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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0713

BRUCE MILLER,

Defendant and Appellant,

v.

AIMEE MILLER; ESTATE OF JOYCE MCGOUGH; BORN HOLM LODGES,
LLC; and KRYCLER, ERVIN, TAUBMAN & KAMINSKY, AN
ACCOUNTANCY FIRM,

Appellees.

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS APPEAL
FOR LACK OF STANDING**

Appellant Bruce Miller, by and through counsel Michelle Ostrye of Silverman Law Office PLLC, respectfully submits this response in opposition to the Motion to Dismiss Appeal for Lack of Standing (filed herein on November 24, 2025) (the “Motion”) and the joinders thereto. The Court should deny the Motion

because Appellant’s interest as a residuary devisee of Joyce McGough confers standing on him to bring this appeal.

I. Introduction.

Appellant appeals the Final Judgment Against the Estate of Joyce McGough and Born Holm Lodges, LLC entered by the District Court (the “Judgment”). *See Ex. 1.* That case was filed by Appellee Aimee Miller (“Aimee”) against Appellant, the Estate of Joyce McGough (the “Estate”) and Born Holm Lodges, LLC (“Born Holm”), alleging fraudulent transfers of a home and other property (the “Property”). The home alone is worth at least \$3.5 million.

Born Holm’s assets, including the Property, are residue of the Estate devised to Appellant and his brother. *See Ex. 2.* As explained in detail below, Appellant is an “aggrieved party” with a direct financial interest adversely affected by the judgment as the Property would pass to Appellant absent the adverse Judgment.

II. The Judgment Injures Appellant’s Interest in the Estate’s Residue, So He Is a “Party Aggrieved” by the Judgment and Is Entitled to Appeal It.

The right to appeal is purely statutory. *In re Bernheim’s Estate*, 82 Mont. 198, 266 P. 378 (1928). Under Montana Code Annotated Section 25-12-102, “[a] party aggrieved may appeal in the cases prescribed in the Rules of Appellate procedure.” A “party aggrieved” is any party to an action having a legally recognized interest in the subject matter that is injuriously affected by the

judgment. *In re Bernheim's Estate*, 82 Mont. 198, 266 P. 378 at 381. Whether a party is aggrieved is resolved by asking whether the party has “a direct, immediate and substantial interest in the subject which would be prejudiced by the judgment or benefited by its reversal.” *Montana Power Co. v. Montana Dep't of Pub. Serv. Regul.*, 218 Mont. 471, 480, 709 P.2d 995, 1000-01 (1985).

Hornbeck v. Richards demonstrates why Appellant has standing. 80 Mont. 27, 257 P. 1025, 1026 (1927). There, during his lifetime, decedent Richards drove negligently and caused an accident resulting in the death of Samuel Hornbeck. *Id.* Richards then died, and his widow was appointed administratrix of his probate estate. *Id.* Hornbeck's widow sued the decedent's estate for money damages. *Id.* The plaintiff was awarded damages after a jury trial and the widow appealed. *Id.* The plaintiff moved to dismiss the appeal, arguing the widow was not aggrieved by the judgment. *Id.* This Court disagreed, holding in part that the decedent's widow was an heir at law and therefore was personally affected by the judgment because it would be paid from the estate which “will greatly diminish, if not entirely destroy, the value of the estate” and by extension, the widow's inheritance. *Id.* The Court held, “[s]urely, it cannot reasonably be urged that she [the decedent's widow] is not a party aggrieved by the judgment.” *Id.*

Here, Appellant is like the widow in *Hornbeck* because he is a residuary devisee whose interest in the estate's residue was reduced by an adverse judgment.

III. Appellant Did Not Disclaim His Inheritance and He Remains a Residuary Devisee Damaged by the Judgment.

Aimee misrepresents that Appellant “has disavowed any interest in the assets of Born Holm that are at issue in this Sanctions Order,” thereby defeating his standing. In his statement, Appellant denied the Property belongs to him. This is not a disclaimer.

Colorado law requires a disclaimer of an inheritance of real property to be in writing, declare the disclaimer, describe the interest disclaimed, be signed by the person making the disclaimer, and be delivered or filed and recorded in the corresponding real property records. Colo. Rev. Stat. §§ 15-11-1205(3) and 15-11-1212(15). Appellant’s statement does not satisfy these statutory prerequisites (and Aimee does not contend that it does). The statement does not use the term “disclaim,” and it contains no other language indicating Appellant intended to renounce, reject, or repudiate his inheritance from Ms. McGough. The statement does not identify the Property as an Estate residuary asset, and the statement was not recorded in the Gallatin County real property records. Because the statement does not comply with Colorado law, the statement is not a disclaimer of Appellant’s inheritance. Aimee’s contention must be rejected.

IV. The Court's Dismissal of Appellant's Previous Appeal Does Not Preclude the Instant Appeal.

Aimee next contends that the Court's August 5, 2025, dismissal of Appellant's previous appeal of the sanctions order underlying the Judgment bars the instant appeal. This is not true. That dismissal order did not enjoin Appellant from appealing a final judgment or any other order later in the case. Moreover, the sanctions order, dated April 25, 2025, was not a final, appealable order because it adjudicated fewer than all the claims as to all the parties. Mont. R. App. P. 6(5)(a). The order was interlocutory only because it lacked a certification of a judgment as final for purposes of appeal. Mont. R. App. P. 6(6). Such a certification requires an express determination that there is no just reason for delay pursuant to Montana Rule of Civil Procedure 54(b). *Id.* This language was not included in the sanctions order, so it was not appealable.

The District Court entered the Judgment on September 12, 2025. It contains the requisite certification which made the Judgment final and appealable under Rule of Appellate Procedure 6(5)(a). Aimee cites no authority for the proposition that a party is limited to a single appeal in any given case, presumably because none exists. The previous appeal has no bearing and does not warrant dismissal of this appeal.

V. Conclusion.

The Judgment permitting Aimee to execute against the Property which is part of the Estate's residue, directly and immediately injured Appellant's legally protectable interest as residuary devisee which Appellant has not disclaimed. Accordingly, Appellant is a "party aggrieved" by the Judgment and has standing to pursue this appeal. Aimee's Motion must be denied.

DATED this 5th day of December, 2025.

SILVERMAN LAW OFFICE, PLLC

/s/ Michelle Ostrye

Michelle Ostrye

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 16(3), I certify that this Response is proportionally spaced Times New Roman text typeface of 14 points, is double spaced, and the word count calculated by Word is 1,019 words.

SILVERMAN LAW OFFICE, PLLC

/s/ Michelle Ostrye _____
Michelle Ostrye

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of December 2025, a true and correct copy of the foregoing Response was served by E-filing to the following:

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