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IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0756

IN THE MATTER OF THE GUARDIANSHIP AND
CONSERVATORSHIP OF:

J.F.R.,

A Protected Person.

MOTION TO DISMISS APPEAL

COMES NOW, Petitioner and Permanent Full Co-Guardian of J.F.R, Jana R. Cooke (“Jana”), by and through her undersigned counsel, and, in accordance with Montana Rule of Appellate Procedure 16(1), respectfully moves the Court to dismiss the appeal of Appellant Lawrence Henke. Mr. Henke has been contacted and opposes this Motion. Counsel for J.F.R. and Stephanie Ross have also been contacted, and they take no position on this motion.

On October 20, 2025, the Montana Third Judicial District Court, Granite County, issued an Order granting Jana’s Emergency Motion regarding Contempt of Court by Henke and Ross (“Order”). *See* Order – Emergency Motion Regarding Contempt by Henke and Ross, Cause No. DG-20-2023-2, Montana Third Judicial District Court, Granite County (Oct. 20, 2025), attached as **Exhibit A**. In the Order, the district court instructed Mr. Henke to submit documentation to support his unauthorized receipt of attorney fees and held Mr. Henke jointly responsible for Jana’s attorney fees related to the emergency motion for contempt. *See Id.* Mr. Henke appealed from this Order. Because the Order is not appealable, the appeal should be dismissed.

Montana Code Annotated § 3-1-523(1) provides (in part) that “[t]he judgment and orders of the court or judge made in cases of contempt are final and conclusive.” It also explains that “there is no appeal” permitted, with one limited exception. Mont. Code Ann. § 3-1-523(1). The only exception to this rule applies to a contempt judgment or order in a *family law proceeding* and “only when the judgment or order appealed from includes an ancillary order that affects the substantial rights of the parties involved.” Mont. Code Ann. § 3-1-523(2).

Montana Rule of Appellate Procedure 6(3) provides a list of orders that may be appealable in civil cases, and specifically states that an aggrieved party may appeal “[f]rom a contempt judgment or order in a *family law proceeding* when, and only

when, the judgment or order appealed from includes an ancillary order entered as a result of the contemptuous conduct which affects the substantial rights of the parties involved.” M. R. App. P. 6(3)(j) (emphasis added). Further, Montana Rule of Appellate Procedure 6(4)(a)–(g) identifies which orders are final and can be appealed in guardianship matters, and a contempt judgment or order is not one of them. In fact, Rule 6(5)(d) makes clear that “[j]udgments or orders made in cases of civil or criminal contempt, except as provided in section (3)(j) of this rule and section 3-1-523” are among those judgments or orders that are *not appealable*.

Additionally, in a case involving a conservatorship in Beaverhead County district court where an order for contempt was entered and subsequently appealed, the Montana Supreme Court held that the issues raised on appeal regarding the contempt order had not been properly presented under § 3-1-523 and the appeal was dismissed. *In re Estate of Gordon*, 192 Mont. 499, 503–04, 628 P.2d 1117, 1119 (1981). Notably, no family law proceeding exception was discussed or applied to the contempt order appealed in the *Estate of Gordon* conservatorship proceeding. *See Id.*

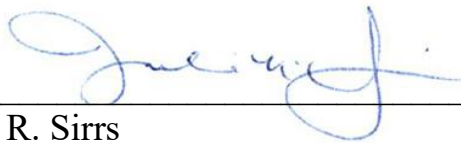
Even if this guardianship and conservatorship proceeding were considered a family law proceeding, “[a] contempt order in a family law proceeding is reviewable only if, within a single judgment, the court issues both an order of contempt and an ancillary order determining the substantive rights of the parties.” *In re Marriage of Marez and Marshall*, 2014 MT 333, ¶ 25, 377 Mont. 304, 340 P.3d 520 (citing

Grounds v. Coward, 2000 MT ¶ 6, 300 Mont. 1, 2 P.3d 822). A “lone contempt order” is not subject to direct appeal. *Id.* (citing *Lee v. Lee*, 2000 MT 67, ¶ 37, 299 Mont. 78, 996 P.2d 389). The Court has also recently recognized in the family law context that if a contempt order does not affect the substantial rights of the parties, it is not appealable. *Taylor v. Taylor*, DA 23-0556, 2023 Mont. LEXIS 1162, at *2 (Nov. 21, 2023) (citing *Grounds v. Coward*, 2000 MT 128, 300 Mont. 1, 2 P.3d 822).

Here, the Order from which Mr. Henke appealed was from a guardianship and conservatorship proceeding, not a family law proceeding. As such, it is a final and conclusive order that is not appealable. Further, even assuming *arguendo* that a guardianship and conservatorship proceeding is considered a family law proceeding, the Order Mr. Henke appealed does not affect the substantial rights of the parties. Because the Order that was appealed here is not an appealable order under Montana Code Annotated § 3-1-523 and Montana Rule of Appellate Procedure 6 or the limited exception, it should be dismissed.

DATED this 3rd day of November, 2025.

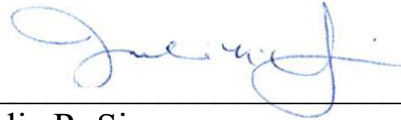
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Julie R. Sirrs
Natasha Prinzing Jones
Forrest M. Crawl
Attorneys for Jana R. Cooke

CERTIFICATE OF COMPLIANCE

In accordance with Montana Rule of Appellate Procedure 16(3), I certify that this Motion to Dismiss is printed with a proportionally spaced Times New Roman text typeface of 14 points; is double-spaced, except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word is not more than 1,250 words.



Julie R. Sirrs
BOONE KARLBERG P.C.

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6 **MONTANA THIRD JUDICIAL DISTRICT COURT**
7 **GRANITE COUNTY**

8 In re the Guardianship and
9 Conservatorship of:

10 JUDITH ROSENBERG
11

Cause No. DG-20-2023-2

12 **ORDER – EMERGENCY**
13 **MOTION REGARDING**
14 **CONTEMPT BY HENKE**
15 **AND ROSS**

16 Before the Court is Temporary Co-Guardian Jana Cooke’s (Jana)
17 emergency motion re contempt by Henke and Ross [Docket No. 273].

18 Temporary Co-Guardian Stephanie Ross (Stephanie) and Protected Person Judith
19 Rosenberg (Judith) oppose the motion. Temporary Co-Guardian and Temporary
20 Conservator Western Montana Chapter for the Prevention of Elder Abuse
21 (Western Montana) did not take a position. Julie Sirrs, Natasha Prinzing Jones,
22 and Forrest M. Crowl represent Jana. Donald Craig St. Peter, Logan A.
23 Nutzman, and Makayzia Counts represent Stephanie. Lawrence E. Henke
24 represents Judith. William E. McCarthy, Cynthia Schott, and Natalie Black
25 represent Western Montana.

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1 of documents received from a financial management firm, Creative Planning, as
2 well as copies of Judith’s bank statements. On February 27, 2025, Jana filed an
3 addendum to Jana Cooke’s emergency motion [Docket No. 280]. Included with
4 her addendum was the affidavit of Julie Sirrs in support of addendum. Attached
5 to the affidavit were copies of documents received from Fidelity Investments by
6 subpoena.

7 Stephanie filed a response to the emergency motion [Docket No.
8 277] on February 24, 2025. Attached to her response were a number of
9 documents. However, the documents were not accompanied by an affidavit.
10 Judith filed a response and objection [Docket No. 281] on March 5, 2025. Judith
11 did not file any supporting documentation or affidavits. Jana filed her reply in
12 support of emergency motion [Docket No. 289] on March 31, 2025. Jana
13 attached a number of documents to her reply. However, they were not
14 accompanied by an affidavit. Western Montana did not file a brief.

15 The documents Jana submitted and attached to the affidavit and
16 addendum affidavit of Julie Sirrs show the following: Judith has three financial
17 accounts with Fidelity Investments, an individual retirement account (IRA), an
18 account for the Judith F. Rosenberg 2007 Revocable Trust, and an account for a
19 trust established by her deceased husband for her benefit (Exemption Trust).

20 On October 14, 2024—six (6) days after the Supreme Court issued
21 its opinion upholding this Court’s determination of Judy’s incapacity and need
22 for a conservator—a representative of Creative Planning met with Mr. Henke,
23 Judith, and Stephanie to establish management of Judith’s Fidelity accounts.
24 *Affidavit*, Ex. 2, pp. 2, 42. According to Creative Planning: “At the time of the
25 engagement, Creative Planning understood that while there was a Court-ordered

1 conservatorship in the past for [Judy’s] IRA account, Ms. Rosenberg was able to
2 engage with us on her own behalf.” *Affidavit of Julie Sirrs*, Ex. 2, p. 42.

3 Creative Planning was engaged to “manage the accounts of The Judith F.
4 Rosenberg 2007 Revocable Living Trust, of which Judith Rosenberg is the
5 Trustee of the Trust.” *Affidavit of Julie Sirrs*, Ex. 2, p. 42. Creative Planning
6 was also engaged to manage Judith’s IRA. *Affidavit of Julie Sirrs*, Ex. 2, p. 2.

7 On November 8, 2024, a Fidelity representative emailed Stephanie and a Creative
8 Planning representative:

9 Long story short, we have a restriction on the Exemption Trust
10 pertaining to a notice that the sole trustee (Judith) on the account is
11 incapacitated. Therefore, we cannot change the account unless she is
12 removed as trustee if that is the case. That being said, Stephanie
13 shared that there was a ruling invalidating that notice and may not
14 need to be removed. So this leaves where I will reach out to our
back office teams and see if we are able to remove the restriction due
to this new ruling.

15 *Affidavit of Julie Sirrs*, Ex. 2, p. 15.

16 Not long after this exchange, Creative Planning received from
17 Judith a letter dated October 14, 2024 (the date of the first meeting between
18 Creative Planning, Judy, Stephanie and Mr. Henke), in which Judith requests
19 payment to Vicevich Law in the amount of \$16,517.11. *Affidavit of Julie Sirrs*,
20 Ex. 2, p. 20. Included with the letter was a check request to Fidelity seeking a
21 withdrawal from the “Rosenberg and Ross Trust” electronically signed by Judith
22 but sent from Stephanie’s email address. *Affidavit of Julie Sirrs*, Ex. 2, pp. 16,
23 21.

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1 Stephanie, without providing notice to the Western Montana,
2 transferred \$10,000 to her Wells Fargo account for “home repairs.” *Affidavit of*
3 *Julie Sirrs*, Ex. 2, pp. 28, 31. Stephanie then contacted Creative Planning to
4 arrange the transfer of \$30,000 from Judy’s IRA to the “Rosenberg and Ross
5 Trust,” with the request electronically signed by Judith through Stephanie’s email
6 address. *Affidavit of Julie Sirrs*, Ex. 2, pp. 33-39. Stephanie sent an email to
7 Creative Planning stating: “Larry is fine with transferring \$30,000 from the IRA
8 to the trust to replenish.” *Affidavit of Julie Sirrs*, Ex. p. 44. The \$30,000 was not
9 transferred because Fidelity notified Creative Planning it would first need
10 approval from the Western Montana. *Affidavit of Julie Sirrs*, Ex. 2, p. 40.

11 On January 21, 2025, Creative Planning notified Stephanie, Mr.
12 Henke and Judith that it planned to terminate its relationship with Judith:

13 “Creative Planning entered into an engagement with Judith
14 Rosenberg on or about October 15, 2024. At the time, Mr. Henke
15 was present with Ms. Rosenberg to sign the engagement agreement
16 with Creative Planning. The engagement agreement granted Creative
17 Planning the ability to manage the accounts of The Judith F.
18 Rosenberg 2007 Revocable Living Trust, of which Rosenberg is the
19 Trustee of the Trust. Creative Planning was informed that Ms.
20 Rosenberg’s daughter, Stephanie Ross, has Power of Attorney. At
21 the time of the engagement, Creative Planning understood that while
22 there was a Court-ordered conservatorship in the past for her IRA
23 account, Ms. Rosenberg was able to engage us on her own behalf.
24 Since the time of the engagement, and from the receipt of the
25 Subpoena and the communications between the parties, it appears
there is a factual dispute regarding who is responsible for Ms.
Rosenberg’s actions, and who is representing Ms. Rosenberg and
handling her affairs. According to the Court Order dated November
20, 2023, it appears the Court appointed Western Montana Chapter
for the Prevention of Elder Abuse guardianship and conservatorship
with “authority to manage all of Judy’s assets, whether held in her
individual name or in trust.” As shown above, from the beginning,

1 Mr. Henke and Stephanie arranged for Creative Planning to be
2 involved with all of Judy's investment accounts, both those in her
3 individual name and in trust. At this point, Creative Planning is not
4 confident who is representing Ms. Rosenberg. While Creative
5 Planning has dealt with Ms. Rosenberg individually, with her
6 attorney, Mr. Henke, present, it appears from the Court Order of the
7 Third Judicial District Court of Granite County, Montana dated
8 August 30, 2024, that Ms. Rosenberg, and her assets, may still be
9 subject to the guardianship and conservatorship of the Western
10 Chapter of Montana.

11 *Affidavit of Julie Sirrs*, Ex. 2, pp. 42-43.

12 The affidavit of Julie Sirrs in support of addendum included copies
13 of documents received from Fidelity Investments. The documents show an
14 additional \$22,586.70 was paid to Mr. Henke's then-law firm in August 2024
15 from Judith's 2007 revocable trust. *Addendum Affidavit*, Ex. 2.

16 The Court held a hearing on the motion on June 10, 2025, and
17 heard oral argument on August 14, 2025. Jana's emergency motion for contempt
18 is fully briefed and ready for decision.

19 **PRINCIPLES OF LAW**

20 Disobedience of any lawful judgment, order, or process of the
21 court is a contempt of court. Mont. Code Ann. § 3-1-501(1)(e). In contrast to a
22 direct contempt, a contempt not committed in the immediate view and presence
23 of the court or judge in chambers is an indirect or constructive contempt. Mont.
24 Code Ann. §§ 3-1-512 through -520. Whether direct or indirect, a contempt may
25 be either civil or criminal depending on the nature of the resulting sanction
imposed. Mont. Code Ann. § 3-1-501(3). A contempt is civil if the sanction
imposed seeks to force the contemnor's compliance with a court order and the

1 contemnor may avoid the sanction by complying with the subject order. Mont.
2 Code Ann. § 3-1-501(3). In contrast, a contempt is criminal if the purpose of
3 sanction is to punish the contemnor to vindicate the authority of the court and the
4 contemnor may not avoid the sanction by complying with the order. Mont. Code
5 Ann. § 3-1-501(3). *Fouts v. Montana Eighth Judicial Dist. Ct.*, 2022 MT 9, ¶ 7,
6 407 Mont. 166, 502 P.3d 689.

7 “When the contempt is not committed in the immediate view
8 and presence of the court or judge at chambers, an affidavit of the
9 facts constituting the contempt or a statement of the facts by the
10 referees or arbitrators or other judicial officer shall be presented to
the court or judge.”

11 Mont. Code Ann. § 3-1-512.

12 “When the contempt is not committed in the immediate view and
13 presence of the court or judge, a warrant may be issued to bring the
14 person charged to the court to answer the charge. The warrant must
15 be accompanied by an adequate and specific statement of the charge.
The answer to the charge must be followed by a hearing under
16 3-1-518.”

17 Mont. Code Ann. § 3-1-513.

18 “In cases in which it is not necessary for a court to take immediate
19 action . . . a contemnor is entitled to full due process. This includes a
20 hearing . . . during which the contemnor is advised of the charges
21 against him or her, has a reasonable opportunity to meet them by
22 way of defense or explanation, has the right to be represented by
counsel, [and] has a chance to testify and call other witnesses on his
behalf.”

23 *Kaufman v. Mont. 21st Judicial District Court*, 1998 MT 239, ¶ 33, 291
24 Mont. 122, 966 P.2d 715.

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1 ANALYSIS

2 In her emergency motion, Jana alleges that Mr. Henke and
3 Stephanie have conspired to circumvent the authority of the court-appointed
4 conservator, Western Montana. She further alleges Mr. Henke and Stephanie
5 have disobeyed the Court’s prior orders related to Western Montana’s
6 management of Judith’s assets.

7 In her response to the motion, Stephanie argues: (1) this Court does
8 not have subject matter jurisdiction over trust issues; (2) Stephanie was acting
9 pursuant to her authority under a power of attorney; and (3) neither Stephanie nor
10 Mr. Henke financially exploited Judith.

11 In her response to the motion, Judith (1) agrees with Stephanie the
12 Court lacks subject matter jurisdiction over trust issues; (2) argues the Court
13 lacks jurisdiction over Stephanie as power of attorney; and (3) argues the
14 temporary appointment of Western Montana lapsed after six months and
15 therefore the order appointing Western Montana is no longer valid.

16 **Subject Matter Jurisdiction**

17 Subject matter jurisdiction is simply the power of the court to hear
18 and adjudicate the claim before it. *In the Matter of B.F.*, 2004 MT 61, ¶ 18,
19 320 Mont. 261, 87 P.3d 427. Whether a court lacks subject matter jurisdiction is
20 a question of law. *Gottlob v. DesRosier*, 2020 MT 210, ¶ 6, 401 Mont. 50,
21 470 P.3d 188. Mont. Code Ann. § 72-5-405 provides:

22 **72-5-405. Exclusive and concurrent jurisdiction of particular**
23 **court after petition and notice.** After the service of notice in a
24 proceeding seeking the appointment of a conservator or other
25 protective order and until termination of the proceeding, the court in
which the petition is filed has:

- 1 (1) exclusive jurisdiction to determine the need for a conservator or
- 2 other protective order until the proceedings are terminated;
- 3 (2) exclusive jurisdiction to determine how the estate of the protected
- 4 person that is subject to the laws of this state is managed, expended,
- 5 or distributed to or for the use of the protected person or any of the
- 6 person's dependents;
- 7 (3) concurrent jurisdiction to determine the validity of claims against
- 8 the person or estate of the protected person and the person's title to
- 9 any property or claim.

10 Mont. Code Ann. § 72-5-405

11 Clearly, the Court has subject matter jurisdiction to determine how

12 Judith's estate is managed, expended or distributed to or for Judith's use.

13 Similarly, the Court has subject matter jurisdiction to determine the validity of

14 claims against Judith or her estate or Judith's title to property. Stephanie does

15 not dispute the Court has authority to manage Judith's estate. Rather, she argues

16 the Court does not have jurisdiction over the two trusts of which Judith is

17 beneficiary. In support, Stephanie cites Montana Code Annotated § 72-38-201,

18 which provides in relevant part:

19 **72-38-201. Subject matter jurisdiction.** (1) The district court

20 having jurisdiction over the trust pursuant to this chapter has

21 exclusive jurisdiction of proceedings concerning the internal affairs

22 of trusts.

23 (2) The district court having jurisdiction over the trust pursuant to

24 this chapter has concurrent jurisdiction of the following:

- 25 (a) actions and proceedings to determine the existence of trusts;
- (b) actions and proceedings by or against creditors or debtors of trusts; and
- (c) other actions and proceedings involving trustees and third persons.

Mont. Code Ann. § 72-38-201

1 Stephanie further argues, pursuant to Montana Code Annotated
2 § 72-23-213(j) and (h), granting powers to a trustee or appointing or removing a
3 trustee constitutes internal affairs of the trust, and therefore, pursuant to Montana
4 Code Annotated § 72-38-201(1), exclusive jurisdiction over those matters rests
5 with a district court exercising authority under the Uniform Trust Code. Because
6 the Court is not acting under the Trust Code in this proceeding, but under the
7 Probate Code, Title 72, chapters 1 through 5, Stephanie argues the Court lacks
8 subject matter jurisdiction over the trusts.

9 Jana maintains the Court does have jurisdiction over the trusts,
10 citing Montana Code Annotated § 72-5-421, which provides in relevant part:

11 **72-5-421. Powers of court as to property and affairs of protected**
12 **persons generally -- temporary conservatorship.** The court has
13 the following powers that may be exercised directly or through a
14 conservator in respect to the estate and affairs of protected persons:

15
16 (3) After hearing and upon determining that a basis for an
17 appointment or other protective order exists with respect to a person
18 for reasons other than minority, the court has, for the benefit of the
19 person and members of the person's household, all the powers over
20 the person's estate and affairs that the person could exercise if
21 present and not under disability, except the power to make a will.
22 These powers include but are not limited to the power to:

23
24 (c) exercise or release the person's powers as trustee, personal
25 representative, custodian for minors, conservator, or donee of a
power of appointment;

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Mont. Code Ann. § 72-5-421

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1 A court interprets a statute by first looking at its plain language. A
2 court construes a statute by reading and interpreting the statute as a whole,
3 without isolating specific terms from the context in which they are used by the
4 legislature. *Montana Sports Shooting Ass’n v. State*, 2008 MT 190, § 11, 344
5 Mont. 1, 185 P.3d 1003. Rules of statutory construction require the court to
6 interpret related statutes to harmonize and give effect to each. Different language
7 is to be given different construction. Where the legislature uses different
8 language in the same connection in related statutes, it is presumed it intended a
9 different meaning and effect. *Bullock v. Fox*, 2019 MT 50, ¶ 59, 395 Mont. 35,
10 435 P.3d 1187.

11 Stephanie’s position the Court only has jurisdiction over Judith’s
12 trusts in a proceeding brought pursuant to the Uniform Trust Code cannot be
13 reconciled with the language in Montana Code Annotated § 72-5-421 which
14 grants the Court authority to “exercise or release (Judith’s) powers as trustee.”
15 Montana Code Annotated § 72-5-421 is consistent with the language in Montana
16 Code Annotated § 72-38-201(2)(c) which provides for concurrent jurisdiction in
17 “other actions and proceedings involving trustees and third persons.” While the
18 Court may lack jurisdiction to appoint or remove a trustee or to grant powers to a
19 trustee, the Court may nevertheless exercise the powers of trustee in place of the
20 protected person. That conclusion is consistent with the plain language of both
21 statutes.

22 The Court not only has subject matter jurisdiction over Judith’s
23 trusts as a substitute trustee, it also has the authority to appoint a conservator to
24 act as a substitute trustee. Montana Code Annotated § 72-5-430 provides in
25 relevant part:

1 **72-5-430. Enlargement or limitation of powers of conservator by**
2 **court.** (1) Subject to the restrictions in 72-5-421(4), the court may
3 confer on a conservator at the time of appointment or later, in
4 addition to the powers conferred on the conservator by 72-5-427, 72-
5 5-428, and 72-5-429, any power that the court itself could exercise
6 under 72-5-421(2) and (3).

7 Mont. Code Ann. § 72-5-430.

8 The Court has authority to exercise Judith’s powers as trustee, and
9 the authority to confer that authority upon a conservator. Judith, as trustee, had
10 the authority to manage the trust. The Court, as substitute trustee, has the
11 authority to assume management of the trust given the Court’s determination
12 Judith lacked the capacity to manage her affairs. Similarly, the Court has
13 authority to delegate its power as substitute trustee to a conservator. The Court
14 did just that when it issued its *Findings of Fact, Conclusions of Law and Order*
15 [Docket No. 98], which held “The Western Montana Chapter is Appointed
16 Temporary Conservator for Judith F. Rosenberg and shall have authority to
17 manage all of Judy’s assets, whether held in her individual name or in trust.” The
18 Court has subject-matter jurisdiction to manage Judith’s trust assets as a
19 substitute trustee for Judith. The Court has appointed Western Montana to act in
20 its place as substitute trustee for Judith.

21 **The Temporary Conservatorship is Still in Place**

22 Judith argues a temporary conservatorship cannot exceed six
23 months, therefore Western Montana’s appointment as conservator ended by
24 operation of law six months after its appointment. Jana argues a temporary
25 conservatorship can be extended, and the Montana Supreme Court previously
 addressed this issue, concluding the temporary conservatorship remains in effect.

1 Western Montana was appointed temporary conservator on
2 November 20, 2023. *Findings of Fact, Conclusions of Law and Order* [Docket
3 No. 98]. The Court did not designate how long the temporary conservatorship
4 would continue. Montana Code Annotated § 72-5-421 provides an appointment
5 of a temporary conservator cannot exceed six months. Pursuant to operation of
6 law, the appointment of Western Montana would expire on May 20, 2024. On
7 May 10, 2024, the Court held a hearing in which the issue of the temporary
8 conservatorship was raised. The parties agreed to continue the temporary
9 conservatorship for 90 days. Minute Entry [Docket No. 131]. On May 16, 2024,
10 the Court issued an Order reappointing Western Montana as temporary
11 conservator for 90 days and setting a hearing to resolve all pending petitions and
12 motions for August 1, 2024. *Order* (May 16, 2024) [Docket No. 133]. The
13 hearing scheduled for August 1, 2024 was cancelled due to illness and on August
14 5, 2024, the Court continued the temporary appointment until the matters set for
15 hearing on August 1, 2024 could be heard. *Order* (August 5, 2024) [Docket No.
16 195]. The Court held a hearing on August 30, 2024, wherein the Court continued
17 the temporary appointment until the “next order of the Court.” *Order* (August
18 30, 2024) [Docket No. 221]; Minute Entry [Docket No. 222]; Hearing Transcript
19 [Docket No. 226]. On the same day, Judith raised this issue with the Montana
20 Supreme Court by filing a petition for writ of supervisory control. *J.F.R. v Mont.*
21 *3rd Judicial Ct.*, 2024 Mont. LEXIS 969. On October 8, 2024, the Supreme
22 Court issued an Order denying the petition for writ of supervisory control. The
23 Court returned the matter to this Court to “undertake coordination of the
24 temporary and permanent appointments.” That is where this matter now stands
25 and is the law of the case. This Court is coordinating the temporary and

1 permanent appointments and by separate order has set a hearing on the issue of
2 capacity and the appointment of a permanent guardian and conservator. In the
3 meantime, the appointment of Western Montana as temporary conservator
4 remains in force until resolution of the need for a permanent conservator.

5 **Stephanie’s Power of Attorney**

6 Opposing the emergency motion for contempt, Stephanie argues
7 that because Judith granted her power of attorney, she has authority over Judith’s
8 trusts. Conversely, Jana maintains the power of attorney Judith granted
9 Stephanie does not include the authority to act as trustee. Rather, Stephanie’s
10 authority is limited to acting on Judith’s behalf as beneficiary of the trust.
11 According to Jana, for Judith to have transferred her authority as trustee to
12 Stephanie, Judith would have been required to designate in the power of attorney
13 a grant of specific authority “to exercise fiduciary powers that the principal has
14 authority to delegate.” The Court agrees. Judith did not grant Stephanie
15 authority to act in Judith’s capacity as trustee. Moreover, Stephanie is
16 accountable to both the conservator, Western Montana, as well as Judith pursuant
17 to Montana Code Annotated § 72-31-308(2).

18 **Motion for Contempt**

19 In her motion for contempt, Jana argues Mr. Henke and Stephanie
20 have ignored or violated the Court’s November 20, 2023, Findings of Fact,
21 Conclusions of Law and Order appointing Western Montana as conservator. A
22 review of the chronology of events shows the following events:

- 23 • November 20, 2023: Court appoints Western Montana as temporary
24 conservator.
- 25 • May 16, 2024: Court reappoints Western Montana as temporary
conservator for ninety days.

- 1 • August 5, 2024: Court continues temporary appointment until hearing.
- 2 • August 30, 2024: Court continues temporary appointment until further
3 order.
- 4 • August 30, 2024: Judith files petition for writ of supervisory control
5 challenging the legality of temporary appointment.
- 6 • October 8, 2024: Supreme Court issues opinion affirming this Court.
- 7 • October 8, 2024: Supreme Court issues order denying supervisory
8 control and returns matter to district court to “undertake coordination of
9 the temporary and permanent appointments.”
- 10 • October 14, 2024: Stephanie, Judith and Mr. Henke meet with Creative
11 Planning. Judith enters into an engagement agreement with Creative
12 Planning. The engagement agreement “granted Creative Planning the
13 ability to manage the accounts of the Judith F. Rosenberg 2007 Revocable
14 Living Trust.” Those accounts included Judith’s individual IRA as well as
15 two trust accounts.

16 The engagement with Creative Planning was a violation of the
17 Court’s order appointing Western Montana as temporary conservator. At the
18 time Stephanie and Mr. Henke assisted Judith in entering into the engagement
19 agreement with Creative Planning, they were or should have been aware the
20 Supreme Court had continued the temporary conservatorship six days before
21 their meeting with Creative Planning.

22 Stephanie and Judith argue that even if the conservatorship
23 remained in place, Stephanie and Mr. Henke cannot be held in contempt because
24 the November 20, 2023 Order authorizing Western Montana to manage Judith’s
25 trust assets was not a lawful order, and they may only be held in contempt for

1 violating a lawful order. As discussed previously, the Court has determined the
2 November 20, 2023 Order was lawful. Further, while Stephanie and Mr. Henke
3 offer a defense related to the trust assets, that defense is not relevant to Judith's
4 personal assets—including Judith's IRA. Exhibit 2, page 2 of the Affidavit of
5 Julie Sirrs demonstrates that Creative Planning was engaged to manage not only
6 the trust assets but also Judy's IRA.

7 The Court has addressed Stephanie and Judith's other arguments
8 (i.e. the expiration of the temporary conservatorship and Stephanie's power of
9 attorney) as to why Stephanie and Mr. Henke did not violate the Court's
10 November 20, 2023 Order. It appears from the Affidavit of Julie Sirrs and the
11 attached documentation there is probable cause to believe Stephanie and/or Mr.
12 Henke were in violation of the Court's November 20, 2023, Order when they
13 engaged Creative Planning to manage Judith's personal and trust assets.

14 It appears from the documents submitted with the Affidavit of Julie
15 Sirrs that Stephanie improperly transferred \$10,000 to her Wells Fargo account
16 for "home repairs" without notice to the Conservator, Western Montana.
17 Stephanie is ordered to provide documentation supporting the use of these funds
18 for home repairs for Western Montana to review. If, upon examination Western
19 Montana concludes that some or all of these funds were not used for home
20 repairs, those funds must be returned.

21 It also appears from the documents submitted with the Affidavit of
22 Julie Sirrs and the Addendum Affidavit of Julie Sirrs that funds in the amount of
23 \$16,517.11 and \$22,586.70 were improperly paid from Judith's 2007 trust
24 account to Mr. Henke and/or his law firm. The Court requests that Western
25 Montana review Mr. Henke's invoices to determine whether these fees were

1 reasonable and proper. If, upon examination, some or all of the fees were not
2 reasonable and proper, those funds must be returned to the trust.

3 Based upon the foregoing,

4 **ORDER**

5 **IT IS HEREBY ORDERED:**

6 1. Jana Cooke's Emergency Motion RE: Contempt of Court by
7 Henke and Ross is **GRANTED**.

8 2. Stephanie Ross shall submit documentation to Western
9 Montana Chapter for Prevention of Elder Abuse that demonstrates the \$10,000
10 she received was used for home repairs.

11 3. Larry Henke shall submit documentation to Western
12 Montana Chapter for Prevention of Elder Abuse to support his receipt of attorney
13 fees in the amount of \$16,517.11 and \$22,586.70 for work performed for the
14 trusts.

15 4. Stephanie Ross and Larry Henke are jointly and severally
16 liable for paying Jana Cooke's attorney fees related to her emergency motion for
17 contempt. Similarly, Stephanie Ross shall bear her own attorney fees related to
18 Jana's emergency motion for contempt and Larry Henke shall not receive
19 compensation for attorney fees related to his representation of Judith related to
20 the emergency motion.

21
22
23 /s/ Mike Menahan
24 MIKE MENAHAN
25 DISTRICT COURT

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1 cc: Lawrence E. Henke, via email
2 Don C. St. Peter, via email
3 Logan Nutzman, via email
4 Makayzia Counts, via email
5 Julie R. Sirrs, via email
6 Natasha Prinzing Jones, via email
7 Forrest M. Crawl, via email
8 William McCarthy, via email
9 Natalie L. Black, via email
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CERTIFICATE OF SERVICE

I, Julie Rachel Sirrs, hereby certify that I have served true and accurate copies of the foregoing Motion - Dismiss to the following on 11-03-2025:

Lawrence E. Henke (Attorney)
6 Summer Gulch Road
Philipsburg MT 59858
Representing: Lawrence E. Henke
Service Method: eService

Kelcie Peltomaa (Attorney)
2809 Great Northern Loop
Suite 100
Missoula MT 59808
Representing: J. F. R.
Service Method: eService

Donald Craig St. Peter (Attorney)
2620 Radio Way
P.O. Box 17255
Missoula MT 59808
Representing: Stephanie Ross
Service Method: eService

William E. McCarthy (Attorney)
321 W. Broadway St., Ste. 300
Missoula MT 59802
Representing: Western Montana Chapter for the Prevention of Elder Abuse
Service Method: eService

Mike Menahan (Appellee)
First Judicial District Court
228 Broadway
Helena MT 59601
Service Method: Conventional

Electronically signed by Denise Cooper on behalf of Julie Rachel Sirrs

Dated: 11-03-2025