessica") brief was overdue and requiring that it be filed by June 30, 2025. Apparently on a motion filed by Jessica, the Court granted her leave to file her opening brief on July 30, 2025. This was Ordered on July 2, 2025. Meghan was never served with that motion. Nor did Jessica inquire as to whether Meghan would object to the motion, as required under M.R. App. P. 16. Jessica served her brief on Meghan, solely via email, on

July 30, 2025.

On August 1, 2025, this Court issued an Order holding Jessica's brief pending filing of a proper Certificate of Service within ten (10) days of the date of that Order. To date, Meghan has received no notice that the certificate has been filed.

In light of the foregoing, Meghan ask the Court to dismiss this appeal for failure to abide by the Rules governing the timing of filing briefs, as provided for under M.R. App. P. 13(3), and for failing to comport with the Court's Order of August 1, 2025.

Moreover, given that the Court had allowed Jessica's brief to be held, as is, pending filing of the Certificate of Service, Meghan further moves the Court to dismiss the Appeal for failure to comply with the requisites of M.R. App. P. 12. Jessica's brief fails to provide a table of authorities; does not include a standard of review; makes no reference to the record in support of factual assertions; and, does not include an appendix. In addition, the assertion made in the brief contradict the relief sought. Though not clear in the body of her brief, Jessica appears to be asserting that the award of a judgment for the underlying promissory note, for which judgment was rendered in District Court, should not have issued, while, in her prayer for relief, Jessica seeks only redress from this court for any amount in excess of the original note. The only amounts at issue, then, must be the statutory interest awarded and attorney fees and costs, as no other damages were awarded.

Jessica also appears to be seeking a writ of supervisory control, which, under the aegis of M.R. App. P. 14, should be in form of a separate petition and must be based upon the criteria set forth in M.R. App. P. 14(3) and must contain the material mandated under M.R. App. P. 14(5)(b). Jessica's brief does not sate these requisites.

While Meghan fully understands the tendency towards giving pro se litigants a degree of latitude, she asks this Court to bear in mind that in spite of being represented by counsel, the effects of the proceedings both here and in District Court have had a very deep and personal impact upon her life,

as could be expected of any individual under such circumstances.

In light of the foregoing, Meghan asks this Court to dismiss Jessica's appeal with prejudice.

The undersigned attests that he did email the Appellant to inquire as to whether she would oppose this motion to dismiss. And, while she did respond to the email, Appellant did not address the question. Hence, it is assumed that she will oppose this Motion.

Respectfully submitted this 13th day of August, 2025.

/s/ Mark J. Hartwig

Mark J. Hartwig, Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2025, a true and correct copy of the foregoing Appellee's Motion To Dismiss Appeal With Prejudice was duly served on Defendant by mail, delivered to and deposited with the United States Postal Service, postage prepaid:

Jessica Zimmermann

414 Daisy Dean Road

Wilsall, Montana 59086

Defendant/Appellant, pro se

/s/Mark J. Hartwig

Mark J. Hartwig

CERTIFICATE OF SERVICE

I, Mark J. Hartwig, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 08-13-2025:

Jessica D. Zimmermann (Appellant)
414 Daisy Dean Rd.
Wilsall MT 59086
Service Method: Conventional

Electronically Signed By: Mark J. Hartwig
Dated: 08-13-2025