IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No.
DA 25-0645

KEVIN CUATT and HEIDI CUATT,

Petitioners and Appellees,

v.

XENA BENEDETTO,

Respondent and Appellant,

CRISTIAN BENEDETTO

On Appeal from the Montana Eleventh Judicial District
Flathead County Cause No. DV-25-393, Hon. Paul Sullivan

APPELLEES' RESPONSE BRIEF

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STATEMENT OF ISSUES

Restatement of Appellant's issues:

1. Whether the District Court correctly denied Appellant's motion to vacate the filing of the foreign judgment.
2. Whether the District Court correctly denied Appellant's motion to stay enforcement of said judgment.
3. Whether the District Court correctly denied Appellant's motion to disqualify Appellees' counsel.

STATEMENT OF FACTS

On March 6, 2025, Appellees filed a Notice of Filing of Foreign Judgment ("Notice"). (APP. A) Pursuant to § 25-9-504(1), MCA, Appellees also filed an Affidavit of Filing of Foreign Judgment ("Filing Affidavit"). (APP. B)

On March 10, 2025, Appellees mailed by certified mail, return receipt requested, a true and correct copy of the Notice and Filing Affidavit to Appellant and Cristian Benedetto at their last known addresses, and to their counsel in Florida. *See* Aff. of Service of Foreign Judgment (the "Service Affidavit") (Doc. 3) Appellant and her Florida counsel each signed receipts for the notices. (APP. C) The notice to Cristian Benedetto was returned unclaimed.

Two weeks later, Appellant, despite claiming that she had never received the Notice and Filing Affidavit, filed a *Motion to Vacate Filing of Foreign Judgment Due to Lack of Notice, Motion to Stay Enforcement, and Motion to Disqualify Plaintiffs' Attorney.* (Doc. 4) Notably, the address Appellant listed in her pleading is identical to the address Appellees used in their certified mailing. (Compare Doc. 4, p.1, with APP. C) Appellant also testified in her affidavit that she "ha[s] reviewed the Notice of Filing for Foreign Judgment filed in this Court." (Doc. 5, ¶ 2)

Appellant provided little to no argument in her Motion to Vacate. Her entire basis for all three motions was as follows:

> 1. There is lack [sic] of property notice given to us. Under Montana's Uniform Enforcement of Foreign Judgments Act (EFJA) (MCA § 25-9-501 et seq.), the judgment creditor must provide the judgment debtor with proper notice of the filing of a foreign judgment. Proper notice was not provided, in violation of due process. 2. The Florida Judgment is subject to Appeal. Case # 432021CA00550CAAMX entered Martin County, Florida is on Appeal as evidenced by the "ORDER OF THE COURT" attached as Exhibit A. The Cuatts have also filed an appeal. This case has a long way to go before being final. 3. Plaintiff's attorney, Frampton Purdy Law Firm, previously represented Defendant in a similar matter, thereby creating a direct conflict of interest.

(Doc. 4)

Regarding a prior representation, over five years ago, in 2019, Doug Scotti, an attorney at Frampton Purdy Law Firm, briefly represented Appellant in a

different matter. *See* Affidavit of D. Scotti, Doc. 7. The prior representation involved responding to a complaint made to the Idaho Real Estate Commission against Appellant regarding the unauthorized practice of real estate brokerage in Idaho. *Id*. The prior representation terminated within two months as a result of Appellant's failure to pay legal fees, and prior to any substantial work taking place. *Id*.

The District Court denied Appellant's motion in its entirety. (APP. D) The District Court found that, based on the delivery receipts, the notice was received by Respondent Xena Benedetto and her Florida attorney. *Id.*, p. 2.

The District Court correctly ruled that the statute requires that notice of the filing of a foreign judgment be sent by certified mail, return receipt requested, to the judgment debtor's last known address but does not require actual receipt, and since Appellees submitted evidence that notice was mailed in accordance with the statute, the Court found Appellees "complied with statutory and constitutional notice requirements." *Id.*, p. 3.

Regarding Appellant's Motion to Stay Enforcement, the District Court relied on § 25-9-505(1), MCA, which provides a stay may be granted only upon proof that the judgment debtor has furnished adequate security as required by the state in which the judgment was rendered. *Id.* The District Court correctly ruled that since Appellant has not posted any security, nor has she demonstrated compliance with

Florida's bond requirements under Rule 9.310(b) of the Florida Rules of Appellate Procedure, "a stay of enforcement is not warranted." *Id.*

Regarding Appellant's Motion to Disqualify Petitioners' Counsel, the District Court found that any such prior representation was undertaken by a different attorney at Petitioners' law firm in an unrelated matter involving a regulatory issue in Idaho, that ended over five years ago, and that concerned different legal issues and parties. *Id.,* p. 4. The District Court further found there was no indication that confidential information from that prior representation would be relevant or used adversely in this matter. *Id.* The District Court ruled that "disqualification under Rule 1.9, M.R.P.C., is not appropriate." *Id.*

Appellant Xena Benedetto appealed. Cristian Benedetto did not appeal, nor did he sign Appellant's brief on appeal. Thus, this appeal applies only to Xena Benedetto.

STANDARD OF REVIEW

Generally speaking, the denial of a motion to vacate is reviewed for an abuse of discretion. *In re Estate of Harmon*, 2011 MT 84A, ¶ 15, 360 Mont. 150 (citing *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451). Yet, whether a party has properly complied with the requirements of §

25-9-504, MCA, is a conclusion of law that is reviewed for correctness. *Blackwell v. Lurie,* 284 Mont. 351, 358, 943 P.2d 1318, 1323 (1997).

A decision of a district court granting or denying a stay is reviewed for an abuse of discretion, as is a motion to disqualify counsel. *Ternes v. State Farm Fire & Cas. Co.,* 2011 MT 156, ¶ 17, 361 Mont. 129, 257 P.3d 352; *Rysewyk v. Mont. Opticom, LLC*, 2023 MT 111, ¶ 15, 412 Mont. 420, 530 P.3d 839. "An abuse of discretion occurs when the district court acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, in view of all the circumstances, ignoring recognized principles resulting in substantial injustice." *Id.* (citing *Schuff v. A.T. Klemens & Son*, 2000 MT 357, ¶ 27, 303 Mont. 274, 16 P.3d 1002).

SUMMARY OF ARGUMENT

Appellees complied with the requirements of § 25-9-504, MCA, and Appellant undisputedly received timely notice of the filing. The District Court properly denied a motion to stay enforcement because Appellant failed to follow the procedure in Florida necessary to receive a stay. Finally, The District Court properly denied Appellant's motion to disqualify the undersigned due to a brief prior representation by a different member of the undersigned's firm of a substantially different matter five years prior.

ARGUMENT

1. WHETHER THE DISTRICT COURT CORRECTLY DENIED APPELLANT'S MOTION TO VACATE THE FILING OF THE FOREIGN JUDGMENT.

A. Appellees properly complied with the requirements of § 25-9-504, MCA.

The notice requirements with the respect to the filing of a foreign judgment are specifically set forth in § 25-9-504, MCA, as follows:

> **25-9-504. Notice of filing.** (1) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit setting forth the name and last known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable and the extent to which it has been satisfied.
> (2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on the judgment creditor's behalf **shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to the judgment debtor's attorney of record, if any, each at the person's last-known address, by certified mail, return receipt requested.** The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

§ 25-9-504, MCA (emphasis supplied). Importantly, this Court has held that a judgment creditor need only comply with plain language of the statute to satisfy the notice requirements thereunder. *Blackwell*, 284 Mont. 351, 358. Nowhere in the statute is there a requirement that notice actually be received by the party against

whom the foreign judgment was obtained, as Appellant has expressly acknowledged in her brief. *Appellant Brief,* p. 9.

Appellees properly served notice upon both Appellant and her Florida legal counsel, via certified mail. Appellant does not contest that Appellees complied with the statute.

B. Appellant's argument that she did not sign for the certified mailing, not only is belied by the evidence, but is not a legal basis to vacate the notice.

Appellant's argument on appeal is that, since she disputed the signature on the certified mailing receipt, the Court erred by not making "findings sufficient for review and [to] ensure the judgment debtor had a meaningful chance to litigate the notice issue." *Appellant Brief,* p. 9. However, since § 25-9-504(2), MCA, only requires mailing and not receipt, a fact which Appellant admitted (*Appellant Brief,* p. 9), it is of no legal consequence whether she signed for it. Accordingly, the District Court did not err in failing to make findings on matters which are not statutorily required and are of no legal consequence.

Moreover, Appellant failed to cite to any authority that suggests that lack of receipt is a valid basis upon which to vacate the filing of a foreign judgment.

Moreover, Appellant has failed to present sufficient evidence to rebut the statutory presumption under § 26-1-602(24), MCA, that a "letter duly directed and mailed was received in the regular course of the mail." The only "evidence" that

Appellant has provided in support of her claim that notice was not received is a self-serving affidavit. Unfortunately for Appellant, the law in Montana is quite clear that an affidavit alone is not sufficient to rebut the statutory presumption of receipt. See *Baldwin v. Bd. of Chiropractors*, 2003 MT 306, ¶ 15, 318 Mont. 188, 79 P.3d 810; *Billings v. Lindell*, 236 Mont. 519, 522, 771 P.2d 134, 136 (1989).

Moreover, given that signed return receipts for the Notice and Filing Affidavit were obtained from Appellant as well as from her Florida counsel, that Appellant responded with her own *Motion* barely two weeks later, and given that her address of record is the same as in the certified mailing, insufficient to overcome the statutory presumption of receipt, the District Court did not abuse its discretion in failing to vacate the filing on this basis.

Next, Appellant argued that she lacked a "meaningful chance to litigate the notice issue." *Appellant Brief,* p. 9. However, in her *Motion* as well as in her *Reply* thereto (Doc. 12), Appellant raised and argued the alleged lack of notice. Moreover, the District Court's *Order* (APP. D) clearly demonstrated that the District Court considered Appellant's arguments on the issue but found them without merit. The fact that the District Court ruled against Appellant on the issue does not mean that she lacked a meaningful opportunity to litigate it.

Finally, Appellant argued that the statutory notice procedure mandated by § 25-9-504, MCA, is a violation of her due process rights. *Appellant Brief,* p. 9.

However, as this Court has stated on more than one occasion, "the hallmarks of due process are notice and opportunity to be heard." *Labair v. Carey*, 2017 MT 286, ¶ 20, 389 Mont. 366, 405 P.3d 1284 (quoting *In re B.W.S.*, 2016 MT 340, ¶ 12, 386 Mont. 33, 386 P.3d 595). Where, as here, actual notice is received by a party and the alleged lack of notice has not adversely affected such party's interests, a claim of a due process violation must fail. *Id.*

In that same vein, the rule is also well established in Montana that statutory notice requirements can be and are waived where a party has actual notice and does in fact appear and argue its case. See *Campbell v. Mahoney*, 2001 MT 146, ¶ 24, 306 Mont. 45, 29 P.3d 1034. In this case, Appellant has done exactly that. As such, Appellant's claim that she lacked a meaningful opportunity to litigate the issue is not supportable.

In conclusion, this Court should AFFIRM the District Court's denial of Appellant's motion to vacate the Notice.

2. WHETHER THE DISTRICT COURT CORRECTLY DENIED APPELLANT'S MOTION TO STAY ENFORCEMENT OF THE FOREIGN JUDGMENT.

A. The District Court correctly denied Appellant's Motion because she failed to demonstrate that the appropriate bond had been filed in Florida.

Appellant argued that the judgment in Florida "was procured through

material misrepresentations of law and fact." *Appellant Brief,* p. 10. However, she filed a motion to stay the enforcement of the foreign judgment, not a motion to vacate it on the basis of fraud.

Staying enforcement of a foreign judgment is governed by § 25-9-505, MCA. Per § 505(1), a District Court may only stay enforcement of a foreign judgment "upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered." Appellees specifically identified this basis in their response to Appellant's motion to vacate. (Doc. 6, p. 3) Despite this fact, Appellant did not furnish the necessary proof in her *Reply.* Having failed to do so, the District Court lacked authority to stay execution of the foreign judgment.

Under § 25-9-505(2), MCA, a party seeking a stay must also provide security for satisfaction of the judgment in Montana. Under Rule 22(1)(b), M.R.App.P., the amount of the bond must equal "such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on appeal, interest, and damages for delay." Here, not only did Appellant not provide the necessary bond, she freely admitted that she *could not* provide the necessary bond. (Reply, Doc. 12, p. 2)

Appellant argues that the *lis pendens* filed against her Montana properties in a separately pending action should function as a form of substitute pseudo-security.

Id. However, as the District Court correctly noted, while those filings may restrict alienation of assets, they do not constitute a bond or security ensuring payment of a judgment in this case. (*Order*, APP. D, p. 3) The language of the statute is quite clear and must be applied as written. § 1-2-101, MCA. Appellant having failed to post the necessary bond, the District Court had no authority to grant the *Motion*.

In conclusion, this Court should AFFIRM the District Court's denial of Appellant's motion to stay enforcement of the foreign judgment.

3. WHETHER THE DISTRICT COURT CORRECTLY DENIED APPELLANT'S MOTION TO DISQUALIFY APPELLEES' COUNSEL

Appellant moved to disqualify Appellees' counsel under Rule 1.9 of the Montana Rules of Professional Conduct based on an allegation that that said counsel "previously represented me in a similar matter." (Motion, Doc. 4, p. 2; Aff. X. Benedetto, ¶ 6, Doc. 5) Rule 1.9, M.R.P.C. provides: "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." (emphasis added) "A motion to disqualify based on a conflict of interest requires a district court to evaluate if the movant has offered sufficient proof that continued representation of one party by

the attorney or firm will prejudice or adversely impact the rights of another party in the matter pending before the court." *Rysewyk*, 2023 MT 111 at ¶ 17.

"In order to succeed on a motion to disqualify opposing counsel, a party must offer sufficient proof that the continued representation of one party by the attorney or firm will prejudice or adversely impact the rights of another party in the matter pending before the court." *Keuffer v. O.F. Mossberg & Sons, Inc.*, 2016 MT 127, ¶ 37, 383 Mont. 439, 373 P.3d 14 (quoting *Krutzfeldt Ranch, Ltd. Liab. Co. v. Pinnacle Bank*, 2012 MT 15, ¶ 17, 363 Mont. 366, 272 P.3d 635). Rather than providing such proof, here Appellant has offered nothing beyond unsupported allegations that she was previously represented by Appellees' counsel and that such representation somehow impaired Appellant's ability to find her own counsel. *Appellant Brief*, p. 12. Moreover, Appellant falsely claims that the District Court failed to make any findings regarding this issue. *Appellant Brief*, pp. 12-13. The District Court did, in fact, make the necessary findings. *Order*, APP. D, p. 4. Appellant simply disagrees with those findings.

In truth, the undersigned, Sean Frampton, never represented Appellant. Rather, Doug Scotti, another lawyer in the firm, briefly represented her five years ago in a substantially different matter. Scotti drafted a response to a complaint made to the Idaho Real Estate Commission regarding an alleged unauthorized practice of real estate brokerage in Idaho. The prior representation was terminated

within two months as a result of Appellant's failure to pay legal fees. Whereas that matter dealt with an allegation in Idaho of a real estate matter, this matter is wholly unrelated in that it is simply the filing of a foreign judgment pursuant to a statutory procedure.

Since this matter is not the same nor substantially related, and Appellant having offered no evidence to the contrary, the motion to disqualify Appellees' counsel should be denied.

In conclusion, this Court should AFFIRM the District Court's denial of Appellant's motion to disqualify counsel.

CONCLUSION

Appellees request that this Court AFFIRM on all of Appellant's issues.

DATED this 9th day of January, 2026.

FRAMPTON PURDY LAW FIRM

By: _____
Sean S. Frampton
Attorneys for Plaintiffs/Appellees

CERTIFICATE OF COMPLIANCE

I, Sean S. Frampton, attorney for Appellees, hereby certify that Appellees' Response Brief complies with the Montana Rules of Appellate Procedure:

A: Document has double-line spacing and is proportionately spaced in Times New Roman text typeface of 14 points;

B: Word count, exclusive of tables and certificates, does not exceed 10,000;

C: Margins are 1";

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I am relying on the word count of the word processing system used to prepare the brief (Microsoft Office Word) in calculating the document's length.

DATED this 9th day of January, 2026.

FRAMPTON PURDY LAW FIRM

By: _____
Sean S. Frampton
Attorneys for Appellees

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 9th day of January, 2026, a true and correct copy of the foregoing document was served upon the persons named below, at the addresses set out below their names, as indicated below.

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[X] U.S. Mail (first class postage)
[ ] Hand Delivery
[ ] Telecopy (facsimile)
[ ] Electronic Service via E-File System
[X] Email: xenabenedetto@gmail.com

Kelly Kracker-Sletten

CERTIFICATE OF SERVICE

I, Sean S. Frampton, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 01-09-2026:

Xena Benedetto (Appellant)
2379 NW Sunset Blvd.
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Service Method: Conventional

Electronically signed by Kelly Kracker-Sletten on behalf of Sean S. Frampton
Dated: 01-09-2026