

**FILED**

11/29/2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 15-0573

**ORIGINAL**

**David B. Cotner**  
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Attorneys for Appellee

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IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court Cause No. DA 15-0573

IN RE THE MARRIAGE OF:

GREGORY A. JACKSON

Petitioner/Appellant,

v.

CATHRYN J. ("KIT") JACKSON,

Respondent/Appellee.

**SECOND UNOPPOSED MOTION  
FOR EXTENSION  
OF TIME**

COMES NOW, Respondent/Appellee, Cathryn J. Jackson ("Kit") by and through her attorney of record David B. Cotner of Datsopoulos, MacDonald & Lind, P.C. and hereby moves this Court for a second extension of time to file her Response to Opening Brief pursuant to Rule 26(2), M.R.App.P. Appellee requests that a two week extension be granted from December 7 to December 21, 2016 file the response to opening brief.

Opposing counsel does not object to this motion

I. PROCEDURAL BACKGROUND

Appellant filed his Opening Brief on October 7, 2016. On October 26, 2016 Appellee sought and obtained a 30 day extension of time to file her brief on December 7, 2016. Appellee now seeks a second and final extension.

II. LEGAL STANDARD

Rule 26, M.R.App.P. governs extensions of time for Appellee's response brief and provides in pertinent part:

(1) Extension of time - generally. ... Any second or subsequent motion for extension of time to file a brief shall meet the requirements of section (2) of this rule.

(2) Extensions of time - filing briefs in appeals of proceedings regarding abused or neglected children and motions for second or subsequent extensions. There shall be a presumption against granting motions for extension of time to file briefs. Any motion for extension of time to file a brief in the referenced cases may be granted only upon written motion supported by a showing of diligence and substantial need. Such a motion shall be filed at least 7 days before the expiration of the time prescribed for filing the brief, shall comply with rule 16, and shall be accompanied by an affidavit stating:

- (a) When the brief is due;
- (b) When the brief was first due;
- (c) The length of the requested extension;
- (d) The reason an extension is necessary;
- (e) An explanation establishing that movant has exercised diligence and has substantial need for the extension, and that the brief will be filed within the time requested. An affidavit setting forth a conclusory

statement as to the press of business will not constitute a showing of diligence and substantial need and will subject the motion to summary denial; and

(f) Whether any other party objects to the request.

Rule 26, M.R.App.P.

Because this is Appellee's second request for an extension, her motion must comply with Rule 26(2), M.R.App.P.

### III. DISCUSSION

In what follows, Appellee addresses the Rule 26 requirements: The brief is due on December 7, 2016, according to the Clerk's November 3, 2016 letter. *See* Rule 26(a), M. R. App. P. The brief was first due on November 7, 2016. *See* Rule 26(b), M. R. App. P. Appellee requests a two week extension, until December 21, 2016. *See* Rule 26(c), M. R. App. P.

Despite Appellee's exercise of diligence, there is a substantial need for an extension for the reasons set forth in the Affidavit of David B. Cotner, filed concurrently herewith. *See* Rule 26(d) and (e), M. R. App. P. Specifically, an extension is necessary because:

1. Mr. Cotner is the only attorney with active involvement in this case from the date it was tried in 2012 to the present. As such, Mr. Cotner has principle responsibility for the finalizing and filing the brief.

2. While research on the issues has been generally completed, and an outline for the argument prepared, Mr. Cotner's schedule is such that without a two week extension it will be difficult, if not impossible to file the brief by the 7<sup>th</sup> of December.
3. While the undersigned's office has prepared the necessary research and outlined the argument, this appeal involves transcripts of numerous proceedings. Specifically the trial and hearings for which transcripts were submitted related to proceedings on the following dates:
  - a. March 21-23, 2012
  - b. June 27, 2012
  - c. August 1, 2012
  - d. May 15, 2013
  - e. June 12, 2013
  - f. July 31, 2013
  - g. August 13, 2013
  - h. October 30, 2013
  - i. December 11, 2013
  - j. January 6, 2014
  - k. February 26, 2014
  - l. April 28, 2014
  - m. September 24, 2014
4. This significant amount of over two and a half years of transcripts must be cross-referenced as necessary to the factual section of the brief.
5. Our firm has exercised diligence in proceeding to prepare and file a responsive brief. Unfortunately in reviewing Mr. Cotner's calendar between today (November 29, 2016) and December 6, 2016 (when the

brief must be completed for the purpose of having it hand delivered on December 7) there is no available time to adequately complete the brief submitted. Not including daily deadlines that are inherent in any attorney's practice, the undersigned presently has scheduled between November 30 and December 6 the following:

- a. November 30, 2016 – two informal settlement conferences regarding outstanding litigation.
  - b. December 1, 2016 – deposition of the Plaintiff in contested litigation
  - c. December 2, 2016 – continued deposition of Plaintiff and of my client in the same litigation.
  - d. December 5, 2016 - Preparation for an Arbitration presently scheduled for December 8 and 9 (although it is likely the arbitration will be extended)
  - e. December 6, 2016 – court appearance in Butte, Montana in the United States Bankruptcy Court.
6. While Mr. Cotner has known of these conflicts, and has been diligent in making every effort to file the brief by December 7 he has concluded it is in the best interest of his client, Mr. Cotner's staff, as well as the clarity of the argument to be presented that such extension be requested.

7. The undersigned has been involved in numerous appeals with this court.

It is not his practice to request a second extension.

#### IV. CONCLUSION

For the above referenced reasons, Appellee respectfully requests a final two (2) week extension.

DATED this 29 day of November, 2016.

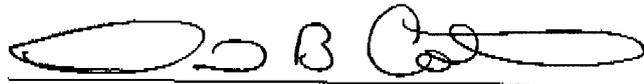
DATSOPOULOS, MacDONALD & LIND, P.C.

A handwritten signature in black ink, appearing to read 'David B. Cotner', written over a horizontal line.

David B. Cotner  
*Attorney for Respondent/Appellee*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16 of the Montana Rules of Appellate Procedure, I certify that this Appellee's motion is printed with a proportionately spaced Times New Roman 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 of 934 words, excluding certificate of service and certificate of compliance.

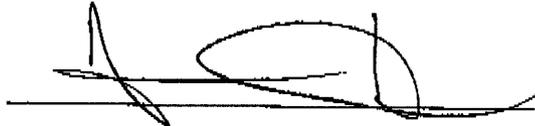
A handwritten signature in black ink, appearing to read 'David B. Cotner', is written over a horizontal line.

David B. Cotner

**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of Datsopoulos, MacDonald & Lind, P.C., hereby certify that on November \_\_\_\_, 2016 a true and correct copy of the foregoing was filed by facsimile to the Montana Supreme Court. Additionally, a copy was mailed, postage prepaid to the following:

Terry A. Wolfe  
Michael Sol  
SOL & WOLFE  
101 E. Broadway, Suite 300  
Missoula, MT 59802

A handwritten signature in black ink, appearing to read 'Terry A. Wolfe', is written over a horizontal line.

**ORIGINAL**

**David B. Cotner**  
DATSOPOULOS, MacDONALD & LIND, P.C.  
201 West Main, Suite 201  
Missoula, MT 59802  
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dcotner@dmlaw.com  
Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court Cause No. DA 15-0573

IN RE THE MARRIAGE OF:

GREGORY A. JACKSON

Petitioner/Appellant,

v.

CATHERYN J. ("KIT") JACKSON,

Respondent/Appellee.

**AFFIDAVIT OF DAVID B. COTNER**

State of Montana            )  
  ss:  
County of Missoula         )

1. My name is David B. Cotner and I am counsel of record in the above captioned matter. I am the only attorney with active involvement in this case from the date it was tried in 2012 to the present.

2. Our Response to Opening Brief was due on November 7, 2016
3. On October 26, 2016 we filed an Unopposed Motion for Extension of time to file the response on December 7, 2016. Such extension was granted on November 3, 2016.
4. While research on the issues has been generally completed, and an outline for the argument prepared, my schedule is such that without a two week extension it will be difficult, if not impossible to file the brief by the 7<sup>th</sup> of December.
5. While my office has prepared the necessary research and outlined the argument, this appeal involves transcripts of numerous proceedings. Specifically the trial and hearings for which transcripts were submitted related to proceedings on the following dates:
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- k. February 26, 2014
- l. April 28, 2014
- m. September 24, 2014

6. This significant amount of over two and a half years of transcripts must be cross referenced as necessary to the factual section of the brief. This will be very time consuming.

7. Our firm has exercised diligence in proceeding to prepare and file a responsive brief. Unfortunately in reviewing my calendar between today (November 29, 2016) and December 6, 2016 (when the brief must be completed) for the purpose of having it hand delivered on December 7) there is no available time to adequately complete the brief submitted. Not including daily deadlines that are inherent in any attorney's practice, I presently have scheduled between November 30 and December 6 the following:

- a. November 30, 2016 – two informal settlement conferences regarding outstanding litigation.
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- d. December 5, 2016 - Preparation for an Arbitration presently scheduled for December 8 and 9 (although it is likely the arbitration will be extended).
- e. December 6, 2016 – court appearance in Butte, Montana in the United States Bankruptcy Court.

8. While I have known of these conflicts, and have been diligent in making every effort to file the brief by December 7 I have concluded it is in the best interest of his client, my staff, as well as the clarity of the argument to be presented that such extension be requested.

9. I have been involved in numerous appeals with this court. It is not my practice to request a second extension

10. On November 29, 2016, I contacted Michael Sol, counsel for Appellee and he stated that he did not object to any extension of time.

DATED this 29 day of November, 2016.

DATSOPOULOS, MacDONALD & LIND, P.C.

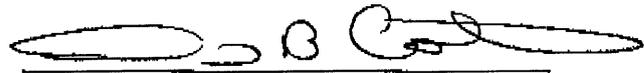


David B. Cotner  
*Attorney for Appellant*

STATE OF MONTANA )  
 )  
:SS.  
County of Missoula )

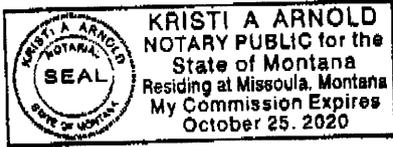
DAVID B. COTNER, being first duly sworn upon her oath, deposes and states  
as follows:

That she has read the foregoing Affidavit, knows the contents thereof, and that  
the facts and matters contained therein are true to the best of her knowledge.



DAVID B. COTNER

SUBSCRIBED AND SWORN to before me this 29 day of November,  
2016, by DAVID B. COTNER.



Notary Public for the State of Montana  
Printed Name of Notary: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of Datsopoulos, MacDonald & Lind, P.C., hereby certify that on November 21, 2016 a true and correct copy of the foregoing was filed by facsimile to the Montana Supreme Court. Additionally, a copy was mailed, postage prepaid to the following:

Terry A. Wolfe  
Michael Sol  
SOL & WOLFE  
101 E. Broadway, Suite 300  
Missoula, MT 59802

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