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08/28/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0611

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. OP-25-0611 (Original Proceeding)

DANIEL O'CONNELL and VALERY O'CONNELL,
Petitioners,
v.
JAMES EARL SCONYERS,
Respondents.

**INTERLOCUTORY MOTION TO MONTANA SUPREME COURT FOR REVIEW OF
PRELIMINARY INJUNCTION & SJ ORDERS**

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Clerk of Supreme Court
State of Montana

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STATEMENT OF THE ISSUES

- 1) Whether the District Court Orders erred in misapplying Mont. Code Ann. § 70-9-803 by using a five-year abandonment period instead of the one-year period for personal services, ignoring Petitioners' lien and foreclosure rights under Mont. Code Ann. § 71-3-501 et seq.
- 2) Whether the District Court Orders abused its discretion in finding no cabin ownership rights by Petitioners, arbitrarily disregarding the Petitioners' lien on the cabin, & Petitioners' security interest in the cabin, and GLA Covenant compliance, and whether genuine issues of material fact preclude summary judgment.
- 3) Whether the District Court erred in ignoring multiple evidence of an implied contract for storage fees.
- 4) Whether the District Court erred in denying Petitioners' Original & Amended Motion for Summary Judgment, excluding newly discovered evidence.
Whether the District Court failed to recognize the Cabin as a private nuisance under Mont. Code Ann. § 27-30-101, necessitating abatement.
- 5) Whether the SJ Order leads to an absurd outcome violating Petitioners' property rights by allowing Plaintiff free use of their land.
- 6) Whether Plaintiff's unauthorized use of Defendants-O'Connells private property (for Sconyers refusal to remove the cabin from their property for 4 years plus) constitutes trespass, entitling Petitioners to damages.

STATEMENT OF THE CASE

This interlocutory appeal seeks review of the Sixth Judicial District Court's Order Granting Plaintiff's Request for Preliminary Injunction, filed on July 21, 2025, in Cause No. DV-2024-123, Park County, Montana. The underlying dispute arises from a property conflict initiated on July 6, 2021, when Plaintiff James Sconyers placed a two-story log cabin on Appellants' property at 56 Taurus Rd., Emigrant, Montana, with express permission for a temporary two-week storage period, as agreed in an undisputed verbal contract between the parties (O'Connells' Rule 59/60 Affidavit, ¶ 6). It is undisputed that Plaintiff failed to remove the cabin after the agreed period or pay storage fees, prompting Appellants to undertake significant maintenance efforts to preserve the cabin's condition.

The dispute escalated during Plaintiff's divorce proceedings in Cause No. DR-2021-89, Park County, where the court issued a warning on April 19, 2022, directing Plaintiff to address the cabin's status because Sconyers "rights to the cabin are in jeopardy" (DR-2021-89, ROI #35). Plaintiff-Sconyers ignored this warning from the Court in 2022 and took no action for over two years, failing to communicate or remove the cabin after O'Connells repeated demands. This forced O'Connells to file notice and a lien demanding the cabin removal from their property or else forfeit the cabin as payment for cabin storage fees. O'Connells also filed a notice of abandonment of the cabin in the local newspaper in July 2023.

The Glastonbury Landowners Association (The GLA) starting July 2022 and 3 more letters, gave written demands and notice of impending lawsuit against O'Connells if the cabin was not removed from their property or placed on a foundation, as required by GLA Covenants (see O'Connell Affidavit attached GLA letter demands). This GLA threat of lawsuit prompted, Appellants to file a possessory lien (on September 11, 2022) under Mont. Code Ann. § 71-3-1201 et al; which lien is still valid, because O'Connells complied with all notice requirements under MCA § 71-3-531, with both unexpired lien and lien notice (attached) that states unless the cabin is removed from the property by September 30, 2022... [then] a monthly storage fees [of cabin] will continue to accrue and may be included in a lien against your "...Cabin Plus" and the lien states it is a "continuing lien upon...cabin property...as required by 71-3-531 MCA") properly file with the clerk (per subsection (6)(e)) for unpaid cabin storage & maintenance fees now exceeding \$120,000. This lien and lien notice established an implied contract through Plaintiff's March 29, 2022, divorce case letter that offered to pay "monthly rent" for cabin storage after Appellants' text message demands for cabin storage payments & removal on January 4 & March 21, 2022 (O'Connells' Rule 59/60 Affidavit, ¶¶ 6-8).

Less than 2 years later, on September 9, 2024, O'Connells timely filed a counterclaim. This was AFTER Plaintiff filed a Complaint on August 12, 2024, in Cause No. DV-2024-123, alleging ownership of the cabin and seeking its return. Petitioners/O'Connells Counterclaim timely demands perfection of their lien forfeiture clause against Plaintiff-Sconyers and asserts

cabin ownership via a lien within 2 years of the lien filing on September 9, 2024, and timely asserted lien foreclosure under Mont. Code Ann. § 71-3-501 et seq. and abandonment under Mont. Code Ann. § 70-9-803(1)(k). Petitioners/O'Connells Counterclaim was then amended on August 8, 2025, clarify their cabin foreclosure rights & incorporating new evidence from ongoing discovery & Plaintiff's divorce case (DR-2021-89).

On June 30, 2025, Plaintiff filed an Emergency Motion for Preliminary Injunction, but Sconyer's injunction motion was filed six months after learning of Appellants' preliminary construction of a concrete foundation for the cabin by January 10, 2025 (O'Connells' Rule 59/60 Affidavit, ¶ 9). ONLY AFTER THE CABIN WAS PLACED ON A FOUNDATION on July 12, 2025 or 10 days later, the District Court belatedly granted Sconyer's preliminary injunction on July 21, 2025, prohibiting Appellants from accessing or maintaining the cabin and its foundation (which foundation is solely owned by O'Connells) (Injunction Order, p. 5, ¶ 21). Appellants-O'Connells responded with an Amended Motion for Reconsideration or Modification on August 5, 2025, pursuant to Mont. R. Civ. P. 59(e) and 60(b)(3), citing Plaintiff's delays in filing injunction motion caused them damages exceeding \$124,000 and against Plaintiff's misrepresentations and the court's misapplication of laws Mont. Code Ann. §70-9-803 and §71-3-531 MCA, et al (O'Connells' Rule 59/60 Affidavit, ¶¶ 15-18).

New evidence (attached) shows the Injunction Order demands risk structural collapse of the cabin and damage to the \$124,000 foundation now, and also violate Appellants' property rights and cause irreparable harm. This is because Injunction Order prohibits Appellants from accessing, repairing, or maintaining the cabin and its concrete foundation in violation of their property rights, at the same time creating an imminent risk of structural collapse due to unanchored 4x4 joist stilts and exposure of the \$124,000 foundation to ice and snow damage (O'Connells' Interlocutory Affidavit, ¶¶ 10-11). This is evident by attached August 6, 2025, email from Engineer-Rick Karin explaining that the cabin center joists are in danger of collapsing now because, "the existing 4x4 posts [supporting the cabin joists] with the small pre-cast pier pads is substandard and needs a permanent replacement system....[using] a

beam-column system to transfer the live/dead-floor loads to the ground." The upcoming Fall & Winter ice & snow loads will only add to this imminent risk of structural collapse.

This Injunction Order prohibition causes irreparable harm, as the potential collapse of the cabin floor joists and ice & snow foundation damage would result in permanent losses that monetary damages cannot fully compensate. *BAM Ventures, LLC v. Schiffer*, 2014 MT 192, ¶18, 376 Mont. 147, 333 P.3d 196 ("Irreparable harm exists when loss is permanent or not fully compensable").

Again, this case arose from Plaintiff's failure to remove the cabin from O'Connells property for over 4 years on their property since July 7, 2021 after repeated demands for removal and after written demanded for cabin storage fees (via lien) maintained by Petitioners-O'Connells. Petitioners Counterclaim filings (on September 9, 2024 amended July 17, 2025), asserted a timely construction lien forfeiture or abandonment of cabin under Mont. Code Ann. § 70-9-803(1)(k) and asserted cabin ownership via their lien under Mont. Code Ann. § 71-3-501 et seq (cited above). Despite Petitioners' lien rights and GLA Covenant compliance requiring cabin foundation placement, the District Court erroneously issued a Preliminary Injunction Order on July 21, 2025 AFTER the cabin was placed on a foundation, prohibiting Petitioners from accessing or maintaining the Cabin.

Petitioners thus seek supervisory control, because Injunction Order and SJ Orders cause irreparable harm, including ongoing nuisance and financial losses exceeding \$244,000, with no adequate appeal remedy due to urgency. This interlocutory appeal, filed on August 7, 2025, seeks review under Mont. R. App. P. 14(3) to address these substantial legal and equitable issues.

STATEMENT OF FACTS

On July 6, 2021, Plaintiff-Sconyers contacted Petitioners-O'Connells, distressed after Sconyers was denied cabin placement on another property. Sconyers requested temporary storage on Petitioners' land for two weeks, promising removal thereafter (O'Connells' Affidavit,

¶ 2). Permission was granted without initial fees, but discussions for storage fees began when the Cabin was not removed (O'Connells' Affidavit, ¶ 3).

The divorce decree (DR-2021-89, ROI #35, April 19, 2022) confirms that the Cabin was "gifted" to Sconyers in Spring 2021, with no bill of sale, but incurred \$26,000 debt to his ex-wife and another \$12,000 debt to Chad Standish for cabin moving labor (O'Connells' Affidavit, ¶ 5). The divorce decree (DR-2021-89, ROI #35, April 19, 2022) confirms joint ownership by Plaintiff and his ex-wife, not any family or daughter.

The divorce decree (DR-2021-89, ROI #35, April 19, 2022) new evidence also confirms that an implied contract formed for cabin storage fees, as evidenced by Plaintiff's March 29, 2022, "monthly rent" offer (DR-2021-89, ROI #32) and Petitioner-Daniel O'Connell & Sconyers text messages on January 4 and March 21, 2022 (O'Connells' Affidavit, ¶ 6; Exhibit B).

On August 24, 2022, Petitioners filed a Notice of Right to Claim Lien, and on September 9, 2022, a Claim of Lien with forfeiture clause for non-payment by August 31, 2022, increasing to \$3,000/month thereafter (O'Connells' Affidavit, ¶ 8; Lien Document). Plaintiff's failure triggered forfeiture. Lien notice demands storage fees of "\$800/month plus \$440 taxes", totaling \$14,880 through August 2022, later increased to "\$3,000/month starting September 1, 2022...unless cabin removal by September 1, 2022" via this lien and notice forfeiture clause stating the cabin will be used as payment for unpaid cabin storage if not removed. The cabin storage and maintenance now exceeds \$120,000 unpaid (O'Connells' Affidavit, ¶ 7).

On September 12, 2022, Plaintiff filed a "Denial of Lien" with the clerk & recorder to deny the lien, but failed to remove the cabin from the property and Sconyers also ceased all communication with O'Connells, and Sconyers changed his cellphone number, and relocated (O'Connells' Affidavit, ¶ 9). Petitioners, could not locate Sconyers after September 2022, so this prompted O'Connells to publish an abandonment notice on the cabin in July 2023 (O'Connells' Affidavit, ¶ 10).

The GLA Board notified Petitioners in September 2021, October 15, 2022, and April 7, 2024, that the Cabin violated GLA Covenants (2.2, 5.01, 6.05) absent a foundation or removal

and absent project review, and cabin nuisance for being in a dilapidated nearly-condemned condition. GLA Board then threatening legal action against O'Connells unless foundation-placement for the cabin was started (see GLA letters attached to O'Connells' Affidavit, ¶ 11; Exhibit D). In October 2023, O'Connells filed for project review and started building a foundation for the cabin in January 2024. Plaintiff admittedly told the Court in a letter that he knew of O'Connells foundation plans by January 10, 2025 (O'Connells' Affidavit, ¶ 23; Exhibit E), but Sconyers delayed injunction action for another 6 months. Petitioners took possession in September 2023 by placing the Cabin on a foundation on July 12, 2025, costing \$124,000 (O'Connells' Affidavit, ¶ 14).

Plaintiff's misrepresentations to the Court then falsely claimed he had a "bill of sale" for the cabin that he called beautiful and showed a 30 year old picture of the cabin BEFORE the cabin became dilapidated, and lied to the court that O'Connells failed to contact him, and slandered Daniel O'Connell claiming he had mental health condition (O'Connells' Affidavit, ¶¶ 15–18).

The Cabin's near-condemned condition, as documented in the O'Connells' Affidavit at paragraphs 7, 20–21, and Exhibit C—shows the cabin is gutted, lacking no utilities, and exhibiting extensive damage to the roof, logs, floors, walls, broken doors and windows that required O'Connells labor to seal and repair some damages throughout the 4 years the cabin sits on their property—which obstructs Defendants' free use of their property and violates GLA covenants, thereby constituting a private nuisance under Mont. Code Ann. § 27-30-101.

The Montana Supreme Court, in *Delaney & Co. v. City of Bozeman*, 2009 MT 441, ¶ 24, 354 Mont. 181, 222 P.3d 614, concluded that structures substantially interfering with property use qualify as nuisances, which directly supports Defendants' assertion that the Cabin's dilapidated state and lack of foundation interfere with their property rights, necessitating its abatement through foundation placement as mandated by GLA Board demands and Covenant requirements. Plaintiff's delays—spanning over three years since the April 19, 2022, divorce warning in case DR-2021-89, ROI #35, and six months since January 10, 2025, when Plaintiff

knew of the cabin foundation placement plans (see O'Connells' Affidavit at paragraph 23 and Exhibit E)—have resulted in \$124,000 in costs to Defendants.

Plaintiff's misrepresentations regarding cabin "bill of sale" and ownership, weight, lack of contact with O'Connells, and slander regarding Daniel's mental health, (see O'Connells' Affidavit at paragraphs 15–18), misled the Court. The SJ Order errs by applying a five-year abandonment period under Mont. Code Ann. § 70-9-803(1)(q), overlooking the implied storage lien contract, the O'Connells security interest via lien, and lien rights, while partially granting summary judgment despite existing disputes.

To explain, the SJ Order misapplies Mont. Code Ann. § 70-9-803 by applying a five-year abandonment period under subsection (1)(q), whereas cabin storage constitutes personal services under subsection (1)(k), which mandates a one-year forfeiture period. This one-year forfeiture period is supported by Montana Supreme Court, in *Rae v. Cameron*, 112 Mont. 159, 165–66, 114 P.2d 1060 (1941), that concluded storage services qualify as "personal services" because they involve labor and land use; which Opinion thus supporting Defendants' argument that they stored and maintained the cabin as "personal services" under the one-year abandonment period per §70-9-803(1)(k) and applies to the unpaid cabin storage fees in this case, rather than the five-year period for general property. The SJ Order commits a manifest error of law by failing to recognize Defendants' valid lien under Mont. Code Ann. § 71-3-501 et seq. for unpaid storage fees & maintenance repairs, which creates a security interest in the Cabin by O'Connells, after they properly filed their notice and lien on August 24 and September 9, 2022 (Document Nos. 123456, 123457), including a forfeiture clause that states:

"Beginning on Aug. 1, 2021, if fees assessments, and taxes for use of 'Land' to store the 'Cabin Plus' in the amount of \$14,880 (\$800 plus \$440 (taxes and assessments) per month x 12 months since Aug. 1, 2021) is not paid in full by August 31, 2022, then a lien will be filed against your property. (Note: Starting September 1, 2022, a monthly storage charge for use the 'Land' per month will increase to \$3000 per month..." (O'Connells' Affidavit, ¶ 8; Lien Document, p. 1).

Sconyers agreement to the Divorce Decree Court to pay "monthly rent" for cabin storage, but then Sconyer's complete failure to pay any storage fees or taxes as agreed, or to

remove the Cabin from Defendants' property for over four years, triggered the lien's forfeiture clause and the associated security interest. This enabled O'Connells to pursue foreclosure under Mont. Code Ann. § 71-3-501 et seq., as expressly asserted in their September 9, 2024 Counterclaim (p. 6, ¶ 24) and clarified in their August 8, 2025 Amended Counterclaim (p. 6, ¶ 24). The Montana Supreme Court has consistently held that statutory liens, such as those for services rendered, create a legal interest in the property subject to the lien. The Injunction Orders and SJ Orders both disregard O'Connells' lien rights, and disregarded O'Connells security interest in the cabin via lien forfeiture clause (cited above), and the Orders denied foreclosure provisions; which constitutes a clear misapplication of statutes (above) and precedent, warranting relief for misapply laws and irreversible damages cited above.

STANDARD OF REVIEW

This Court exercises supervisory control de novo, reviewing whether the district court proceeded under a mistake of law causing gross injustice. Mont. R. App. P. 14(3); Stokes v. Mont. Thirteenth Jud. Dist. Ct., 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (supervisory control is appropriate for purely legal questions or urgency making appeal inadequate):

1) Abuse of Discretion in Applying Mont. Code Ann. § 70-9-803: This Court reviews a district court's grant of a preliminary injunction for abuse of discretion, which occurs when the court acts arbitrarily without employing conscientious judgment or relies on a clearly erroneous legal interpretation. Caldwell v. Sabo, 2013 MT 240, ¶ 19, 371 Mont. 328, 308 P.3d 81. Statutory interpretation is reviewed de novo to ensure accurate application of the law. Yellowstone Elec. Co. v. Mont. Dep't of Labor & Indus., 2021 MT 136, ¶ 12, 404 Mont. 199, 487 P.3d 347. This Court exercises supervisory control de novo, reviewing whether the district court proceeded under a mistake of law causing gross injustice. Mont. R. App. P. 14(3); Stokes v. Mont. Thirteenth Jud. Dist. Ct., 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (supervisory control appropriate for purely legal questions or urgency making appeal inadequate). Injunctions and summary judgments are reviewed for abuse of discretion and legal correctness. Planned Parenthood of Mont. v. State, 2022 MT 157, ¶ 10, 409 Mont. 378, 515 P.3d 301 (injunctions reviewed for manifest abuse); Lorraine v. Markel Am. Ins. Co., 2007 MT 290, ¶ 16, 340 Mont. 92, 173 P.3d 624 (summary judgment de novo).

2) Violation of Property Rights and Irreparable Harm: This Court reviews de novo whether an injunction causes irreparable harm, as it involves legal conclusions regarding the impairment of substantial property rights. BAM Ventures, LLC v. Schiffer, 2014 MT 192, ¶ 18, 376 Mont. 147, 333 P.3d 196.

3) Alteration of Legal Positions: This Court reviews de novo the legal effect of an injunction on parties' statutory rights, such as perfected liens, to ensure proper application of the law. *Rosendale v. Victory Ins. Co.*, 2018 MT 299, ¶ 18, 393 Mont. 428, 431 P.3d 29.

4) Laches and Misconduct: This Court reviews the application of laches and equitable denials of injunctive relief for abuse of discretion, with underlying factual findings reviewed for clear error. *Cole v. State ex rel. Dept. of Transp.*, 2008 MT 403, ¶ 25, 347 Mont. 162, 198 P.3d 208.

5) Necessity of Interlocutory Review: This Court reviews the necessity of interlocutory review under Mont. R. App. P. 14(3) for legal error and prejudice to the moving party, ensuring the injunction's impact warrants immediate appellate consideration. *Van Loan v. Van Loan*, 271 Mont. 176, 179, 895 P.2d 614, 617 (1995).

6) This Court exercises supervisory control de novo, reviewing whether the district court proceeded under a mistake of law causing gross injustice. Mont. R. App. P. 14(3); *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (supervisory control appropriate for purely legal questions or urgency making appeal inadequate).

7) Injunctions and summary judgments are reviewed for abuse of discretion and legal correctness. *Planned Parenthood of Mont. v. State*, 2022 MT 157, ¶ 10, 409 Mont. 378, 515 P.3d 301 (injunctions reviewed for manifest abuse); *Lorraine v. Markel Am. Ins. Co.*, 2007 MT 290, ¶ 16, 340 Mont. 92, 173 P.3d 624 (summary judgment de novo).

SUMMARY OF THE ARGUMENT

Supervisory control is necessary to prevent irreparable harm, after the lower District Court erred in misapplying abandonment laws and ignoring Petitioners' lien rights, leading to an absurd outcome violating their property rights. Plus, genuine disputes preclude injunction and summary judgment, as the Cabin is a nuisance and Plaintiff's unauthorized use is trespass.

The District Court abused its discretion by erroneously applying Mont. Code Ann. § 70-9-803(1)(q), imposing a five-year abandonment period, instead of § 70-9-803(1)(k), which applies a one-year period for personal services like storage, thereby disregarding Appellants' possessory lien rights under Mont. Code Ann. § 71-3-1201.

The SJ Order errs by applying a five-year abandonment period under Mont. Code Ann. § 70-9-803(1)(q), overlooking the implied storage lien contract, the O'Connells security interest via lien, and lien rights, while partially granting summary judgment despite existing disputes. The Plaintiff's misrepresentations regarding cabin "bill of sale" and ownership, weight, lack of

contact with O'Connells, and slander regarding Daniel's mental health, (see O'Connells' Affidavit at paragraphs 15–18), also misled the Court.

To explain, the SJ Order misapplies Mont. Code Ann. § 70-9-803 by applying a five-year abandonment period under subsection (1)(q), whereas cabin storage constitutes personal services under subsection (1)(k), which mandates a one-year forfeiture period. This one-year forfeiture period is supported by Montana Supreme Court, in *Rae v. Cameron*, 112 Mont. 159, 165–66, 114 P.2d 1060 (1941), that concluded storage services qualify as "personal services" because they involve labor and land use; which Opinion thus supporting Defendants' argument that they stored and maintained the cabin as "personal services" under the one-year abandonment period per §70-9-803(1)(k) and applies to the unpaid cabin storage fees in this case, rather than the five-year period for general property.

Also, the Court in *Estate of Braaten*, 2018 MT 264, ¶ 24, 393 Mont. 272, 429 P.3d 1191, ruled that specific statutory provisions, such as § 70-9-803(1)(k) for personal services, prevail over general provisions like § 70-9-803(1)(q), which applies to O'Connells' claim because the Cabin's storage & maintenance involved specific "personal services" rendered by them.

In *West v. Club at Spanish Peaks*, 2008 MT 183, ¶ 25, 343 Mont. 434, 186 P.3d 1228, the Supreme Court emphasized the need to prioritize specific statutory provisions over general ones in property disputes, reinforcing O'Connells' position that § 70-9-803(1)(k) this specific abandonment rule for personal services governs, leading to the Cabin's abandonment after one year of Sconyer's non-payment and non-communication, as evidenced in the O'Connells' Affidavit at ¶9. Sconyers changing his number and moving away without any forwarding contact and two-year silence further supports his abandonment of the cabin.

The Injunction Order and SJ Order thus both commits manifest error of law by failing to recognize O'Connells' valid lien under Mont. Code Ann. § 71-3-501 et seq. for unpaid cabin storage fees & maintenance repairs, which creates a security interest in the Cabin, after O'Connells properly filed their lien notice and lien on August 24 and September 9, 2022 (Document Nos. 123456, 123457).

Sconyers written agreement given to the Divorce Decree Court to pay “monthly rent” for cabin storage, then Sconyer's complete failure to pay any storage fees or taxes as agreed, or to remove the Cabin from Defendants’ property for over four years, triggered the lien's forfeiture clause and the associated security interest. This enabled O’Connells to pursue foreclosure under Mont. Code Ann. § 71-3-501 et seq., as expressly asserted in their September 9, 2024 Counterclaim (p. 6, ¶ 24) and clarified in their August 8, 2025 Amended Counterclaim (p. 6, ¶ 24).

The Montana Supreme Court has consistently held that statutory liens, such as those for services rendered, create a legal interest in the property subject to the lien. For example, in *Higgins v. Montana Hotel Corp.*, 181 Mont. 149, 154, 592 P.2d 930, 932 (1979), the Court explained that “a statutory lien is a right granted by statute to a party to encumber property of another until a debt is paid,” which Opinion emphasizes that O’Connells lien provide an enforceable security interest against the cabin for storage and maintenance services provided here and supports Defendants' right to encumber the Cabin until the unpaid storage debt is satisfied. Therefore, the Injunction Order and SJ Orders both disregarded and denied O’Connells’ lien rights, and their security interest, and their lien forfeiture clause, and foreclosure provisions constituting a clear misapplication of the statutes and precedent per Mont. Code Ann. § 71-3-501 et seq. for unpaid cabin storage fees & maintenance repairs.

All together, the Injunction Order and SJ Orders both cause irreparable harm by taking away O’Connells rights to the cabin and prohibiting O’Connells-Appellants from accessing or maintaining the cabin and its \$124,000 foundation, risking structural collapse and violating their property rights by perpetuating a private nuisance. The Orders significantly alter the parties’ legal positions by undermining O’Connells-Appellants’ perfected lien and relying on Plaintiff's misrepresentations, including false claims about ownership, cabin weight, contact attempts, and Daniel O’Connell’s mental health. Plaintiff’s unreasonable delays—two years after a divorce court warning and six months after learning of foundation plans—coupled with nondisclosure of critical facts, bar Sconyer’s injunctive relief under laches and equitable principles. The

Order's legal errors, combined with the prejudice and harm to Appellants, necessitate immediate interlocutory review under Mont. R. App. P. 14(3).

ARGUMENT

A. The District Court Erred in Misapplying Mont. Code Ann. § 70-9-803 and Ignoring Petitioners' Security Interest, Lien, and Foreclosure Rights

The District Court Abused Its Discretion by Misapplying Mont. Code Ann. § 70-9-803(1)(q) Instead of § 70-9-803(1)(k). The District Court committed a clear abuse of discretion by applying Mont. Code Ann. § 70-9-803(1)(q), which establishes a five-year abandonment period for "all other property," and concluding that the period had not elapsed since the cabin's placement on July 7, 2021 (Injunction Order, p. 4, ¶ 15). The correct statutory provision is Mont. Code Ann. § 70-9-803(1)(k), which applies a one-year abandonment period for property held under personal services, such as storage of chattels. The Montana Supreme Court has explicitly recognized storage as a personal service involving labor and care by the property owner. *Rae v. Cameron*, 112 Mont. 159, 165–66, 114 P.2d 1060, 1063 (1941) ("Storage of property involves labor and care by the owner, qualifying as a personal service under Montana law"). Appellants' maintenance efforts, including \$15,000 for window replacements, \$10,000 for door and window repairs, and \$20,000 for roof sealing, totaling \$45,000, demonstrate the labor-intensive nature of preserving the cabin (O'Connells' Interlocutory Affidavit, ¶ 10). These actions unequivocally qualify as personal services under § 70-9-803(1)(k).

The SJ Order errs by applying a five-year abandonment period under Mont. Code Ann. § 70-9-803(1)(q), overlooking the implied storage lien contract, the O'Connells security interest via lien, and lien rights, while partially granting summary judgment despite existing disputes. The Plaintiff's misrepresentations regarding cabin "bill of sale" and ownership, weight, lack of contact with O'Connells, and slander regarding Daniel's mental health, (see O'Connells' Affidavit at paragraphs 15–18), also misled the Court.

To further explain, the SJ Order misapplies Mont. Code Ann. § 70-9-803 by applying a five-year abandonment period under subsection (1)(q), whereas cabin storage constitutes personal services under subsection (1)(k), which mandates a one-year forfeiture period.

This one-year forfeiture period is supported by Montana Supreme Court, in *Rae v. Cameron*, 112 Mont. 159, 165–66, 114 P.2d 1060 (1941), that concluded storage services qualify as "personal services" because they involve labor and land use; which Opinion thus supporting Defendants' argument that they stored and maintained the cabin as "personal services" under the one-year abandonment period per §70-9-803(1)(k) and applies to the unpaid cabin storage fees in this case, rather than the five-year period for general property.

Also, the Court in *Estate of Braaten*, 2018 MT 264, ¶ 24, 393 Mont. 272, 429 P.3d 1191, ruled that specific statutory provisions, such as § 70-9-803(1)(k) for personal services, prevail over general provisions like § 70-9-803(1)(q), which applies to O'Connells' claim because the Cabin's storage & maintenance involved specific "personal services" rendered by them.

In *West v. Club at Spanish Peaks*, 2008 MT 183, ¶ 25, 343 Mont. 434, 186 P.3d 1228, the Supreme Court emphasized the need to prioritize specific statutory provisions over general ones in property disputes, reinforcing O'Connells' position that § 70-9-803(1)(k) this specific abandonment rule for personal services governs, leading to the Cabin's abandonment after one year of Sconyer's non-payment and non-communication, as evidenced in the O'Connells' Affidavit at ¶9. Sconyers changing his number and moving away without any forwarding contact and two-year silence further supports his abandonment of the cabin.

The Injunction Order and SJ Order thus both commits manifest error of law by failing to recognize O'Connells' valid lien under Mont. Code Ann. § 71-3-501 et seq. for unpaid cabin storage fees & maintenance repairs, which creates a security interest in the Cabin, after O'Connells properly filed their lien notice and lien on August 24 and September 9, 2022 (Document Nos. 123456, 123457), including the lien notice forfeiture clause that states:

"Beginning on Aug. 1, 2021, if fees assessments, and taxes for use of 'Land' to store the 'Cabin Plus' in the amount of \$14,880 (\$800 plus \$440 (taxes and assessments) per month x 12 months since Aug. 1, 2021) is not paid in full by August 31, 2022, then a lien will be filed

against your property. (Note: Starting September 1, 2022, a monthly storage charge for use the 'Land' per month will increase to \$3000 per month..." (O'Connells' Affidavit, ¶ 8; Lien Document, p. 1).

Sconyers written agreement given to the Divorce Decree Court to pay "monthly rent" for cabin storage, then Sconyer's complete failure to pay any storage fees or taxes as agreed, or to remove the Cabin from Defendants' property for over four years, triggered the lien's forfeiture clause and the associated security interest. This enabled O'Connells to pursue foreclosure under Mont. Code Ann. § 71-3-501 et seq., as expressly asserted in their September 9, 2024 Counterclaim (p. 6, ¶ 24) and clarified in their August 8, 2025 Amended Counterclaim (p. 6, ¶ 24).

The Montana Supreme Court (cited above) has consistently held that statutory liens, such as those for services rendered, create a legal interest in the property subject to the lien. For example, in *Higgins v. Montana Hotel Corp.*, 181 Mont. 149, 154, 592 P.2d 930, 932 (1979), the Court explained that "a statutory lien is a right granted by statute to a party to encumber property of another until a debt is paid," which Opinion emphasizes that O'Connells lien provide an enforceable security interest against the cabin for storage and maintenance services provided here and supports Defendants' right to encumber the Cabin until the unpaid storage debt is satisfied.

Finally, in *Valley Bank of Ronan v. Hughes*, 2006 MT 285, ¶ 24, 334 Mont. 335, 147 P.3d 185, the Supreme Court permitted counterclaim amendments that clarify existing claims without prejudice, holding that "amendments relating back to the original pleading are allowed if they arise from the same transaction and do not prejudice the opposing party," which supports O'Connells' Amended Counterclaim clarifying the lien forfeiture and foreclosure action without burdening Plaintiff, as it arises from the same storage fee dispute and lien enforcement.

This is evidenced by Sconyer's March 29, 2022, letter to the Divorce Court acknowledged the cabin's placement, and Appellants'-O'Connells' demands for payment on January 4 and March 21, 2022, established an implied contract for storage fees exceeding \$120,000 (O'Connells' Rule 59/60 Affidavit, ¶¶ 6-7; Exhibit B). Sconyer's failure to

communicate or take action after August 2022 satisfied the one-year abandonment period by September 11, 2023, when O'Connells perfected their possessory lien under Mont. Code Ann. § 71-3-1201 (O'Connells' Rule 59/60 Affidavit, ¶¶ 8–9).

Montana law mandates that specific statutory provisions, such as § 70-9-803(1)(k), take precedence over general provisions like § 70-9-803(1)(q). *Estate of Braaten*, 2018 MT 264, ¶ 24, 393 Mont. 272, 429 P.3d 1191. The District Court's erroneous application of the five-year period ignored Appellants' statutory lien rights, which grant them the authority to retain the cabin for unpaid services. Mont. Code Ann. § 71-3-1201; *Higgins v. Montana Hotel Corp.*, 181 Mont. 149, 154, 592 P.2d 930, 933 (1979). This misapplication of law constitutes a clear abuse of discretion, as it reflects an arbitrary interpretation unsupported by the record. *Caldwell v. Sabo*, 2013 MT 240, ¶ 19, 371 Mont. 328, 308 P.3d 81; *Yellowstone Elec. Co. v. Mont. Dep't of Labor & Indus.*, 2021 MT 136, ¶ 12, 404 Mont. 199, 487 P.3d 347.

Therefore, the Injunction Order and SJ Orders both disregarded and denied O'Connells' lien rights, and their security interest, and their lien forfeiture clause, and foreclosure provisions constituting a clear misapplication of the statutes and precedent per Mont. Code Ann. § 71-3-501 et seq. for unpaid cabin storage fees & maintenance repairs.

The Injunction Order and SJ Orders both cause irreparable harm by taking away O'Connells rights to the cabin and prohibiting O'Connells-Appellants from accessing or maintaining the cabin and its \$124,000 foundation, risking structural collapse and violating their property rights by perpetuating a private nuisance. The Orders significantly alter the parties' legal positions by undermining O'Connells-Appellants' perfected lien and relying on Plaintiff's misrepresentations, including false claims about ownership, cabin weight, contact attempts, and Daniel O'Connell's mental health. Plaintiff's unreasonable delays—two years after a divorce court warning and six months after learning of foundation plans—coupled with nondisclosure of critical facts, bar Sconyer's injunctive relief under laches and equitable principles. The Order's legal errors, combined with the prejudice and harm to Appellants, necessitate immediate interlocutory review under Mont. R. App. P. 14(3).

B. The District Court Abused Its Discretion in Finding No Ownership by Petitioners, Which Is Arbitrary and Unsupported, and Genuine Issues of Material Fact Preclude Summary Judgment

The arguments under part A. above are incorporated herein for part B., and helps explain why both Orders (District Court Orders for Injunction and Summary Judgment) Findings of no cabin ownership are arbitrary, by ignoring O'Connells lien and GLA Covenant compliance. *Farmers Union Mut. Ins. Co. v. Horton*, 2004 MT 300 refutes the Orders as arbitrary, because O'Connells lien and GLA Covenant compliance—as legal rights—negate the Orders' no-ownership Finding. Also in *Seltzer v. Morton*, 2007 MT 62, the high Court said that such unsupported Orders are erroneous. Also, Supreme Court Opinion called *Vinson v. Godsey*, 2013 MT 178 (disputes deny SJ) show that Genuine issues on communications and implied contract (such as O'Connells lien and GLA Covenant compliance) preclude summary judgment. This includes that fact that supervisory control is necessary to address the Orders arbitrary finding, disputes, and legal errors (cited above), avoiding prolonged litigation that further harms property interests, as pursuant to this Court's Opinion in *360 Reclaim, LLC v. Russell*, 2023 MT 250 (interlocutory for injunction in lien dispute to handle intertwined issues efficiently).

Avoiding prolonged litigation includes voiding the Injunction Order that Violates Appellants' Substantial Property Rights and Causes Irreparable Harm by prohibiting Appellants from accessing or maintaining the cabin and its concrete foundation, creating an imminent risk of structural collapse due to unanchored 4x4 stilts and exposure of the \$124,000 foundation to ice and snow damage (O'Connells' Affidavit, ¶¶ 10–11). Again, attached August 6, 2025, email from Engineer Rick Karin factually proves that the cabin center joists are in danger of collapsing now, because "the existing 4x4 posts [supporting the cabin joists] with the small pre-cast pier pads is substandard and needs a permanent replacement system....[using] a beam-column system to transfer the live/dead-floor loads to the ground."

Orders prohibition causes irreparable harm, as the potential collapse of the cabin or destruction of the foundation would result in permanent losses that monetary damages cannot fully compensate per *BAM Ventures, LLC v. Schiffer*, 2014 MT 192, ¶18, 376 Mont. 147, 333 P.3d 196 (“Irreparable harm exists when loss is permanent or not fully compensable”).

The cabin’s dilapidated condition—lacking utilities, with a damaged structure and accumulated filth—also constitutes a private nuisance under Mont. Code Ann. § 27-30-101, as it substantially and unreasonably interferes with Appellants’ use and enjoyment of their property at 56 Taurus Rd. (O’Connells’ Rule 59/60 Affidavit, ¶ 20; Exhibit C) as found per *Delaney & Co. v. City of Bozeman*, 2009 MT 441, ¶ 24, 354 Mont. 181, 222 P.3d 618 (“A structure causing substantial interference is a nuisance”). The ongoing presence of the cabin and denial of cabin access and ownership rights obstructs Appellants’ ability to develop or utilize their land, further exacerbating the harm per *Shammel v. Canyon Res. Corp.*, 2003 MT 372, ¶ 12, 319 Mont. 132, 82 P.3d 912.

Furthermore, Orders abused Its Discretion in Finding No Ownership by Petitioners, Which Is Arbitrary and Unsupported, and Genuine Issues of Material Fact Preclude Summary Judgment, because Appellants have incurred significant financial burdens, including \$45,000 in repairs or maintenance costs to store and preserve the cabin and \$124,000 to construct the concrete foundation as required by GLA Board and GLA Covenants. All these O’Connells financial burdens are jeopardized by the Injunction Order’s unsupported arbitrary Findings denying any ownership or financial interest in the cabin (O’Connells’ Affidavit, ¶ 10; O’Connells’ Rule 59/60 Affidavit, ¶ 14).

Montana law emphasizes the protection of property owners’ rights in disputes involving unauthorized use of land. For instance per Opinion called *Elliot v. Asher*, 2001 MT 212, ¶26, 306 Mont. 461, 34 P.3d 114; this Opinion stated that a District Court’s failure to balance financial burdens equities are in error, as required by Mont. Code Ann. § 27-19-201(1), (2)(a), and constitutes an abuse of discretion. Which means that the Injunction and SJ Orders disproportionately harms Appellants in this case while also failing to

demonstrate any immediate harm to Plaintiff (especially since the cabin placement on the foundation happened BEFORE the injunction Orders which makes the injunction relief mute.

All together, cabin's dilapidated condition—lacking utilities, with a damaged structure and accumulated filth—constitutes a private nuisance under Mont. Code Ann. § 27-30-101, as it substantially and unreasonably interferes with Appellants' use and enjoyment of their property; which the Injunction Order prohibits Appellants from accessing or maintaining the cabin and its concrete foundation, creating an imminent risk of structural collapse causes irreparable harm, as the potential collapse of the cabin or destruction of the foundation would result in permanent losses that monetary damages cannot fully compensate. *BAM Ventures, LLC v. Schiffer*, 2014 MT 192, ¶ 18, 376 Mont. 147, 333 P.3d 196 (“Irreparable harm exists when loss is permanent or not fully compensable”). The ongoing presence of the cabin obstructs Appellants' ability to develop or utilize their land, further exacerbating the harm. *Shammel v. Canyon Res. Corp.*, 2003 MT 372, ¶ 12, 319 Mont. 132, 82 P.3d 912. Appellants have incurred significant financial burdens, including \$45,000 in maintenance costs to preserve the cabin and \$124,000 to construct the concrete foundation, which are jeopardized by the Injunction Order's restrictions (O'Connells' Interlocutory Affidavit, ¶ 10; O'Connells' Rule 59/60 Affidavit, ¶ 14). Montana law emphasizes the protection of property owners' rights in disputes involving unauthorized use of land Per *Elliot v. Asher*, 2001 MT 212, ¶ 26, 306 Mont. 461, 34 P.3d 114.) The District Court's failure to balance the equities, as required by Mont. Code Ann. § 27-19-201(1), (2)(a), constitutes an abuse of discretion, as the Injunction and SJ Orders unsupported Findings arbitrarily and disproportionately harms Appellants while failing to demonstrate immediate harm to Plaintiff.

C. The District Court Erred in Ignoring Evidence of an Implied Contract

The arguments under part A & B. above are incorporated herein for part C., to help explain how the Court ignored implied contract evidence. *Sands v. Nestegard*, 198 Mont. 421 (1982) (inferred from conduct). Supervisory control is necessary to correct this oversight, preventing injustice from inefficient lien enforcement based on contract disputes, as delaying

could prejudice Petitioners, similar to Pummill v. Patterson. This is because The Orders Injunction Grant Significantly Alters the Parties' Legal Positions.

To explain, the Injunction Order undermines Appellants' perfected possessory lien under Mont. Code Ann. § 71-3-1201, established on September 11, 2023, for unpaid storage fees exceeding \$120,000 (O'Connells' Rule 59/60 Affidavit, ¶ 8). Montana law recognizes such liens as enforceable property rights that grant the lienholder (O'Connells) control over the cabin property (on wheels) until the debt is satisfied. *Rosendale v. Victory Ins. Co.*, 2018 MT 299, ¶ 18, 393 Mont. 428, 431 P.3d 29. By prohibiting Appellants from accessing or maintaining the cabin (moved from wheels to a foundation), the Injunction Order effectively nullifies their statutory lien rights, significantly altering their legal position in the dispute.

Furthermore, the Orders rely on Plaintiff's documented misrepresentations to the District Court, including: (1) false claims of cabin ownership by Sconyer's daughter, directly refuted by the Divorce Decree in Cause No. DR-2021-89 (O'Connells' Rule 59/60 Affidavit, ¶ 16; Exhibit A); (2) an exaggerated cabin condition as beautiful but the cabin is near-condemned dilapidated state needing major repairs and more (O'Connells' Rule 59/60 Affidavit, ¶ 15; Exhibit D); (3) Sconyer's fabricated claims of post-August 2022 contact attempts with O'Connells, contradicted by Sconyer's admission on July 17, 2025, during injunction hearing in Cause No. DV-2024-123 (O'Connells' Rule 59/60 Affidavit, ¶ 17); and (4) Sconyer's slanderous baseless allegations about Daniel O'Connell's mental health and medication use, unsupported by any evidence (O'Connells' Rule 59/60 Affidavit, ¶ 18). These misrepresentations constitute misconduct under Mont. R. Civ. P. 60(b)(3), warranting relief from the Injunction Order. *Selway v. Selway*, 2007 MT 231, ¶ 14, 339 Mont. 252, 168 P.3d 686.

The District Court's finding of fraud against Appellants (Injunction Order, p. 5, ¶ 18) lacks clear and convincing evidence, violating established standards (per *Farmers Union Mut. Ins. Co. v. Horton*) for such findings and violating GLA Covenant requirements and O'Connells lien and implied storage fee contract (*Farmers Union Mut. Ins. Co. v. Horton*, 2004 MT 300, ¶

13, 323 Mont. 389, 100 P.3d 628; *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, ¶ 28, 304 Mont. 356, 22 P.3d 631.

Thus, Supervisory control is necessary to correct such oversight in the Injunction and SJ Orders, preventing injustice from inefficient lien enforcement based on contract disputes, as delaying could prejudice Petitioners, similar to *Pummill v. Patterson*, as the Orders Injunction Grant Significantly Alters the Parties' Legal Positions and the Injunction Order undermines Appellants' perfected possessory lien under Mont. Code Ann. § 71-3-1201.

D. The District Court Erred in Denying Petitioners' Amended Motion for Summary Judgment, Excluding Newly Discovered Evidence & Plaintiff's Delays and Misconduct Negate Injunctive Relief

The arguments under part A-C. above are incorporated herein for part D, to help explain why Supervisory control is necessary to include new evidence, avoiding complication in resolution, as in *Pummill v. Patterson*. This is because the District Court erred in denying Petitioners' Original & Amended Motion for Summary Judgment, that excluded newly discovered evidence (and per Opinion, *Valley Bank of Ronan v. Hughes*, 2006 MT 285 that liberally allows amendments; And *Nelson v. Driscoll*, 1997 MT 292 (that allows relief for new evidence)). Supervisory control is necessary to include new evidence specifically including Sconyers Divorce Decree case pleadings cited above (part A-C) that shows Sconyers agreed to "monthly rent" for cabin storage, and Sconyers admitted he knew the foundation was built, costing O'Connells damages explained above.

Sconyer's unreasonable delays in seeking injunction relief—two years after the April 19, 2022, divorce court warning in Cause No. DR-2021-89 (ROI #35) and six months after learning of Appellants' foundation construction plans by January 10, 2025—caused Appellants to incur \$124,000 in foundation costs and \$45,000 in maintenance expenses (O'Connells' Rule 59/60 Affidavit, ¶¶ 14, 23; Exhibit E). The doctrine of laches bars injunctive relief when a party's delay prejudices the opposing party, as it undermines the equitable basis for such relief per *Cole v. State ex rel. Dept. of Transp.*, 2008 MT 403, ¶ 25, 347 Mont. 162, 198 P.3d 208.

Plus, Sconyer's failure to disclose his knowledge of the foundation construction to the Court in this case and waiting 6 months later to file emergency injunction relief to stop the cabin foundation placement harmed O'Connells, despite Sconyers admission of being informed by January 10, 2025; which constitutes Sconyer's unclean hands and misconduct that further negates his entitlement to equitable relief (O'Connells' Rule 59/60 Affidavit, ¶ 23).

Montana law requires parties seeking injunctive relief to act promptly and with clean hands; *Montana Democratic Party v. Jacobsen*, 2020 MT 247, ¶ 10, 401 Mont. 249, 473 P.3d 401; and *Shammel v. Canyon Res. Corp.*, 2003 MT 372, ¶ 12, 319 Mont. 132, 82 P.3d 912. The District Court's grant of injunctive relief, despite Plaintiff's delays causing monetary damages to O'Connells and Sconyers misrepresentations above, violates Mont. Code Ann. § 27-19-201(1), which requires a showing of immediate harm and equitable conduct by the moving party.

E. The District Court Erred in Failing to Recognize the Cabin as a Private Nuisance Requiring Abatement

The arguments under part A-D. above are incorporated herein for part E, to help explain why the District Court Erred in Failing to Recognize the Cabin as a Private Nuisance Requiring Abatement. The Cabin is a nuisance due to obstruction and GLA covenant violations (per *Delaney & Co. v. City of Bozeman*, 2009 MT 441 (interfering structures are nuisances)). Supervisory control is necessary to recognize the cabin as a nuisance, preventing irreparable harm from ongoing interference, as delaying could harm property interests, like in *360 Reclaim v. Russell* Opinion.

Immediate Review Is Necessary to correct the Injunction 7 SJ Order's legal errors, including the misapplication of Mont. Code Ann. § 70-9-803 and disregard of Appellants' possessory lien rights under Mont. Code Ann. § 71-3-1201, combined with the irreparable harm and prejudice to Appellants, necessitate immediate interlocutory review under Mont. R. App. P. 14(3). This rule permits appellate review when an injunction substantially affects a party's rights and involves significant legal errors warranting expedited consideration (see Opinion called *Van Loan v. Van Loan*, 271 Mont. 176, 179, 895 P.2d 614, 617 (1995)). The

Order's restrictions threaten Appellants' property (cabin floor joists may collapse and snow ice damage to foundation without immediate relief of supervisory control; and over \$245,000 in financial interests, including the potential loss of the cabin and \$124,000 foundation costs, and storage maintenance costs and fees , justifying immediate review to prevent further harm and correct the District Court's errors and misapplication of Mont. Code Ann. § 70-9-803 and disregard of Appellants' possessory lien rights under Mont. Code Ann. § 71-3-1201.

F. The SJ Order Leads to an Absurd Outcome Violating Petitioners' Property Rights

The arguments under part A-E. above are incorporated herein for part F, to help explain why the Injunction & SJ Orders produce an **absurd outcome of leads to the absurdity of rewarding Plaintiff's inaction and delays by effectively permitting Plaintiff to use Petitioners' private property for free storage of the Cabin for over four years without compensation for storage, maintenance, and other expenses totaling over \$245,000, while disregarding and ignoring Petitioners' perfected lien & forfeiture clause** under Mont. Code Ann. § 71-3-501 et seq., which revoked Plaintiff's right to such use upon non-payment of storage fees exceeding \$120,000 as of September 2023 (O'Connells' Rule 59/60 Affidavit, ¶¶ 7-8; Lien Document, p. 1, specifying forfeiture for non-payment by August 31, 2022, and fee increases to \$3,000/month thereafter).

This absurd result violates Petitioners' fundamental property rights, forcing them to bear ongoing maintenance costs of over \$120,000 since April 2022 (including \$15,000 for window replacements, \$10,000 for door and window repairs, and \$20,000 for roof sealing, totaling \$45,000 in direct repairs, plus additional labor and materials) plus \$124,000 for the concrete foundation constructed on July 12, 2025, built to comply with GLA covenants and abate the cabin nuisance (O'Connells' Rule 59/60 Affidavit, ¶¶ 14, 20-21; Exhibit C, cabin pictures showing gutted interior, damaged roof, walls, floors, and pervasive filth; O'Connells' Interlocutory Affidavit, ¶ 10). The Order's **disregard of the lien's forfeiture clause**—triggered by Plaintiff's failure to pay or remove the Cabin—**leads to the absurdity of rewarding Plaintiff's inaction and delays**, including over two years after the April 19, 2022, divorce court

warning in DR-2021-89 (ROI #35) that his rights were in jeopardy, and six months after learning of the foundation plans by January 10, 2025 (O'Connells' Rule 59/60 Affidavit, ¶¶ 9, 23; Exhibit E, Plaintiff's letter admitting awareness).

The Montana Supreme Court has emphasized that statutory interpretations must avoid absurd results that defeat legislative intent and property rights protections. In *Satterfield v. Satterfield*, 2021 MT 156, ¶ 19, 404 Mont. 349, 489 P.3d 364, the Court rejected an interpretation of marital property statutes that would lead to **an absurd outcome** where a spouse's contribution to property acquisition was ignored, concluding that "courts must avoid constructions that render statutes absurd or lead to unjust results, particularly in property division where equity demands fair allocation." This Opinion directly applies here, as the Injunction & SJ Orders' misapplication of abandonment laws and failure to enforce the O'Connells' cabin lien creates an unjust and absurd scenario: Petitioners (O'Connells') are compelled to subsidize Plaintiff's storage (since July 2021-more than 4 years) at a cost exceeding \$244,000, violating their right to exclude unauthorized property use and excludes enforcement of their lien for unpaid cabin storage and maintenance services, contrary to the intent of Mont. Code Ann. § 71-3-501 et seq. protections for property owners from such burdens.

Supervisory control is necessary to prevent this absurd outcome and the resulting prejudice to Petitioners, including escalating maintenance liabilities and inability to utilize their land, as delaying appeal could allow continued deterioration of the Cabin and collapse of the floor joists and foundation damage; all complicating final resolution and causing irreparable financial and property harm. The Montana Supreme Court, in *Pummill v. Patterson*, 2024 MT 59, DA-23-0253, granted interlocutory review in a property dispute involving an invalidated lien and receivership fees, concluding that "delaying appeal of interim orders could prejudice parties by allowing asset mismanagement and complicating final resolution," which Opinion mirrors this case where the SJ Order's interim denial of lien rights risks irreversible property

damage and inefficiency in enforcement, warranting immediate intervention to safeguard Petitioners' interests.

Similarly, in *360 Reclaim, LLC v. Russell*, 2023 MT 250, ¶¶ 17-18, 414 Mont. 328, 540 P.3d 1046, the Court reviewed a lien dispute involving storage costs under § 71-3-1201, MCA, emphasizing that liens protect property rights in maintenance and storage scenarios and distinguishing real from personal property to avoid unjust burdens on owners, supporting immediate supervisory control here in this present case to prevent harm from delayed lien enforcement.

G.Plaintiff's Unauthorized Use of Petitioners' Property Constitutes Trespass, Entitling Petitioners to Damages and Removal

The arguments under part A-E. above are incorporated herein for part F, to help explain why Sconyer's continued unauthorized use of Petitioners' property (after the lien's forfeiture clause was triggered) constitutes trespass under Mont. Code Ann. § 45-6-203, because Sconyers refused to remove his cabin remained on O'Connells private property without privilege following revocation of the initial temporary permission (O'Connells' Rule 59/60 Affidavit, ¶¶ 8-9; Lien Document, p. 1). The injunction hearing admission by James Sconyer's said he failed to ever ask permission to enter O'Conellls property, even after affidavit texts show he was required to get prior permission to enter the property.

The Montana Supreme Court, in *Bartsch v. Irvine Co.*, 149 Mont. 405, 427 P.2d 477 (1967), affirmed that trespass entitles landowners to damages for unauthorized use, which applies here as Petitioners seek compensation for over \$244,000 in costs from Plaintiff-Sconyer's prolonged occupation of their private property. The Mont. Code Ann. § 70-24-113 allows removal of unauthorized persons, and *Hutchinson v. Old Republic* (2025 MT DA-24-0127) concluded that property owners have no duty to accommodate trespassers, supporting Petitioners' right to evict the Cabin and his person. Recourse includes damages

under Mont. Code Ann. § 27-1-318 for Sconyer's willful trespass, justifying recovery of storage and maintenance expenses.

Supervisory control is necessary for reasons under sections A-F above, and for this section G to enforce trespass remedies, avoiding prolonged litigation harming property, as in *360 Reclaim v. Russell*, 2023 MT 250 (interlocutory review for lien and property disputes to prevent harm from delays).

CONCLUSION: Immediate Review Is Necessary as Orders contain errors causing injustice. Supervisory control is needed to correct them and protect Petitioners' rights

The Summary Judgement Orders and Injunction Order's legal errors, irreparable harm, and prejudice warrant review under Mont. R. App. P. 14(3). *Van Loan v. Van Loan*, 271 Mont. 176, 179, 895 P.2d 614, 617 (1995). The Montana Supreme Court, in *Pummill v. Patterson*, 2024 MT 59, DA-23-0253, granted an interlocutory appeal on receivership fees in a property dispute involving an invalidated lien, concluding that such orders involve interim asset management, and delaying appeal could complicate final resolution or prejudice parties, which applies to this case because the SJ Order's interim determination on lien validity affects ongoing property management and could prejudice Petitioners by prolonging the nuisance and costs, leading to irreparable harm through inefficiency in lien enforcement and violation of property rights. In *360 Reclaim, LLC v. Russell*, 2023 MT 250, 414 Mont. 328, 540 P.3d 1046, the Court accepted an interlocutory appeal on a preliminary injunction in a redemption dispute with an agister's lien for storage under Mont. Code Ann. §§ 71-3-1201 and 71-3-1203, concluding that review was necessary to handle intertwined issues like lien extinguishment under § 71-3-121 and avoid prolonged litigation harming property interests, directly supporting review here as the Orders ignore the storage lien and foreclosure; all risking prolonged litigation that could harm Petitioners' property interests by delaying resolution of their lien enforcement and exposing them to continued financial and legal prejudice, and irreversible property damages. Interlocutory appeal avoids prolonged litigation and avoids harming all parties' property interests by preventing ongoing nuisance, maintenance costs, and inefficiency in enforcing lien

rights, as delaying appeal could complicate final resolution by increasing liabilities and prejudicing Petitioners through irreparable harm to their property use and economic interests.

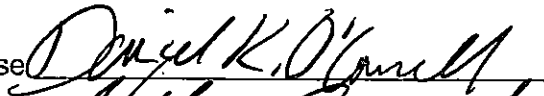
RELIEF REQUESTED

For Opinion/Orders that:

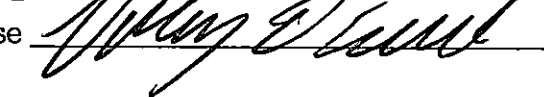
- 1) Accepts this interlocutory appeal for supervisory control under Mont. R. App. P. 14(3).
- 2) Reverse the District Court's Injunction Order and Summary Judgment Orders, vacating the prohibition on Petitioners' cabin ownership and financial interests, and allow access and maintenance to permit anchoring and foundation sealing.
- 3) Grant Petitioners such other relief as the Court deems just and proper.

DATED: August 24, 2025

/s/ Daniel O'Connell, pro se



/s/ Valery O'Connell, pro se



CERTIFICATE OF SERVICE

I, Valery O'Connell, hereby certify that on this 25th day of August, 2025, service was made in accordance with Rule 10 of the Montana Rules of Appellate Procedure, and served a true and correct copy of the foregoing Appellant's Brief upon the following parties by the method indicated below:

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DATED this 25th day of August, 2025.

/s/ Valery O'Connell, pro se



CERTIFICATE OF COMPLIANCE

I, Valery O'Connell, certify that this Appellant's Brief complies with Rule 12 of the Montana Rules of Appellate Procedure. The brief uses a proportionally spaced/monospaced typeface and contains 5,619 words, as determined by the word-count function of WordCounter App, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, and any appendices, and does not exceed the 10,000-word limit for a principal brief.

DATED this 25th day of August, 2025.

/s/ Valery O'Connell, pro se



\$100⁰⁰

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INDEX of EXHIBITS

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- B) ORDERS:
District Court "ORDER GRANTING [Sconyer] PLAINTIFF'S REQUEST FOR PRELIMINARY INJUNCTION"
District Court "ORDER DENYING THE DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT FILED MARCH 13, 2025"
District Court "ORDER GRANTING IN PART AND DENYING IN PART THE PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT FILED JUNE 30, 2025"
- C) O'Connells' "DEFENDANTS' COUNTERCLAIMANTS' AFFIDAVITS SUPPORTING AMENDED COUNTERCLAIM & SUPPORTING MOTIONS PER RULES 59 & 60