

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause No. DA 25-0480

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MICHAEL JOHNSON and TERESA JENISCH,

Plaintiffs/Appellants/Cross-Appellees,

v.

SPIRE HOME INSPECTION, LLC and KEVIN KIVELA,

Defendants/Appellees/Cross-Appellants.

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On Appeal from the Montana Fourth Judicial District Court, Missoula County  
Cause No. DV-32-2023-0000182-NE

Honorable Judge John W. Larson

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**SPIRE'S MOTION TO DISMISS WITH BRIEF IN SUPPORT**

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## **MOTION TO DISMISS**

Appellees, Spire Home Inspection, LLC and Kevin Kivela (collectively “Spire”), respectfully move the Supreme Court for dismissal of the July 7, 2025 Amended Notice of Appeal.

Appellants, Michael Johnson and Teresa Jenisch (collectively “Johnsons”), have been contacted and we anticipate they oppose.

## **BRIEF IN SUPPORT**

### **I. ISSUE PRESENTED**

Whether the Parties’ settlement under Montana Code Annotated § 25-7-105 precludes any appeal by Johnsons.

### **II. FACTUAL AND PROCEDURAL BACKGROUND**

On May 19, 2025, Johnsons sent Spire a settlement offer pursuant to § 25-7-105 proposing \$954.00 to resolve the case. Doc. 77, Pls.’ Objection to Notice of Offer of Settlement at Ex. 1, May 19, 2025 Letter from Siefert (“I am writing to advance an offer of settlement pursuant to Mont. Code Ann. § 25-7-105. The statute states a party may make an offer to resolve a case.”). The offer pursuant to the statute stated Spire had 10-days to accept or it would be deemed rejected and withdrawn. *Id.* If rejected and Johnsons obtained a judgment exceeding \$954.00, Spire would owe costs, including attorneys’ fees. *Id.* Johnsons’ statutory offer utilized the statutory language and took advantage of the statute’s benefits.

During a May 20, 2025 call, Johnsons' counsel, Ms. Siefert, informed Spire's counsel, Mr. HagEstad, that the offer excluded a release because Johnsons intended to appeal the Court's ruling limiting damages to \$955.00. Doc. 77 at Ex. 5, Decl. of Siefert, ¶ 4. HagEstad noted that an offer contemplating an appeal was not a "true settlement," and Siefert agreed it was non-traditional. *Id.* ¶¶ 2-7. Siefert followed up in an email, stating the offer "anticipates an immediate appeal of the Court's ruling on the \$955 cap." *Id.* ¶ 8; Doc. 77 at Ex. 2, May 20, 2025 Email from Siefert.

On May 28, 2025, Spire accepted the offer in writing within the statutory timeframe, delivered a \$954.00 check to Johnsons' counsel and obtained an acknowledgment of receipt. Doc. 75, Notice of Offer of Settlement and Acceptance at Ex. C (May 28, 2025 Acceptance Letter), Ex. D (Proof of Service) and Ex. E (Acknowledgment of Receipt). Spire's Acceptance Letter notified Johnsons Spire accepted the offer under the statutory terms and made clear the statutory settlement fully resolved the case, mooted any appeal. *Id.* Ex. C (Acceptance Letter).

On May 29, 2025, Spire filed the Notice of Settlement and Acceptance. Doc. 75. Subsequently, Siefert emailed HagEstad asserting a misunderstanding and requesting withdrawal of the filing, claiming the offer included an appeal right. Ex. A, May 29, 2025 Email from Siefert. On May 30, 2025, Spire responded, affirming statutory compliance and asserting that an appeal was not a term of the offer. Ex. B, May 30, 2025 Letter from HagEstad. Johnsons filed their Objection, alleging no

meeting of the minds or a mutual mistake. Doc. 77. On June 5, 2025, Johnsons returned the \$954.00 check, denying an agreement. Ex. C, June 5, 2025 Letter from Siefert.

In its July 1, 2025 Order, the District Court held “there is a Settlement under Mont. Code Ann. Section 25-7-105 for the sole purpose of appealing this Court’s previous ruling that damages are limited to \$955.” Doc. 85, Order, July 1, 2025.

On July 2, 2025, the District Court issued judgment, holding that the parties have fully and finally settled the matter pursuant to § 25-7-105. Doc. 86, Judgment, July 2, 2025.

### **III. ARGUMENT AND SUPPORTING AUTHORITY**

#### **A. The Parties entered into a valid and enforceable agreement to settle and resolved the underlying claims, precluding any subsequent appeal of the case.**

According to the final judgment and documents of record, the Parties entered into a settlement pursuant to § 25-7-105. Doc. 75. Such a settlement finally and unequivocally resolves the dispute.

Contrary to the Court’s July 1, 2025 Order, the parties did not enter into settlement for the sole purpose of moving this case to appeal. Spire has been clear in several writings, its briefing on the issue at the district court level, verbal communications with Johnsons’ counsel, and in oral argument that it entered into the Agreement to settle the claim fully and finally, and § 25-7-105 is to be treated in

a like manner as Rule 68. Doc. 75 at Ex. C (May 28, 2025 Acceptance Letter) Ex. B; Doc. 83, Def. Response to Pls.’ Objection to Notice of Offer of Settlement. Johnsons’ settlement offer makes no mention of any intent to appeal. Doc. 77. Spire made clear acceptance was final and no appeal could follow. Doc. 75 at Ex. C (May 28, 2025 Acceptance Letter).

Montana Code Annotated § 25-7-105 was enacted for similar purposes as Montana Rules of Civil Procedure 68, which encourages settlement, avoids litigation, and forecloses appeal of prior orders. *Weston v. Kuntz*, 194 Mont. 52, 57, 635 P.2d 269 (1981).

Rule 68 and § 25-7-105 provide a means to resolve disputes by offering a specified amount. Mont. R. Civ. P. 68; § 25-7-105. Both impose potential cost consequences if rejected, and final judgment is less favorable than the offer. *Id.* They state the timeframe for the offer, require it to be written, and state it is deemed withdrawn if not accepted. *Id.* The similarities between the statute and rule reflect a procedural legislative intention to ‘promote efficiency and encourage settlement prior to trial.’ *Weston*, 194 Mont. at 57. This Court has not had the opportunity to address the appealability of prior orders following a settlement the statute, however in the similar *Weston* matter, this Court held that a Rule 68 settlement precludes an appeal. *Id.*

Specifically, this Court held in *Weston* that utilizing a Rule 68 offer to facilitate an appeal is inconsistent with its purpose, as it extends litigation. *Id.* In *Weston*, Kuntz served a Rule 68 offer of judgment on Weston. *Weston*, 194 Mont. at 54. After discussion on the value, the offer was accepted. *Id.* The next day Kuntz attempted to withdraw his offer. *Id.* The District Court found the offer was accepted and enforceable. *Id.* Kuntz then appealed a prior ruling on his motion for summary judgment. *Id.* Both parties knew of Kuntz’s appeal intentions and Weston’s position that acceptance moots any appeal, yet the offer was made and accepted. *Id.* This Court held “it would be inconsistent to allow a procedure designated to facilitate settlement and avoid litigation costs to be used to challenge liability and, thereby, extend litigation.” *Weston*, 194 Mont. at 57.

Spire now asks this Court to apply the same principles found in *Weston* to a settlement under § 25-7-105. Saying otherwise would permit plaintiffs to extort settlement from defendants to avoid possible attorneys’ fees claims, and still appeal, rendering settlement illusory. *Brooke v. State*, 2020 MT 187, ¶ 13, 400 Mont. 435, 440, 468 P.3d 351, 354 (“A contract becomes illusory when it consists of ‘words in promissory form that promise nothing.’”). As in *Weston*, regardless of whether Spire was aware of Johnsons’ intent to appeal intentions, Spire accepted the offer, as made, and Johnsons’ accepted payment pursuant to the statute. Doc. 75 at Ex. C (May 28, 2025 Acceptance Letter) and Ex. E (Acknowledgment of Receipt). All along, Spire

has been consistent in its stance that the settlement was final and § 25-7-105 should be receive the same treatment as Rule 68. Doc. 83.

#### **IV. RELIEF SOUGHT**

Spire Home Inspection, LLC and Kevin Kivela respectfully request this Court dismiss Appellants Michael Johnson's and Teresa Jenisch's Amended Notice of Appeal pursuant to Montana Rules of Appellate Procedure 4, and for such other relief this Court deems just and proper.

Respectfully submitted this 10<sup>th</sup> day of September, 2025.

By: /s/ David J. HagEstad  
David J. HagEstad

HAGESTAD LAW GROUP, PLLC  
*Attorneys for Defendants/Appellees/  
Cross-Appellants, Spire Home  
Inspection, LLC and Kevin Kivela*

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Montana Rules of Appellate Procedure, Rule 16(3), I hereby certify that the foregoing *Spire's Motion to Dismiss and Brief in Support* is proportionally in 14-point Times New Roman and contains words 1,249 and does not exceed 1,250 words.

Respectfully submitted this 10<sup>th</sup> day of September, 2025.

By: /s/ David J. HagEstad  
David J. HagEstad

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