

NICK LETANG  
PASSAMANI & LETANG, PLLC  
Physical: 40 West 14<sup>th</sup> Street, Helena, MT 59601  
Mail: P.O. Box 1778, Helena, MT 59624  
(406) 422-4522  
[nick@plmontana.com](mailto:nick@plmontana.com)  
Bar #: 54057898  
*Attorney for Bickham Properties, LLC*

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

**No. DA-25-715**

---

BRYAN JON SHEPARD,

*Plaintiff / Appellee,*

v.

BICKHAM PROPERTIES, LLC, AMY BICKHAM, JUSTIN BICKHAM, AND  
JESSICA BICKHAM,

*Defendants / Appellants.*

---

**APPELLANT BICKHAM PROPERTIES, LLC'S OPENING BRIEF**

---

*Appeal from the District Court of the Thirteenth Judicial District of the State of Montana in and for  
Yellowstone County, Cause No. DV 2023-638, Hon. Knisely*

---

## **Attorneys of Record**

*For Appellant Bickham Properties, LLC*  
Nicholas A. LeTang

[nick@plmontana.com](mailto:nick@plmontana.com)

PASSAMANI & LETANG, PLLC  
40 W. 14<sup>th</sup> St., Ste. 2A  
Helena, MT 59601  
Representing: Bickham Properties, LLC  
Service Method: eService

*For Appellee Bryan Jon Shepard*  
Alex Hamman

[alexhamman@chwlawfirm.com](mailto:alexhamman@chwlawfirm.com)

CARLTON, HAMMAN & WOLFF, P.C.  
2075 Central Ave., Suite 4  
Billings, MT 59102  
Representing: Bryan Jon Shepard  
Service Method: eService

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... 3

TABLE OF AUTHORITIES .....5

STATEMENT OF THE LEGAL ISSUES .....6

STATEMENT OF THE CASE ..... 6

STATEMENT OF THE FACTS

    I.    The facts.....8

        A. Background: Before the February 21, 2023 meeting.....8

        B. February 21, 2023: Prior to the meeting that day.....9

        C. February 21, 2023: During the meeting.....10

        D. Consummating the transaction: The weeks following the  
            February 21, 2023 meeting, ratification, and seller’s  
            Remorse.....11

        E. Relevant District Court findings.....13

STANDARD OF REVIEW .....14

SUMMARY OF ARGUMENT .....15

ARGUMENT .....16

**Issue 1: No substantial credible evidence of fraud.**

    II.    A valid agreement existed between Bryan Shepard and  
            Bickham Properties, LLC.....16

        A. The four elements of a contract were met.....16

B.	The District Court’s Order does not clearly delineate when a “meeting of the minds” existed, and the absence of this analysis led to confusion.....	17
III.	The evidence in the record supports disagreement between the parties about the scope of the real estate deal—and disagreement on terms is not fraud.....	19
IV.	Being that the parties disagreed about the scope of the agreement, there is no substantial credible evidence that Justin Bickham intended to defraud Mr. Shepard into Signing the closing documents.....	20
 <b>Issue 2: The District Court did not consider waiver and estoppel.</b>		
V.	The District Court erred when it did not analyze Evidence of waiver and equitable estoppel.....	21
CONCLUSION .....		25
CERTIFICATE OF COMPLIANCE .....		26
APPENDIX INDEX .....		27

## TABLE OF AUTHORITIES

### **Cases**

<i>Blaine Cnty. v. Stricker</i> , 2017 MT 80, 394 P.3d 159 .....	20
<i>City of Whitefish v. Troy Town Pump</i> , 2001 MT 59, 21 P.3d 1026 .....	23
<i>Dern v. Dern</i> , 279 Mont. 138, 928 P.2d 123 (1996) .....	14
<i>Edwards v. Cascade County</i> , 2009 MT 229, 212 P.3d 289 .....	22
<i>Kurtzenacker v. Davis Surveying, Inc.</i> , 2012 MT 105, 278 P.3d 1002 .....	14
<i>O'Brien v. O'Brien</i> , 2022 MT 246, ¶ 13, 532 P.3d 831 .....	14

### **Constitutional and statutory provisions**

Section 28-1-102, MCA .....	16
-----------------------------	----

## **STATEMENT OF LEGAL ISSUES**

- I. Whether the District Court’s determination of actual fraud is supported by substantial credible evidence?
- II. Whether the District Court erred when not considering evidence of estoppel?

## **STATEMENT OF THE CASE**

This case is about a lack of substantial credible evidence of actual fraud and the District Court’s err in not addressing evidence of waiver and estoppel.

On February 21, 2023, Appellee Bryan Jon Shepard (hereinafter “Shepard”) executed a Contract for Deed, Warranty Deed, Notice of Purchaser’s Interest, Limited Power of Attorney, and Assignment and Assumption of Contract transferring his interest in his Billings, MT property to Appellant Bickham Properties, LLC. Shepard did so before a notary public and after rescheduling the closing location. Wanting to please his significant other, Shepard transferred his property at the persistent pleas of his then-girlfriend Amy Bickham (the ex-wife of Justin Bickham).

Prior to transferring his property, Shepard spoke with Justin Bickham, a managing owner of Bickham Properties, LLC. It is uncontested that the two spoke about Shepard receiving a lease interest in one of Justin Bickham’s rental properties; however, what was disputed is whether Shepard’s lease interest would be a part of the February 21, 2023 transaction wherein Shepard transferred his Billings, MT

property to Bickham Properties, LLC. At the bench trial before the District Court, Justin Bickham was adamant that any lease interest discussions were separate from the real property transfer, whereas Shepard was adamant that such least interest was an integral part of his decision to transfer his Billings, MT property.

In his pleadings, Shepard alleged several causes of action seeking to void the contract that Shepard had willingly entered and subsequently affirmed in ensuing behavior. Shepard did not allege any breach of contract claim or mistake-based theories that would have been more suitable for relief.

At the conclusion of trial, the District Court determined that Justin Bickham had fraudulently induced Shepard into transferring his Billings, MT property. The District Court pointed to confusion about the lease offer as evidence that Justin Bickham had fraudulently induced Shepard into transferring his property. The District Court's decision failed to address Appellant's affirmative relief defenses, including that Shepard had ratified the parties' February 21, 2023 transaction via both his conduct and failure to disavow the transaction he willingly entered.

Mr. Shepard entered a bad deal, but he did so willingly out of love for his then girlfriend, Amy Bickham. Justin Bickham is not a man who commits fraud, and he should not be labeled as a fraudster to save Mr. Shepard from an inadvisable transaction that Shepard freely entered out of love for his girlfriend. Appellant

Bickham Properties, LLC asks this Court to vacate the Court’s judgment and remand for further proceedings consistent with this Court’s opinion.

## **STATEMENT OF THE FACTS**

### **I. The facts.**

#### **A. Background: Before the February 21, 2023 meeting.**

Bryan Jon Shepard is a Billings, Montana resident who was thirty-three years old at the time of trial and employed as a manager at Dairy Queen. (Findings of Fact, Conclusions of Law, and Order After Bench Trial, Doc. 58 , pg. 5, ¶ a.)

Shepard inherited the residence located at 4132 Frances Avenue in Billings, Montana, from his father. (Doc. 58, pg. 5, ¶ c.) The residence was originally built by Shepard’s great-uncle for Shepard’s great grandmother. (Doc. 58, pg. 5, ¶ c.) Shepard lived in the Frances Avenue residence for his entire life prior to the events giving rise to this litigation. (Doc. 58, pg. 5, ¶ c.)

Amy Bickham (hereinafter “Amy” for clarity) is employed as a childcare provider and was previously married to Justin Bickham. (Doc. 58, pg. 2, ¶¶ a-b.) Amy and Justin Bickham have two children together. (Doc. 58, pg. 2, ¶ b.)

In January 2023, Amy Bickham met Shepard, and the two entered a romantic relationship. (Doc. 58, pg. 2, ¶ c.) Within days, the relationship became serious, and Shepard and Amy discussed marriage, having children, and starting a family. (Doc. 58, pg. 6, ¶¶ f-g.) Shepard and Amy referred to one another as husband and wife,

filed a marriage license, and planned to get married. (Doc. 58, pg. 6, ¶ g.) Shepard added Amy to his bank accounts and allowed her to use his debit card. (Doc. 58, pg. 6, ¶ g.)

In February 2023, Amy suggested to Shepard that he sell the Frances Avenue residence to her ex-husband, Justin Bickham. (Doc. 58, pg. 3, ¶ e; Doc. 58, pg. 6, ¶ h.) Around that time, Amy and Justin exchanged Facebook messages and text messages regarding a potential sale of Shepard's house. (Doc. 58, pg. 3, ¶¶ f, h, i.) Shepard did not exchange text messages or Facebook messages with Justin and did not directly negotiate the terms of the transaction with him prior to February 21, 2023. (Doc. 58, pg. 3, ¶ g; Doc. 58, pg. 6, ¶ i.)

**B. February 21, 2023: Prior to the meeting that day.**

On February 21, 2023, Amy sent Shepard a series of Facebook messages outlining proposed terms if Shepard sold the Frances Avenue residence to Justin. (Doc. 58, pg. 4, ¶¶ j-k.) Amy proposed that Shepard would receive an initial payment of \$5,000, a 2003 GMC Yukon, a subsequent payment of \$30,000, rent-free occupancy of a duplex for sixty years, two two-bedroom apartments, fifty-percent custody of Amy and Justin's children, and relief from child support obligations. (Doc. 58, pg. 4, ¶¶ j-k.) As part of those messages, Amy pleaded with Shepard to agree to the sale, stating that she needed her children in her life and asking Shepard to make the deal happen: "Please baby I'm begging you with my heart and soul please please

please baby make this deal with Justin I will do anything / Please baby / Please [prayer emoji] / I need my kids in my life / I will do anything.” (Doc. 58, pg. 4, ¶ k.)

After receiving Amy’s messages on February 21, 2023, Shepard left work and returned to his home for a signing meeting. (Doc. 58, pg. 4, ¶ l.) As expressly found by the District Court, this meeting was not impromptu: it was planned and Shepard requested the meeting take place at his house. (Doc. 58, pg. 15, ¶ h.) In fact, the February 21 signing was not the first signing meeting to consummate the parties’ transaction. (Doc. 58, pg. 15, ¶ h.) Justin Bickham and the notary, Beth Goldberg, testified that signing meetings were previously scheduled for Justin’s attorney’s office and Shepard’s place of employment at Dairy Queen. (Doc. 58, pg. 15, ¶ h.)

**C. February 21, 2023: During the meeting.**

When Shepard arrived, Amy, Justin Bickham, Jessica Bickham, and the notary, Beth Goldberg, were present at Shepard’s residence. (Doc. 58, pg. 4, ¶ n.) At the meeting, Justin presented Shepard with multiple documents to sign, including a Contract for Deed and related instruments. (Doc. 58, pg. 4, ¶ m.) Amy and Shepard testified that around when Justin handed him the documents, Justin referenced a lease agreement. (Doc. 58, pg. 5, ¶ o; Doc. 58, pg. 8, ¶¶ o, p.) Amy and Shepard testified that Justin told Shepard the lease would be in Shepard’s name so that Shepard would have a place to live rent-free if Shepard and Amy broke up. (Doc. 58, pg. 5 ¶ o; Doc. 58, pg. 8, ¶¶ o, p.)

The Court credited Shepard's testimony that Justin represented that the transaction included a rent-free lease in Shepard's name after the sale of the Frances Avenue property. (Doc. 58, pg. 8, ¶ o.) The Court further found that Shepard believed he would be receiving custody of Amy's children as part of the transaction. (Doc. 58, pg. 9, ¶¶ s-t.) Shepard testified that he would not have agreed to sell his house absent the promised lease arrangement. (Doc. 58, pg 9, ¶ u.)

Shepard signed the documents presented to him without reading them and felt pressured during the signing process. (Doc. 58, pg. 8, ¶ q.) At the signing, Shepard briefly stepped away to ask Amy whether he should read the documents, and Amy told him not to worry and to sign them. (Doc. 58, pg. 8, ¶ q.) The documents Shepard signed included a Contract for Deed, Warranty Deed, Notice of Purchaser's Interest, Limited Power of Attorney, and a (flawed) Assignment and Assumption of Lease. (Doc. 58, pg.s 8-9, ¶ r.)

The Contract for Deed reflected that Bickham Properties, LLC agreed to pay \$5,000 and provide a 2003 GMC Yukon in exchange for Shepard's interest in the Frances Avenue property. (Doc. 58 ¶ 51.) The written documents contained no reference to any lease or rent-free occupancy for Shepard. (Doc. 58 ¶ 52.)

**D. Consummating the transaction: The weeks following the February 21, 2023 meeting, ratification, and seller's remorse.**

After the transaction was completed, Justin and Jessica Bickham provided Shepard with a 2003 GMC Yukon. (Doc. 58, pg. 9, ¶ v.) The \$5,000 payment was not made; instead, Justin and Jessica provided Shepard with a 2007 Chrysler Town & Country because Amy desired a car rather than the \$5,000. (Doc. 58, pg. 9, ¶ v.) Shortly after February 21, 2023, Amy crashed the Chrysler Town & Country, and both Amy and Shepard split the insurance proceeds. (Doc. 58, pg. 10, ¶ y.)

In the weeks following execution of the documents, Shepard began having second thoughts about the February 21, 2023 transaction; however, Shepard did not reach out to Justin or Jessica Bickham to “unwind” the deal. (Doc. 58, pg. 10, ¶ aa.) Shepard periodically asked Amy about the custody arrangement, and Amy avoided answering those questions. (Doc. 58, pg. 10, ¶ z.) Thereafter, Amy and Shepard’s relationship deteriorated: Amy cheated on Shepard, the two began arguing more often, and Amy would threaten to kick Shepard out of the Frances Avenue property. (Doc. 58, pg. 10, ¶ bb.)

In April or May 2023, Justin, Jessica, and others came to the Frances Avenue property. (Doc. 58, 10, ¶ cc.) Shepard posted a sign stating they were not allowed on the property but later allowed them to clean the residence. (Doc. 58, 10, ¶ cc.) Justin and Jessica incurred expenses to do this. Trial Tr. at pg. 128-131.

No rent-free lease was provided to Shepard. Shepard did not move into any apartment owned by Justin or Jessica Bickham, and no lease agreement was executed.

On June 6, 2023, Shepard brought suit in Yellowstone County District Court. A bench trial was held on February 15, 2024. *Shepard v. Bickham Prop.s, LLC*, No. DV-0638, Transcript of Proceedings (Mont. Dist. Ct., 13<sup>th</sup> Jud. Dist. Yellowstone. Cty., Feb. 15, 2024.) Upon the conclusion of trial, the Court found that Justin misrepresented to Shepard that the terms of the real estate transaction included a rent-free lease in Shepard's name. (Doc. 58 ¶ 70.) The Court further found that Shepard relied on that representation in deciding to sign the Contract for Deed. (Doc. 58 , 25-26, ¶¶ 20-21.) The Court concluded that Shepard's consent to the transaction was not free and that he was fraudulently induced into signing the Contract for Deed. (Doc. 58 pg. 26, ¶ 23.)

**E. Relevant District Court findings.**

The District Court expressly found the following:

- (1) Appellee Shepard did not discuss the terms of the deal with Justin prior to the meeting on February 21, 2023. (Doc. 58, pg. 15, ¶ g.iv.)
- (2) Shepard signed many contracts in his lifetime. (Doc. 58, pg. 11, gg.i.)

- (3) Shepard had considered selling his house several times prior to selling his property to Bickham Properties, LLC on February 21, 2023. (Doc. 58, pg. 11, gg.ii.)
- (4) That Shepard received no representations from Appellants that the transaction would include custody arrangements or child support. (Doc. 58, pg. 11, gg.iii.)
- (5) That Shepard was not forced to sign the closing documents on February 21, 2023. (Doc. 58, pg. 11, gg.iv.)

### **STANDARD OF REVIEW**

Following a bench trial, this Court reviews a district court's findings of fact for clear error. *Dern v. Dern*, 279 Mont. 138, 144, 928 P.2d 123 (1996). However, where the appeal turns on the district court's legal determinations, no deference is owed. Conclusions of law are reviewed de novo, and this Court must independently determine whether the district court correctly interpreted and applied the governing law. *Id.*; *Kurtzenacker v. Davis Surveying, Inc.*, 2012 MT 105, ¶ 14, 278 P.3d 1002. To the extent the district court's ruling rests on an incorrect legal standard or a misapplication of the law, it constitutes reversible error. See *Dern*, 279 Mont. at 144; *O'Brien v. O'Brien*, 2022 MT 246, ¶ 13, 532 P.3d 831.

//

//

## SUMMARY OF ARGUMENT

This case is not one of fraud; it is one of seller's remorse. The trial testimony supports the conclusion that the parties disagreed about whether a lease would be a part of the February 21, 2023 closing. Disagreement on the inclusion of a lease arrangement is not evidence of fraud. Limited by claims alleged in Shepard's pleadings, the District Court erred in conflating evidence on the *disagreement of the scope and terms* of the parties' February 21, 2023 agreement as evidence of *fraud*. Failure to deliver a promised lease is a breach claim unless the promise was knowingly false when made and used to induce reliance. Here, Appellee's fraud claim cannot succeed by mere evidence that the parties disagreed on the scope of their agreement, i.e., on whether a lease agreement was a part of the February 21, 2023 transaction. Disagreement on terms is not fraud, and Mr. Bickham should not bear the label of a fraudster for such disagreement. In addition to the lack of substantial credible evidence of intent to defraud, the District Court erred when not completing the full legal analysis commanded by the pleadings in this matter: the District Court did not address Appellant's waiver and estoppel affirmative defenses. Such defenses are credible, were made in good faith, and supported by substantial credible evidence. This Court should reverse and remand in accordance with its decision.

//

//

## **ARGUMENT**

### **ISSUE 1: NO SUBSTANTIAL CREDIBLE EVIDENCE OF FRAUD**

#### **II. A valid agreement existed between Bryan Shepard and Bickham Properties, LLC.**

##### **A. The four elements of a contract were met.**

The essential elements of a contract in Montana are: (1) identifiable parties capable of contracting; (2) their consent; (3) a lawful object; and (4) sufficient cause or consideration. MCA § 28-1-102.

Here, it is clear from the totality of the Court's findings that all elements of a contract were present.

First, there were parties capable of contracting. In this case, the parties were Bryan Shepard and Bickham Properties, LLC, a valid Montana LLC.

Second, the parties consented to enter into an agreement on February 21, 2023. The signing on February 21, 2023 was done freely and before a notary, Beth Goldsmith. As stated by the District Court, "The evidence is uncontested that Bryan was offered an opportunity to look through the documents that Justin provided to him, and that he was free to ask questions about them, but he failed to do so."

Third, the parties' bargain was lawful: the sale of the 4132 Frances residential property in exchange for:

- (1) \$5,000 cash (subsequently amended to be the Chrysler Town & Country),
- (2) A car (initially just the Yukon); and
- (3) Potentially a lease (depending on whether a meeting of the minds occurred).

Not only did the parties initially have an agreement on February 21, 2023, the parties subsequently proceeded to amend their agreement in the weeks following: instead of receiving the \$5,000 cash that was a part of the February 21, 2023 transaction, Shepard allowed Amy to receive the Chrysler Town & Country in lieu of the cash payment. And when Amy totaled the Chrysler, Shepard kept the insurance proceeds.

**B. The District Court’s Order does not clearly delineate when a “meeting of the minds” existed, and the absence of this analysis led to confusion.**

Under normal circumstances, a “meeting of the minds” in a transaction occurs when the parties enter a purchase and sale agreement that includes all material terms. Then, a pre-closing period ensues in which due diligence occurs (inspections, funding procurement, etc.) and contingencies may be exercised. Later, during closing, the parties consummate the transaction by exchanging their respective consideration.

Here, there was no written purchase and sale agreement in this matter. The absence of a written purchase and sale agreement led to confusion: the District

Court's Order seemingly assumes that both parties' intended the Contract for Deed to encompass the full terms of their agreement. Notably, absent from the Contract for Deed is any mention of a lease arrangement:

B. The Seller and the Buyer are parties to an Agreement dated February 21, 2023 pursuant to which the Buyer agreed to pay (i) the balance of the purchase price in the amount of 2003 Yukon \$5,000.00 pursuant to the terms and conditions of this Agreement.

Here, whether by accident or design, the absence of the parties' lease arrangement in a contract for deed is not dispositive to *whether the parties previously agreed that a lease arrangement be made part of the transaction.*

The "Contract for Deed" in this matter should not be confused for the parties' full agreement. In a typical financing arrangement, a Contract for Deed does not enumerate the entirety of the parties' agreement; instead, a Contract for Deed acts as the security interest that collateralizes a seller in a seller-financing arrangement. It is uncommon that the terms of a lease would be included in a contract for deed. Here, the parties used a stock contract-for-deed arrangement that included several fill-in-the-blank terms. Doing so was confusing since it did not include the full terms discussed by the parties, which included—in addition to the 2003 Yukon and \$5,000—a lease arrangement between Shepard and Bickham Properties, LLC (as determined by the District Court).

**III. The evidence in the record supports disagreement between parties about the scope of the real estate deal—and disagreement on terms is not fraud.**

Failure to deliver a promised lease is breach unless the promise was knowingly false when made and used to induce reliance. Appellee’s fraud claim cannot succeed by mere evidence that the parties disagreed on the scope of their agreement, i.e., on whether a lease agreement was a part of the February 21, 2023 transaction. It is not enough to prove fraud that the parties merely disagreed or were confused about whether a lease agreement would be part of the real estate deal or would be addressed separately at another time.

Here, Justin disagreed in earnest about the linkage of the two matters, and such confusion is neither fraud nor an intent to defraud; indeed, to this day Justin desires that Shepard receive a lease arrangement. Trial Tr. at pg. 124, 125, 129. “Yes, I am still willing to talk to Bryan about a rental credit. And he wouldn’t—he would be going through my property management, so I wouldn’t even—he don’t have to talk to me. I’m not against Bryan. Like—I thought he was a nice guy. I thought they were happy together.” Trial Tr. at pg. 129. The fact that Justin Bickham—to this day—continues to extend a lease agreement to Mr. Shepard is instructive. Mr. Shepard was not deceitfully dangled a lease to induce his signature on February 21, 2023; instead, Mr. Shepard is free to enter into a lease agreement with Bickham Properties, LLC—just as Justin Bickham always intended.

**IV. Being that the parties disagreed about the scope of the agreement, there is no substantial credible evidence that Justin Bickham intended to defraud Mr. Shepard into signing the closing documents.**

Substantial credible evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Blaine Cnty. v. Stricker*, 2017 MT 80, ¶ 26, 394 P.3d 159. It consists of more than a mere scintilla of evidence but may be less than a preponderance. *Id.* The evidence is viewed in the light most favorable to the prevailing party when determining whether findings are supported by substantial credible evidence. *Id.* The reviewing body's standard of review is not whether there is evidence to support findings different from those made by the trier of fact, but whether substantial credible evidence supports the trier's findings. *Id.*

Bryan is a sophisticated person who manages a Dairy Queen and wanted to make his partner, Amy, happy with the arm's length transaction that he freely entered. As the District Court determined, the evidence is uncontested that Bryan was afforded an opportunity to review the documents he signed on February 21, 2023, was free to ask questions regarding those documents, and failed to do so:

The evidence is uncontested that Bryan was offered an opportunity to look through the documents provided to him, and that he was free to ask questions about them, but he failed to do so. If Bryan had just read the Contract for Deed, he would have had the opportunity to ask, for example, why Justin orally promised him a rent-free lease when the Contract for Deed did not list a rent-free lease as one of the terms of the sale.

(Doc. 58, pg. 30, ¶ 38.)

On February 21, 2023, Shepard rushed home to sign the property transfer documents. Present at the document signing ceremony was Mr. Shepard, Amy, Bickham, Jessica Bickham, Justin Bickham, and public notary Beth Goldberg. Mr. Shepard freely and willfully signed all documents, choosing himself to not review the documents and instead relied upon Amy’s representations.

**ISSUE 2: THE DISTRICT COURT DID NOT CONSIDER WAIVER  
AND ESTOPPEL**

**V. The District Court erred when it did not analyze evidence of waiver and equitable estoppel.**

Bickham Properties, LLC pled both waiver and equitable estoppel as affirmative defenses. (Doc. 26, ¶ 14.) The affirmative defenses are found in Bickham Properties, LLC’s Answer to Amended Complaint:

5	<b>AFFIRMATIVE DEFENSES</b>
6	
7	13. Plaintiff’s Complaint fails to state a cause of action upon which relief may be
8	granted.
9	14. Plaintiff’s claims are barred in whole or in part by the doctrines of waiver,
10	acquiescence, estoppel, and set off.

(Doc. 26, ¶ 14.) Despite substantial credible evidence of these defenses, the District Court's Order did not address these defenses in its conclusions of law. (Doc. 58.)

The substantial credible evidence of waiver and estoppel were: (1) Mr. Shepard did not move to rescind or disavow this transaction between February 21, 2023 and June of 2023 when he brought his complaint; (2) Mr. Shepard took actions to amend the February 21, 2023 transactions when he accepted the Chrysler in lieu of \$5,000 cash; (3) Mr. Shepard kept the insurance proceeds on the Chrysler after Amy totaled such vehicle; and (4) Mr. Shepard allowed Appellant to clean the property rather than excluding Appellant from the property.

Waiver is a voluntary and intentional relinquishment of a known right or claim. *Edwards v. Cascade County*, 2009 MT 229, ¶ 30, 212 P.3d 289. It may be proved by express declarations or by course of acts and conduct which induces the belief that the intent and purpose was waiver. *Id.* To establish waiver, the party asserting waiver must demonstrate the other party's knowledge of the existing right, acts inconsistent with the right, and resulting prejudice to the party asserting waiver. *Id.*

The elements of equitable estoppel are: (1) conduct, acts, language or silence amounting to a representation or a concealment of a material fact; (2) the facts must be known to the party to be estopped at the time of that party's conduct, or at least the circumstances must be such that knowledge of the facts is necessarily imputed to that party; (3) the truth must be unknown to the other party at the time the

representation was acted upon; (4) the representation must be made with the intent or expectation that it will be acted on by the other party; (5) the representation must be relied upon by the other party, leading that party to act upon it; and (6) the other party must in fact rely on the representation so as to change its position for the worse. *City of Whitefish v. Troy Town Pump*, 2001 MT 59, ¶ 15, 21 P.3d 1026.

Waiver and estoppel can occur through acts of ratification. Ratification is the affirmance of a voidable agreement, either expressly or by conduct, by a party who had the right to avoid it, after that party knew or had reason to know the material facts. Ratification occurs when a party claiming fraud knowingly treats the contract as valid. Ratification should occur when: (1) a party knew, or reasonably should have known, the misrepresentation; (2) the party had a reasonable chance to reject the contract after learning the truth; and (3) conducted themselves in a way that treated the contract as valid. Common acts of ratification include: continuing performance under the contract, keeping payments and profits, failing to promptly disaffirm, and amending terms instead of rescinding the contract.

Here, there was substantial evidence that Shepard ratified the agreement by his actions, thereby supporting theories of both waiver and equitable estoppel. For instance, the following acts showing Shepards actions of ratifying the February 21, 2023 transaction and Appellant's reliance thereupon:

- (1) Mr. Shepard did not move to rescind this transaction between February 21, 2023 and June of 2023 when he brought his complaint. He took no actions with otherwise disavow the transaction, even when the opportunity presented itself.
- (2) Mr. Shepard agreed to amend the February 21, 2023 transaction, wherein he accepted the Chrysler Town & Country in lieu of \$5,000 cash.
- (3) When Amy crashed the Chrysler vehicle, Mr. Shepard kept the insurance proceeds rather than disavowing such.
- (4) Mr. Shepard allowed Appellant to clean the property rather than excluding Appellant from the property.

Here, the District Court's analysis is incomplete. If fraud is found, then the analysis must proceed to affirmative defenses for fraud. See, e.g., *State v. Akers*, 2017 MT 311, 408 P.3d 142. Affirmative defenses were pled, and the District Court was sitting as the factfinder and de facto drafter of jury instructions. This was a bench trial where the District Court determined the applicable legal standards (i.e., conclusions of law) that applied based upon the facts presented at trial. At trial, there was conduct that clearly and unequivocally demonstrated that Mr. Shepard intended that the parties be bound by the contract. And the District Court failed when it did not consider such in its Order.



## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with proportionately spaced serif font 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 9,270, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Nicholas LeTang  
NICHOLAS LETANG

**APPENDIX INDEX**

District Court’s *Findings of Fact, Conclusions of Law,*  
*and Order After Bench Trial* (Doc. 58) ..... App. A

## CERTIFICATE OF SERVICE

I, Nicholas LeTang, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-30-2026:

Alex W. Hamman (Attorney)  
2075 Central Ave., Suite #4  
Billings MT 59102  
Representing: Bryan Jon Shepard  
Service Method: eService

Justin Bickham (Appellant)  
825 Billings Ave. C #1  
Billings MT 59102  
Service Method: Conventional

Jessica Bickham (Appellant)  
825 Avenue C #1  
Billings MT 59102  
Service Method: Conventional

Electronically Signed By: Nicholas LeTang  
Dated: 01-30-2026