IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA 25-0376

JAMES "BUCK" MACLAURIN, JR.,

Plaintiff/Appellant,

v.

FISCHER LAW, PLLC, d/b/a Kelby R. Fischer Attorney at Law,

Defendant/ Appellee.

APPELLEE'S ANSWER BRIEF

On Appeal from the First Judicial District Court, Lewis & Clark County
Cause No. DV-25-2024-143-NE
The Honorable Kathy Seeley, Presiding

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STATEMENT OF THE ISSUE[1]

Did the District Court correctly dismiss a legal malpractice claim for lack of causation, because the client's conveyance of a life estate to another joint tenant decades before legal counsel was retained severed the joint tenancy's unities of possession, interest, and title and, therefore, as a matter of law, the alleged damages could not have been caused by legal counsel?

STATEMENT OF THE CASE[2]

This case arises from James "Buck" MacLaurin, Jr.'s ("MacLaurin") allegation that his estate planning attorney, Fischer Law, PLLC ("Fischer"), committed legal malpractice in 2020 when Fischer advised MacLaurin to convey certain property ("Property") into a trust as part of an estate plan. MacLaurin

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[1] MacLaurin's Opening Brief does not assert or discuss the District Court's dismissal of the second claim in his Complaint, one for declaratory judgment. That claim is, therefore, waived. *See, e.g.*, *Bucy v. Edward Jones & Co., L.P.*, 2019 MT 173, ¶ 23, 396 Mont. 408, 445 P.3d 812 ("A party aggrieved by any aspect of an appealable judgment waives appellate review absent timely appeal in accordance with the Montana Rules of Appellate Procedure.").

[2] Fischer disputes many of MacLaurin's allegations; however, they are assumed true for the purposes of a motion to dismiss. Mont. R. Civ. P. 12(b)(6). The factual background is, therefore, taken from the Complaint and all exhibits and materials referred to in the Complaint. *See Cowan v. Cowan*, 2004 MT 97, ¶ 11, 321 Mont. 13, 89 P.3d 6 ("The only relevant document when considering a motion to dismiss is the complaint and any documents it incorporates by reference."); *Firelight Meadows, Ltd. Liab. Co. v. 3 Rivers Tel. Coop., Inc.*, 2008 MT 202, ¶ 15, 344 Mont. 117, 186 P.3d 869 ("All exhibits and materials referred to in a pleading are incorporated into the pleading." (emphasis added)). Moreover, at oral argument all parties agreed the District Court could rely upon the deeds attached to Fischer's Motion to Dismiss. (Doc. 11 at 3.)

asserts that the conveyance severed the joint tenancy with right of survivorship ("JTWROS") and, as a result, he did not obtain full ownership of the property when the other joint tenant died. However, a straightforward application of Montana law, *Barrett v. Ballard*—which held that the "law in Montana" is that "[a]ny act of a joint tenant which destroys one or more of its necessarily coexisting unities operates as a severance of the joint tenancy"—establishes that MacLaurin's own decision to convey a life estate to the Property in 1987 severed the JTWROS decades before Fischer was retained. 191 Mont. 39, 43, 622 P.2d 180, 183 (1980) (quotation marks omitted). Relying on this clear and binding precedent, the District Court correctly dismissed the case. This Court should affirm that decision.

In 1986, MacLaurin, his sister Dorothy Wardwell ("Sister'), and his stepmother Mary MacLaurin ("Stepmother") obtained title to certain property in Sheridan, Montana ("Property"). (Doc. 1, ¶ 11; App. 1.) In January 1987, MacLaurin and the Sister conveyed—by deed—to the Stepmother a life estate in the Property. (Doc. 1, ¶ 12; App. 2.) The deed conveyed to the Stepmother exclusive "use, control, income, possession, enjoyment and occupancy" of the Property for her lifetime, thus severing the unities of possession, interest, and title. (App. 2.) The Sister died in 2013. (Doc. 1, ¶ 13.)

Fischer was first retained by MacLaurin in 2020. At that time, Fischer drafted a revocable trust for MacLaurin ("Trust") and MacLaurin conveyed his

interest in the Property into the Trust. (*Id.* ¶ 16–17.) The Stepmother died in 2022. Following the Stepmother's death, her estate claimed 50% ownership in the Property. (*Id.* ¶ 21.) MacLaurin subsequently sold his interest in the Property to the Stepmother's heir. (*Id.* ¶ 22.)

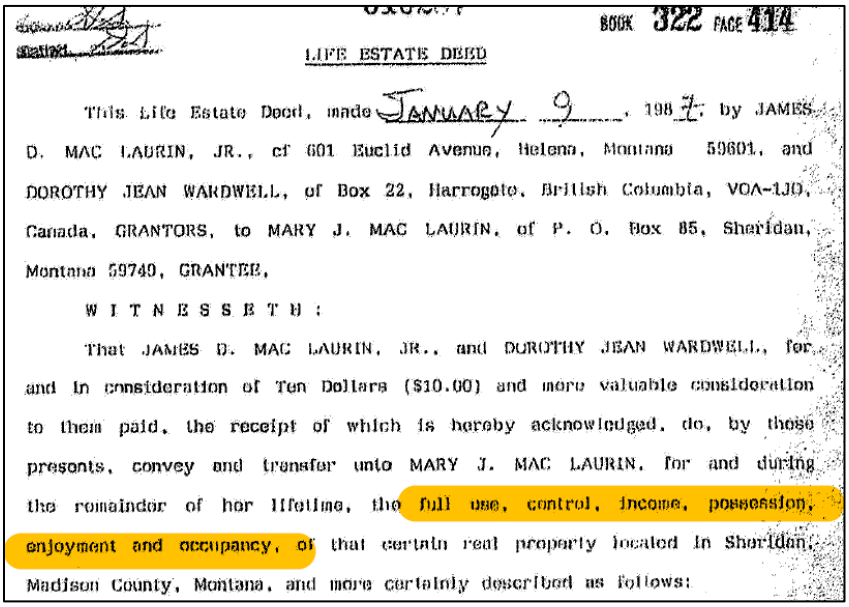
MacLaurin then sued Fischer alleging he committed malpractice with respect to the 2020 estate planning by advising MacLaurin to transfer his interest in the Property to the Trust. (*Id.* ¶¶ 18–19, 23.) Fischer moved to dismiss because it was MacLaurin's and his Sister's actions in 1987—decades *before* Fischer was ever involved—that severed the joint tenancy under this Court's 1980 decision in *Barrett*, by destroying three of the four necessary unities for JTWROS (possession, interest, and title). (Doc. 2.) Thus, as a matter of law, Fischer's advice in 2020 was correct and could not have caused the damages MacLaurin now claims. (*Id.*) The District Court agreed and, following oral argument, granted Fischer's Motion to Dismiss, holding:

> Applying Montana statutory and case law and the common law, the Court concludes that the Life Estate Deed granting Mary MacLaurin "for and during the remainder of her lifetime, the full use, control, income, possess, enjoyment and occupancy, of that certain real property located in Sheridan, Madison County, Montana . . ." served to sever the coexisting unities of the joint tenancy. Thus, the severance took place decades prior to Defendant's 2020 involvement with Plaintiff.

(Doc. 11 at 7.) MacLaurin appealed.

STATEMENT OF FACTS

MacLaurin, the Sister, and the Stepmother obtained ownership in the Property, known as 422 Mill Street in Sheridan, Montana, in November 1986. (Doc. 1, ¶ 10; App. 1.) The three of them obtained title in fee simple as joint tenants with a right of survivorship. (*Id.*) In January 1987, MacLaurin and the Sister, as grantors, conveyed to the Stepmother, as grantee, a life estate in the Property through what was titled a "Life Estate Deed" (hereinafter "1987 Conveyance"). (App. 2.) That deed conveyed the following interest:



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LIFE ESTATE DEED

This Life Estate Deed, made January 9, 198 7, by JAMES D. MAC LAURIN, JR., of 601 Euclid Avenue, Helena, Montana 59601, and DOROTHY JEAN WARDWELL, of Box 22, Harrogate, British Columbia, VOA-1JO, Canada, GRANTORS, to MARY J. MAC LAURIN, of P. O. Box 85, Sheridan, Montana 59749, GRANTEE,

W I T N E S S E T H :

That JAMES D. MAC LAURIN, JR., and DOROTHY JEAN WARDWELL, for and in consideration of Ten Dollars ($10.00) and more valuable consideration to them paid, the receipt of which is hereby acknowledged, do, by these presents, convey and transfer unto MARY J. MAC LAURIN, for and during the remainder of her lifetime, the full use, control, income, possession, enjoyment and occupancy, of that certain real property located in Sheridan, Madison County, Montana, and more certainly described as follows:

(*Id.* (emphasis added).) Thus, the Stepmother was granted, by deeded conveyance, "full use, control, income, possession, enjoyment and occupancy" of the Property "for and during the remainder of her lifetime." (*Id.*) The Stepmother was specifically responsible for "all taxes, insurance and other assessments or changes made against the premises." (*Id.*)

The Sister died in 2013, predeceasing both MacLaurin and the Stepmother. (Doc. 1, ¶ 13.) In 2020, Fischer drafted the Trust for MacLaurin and, in May 2020, MacLaurin conveyed his interest in the Property into the Trust (hereinafter "2020 Conveyance"). (*Id.* ¶¶ 16–17.) The Stepmother died in 2022. (*Id.* ¶ 19.)

The Stepmother's estate claimed a 50% ownership interest in the Property. (*Id.* ¶ 21.) MacLaurin did not challenge the claim and sold his interest in the Property to the Stepmother's heir. (*Id.* ¶ 22.)

MacLaurin filed suit against Fischer in March 2024 alleging that Fischer's advice to convey his interest in the Property into the Trust severed the JTWROS, which, in turn, prevented him from obtaining full title to the Property when the Stepmother died. (Doc. 1.) MacLaurin also sought a declaratory judgment that (a) the 1987 Conveyance did not sever the JTRWOS, (b) the 2020 Conveyance did sever the JTWROS, and (c) following the 2020 Conveyance, MacLaurin and the Stepmother held tenancy-in-common interests in the Property. (*Id.*)

STANDARD OF REVIEW

This Court's review of a district court's dismissal under Rule 12(b)(6) is *de novo*. *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 7, 390 Mont. 12, 407 P.3d 692. "A district court's determination that a complaint has failed to state a claim for which relief can be granted is a conclusion of law which we review for

correctness." *Sinclair v. Burlington N. & Santa Fe Ry.*, 2008 MT 424, ¶ 25, 347 Mont. 395, 200 P.3d 46.

Under Rule 12(b)(6) the court "must take all well-pled factual assertions as true and view them in the light most favorable to the claimant, drawing all reasonable inferences in favor of the claim." *Anderson*, ¶ 8. "An asserted claim is subject to dismissal if, as pled, it is insufficient to state a cognizable claim entitling the claimant to relief." *Id.* (citing Mont. R. Civ. P. 12(b)(6)). Dismissal is appropriate where a claim "either fails to state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under that claim." *Id.*

SUMMARY OF ARGUMENT

The District Court correctly concluded that the 1987 Conveyance destroyed the JTWROS in the Property and, as such, properly dismissed this case, because Fischer's advice in 2020 could not have caused the damages alleged by MacLaurin. Montana law provides that severing "[a]ny" of the four unities (possession, interest, title, and time) operates to sever a JTWROS. *Barrett*, 191 Mont. at 43, 622 P.2d at 183. Here, the 1987 Conveyance of a life estate severed the interest of possession, because the Stepmother was given exclusive possession of the Property. The 1987 Conveyance severed the unity of interest, because the Stepmother now had indefeasible legal rights elevated above those of MacLaurin

and his Sister. The 1987 Conveyance also severed the unity of title, because the Stepmother now held title under two instruments, but MacLaurin and the Sister held title under only one document. As such, the District Court correctly found that the 1987 Conveyance severed the JTWROS. Legal malpractice requires establishing that the lawyer's alleged breach of the standard of care caused the alleged damages. Here, the District Court correctly dismissed this case, because the effect of MacLaurin's actions in 1987, meant Fischer's advice could not have caused the damages MacLaurin now claims.

MacLaurin's arguments to the contrary do not change the analysis. This Court in 1980 outlined the "law in Montana" on severing a JTWROS. *Id.* That was and is the law. Moreover, *Barrett* is factually on point, because the decision outlined the principles regarding severing a JTWROS and then applied those principles to the facts in that case. Those very same principles are applicable to this case as well.

MacLaurin's reliance on the 1974 decision, *In re Estate of Rickner*, 164 Mont. 51, 518 P.2d 1160 (1974) (hereinafter "*Rickner*"), is misplaced. *Rickner* is readily distinguishable because it concerns an undelivered deed and examined whether changing the form of the JTWROS under a contract for deed severed the joint tenancy. Here, the deed at question was delivered and recorded and MacLaurin raises no issue as to whether the form of the interest changed. *Rickner*

was also decided before *Barrett*, which did not rely on *Rickner*, and *Barrett* was the law when the 1987 Conveyance occurred.

Lastly, MacLaurin's public policy arguments are unpersuasive. Arguments to change the law are not only unfounded, but also completely irrelevant because this is a malpractice case. An attorney cannot be liable for a future change in the law where the "law in Montana" was previously established at the time the advice was given. This Court's jurisprudence on severing a JTWROS is not underdeveloped because it is based on longstanding common law dating back hundreds of years. Moreover, the *Barrett* approach is neither rigid nor blunt, because it offers clear principles that permit lawyers and non-lawyers to easily apply the law. Lastly, MacLaurin's proffered "intent" approach would create a host of uncertainties in the law, including whether prior conveyances should be reexamined, what the meaning of "intent" entails, and how practitioners should examine conveyances. Such an approach would also create significant additional litigation around the intent of the parties to transactions.

The Court should follow its longstanding and clear precedent in *Barrett* and conclude the 1987 Conveyance severed the JTWROS and thus affirm the District Court's dismissal of this action.

ARGUMENT

MacLaurin's frustration with the result of actions he took in 1987 does not amount to professional negligence by legal counsel over thirty years later. As the District Court found, this case presents a straightforward application of this Court's controlling precedent in *Barrett*. MacLaurin and his Sister conveyed to the Stepmother an interest in the Property that destroyed three of the four the unities required under Montana law to maintain the JTWROS, decades before Fischer was asked to assist MacLaurin in his estate planning. As such, the District Court correctly held that MacLaurin's legal malpractice claim fails as a matter of law, because he cannot establish causation: "[T]he severance [of the joint tenancy] took place decades prior to [Fischer's] 2020 involvement with [MacLaurin]." (Doc. 11 at 7.) In response, MacLaurin disputes the application of *Barrett* and raises a number of public policy arguments, asking this Court to retroactively change its approach to severing joint tenancy nearly forty years after the conveyance at issue occurred and five years after the alleged malpractice. Such arguments are both unavailing and fatal in a legal malpractice action. The Court should affirm the District Court's dismissal.

I. The District Court correctly concluded that Fischer's actions, as a matter of law, did not fall below the standard of care, because MacLaurin and the Sister's conveyance of a life estate to the Stepmother in 1987 severed the joint tenancy before Fischer was retained for legal services in 2020.

MacLaurin claims that Fischer's advice to convey his interest in the Property into the Trust was a mistake which fell below the legal standard of care. That claim, however, fails to take into account this Court's 1980 precedent, which held that "[a]ny act . . . which destroys one or more of the necessarily coexisting unities" of the joint tenancy (possession, interest, title, and time) would sever the JTWROS. *Barrett*, 191 Mont. at 43, 622 P.2d at 183. MacLaurin and the Sister's conveyance of a life estate to the Stepmother in 1987, which gave her "full use, control, income, possession, enjoyment and occupancy" of the Property did just that: it severed the JTWROS. The analysis is straightforward and any other conclusion would require fundamentally revising Montana's common law on joint tenancy.

Legal malpractice claims require the plaintiff to establish and prove "the professional owed him a duty, and that the professional failed to live up to that duty, thus causing damages to the plaintiff." *Labair v. Carey*, 2012 MT 312, ¶ 17, 367 Mont. 453, 291 P.3d 1160 (quotation marks omitted). An attorney has a duty of care if there is an attorney-client relationship. *Lorash v. Epstein*, 236 Mont. 21, 24, 767 P.2d 1335, 1337 (1989). The standard of care in a legal malpractice action

is the "skill and care ordinarily exercised by attorneys." *Carlson v. Morton*, 229 Mont. 234, 240, 745 P.2d 1133, 1137 (1987). "[A]n attorney's negligence is the cause of the plaintiff's injury if there is an uninterrupted chain of events from the negligent act to the injury." *Labair*, ¶ 24.

Here, MacLaurin's legal malpractice claim fails as a matter of law because, as the District Court found, the JTWROS was severed decades before Fischer ever represented him. As such, Fischer's actions did not fall below the standard of care, nor could they, as a matter of law, be the cause of MacLaurin's alleged damages.

A. The District Court correctly concluded the 1987 Conveyance of a life estate by MacLaurin and the Sister severed the JTWROS under Montana law.

Montana has long recognized JTWROS as an estate in real property. As early as 1893, this Court held that "[a] homestead can be claimed in lands held in joint tenancy, or as tenants in common . . . ." *Ferguson v. Speith*, 13 Mont. 487, 493, 34 P. 1020, 1021 (1893); *see also In re Marsh's Estate*, 125 Mont. 239, 242, 234 P.2d 459, 461 (1951) (noting joint tenancy required the "four unities"). JTWROS is still an estate in property today. Mont. Code Ann. § 70–1–306.

Under the common law, to both form and maintain a JTWROS, the "four unities" of interest, title, time, and possession are required. *In re Marsh's Estate*, 125 Mont. at 242, 234 P.2d at 461; 20 Am. Jur. 2d *Cotenancy and Joint Ownership* § 5; *Barrett*, 191 Mont. at 43, 622 P.2d at 183 (relying on Am. Jur. 2d for joint

tenancy principles); *Todd v. Blakeslee*, 2008 Mont. Dist. LEXIS 580, *7 (Mont. 1st Jud. Dist. Ct.) (relying on Am. Jur. 2d for joint tenancy principles). These "unities" have simple and straightforward definitions. The unity of interest requires that each joint tenant's "shares are all equal and duration and quality, legal or equitable, of their estates are the same." 20 Am. Jur. 2d *Cotenancy and Joint Ownership* § 5. The unities of title and time require that all joint tenants must take title to the joint property via the same instrument and at the same time. *Id.* Lastly, unity of possession is the same for both JTWROS and tenancy in common, and mandates that each joint tenant must have "possession of the whole estate" and each "is entitled to an equal undivided share of the whole." *Id.*

Under Montana law, "unity of possession" is "an equal right in all to share in the enjoyment of the property during their lives." *Dep't of Revenue v. Estate of Dwyer*, 236 Mont. 405, 410, 771 P.2d 93, 96 (1989)); *see also Hennigh v. Hennigh*, 131 Mont. 372, 377, 309 P.2d 1022, 1025 (1957) ("These incidents [of a JTWROS] at common law were a single estate in property, real or personal, owned by two or more persons, under one instrument or act of the parties, an equal right in all to share in the enjoyment during their lives . . . ."). Such "possession" includes the "right to enter upon, occupy and use the whole or any part of the common property." *Mullins v. Butte Hardware Co.*, 25 Mont. 525, 536, 65 P. 1004, 1008 (1901) (interpreting "unity of possession" in tenancy in common).

A JTWROS is severed if any of the four unities are broken. In *Barrett*, this Court held in 1980 that the "law in Montana" on severance was as follows:

> "Any act of a joint tenant which destroys one or more of its necessarily coexisting unities operates as a severance of the joint tenancy and extinguishes the right of survivorship. The act of one joint tenant in severing his interest in the property by alienation severs the joint tenancy to that extent, so that if there were but two tenants, the joint tenancy is terminated."

Barrett, 191 Mont. at 43, 622 P.2d at 183 (quoting the then 20 Am. Jur. 2d *Cotenancy and Joint Tenants* § 16 and citing *State Bd. of Equalization v. Cole*, 122 Mont. 9, 195 P.2d 989 (1948)) (emphasis added). This definition was the same in English common law hundreds of years ago. As Blackstone commented in 1807:

> We are, lastly, to inquire how an estate in joint-tenancy may be *severed* and *destroyed*. And this may be done by destroying any of its constituent unities. . . . . But, 2. The joint-tenant's estate may be destroyed, without any alienation, by merely disuniting their *possession*. For joint-tenants being seised *per my per tout*, every thing that tend to narrow that interest, so that they shall not be seised throughout the whole, and throughout every part, is a severance or destruction of the jointure. . . . . 3. The jointure may be destroyed by destroying the unity of *title*. . . . . 4. It may also be destroyed, by destroying the unity of *interest*. . . . . In like manner, if a joint-tenant in fee makes a lease for life of his share, this defeats the jointure.

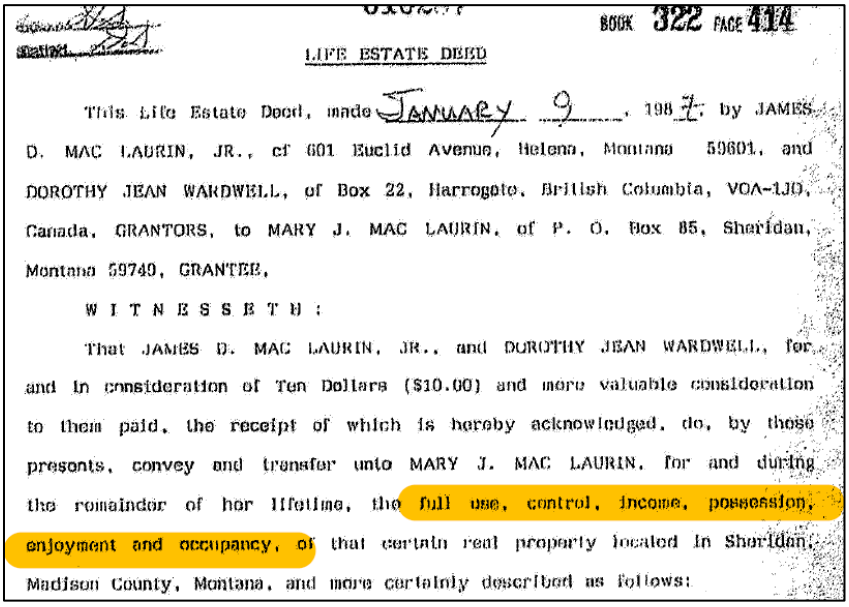
WM. Blackstone, *Commentaries on the Laws of England*, Book the Second at 185–86 (1807). What Blackstone outlined in 1807 is still the common law as articulated by *American Jurisprudence*, which states the following: "A joint tenancy is terminated by any act inconsistent with its continued existence or that operates to destroy one or more of its essential unities of interest, title, time, and possession."

20 Am. Jur. 2d *Cotenancy and Joint Ownership* § 21 (emphasis added). Thus, Montana law and common law agree that the severance of even a single unity will sever a JTWROS.

Here, the District Court correctly concluded the 1987 Conveyance severed the JTWROS for the Property. *First*, the 1987 Conveyance severed the unity of possession. The 1987 Conveyance provided the Stepmother "*full* use, control, income, possession, enjoyment and occupancy" of the Property. (App. 2 (emphasis added).) In other words, the Stepmother's use of the Property was exclusive to her and she had the legal right to bar entry onto the Property and deny MacLaurin and his Sister use, access, enjoyment, and other benefits of the Property. Montana law is clear that "unity of possession" is "an equal right in all to share in the enjoyment of the property during their lives." *Estate of Dwyer*, 236 Mont. at 410, 771 P.2d at 96 (emphasis added). The ability to exclude other joint tenants from the Property and hold "full" (*i.e.*, exclusive) use, control, possession, enjoyment, and occupancy of the property makes clear that the unity of possession was severed by the 1987 Conveyance.

Second, the 1987 Conveyance severed the unity of interest. Just before the conveyance of the life estate was made, MacLaurin, his Sister, and his Stepmother all owned, as joint tenants, a fee simple interest in the Property. Fee simple ownership, under Montana law, is "absolute title or estate in lands wholly

unqualified by any reversion, reservation, condition or limitation, or possibility of any such things present or future, or precedent or subsequent." *Libby Placer Mining Co. v. Noranda Minerals Corp.*, 2008 MT 367, ¶ 37, 346 Mont. 436, 197 P.3d 924 (emphasis added). Then, with the 1987 conveyance of the life estate, MacLaurin and his Sister conveyed, by way of a recorded deed—not a contract or lease—a full life estate in the Property to the Stepmother:



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LIFE ESTATE DEED

This Life Estate Deed, made January 9, 1987, by JAMES D. MAC LAURIN, JR., of 601 Euclid Avenue, Helena, Montana 59601, and DOROTHY JEAN WARDWELL, of Box 22, Harrogate, British Columbia, V0A-1J0, Canada, GRANTORS, to MARY J. MAC LAURIN, of P. O. Box 85, Sheridan, Montana 59749, GRANTEE,

W I T N E S S E T H :

That JAMES D. MAC LAURIN, JR., and DOROTHY JEAN WARDWELL, for, and in consideration of Ten Dollars ($10.00) and more valuable consideration to them paid, the receipt of which is hereby acknowledged, do, by these presents, convey and transfer unto MARY J. MAC LAURIN, for and during the remainder of her lifetime, the full use, control, income, possession, enjoyment and occupancy, of that certain real property located in Sheridan, Madison County, Montana, and more certainly described as follows:

(App. 2 (emphasis added).) This conveyance guaranteed, by recorded deed, that the Stepmother, who had formerly shared both possession and interest with MacLaurin and his Sister, now had exclusive "control, income, possession, enjoyment and occupancy" of the Property. In other words, MacLaurin and his Sister's interests were no longer "wholly unqualified," but were instead now significantly more constrained than that of the Stepmother. The Stepmother held more rights to the property than MacLaurin and his Sister in that the Stepmother had exclusive use of

the Property during her life. This, without question and as a matter of law, severed the unity of interest.

Third, the 1987 Conveyance was just that—a deed conveying an indefeasible interest (a life estate) in the Property from two joint tenants to the third joint tenant. Montana law provides that a joint tenancy is "one owned by several persons in equal shares by a title created by a single will or transfer . . . ." Mont. Code Ann. § 70–1–307 (emphasis added). Conveying any part of an interest in property severs the unity of title. Following the conveyance of the life estate by MacLaurin and his sister, title was no longer held by all of the owners under a single instrument, as one of the parties—the Stepmother—now held title under multiple instruments. MacLaurin variously claims in his Opening Brief that the 1987 Conveyance was a "property sharing agreement" or a "private agreement" between three joint owners. (*See, e.g.*, Op. Br. at 8, 20.) Not so. MacLaurin and his Sister conveyed to the Stepmother a recorded property interest which created an irrevocable lifetime property right in the Stepmother. Such act by MacLaurin and his Sister did not constitute a mere "property sharing agreement," it was an indefeasible property right.

Lastly, though no less importantly, the 1987 Life Estate Deed is utterly silent regarding any intent to preserve the JTWROS. The original deed by which MacLaurin, his Sister, and his Stepmother took title to the Property together

explicitly stated that they were doing so as joint tenants. (App. 1.) But, as the District Court noted, the 1987 Conveyance "does not mention joint tenancy," nor does it contain any language whatsoever which could challenge the conclusion that the parties had severed it. (Doc. 11 at 5.)

Montana law is clear and, when applied to the undisputed facts in this case, there is no doubt the JTWROS was severed by the 1987 Conveyance. Destruction of any one of the unities is enough and, as the District Court concluded, the unities were destroyed by the 1987 Conveyance:

> Applying Montana statutory and case law and the common law, the Court concludes that the Life Estate Deed granting Mary MacLaurin "for and during the remainder of her lifetime, the full use, control, income, possess, enjoyment and occupancy, of that certain real property located in Sheridan, Madison County, Montana . . ." served to sever the coexisting unities of the joint tenancy. Thus, the severance took place decades prior to Defendant's 2020 involvement with Plaintiff.

(Doc. 11 at 7.) The damages that MacLaurin claims Fischer caused were, in fact, caused by MacLaurin himself. *Carlson*, 229 Mont. at 240, 745 P.2d at 1137; *Labair*, ¶ 24. Fischer, on the other hand, correctly interpreted the effect of the 1987 Conveyance and thus, there was no negative impact to MacLaurin (much less malpractice) by advising MacLaurin to convey his interest into the Trust. The Court should, thus, affirm the District Court's dismissal of MacLaurin's Complaint. Mont. R. Civ. P. 12(b)(6).

B. MacLaurin's argument that *Barrett* does not apply and that this Court has adopted an "intent to sever" approach misunderstands Montana law.

MacLaurin's opening brief (and his briefing below) omits any analysis of the four unities and whether (or not) they were severed by the 1987 Conveyance. This omission speaks volumes. Under the controlling legal analysis, MacLaurin's claim fails as a matter of law. Nevertheless, MacLaurin argues that this Court should not follow its binding precent in *Barrett* (which outlines the law on severing joint tenancy dating back to English common law), but, instead, follow an earlier decision, *Rickner*, which he asserts stands for an "intent to sever" approach to severing JTWROS interests. Neither of these arguments are meritorious.

MacLaurin argues that the *Barrett* decision is factually inapposite and is "primarily" about contracts. (Op. Br. at 17–20.) MacLaurin is mistaken. *Barrett* concerned a situation where this Court examined whether a wife's unilateral action to sell a piece of property held in joint tenancy was binding and, as such, examined what the "law in Montana" was regarding severing the JTWROS for that property. In brief, the wife entered into a real estate contract with a broker to sell property she and her husband held in joint tenancy. *Barrett*, 191 Mont. at 41–43, 622 P.2d at 182–83. The broker sourced a buyer who eventually entered into an agreement with the husband to purchase, cutting the realtor out, who later sued for her commission. *Id.* On appeal, the wife argued, among other things, that the real

estate contract was impossible to perform since she alone (and not her husband) signed it and she and her husband held the property as joint tenants. *Id.* at 43, 622 P.2d at 183. To address this argument, this Court was forced to address whether the wife alone could sever the joint tenancy and sell her interest. In answering this question, this Court held the "law in Montana" was that one joint tenant could, in fact, sever the interest and outlined how that was done: "[a]ny act of a joint tenant which destroys one or more of its necessarily coexisting unities operates as a severance of the joint tenancy and extinguishes the right of survivorship." *Id.* (quotation marks omitted). Thus, the Court concluded that the impossibility argument failed. *Id.* at 44, 622 P.2d at 184. Like the District Court did here, the *Barrett* Court correctly applied the principles of severing a JTWROS to the facts before it, which, in that case, meant the impossibility argument was legally void. The same analysis applies here. As the District Court concluded in this case, those very same principles (*i.e.*, whether "[a]ny" unities were broken) necessitate the conclusion that the JTWROS was severed in 1987 with the conveyance of the life estate to the Stepmother. "Applying Montana statutory and case law and the common law, the Court concludes that the Life Estate Deed . . . served to sever the coexisting unities of the joint tenancy." (Doc. 11 at 7.)

MacLaurin also argues that *Barrett* fails to address certain "nuances" of severing JTWROS. He claims *Barrett* is good law for when property is conveyed

to a third party, but it fails to address "other factual scenarios" such as property sharing, leases, or life estates. (*See e.g.*, Op. Br. at 21–22.) This argument is unpersuasive. The *Barrett* decision sets forth the principles of how and when a JTWROS is severed with a straightforward definition, which has served as a fundamental tenet of property law for hundreds of years: the destruction of any of the unities operates as a severance. With this clear definition in hand, practitioners can (as Fischer did here) apply it to determine if the actions taken by the joint tenants severed the JTWROS or not. *Barrett* applies equally to all situations and provides a straightforward means to analyze the question. MacLaurin attempts to diminish *Barrett*'s significance by claiming the cases citing *Barrett* mostly show contract-related reliance, but this argument misses the point. The clarity of the *Barrett* decision is presumably why there is little additional case law arising from parties disputing whether a JTWROS was severed or not. Where a rule is clear and easy to apply, there is no need to litigate, because resolving whether or not the JTWROS was severed does not require litigating the subjective intent of every disputed conveyance.

Lastly, in place of *Barrett*, MacLaurin asserts this Court should follow *Rickner*. MacLaurin's argument is not persuasive. *First*, *Rickner* is not factually applicable. In *Rickner*, the joint tenants jointly entered into a contract for deed to sell certain property, then the wife died. 164 Mont. at 52–53, 518 P.2d at 1160–61.

Per the contract for deed, the title was placed in escrow. *Id.* at 53, 518 P.2d at 1161. The question before this Court was whether an action by all joint tenants to change the *form* of the interest severed the JTWROS. *Id.* at 53–54, 518 P.2d at 1161–62. This Court concluded no, finding that "proceeds of a sale of joint tenancy property pursuant to a contract are held in joint tenancy. Mere change of form through equitable conversion does not automatically change the nature of the interest." *Id.* at 56, 518 P.2d at 1162. Importantly, unlike here where the deed conveying the life estate to the Stepmother was recorded and the rights accompanying the life estate were irrevocably conveyed, nothing was ever conveyed in *Rickner* because the deed was held in escrow. Deeds are not effective until delivered, therefore, in *Rickner*, the joint tenants continued to hold the four unities together. Mont. Code Ann. § 70–1–511 (providing grants delivered to third person are not effective until delivery by the depository); *Sparks v. Emmert*, 2016 MT 43, ¶¶ 12–13, 382 Mont. 249, 369 P.3d 994 (noting grant takes effect only upon delivery by grantor). Unlike *Rickner*, this case does not ask whether the *form* of MacLaurin and the Sister's interest changed. Rather, as outlined above, the question is whether a conveyance of a life estate to a joint tenant severs the JTWROS. That is not a change in the "form" of the property, but something quite different. *Rickner* is, thus, factually not on point. *Second*, *Rickner* was decided in 1974—six years before the 1980 decision in *Barrett*—and *Barrett* did not adopt or

rely upon *Rickner* when it held that the "law in Montana" on severance of a JTWROS was destroying any of the four unities. *See generally Barrett*, 191 Mont. at 41–44, 622 P.2d at 182–84. And, *lastly*, *Barrett* was the binding law when the 1987 Conveyance occurred, not *Rickner*. *Rickner*, for a host of reasons, is therefore not applicable here.

Ultimately, this Court could not have been clearer in *Barrett* when it provided the "law in Montana" on how a JTWROS is severed. The District Court appropriately applied Montana law and this Court should affirm the dismissal.

II. MacLaurin's policy arguments in favor of changing this Court's precedent are unavailing and are, in any event, fatal to his malpractice claim.

MacLaurin's remaining arguments are public policy arguments that the *Barrett* approach is an "underdeveloped," "rigid," and "blunt framework" that is "overly theoretical" and that this Court should adopt an "intent to sever" approach. (Op. Br. at 23–32.) These arguments are addressed below, but fundamentally his argument misses the forest for the trees.

As a preliminary matter, this is a legal malpractice case, not a property case and, as such, there exists no case or controversy related to the property issue for the Court to resolve. Instead, MacLaurin is asking the Court to upend longstanding and unwavering legal precedent in order to bootstrap his argument in 2025 that Fischer erred in 2020 when he correctly interpreted the effect of a 1987 conveyance of a

life estate based on a 1980 decision of this Court which made clear that the law in Montana is (and was) what it has been since statehood. (*See generally* Doc. 1.) As argued above, *Barrett* confirmed what the "law in Montana" was in 1980 and no decisions by this Court since *Barrett* have changed the "law in Montana" regarding the severing of JTWROS. To the extent MacLaurin asks this Court to now change course and adopt a new legal standard for examining such severances, a legal malpractice action is not the right proceeding. MacLaurin no longer owns the property and, even if the Court were inclined to entertain MacLaurin's argument, it would need to determine precisely when this substantive change to Montana law would become effective: from this point forward in 2025? When Fischer allegedly erred in 2020? When MacLaurin and his Sister conveyed the life estate in 1987? Or, even further back?

Here, the effect of what happened with the 1987 Conveyance was correctly analyzed by Fischer in 2020 by applying the "law in Montana" at the time of both the 1987 Conveyance and the time that the legal advice was given. Importantly, the 1987 Conveyance occurred just a few years after *Barrett* was decided. Even if the Court decided to change the law from this point forward, an attorney cannot reasonably be expected to anticipate changes in well-established law after legal advice has been provided and where the prior precedent made clear that the "law in

Montana" was different. Thus, Fischer's advice could not have fallen below the legal standard of care.

This Court's jurisprudence on JTWROS is not underdeveloped. Quite the opposite. *Barrett* is based on longstanding common law. As examined *infra*, the common law regarding what establishes and what severs a JTWROS is thoroughly developed and has been the law for hundreds of years. Montana recognized joint tenancy as an estate in property from the outset. The definitions of each of the unities underpinning JTWROS are clearly stated in both Montana and common law. Similarly, the law set forth in *Barrett* regarding the severance of a JTWROS aligns perfectly with the law set forth by Blackstone over two hundred years ago. There can be no question this Court's decision in *Barrett* is well founded.

Further, the *Barrett* principles (or the "four unities approach") are neither rigid nor blunt. Rather, they provide objective and clear definitions for both lawyers and non-lawyers to rely upon when examining what happened in a particular chain of title. Often, disputes regarding the import of a deed or its effect arise long after the conveyance occurred and, as is the case here, after all but one of the joint tenants has died. Being able to apply objective and clear principles to determine the import of prior actions brings clarity, simplicity, and predictability to the law. That is key.

By contrast, an "intent" approach creates unnecessary confusion and vagueness, which will undoubtedly lead to significant litigation throughout Montana concerning the "intent" of the parties. A subjective approach would require answering a number of questions regarding the standard to be applied. What actions constitute intent? What does silence mean? How should practitioners examine intent when some or all of the parties involved are now deceased? What happens when only one remaining party is alive and the now-deceased party's representatives or heirs cannot dispute the alleged intent? Does intent need to be established using only the written (or recorded) documents at issue or can intent be derived from oral statements or testimony? The list goes on and on. Importantly, all the above questions are questions of fact, which would require establishing intent through litigation. Adopting an intent approach would, as such, potentially subject every conveyance to litigation and dispute.

Moreover, if this Court were inclined to reverse course and abandon *Barrett*'s "law in Montana" analysis, it would need to consider the innumerable property transactions which have occurred over the past four decades, which may need to be revisited and potentially revised by court order. A change in the law of such a magnitude would create a host of downstream impacts and, as articulated *infra*, inject substantial uncertainty into future property transactions and open the floodgates of litigation over the "intent" of the parties to a conveyance.

Similarly, a decision to abandon *Barrett*'s approach would require the Court to articulate precisely what the rule regarding the severance of JTWROS is going forward. For example, any such decision would need to specifically analyze why, as MacLaurin argues, the conveyance of his interest into the Trust severed the JTWROS (even though the revocable Trust was controlled by MacLaurin) while the conveyance of his interest by life estate deed in 1987 did not. Another example would be a contractual arrangement to let one joint tenant have exclusive possession of the property for a period of time. Would that sever the JTWROS under the "intent" approach? These represent just a few examples among the numerous possibilities that the overturning of such longstanding law would necessitate this Court address (or address in future litigation).

This Court made clear over forty years ago that the law in Montana is that severing any of the four unities severs a JTWROS. The Court should reaffirm and leave its longstanding jurisprudence in place.

CONCLUSION

MacLaurin may be frustrated with the effects of his own actions in 1987, but that does not mean the law is wrong, nor that the law should be changed decades later to provide a different outcome for him (or, as here, a means to blame his legal counsel). Fischer correctly interpreted this Court's precedent in *Barrett* and applied it to the facts before him. The fact that MacLaurin and his Sister severed the

JTWROS thirty years ago was not Fischer's fault, and therefore he cannot be liable for legal malpractice as a matter of law. The Court should affirm the District Court.

Dated: October 27, 2025

BOONE KARLBERG P.C.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing Appellee's Answer Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double-spaced except for quoted and indented material, and contains approximately 6,678 words, excluding the Table of Contents, Table of Authorities, and Certificate of Compliance.

Dated: October 27, 2025

BOONE KARLBERG P.C.

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CERTIFICATE OF SERVICE

I, Tyler M. Stockton, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-27-2025:

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