Recent Montana Cases Affecting Estate Planning
(2007 through October 2009)
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I. Beneficiaries

A. T.O.D. / P.O.D Accounts

1. A conservator has the power to remove a beneficiary from a TOD account without notice to the beneficiary, but only with court approval. (***Guardianship and Conservatorship of Lucille Anderson***, 2009 MT 344, ___, Mont. ___, ___ P.3d ___ (2009) (Note: This opinion not yet released for publication and is subject to revision or withdrawal).

2. The power to change the TOD Beneficiary:

a. The court is vested with this power, but apparently not the conservator.

b. § 72-5-421, M.C.A., states that "the court has the following powers that may be exercised directly or through a conservator." The "following powers" include subparagraph (3), which does not specifically include the power to make a change in beneficiary designation of a TOD account, but does permit a change in beneficiary designation under an insurance policy. The Supreme Court said there was "no substantive distinction" between a beneficiary designation for an insurance policy and one for a TOD account, and because the powers under the statute "included but were not limited to" those enumerated, the Supreme Court found the District Court could order a change in the beneficiary designation.

c. But this highlights an ambiguity in the statutory language. Subparagraph (3) states that "After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has all the powers over the person's estate and affairs that the person could exercise if present and not under disability, except the power to make a will."

d. The issue then is whether all the powers enumerated under (3) can be exercised only after a hearing, or whether the hearing is for the purpose of determining whether a basis for appointment exists, after which the court may exercise those powers "through a conservator" as stated in the introductory clause of the statute. For example, subparagraph (3)(d) includes the power to enter into contracts. Is the conservator required to have a court hearing every time a contract is needed for the protected person? That may come as a surprise to many conservators. But this "con-

tract" provision is in the same subparagraph (3) as the change of beneficiary provision, which the Court found required a hearing.

e. Remember, subparagraph (3) applies to "all the powers over the person's estate and affairs that the person could exercise if present and not under disability." In other words, everything.

f. At present, the law in Montana seems to be that a conservator cannot act without a court hearing.

3. The right to notice of hearing:

a. Even though a hearing was required, the ***Anderson*** court found that notice was not required to be given to the TOD beneficiary, because it had no present interest in the TOD account, and therefore was not an "interested person." *See* § 72-6-306, M.C.A.

b. The Court in ***Anderson*** contrasted the beneficiary of a TOD account with the beneficiary of a trust, who *would* have right to notice of the hearing, because the statutory definition of "interested person" (§ 72-1-103(3)(a), (25), M.C.A.) includes trust beneficiaries. But see ***Stanton*** below.

c. It is instructive to note that under § 72-1-103(3)(c), M.C.A. includes within the definition of "beneficiary" the beneficiary of a TOD or POD account, but under § 72-1-103(25), M.C.A., an "interested person" includes "beneficiaries … having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person." Since ***Anderson*** involved a TOD account and not a trust estate or the estate of a decedent, the TOD beneficiary was not an "interested person" within the definition.

B. Trust Agreements

1. A charitable beneficiary of a revocable trust has no right to notice from the Trustee that the trust has been changed to remove the charity as a beneficiary. ***Stanton v. Wells Fargo Bank Montana, N.A.***, 335 Mont. 384, 152 P.3d 115 (2007).

2. A trustee does not owe a fiduciary duty to the beneficiary of a revocable trust. ***Stanton***. § 72-33-701, M.C.A.

II. Undue Influence

A. Statutory Definition:

28-2-407. What constitutes undue influence. Undue influence consists of:

(1) the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over the other person of the confidence or authority for the purpose of obtaining an unfair advantage over the other person;

(2) taking an unfair advantage of another person's weakness of mind; or

(3) taking a grossly oppressive and unfair advantage of another person's necessities or distress.

B. Judicial Interpretation:

1. In ***Estate of Lightfield***, 351 Mont. 426, 213 P.3d 468 (2009), the Montana Supreme Court found that a court determining whether there has been undue influence may consider relevant factors including:

a. any confidential relationship between the donor and the person allegedly exercising influence;

b. the physical condition of the donor as relevant to her ability to withstand influence;

c. the mental condition of the donor as relevant to her ability to withstand influence;

d. the unnaturalness of the disposition as it relates to showing an unbalanced mind or a mind easily susceptible to undue influence; and

e. the demands and importunities as they affect the donor, considering the relevant circumstances. The statutory requirements control.

2. These five criteria may, but need not, be present in an undue influence case; they are simply nonexclusive considerations available to guide the trial court in its application of the statutory requirements. ***Lightfield***.

3. The opportunity to exercise undue influence on a person is not sufficient to prove undue influence and invalidate a will or a transfer of property. Rather, the opportunity to exercise undue influence is to be considered and correlated with the alleged acts of influence to determine if the acts amount to undue influence.

C. To establish undue influence, a confidential relationship must be shown.

D. But, the presence of a confidential relationship does not alone establish undue influence. ***Stanton.***

1. An ex-son-in-law who spent significant amounts of time with his ex-mother-in-law, who drafted a will and trust leaving her estate to him, after she had previously executed a trust leaving her assets to charity, was found to have a confidential relationship with her, but *not* to have exerted undue influence. ***Stanton.***

2. But, a son who took his mother to his attorney to have her draft a will leaving everything to him to the exclusion of his sister, was found to have exerted undue influence. ***Lightfield***.

E. Distinguishing Factors

1. In ***Lightfield***, the Supreme Court upheld a finding of undue influence, based on the following factors:

a. During the time the property transfers in question were made, the son maintained a confidential relationship with the mother to the exclusion of the daughter.

b. The mother's health was failing and she had broken bones during the time she was under the son's care.

c. The mother's mental health was also failing.

(1) Her attorney initially refused to draft a will for her because he believed she was paranoid and delusional. The attorney at one time called the mother to determine if she could sign the deed transferring her real property into the trust. She did not remember him.

(2) The mother wrote to her attorney telling him she had taken trust documents to a local government office and that people were going into the ditch by her house and she needed to pull them out. However, the attorney had the trust documents, and there is no evidence anyone was in a ditch. One month after that, the mother executed the February 2003 oil and gas lease with the son as co-trustees.

d. A little more than six months after that, the mother made a holographic will leaving all of her earthly possessions to the son and completely disinheriting the daughter. The disposition was unnatural in that it left everything to the son, at a time when the son had close contact with the mother, and disinherited the daughter.

e. The son took the mother to his attorney to draft a will leaving everything to him at a time when she was exhibiting delusions. The attorney created a living trust instead. Then, the son called a week later saying the mother was asking for a will leaving everything to him. When the attorney declined to draft the will the son wanted, an attempt was made to have another attorney do so. Around this time, the mother wrote checks to the son for the entire amount of the rent and surface damage payments her trust had received from the oil and gas lease.

f. The record contained substantial circumstantial evidence supporting the District Court's finding that the son exercised undue influence over the mother for the purpose of acquiring her assets.

g. The District Court specifically found the son took advantage of the mother's weakness of mind.

h. The transfer of a leasehold interest owned by the mother took place three years prior to when the mother was diagnosed with severe cognitive impairment consistent with severe dementia, with significant impairment of memory and executive function, but the doctor examining her determined her decline had occurred over three to four years.

2. In *Stanton*, the Supreme Court looked to the following evidence to establish that undue influence was not present:

a. Confidential Relationship. The ex-son-in-law (Stanton) admitted to a confidential relationship with the decedent (Frances). That was not an issue.

b. Mental and Physical Condition

(1) The ex-son-in-law (Stanton) remained close to the decedent (Frances) after the death of Stanton's ex-wife and Frances's daughter (Joanne) death and their relationship improved. Stanton visited Frances daily, drove her around town when she needed, and also drove her to California several times to visit her brothers.

(2) Testimony from people who knew Frances was that Frances remained physically active and independent during the time in question.

(3) Frances lived independently.

(4) Frances was admitted to the hospital briefly for heart trouble in 1999, but her medical records indicate that she was alert, oriented, and looked much younger than her 90 years. The medical records also indicate that Frances had not required any medical attention during the previous 30 years.

(5) Friends also described Frances as mentally sharp and strong-willed even into her 90's.

(6) Frances was diagnosed with Alzheimer's in late 2003, but no evidence was provided that established that Frances suffered any decline in her mental condition leaving her susceptible to undue influence at the time she executed the documents in question in 2000.

(7) The charity offered the deposition testimony of a physician in an attempt to establish that Frances suffered from the effects of Alzheimer's disease at the time she made changes to her 1996 Trust Agreement and Will, but the physician never met or examined Frances and she never had undergone a neuropsychological evaluation for him to review. The court found his testimony speculative.

c. Unnaturalness of the Disposition

(1) Frances had not connection with the charity during her lifetime, other than to name it as a beneficiary of her trust.

(2) The District Court concluded that the disposition to Stanton was a more natural distribution than a distribution to charities to which Frances had little or no connection during her lifetime.

(3) Frances still referred to Stanton as her "son-in-law" even after his divorce and that Frances promised Joanne that she would "take care" of Stanton.

(4) Frances's brother also knew of, and supported, Frances's intention to leave her estate to Stanton.

d. Demands and Importunities. Finally, the District Court found that Trail's End failed to present any evidence that Stanton made any requests or demands on Frances to amend her Will or Trust or to provide any monetary gifts to him.

III. Fiduciary Duty

A. Conflict of Interest

1. A Personal Representative may be removed for cause (pursuant to § 72-3-526, M.C.A.), which may be shown by a conflict of interest. ***Estate of Anderson-Feeley*** 340 Mont. 352, 174 P.3d 512 (2007).

a. A 69 year old woman married a man in his early forties, appointed him as her agent under a power of attorney, designated him as Personal Representative under a Will she drafted leaving ¾ of her estate to her children and ¼ to him.

b. At that time, she had assets in excess of $4 Million.

c. When she died six years later, her assets were less than $30,000. The District Court pointed to evidence that the new husband may have transferred significant assets from his wife for his personal benefit.

d. When she died, the husband was appointed Personal Representative, but her son successfully challenged to have him removed, on the grounds that the potential claims the Estate had against him personally presented a conflict of interest. This finding was upheld.

2. In ***Anderson-Feeley***, the Court also discussed a prior case, ***In re the Estate of Peterson***, 265 Mont. 104, 874 P.2d 1230 (1994), in which a Personal Representative had been removed for having a conflict of interest.

a. The Personal Representative was an attorney who had represented the decedent in a personal injury claim. He and another attorney entered into an agreement with their client that if the case was set for trial, they would get a 40% contingency fee of any recovery. They filed a two-page complaint, requested and acquired a trial date, and then settled the case for $3,125,000.

b. After that, the attorney drafted a Will for the client appointing himself as Personal Representative, and was in fact appointed Personal Representative upon the client's death.

c. A relative sought to have the attorney removed as Personal Representative on the grounds that he would not be likely to pursue a claim against himself for an excessive fee on the personal injury case. The court found a conflict of interest and removed the attorney as Personal Representative.

3. In ***Stanton***, lifetime gifts and testamentary dispositions in favor of the ex-son-in-law, Stanton, were upheld, even though, the court noted, his role in acting as Frances's attorney in preparing the 2000 Trust Agreement, the Will and the gift of stock could constitute a violation of Rule 1.8(c) of the Montana Rules of Professional Conduct.[1] "We have previously stated, however, that a violation of a professional conduct rule 'should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached.'" ***Stanton*** ¶ 24. Consequently, the burden of proving undue influence remained on the charity.

B. Duty to Third Parties

1. In 2004, in a matter of first impression in Montana, the Montana Supreme Court held that an attorney may owe a duty to a nonclient beneficiary of an estate plan. ***Watkins Trust v. Lacosta***, 321 Mont. 432, 92 P.3d 620 (2004). Privity is no longer a strict defense in a legal malpractice claim.

2. Privity as a defense had been eroded in other cases involving accountants and engineers, but because it was still unclear in the case of a legal malpractice claim, the Montana Supreme Court found that the position taken by ALPS—that an attorney hired by a former conservator did not owe the former protected person a duty of care—was reasonable under the law existing when the malpractice action was commenced. ***Redies v. Attorneys Liability Protection Society***, 335 Mont. 233, 150 P.3d 930 (2007).

IV. Wills

A. Testamentary Capacity

1. In ***Estate of Lightfield***, 351 Mont. 426, 213 P.3d 468 (2009) the Supreme Court restated the test for testamentary capacity:

> [A] testator is competent if he is possessed of the mental capacity to understand the nature of the act, to understand and recollect the nature and situation of his property and his relations to persons having claims on his bounty whose interests are affected by his will.... The testator must have sufficient strength and clearness of mind and memory to know, in general, without prompting, the nature and extent of the property of which he is about to dispose, and the nature of the act which he is about to perform,

[1] Rule 1.8(c) of the Montana Rules of Professional Conduct states, "A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative."

and the names and identity of the persons who are to be the objects of his bounty, and his relation towards them.

a. Testamentary capacity requires the testator be aware of three elements: (1) the nature of the act to be performed, (2) the nature and extent of the property to be disposed of, and (3) the objects of his or her bounty.

b. Testamentary capacity is determined as of the date the will was executed.

c. The proponent of a will has the burden of establishing prima facie proof of its due execution. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.

d. Where a duly executed will is submitted for probate, a presumption exists that the testator was competent and of sound mind.

2. The Supreme Court found that the Testatrix did *not* have testamentary capacity, based on the following factors:

a. There was evidence in the record that as much as one year before the holographic will, the Testarix was confused and uncertain about her assets;

b. She was paranoid;

c. She often did not know what was happening around her, and she was delusional;

d. She often could not remember people, nor could she recall what she had done with her property;

e. She thought that the sheriff as well as everyone in Richland County was on drugs;

f. She was paranoid and thought people were stealing from her;

g. She was not truly aware she would be treating her children differently;

h. When she signed her holographic will, the Testarix did not understand that it would govern the distribution of her assets upon her death and would revoke any prior wills that she may have made;

i. She was not aware of the objects of her bounty.

B. Intestacy

1. A recital in a Will of a conveyance of land which was not in fact made, or which proved to be ineffectual, will not operate as a devise. ***Estate of Ayers***, 338 Mont. 12, 161 P.3d 833 (2007).

2. Kathleen, the mother, owned a 50% undivided interest in real property with one of her daughters, Donielle, as tenants in common. The real property, re-

ferred to as the "Fishtail Property" was referenced in this provision of the mother's Will:

> Fishtail Property Acreage and Buildings-in dual name of Kathleen Lynch Ayers and Donielle Ayers Slanina, at this time, shall remain in her name. She has promised to share title and all duties with Lorielle Ayers Waisanen.

3. Donielle contended that this language meant she was to get 100% of the Fishtail Property.

4. The District Court found that this provision made no valid devise of the Fishtail property, and the mother's 50% interest was to pass by intestacy, resulting in Donnielle having a 75% ownership interest and the other daughter, Lorielle, having a 25% ownership interest.

5. Donielle, who was also Personal Representative of the estate, basically ignored the court's decision and proposed a final distribution of 100% of the Fishtail Property to herself with a payment from the Estate to Lorielle of "any difference that may result from the distribution to Donielle of the Fishtail Residence property that exceeds Donielle's equal share of the residue."

6. The Supreme Court found that the Will indicated the mother had mistakenly assumed that Donielle would take sole ownership to the Fishtail Property by operation of law as the surviving joint tenant,[2] but that her misstatement of Donielle's ownership interest in the Fishtail Property "cannot act as evidence of her intent to devise that property." ***Ayers*** ¶ 18. Accordingly, the Supreme Court found that the District Court had correctly determined that the Will made no valid devise of the Estate's 50% interest in the property and that it was to pass by intestacy.

7. The Supreme Court also noted that the total value of the Estate was approximately $100,000, that the daughters "have been litigating for almost eight years over their respective rights to the Fishtail property" and that attorney fees for the Personal Representative alone were $28,000. ***Ayers*** ¶¶ 5 & 11.

V. Distributions

A. Valuation

1. Unless a contrary intention is indicated by a decedent's Will, estate assets are to be distributed in kind to the extent possible, and the devise of a stated sum of money may be satisfied in kind if the property distributed in kind is valued at the fair market value as of the date of its distribution (not the date of death value). § 72-3-902, M.C.A.

[2] "Kathleen reminds Donielle that '[s]he has promised to share title and all duties with Lorielle Ayers Waisanen.' Kathleen's reminder to Donielle would be superfluous unless she assumed that Donielle held the sole right to survivorship in the Fishtail property." *Ayers* ¶ 16.

2. In ***Estate of Lucile B. Snyder***, 352 Mont. 264, ___ P.3d ___, (2009), the Montana Supreme Court was presented with the third appeal in this estate, which had been open for 15 years.

a. The Court found that the Will indicated an intent to have the estate distributed pursuant to its value at the decedent's death, not at the date of distribution value.

b. The two principal assets were stock in a drug store and 40 acres on Flathead Lake, which were of roughly equivalent value at the decedent's death in 1992, but in the intervening 15 years, the lake property had increased in value from approximately $160,000 to approximately $5 Million, while the drug store stock had not increased nearly as much.

c. The Will had stated that the two children were to receive equal distributions of the residuary with 51% of the drug store stock first apportioned to the son, but counting towards his half of the residuary.

d. The Court decided the son should get all of the drug store stock and the daughter the lake property.

e. Although there is now a great disparity in the value of the distributions to the son and the daughter, the Court found that was merely due to the delay caused by litigation in the estate.

f. The Supreme Court remanded the case for further proceedings to value and distribute the remaining Estate based on federal estate tax values.

3. *In* ***Snyder***, the District Court appeared to misconstrue the provisions of § 72-3-902(2)(b), M.C.A., which applies only when a devise of a "stated sum of money" is to be satisfied with an in kind distribution of property. In that limited situation, the statute directs that the in kind property be valued at its date of distribution value. The District Court, however, held that absent a contrary intent in the Will "property distributed in kind is valued as of the date of its distribution" without limiting this to in kind distributions in satisfaction of devises of a stated sum of money.

4. The Supreme Court, however, looked to provisions in the Will that indicated the testator's intent was that federal estate tax values were to be used, not date of distribution values, and so found § 72-3-902(2)(b), M.C.A. to be inapplicable.

B. Need for Certainty

1. A brother removed a truck and equipment from the garage of his sister, which had been part of the estate that was to be equally divided among the siblings. The sister brought charges against the brother for theft and trespass. ***Turk v. Turk***, 341 Mont. 386, 177 P.3d 1013 (2008).

2. "Though the estate has been closed for more than eight years, the heirs gave conflicting testimony as to how the equipment was to be distributed amongst the Turks, and whether each received his or her fair share." ***Turk*** ¶ 6.

3. A jury ultimately determined the truck and equipment belonged to the brother who took it.

4. Ideally, the distribution of the estate should be in writing and of record. But as a practical matter, items of tangible personal property are frequently distributed to the heirs with no permanent record of who was entitled to each item.

VI. Slayer Statute

A. Montana's "slayer statute" is found at § 72-2-813, M.C.A. which provides that

> An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

B. But a guilty plea to a charge of deliberate homicide does not by itself conclusively establish that a killer acted feloniously and intentionally for purposes of the slayer statute. ***Estates of Swanson***, 344 Mont. 266, 187 P.3d 631 (2008).

1. In ***Swanson***, a mother shot and killed two of her children, then immediately called 911 to report that she shot the children. She was charged with two counts of deliberate homicide. She pled guilty to both counts.

2. The father, as Personal Representative of his children's estates, argued the mother should not inherit, arguing that the guilty pleas established the mother had "feloniously and intentionally" killed their children. The District Court agreed, but the Supreme Court did not.

C. The Supreme Court said that the doctrine of collateral estoppel (which would have permitted the guilty plea to be used against the mother) applies only when there is a final judgment on the merits in a previous proceeding, and a guilty plea does not meet that requirement.

D. The determination of whether the slayer acted "feloniously and intentionally" was a question of fact to be established at trial.

E. A guilty verdict would have led to a different result than a guilty plea.

1. The Supreme Court quoted the Official Comment to § 72-2-813(7), M.C.A., which states that "A judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section." (Emphasis added).

F. And an acquittal would not have established that the killer did not act "feloniously and intentionally."

1. The above Comment also states, "Acquittal, however, does not preclude the acquitted individual from being regarded as the decedent's killer for purposes of this section."

VII. Probate Court Jurisdiction and Venue

A. Jurisdiction

1. A District Court sitting in probate does not have jurisdiction over a trust dispute once the probate has ended and the decedent's estate has been closed, even though the trust was testamentary trust created pursuant to a Will probated by that District Court. ***Estate of Haugen***, 346 Mont. 1, 192 P.3d 1132 (2008).

2. § 72-1-202, M.C.A. provides District Courts with limited subject matter jurisdiction over probate and conservatorship matters, specifically over all subject matter relating to "estates of decedents, including construction of wills and determination of heirs and successors of decedents …."

3. § 72-35-101, M.C.A. confers upon District Courts exclusive subject matter jurisdiction over trust proceedings. "A trust proceeding brought pursuant to the Montana Trust Code is a proceeding separate and apart from the probate of an estate." ***Haugen*** ¶12.

4. District Courts sitting in probate once had jurisdiction over trusts after probate had closed, but the statute providing that jurisdiction, § 72-12-101, M.C.A. (1987) was repealed in 1989 when § 72-35-101, M.C.A. was enacted.

5. The ***Haugen*** case cites the earlier case of *In re Graff's Estate*, 119 Mont. 311, 316-17, 174 P.2d 216, 218 (1946), which held that disputes as to the title to property are not within the subject matter jurisdiction of the District Court in a probate proceeding.

6. See also ***In re Estate of Pegg,*** 209 Mont. 71, 84, 680 P.2d 316, 322 (1984) holding that limited grant of jurisdiction under § 72-1-202(1), MCA, did not extend to the approval of a settlement of a wrongful death action which was pursued by the personal representative of the decedent's estate

7. See also ***In re Estate of Thomas,*** 216 Mont. 87, 89-90, 699 P.2d 1046, 1048 (1985) holding that a district court sitting in probate did not have jurisdiction to decide title to real property.

B. Venue

1. As long as Montana has subject matter jurisdiction over a probate, there is no *de minimis* exception to determine whether it has venue. ***Estate of Strange*** 343 Mont. 296, 184 P.3d 1029 (2008).

   a. The District Court had confused jurisdiction with venue. It had found that jurisdiction was proper in Montana, but venue was not, because the decedent's Montana assets (fishing gear, a rifle, assorted tools and an investment account) did not establish a "significant connection" to Montana.

b. The Supreme Court said that "venue pertains to the propriety of a given county in Montana for probating a decedent's estate … The question of whether Montana is the proper state is governed by Montana's territorial jurisdiction statute, not the venue statute. *See* § 72-1-201(2), M.C.A." ***Strange*** ¶ 11.

c. Once the District Court concluded that jurisdiction was proper in Montana, the only issue should have been whether that county was the proper county for venue. ***Strange*** ¶ 12.

d. "There is no statutory requirement that a decedent's property have a 'significant connection' to Montana." ***Strange*** ¶ 12.

2. "The general nature of the probate code allows for multiple probate proceedings to be initiated in the various states where a decedent had property. Contrary to the rule in civil actions, there is no 'single forum' requirement under the Uniform Probate Code. Instead, our statutes allow for an initial filing in Montana if a decedent owned property here, § 72-1-201(2), MCA, followed by ancillary probate proceedings in other jurisdictions when necessary." ***Strange*** ¶ 10.

3. § 72-1-201(2), M.C.A. provides that the Uniform Probate Code, as adopted by the Montana Legislature, applies to "the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state[.]"

a. The District Court's finding that Montana had jurisdiction over the Montana assets was based on its determination that it had jurisdiction over the son who had acquired fiduciary control over his father's property and was a Montana resident subject to the laws of this state. ***Strange*** ¶ 8.

b. The decedent never resided in Montana, but periodically visited his son in Billings, with whom he left the few items of personal property mentioned above. In addition, his son opened an account with Putnam Investments for the father, which the son managed in Montana under a power of attorney executed by the father. ***Strange*** ¶ 3.

VIII. Statute of Limitations

A. The minority tolling of the statute of limitations for a survival action continues only for the period of the minor's survival. After that, the Personal Representative is an adult and consequently the statute of limitations is no longer tolled for minority. ***Runstrom v. Allen***, 345 Mont. 314, 191 P.3d 410 (2008).

B. Minority tolling does not apply to a wrongful death claim. ***Runstrom***.