

**ORIGINAL**

**FILED**

09/23/2025

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 25-0480

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 25-0480

MICHAEL JOHNSON and TERESA JENISCH,

Plaintiffs, Appellants,  
and Cross-Appellees,

v.

SPIRE HOME INSPECTION, LLC  
and KEVIN KIVELA,

Defendants, Appellees,  
and Cross-Appellants.

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SEP 23 2025

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

**ORDER**

This matter comes before the Court on the motion of Defendants and Appellees Spire Home Inspection, LLC and Kevin Kivela (collectively “Spire”) to dismiss the appeal of Plaintiffs and Appellants Michael Johnson and Teresa Jenisch (collectively “Johnsons”). Johnsons oppose the motion.

Johnsons sued Spire in the Fourth Judicial District Court after purchasing property on which Spire conducted a home inspection. Spire billed Johnsons \$955 for the inspection, which they paid. Johnsons allege that the property turned out to be marred by numerous deficiencies, that Spire’s inspection report was contradictory, and that Spire failed to include numerous defects that should have been noticed. They claim that it will require approximately \$500,000 to fix the deficiencies with Johnsons’ property.

The District Court granted declaratory judgment to Spire based on a clause in the Inspection Agreement that stated, “The Client further agrees that the Inspector is liable only up to the cost of the inspection.” Although Johnsons never signed the Inspection Agreement, the court held that they consented to it by hiring Spire and accepting the services or proposal, thereby impliedly accepting the contract as provided by § 28-2-503, MCA. The court

accordingly entered judgment that Johnsons' damages were limited to \$955, the cost of the inspection.

After Johnsons unsuccessfully sought certification of the declaratory judgment order as final for purposes of appeal, they proposed a settlement with Spire pursuant to § 25-7-105, MCA. Johnsons contend that they proposed the offer because the declaratory judgment ruling left them with limited options. They sought to appeal the District Court's order to obtain an answer regarding the legitimacy of Spire's damage limitation provision, so they could then either try the case a single time on remand or drop the case altogether in the event this Court upheld the District Court's order. Johnsons therefore proposed a settlement in the amount of \$954.00 to resolve the case. The following morning, Plaintiffs' counsel contacted Spire's counsel stating in an e-mail, "Following up on my phone call just now, this settlement offer anticipates an immediate appeal of the Court's ruling on the \$955 cap. It does not include an MDTL release because we anticipate an appeal."

Several days later, within the time allowed by the statute, Spire's counsel accepted the settlement offer in writing. Spire's Acceptance Letter, with which it included a check for \$954.00, advised Johnsons that Spire accepted the offer under the statutory terms and that the statutory settlement fully resolved the case, mooted any appeal. Spire filed a Notice of Offer of Settlement and Acceptance, prompting an Objection from Johnsons. On July 1, 2025, following a hearing, the District Court entered an Order declaring "that the Settlement is enforceable for the sole purpose of appealing this Court's previous ruling limiting damages to \$955."

Johnsons filed their notice of appeal with this Court on July 7, 2025, designating both the February 19, 2025 Declaratory Judgment Order and the July 1 Order on enforceability of the settlement as the orders from which appeal was taken. Spire seeks dismissal of the appeal on the ground that the case has been fully resolved in accordance with § 25-7-105, MCA. Johnsons dispute the asserted ground for dismissal, arguing that the record will demonstrate the District Court's agreement that the purpose of the settlement was to allow an

immediate appeal and that Spire knew this purpose when they accepted the offer. Johnsons ask for an opportunity to present this argument outside the confines of a motion to dismiss.

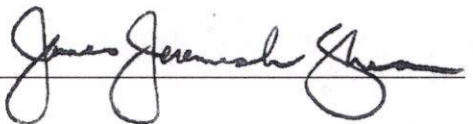
Having considered the parties' arguments and reviewed the orders on appeal, we conclude that the Johnsons' appeal should move forward. Whether the settlement offer and acceptance preclude the Johnsons from proceeding with their claim for damages is one of the issues squarely presented by their Notice of Appeal. The Court will consider Spire's arguments in the course of determining the disposition of Johnsons' appeal.

IT IS THEREFORE ORDERED that the motion to dismiss the appeal is DENIED without prejudice to consideration of Spire's arguments in the course of deciding the appeal. Briefing shall proceed in accordance with the Montana Rules of Appellate Procedure.

The Clerk shall notify all counsel of the entry of this Order.

Dated this 23<sup>rd</sup> day of September, 2025.

  
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Justices