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IN THE SUPREME COURT OF MONTANA
Cause No. DA 25-0779

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0779

360 RECLAIM, LLC, a Montana limited liability company,
Appellant and Appellee,

v.

WILLIAM M. RUSSELL, an individual, and MOUNTAIN
VIEW INVESTMENTS, LC, an Idaho limited liability company,
Appellees and Appellants.

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State of Montana

WILLIAM M. RUSSELL,
Appellant and Appellant,

v.

360 RECLAIM, LLC, a Montana limited liability company,
Appellee, Counter-Appellant and Third-Party Appellant and
Appellee,

v.

WILLIAM M. RUSSELL,
Counter-Appellee and Appellant,

and

U.S. TREASURY by and through the INTERNAL REVENUE SERVICE,
Third-Party Appellees.

APPELLANT WILLIAM M. RUSSELL'S OPENING BRIEF

Appealed from the Eleventh District Court of Montana, In and For Flathead County,
Cause No. DV-15-19-305B
The Honorable Judge Robert B. Allison Presiding

APPEARANCES

William M. Russell
310 East Day Street
Pocatello, ID 83201
406-309-5862
midnightmopper@gmail.com
Pro Se

Nicholas J. Lofing
Britton J. Fraser
GARLINGTON, LOHN &
ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
njlofing@garlington.com
bjfraser@garlington.com
*Attorneys for Appellant Mountain View
Investments, L.C.*

Kristin L. Omvig
Benjamin J. Hammer
OMVIG HAMMER LAW, P.C.
PO Box 1202
Kalispell, MT 59903-1202
kristin@ohlawmt.com
ben@ohlawmt.com
*Attorneys for Appellee 360 Reclaim,
LLC*

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OVERARCHING APPELLATE THEORY

This appeal turns on a single structural error:

Once the District Court determined that Appellant had, as a matter of law, redeemed the real property at issue, every subsequent order premised on a failure of redemption—including the Allison Court’s abandonment orders—became voidable and could not lawfully be enforced.

The District Court initially recognized this problem, framed it correctly, and ordered briefing. It then reversed itself without briefing from Appellee, mischaracterized the appellate record, and reinstated voidable orders, thereby committing reversible legal error.

ISSUES PRESENTED

1. WHETHER THE DISTRICT COURT ERRED AS A MATTER OF LAW BY ENFORCING ABANDONMENT ORDERS THAT WERE PREMISED ON A REDEMPTION FAILURE THAT WAS LATER REVERSED.
2. WHETHER A PARTY CAN “ABANDON” PERSONAL PROPERTY LOCATED ON REAL PROPERTY THAT THE PARTY WAS LEGALLY ENTITLED TO POSSESS DURING THE ALLEGED ABANDONMENT PERIOD.
3. WHETHER THE DISTRICT COURT VIOLATED MONTANA LAW AND PROCEDURAL FAIRNESS BY GRANTING RELIEF TO A PARTY THAT TWICE REFUSED TO FILE COURT ORDERED BRIEFS ON THE DISPOSITIVE ISSUE.
4. WHETHER THE DISTRICT COURT CLEARLY ERRED BY FINDING APPELLANT FAILED TO RAISE THE PERSONAL PROPERTY ISSUE ON APPEAL, WHEN THE APPELLATE BRIEFS DIRECTLY CHALLENGED THE LEGAL FOUNDATION OF THE ABANDONMENT ORDERS.
5. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION UNDER RULE 60(b) BY REFUSING TO GRANT RELIEF FROM ORDERS RENDERED VOIDABLE BY REVERSAL OF THE FOUNDATIONAL JUDGMENT.
6. WHETHER THE DISTRICT COURT ERRED AND ABUSED ITS DISCRETION BY RELEASING THE REDEMPTION FUNDS WHILE OWNERSHIP OF THE PERSONAL PROPERTY, ENTITLEMENT TO OFFSETS AND DAMAGES ARISING FROM APPELLEE'S POSSESSION REMAINED UNRESOLVED.

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Appealed from the Eleventh District Court of Montana, In and For Flathead County,
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The Honorable Judge Presiding

STATEMENT OF THE ISSUES

Plaintiff timely redeemed the Property under Montana law. The Allison Court misapplied redemption law and erroneously ruled that Appellant's redemption had failed. Based on that erroneous premise, the Allison Court later declared Appellant's personal property abandoned.

This Court reversed the redemption ruling and remanded it to the District Court for proper application and credits owed under redemption law. On remand, the District Court correctly held that Russell had redeemed and was entitled to possession, expressly asking:

“How could [Appellant] have abandoned his personal property when it was located on real property that he was entitled to occupy and possess—having successfully redeemed it.” (*October 1, 2024 Order and Rationale, et seq.*, Page 6, Lines 27-29)

The District Court ordered briefing on that precise issue. Appellant and Co-Plaintiff MVI complied; 360 Reclaim did not file a brief at all, instead pursuing delay tactics, including an additional appeal to this Court (See *360 Reclaim, LLC v Russell, et al.*, Cause No. DA 24-0610).

Despite this, the District Court later reversed course, enforced the abandonment orders, and released or structured release of redemption funds. Appellant timely moved for Rule 60(b) relief, which was denied, preserving the issues now before this Court.

PRELIMINARY STATEMENT

This appeal arises from a prolonged and procedurally irregular dispute concerning the statutory right of redemption following a sheriff's sale of real property, and the downstream consequences of an erroneous trial-court determination that redemption had failed.

In 2019, Appellee purchased the subject property identified as 7435 US Hwy 2 East, Columbia Falls, MT ("the Property") at a sheriff's sale. That purchase was expressly subject to Montana's one-year statutory right of redemption. Appellant timely exercised that right and tendered payment in accordance with Montana law. Nonetheless, the District Court at that time ("the Allison Court") misapplied the governing redemption statutes and ruled that redemption had failed.

Relying on that erroneous premise, the Allison Court proceeded to issue a series of subsequent orders, including orders entered in January 2022 declaring Appellant's personal property located on the real property to be abandoned and awarding control or disposition of those assets to Appellee. Those orders were entered while Appellant continued to dispute the validity of the redemption ruling and while appellate review was anticipated.

On December 27, 2023, this Court reversed the Allison Court's redemption analysis and remanded for proper application of redemption law (See *Russell v 360 Reclaim*,

LLC, et al., Cause No. DA 22-0670). On remand, the present District Court correctly determined that Appellant had, in fact, redeemed the property and was entitled to possession and restoration of his estate. The District Court’s October 1, 2024 order expressly recognized that Appellant was legally entitled to occupy and possess the property during the period in which abandonment had allegedly occurred.

Recognizing the legal tension created by that determination, the court *sua sponte* framed a dispositive question: how Appellant could have abandoned personal property located on real property he was legally entitled to possess. The lower court ordered the parties to brief that issue. Appellant and joined Co-Plaintiff MVI complied, while Appellee did not.

Despite Appellee’s failure to brief the court-ordered issue, and despite its own earlier findings regarding possession and redemption, the District Court later reversed course. In an August 19, 2025 order, the court enforced the Allison Court’s abandonment orders, found that Appellee’s “owned” the property during the relevant period, and ordered release of redemption funds held by the lower court — reasoning in part that Appellant had failed to challenge the abandonment issue on appeal.

Appellant timely moved for relief under Rule 60(b), arguing that the abandonment orders were voidable as a matter of law because they rested on a redemption failure that had been overturned, that abandonment was legally impossible under the court’s own findings, and that the court mischaracterized the appellate record. The District Court

denied that relief, preserving the issues now before this Court.

This appeal follows.

ARGUMENT

I. ORDERS PREMISED ON A REVERSED JUDGMENT ARE VOIDABLE AND CANNOT STAND.

Montana law is clear: when a judgment is reversed, orders dependent upon it lose legal foundation (See MRCP Rule 60(b)(5) and MRAP Rule 19(1)(b)).

The Allison Court's abandonment orders rested entirely on the premise that Appellant failed to redeem. Once that premise was overturned, the abandonment orders became legally voidable and the orders upon which such erroneous ruling relied could not be enforced without independent factual and legal findings—which do not exist here.

The District Court itself recognized this problem in its October 1, 2024 order, asking: How could Appellant have abandoned his personal property when it was located on real property that he was entitled to occupy and possess?" (*October 1, 2024 Order and Rationale, et seq.*, Page 6, Lines 27-29).

That question answers itself as a matter of law.

MRCP Rule 60(b)(5) codifies the long-recognized principle that an order or judgment cannot be enforced where its legal foundation has been reversed or vacated. Once the District Court determined that Russell had, as a matter of law, redeemed the property,

any subsequent order premised on a failure of redemption became voidable and unenforceable. The District Court initially recognized this reality, but later departed from it without new facts, briefing, or legal justification.

Enforcement of such derivative orders constitutes legal error.

II. ABANDONMENT IS LEGALLY IMPOSSIBLE WHERE POSSESSION WAS NEVER LOST

Abandonment cannot occur without intentional relinquishment of property rights. Abandonment requires voluntary relinquishment and intent; it cannot occur where possession is lawfully retained or wrongfully denied (See *Fischer v State*, 2003 MT 227, ¶ 23, 317 Mont. 244, 75 P.3d 984 (abandonment requires intent)). In absence of such and during pendency of litigation and appeal, gratuitous bailment is applicable (See MCA § 70-6-101, et seq.).

Here, Appellant was legally entitled to possession of the property throughout the redemption period. Any physical exclusion was the result of judicial error, not voluntary surrender. Property stored on land one is entitled to possess cannot be abandoned as a matter of law, and Appellee should have been compelled to preserve it, not claim it pending disposition of litigation and appeal. The district court's later conclusion that abandonment nonetheless occurred directly contradicts its own earlier findings, basic abandonment doctrine, and this Court's redemption ruling.

This is legal error, not discretion.

III. THE DISTRICT COURT IMPROPERLY REWARDED APPELLEE'S NONCOMPLIANCE AND CONTEMPT

Under Montana practice, failure to brief an ordered issue constitutes waiver, or admission that the position lacks merit (See MRCP Rule 2(c)). A district court abuses its discretion if it “act[s] arbitrarily without employment of conscientious judgment or exceed[s] the bounds of reason resulting in substantial injustice” (*Jarvenpaa v Glacier Elec. Co-op., Inc.*, 1998 MT 306, ¶ 13, 292 Mont. 118, ¶ 13, 970 P.2d 84, ¶ 13 (citing *C. Haydon Ltd. v MT Min. Properties, Inc.*, 286 Mont. 138, 146, 951 P.2d 46, 51 (1997))).

After framing the dispositive issue, the district court ordered simultaneous briefing. Appellant and Co-Plaintiff MVI complied. Appellee filed no brief. Twice.

Instead, the District Court relied on arguments made elsewhere, granted substantive relief to the non-complying party (Appellee), and reversed its prior ruling without adversarial testing.

This was an abuse of discretion and a denial of basic procedural fairness.

IV. THE DISTRICT COURT CLEARLY ERRED IN FINDING WAIVER ON APPEAL

The District Court asserted that Appellant failed to raise the personal-property issue

on appeal. That finding is demonstrably false.

Appellant's appellate briefs in Cause No. DA 22-0670 challenged the legality of possession prior to redemption, attacked the imposition of storage fees and lien, and questioned the right to dispose of property before redemption expired. These arguments directly undermined the legal foundation of the abandonment orders. An issue is preserved for appeal if the party makes the trial court aware of the issue and provides an opportunity to rule on it (See *State v Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 151 P.3d 892).

This Court's decision not to reach the issue in its December 27, 2003 order does not constitute waiver; it reflects sequencing, not rejection.

V. RULE 60(b) RELIEF WAS REQUIRED AS A MATTER OF LAW

MRCP Rule 60(b)(5) expressly authorizes relief where an order is based on a judgment later reversed. The District Court committed legal mistake (MRCP Rule 60(b)(1)) and extraordinary circumstances justify relief (MRCP Rule 60(b)(6)).

All three apply. By denying relief, the District Court enforced orders known to rest on a false premise, contradicted its own earlier findings and created an internally inconsistent judgment.

That is reversible error.

**VI. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY
RELEASING REDEMPTION FUNDS BEFORE FINAL ADJUDICATION
OF OFFSETS, DAMAGES, AND OWNERSHIP DISPUTES**

A. Redemption Funds Are Not a Ministerial Disbursement Where Equitable Offsets Remain

Redemption under Montana law restores the redeeming party to their estate but does not require immediate or unconditional release of funds where disputes remain regarding offsets, damages, wrongful possession, or unlawful conversion of property. MCA § 25-13-809 governs the mechanics of redemption but does not mandate release of funds where doing so would prejudice unresolved claims arising from the redemption process itself.

Here, Appellant has consistently asserted—and preserved—that Appellee’s unlawful possession resulted in loss, sale, or destruction of personal property; unjust enrichment; costs associated with cleanup and restoration; and obstruction of lawful possession. These claims are not collateral; they arise directly from Appellee’s conduct during the redemption period. Releasing funds before adjudicating those claims improperly elevates form over equity.

B. Release of Funds Created Irreparable Harm and Mootness Risk

The District Court’s decision to release or authorize release of the redemption funds created a substantial risk of irreparable harm because Appellee is a single-purpose LLC

with no ongoing operations. Once funds are disbursed, recovery is speculative at best, and dissolution or asset transfer would render appellate relief illusory.

Montana courts recognize that equitable restraint is required where disbursement would defeat meaningful review. By releasing funds held in the court registry while Rule 60(b) relief and ownership disputes remained unresolved, the district court altered the status quo and risked rendering appellate relief ineffective, constituting an abuse of discretion.

C. The Court Exceeded Its Discretion by Altering the Status Quo During Active Post-Judgment Proceedings

At the time the court authorized release of funds a Rule 60(b) motion was pending or imminently pending, ownership of the personal property was unresolved, and the District Court's own findings were internally inconsistent.

Montana law disfavors altering the status quo where appellate rights remain live. Rather than preserving the funds in *custodia legis*, the District Court acted prematurely — thereby compounding error already present in its abandonment and possession rulings.

D. The Release Was Tainted by the Same Legal Errors Underlying the Abandonment Ruling

The decision to release funds was expressly tied to the court's conclusion that

Appellee owned the property during the relevant period and that Appellant had forfeited claims to the personal property. As demonstrated above, both premises are legally erroneous.

Because the fund release flowed directly from those flawed conclusions, it cannot stand independently. When the foundation fails, the derivative relief must also fail.

E. Proper Remedy Requires Reversal and Re-Sequestration of Funds

The appropriate appellate remedy is to:

1. Reverse the order releasing or authorizing release of redemption funds;
2. Order the funds returned to the court registry (or retained if not yet disbursed);
3. Remand for adjudication of offsets, damages, and entitlement consistent with redemption having been valid from inception.

This relief preserves this Court's ability to fashion meaningful equitable remedies and restores procedural fairness.

CONCLUSION

This case presents a narrow but fundamental question of law: whether orders that depend upon a judgment later reversed may continue to be enforced, and whether a district court may distribute disputed funds while entitlement remains unresolved and appellate review remains meaningful. Montana law answers both questions in the

negative.

Once the District Court determined that Appellant had, as a matter of law, redeemed the property, the legal foundation for the Allison Court's abandonment orders was removed. Those orders rested entirely on the premise that redemption had failed. When that premise was overturned, the abandonment orders became voidable and could not be enforced without independent legal and factual support. The District Court initially recognized this reality, expressly questioning how abandonment could occur where Appellant was legally entitled to possession. The lower court then reversed course without adversarial briefing from Appellee, misapprehended the appellate record, and reinstated orders that no longer had a valid legal basis.

The District Court compounded this error by granting substantive relief to a party that repeatedly failed to comply with court-ordered briefing on the dispositive issue. Rather than treating that failure as a waiver or admission under Montana's procedural rules, the lower court relied on undeveloped arguments and altered its prior findings. This departure from procedural fairness constituted an abuse of discretion.

The District Court further erred by concluding that Appellant failed to preserve the personal property issue for review. Appellant challenged the legal foundation of the abandonment orders on appeal, and this Court elected not to reach those issues after resolving the predicate question of redemption. That sequencing did not amount to waiver. Once redemption was reversed, the dependent issues became ripe for

adjudication on remand.

Finally, the District Court abused its discretion by releasing the redemption funds while ownership of the personal property, entitlement to offsets, and claims for damages arising from Appellee's unlawful possession remained unresolved. The funds were held by the lower court and subject to equitable control. Their premature release altered the status quo, risked rendering appellate relief ineffective, and flowed directly from the same legal errors underlying the abandonment ruling. Equity and procedure required that the funds remain sequestered until final adjudication.

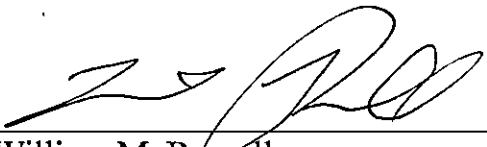
For these reasons, Appellant respectfully requests that this Court:

1. Reverse the District Court's enforcement of the January 2022 abandonment orders;
2. Vacate the August 19, 2025 order to the extent it awards personal property to Appellee and authorizes release of redemption funds;
3. Hold that abandonment of personal property was legally impossible under the District Court's own findings regarding redemption and possession;
4. Order that the redemption funds be returned to the District Court registry pending resolution of entitlement, offsets, and damages; and
5. Remand for further proceedings consistent with this Court's opinion.

Only such relief restores coherence to the law of the case, preserves meaningful appellate review, and ensures that the consequences of an erroneous judgment do not survive its reversal.

Respectfully Submitted,

Dated: February 2, 2026



William M. Russell
Appellant

CERTIFICATE OF SERVICE

I do hereby attest under penalty of perjury that a true and correct copy of the forgoing Brief was delivered via email, address as follows:

Kristin L. Omvig
Benjamin J. Hammer
OMVIG HAMMER LAW, P.C.
PO Box 1202
Kalispell, MT 59903-1202

Nicholas J. Lofing
Britton J. Fraser
GARLINGTON, LOHN &
ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909

Dated this 2nd day of February, 2026.



William M. Russell, Appellant

CERTIFICATE OF COMPLIANCE

I do hereby attest under penalty of perjury that the preceding Appellant's Brief, not including this certificate, is proportionately spaced, with Times New Roman font, 14 point, and consists of 3282 words.

Dated this 2nd day of February, 2026.



William M. Russell, Appellant