

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 25-0436

CHRISTINE BROCK, AS CO-TRUSTEE OF
THE DONALD D. BROCK AND JANET M.
BROCK, CO-TRUSTEES OF THE DON AND
JANET BROCK FAMILY TRUST DATED
MARCH 24, 1998

Cross-Appellant, Appellee, Plaintiff

v.

SHAN and DANA TOMPKINS

Cross-Appellee, Appellant, Defendant

***STIPULATED MOTION TO VACATE MANDATORY APPELLATE ALTERNATIVE DISPUTE
RESOLUTION UNDER MONT. R. APP. P. 7***

On Appeal from the Montana Twenty-First Judicial District Court, Ravalli County,
Cause No. DV-41-2018-0000428-DK, Before Hon. Howard Recht.

Kyle J. Workman
WORKMAN LAW, PLLC
PO Box 1167
Hamilton, MT 59840
Telephone: (406) 802-2198
kyle@workmanlawmt.com
courts@workmanlawmt.com
*Attorney for Cross-Appellant,
Appellee,
Plaintiff Janet Brock*

Jesse Kodadek
William Casey
PARSONS BEHLE & LATIMER
127 E. Main St., Suite 300
Missoula, MT 59802
Telephone: (406) 317-7220
jkodadek@parsonsbehle.com
wcasey@parsonsbehle.com
*Attorneys for Cross-Appellee,
Appellant,
Defendants Shan and Dana Tompkins*

COMES NOW Cross-Appellant Christine M. Brock, as Co-Trustee of the Donald D. Brock and Janet M. Brock, Co-Trustees of THE DON AND JANET BROCK FAMILY TRUST DATED MARCH 24, 1998, (hereinafter “Brock”), by and through undersigned counsel of record, Kyle J. Workman, of Workman Law, PLLC, and hereby files this Joint Stipulated Motion for Clarification Regarding Mandatory Appellate Alternative Dispute Resolution Under Rule 7, Mont. R. App. P. Thereby, the Parties jointly move the Court for an Order clarifying that this case is not subject to mandatory appellate alternative dispute resolution.

STATEMENT OF THE ISSUE

The issue at present is whether Brock’s Cross Appeal regarding the District Court’s denial of attorney’s fees triggers mandatory appellate alternative dispute resolution under Mont. R. App. P 7(2)(c). Based on review of the relevant case law, Brock’s cross appeal arguing for reversal of the District Court’s denial of an award of attorney’s fees, by itself, likely does not trigger Mont. R. App. P 7.

ANALYSIS

Cross-Appellee, Appellant and Defendant Shan and Dana Tompkins’ (hereinafter “Tompkins”) filed their notice of appeal challenging the District Court’s *Findings of Fact, Conclusions of Law and Order re Express and Implied Easement* (Doc. 119). Therein, the court issued a three-part order: (1) granting declaratory judgment to the Brock for an implied easement; (2) issuing a permanent

injunction prohibiting any further interference with the easement; and (3) giving the parties until a date certain to brief the issues of “attorney fees and costs and any other procedural issues.” *Id.* From this Order, Tompkins appeal.

Brock’s operative amended complaint does not seek money damages in its request for relief, other than a request for an award of reasonable costs and attorney’s fees. (*Brock v. Tompkins*, Doc. 41, at 7, 8,). In Brock’s Notice of Cross Appeal, however, did indicate that this cross-appeal was subject to mediation under Rule 7, Mont. R. App. P. (*Notice of Cross-Appeal*, at 2, Doc. 3). Brock, out of an abundance of caution, included this language regarding mediation as to not waive or otherwise avoid the requirements of Mont. R. App. P. 7. Brock’s only issue on cross-appeal is the District Court’s denial of an award of reasonable costs and attorney’s fees.

The parties were scheduled for appellate mediation to be conducted on Sept. 18, 2025. However, prior to conducting that mediation, the District Court granted Brock’s previously filed Motion under Rule 59, Mont. R. Civ. P., leading to additional briefing on behalf of the parties in this Court and a postponement of the previously scheduled mediation. This Court ultimately vacated the District Court’s order granting Brock’s Rule 59 Motion. (*Order*, at 3, Doc. 22).

Thereafter, upon further review of the relevant case law, and additional correspondence between the parties, it was determined that Mont. R. App. P. 7, is

likely not operative here. Specifically, because this appeal, and the underlying case, is one regarding interests and rights in real property, where the prevailing party's right to an award for attorney's fees could be considered ancillary to the primary issue, mandatory alternative dispute resolution under Mont. R. App. P. 7, is likely not triggered.

In *Hanley v. Lanier*, this Court concluded that an appeal addressing the existence or nonexistence of an easement along with corresponding injunctive relief was not subject to mandatory appellate mediation and that requiring it would not "hasten or assist resolution" of the appeal. *Hanley v. Lanier* 2001 MT 91, ¶ 4, 305 Mont. 175, 24 P.3d 206. The Court reached a similar conclusion in an appeal about a lease that provided for an award of attorney fees to the prevailing party, where it was "clear that, absent the incidental attorney fee issue, this appeal could not be categorized as one in an action seeking monetary damages or recovery." *McDonald v. Cosman*, 1999 MT 294, ¶ 5, 297 Mont. 108, 995 P.2d 922. The Court reasoned that to conclude otherwise "would require parties to mediate a matter totally incidental to the outcome of the substantive issue on appeal without providing a concomitant opportunity to resolve the substantive issue." *Id.*

Based on this further review of the relevant case law, the Parties agreed that Brock's cross-appeal for attorney's fees did not necessarily trigger the mandatory appellate mediation under Mont. R. App. P. 7(2)(c). Here, the Parties have further

conversed and are in agreement that to appellate mediation would neither hasten nor assist in a resolution of Tompkins' appeal nor Brock's Cross Appeal.

Here, the parties have already participated in an unsuccessful mediation about the disputed easement. The case then went to trial. The District Court issued a declaratory judgment and accompanying injunctive relief regarding an easement. There are no money damages at issue on appeal, other than that Brock's cross-appeal will address whether the District Court should have awarded attorney fees. For these reasons, appellate mediation will not resolve the substantive issues on appeal and could instead only delay the resolution of this case. The parties therefore respectfully request that the Court issue an order concluding that this case can proceed without appellate mediation. A proposed order regarding this same is filed contemporaneously herewith.

DATED this 29th day of October 2025.

RESPECTFULLY SUBMITTED.
WORKMAN LAW, PLLC

By: /s/ Kyle J. Workman
Kyle J. Workman,
Attorney for Brock

DATED this 29th day of October 2025.

Parsons Behle & Latimer

By: /s/ Jesse Kodadek
Jesse Kodadek
Attorneys for Tompkins

CERTIFICATE OF SERVICE

I, Kyle J. Workman, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 10-29-2025:

William T. Casey (Attorney)
127 E. Main Street
Suite 301
P.O. Box 7369
Missoula MT 59802
Representing: Dana Tompkins, Shane Tompkins
Service Method: eService

Jesse C. Kodadek (Attorney)
Parsons Behle & Latimer
127 East Main Street
Suite 301
Missoula MT 59802
Representing: Dana Tompkins, Shane Tompkins
Service Method: eService

Electronically signed by Abby Fegely on behalf of Kyle J. Workman
Dated: 10-29-2025