IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0473

JOHN BRADLEY AND LISA BRADLEY,
Plaintiffs/Appellants,

v.

YELLOWSTONE TRAILS RANCH OWNERS' ASSOCIATION,
Defendant/Appellee.

ON APPEAL FROM THE MONTANA SIXTH JUDICIAL DISTRICT COURT,
PARK COUNTY
CAUSE NO. DV-34-2025-29-DK
HON. BRENDA GILBERT, PRESIDING

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE

This appeal arises out of the district court's setting aside of a default judgment that was entered against the Defendant/Appellee, Yellowstone Trails Ranch Owners' Association ("YTROA").

In 2018 Plaintiffs/Appellants, John and Lisa Bradley (collectively "Bradleys"), purchased two adjacent subdivision lots in Yellowstone Trails Ranch Subdivision, knowing that one of the lots was designated on the recorded subdivision plat as an "Ag Lot," and that no residential development was permitted. Sometime in 2021, in the midst of the post-pandemic real estate boom, the Bradleys decided that they wanted to try to have the lot "redesignated" to make it buildable, and began discussions with YTROA to see if it was possible.

When it eventually became clear that YTROA would not support the removal of the "Ag Lot" designation, the Bradleys hired counsel, and on February 21, 2025, filed their Complaint for Declaratory Judgment against YTROA. On March 4, YTROA's President, Jeff Collins, acknowledged service of the Summons

and Complaint and told the Bradleys' counsel he would engage counsel to represent YTROA. The Bradleys' counsel then replied to Collins, "Feel free to have the HOA attorney reach out to me once you get them retained."

On March 26, just twenty-two days after YTROA acknowledged service, and with YTROA still without counsel, the Bradleys filed a Motion for Entry of Default. The clerk of court entered default against YTROA that same day. On March 31, the Bradleys filed a Motion for Default Judgment. Upon learning of the Motion, on April 1 YTROA filed a *pro se* request for an extension of time to respond. The district court entered Default Judgment against YTROA later that same day.

YTROA engaged counsel on April 3, and on April 9 filed its Motion to Set Aside Default Judgment. On June 5 the district court granted YTROA's motion and set aside the default judgment. The Bradleys now appeal from that Order.

STATEMENT OF FACTS

YTROA is the non-profit property owner's association that governs Yellowstone Trails Ranch, a 39-lot residential subdivision in Paradise Valley. *Decl. of Jeff Collins*, ¶ 3 (Doc. 12.00). Plaintiffs, John and Lisa Bradley ("Bradleys"), are residents of Colorado who purchased neighboring Lots 38 and 39 of Yellowstone Trails Ranch Subdivision in July of 2018. *Complaint*, ¶¶ 1,4 (Doc. 1.00). The Bradleys acquired title to the lots by warranty deed, subject to all

building, use, zoning, sanitary, floodplain, and environmental regulations and restrictions. See *Id.*, ¶ 4, Ex. A. One such building restriction is that Lot 38 is designated on the final approved subdivision plat as an "Ag Lot," and is the only lot in the subdivision without a building envelope. See *Id.*, ¶ 4, Ex. B. In conjunction with the Yellowstone Trails Ranch Declaration of Covenants, Conditions and Restrictions ("CCRs"), which states that each building lot shall have a building envelope, this effectively prohibits any residential development of Lot 38. *Decl. Collins* ¶ 6 (Doc. 12.00).

The Bradleys purchased Lot 38 with actual or constructive knowledge of the "Ag Lot" designation.[1] However, in late 2021, in the midst of the post-pandemic real estate boom, the Bradleys approached YTROA about "redesignating" Lot 38 to make it buildable, and began periodic discussions with YTROA to see if it was possible. *Aff. of John Bradley*, pg. 2 (Doc. 15.00). In the following years the Bradleys had periodic discussions with YTROA about removing the "Ag Lot" designation. *Id*., pp. 2-3. However, YTROA was starting to hear from other lot owners in the subdivision who were opposed to the redesignation, and who

[1] Presumably, the price the Bradleys paid for Lot 38 in 2018 reflected the fact that it was an "Ag Lot" (i.e., open space) that could not be developed.

purchased their lots in reliance upon the "Ag Lot" designation and in the belief that Lot 38 could never be developed. *Decl. Collins*, ¶ 7 (Doc. 12.00).

When it eventually became clear that YTROA was unlikely to support the redesignation, the Bradleys hired counsel, Steve Woodruff, who presented YTROA with a draft complaint in July 2024. *Aff. Bradley*, p. 4 (Doc. 15.00). The Bradleys, Woodruff, and YTROA continued to have constructive dialogue for several more months to try to come to a resolution, but were unsuccessful. *Id*.[2] On February 21, 2025, the Bradleys filed their Complaint for Declaratory Judgment against YTROA, seeking to void the "Ag Lot" designation on Lot 38. *Complaint* (Doc. 1.00).

YTROA learned of the lawsuit filing in early March, after hearing that a process server was looking for a YTROA officer to serve. *Decl. Collins*, ¶ 8 (Doc. 12.00). YTROA's President, Jeff Collins, emailed Woodruff on March 4 and said he would acknowledge service and engage counsel to defend YTROA. *Id*., ¶ 9. Woodruff then emailed Collins an Acknowledgement of Service, which Collins signed and emailed back to Woodruff that same day. Woodruff then replied back

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[2] Woodruff's communications were mainly with YTROA board member Curtis Anderson, a part-time resident of YTROA and an attorney licensed in the State of Georgia. *Aff. Bradley*, p. 4 (Doc. 15.00); *Collins Decl*., ¶ 11 (Doc. 12.00). Anderson has never acted as YTROA's counsel.

to Collins, "Thank you Jeff. Feel free to have the HOA attorney reach out to me once you get them retained." *Id*., Ex. A.

Woodruff then filed the Acknowledgement that same day. *Id*., ¶¶ 9-10; *Acknowledgement of Service* (Doc. 2.00). The Acknowledgement states that "*Defendant hereby enters its voluntary appearance in this action*, and consents to the jurisdiction of the Court."

Collins immediately began searching for counsel for YTROA, which was a challenge considering that it had no prior relationships with counsel and its board is composed of five volunteers, including Collins, who have full-time jobs, and three of whom live out of state. *Decl. Collins*, ¶¶ 10-11 (Doc. 12.00). Collins emailed a Bozeman lawyer, who had previously done work for Collins' construction business, to ask if he could represent YTROA. *Id*., ¶ 12. The lawyer said he was busy that week but would get back to Collins as soon as he could to let him know. *Id.* Another couple of weeks passed and Collins still had not heard back from the lawyer. *Id*., ¶ 13. However, he was not overly concerned because, based on his email communication with Mr. Woodruff, and YTROA's extensive and respectful dialogue with the Bradleys and their counsel over the preceding

years, Collins did not believe YTROA was under a strict deadline to answer the Complaint.[3] *Id.*

Collins was obviously mistaken, because on March 26, *just twenty-two days after YTROA had acknowledged service*, the Bradleys filed a Motion for Entry of Default. *Motion for Entry of Default by Clerk*, (Doc. 3.00). The clerk of district court entered YTROA's default that same day. *Order for Entry of Default*, (Doc. 4.00). YTROA was not served with a copy of either document.[4] YTROA only learned about the default on March 31 when the Bradleys filed their Motion for Entry of Default Judgment, which Woodruff emailed to Collins at 4:57 p.m. that day. *Aff. of Stephen E. Woodruff*, ¶ 7, Ex. B (Doc. 14.00).

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[3] Collins' states in his Declaration that ". . . based on my previous communications with Mr. Woodruff, I did not believe that YTROA was under a strict deadline to answer the Complaint. *Decl. Collins*, ¶ 13 (Doc. 12.00). In the district court proceedings, the Bradleys responded to this statement by accusing Collins of falsely claiming that Woodruff told him that YTROA would not be required to file a timely answer to the Complaint. In fact, Collins has claimed no such thing. What he is referring to is the March 4, 2025 multiple email exchange he had with Woodruff. He is also *implicitly* referring the constructive dialogue that the Bradleys and Woodruff had with YTROA over the previous years(s). See *Aff. Bradley*, pp. 3-4 (Doc. 15.00).

[4] The Bradleys' Motion for Entry of Default by Clerk contains no certificate of service, and the Order for Entry of Default that they provided, and which the clerk signed, shows Woodruff as the sole person copied. *Motion for Entry of Default by Clerk* (Doc. 3.00); and *Order for Entry of Default* (Doc. 4.00).

The very next morning, at 9:51 a.m. on April 1, Collins went to the Courthouse and filed on behalf of YTROA a *pro se* request for extension of time, until April 30, to respond to the Bradley's Motion for Entry of Default Judgment, on the grounds that YTROA was still actively searching for counsel in the matter. See "Response from Jeffrey Collins," (Doc. 7.00). Collins also immediately made a follow-up call to the attorney he had previously spoken with about representation (who had still not gotten back to him), only to find out that the attorney was unable to represent YTROA in the matter. *Decl. Collins*, ¶ 15. That attorney referred Collins to another firm, which then referred him to yet another firm, which YTROA ultimately retained. *Id*.

The district court was apparently unaware of YTROA's request for extension of time because it entered Default Judgment against YTRTOA later that same day. *Default Judgment and Order Terminating Ag Lot Designation*, (Doc. 8.00). On April 9, YTROA's current counsel appeared and moved to set aside the default judgment. *YTROA's Motion to Set Aside Default Judgment*, (Doc. 11.00). The district court granted YTROA's Motion on June 5. *Order Granting Motion to Set Aside Default Judgment,* (Doc. 22.00). The Bradleys appeal from that Order.

STANDARD OF REVIEW

This Court will reverse a decision to set aside a default judgment only upon a showing of manifest abuse of discretion. *Bartell v. Zabawa*, 2009 MT 204, ¶ 10, 351 Mont. 211, 214 P.3d 735. A manifest abuse of discretion is one that is obvious, evident, unmistakable. *Id*. This Court is guided by the principle that "every litigated case should be tried on the merits and thus judgments by default are not favored." *Id.*

In addition, and in general, this Court may affirm a District court's ruling for any reason supported by law and the record that does not expand the relief granted by the district court. *Peeler v. Rocky Mountain Log Homes Canada, Inc*. 2018 MT 297, ¶ 28, 393 Mont. 396, 431 P.3d 911. Similarly, this Court will affirm a district court ruling that reaches the right result even if based on a wrong or unspecified reason. *North Star Dev., LLC v. Mont. Pub. Service Comm.*, 2022 MT 103, ¶ 17, 408 Mont. 498, 510 P.3d 1232; *Essex Ins. Co. v. Jaycie, Inc*., 2004 MT 278, ¶ 16, 323 Mont. 231, 99 P.3d 651.

SUMMARY OF ARGUMENT

The district court did not manifestly abuse its discretion in setting aside the default judgment against YTROA. Contrary to the Bradleys' argument, the district court did not find that YTROA failed to establish excusable neglect and, therefore, did not misapply the *Blume* test.

Assuming for the sake of argument that the district court did find YTROA's neglect inexcusable, such a finding would not be binding on this Court. This Court, in applying the *Blume* test and the related factors it considers in determining excusable neglect, can and should find that YTROA's neglect was excusable under the facts and circumstances surrounding the default.

Lastly, certain procedural defects surrounding YTROA's default provide an alternative, or additional, basis for setting aside the default judgment. The Acknowledgement of Service that YTROA signed, and which the Bradleys' counsel prepared and filed, plainly states that YTROA "hereby enters its voluntary appearance in the action." Having so appeared, YTROA was entitled under the Rules of Civil Procedure to notice and an opportunity to be heard on all subsequent filings and orders, but unfortunately did not receive it. If only YTROA had received the notice to which it was entitled, it could have moved pursuant to M.R.Civ.P. 55(c) to set aside the Entry of Default, before the Default Judgment was entered, and excusable neglect would not have been an issue.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN SETTING ASIDE THE DEFAULT JUDGMENT.

a. The District Court Correctly Applied the *Blume* Test.

A district court may set aside a default judgment under the provisions of M.R.Civ.P. 60(b). See M.R.Civ.P. 55(c). Under Rule 60(b)(1), M.R.Civ.P., a

default judgment may be set aside for "mistake, inadvertence, surprise, or excusable neglect." When reviewing a ruling from a district court on a motion to set aside a default judgment under M.R.Civ.P 60(b)(1), this Court applies a four-part conjunctive test, namely, whether the defaulting party 1) has proceeded with diligence; 2) has shown excusable neglect; 3) has a meritorious defense to the claim; and 4) would be injured if the judgment is permitted to stand. *Grizzly Sec. Armored Exp., Inc. v. Armored Group, LLC*, 2009 MT 396, ¶14, 353 Mont. 399, 220 P.3d 661 (citing *Blume v. Metropolitan Life Ins. Co.*, 242 Mont. 465, 467, 791 P.2d 784, 786 (1990)). This is known as the *Blume* test, and it is what the district court used in deciding to set aside the default judgment against YTROA.

The Bradleys argue that the district court misapplied the conjunctive, four-part *Blume* test. *Appellant's Brief*, p. 13. This argument appears to be based on the district court's use of the phrase "after considering all the factors together" in the conclusion of its Order setting aside the default judgment, suggesting the district court considered the totality of the *Blume* test factors rather than the fulfillment of each one (even though the Order says "*all* of the factors"). *Order Granting Motion to Set Aside Default Judgment* ("Order"), p. 15, (Doc. 22.00). The Bradleys also focus on the following language from the Order:

> The Court finds that Defendant has not presented an ironclad reason for why it did not file an Answer... The Court does not find that counsel's "tone" constitutes an understandable reason to ignore the deadline to Answer.

> Defendant has also pointed out that it did not file an Answer because it was still in the process of securing an attorney. The Declaration of Jeffrey Collins confirmed that, after Mr. Collins acknowledged service on March 4, 2025, he called a Bozeman lawyer on the same day to discuss potential representation. The lawyer told Mr. Collins that he was busy with depositions but would get back to Mr. Collins as soon as he could to discuss whether he could assist. Mr. Collins did not follow back up with the Bozeman lawyer until March 31, 2025, after default judgment had been entered.

Id., p. 13–14. The Bradleys take this language to mean that the district court *found* that YTROA has not shown excusable neglect, and, therefore, it should not have set aside the default judgment.

The Bradleys misinterpret the district court's order. The district court did not find that YTROA failed to show excusable neglect. While the district court said that YTROA has not presented and "ironclad" or "understandable" reason for why it did not file an answer by the deadline, that is obviously not the standard for a finding of excusable neglect. Rather, it is whether the reasons given for the neglect "are such that reasonable minds might differ in their conclusions concerning excusable neglect," and any doubt regarding whether the neglect was excusable is resolved in favor of trial on the merits. *Grizzly*, 2009 MT 396, ¶17.

The district court's use of language different from the applicable standard indicates that it was basically dicta, and certainly not dispositive of the question of whether YTROA had shown excusable neglect. If this were not the case, the district

court would not have proceeded to discuss the facts favorable to YTROA's position as it did in the paragraph immediately following (namely, that Mr. Collins had been unable to secure an attorney before the Answer became due). The district court's weight of both parties' arguments, in its apparent equivocal reasoning, is acknowledging the standard set forth in *Grizzly*, showing that the circumstances of this case "are such that reasonable minds might differ in their conclusions concerning reasonable neglect." *Id*.

While the Bradleys dispute the implicit finding of excusable neglect, they do not dispute the district court's ruling in favor of YTROA on the other three elements of the *Blume* test. YTROA proceeded with diligence by filing its Motion to Set Aside the Default Judgment about a week after the default judgment was entered. *Order*, p. 13, (Doc. 22.00). The district court also properly found that YTROA had a meritorious claim: contending that its reasons for not re-designating the Ag Lot were valid. *Id.*, p. 14. Finally, the district court correctly found that YTROA stood to suffer injury if the default judgment were permitted to stand, through the weakening of the integrity of the covenants, and allowing for the development of property clearly designated as an "Ag Lot" (i.e., open space), and by possibly subjecting YTROA to suit by other Owners. *Id*., p. 15.

Because the district court ultimately decided to set aside the default judgment, this Court should assume that it found that YTROA established all of the elements

of the *Blume* test, including excusable neglect, unless otherwise clear. The district court certainly did not abuse its discretion, much less in a manner that is "obvious, evident, or unmistakable." See *Bartell*, 2009 MT 204, ¶ 10.[5]

b. YTROA has Shown Excusable Neglect Under the Facts and Circumstances Surrounding the Default Judgment.

Even if the district court had found that YTROA failed to show excusable neglect, such a finding would not be binding on this Court. Regardless of its reasoning and analysis, the district court reached the right decision in setting aside the default judgment. This Court will affirm a district court ruling that reaches the right result even if based on a wrong or unspecified reason. *North Star Dev.,* 2022 MT 103, ¶ 17. This Court, through its own application of the *Blume* test and the related factors it considers in determining excusable neglect, can and should find that YTROA's neglect was excusable under the facts and circumstances surrounding the default.

As discussed previously, in evaluating excusable neglect, Montana courts examine whether the reasons given for the neglect "are such that reasonable minds

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[5] Notably, had the district court denied YTROA's motion to set aside the default judgment, its decision would be reviewed for only a *slight* abuse of discretion. *Whitefish Credit Union v. Sherman*, 2012 MT 267, ¶ 7. District court decisions to set aside a default judgment are thus afforded significantly more deference.

might differ in their conclusions concerning reasonable neglect." *Grizzly,* ¶ 18. Any doubt as to whether the neglect was excusable must be resolved in favor of a trial on the merits. *Id.*

Contrary to the Bradley's claims, YTROA never "ignored" the Complaint. It acted diligently and reasonably in acknowledging service, seeking counsel to defend it and file a response, and then acting immediately once it learned of the entry of default and the Bradleys' motion for default judgment. YTROA has made a showing of excusable neglect and has met the requirements necessary to set aside a default judgment.

The Bradleys argue that *Grizzly* is an "outlier in modern case law" and at odds with "the logic of more contemporary caselaw." *Appellants' Brief*, p. 24. However, the lenient standard set forth in *Grizzly* comes from a robust line of cases. *See, e.g., Puhto v. Smith Funeral Chapels, Inc.,* 2011 MT 279, ¶ 12, 362 Mont. 447, 264 P.3d 1142; *Myers v. All West Transport,* 235 Mont. 233, 236, 766 P.2d 864, 866 (1988); *U.S. Rubber Co. v. Community Gas & Oil Co*., 139 Mont. 36, 38–39, 359 P.2d 375, 376 (1961) (noting also that a review of cases shows "that this court has gone far to see that a trial on the merits was had").

The Bradleys emphasize that "excusable neglect requires some justification for an error beyond mere carelessness." *Frye v. Roseburg Forest Prod. Co.*, 2020 MT 10, ¶ 12, 398 Mont. 347, 456 P.3d 573. This principle acts as a qualifier of the

"reasonable minds may differ" principle of law articulated by *Grizzly* and others, as *Frye* cites to that rule in its discussion. *Id.* Thus, reasonable minds may not differ when a party has merely acted with *carelessness*. YTROA, however, can certainly show justification beyond carelessness, so the ultimate inquiry is properly whether reasonable minds may differ on the issue of excusable neglect.

This Court has found reasonable minds may differ on excusable neglect in a variety of situations: *Blume*, 242 Mont. at 469, 791 P.2d at 787 (when defendant lost or misplaced a summons and complaint following service); *Green v. Montana Brewing Co.*, 32 Mont. 102, 107, 79 P.3d 693, 694 (1905) (same); *Grizzly* ¶ 28 (when defendant had been omitted from the certificate of service on the entry of default); *Worstell v. Devine*, 135 Mont. 1, 2, 335 P.2d 305, 305–06 (1959) (when a default was caused by an attorney's mistaken belief that the date of service was the day when client delivered the summons and complaint to his office); *Kootenai Corp. v. Dayton*, 184 Mont. 19, 601 P.2d 47 (1979) (when defendant only had six days between service and default judgment but moved promptly to set aside the judgment); and *Hoyt v. Eckland,* 249 Mont. 307, 815 P.2d 1140 (1991) (when defendant's neglect was only a failure to follow up with the plaintiff).

Relevant here, this Court found excusable neglect where an unrepresented defendant did not fully grasp the need to file a timely answer to a complaint, when the defendant had previously discussed the potential resolution of the dispute with

the plaintiff and her counsel, and the tenor of the parties' communications was generally non-adversarial. See *In re Marriage of Winckler*, 2000 MT 116, ¶¶ 18-19, 299 Mont. 428, 2 P.3d 229.

Here, Collins was under the impression that YTROA was not under a strict deadline to answer based on his and YTROA's non-adversarial interactions with the Bradleys and their counsel. YTROA, all the while unrepresented, was engaging in constructive dialogue with the Bradleys for *years*, in an attempt to come to an agreement over the "Ag Lot" designation on Lot 38. When those discussions finally broke down and the Bradleys resorted to litigation, the tone of communications continued to be cordial and non-adversarial. Specifically, after receiving the signed Acknowledgement from Collins, Woodruff replied back, "Thank you Jeff. Feel free to have the HOA attorney reach out to me *once you get them retained*." *Decl. Collins*, Ex. A (emphasis added) (Doc. 12.00). T

These are factually similar circumstances to the mistake of *Winckler*, which, rather than careless, was excusable. Like the false expectation created by the telephone conversation in *Winckler,* Woodruff's email reasonably lead to Collins' impression that Woodruff would wait to take action until YTROA had retained counsel. Thus, the Bradleys' aggressive pursuit of YTROA's default just one day after the answer deadline was certainly a surprise. The totality of these circumstances weigh in favor of a finding of excusable neglect.

The Bradleys cite *Roberts v. Empire Fire and Marine Insurance Company*, where this Court reversed the grant of a motion to set aside the default judgment. 278 Mont. 135, 923 P.2d 550 (1996). *Roberts* is unlike the present case, because it hinges on the evidence of "office mismanagement, neglect, and inattentiveness on the part of high-level employees" when a claims supervisor did not pass on the complaint to a dedicated attorney document-handler. *Id.* at 137 & 140, 923 P.2d at 551–52 & 554. Here, there was no office mismanagement nor high-level employees; only a nonprofit homeowners' association with volunteer board members who all have full-time day jobs. The board does not have an office structure, but meets remotely, and beyond standard officer roles, does not have dedicated functions for discrete tasks like the defendant in *Roberts* (whose neglect was inexcusable on account of neglecting his own dedicated functions).

The Bradleys argue at great length that YTROA's board members are sophisticated, but this is unconvincing. Their main argument points to member Curtis Anderson, who is an attorney in Georgia. This is irrelevant, as Mr. Anderson does not represent YTROA nor was he the board member who acknowledged service – that was Collins, a layperson, who believed that YTROA was not under a strict

deadline to answer.[6] Even so, the Montana Supreme Court has found an attorney's neglect excusable in the event of a represented defaulted party. *Worstell* at 2, 335 P.2d at 305–06. Thus, a defaulting party's level of sophistication is hardly relevant, much less decisive.

The Bradleys also cite *Matthews v. Don K Chevrolet*, which is distinguishable. 2005 MT 164, 327 Mont. 456, 115 P.3d 201. It involved a represented party, unlike the unrepresented YTROA, so *Don K*'s analysis of whether a law practice's "state of confusion" is excusable has no application here. With the remaining facts, the Court noted that Matthews' counsel had provided notice to Don K's counsel that a default had been entered and the scheduled hearing on Matthews' motion for entry of the default judgment, but Don K didn't bother to heed the warnings. *Id.* ¶ 15. The Bradleys argue that YTROA's argument is less convincing than Don K's because YTROA "had notice" of the complaint months prior. *Appellant's Brief*, p. 20. However, the Bradleys specifically did not extend the same notice about the *entry of default* that Matthew's counsel did to Don K.

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[6] If Anderson's status as a Georgia licensed attorney was relevant, it would arguably provide another basis for finding excusable neglect because the law in Georgia, where Anderson is licensed, is that a defendant has thirty days to respond to a summons and complaint, not twenty-one. O.C.G.A. § 9-11-12(a). Having moved for default on the twenty-second day after service, the Bradleys did not allow YTROA thirty days to file an answer, thus Mr. Anderson's purported knowledge of Georgia law could not have even been applied.

Moreover, the fact that the Bradleys provided YTROA with a draft complaint months before filing an actual one arguably *supports* a finding of excusable neglect. To illustrate, this Court had this to say in *Hoyt*: "threats of lawsuits are common among disgruntled individuals, threats that are not always carried out. In fact, in this case the plaintiff had warned the defendant that he would file suit over ten months before he actually commenced the action." 249 Mont. at 312, 815 P.2d at 1143. In other words, early exposure to a complaint can desensitize a non-litigation-savvy party to its significance by the time it is filed. *Hoyt* is informative for another reason: although the Court was analyzing willfulness, it reasoned that a defendant failing to follow-up on the status of a complaint, combined with making a mistake with the summons, "at most…presents a case of excusable neglect." *Id.* Here, it is undisputed that the parties did not correspond during the period between YTROA's acknowledgement of service and the Bradleys' Motion for a Default Judgment. Meanwhile, Collins mistakenly believed YTROA was not under a strict deadline to answer, so its neglect cannot be found any less excusable by the fact that there was no communication, per *Hoyt*. The fact there was no communication, rather, reflects poorly on the Bradleys, who moved for default on the first day after the deadline.

The Bradleys then cite *Peak Development, LLP v. Juntunen*, which does involve an unrepresented litigant, and merely stands for the proposition that a busy work schedule cannot constitute excusable neglect. 2005 MT 82, 326 Mont. 409,

110 P.3d 13. In *Juntunen*, the core ruling was based on the Defendant's failure to meet his burden when his affidavit *only* demonstrated the press of other work putting the complaint out of his mind. *Id*. at 413–14, 110 P.3d at 13. Thus, *Juntunen* has no application here, because YTROA has shown more reasons than mere busyness of its members. These reasons include inability to secure representation, the non-adversarial prior history of discussions, and the conduct of the Bradleys, as discussed below.

The final case the Bradleys discuss at length is *Whitefish Credit Union v. Sherman,* 2012 MT 267, 367 Mont. 103, 289 P.3d at 174, which hinges on facts that are not at issue here. In upholding the district court's ruling that there was no excusable neglect, this Court reasoned that it was insufficient that the defendant was awaiting advice from his attorney, whom he wrongly assumed was aware of the complaint. *Id.* ¶¶ 18-19. Here, YTROA was unrepresented, and did not believe this matter was in anyone else's hands. Collins certainly knew that the attorney he had called had not yet been retained by YTROA nor taken the case under advisement. In fact, YTROA, through Collins, filed a *pro se* request for an extension of time, recognizing that no one else was available to act on its behalf. Beyond that, the majority of Sherman's case is based on other "extraordinary circumstances," which is outside the scope of the sole issue the Bradleys have raised on appeal: that of excusable neglect. This Court may still find that YTROA acted with excusable

neglect on the other grounds raised herein.

Lastly, the Bradleys' swiftness in seeking YTROA's default also supports a finding of excusable neglect in itself. This Court may find excusable neglect considering as evidence the speed by which the *plaintiff's* counsel had moved for default. In *Grizzly,* it was on the twenty-first day after service of process which, combined with defense counsel's lack of complete knowledge that the answer was past due, showed excusable neglect *in addition to* diligence.[7] *Grizzly*, ¶ 16; *see also*, *Frye*, ¶12 ("the court must consider the circumstances surrounding the default, including whether plaintiff's actions contributed to the default"). Similarly, this Court set aside a default judgment, finding excusable neglect, where the plaintiff moved for entry of default on the twenty-first day after service of process, and the defendant's counsel was under a mistake as to the date of service and deadline for answering. *Worstell*, 135 Mont. at 5, 335 P.2d at 307.

Finding local counsel during this time proved difficult, and most of YTROA's volunteer board members were out of state. Aware of this, the Bradleys moved for entry of default on the twenty-second day following YTROA's Acknowledgement

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[7] Thus, the Bradleys' legal analysis of *Grizzly*, which contends that the Court essentially conflated diligence with excusable neglect, is erroneous. *See Appellant's Brief*, p. 24. In fact, a closer reading reveals that the court reasoned that the facts support both elements.

of Service. Prior to moving for Default Judgment, the Bradleys made no effort to reach out to YTROA to inquire whether it had been able to retain counsel, or whether it intended to answer the Complaint. Given the circumstances, the timing of the Bradley's Motion for Default Judgment supports a finding of excusable neglect.

YTROA never "ignored" the Complaint. It acted diligently and reasonably in acknowledging service, seeking counsel to defend it and file a response, and then acting immediately once it learned of the Bradleys' Motion for Default Judgment. Its actions thus cannot be reduced to mere carelessness. The record shows that reasonable minds may differ as to whether YTROA acted with excusable neglect. Therefore, that element must be resolved in their favor, and YTROA has thus met the requirements necessary to set aside the default judgment.

II. THE DEFAULT JUDGMENT SHOULD BE SET ASIDE BECAUSE YTROA, HAVING APPEARED IN THE CASE, WAS ENTITLED TO NOTICE AND AN OPPORTUNITY TO RESPOND.[8]

[8] The Bradleys have indicated by footnote that they reserve the right to move to strike this argument because YTROA did not cross-appeal the district court's conclusion. However, a cross-appeal is not necessary for this assignment of error because it is not a "separate and distinct" issue from the main issue raised on appeal. It relates to the same order by resolving whether the default judgment should stand, without creating any new rights for YTROA nor abridging the Bradleys' avenues for relief. See Bucy v. Edward Jones & Company, 2019 MT 173, ¶¶ 24-25, 396 Mont. 408, 445 P.3d 812; and *Jennings v. Stephens,* 574 U.S. 271, 276 (2015) (appellee is not required to file cross-appeal in order to urge an alternative ground for relief, although the argument may involve an attack upon the reasoning of the lower court).

The district court ruled that YTROA was not entitled to the notice of proceedings by "the fact of having been served," but notes that "the right to notice is triggered by an appearance of a party in the record." *Order*, p. 13 (Doc. 22.00). YTROA was not served; rather, it signed an Acknowledgement of Service, which stated "Defendant hereby enters its *voluntary appearance* in this action and consents to the jurisdiction of the Court." *Acknowledgement of Service,* (Doc. 2.00). Thus, by its own terms, the Acknowledgement constituted an appearance. It was drafted by the Bradleys' counsel and, therefore, should be interpreted and enforced according to its plain terms.

Therefore, YTROA, having appeared in the case, should have been served with the request for entry of default and the clerk's entry of default under the Rules of Civil Procedure. See M.R.Civ.P. 5(a)(2) ("no service is required on a party in default for failing to appear"). Moreover, according to Rule 55(b)(2), if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. M.R.Civ.P. 55(b)(2). Therefore, YTROA was entitled to written notice of the Bradleys' Motion for Default Judgment, and a hearing, before default judgment was entered by the court.

YTROA was not given that time because the district court promptly granted the Bradleys' motion at 1:15 p.m. on April 1st, 2025, just one day after it had been

filed, and hours after YTROA, through Collins, had filed its request for extension of time. YTROA's request should have been considered and granted. This error prejudiced YTROA because the lack of proper notice and the speed at which the Bradleys and the Court acted precluded YTROA from objecting and participating so as not to be in default.

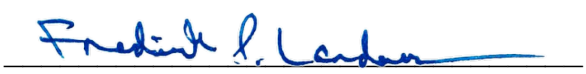
Had YTROA been afforded proper notice, it would have been subject to the more lenient "good cause" standard for setting aside an entry of default. See *Essex* ¶¶ 10-12. This test does not put into issue whether the neglect was excusable, the sole issue raised on this appeal. Being denied the opportunity to contest the entry of default and the motion for default judgment was an error that prejudiced YTROA.

CONCLUSION

For the reasons argued herein, this Court should affirm the district court's order granting YTROA's Motion to Set Aside the Default Judgment.

Respectfully submitted this 15th day of December, 2025.

AXILON LAW



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CERTIFICATION

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with proportionately spaced Times New Roman typeface of 14 points; is double spaced; and that the word count as calculated my Microsoft Word is 6,245 words, excluding the table of contents, table of authorities, and this certification.

Dated this 15th day of December, 2025.

AXILON LAW

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CERTIFICATE OF SERVICE

I, Frederick P. Landers, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-16-2025:

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