

DA 25-0436

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 175

CHRISTINE BROCK, AS CO-TRUSTEE
OF THE DONALD D. BROCK AND
JANET M. BROCK, CO-TRUSTEES OF
THE DON AND JANET BROCK FAMILY
TRUST DATED MARCH 24, 1998,

Plaintiff, Appellee,
and Cross-Appellant,

v.

SHAN and DANA TOMPKINS,

Defendants, Appellants,
and Cross-Appellees.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DV 18-428
Honorable Howard F. Recht, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Jesse Kodadek, William T. Casey, Parsons Behle & Latimer, Missoula,
Montana

For Appellee:

Kyle J. Workman, Workman Law, PLLC, Hamilton, Montana

Submitted on Briefs: June 17, 2026
Decided: August 4, 2026

Filed:


Clerk

Justice Katherine M. Bidegaray delivered the Opinion of the Court.

¶1 Shan and Dana Tompkins (the Tompkins) appeal from the District Court’s March 25, 2025 Findings of Fact, Conclusions of Law, and Order declaring that Christine Brock (Brock) holds an implied easement across their property and from several interlocutory orders. Brock cross-appeals the District Court’s June 19, 2025 procedural denial of her request for costs and attorney fees under § 25-7-105, MCA. We conclude that the District Court should have entered summary judgment for the Tompkins on Brock’s original express-easement theory, but that error did not affect their substantial rights after the court granted leave to amend and the parties fully litigated the amended claims. We affirm the order granting leave to amend, the denial of the later dispositive motions, and the bifurcation order. We reverse the implied-easement judgment and vacate the permanent injunction. We also vacate the mootness dismissal of Brock’s prescriptive-easement claim, the Tompkins’ trespass counterclaim, and the extinguishment issues, and we remand any preserved alternative easement theory that the District Court did not adjudicate on the merits. We reverse the ruling that Brock’s request under §§ 25-7-105 and 25-10-501, MCA, was untimely and remand for further proceedings and a new cost-and-fee determination after final judgment.

¶2 We address the following issues:

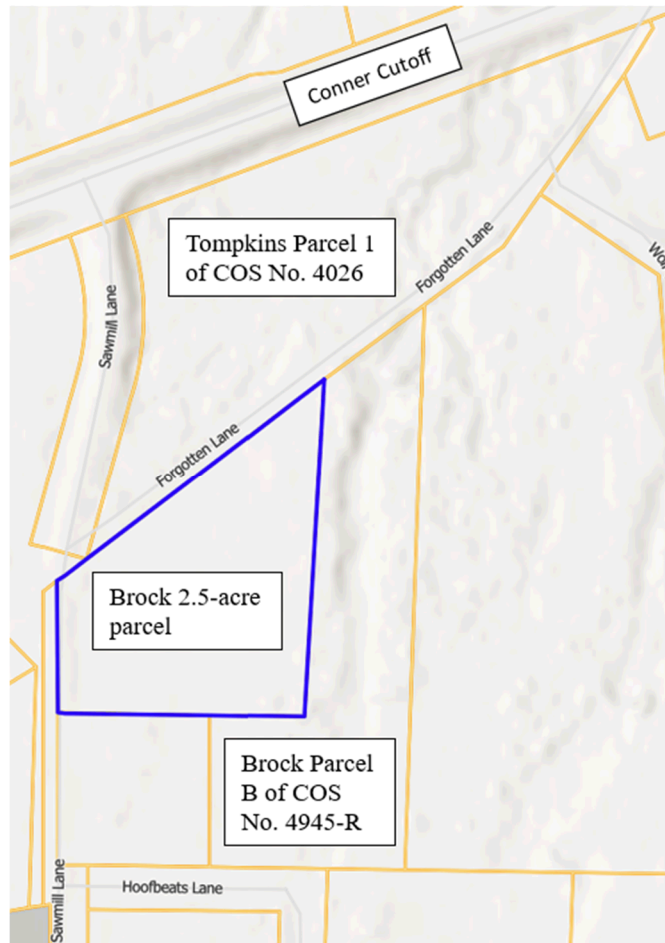
- 1. Whether the District Court erred by denying summary judgment to the Tompkins on Brock’s original express-easement theory, whether that error requires reversal of the amended proceedings, and whether the court abused its discretion by granting Brock leave to amend.*

2. *Whether the District Court erred by denying the Tompkins' motion for judgment on the pleadings and their later motion for partial summary judgment on Brock's amended claims.*
3. *Whether the District Court abused its discretion by bifurcating the case and assigning Brock's express-, implied-, and public-easement theories to the court while preserving the prescriptive-easement claim and trespass counterclaim for a jury.*
4. *Whether the District Court erred by concluding that Brock proved an implied easement by preexisting use benefiting both of her parcels.*
5. *Whether reversal of the implied-easement judgment requires vacatur of the permanent injunction and remand of the matters the District Court treated as moot.*
6. *Whether the District Court erred by treating its March 25, 2025 order as the decision triggering the five-day period under § 25-10-501, MCA, and by denying Brock's request under § 25-7-105, MCA, as untimely.*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 This case involves the roadway known as Forgotten Lane, which extends between Sawmill Lane, a Ravalli County road, and Conner Cutoff, a state highway near the West Fork of the Bitterroot River. The Tompkins own Parcel 1 of Certificate of Survey (COS) No. 4026, which depicts the disputed Forgotten Lane corridor along its southern boundary. Brock, as co-trustee of the Don and Janet Brock Family Trust, owns two parcels south of Parcel 1: a 2.5-acre residence parcel and Parcel B of COS No. 4945-R, which lies on Hoofbeats Lane. Figure 1 below depicts the approximate relative locations of the three parcels and surrounding roads for orientation.¹

¹ Figure 1 depicts approximate locations of Parcel 1 of COS No. 4026, the 2.5-acre parcel, Parcel B of COS No. 4945-R, Forgotten Lane, Sawmill Lane, Conner Cutoff, and Hoofbeats Lane. It is Court-prepared from Montana Cadastral and is not to scale. Parcel outlines and roadway locations are approximate and are shown for orientation only. The figure does not determine title to the



¶4 All three parcels trace to a single source of title. In 1943, Walter and Vivian Shook acquired roughly 111 acres in Section 18, Township 2 North, Range 20 West, comprising the North half of the Northeast quarter together with an adjoining strip. The 1943 tract included land from which the present Tompkins parcel and both Brock parcels later derived.

¶5 In 1949, Vivian Shook conveyed a 14.3-acre tract out of that holding to Dee Shook. The deed described the tract as running along “the westerly side of the county road” and

Forgotten Lane corridor, exact parcel boundaries, whether either Brock parcel directly adjoins Sawmill Lane, or the existence, character, or scope of any easement.

“the northwesterly side of the road.” The parties agree that the deed’s road references describe the roadway now known as Forgotten Lane. This 14.3-acre tract later became part of the Tompkins parcel.

¶6 In 1950, Walter and Vivian Shook conveyed a larger tract to Milo and Juanita Wilson, expressly excepting the 14.3-acre tract conveyed in 1949 to Dee Shook and a separately-described 2.5-acre tract along “the southerly side of the said county road.” The District Court later identified this 1950 conveyance as the operative severance of title for purposes of Brock’s implied-easement claim.

¶7 In 1952, Walter and Vivian Shook conveyed the 2.5-acre tract to Dee Shook, placing the two deeded tracts—the 2.5-acre tract and the previously conveyed 14.3-acre tract—in Dee Shook’s ownership.

¶8 In 1961, Dee Shook and, separately, Walter and Vivian Shook granted rights-of-way to the State for construction of Conner Cutoff and the extension of Sawmill Lane, altering how the surrounding parcels would thereafter be accessed.

¶9 In 1973, the lands the Shooks had conveyed to the Wilsons, including what would become Brock’s Hoofbeats Lane parcel, were conveyed on contract to Robert and Elizabeth Saxe. The Saxes recorded COS No. 595 in 1974, depicting the conveyed land as a single, roughly 1,600-acre parcel spanning parts of seven sections and bordering both Conner Cutoff and Sawmill Lane.

¶10 In 1976, Don and Janet Brock acquired an interest in the 2.5-acre parcel from Dee and Alice Shook. In 1978, the Saxes subdivided their holdings into “pasture lots” under

COS No. 1619 and conveyed a 10.18-acre lot, known as Tract A, to the Brocks. That tract later became, after further division, Brock's Hoofbeats Lane parcel.

¶11 In 1987, Dee Shook recorded COS No. 4026, depicting the disputed corridor within Parcel 1, now the parcel that belongs to the Tompkins, and labeling it a "60-foot-wide Road and Utility Easement." Neither Brock's 2.5-acre parcel nor her Hoofbeats Lane parcel is surveyed or legally described on COS No. 4026.

¶12 Brock's Hoofbeats Lane parcel took its current configuration in June 1993, when Brock recorded COS No. 4945-R after further dividing the 1978 tract. The Tompkins purchased Parcel 1 of COS No. 4026 from the Schlapmans in 2004.

¶13 The parties dispute the character of historical use of Forgotten Lane. The Tompkins' evidence at trial was that, while the Schlapmans owned the parcel, they placed a log across the west end of Forgotten Lane, between Brock's driveway and Sawmill Lane, to deter speeding; that the log blocked vehicular access at that end for many years; that the east end carried "dead end" and "no trespassing" signage; and that Brock's own testimony acknowledged her use of that stretch was with the Schlapmans' permission, and later the Tompkins' permission. Brock's position is that Forgotten Lane was historically the only road connecting the East Fork Road (U.S. Highway 93) to the West Fork Road, including the only bridge across the West Fork of the Bitterroot River, until Conner Cutoff and a new bridge were built in the early 1960s, and that it was used by the general public.

¶14 The parties also dispute both the date and character of the events that led to this litigation. The Tompkins presented evidence that, in 2016, Brock obtained permission from Shan Tompkins to spread gravel on Forgotten Lane, placed gravel on the road to the

log at the road's west end, removed a section of fence near the western end and began driving around the log. The Tompkins testified that, during the summer of 2016, they replaced the log with a post-and-rail fence and gate. Brock maintains that the actionable obstruction occurred in 2017, when the Tompkins placed two fences across Forgotten Lane.

¶15 Brock filed her Complaint in Ravalli County District Court on October 10, 2018, alleging a single theory that she held an express easement over Forgotten Lane based on COS No. 4026, and seeking declaratory and injunctive relief. The Tompkins answered, denied the existence of an express easement, and on the same day moved for summary judgment. Brock cross-moved for summary judgment on the same express-easement theory.

¶16 In June 2021, the District Court denied both motions. The court found that Brock had “provided little evidence of an express grant,” but declined to enter judgment for the Tompkins, instead concluding that Brock’s pleading should be read to encompass a broader claim to access rights predating COS No. 4026, and inviting her to amend. Later in 2021, the District Court granted Brock leave to amend her complaint over the Tompkins’ objection. Brock’s amended complaint retained the express easement theory and added implied-, prescriptive-, and public-easement theories as alternative grounds for declaratory and injunctive relief. The Tompkins answered, counterclaimed for trespass, demanded a jury trial, and asserted reverse prescription as an affirmative defense.

¶17 In February 2022, Ravalli County, acting on a request from Brock’s counsel, determined that Forgotten Lane was a county road. County employees then removed the

Tompkins' fence and gate and graded the roadway. The Tompkins sued Ravalli County in federal court, seeking a declaratory judgment that Forgotten Lane was never a validly created county road and asserting takings claims. Brock consented to a stay of the state court action pending that outcome. On November 17, 2022, the federal court denied the County's motion to dismiss, concluding the County had not established as a matter of law that Forgotten Lane was ever an official county road. In settling the federal action, the County agreed, as between itself and the Tompkins, that Forgotten Lane had not been established as a county road and that neither the County nor the public held a right of access where the road crossed or touched the Tompkins parcel.

¶18 On March 5, 2024, the District Court held the Tompkins' motion for judgment on the pleadings in abeyance, electing to treat it as a converted motion for summary judgment to be briefed after the close of discovery.

¶19 In April 2024, the Tompkins moved for partial summary judgment on Brock's express easement, public easement, prescriptive easement, and implied easement theories. Brock cross-moved for summary judgment.

¶20 On May 8, 2024, the District Court denied both parties' cross-motions in a single order, finding disputed material facts concerning, among other things, the date of severance from common ownership, the historic use of Forgotten Lane, whether permission was required to use it, and the circumstances surrounding the log that blocked its west end.

¶21 The District Court later bifurcated the case over the Tompkins' objection. It assigned Brock's express-, implied-, and public-easement theories to the bench and reserved Brock's prescriptive-easement claim and the Tompkins' trespass counterclaim for

a jury only if necessary. The District Court stayed the jury trial pending the bench trial, which ultimately addressed the express- and implied-easement theories on December 5, 2024.

¶22 On March 25, 2025, the District Court entered its Findings of Fact, Conclusions of Law, and Order. The court found that Brock had not proved an express easement but found by clear and convincing evidence that Brock held an implied easement across the Tompkins parcel for the entirety of Forgotten Lane, arising in 1950 when Walter and Vivian Shook severed title by conveying to the Wilsons. The District Court adopted the scope depicted on COS No. 4026, entered a permanent injunction, and directed the parties to brief attorney fees, costs, and any remaining procedural issues by April 25, 2025. The March 25 order stated that the public-road or public-easement issue had not been tried and remained at issue. Brock's amended complaint, however, pleaded the express, public, implied, and prescriptive theories as alternative grounds for the same declaration of access and related injunction. The March 25 order granted Brock the complete relief she sought on the implied-easement ground.

¶23 In the post-trial briefing, Brock treated her remaining alternative easement theories as moot while the implied-easement judgment remained in effect and maintained that they would return if that judgment were reversed. The Tompkins declined to pursue their trespass counterclaim and extinguishment issues while reserving their position following appeal.

¶24 On June 19, 2025, the District Court dismissed the prescriptive easement claim, the trespass counterclaim, and extinguishment issues as moot. It denied Brock's request for

attorney fees under the Uniform Declaratory Judgments Act on equitable grounds. It separately denied her request under § 25-7-105, MCA, because she had not timely filed a memorandum of costs under § 25-10-501, MCA, within five days after the March 25 Findings of Fact, and Conclusions of Law, and Order. Brock filed a bill of costs on June 24, 2025, and, on July 1, 2025, moved to alter or amend the judgment. On September 4, 2025, more than sixty days after the motion was filed, the District Court granted it and awarded Brock her fees. Because the court had not ruled within sixty days, the motion was deemed denied by operation of law, and the belated order granting it was vacated. The Tompkins timely appealed, and Brock timely cross-appealed.

¶25 Although the March 25 order stated that the public-road or public-easement issue had not been tried, Brock pleaded the express-, implied-, public-, and prescriptive-easement theories as alternative grounds for the same declaration of access and related injunction. The March 25 order granted that relief on the implied-easement ground. The June 19 order then disposed of the separately bifurcated prescriptive-easement claim, the trespass counterclaim, the extinguishment issues, and the fee requests. In context, the June 19 order ended the proceedings below and constituted a final judgment. Because we reverse the ground on which the District Court granted complete relief, any preserved alternative theory that the court did not adjudicate on the merits returns on remand.

STANDARD OF REVIEW

¶26 We review a district court's grant or denial of summary judgment de novo, applying the same M. R. Civ. P. 56 standard applied by the district court. *Estate of Mandich v.*

French, 2022 MT 88, ¶ 15, 408 Mont. 296, 509 P.3d 6. We review a district court’s grant or denial of leave to amend a pleading for abuse of discretion. *Estate of Mandich*, ¶ 15; *Rolan v. New W. Health Servs.*, 2017 MT 270, ¶ 16, 389 Mont. 228, 405 P.3d 65. A district court’s ruling on a motion for judgment on the pleadings under M. R. Civ. P. 12(c) presents a question of law that we review for correctness. *Conway v. Benefis Health Sys.*, 2013 MT 73, ¶ 16, 369 Mont. 309, 297 P.3d 1200.

¶27 Following a bench trial, we review a district court’s findings of fact for clear error and its conclusions of law, including whether the facts found satisfy the elements of easement law, de novo. *Musselshell Ditch Co. v. JD Bar D, LLC*, 2025 MT 63, ¶ 8, 421 Mont. 232, 566 P.3d 511. A finding is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if our review of the record leaves us with a definite conviction that a mistake has been made. *Musselshell Ditch*, ¶ 8.

¶28 A claimant asserting an implied easement by preexisting use bears the burden of proving each element by clear and convincing evidence. *Apecella v. Overman*, 2025 MT 219, ¶ 31, 424 Mont. 202, 577 P.3d 133.

¶29 We review a district court’s decision to bifurcate under M. R. Civ. P. 42(b) for abuse of discretion. *Malta Public School District A & 14 v. Mont. Seventeenth Jud. Dist. Ct.*, 283 Mont. 46, 50, 938 P.2d 1335, 1338 (1997). Whether a jury-trial right attaches to a claim or a common factual issue presents a question of law that we review for correctness. *Supola v. Mont. Dep’t of Justice*, 278 Mont. 421, 423, 925 P.2d 480, 481 (1996). An action to quiet title to an easement traditionally sounds in equity, but a court may not use

bifurcation to impair the jury right attached to a legal claim or to a factual issue common to legal and equitable claims. *Getter v. Beckman*, 236 Mont. 377, 381, 769 P.2d 714, 716 (1989); *Gray v. City of Billings*, 213 Mont. 6, 13, 689 P.2d 268, 272 (1984).

¶30 Whether legal authority exists to award attorney fees and whether the District Court correctly interpreted §§ 25-7-105 and 25-10-501, MCA, present questions of law that we review for correctness. If legal authority exists, we review the decision whether to award fees and the amount awarded for abuse of discretion. *Wohl v. City of Missoula*, 2013 MT 46, ¶ 29, 369 Mont. 108, 300 P.3d 1119; *Boehm v. Cokedale, LLC*, 2011 MT 224, ¶ 12, 362 Mont. 65, 261 P.3d 994.

DISCUSSION

¶31 1. *Whether the District Court erred by denying summary judgment to the Tompkins on Brock's original express-easement theory, whether that error requires reversal of the amended proceedings, and whether the court abused its discretion by granting Brock leave to amend.*

¶32 Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 55(c). In reviewing summary judgment motions, we view the evidence in the light most favorable to the party opposing summary judgment and draw all reasonable inferences in favor of the party opposing summary judgment. *Warrington v. Great Falls Clinic, LLP*, 2019 MT 111, ¶ 8, 395 Mont. 432, 443 P.3d 369. Once the moving party meets its initial evidentiary burden demonstrating facts to support its entitlement to judgment as a matter of law, the burden then shifts to the nonmoving party to present substantial evidence, as opposed to mere

denial, speculation, or conclusory statements, raising a genuine issue of material fact. *Ternes v. State Farm Fire & Cas. Co.*, 2011 MT 156, ¶ 27, 361 Mont. 129, 257 P.3d 352.

¶33 In her original complaint, Brock pleaded only an express-easement theory. On appeal, the Tompkins argue that the District Court wrongfully denied their initial motion for summary judgment because the facts on which the court relied were immaterial to Brock's sole claim in her original complaint that COS No. 4026 created an express easement. The historical allegations concerning Forgotten Lane included in Brock's original complaint did not transform unpleaded implied, public, or prescriptive theories into pending claims. The District Court therefore should have resolved the pleaded express-easement theory under M. R. Civ. P. 56.

¶34 To prevail on the express-easement theory pleaded in her original complaint, Brock had to identify a written instrument that manifested an intent to create the easement and described the dominant and servient estates with reasonable certainty. *Blazer v. Wall*, 2008 MT 145, ¶¶ 41, 51, 56, 343 Mont. 173, 183 P.3d 84; *Towsley v. Stanzak*, 2022 MT 217, ¶ 12, 410 Mont. 403, 519 P.3d 817. A survey may describe an easement incorporated into a conveyance, but the transaction documents, read together, must identify both affected estates. *Blazer*, ¶¶ 41, 51, 56. A conveyance made "subject to" an easement does not, without more, create or grant that easement. *Blazer*, ¶ 64.

¶35 Neither COS No. 4026 nor any instrument of conveyance identifies either Brock parcel as the dominant estate or grants Brock a right to use the corridor. The references to a "county road" in historical deeds may bear on Brock's alternative access theories, but they do not grant a private easement appurtenant to either parcel. Brock's original

express-easement theory therefore failed as a matter of law, and the District Court should have entered summary judgment for the Tompkins on that theory.

¶36 Rule 15(a)(2) directs that “[t]he court should freely give leave when justice so requires.” M. R. Civ. P. 15(a)(2). Although the rule favors amendment, a court may deny leave for “an apparent reason such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by allowance of the amendment, futility of the amendment, etc.” *Seamster v. Musselshell Cnty. Sheriff’s Office*, 2014 MT 84, ¶ 14, 374 Mont. 358, 321 P.3d 829 (quoting *Bitterroot International Systems, Ltd. v. Western Star Trucks, Inc.*, 2007 MT 48, ¶ 50, 336 Mont. 145, 153 P.3d 627).

¶37 Although Brock sought amendment nearly three years after filing the original complaint, the case remained procedurally early. The Tompkins filed their initial summary-judgment motion with the answer, the parties jointly stayed the scheduling deadlines, meaningful discovery had not occurred, no depositions had been taken, and no trial date had been set. The amendment concerned the same roadway, parcels, title documents, alleged obstruction, and requested access. *Bardsley v. Pluger*, 2015 MT 301, ¶¶ 20–22, 381 Mont. 284, 358 P.3d 907, and *Thornton v. Flathead Cnty.*, 2009 MT 367, ¶¶ 39–40, 353 Mont. 252, 220 P.3d 395, caution against allowing a change in legal theory after substantially completed discovery and dispositive-motion practice when the change would prejudice the opposing party. Unlike the parties in *Bardsley* and *Thornton*, the Tompkins had not completed discovery or prepared for trial under the original theory. The

materially earlier posture here distinguishes those cases. The District Court therefore could reasonably conclude that amendment would cause no undue prejudice.

¶38 The District Court therefore should have entered summary judgment for the Tompkins on Brock's original express-easement theory. That error does not require reversal of the amended proceedings. No final judgment had been entered when Brock formally moved under Rule 15(a)(2), and the rule did not condition amendment on the continued viability of her original theory. The amended complaint—not the District Court's discussion of unpleaded theories—governed all later proceedings. The Tompkins received notice, discovery, an opportunity to assert defenses and a counterclaim, dispositive-motion practice, and a trial on the amended pleading. The final judgment also rejected the express-easement theory. Because the initial ruling did not affect the Tompkins' substantial rights, M. R. Civ. P. 61 requires us to disregard the error. The District Court did not abuse its discretion by granting leave to amend.

¶39 The Tompkins separately invoke the party-presentation principle reflected in *Greenlaw v. United States*, 554 U.S. 237, 243–44, 128 S. Ct. 2559, 2563–64 (2008), and *United States v. Sineneng-Smith*, 590 U.S. 371, 375–76, 140 S. Ct. 1575, 1578–79 (2020). The better course would have been to decide the express-easement theory as pleaded and leave Brock to determine whether to seek amendment. The District Court did not, however, award relief on an unrepresented theory. Brock filed a formal amended complaint; the Tompkins opposed amendment, answered the new pleading, conducted discovery, asserted defenses and a counterclaim, and litigated the amended theories. That adversarial process distinguishes this case from one in which a court selects and decides an unrepresented

dispositive theory. We therefore need not decide whether Montana law independently recognizes the broader party-presentation rule the Tompkins propose.

¶40 2. *Whether the District Court erred by denying the Tompkins’ motion for judgment on the pleadings and their later motion for partial summary judgment on Brock’s amended claim.*

¶41 M. R. Civ. P. 12(c) permits a party to move for judgment on the pleadings “[a]fter the pleadings are closed—but early enough not to delay trial.” In deciding the motion, the court accepts the nonmovant’s well-pleaded factual allegations as true and construes them favorably to the nonmovant. *Firelight Meadows, LLC v. 3 Rivers Telephone Coop., Inc.*, 2008 MT 202, ¶ 11, 344 Mont. 117, 186 P.3d 869. If the court considers and does not exclude matters outside the pleadings, M. R. Civ. P. 12(d) converts the motion to one for summary judgment. *Kalispell Aircraft Co., LLC v. Patterson*, 2019 MT 142, ¶ 15, 396 Mont. 182, 443 P.3d 1100.

¶42 Brock, in the amended complaint, expressly sought declaratory relief under implied-, public-, and prescriptive-easement theories and alleged the historical facts on which those theories rested. It therefore gave the Tompkins fair notice and survived review under M. R. Civ. P. 12(c). Because the Tompkins relied on matters outside the pleadings and the District Court did not exclude them, M. R. Civ. P. 12(d) converted the motion to one for summary judgment. The court notified the parties of the conversion, allowed them to complete discovery, and permitted supplemental briefing.

¶43 The developed record contained genuine disputes concerning the ownership and location of the road corridor; the operative severance; the nature, duration, and permissiveness of historical use; and the circumstances surrounding the log, fenceposts,

and later fencing. Those disputes precluded the broad judgment the Tompkins sought on every unresolved amended theory. Brock's later failure to carry the clear-and-convincing burden at trial does not establish that the pretrial record compelled judgment for the Tompkins on all theories. The express-easement theory remained legally deficient, but the final judgment rejected that theory. We affirm the denial of broader pretrial judgment on the unresolved amended theories.

¶44 3. *Whether the District Court abused its discretion by bifurcating the case and assigning Brock's express-, implied-, and public-easement theories to the court while preserving the prescriptive-easement claim and trespass counterclaim for a jury.*

¶45 M. R. Civ. P. 42(b) permits a district court to order separate trials for convenience, to avoid prejudice, or to expedite and economize, but requires the court to preserve every constitutional and statutory jury-trial right. Brock's bench-tried theories sought declarations establishing an easement and related injunctive relief. An action to quiet title to an easement traditionally sounds in equity. *Getter*, 236 Mont. at 381, 769 P.2d at 716. The District Court reserved Brock's prescriptive-easement claim and the Tompkins' trespass counterclaim for a jury and concluded that separate consideration of the title-intensive theories would streamline the case, avoid confusion, and conserve judicial resources.

¶46 The Tompkins rely on *Gray*, which prohibits a court from using equitable claims to displace a jury's determination of a legal claim or a factual issue common to legal and equitable claims. *Gray*, 213 Mont. at 13, 689 P.2d at 272. The bifurcation order did not submit the prescriptive-easement claim or trespass counterclaim to the court; it reserved

both for a jury. Because we reverse the implied-easement judgment, the merits determinations necessary to that judgment cannot receive preclusive effect on a revived legal claim. The Tompkins therefore have shown no remaining impairment of their jury-trial right that requires reversal of the sequencing order. We affirm the bifurcation order, but the District Court must reconsider sequencing in the restored procedural posture and preserve every applicable jury right.

¶47 4. *Whether the District Court erred by concluding that Brock proved an implied easement by preexisting use benefiting both of her parcels.*

¶48 An implied easement by preexisting use arises when, at the severance of parcels previously held in common ownership, an apparent and continuous use exists on the servient estate, the use is reasonably necessary for the beneficial use and enjoyment of the dominant estate, and the parties intend the use to continue after severance. *Apecella*, ¶ 31. The claimant must prove each element by clear and convincing evidence. *Apecella*, ¶ 31. The scope of an implied easement depends on the severing owner's apparent intent and extends only to reasonable uses existing at severance and future uses the parties reasonably could have anticipated. *Apecella*, ¶ 31 (citing *Thomas Mann Post No. 81 v. Knudsen Family L.P.*, 2022 MT 150, ¶ 25, 409 Mont. 318, 514 P.3d 409). An easement by necessity is distinct and requires unity of ownership and strict necessity when the unified tract is severed. *Wolf v. Owens*, 2007 MT 302, ¶ 16, 340 Mont. 74, 172 P.3d 124.

¶49 Brock defends the judgment under the preexisting-use framework. The dispositive issue is not the governing legal standard but the District Court's application of that standard to two parcels with different title chains, different potential severances, and different access

histories. The court relied on a single severance to imply one easement benefiting both parcels without separately analyzing whether the required elements existed for each parcel.

¶50 We need not decide which chain held title to every portion of the disputed corridor. The District Court's single 1950 theory fails under either title premise the parties presented. If the present Forgotten Lane corridor lay within the 14.3-acre tract conveyed to Dee Shook in 1949, Walter and Vivian Shook did not own the alleged servient estate when they conveyed property to the Wilsons in 1950. If, as Brock argues, the corridor remained a separate strip that passed to the Wilsons in 1950, the District Court did not trace that strip into present Parcel 1 or explain how the 1950 conveyance separated it from each alleged dominant estate. Under the latter theory, the strip and the land that later became Parcel B passed together to the Wilsons and could not then give rise to an easement between lands remaining in common ownership. COS No. 4026, recorded in 1987, cannot itself establish title to the strip or the severing parties' intent in 1950. On either premise, the District Court's undifferentiated finding does not identify an operative severance between the land now alleged to be servient and each alleged dominant parcel.

¶51 The 2.5-acre parcel requires separate analysis. If the disputed strip passed to the Wilsons in 1950 while Walter and Vivian retained the 2.5-acre parcel, Brock had to prove an apparent and continuous private use serving that parcel, reasonable necessity, and an intent that the use continue as a private property right. The District Court's findings describe historical public travel along the old road, but they do not establish a parcel-specific preexisting private use benefiting the 2.5-acre parcel, an intent to burden the identified servient parcel with a private appurtenant right, or the scope of such a right.

Evidence that the parties may have regarded the road as public may support an expectation of continued access, but it does not, without more, establish the particular private appurtenant easement that the judgment declared.

¶52 If Dee Shook later held both the 2.5-acre parcel and the alleged servient estate, the 1976 conveyance to the Brocks would constitute the relevant severance. By that time, the modern Sawmill Lane configuration existed in the immediate area, although the parties dispute the practical availability of direct access from the parcel. The evidence bears on reasonable necessity but does not alone resolve the preexisting-use doctrine claim. The decisive deficiency is the absence of clear-and-convincing, severance-specific findings that the claimed route served the 2.5-acre parcel as an apparent and continuous private access immediately before the 1976 conveyance, that the route remained reasonably necessary, and that the severing parties intended the use to continue as an appurtenant property right. COS No. 4026, recorded eleven years later, cannot alone establish the severing parties' intent in 1976. *Thomas Mann Post No. 81* is distinguishable because, there, the use existing immediately before severance and the circumstances of the division supported an inference that the parties intended the same access to continue.

¶53 Parcel B followed a different title chain and therefore requires a separate operative severance. Remote common ownership in 1943 does not, by itself, establish an implied easement. If the disputed strip and the land that later became Parcel B passed together through the Wilson-Saxe chain, the 1950 conveyance did not separate a dominant estate from the land now alleged to be servient. A possible later severance occurred when the Saxes conveyed the 10.18-acre tract to the Brocks in 1978. The District Court did not find

that the Saxes then owned and retained the disputed corridor, that an apparent and continuous route across that land served the conveyed tract, or that the parties intended the use to continue as an appurtenant property right. The judgment therefore identifies no operative severance at which all elements of an implied easement arose for Parcel B. *JRN Holdings, LLC v. Dearborn Meadows Land Owners Ass’n, Inc.*, 2021 MT 204, ¶¶ 27–31, 405 Mont. 200, 493 P.3d 340, does not support a different result. The road there predated and served lots sold from a unified development; the findings here connect no comparable preexisting private use to a severance involving Parcel B and the disputed corridor.

¶54 The judgment’s scope provides an independent basis for reversal. The District Court adopted the sixty-foot width, utility rights, and full-road length depicted on COS No. 4026 without finding that the traveled way was sixty-feet wide, that utility use existed, or that use of the entire corridor existed at the operative severance or was reasonably contemplated by the severing parties at an operative severance. An implied easement’s scope derives from the use and intent at severance, not automatically from a later survey. *Apecella*, ¶ 31; *Thomas Mann Post No. 81*, ¶ 25.

¶55 The District Court’s findings do not establish, by clear and convincing evidence, the elements or scope of an implied easement by preexisting use benefiting either parcel. We therefore reverse the implied-easement judgment. Because Brock received a full trial on that theory, the implied-easement-by-preexisting-use claim does not return on remand. We do not reach the Tompkins’ merger argument.

¶56 5. *Whether reversal of the implied-easement judgment requires vacatur of the permanent injunction and remand of the matters the District Court treated as moot.*

¶57 Reversal of the implied-easement judgment removes the premise for the permanent injunction and the District Court’s mootness rulings. The June 19 order dismissed Brock’s prescriptive-easement claim, the Tompkins’ trespass counterclaim, and the outstanding extinguishment issues as moot. We therefore vacate the permanent injunction and the mootness dismissals.

¶58 The District Court did not adjudicate Brock’s public-easement alternative theory on the merits. Because the implied-easement judgment no longer supplies the complete relief that made further adjudication unnecessary, any preserved public-easement theory also returns on remand.

¶59 The District Court shall identify the live claims and defenses, determine the effect of the prior bifurcation order in the restored procedural posture, and preserve every applicable constitutional and statutory jury-trial right. Because we reverse the implied-easement judgment, the District Court shall not give preclusive effect to any factual determination necessary to that judgment when the same factual issue must be resolved in connection with a revived legal claim. We express no view on the merits of the revived theories, defenses, or counterclaim.

¶60 6. *Whether the District Court erred by treating its March 25, 2025 order as the decision triggering the five-day period under § 25-10-501, MCA, and by denying Brock’s request under § 25-7-105, MCA, as untimely.*

¶61 Section 25-10-501, MCA, requires a party claiming costs to file and serve a memorandum within five days after receiving notice of the court’s decision. In a

bench-trying case, findings and conclusions that leave matters unresolved and expressly call for additional proceedings do not trigger the five-day period. *Ballenger v. Tillman*, 133 Mont. 369, 382, 324 P.2d 1045, 1052 (1958) (findings and conclusions that gave the parties additional time to file exceptions did not commence the period, because they stayed entry of final decision); *Karell v. Am. Cancer Soc’y*, 239 Mont. 168, 177–78, 779 P.2d 506, 511–12 (1989). *Pastimes, LLC v. Clavin*, 2012 MT 29, ¶ 38, 364 Mont. 109, 274 P.3d 714, addresses the consequence of an untimely memorandum; it does not determine whether an interlocutory decision begins the statutory period.

¶62 The March 25 order expressly directed the parties to brief attorney fees, costs, and other remaining procedural matters by a future date. It also left the separately bifurcated claims and counterclaim unresolved. The order therefore did not finally resolve the case. The June 19 order disposed of those remaining matters, and Brock filed her memorandum within five days. Assuming § 25-10-501, MCA, applies to her statutory request, the memorandum was timely. We reverse only the procedural ruling to the contrary.

¶63 Section 25-7-105, MCA, permits a party to serve a written offer to settle a qualifying claim. If the offeree rejects the offer and the final judgment is less favorable to the offeree than the offer, the statute requires the offeree to pay the offeror’s postoffer costs, including reasonable attorney fees. Section 25-7-105(1)(a), (1)(c), (3), MCA. The District Court did not determine whether Brock’s November 2023 proposal satisfied the statute, including whether it constituted a qualifying written offer, whether its material terms were sufficiently definite, and whether the judgment ultimately entered is less favorable to the offeree. Our reversal also eliminates the judgment previously used for that comparison.

After resolving the remanded claims and entering a new final judgment, the District Court shall determine the parties' recoverable costs and all issues bearing on Brock's request under § 25-7-105, MCA. We express no view on statutory entitlement or amount.

¶64 The District Court separately denied fees under the Uniform Declaratory Judgments Act after concluding that equitable considerations did not make an award necessary and proper. Brock does not develop a basis for disturbing that independent determination. We leave it undisturbed.

CONCLUSION

¶65 We conclude that the District Court should have entered summary judgment for the Tompkins on Brock's original express-easement theory, but that error did not affect their substantial rights and does not require reversal of the amended proceedings. We affirm the order granting Brock leave to amend, the denial of the motion for judgment on the pleadings after conversion under M. R. Civ. P. 12(d), the later motion for partial summary judgment on the unresolved amended theories, and the bifurcation order. The final rejection of Brock's express-easement theory remains undisturbed. We reverse the implied-easement judgment and vacate the permanent injunction. We vacate the mootness dismissal of Brock's prescriptive-easement claim, the Tompkins' trespass counterclaim, and the extinguishment issues, and we remand any preserved alternative easement theory that the District Court did not adjudicate on the merits. On remand, the District Court shall identify the live claims and defenses and preserve every applicable constitutional and statutory jury-trial right. We also reverse the procedural ruling that Brock's memorandum

was untimely and remand for the District Court to determine costs and attorney fees, if any, after entry of final judgment.

¶66 Affirmed in part, reversed in part, and remanded.

/S/ KATHERINE M. BIDEGARAY

We Concur:

/S/ CORY J. SWANSON

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ JIM RICE