

ORIGINAL

FILED

06/09/2026

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 26-0244

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 26-0244

JAMES REYNOLDS,

Petitioner,

v.

MONTANA THIRTEENTH JUDICIAL  
DISTRICT COURT, YELLOWSTONE  
COUNTY, HON. JUDGE COLETTE B. DAVIES,  
PRESIDING,

Respondent.

FILED

JUN 09 2026

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

ORDER

Petitioner James Reynolds, through counsel, seeks a writ of supervisory control over the Thirteenth Judicial District Court in Yellowstone County Cause Number DV-56-2024-316 to reverse that court's February 12, 2026 ruling that Reynolds did not have a common law marriage to Lisa Anne Nester and therefore cannot recover damages against the Montana Department of Corrections (DOC) for Nester's alleged wrongful death while incarcerated at the Montana Women's Prison. At our invitation, both the District Court and the DOC have responded to the Petition.

Nester died by suicide on June 8, 2021, while in custody at the Women's Prison. Reynolds thereafter filed an application for informal probate in intestacy. The Clerk of District Court granted his application and appointed him personal representative of Nester's estate. The probate is pending in Yellowstone County Cause No. DP 23-68. In his capacity as PR for Nester's Estate, Reynolds filed a complaint against DOC in March 2024 pursuant to § 27-1-513, MCA. In part, the complaint seeks wrongful death damages as Nester's surviving spouse for his own "grief, loss, sorrow, loss of emotional distress, mental anguish, loss of consortium/companionship, and the reasonable value of the contribution in money that Ms. Nester would reasonably have made for the support of Mr. Reynolds had she lived."

DOC moved to dismiss on the ground that Reynolds and Nester were not common law spouses and he therefore lacked standing to seek wrongful death damages. The District Court denied the motion to dismiss, explaining that because the probate court alone may determine who serves as personal representative, a wrongful death tort action is not the proper proceeding to challenge the probate court's appointment of Reynolds as PR. The court held, however, that because Reynolds could pursue a claim for wrongful death damages for himself only if he is Nester's surviving spouse, it would proceed to make that determination.

The court provided the parties an opportunity for discovery and held an evidentiary hearing on November 24, 2025. On February 12, 2026, the court entered extensive findings of fact and concluded as a matter of law that no common-law marriage existed between Nester and Reynolds. Reynolds argues that the District Court committed an error of law by adjudicating the status of his relationship with Nester in the wrongful death action, as only the probate court has authority to determine whether he properly was appointed PR of her estate. Allowing the tort case to proceed under the District Court's ruling, Reynolds claims, "will distort the litigation in a way that cannot be remedied on appeal" and lead to the potential for inconsistent outcomes and disputes among heirs regarding the effect of the court's ruling. Reynolds insists that DOC's only role is to defend the wrongful death action and that it has no standing to contest his appointment as PR to pursue the estate's claims. Reynolds maintains that the administration of Nester's estate, including the intestate distribution of any damages it may be awarded, is an issue for the probate court in which the DOC has no interest.

The District Court responds that it did not disturb Reynolds' appointment as PR in the probate matter but considered only whether Reynolds could personally pursue a claim for wrongful death if he was not Nester's surviving spouse—squarely at issue in the tort case.

Both the District Court and the DOC point out that Reynolds is no longer the PR of Nester's estate, having resigned his position more than a month before the court issued its

findings and conclusions on the common law marriage.<sup>1</sup> The District Court states that Reynolds never advised it of this fact and that the court discovered the change in PR only in the context of responding to this petition. Both the DOC and the District Court assert that, as he is no longer the PR, Reynolds lacks standing to bring this petition for supervisory control. Although both also defend the propriety of the District Court's determination on the merits that Reynolds was not Nester's common-law spouse, we find this threshold issue dispositive.

Under § 27-1-513, MCA, only the personal representative may bring an action for wrongful death damages. Termination of appointment as the personal representative "terminates [Reynolds's] authority to represent the estate in any pending or future proceeding." Section 72-3-521, MCA. Reynolds lacks authority to pursue a writ of supervisory control on behalf of the Estate of Lisa Nester.

This Court exercises its discretionary authority of supervisory control on a case-by-case basis following the criteria of M. R. App. P. 14(3). *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted). The Court refrains from exercising supervisory control when the petitioner has an adequate remedy of appeal. *E.g., Westphal v. Mont. Eleventh Jud. Dist. Ct.*, No. OP 21-0387, 405 Mont. 538, 495 P.3d 421 (Aug. 17, 2021) (citing cases). To the extent that the District Court's ruling prevents Reynolds personally from any future recovery of damages in the wrongful death action, he may seek redress on appeal of final judgment in the case.

IT IS THEREFORE ORDERED that the petition for writ of supervisory control is DENIED and DISMISSED.

The Clerk is directed to provide notice of this Order to all counsel of record in Yellowstone County District Court Cause No. DV-56-2024-316, and to the Hon. Collete B. Davies, presiding District Judge.

DATED this 9<sup>th</sup> day of June, 2026.

  
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<sup>1</sup> The District Court submitted with its response a copy of the Probate Court's order appointing a successor personal representative. We have amended the caption of this case accordingly.

*Thomas Nelson*

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*Katherine M. Fitzgerald*

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*Angel Guff*

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*Jan Rice*

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Justices