IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0615

IN RE MATTER OF THE MARRIAGE OF:

TARALYN DECOCK,

Petitioner/Appellant,

vs.

DEAN DECOCK,

Respondent/Appellee.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Fifth Judicial District Court, Beaverhead County
Before the Honorable Luke Berger

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REPLY BRIEF

I. THE DISTRICT COURT'S OCTOBER 31, 2024, ORDER DOES NOT PRECLUDE THE RULE 60(b)(6) MOTION.

Dean argues that Taralyn improperly uses Rule 60(b)(6) as a substitute for appeal and that the October 31, 2024, Order denying her Motion for Rescission bars this motion. (*Appellee's Br.* at 11, 21, 44.) These arguments fail for two independent reasons. First, the October 31, 2024, Order was not a final appealable order. Additionally, the Rule 60(b)(6) motion raises fundamentally different legal claims that could not have been brought until after entry of the *Final Decree*.

A. The October 31, 2024, Order Was Not a Final Appealable Order.

Under M.R.App. 6(1), a party may appeal only from a final judgment or from the final orders specified in subsections (2), (3), and (4) of the rule. The rule expressly identifies orders that are not appealable. M.R.App. 6(5)(a) provides that an order which leaves matters in the litigation undetermined is not appealable. M.R.App. 6(5)(f) provides that interlocutory judgments are not appealable. At the time the District Court denied the *Motion for Rescission* on October 31, 2024, the dissolution proceeding remained pending. No final decree had been entered. The parties had not yet resolved parenting issues. The October 31, 2024, Order was an interlocutory ruling that left matters undetermined within the meaning of M.R.App. 6(5)(a) and (f). Taralyn could not have appealed that Order because there was nothing final to appeal.

Dean's argument faults Taralyn for failing to do something that was procedurally impossible under M.R.App. 6. The Final Decree was not entered until February 25, 2025. Only after that date did an appealable judgment exist under M.R.App. 6(1). The Rule 60(b)(6) motion filed on June 26, 2025, attacked that Final Decree and the Agreement incorporated within it. This is not a substitute for appeal. It is the proper procedural vehicle for seeking relief from a final judgment based on extraordinary circumstances.

B. The Rule 60(b)(6) Motion Raises Different Legal Claims Than the Motion for Rescission.

Dean characterizes the Rule 60(b)(6) motion as merely "repackaging" the rescission arguments and asserts that the motion raises "the same allegations, same factual claims, and same characterizations previously rejected on the merits." (Appellee's Br. at 11, 30.) To the extent this argument sounds in res judicata, it fails. Res judicata requires four elements, including that the subject matter and issues in the present and past actions are the same. *Baltrusch v. Baltrusch*, 2006 MT 51, 331 Mont. 281, 130 P.3d 1267; *Wiser v. Mont. Bd. of Dentistry*, 2011 MT 56, 360 Mont. 1, 251 P.3d 675. Those elements are not met here.

The *Motion for Rescission* sought contract-based relief before entry of the Final Decree. It challenged the MPSA itself under theories of unconscionability and mistake. This Rule 60(b)(6) motion is fundamentally different. It seeks post-judgment relief based on the extraordinary circumstances of attorney gross neglect.

These are distinct legal theories with distinct elements, available at distinct procedural stages.

This Court has recognized that the "mere fact that two cases arise from the same transaction does not necessarily mean that each involve identical issues." *Baltrusch*, ¶ 25. Both motions concern the MPSA, but the legal questions are entirely different. *Baltrusch* further explains that "the second and third elements focus on the subject matter and issues, not the underlying facts." *Id*.

Res judicata also requires a final judgment. *Baltrusch* emphasizes that "res judicata applies when a final judgment has been entered" and that "res judicata cannot, on the basis of [a non-final] trial, bar any claims presented in this case." *Baltrusch*, ¶ 17. The October 31, 2024, Order was interlocutory. It was not appealable. Without a final judgment, res judicata cannot bar the Rule 60(b)(6) motion.

Moreover, Rule 60(b)(6) provides an independent basis for challenging the final judgment that was not available when the *Motion for Rescission* was filed. As this Court established in *Tanascu*, "when modification of a property settlement previously incorporated into a decree of dissolution is proposed on motion for relief from judgment, the catchall 'any other reason' ground for relief necessarily requires application of the relevant statutes on marriage dissolution and property division." *Tanascu v. Tanascu*, 2014 MT 293, ¶ 12, 377 Mont. 1, 338 P.3d 47. The Rule

60(b)(6) motion could not have been brought until after entry of the Final Decree because there was no final judgment from which to seek relief.

II. TARALYN SATISFIED ALL THREE ELEMENTS OF THE RULE 60(b)(6) TEST.

A. Counsel's Active Concealment and Affirmative Misrepresentation Constitute Extraordinary Circumstances.

Dean's own chronology confirms the extraordinary circumstances warranting relief. Dean concedes that his "Financial Disclosures" were "served" on Taralyn's counsel on February 15, 2024, and that "[o]pposing counsel received and reviewed" those disclosures "the same day." (*Appellee's Br.* at 12.) Dean further concedes that mediation occurred on March 5, 2024. (*Appellee's Br*. at 12.) But nowhere in Dean's brief does he claim that Taralyn personally received, reviewed, or even saw these documents before mediation. He cannot make that claim because it is not true.

The timeline established by Dean's own response confirms that Taralyn's former counsel possessed Dean's complete financial information for nearly three weeks before mediation but failed to provide it to his client. As stated in Taralyn's Affidavit, "Although Dean provided a financial disclosure and discovery responses to my former counsel on or about February 15, 2024, I was not provided copies of those documents in advance of mediation." (D.C. Doc. 19, ¶ 5.) Taralyn finally received Dean's financial disclosures on April 26, 2024, nearly two months after

signing the Agreement, and only then discovered the $1,000,000 disparity in retirement assets. (D.C. Doc. 19, ¶ 6.)

Dean attempts to bridge this evidentiary gap with speculation. He asserts that Taralyn "knew that Financial Disclosures had been received but opted not to review them herself" and that she "simply failed to review them herself even when they were available at mediation." (*Appellee's Br.* at 34, 39.) But Dean cites no evidence that Taralyn knew the disclosures existed, that they were "available" to her at mediation, or that she made any conscious decision not to review them. Dean's theory requires this Court to assume facts not in the record.

More fundamentally, Dean's argument ignores what Taralyn actually did. She did not passively assume her attorney was handling matters properly. At mediation, she specifically asked her attorney "if there was anything [she] needed to be aware of from Dean's discovery that was not something [she] had already brought up in [their] discussions of property distribution." (D.C. Doc. 19, ¶ 22.) Counsel indicated nothing of significance existed. (D.C. Doc. 19, ¶ 22.) This was a lie. Counsel had possessed Dean's complete financial disclosures for nearly three weeks, showing Dean had accumulated over $1.2 million in retirement accounts during the marriage.

Dean argues that counsel's conduct amounts to nothing more than "bad advice" that does not rise to gross neglect. (*Appellee's Br*. at 30-31.) Dean relies on *Lussy* for the proposition that bad advice from counsel does not warrant 60(b)(6)

relief. *Lussy v. Dye*, 215 Mont. 91, 695 P.2d 465 (1985). But *Lussy* involved a dispute over litigation strategy where counsel advised a course of action the client later regretted. That is not this case. This is not bad advice about litigation strategy. This is not a failure to investigate or prepare. This is active concealment of material information coupled with an affirmative misrepresentation when directly questioned.

This Court has addressed precisely this type of gross neglect. *See In re Marriage of Orcutt*, 2011 MT 107, ¶ 12, 360 Mont. 353, 253 P.3d 884. The framework for Rule 60(b)(6) relief based on attorney misconduct has evolved significantly. In *Peak Development, LLP v. Juntunen*, the Court initially stated that Rule 60(b)(6) required "gross neglect or actual misconduct by [the] attorney" in all cases. *Peak Development, LLP v. Juntunen*, 2005 MT 82, ¶ 17, 326 Mont. 409, 110 P.3d 13. However, *Essex Insurance Co. v. Moose's Saloon, Inc.* overruled this portion of *Peak Development*, clarifying that "gross neglect or actual misconduct on the part of the movant's attorney" applies "only in cases where the basis of the Rule 60(b)(6) motion is an alleged error by the movant's attorney." *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 25 n.4, 338 Mont. 423, 166 P.3d 451.

Essex confirms that when attorney error forms the basis of a Rule 60(b)(6) motion, as it does here, the movant must demonstrate gross neglect or actual misconduct. The *Orcutt* Court, decided after *Essex*, applied this refined standard,

requiring proof of "gross neglect or actual misconduct by an attorney" as one of three elements. *Orcutt*, ¶ 12.

Clearly, the gross neglect here exceeds that found in *Orcutt*. There, the attorney failed to disclose a realtor as an expert witness and presented no evidence of the marital home's value. *Orcutt*, ¶ 18. This Court found this constituted gross neglect because counsel "totally failed to present evidence on the issue" when the trial court had a "statutory obligation to equitably apportion the marital estate." *Orcutt*, ¶¶ 17-18. The Court noted that "Rule 60(b)(6) contemplates the situation faced by Charlene—it is designed primarily for situations where a party is wronged through no fault of its own." *Orcutt*, ¶ 15.

Here, Taralyn's counsel did not merely fail to present evidence. Counsel possessed Dean's complete financial disclosures for nearly three weeks, was directly asked about their contents, and affirmatively misrepresented that nothing significant existed. Unlike in *Orcutt*, where counsel failed to prepare, here counsel had the evidence in hand and lied about it. If *Orcutt's* failure to prepare evidence constitutes gross neglect warranting relief, then possessing evidence and lying about it must satisfy the extraordinary circumstances requirement a fortiori.

Dean's logic, taken to its conclusion, would require clients to assume their attorneys are lying and personally verify every document in every case. That is not how the attorney-client relationship works. Clients are entitled to rely on their

attorneys' direct representations. When Taralyn asked whether anything significant existed in Dean's discovery and counsel said no, she was entitled to rely on that answer. The law does not require clients to distrust their own counsel.

B. Taralyn Acted Within a Reasonable Time.

Dean argues Taralyn waited an unreasonable 14 months before filing her Rule 60(b)(6) motion. (*Appellee's Br.* at 32.) This calculation is wrong. Dean measures from April 2024, when Taralyn received Dean's discovery from her former counsel. But the relevant question under Rule 60(b)(6) is how long the movant waited to set aside the judgment. There was no judgment to set aside until the *Final Decree* was entered on February 25, 2025. The Rule 60(b)(6) motion was filed on June 26, 2025, four months later.

What constitutes a reasonable time depends on the particular facts of each case. *Karlen v. Evans*, 276 Mont. 181, 191, 915 P.2d 232, 238 (1996). Relevant to this determination is "prejudice to the party opposing the motion and the basis for the moving party's delay." *Karlen*, 276 Mont. at 191, 915 P.2d at 238. In *Karlen*, this Court found that 13 months was reasonable where the plaintiffs' attorney had misled them into believing their case was progressing when it had actually been dismissed. *Karlen*, 276 Mont. at 190, 915 P.2d at 238. The plaintiffs could not have discovered the deception earlier because their attorney controlled the information,

and once they obtained their file and discovered what had happened, they acted promptly. *Karlen*, 276 Mont. at 191, 915 P.2d at 238.

Similarly, in *Bartell v. Zabawa*, this Court found that filing a motion 10 days after discovery of an error constituted a reasonable time, even though the underlying accident had occurred six years earlier. *Bartell v. Zabawa*, 2009 MT 204, ¶ 34, 351 Mont. 211, 214 P.3d 735. The Court emphasized that the movant "proceeded with diligence" by acting "promptly upon receipt" of notice. *Bartell*, ¶ 34. In *Wagenman*, this Court found that moving within 8 days of discovering the district court's error was reasonable. *Wagenman v. Wagenman*, 2016 MT 176, ¶ 19, 384 Mont. 149, 376 P.3d 121.

Taralyn acted with comparable diligence. She filed her *Motion for Rescission* on May 13, 2024, just three weeks after finally receiving Dean's discovery from her former counsel on April 26, 2024. After the rescission motion was denied and the Final Decree was entered on February 25, 2025, she filed the Rule 60(b)(6) motion on June 26, 2025, four months later. This timeline compares favorably to *Karlen's* 13 months. Dean suffers no prejudice from allowing this matter to proceed. The only consequence of granting relief is an equitable distribution of marital assets rather than allowing Dean to retain over $1.7 million while Taralyn receives less than $185,000.

C. Taralyn Was Blameless.

Dean devotes significant effort to arguing Taralyn was not blameless because she "waived final disclosures twice," "signed an MPSA stating she reviewed and understood all financial information," and "affirmed under oath in the Joint Affidavit" that she was aware of the assets. (*Appellee's Br.* at 33-35.) This argument fundamentally misunderstands the blamelessness inquiry.

The question is not whether Taralyn signed documents or made representations. The question is whether she bears blame for the situation that led to the inequitable distribution. She does not. Taralyn did exactly what a diligent client should do. She asked her attorney directly whether Dean's discovery contained anything significant. She received a false answer. A client cannot be faulted for relying on direct representations from her own counsel. In *Karlen*, this Court found the clients blameless when their attorney "intentionally misled them into believing that their case was progressing and concealed from them the fact that the case had actually been dismissed." *Karlen*, 276 Mont. at 190, 915 P.2d at 238. The same principle applies here.

This Court's decision in *Wagenman* is directly on point. There, the wife was found blameless for failing to discover the district court's error in not incorporating the parties' property settlement agreement into the decree. *Wagenman*, ¶ 20. The Court explained that "we do not fault Tammy as a pro se litigant who had little

previous contact with the court system and who was relying on the marital dissolution statutes, and the court, to uphold their agreement." *Wagenman*, ¶ 20. If a pro se litigant relying on the court is blameless, then a represented party relying on her attorney to fulfill his duty must also be blameless. Taralyn's situation is stronger than *Wagenman* because she actively inquired rather than passively relying.

Dean points to the Joint Affidavit executed in February 2025 as evidence Taralyn was not blameless. But by that point, Taralyn had already filed and lost her Motion for Rescission. She was operating under a denial of that motion that she could not appeal because no final judgment existed. The execution of the Joint Affidavit after the rescission motion was denied does not establish that Taralyn was blameworthy for the original deception that occurred at mediation.

In *Orcutt*, this Court found the wife blameless even though she was present at trial and theoretically could have intervened in her attorney's failure to present evidence. *Orcutt*, ¶ 16. The Court noted that she "believed the case was progressing and had supplied [her attorney] with what she thought was evidence for trial." *Orcutt*, ¶ 16. Similarly, Taralyn believed her attorney was handling matters properly. She supplied information, asked appropriate questions, and relied on counsel's representations. She was blameless.

III. EVEN ACCEPTING DEAN'S DISPUTED ASSETS, THE DISTRIBUTION REMAINS UNCONSCIONABLE.

Dean claims Taralyn's calculations are a "blatant misrepresentation" and offers an alternative accounting showing Taralyn received $1,316,059.21 while he received $1,242,321.09. (*Appellee's Br.* at 42.) Dean's sole support for this calculation is "App 12," a spreadsheet that was never introduced, authenticated, admitted, or considered by the District Court.

Dean cannot manufacture evidence on appeal. This Court has consistently refused to consider materials outside the District Court record: "an appellate court in reaching its decision will only consider material ascertainable from the record." *State v. Ellison*, 2012 MT 50, ¶ 10, 364 Mont. 276, 272 P.3d 646 (citing *City of Missoula v. Robertson*, 2000 MT 52, ¶ 26, 298 Mont. 419, 998 P.2d 144); see also *Nielsen v. Hornsteiner*, 2012 MT 102, ¶ 13 n.3, 365 Mont. 64, 277 P.3d 1241 ("the parties on appeal are bound by the record and may not add additional matters in briefs or appendices"). App 12 should be stricken.

But even if considered, the very fact that Dean's calculation differs from Taralyn's by over one million dollars proves Taralyn's central point: the parties fundamentally disagree about the contents of the marital estate. That disagreement exists because Taralyn never had the information necessary to understand the estate's composition. A party cannot make an informed decision about dividing

marital assets when she does not know what those assets are. But that is precisely what happened here.

Dean argues Taralyn's calculation improperly excludes her interest in 1250 Winscott Lane, the Heaven's Half Acre trust, and certain financial accounts, while including Dean's Social Security but not her own. (*Appellee's Br.* at 42.) Taralyn's *Opening Brief* clearly identified her IRA Rollover ($82,875.23) and TOD ($164,835.51) as non-marital property. (*Opening Br.* at 5-6.) Regardless, even conceding Dean's position *arguendo*, the distribution remains grossly inequitable.

Adding Taralyn's IRA Rollover and TOD to her total as Dean suggests yields $431,970.67 for Taralyn. Using Taralyn's documented figures for Dean's assets, Dean's total remains $1,746,037.85. That is still a ratio of more than 4 to 1 in Dean's favor after a fifteen-year marriage. No reasonable person with full knowledge of the marital estate would agree to such a distribution. That is the definition of unconscionability.

The Commissioners' Notes to § 40-4-201, explain that the unconscionability standard was adopted specifically to provide "protection against overreaching, concealment of assets, and sharp dealing not consistent with the obligations of marital partners to deal fairly with each other." Mont. Code Ann. § 40-4-201, Comm'rs Note. An agreement procured through concealment of over one million dollars in marital assets cannot satisfy this standard.

This Court's decision in *Simpson* confirms that unconscionability review is mandatory. The *Simpson* Court held that "courts may modify decrees with settlement agreements in dissolution cases despite a nonmodification clause if the agreement is unconscionable" and that "the Legislature considered unconscionability as an appropriate reason to modify property settlement agreements in all cases." *In re Marriage of Simpson*, 2018 MT 281, ¶¶ 17-18, 393 Mont. 340, 430 P.3d 999. In *Tanascu*, this Court found an agreement was not unconscionable because the wife had "full knowledge of the relevant facts." *Tanascu*, ¶ 17. Taralyn had no such knowledge. Her attorney concealed the relevant facts from her.

Dean's alternative calculation is a distraction. The central question is not the precise final tally. The question is whether Taralyn had the information necessary to evaluate the proposed distribution at the time she signed. She did not. She believed she was accepting a distribution of approximately $725,169 to Dean and $520,720 to herself, a ratio of approximately 1.4 to 1. (D.C. Doc. 26 at 9.) She had no idea Dean actually possessed over $1,000,000 more in retirement accounts. That information asymmetry, created by her counsel's affirmative misrepresentation, prevented informed consent regardless of how one calculates the final numbers.

IV. THE RULE 60(b)(6) MOTION WAS DEEMED DENIED.

Dean argues that "the District Court Reviewed Taralyn's Claims and Rejected Them in a Reasoned, Written Order." (*Appellee's Br.* at 45.) This reflects a fundamental misunderstanding of how Rule 60 operates.

Rule 60(c)(1) provides that motions under Rule 60(b) "must be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment, and if the court shall fail to rule on the motion within the time frames set forth in Rule 59(f), the motion must be deemed denied." M.R. Civ. P. 60(c)(1). Rule 59(f) provides that if the court does not address such a motion "within 60 days from its filing date, the motion must be deemed denied." M.R. Civ. P. 59(f). A deemed denial is then appealable under M.R.App.P. 6(3)(b), which permits appeal "[f]rom a 'deemed denied' motion that was made pursuant to M.R. Civ. P. ... 60(b)."

That is exactly what happened here. Taralyn filed her Rule 60(b)(6) motion on June 26, 2025. The District Court had 60 days to rule. It did not. The motion was deemed denied by operation of Rule 59(f), and Taralyn timely appealed.

Dean conflates the October 31, 2024, Order denying the *Motion for Rescission* with a ruling on the Rule 60(b)(6) motion. These are different motions raising different legal theories filed at different times. The October 31 Order addressed whether the Agreement should be rescinded under contract principles. It did not

address whether extraordinary circumstances warranting 60(b)(6) relief existed. It did not analyze whether counsel's conduct constituted gross neglect under *Orcutt*. It could not have, because the Rule 60(b)(6) motion would not be filed for another eight months.

There is no "reasoned order" on the Rule 60(b)(6) motion for this Court to review. The deemed denial provides no reasoning, no analysis, and no findings. The District Court's silence cannot be treated as a considered exercise of discretion.

V. TARALYN'S CLAIMS ARE NOT SUBJECT TO THE RULE 60(b)(3) TIMELINE.

Dean argues that Taralyn's claims "must be brought under Mont. R. Civ. P. 60(b)(3) and are subject to strict time limits" because they involve allegations of fraud or misconduct. (*Appellee's Br.* at 19.) This argument fails.

Rule 60(b)(3) applies to "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." M.R. Civ. P. 60(b)(3) (emphasis added). Taralyn does not allege fraud by Dean. She does not claim Dean engaged in misconduct or concealed assets. Dean provided his financial disclosures to Taralyn's counsel. The problem is that Taralyn's own counsel concealed those disclosures from her and lied about their contents. Taralyn's attorney is not an "adverse party." This is a claim of gross neglect by her own attorney, which is precisely the type of claim addressed under Rule 60(b)(6) in *Orcutt* and *Karlen*.

Further, even if Rule 60(b)(3) applied, the motion would be timely. Rule 60(c)(1) provides that motions under Rule 60(b)(3) must be filed "no more than a year after the entry of the judgment or order." M.R. Civ. P. 60(c)(1). The relevant judgment is the *Final Decree*, entered February 25, 2025. Taralyn filed her Rule 60(b)(6) motion on June 26, 2025, four months later. Even under Dean's theory, the motion is well within the one-year limit. Dean's time-bar argument fails regardless of how it is analyzed.

CONCLUSION

Dean's *Response Brief* confirms rather than refutes the basis for relief. Dean does not dispute that his financial disclosures were in Taralyn's counsel's possession for nearly three weeks before mediation. Dean does not dispute that those disclosures showed over $1,285,000 in retirement accounts. Dean does not dispute that Taralyn asked her attorney whether anything significant existed in Dean's discovery. Dean does not dispute that counsel told her nothing of significance existed.

What Dean offers instead are procedural arguments that do not withstand scrutiny. The October 31, 2024, Order was not appealable. The Rule 60(b)(6) motion raises distinct claims from the rescission motion. Taralyn filed within a reasonable time after entry of the *Final Decree*. She was blameless for relying on her attorney's direct misrepresentation. And the District Court issued no reasoned ruling on the 60(b)(6) motion because it was deemed denied through inaction.

Dean's alternative calculation of the marital estate only underscores the problem. The parties' figures differ by over one million dollars. That disagreement exists because Taralyn never had the information necessary to understand what was in the estate. And even accepting Dean's position on which assets are marital, the distribution remains more than 4 to 1 in Dean's favor. No informed person would agree to such a distribution after a fifteen-year marriage. That is unconscionable under any measure.

Taralyn asks only for what Montana law guarantees: an equitable distribution of marital property. Her attorney's misconduct deprived her of approximately $1,000,000 in retirement assets she did not even know existed. This Court should not permit that unconscionable result to stand. The judgment should be reversed and the matter remanded for proceedings consistent with the equitable principles underlying Montana's dissolution statutes.

DATED: January 6, 2026.

MEASURE LAW, P.C.

By: /s/ Marybeth M. Sampsel
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellant's Reply Brief is printed with a proportionately 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 for Windows is not more than 5,000 words, excluding the certificate of service and the certificate of compliance.

MEASURE LAW, P.C.

By: /s/ Marybeth M. Sampsel
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CERTIFICATE OF SERVICE

I, Mary-Elizabeth Marguerite Sampsel, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 01-06-2026:

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