

FILED

05/22/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 19-0036

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No.: DA- 19-0036

MARK KUCERA,

Plaintiff/Appellant,

vs.

CHRISTOPHER BRADY

Defendant/ Appellee.

APPELLANT'S BRIEF

FILED

MAY 22 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

On Appeal from the Montana Thirteenth Judicial District Court,
County of Yellowstone,
CAUSE # DV-18-0782.

Honorable Donald L. Harris Presiding.

Appellant Kucera submits the following Brief upon which we rely on to
oppose the Judgment awarded to Appellee.

PARTIES

Appellant Mark Kucera

3131 Radcliffe Drive

Billings Montana. 59102

Ph# (406)-690-5634

kuchthird@yahoo.com

Appellee Christopher Brady

21924 Angostura Boulevard

San Antonio, Texas 78224

Ph# (913)-240-3414

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No.: DA- 19-0036

<p>MARK KUCERA,</p> <p>Plaintiff/Appellant,</p> <p>vs.</p> <p>CHRISTOPHER BRADY</p> <p>Defendant/ Appellee.</p>	<p>APPELLANT'S BRIEF</p>
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Ph# (406)-690-5634
kuchthird@yahoo.com

Appellee Christopher Brady
21924 Angostura Boulevard
San Antonio, Texas 78224
Ph# (913)-240-3414

TABLE OF AUTHORITIES

MONTANA CASES

CASES OF OTHER JURISDICTIONS The U.S. Judiciary Act, Code of
RE: CAUSE NO. DV 18-0782, Conduct for the United States Judges.
attached (uscourts.gov/rules-policies/judiciary-policies. March20,2014)

MONTANA STATUTES, RULES & REGULATIONS

TABLE OF CONTENTS

TABLE OF AUTHORITIES	i
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
SUMMARY OF THE ARGUMENT.....	11
CONCLUSION.....	17
CERTIFICATE OF COMPLIANCE.....	18
CERTIFICATE OF SERVICE.....	19
ATTACHMENTS, Transcript Error, The U.S. Judiciary Act, The Code of Conduct ORDER APPEALED FROM	

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether an individual that provides testimony under oath that contradicts evidence he himself provided to the court could be considered credible and prevail on the issue of credibility when the opposing party has no such contradictions in his testimony. Could the District Court have erred in overlooking the evidence that the Appellee lied under oath whereas the Appellant did not lie.

2. Whether the Court erred in its Findings of Fact, whereas the Court misquoted and reworded the Appellant's testimony altering the facts of the case to unfairly favor of the appellee. The correct testimony can be seen in the transcript.

3. Whether the Court erred in not considering deletions of texts or alterations of evidence by the appellee as important to credibility, when this issue was brought up by the appellant in court. When threads of word and picture texts (available in the exhibits) are compared, only the appellee can be shown to have deleted any texts. The texts deleted were precisely those picture texts that would have bolstered the appellant's version of events.

4. (a) Whether the District Court erred in allowing Affidavit(s) and documentation to be introduced into evidence, by the Appellee for his witness, Rasmussen, when Rasmussen was not present to testify or be cross-examined by the Appellant.

and documentation to the Court, they were denied as hearsay and not allowed to be introduced or entered into evidence by the Court. This witness was present and heard conversation between the Appellant and Appellee at the time in question. (b) Whether the Court erred in denying the Appellant time to set up a video conference in mid-trial for testimony to be given by the Appellant's witness, after Appellant was told he would be permitted to do so and that his witness's testimony would be heard by the Court, and after the Court gave permission for the same witness to testify via video conference at the Pretrial Conference which was held Monday November 5, 2018 at 4:30 p.m. two days prior to the trial at November 7, 2018 at 9:00 a.m., with the court offices closed Tuesday for election day.

II. STATEMENT OF THE CASE

A. Procedural History

The Appellant, Mark Kucera, ("Kucera") filed a Complaint May 1, 2018 asserting the following claims: (1) declaratory judgement; (2) accounting and turnover; (3) constructive fraud; (4) deceit; (5) breach of duty of good faith and fair dealings; (6) constructive trust; (7) violation of fiduciary duty; (8) conversion; (9) unjust enrichment; (10) fraud; (11) preliminary and permanent injunctive relief by lien; and (12) theft. Doc. No. 1.

The Appellee, Christopher Brady, (“Brady”) denied allegations and filed a counter-claim June 17, 2018 asserting the following claims: (1) breach of contract; (2) breach of duty of good faith and fair dealing; (3) fraud; (4) conversion; (5) theft; and preliminary and permanent injunctive relief. Doc. No. 2.

Appellee was served in Texas with Appellant’s response to Appellee’s answers and counterclaim on complaint, Appellant’s preliminary pretrial statement and Appellant’s preliminary pretrial statement’s additional claim.

B. STATEMENT OF FACTS

February 26th, 2017 Appellant receives his first 1932 Packard from Connecticut. (Tr.12 ln. 4-8, Plaintiff Exhibit 3)

After receiving his Packard Appellant finds the car needs many parts to restore his Packard. Appellant calls many individuals with 1932 Packard vehicles to locate parts and learn about his vehicle and various models Packard had made in 1932 and what his car was and what would fit his car. Around March and May of 2017 Appellant learns that his car is a Super 8, model 903 with an engine that is identical to the Standard 8 Model 902 apart from being two inches longer (Tr. 17 ln. 8-12; Tr. 18 ln.12-25; Tr. 19 ln.1-5).

After many months of looking for 1932 Super 8 parts Appellant calls one of his contacts, Mr. Rasmussen, who previously stated his standard eight 3 speed

transmission would work on Appellant's Super 8 engine (Tr. 18 ln. 15-25; Tr. 19 ln. 1-5). Mr. Rasmussen told Appellant that he no longer had the transmission, that he sold his 1932 Packard model 902 Roadster to Appellee and the transmission along with his other spare parts were sold along with the Roadster. Mr. Rasmussen told Appellant that Appellee would be coming up to Colorado for an auction and Appellee might be willing to bring the transmission up with him and then provided Appellant with Appellee's cell phone number. (Tr. 50 ln. 24-25; Tr. 51 ln. 1-3).

Appellant calls Appellee for information regarding the 902 transmission and is informed by Appellee that he has parts that will fit Appellant's 1932 Super 8 903 Packard (Tr. 43 ln.16-20; Def. Ex. 205). The only item specifically stated between the two parties was the 902 3-speed transmission among the unspecified 903 parts Appellee represented he had for Appellant's car. Appellant and Appellee start talking about cars, what they own and what they like. Appellee text Appellant "Please send me: 3. Some pictures of your Packard 4. Some pictures of cars you want to sell (I like really old cars 1936 and earlier." (Def. Ex. 211, Text page 1). Appellee text Appellant, "This is me:" Def. Ex. 211, text pages 11, 12, 13 and 14, followed with pictures of his cars, Text page 12 shows the 1932 Packard that Appellee testified in Court that he sold for \$100,000 while evidence he provided, showed the car sold at auction for \$147,000, with Appellee splitting the \$47,000 profit 50/50 with auction company. (Tr. 95 ln. 16-25; Tr. 96 ln. 1-7; Tr. 82 ln. 17-

18; Def. Ex. 209). Def. Ex. 209 also shows Appellee owned a model 1947 Lincoln, but he later contradicts himself to The Court stating, “it’s a 1948 Lincoln Continental - - and I don’t own that” (Tr.103 ln. 24-25; Tr. 104 ln. 1-15; Def. Ex. 209), Vehicle Purchase and Auction deal recap pages show Appellee owned a 1947 Lincoln with repairs of \$650.

Appellant ask Appellee if he could pick up some Jaguar parts close to him. Within nine days, Appellee sends Appellant a picture of Jaguar parts missing the box of small parts. (Tr. 34 ln 9-14), before Appellee delivers balance of Jaguar parts to Appellant. The Court not allowing the signed parts trade between Appellant and Dr. Mueller or the pictures Appellee and Appellant exchanged of Jaguar parts that occurred between Appellant and Dr. Mueller as evidence, but Court permitted Appellee to introduce the exact pictures in our text communications that contained a timeline of missing Jaguar parts from Appellant’s preliminary pretrial statement as Def. Ex. 206-207-208.

Appellee shows up around 1pm, (Tr. 39 ln 6-10; Tr. 71 ln. 10-13). Appellant removed XK jaguar parts and set them next to the old Jaguars, call Dr. Mueller about missing parts (.7 hour?), (Tr.33 ln. 12-55; Tr. 34 ln.1-13). Appellant and Appellee look at Appellant’s 22 cars for a possible trade (2 hours?) (Tr. 72 ln. 1), Appellant: My project cars for parts (Tr. 76 ln. 4), Most specifically since the parts look identical and the parts were not brought into Appellant’s shop next to his

Packard until right before going out for dinner, after the \$8,000 payment was provided directly from Dr. Bailey around 4 pm, and still a percentage of the parts were to be brought in by Appellee's friend while we went out to eat a quick dinner. We (Appellee, Appellant and Dr. Bailey) went for dinner (Tr. 39 ln 24-25 Def. Ex. 205). "What was it around? 4:30. (Tr. 39 ln 8). Appellee wanted to leave town right away instead of coming in after lunch to see if we could fit some parts (Def. Ex. 205).

Appellant: No. The Court: Okay. You're relying on his representations?

Appellant: Yeah. Yes, I am. (Tr. 40 ln. 2-14). Appellant: Well, we looked at them, where they were in the pickup, on the ground. And they looked to be Super 8 parts (Tr.72 ln. 13-15).

Once Appellant found parts were wrong and misrepresented, he text Appellee asking: Exhibit 8). "I want \$5,000 back as engine and many parts do not fit as you stated to me and my girlfriend" The \$1,000 price Appellant paid for the Mustang and the stated value of the used 3 speed standard 8 transmission of \$200 from another Packard owner is a consideration of a reasonable value range for the used Packard Parts expected from Appellee. Therefore, Appellant asked for the \$5,000 refund, (not a return) (Tr. 29 ln. 18-20; Plaintiff's Exhibit 8) because standard 8 (902) have less value, as Super 8 (903) parts are much more valuable. If the Packard parts were as represented, it is agreed by both parties the parts would have

increased Appellant's unrestored Super 8 (903) Packard's value up an additional \$100,000 (Pg. 44 ln 3-9; Def's Ex. 205), once running to a value of \$300,000 (to three times the value of Appellee's restored Packard Standard 8 {902} (Tr. 38 ln 3-13), (if the parts included everything needed to complete the drivetrain to running status, but they did not include many other parts needed) to determine parts value per MT UCC Section 30-2-305 Open Price Term.

Appellee selectively deletes text communications between Appellee and Appellant. Appellant's text Exhibits of Appellee's deleted text (timeline order); 17, 18, 6, 5, 8, 9, 10, 11, 7. In these papers the Appellant provided evidence to the Court that the Appellee had selectively deleted certain pictures and written text messages from those he provided the Court in his Answer to Complaint & Def. Exhibit 211, this evidence was crucial to the Appellant's case and the alterations and deletions were proven to be true by the Appellant's evidence brought at trial during cross examination with the Judge observing the undeleted communications on the Appellant's phone and shown as exhibits. (a) **Admission to \$8,000**

agreement on misrepresented Packard parts. Appellant: When you didn't respond to my calls because you were sleeping. (Tr. 27 ln.3-4) ---- **On April 21, 12:43 pm.** "will you give me a call? Not Super 8 Parts! What are you going to do?" (Tr. 27 ln. 6-7; Plaintiff's Ex. 17; Def. Ex. 205). **April 22, 8:44 am**, a text Appellee **deleted** from the two party's communications; Appellant: Can you find

me the convertible top and other needed parts? (Tr. 27 ln. 9-10; Plaintiff's Ex.6; Def. Ex. 205). Appellee: ---"I actually **blocked** him after that." (Tr. 27. Ln. 19-20). **April 22, 8:49 am**, a text Appellee **deleted** from the two party's communications; Appellant: "I would prefer a positive relationship than the means to a negative experience" (Tr.27 ln. 23-25; Plaintiff's Ex.18). He (Appellee) says **—he blocks Appellant, but Appellee later did say** (Tr. 28 ln. 13) **April 22, 9:05 am**, Appellee: **"Sorry I missed your call and messages. I've was sleeping all day yesterday. Heading to Mexico with family and won't be back until Thursday. I'll call you when I get back to work this out."** I'll call you when I get back to work this out. No mention of \$7,000 or anything like that"—**He blocked me, but why did he communicate afterwards and, "sorry I missed your calls" and "I'll work this out"?** (Tr.28 ln. 13-22; Plaintiff's Ex. 5) May 1, 9:00 am, a text Appellee deleted from the two party's communications; Appellant: "It's now nine days, what are your plans?" (Tr. 29 ln. 17-18; Plaintiff's Ex. 8), **May 1, 10:09 am**, a text Appellee **deleted** from the two party's communications; Appellant: I want \$5,000 back as engine and many parts do not fit as you stated to me and my girlfriend." (Tr. 29 ln. 18-20; Plaintiff's Ex 8). **May 1, 11:43 am**, a text Appellee **deleted** from the two party's communications; Appellant text: "sent him"1932 Packard word document of 1st draft of complaint. (Tr. 30 ln. 2-3). **May 1, 12:00 pm**, a text Appellee **deleted** from the two party's communications; Appellant:" this will be

completed and filed this week. Please make an attempt to remedy this issue within 48 hours.” (Tr. 30 ln. 3-5; Plaintiff’s Ex. 9). **May 1, 1:07 pm**, a text Appellee **deleted** from the two party’s communications; Appellant text: “And then draft two”1932 Packard word document of 2nd draft of complaint. (Tr. 30 ln. 10; Plaintiff’s Ex 9). Later in Court, Appellant’s cross examination of Appellee on stand, **showed Judge all deleted** evidence from Appellee’s Exhibits while looking at Appellant’s phone and string of **complete unaltered text**. Plaintiff’s Exhibit 4 (first page, Drivers side **20 bolt**-count of engine side panel missing from front and passenger side engine pictures text to Appellee **April 19, 2018**, 2nd page Appellant during trial, provided picture of standard 8 engine **18 bolt**-count to show differences), the three body pictures showing vent doors between the front and rear doors which only Super 8 cars have. Appellant’s text Exhibits of missing text (timeline order); 17, 18, 6, 5, 8, 9, 10, 11, 7, showing Appellee had enough knowledge of Packard models to selectively delete such important information. Last text Appellee sent was after he received Complaint from Appellant on **June 1, 2018 5:30p.m.** now asking for an additional \$7,000. In cross examination Appellant ask **if Appellee blocked Appellant, why did we get communication, Appellee stated it was his wife who sent text** (Tr. 108 ln 10-19). These deletions resulted in an altered text conversation to support Appellee’s contention that he didn’t know that Appellant’s Packard was a Super 8 (903) Packard. This was

crucial evidence to the Plaintiff's case. **The Court does not consider deleting or altering evidence is important.** (Tr. 25 ln. 13-25).

Appellee represents parts are "All in original boxes to one (the starter), maybe two or three or four", the Starter not contained in the Rasmussen parts list. (Tr. 96 ln. 14-25; Tr. 97 ln. 1-24).

10:49:37 Judge. Disallows Appellant's witness Dr. Bailey a party and factual witness regarding the events leading up to the lawsuit, waiting at VA hospital to teleconference for approximately two hours. Denying a key material witness who was directly involved in the transaction and paid for the Packard parts with her check, reaffirmed by Appellee's direct representations of the parts being Super 8 (903).

The District Court may have erred on #20 as the Judge may have become predisposed against Appellant in the beginning of the trial when Appellant strongly and with regretted emotion protested that the Judge was not making enough allowances so Appellant's crucial witness could testify. This was a finding that caught Appellant by surprise as there had been two previous occasions in which the Judge had said/written that Dr. Bailey would be allowed to testify. The change in court date from Election Day to the day after created constraints in the availability of the witness and it was not previously understood by Appellant that no leeway would be given for the manner of her video- participation. The Judge

then reprimanded Appellant for taking longer than expected on his testimony. This disapproval of Appellant's demeanor may then have unfairly colored the Court's opinion of whether Appellant or Appellee's testimony was more credible. But logic and reason should matter more. No list of parts were ever provided or extra funds asked for, until Appellee responded to Appellant's Complaint, approximately 55 days after delivery of misrepresented parts. Why, when there was no defined invoice or list, of merchandise would Appellant have verbally agreed to a sum of \$15,000 or any price at all?

III. Argument

A. Summary of Argument

1. (a) After the Court listened carefully to their testimony and arguments and observing their demeanor, District Court erred in finding their conclusion #20 that Appellee could be considered credible by overlooking that Appellee perjured himself under oath, by stating that Appellee sold the 1932 Packard for \$100,000.00 when the evidence he provided proves that said vehicle was sold for \$147,000.00 with Appellee splitting the \$47,000 profit 50/50 with auction company while again, Appellee's testimony that he did not own a 1947 Lincoln continental while he provided evidence to the contrary in his exhibits. And while also observing Appellee allege his blocking Appellant's text and calls but texts back to

Appellant with an apology for missing such calls and text. The Court does not consider deleting or altering evidence is important.

2. The District Court erred in the Findings of Fact on Judicial Canons to be determined, when the Court reworded, changed and altered the Appellant's Position in regard to the Appellant's own testimony, stated monetary amounts, exhibits, and discovery provided while leaving out important information contained in the same afore mentioned to slant the Appellant's position.

(a) The District Court erred in Finding of Fact, Appellant's Position # 12 by rewording testimony, exhibits and the exact text statement. The Court rewording: Appellant demandd that Appellee return the \$8,000 in return for the Packard parts Appellee had delivered. Appellant text stated: "I want \$5,000 back as engine and many parts do not fit as you stated to me and my girlfriend" (refund 'not a return'), (Tr. 29 ln. 18-20; Plaintiff's Exhibit 8).

(b) The District Court erred in Finding of Fact, Appellant's Position #10 by rewording "the parts Appellant was buying would be compatible 903 Packard", *contradicting* Appellant: And through all our conversations --- Mr. Rasmussen, and I, and other individuals with Packards – I'm learning with what my car is and what it needs. Mr. Rasmussen says these parts that I have will not work on your Packard. But the transmission will. (Tr. 15 ln. 14-19; Tr.18 ln. 2-25; Tr.19 ln. 1-18; Def. Ex. 201).

(c) The District Court erred in its Finding of Fact, Appellant's Position #6, by rewording (1) Rasmussen also told Appellant that some parts were compatible with either a 902 Packard or a 903 Packard. Appellant: "And through our conversations – Mr. Rasmussen, (*{missing}*) "*{and I, and other individuals with Packards – with what my car is and what it needs. Mr. Rasmussen says these parts that I have will not work on your Packard. But the transmission will}*". (Tr. 18 ln. 2-20; Tr. 17 ln. 8-9). (2) later in 2017. contradicting, Appellant stated that he contacted Mr. Rasmussen early march or may of 2017, (Tr. 17 Ln 10-12) (Tr. 17 ln. 8-12; Tr. 18 ln. 12-25; Tr 19 ln. 1-5).

(d) The District Court erred in its Finding of Fact, insofar as it misstated Appellant's Position #27. Appellant's voicemail Def. Ex. 202 0:10 and 0:17. Appellant was interested in "all the 32 Packard stuff you have." And Appellant wanted to use those parts "to work on {his} car." Court's misrepresentation is slanted. Actual voicemail: "I'd like to have all the '32 Packard stuff that you have that would work on my car." (Tr.56 ln. 25; Tr. 57 ln.1) a year earlier, it had already been determined Appellant's Packard was a Super 8, 903. Also, the Courts transcriptionist also changed the verbiage "Super 8" in three separate locations to read "Not too great parts" (Tr.50 ln.5; Tr.107 lns.10;12). Only after Appellant provided Plaintiff's Exhibit #17 transcriptionist a copy, the transcript would be changed.

(e) The District Court erred in Finding of Fact, Appellant's Position #9. The Court states, "Appellant also contends that, before Appellee left for Billings, Appellee agreed to go to Austin, Texas and pick up a collection of Jaguar parts that Appellant was acquiring from a seller in Austin and deliver them to Appellant in Billings". The Court left out or overlooked Appellee's own testimony, "Appellee: So I told him I would help him out. He said, 'How far away is blah, blah, blah.' I said, 'I'll go pick it up. It's an hour away'" He did not give me a parts list. I didn't ask him. I thought I was doing him a favor and helping him out. Got the parts, came back home. Put parts back in my truck. And left to Montana---" (Tr. 88 ln. 23-25; Tr. 89 ln. 1-5).

(f) The District Court erred in Finding of Fact, Appellant's Position #8. The Court erred in excluding the fact Appellant knew the transmission was a 902 three speed with the verbiage to include the transmission as a 903.

(g) The District Court erred in Finding of Fact, Position #21, by finding that in January 2017 Kucera contacted Rasmussen to find Packard Parts. ignoring Plaintiff's Ex. 3, Bill of Lading dated February 26, 2017 showing Kucera did not have a Packard February 26, and time related statements (Tr. 17 Ln 10-12; Tr. 17 ln. 8-12; Tr. 18 ln. 12-25; Tr 19 ln. 1-5).

(h) The District Court erred in Finding of Fact, Position # 38 by rewording testimony, exhibits and the exact text statement. ignoring, The Court rewording:

Appellant demanded that Appellee return the \$8,000 in return for the Packard parts Appellee had delivered. Appellant text stated: “I want \$5,000 back as engine and many parts do not fit as you stated to me and my girlfriend”. (refund ‘not a return’), (Tr. 29 ln. 18-20; Plaintiff’s Exhibit 8).

3. As noted by the Court in its own admission of Fact # 23, “The Court also finds sometime early in March 2017- -the 902 Packard parts Rasmussen owned. Kucera received the list and determined he was only interested in the transmission included in the list”. A year after Appellant had already rejected all those exact same non-transmission parts, he knows will not fit his car, Appellee had to have represented that he had other Packard parts other than just those he got from Rasmussen. It would have ended the deal. That would explain why Appellee did not provide a list or price of what he was bringing. That somehow, Appellee convinced the Court, after he cleverly deleted very specific information from his communications with Appellant about Super 8 specific detail to guise himself into a polite innocent unknowing one-time car trader. This may explain why Appellee would not let Appellant bring any parts into his shop until he received the cash or cashier’s check and needed to leave town immediately. Once Dr. Bailey handed the check over to Appellee, She, Appellee, Anthony and I started to bring the heavy parts approximately 30 yards into the shop next to the old Packard inside. Appellee

had already been compensated with the missing Jaguar parts, was selling an unwanted large disassembled engine and other used parts misrepresented at a much more desirable Super 8 price. It was the Appellee that was being disingenuous by planning to force the deal by insisting that the very much desired transmission will only be sold in a larger lot than Appellant was anticipating. The District Court erred in allowing into evidence and discounting its effects, phone texting communications wherein the Appellee deleted important information from and then was allowed to introduce the altered version into evidence for the benefit of Appellee's case. These alterations and deletions of the texting communications between Appellant and Appellee resulted in damage to the Appellant in that the alterations and deletions misled the Court into believing that the Appellee did not know that Appellant's Packard was a Super 8 (903) Packard.

4. Whether the Court erred after permitting a party and factual witness to testify via video conference at the Pretrial Conference which took place at approximately 4:45pm Monday November 5, 2018. (All court offices closed for election day on Tuesday). When Court resumed again at 9:04 a.m. Wednesday November 7, 2018, the Court again permitted Appellant's witness to testify and gave the Appellant time to set up the video conference equipment but then during

mid-trial the Court denied Appellant time to set up video conference equipment for the party and factual witness to give testimony.

Conclusion

Appellant also reiterates and alleges that Appellee perjured himself under oath, by stating that Appellee sold the vehicle for \$100,000.00 when the evidence provided proves that said vehicle was sold for \$147,000.00. Appellant also reiterates that the Court erred by changing, altering or rewording Appellant's testimony when reaching the final Findings in this case. Appellant also reiterates that the Court erred by allowing communications that had been altered, changed or deleted by the Appellee, which was also proven by a preponderance of the evidence presented at trial and that Appellant was denied his right to present witnesses, even though the Court had given prior notice that Appellant would be allowed to present his witness, via video conference.

WHEREFORE, APPELLANT prays for either a reversal of the final findings made by the District Court in this case, or that a new trial be granted, and for whatever and further relief the Appellate Court herein deems just and equitable.

A handwritten signature in black ink, appearing to read "Mark Ruan", is positioned above the page number.

CAUSE NO. DV 18-0782

This Pro-Se Appellant respect the Montana Commission study and consideration for adoption of a version of the ABA national Code of Judicial Conduct and prays for a close association within the Ninth Circuit toward;

The U.S. Judiciary Act, the Code of Conduct for the United States Judges. (uscourts.gov/rules-policies/judiciary-policies. March 20, 2014) the Federal Rules of Civil Procedures, the Federal Rules of Criminal Procedures, the Federal Rules of Evidence and the Federal Rules of Appellate Procedure address the rights of the self-represented litigants in several places.

(a.) Section 1654 of the title 28 of the United States Code provides: “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” Laws and organizations charged with regulating judicial conduct may also affect pro se litigants. For example, within the Ninth Circuit, the State of California Judicial Council has addressed through published materials the need of the Judiciary to act in the interest of fairness to self-represented litigants.

(b.) The California rules express a preference for resolution of every case on the merits, even if resolution requires excusing inadvertence by a pro se litigant that would otherwise result in a dismissal. The Judicial Council justifies this position based on the idea that “Judges are charged with ascertaining the truth, not just playing referee”. (See Guardianship of Simpson (1998) 67 Cal.App.4th 914, 79 Cal.Rptr.2d 389.)

(c.) “A lawsuit is not a game, where the party with the cleverest lawyer prevails regardless of the merits”. (Adam V. Murakami (1991) 54 Cal.3d 105, 284 Cal.Rptr. 318, P.2d 1348.) (Court of Appeal, Fourth District, Division3, California. Sue GAMET et al., Plaintiffs and Appellants, V. Christopher BLANCHARD et al., Defendants and Respondents. August 29, 2001.)

(d) These suggest “the court should take whatever measures may be reasonable and necessary to insure a fair trial”. The committee notes to the Federal Rules of Civil Procedure rule 56 on summary judgements notes that “Many courts take extra care with pro se litigants, advising them of the need to respond and the risk of losing by summary judgement if an adequate response is not filed. And the court may seek to reassure itself by some examination of the record before granting summary judgement against a pro se litigant.”

For this Pro Se litigant, I respectfully request this Court to hear this case on what I believe are its merits.

Yellowstone County District Court

Minutes Report

Case: DV 18-782

Plaintiff: Mark Kucera

Defendant: Christopher Brady

Hearing Type: Non-Jury Trial

Date: November 7, 2018

Assigned Judge: Donald Harris

Start time: 9:02 am

Court Reporter: Electronically Recorded/606

End time: 11:34 am

Minutes Clerk: Anthony Anderson

Plaintiff's Attorney: PRO SE

Respondent's Attorney: PRO SE

On November 7, 2018, at 9:02 am, this cause comes on regularly before the Court for a trial sitting without a jury.

missing

Before court starts Deputy Clerk of Court retrieves documentation from mediator's office

Present in Court are the plaintiff appearing PRO SE and the Defendant also appearing PRO SE.

Plaintiff states his fiancé, who is a witness, cannot testify via video because of the firewall within the VA Hospital.

The Court tells the Plaintiff that he is the person responsible for setting up video conferencing equipment. The Court will allow him 10 minutes following his testimony in order to set up the equipment for video conferencing.

At 9:07 am, Mark Kucera is sworn and testifies.

Plaintiff states he served a Response to Defendants Answers and Counterclaim on Complaint, Plaintiff's Preliminary Pretrial Statement and Plaintiffs Preliminary Statement's (sic) Additional Claim. Defendant has received them; however, they are not part of the Court's file. According to the Plaintiff, the Mediator had them at mediation. The Court orders the Deputy Clerk of the Court to file these documents.

retrieves

in Texas

From 10:00 am until 10:11 am, the Court takes a brief recess; after which all parties return to the Courtroom as heretofore, and trial of this cause resumes.

At 10:48 am, the Court terminates the cross-examination and explains to the parties that at 12:00 pm this case will be over.

Video is not set up and the Court will not allow the witness to be examined by telephone. The plaintiff explains to the Court that he has not had a chance to have the video set up. The Court tells the parties that it was their choice to retain counsel, and it was explained to them during the final pre-trial hearing what needed to be completed. It is not the Court's fault the parties did not follow its instructions.

At 10:51 am, Christopher Brady is sworn and testifies.

Re: ^_Transcript^_ for ^_DV^_ ^_18^_ -^_782^_

From: Mark Kucera (kuchthird@yahoo.com)

To: Geoffrey.Curtiss@mt.gov

Date: Monday, January 28, 2019, 4:30 PM MST

same on page 107, line 12 "Not too great parts. Please listen close, the correct statement is "Not Super 8 parts. attached is the proper text.

On Monday, January 28, 2019, 4:24:45 PM MST, Mark Kucera <kuchthird@yahoo.com> wrote:

Hello Curtiss,

Thank you for the time doing the transcript.

I have a few questions regarding the finished transcript.

Would you please explain the below issues?

1. The court time started at 9:03:00 am, your transcript starts the court hearing at 08:35:04 am
2. The hearing ended at 11:34:35 am, your transcript ends the hearing at 12:00:06 am.
3. I have not found a transcript time that matches any of the sentences per the CD provided by the Court.
4. Page 107, line 9 & 10 you typed "Not too great parts. Please listen close, the correct statement is "Not Super 8 parts. attached is the proper text.

Thank you again.

Mark Kucera

On Friday, January 25, 2019, 9:16:31 AM MST, Curtiss, Geoffrey <Geoffrey.Curtiss@mt.gov> wrote:

Hello Mr. Kucera,

This is Geoffrey Curtiss. I have attached the transcript and my invoice with the remaining balance information in pdf format. The final bill was \$368.55. Minus your \$250 deposit, there is a remainder of \$118.55. Please send a check to the PO Box on my invoice. If you have any further questions, please let me know.

Thanks,

Geoffrey Curtiss,

Official Court Reporter

CERTIFICATE OF COMPLIANCE

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with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

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