

IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO. DA 19-0068

CARRIE A. PINTAR, d/b/a AMAZING TAXI,
Petitioner/Appellant,

v.

STATE OF MONTANA, MONTANA HUMAN RIGHTS BUREAU, and
MONTANA PUBLIC SERVICE COMMISSION,
Respondents/Appellees.

On Appeal from the Montana Sixth Judicial District Court,
Park County, Hon. Brenda R. Gilbert, Presiding
District Court Case No. DV 2018-107

**APPELLEE MONTANA PUBLIC SERVICE COMMISSION'S
RESPONSE TO APPELLANT'S MOTION TO STAY BRIEFING
SCHEDULE AND REMAND CASE TO DISTRICT COURT**

Counsel for the Respondent/Appellee Montana Public Service Commission (“MPSC”) hereby responds to the Petitioner/Appellant Carrie Anne Pintar, d/b/a Amazing Taxi’s (“Ms. Pintar”) Motion to Stay Briefing Schedule and Remand Case to District Court for Completion of the Record.

Ms. Pintar states in her Motion that “[i]t has come to the attention of the Appellant, upon examining the file at the Supreme Court on May 17, 2019 that the file is not complete. The record does not contain the States exhibits. Moreover, it seems the District Court decided it’s case without the complete record.” Ms. Pintar then requests an Order remanding this case back to the District Court for review and completion of the record.

An examination of the record on file with the Supreme Court and the applicable Human Rights Commission (“HRC”) administrative rule confirm that the record transmitted by the Human Rights Bureau staff (“HRB”) to the District Court and then the District Court transmittal to the Supreme Court is accurate. Therefore, Ms. Pintar’s Motion should be denied by this Court and the briefing schedule should be reset and the case should move forward in front of the Supreme Court.

Ms. Pintar’s HRB Case No. 0170483 was dismissed on February 2, 2018, by the HRB. See Attach. 1, Aff. Kim Cobos, ¶ 5. (June 17, 2019). A Notice of Dismissal was issued to Ms. Pintar allowing her to either proceed to District Court

or appeal the dismissal to the HRC. *Id.* at 3. The Notice of Dismissal paperwork included a copy of the controlling Administrative Rules of Montana, specifically Mont. Admin. R. 24.9.121. *Id.* at 4. The record before the HRC is controlled by Mont. Admin. R. 24.9.121(4) which indicates that HRC does not review the entire HRB file.

Consideration of the objection will be based upon the written record unless oral argument is requested by a party and authorized by the commission. For the purposes of review of objections to a dismissal of a complaint, the written record is comprised solely of the Final Investigative Report of the department, the objection, the briefing of the parties pursuant to this rule, and any attachments to that briefing.

Mont. Admin. R. 24.9.121(4). Notably, 24.9.121(4) allows the parties to attach to briefing the documents they believe to be appropriate. Therefore the parties to an appeal to the HRC determine what constitutes the record. Thus Ms. Pintar had the opportunity to include in the record all documents which she believed to be necessary for review of the HRB decision.

The full HRB record is not transmitted to HRC because the HRC does not review a record to determine if discrimination occurred, but rather to determine whether the HRB abused its discretion. See Mont. Code Ann. § 49-2-511(2)(a). Thus, as indicated above, it was incumbent upon Ms. Pintar to include the evidence of abuse of discretion upon submission to HRC for review. Following an HRC decision to affirm a notice of dismissal by HRB, a party may seek judicial review of the HRC decision. Mont. Code Ann. § 49-2-511(3)(b). The statute indicates that

the function of the district court is to review the HRC (not HRB) decision. Thus, it is the HRC—and not the HRB—record which is relevant for review in this case.

Here, the parties submitted their documents (e.g., the objection, briefing, attachments) and this was reviewed by the HRC. On May 29, 2018, the HRC ultimately overruled Ms. Pintar's objection and affirmed the determination of the HRB to dismiss the complaint. When the HRC receives a Petition for Judicial Review, the actual HRC file is transmitted to the District Court. See Attach. 2, Notice of Transmittal. The District Court issued a decision affirming the decision of the HRC on January 9, 2019.

Ms. Pintar subsequently appealed that decision to the Supreme Court. The Clerk of the Supreme Court issued a Notice of Filing on March 15, 2019 that the District Court record for Cause No. DV-2018-107 consisting of one (1) manila file folder and one (1) manila envelope with the HRC file was received and filed on March 15, 2019. The Supreme Court has the record of both the HRC and the District Court as required by Montana law and administrative rules.

Additionally, I went to the Supreme Court last week to review the file after the filing of Ms. Pintar's motion. The file is consistent with the analysis stated above. Therefore, the MPSC respectfully requests that this Court deny Ms. Pintar's Motion and reset the briefing schedule for Ms. Pintar's initial brief.

RESPECTFULLY SUBMITTED this 17th day of June, 2019.

Montana Public Service Commission

/s/ Justin Kraske

Justin Kraske

Luke Casey

CERTIFICATE OF SERVICE

I, Justin Wade Kraske, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 06-17-2019:

Timothy Charles Fox (Prosecutor)
Montana Attorney General
215 North Sanders
PO Box 201401
Helena MT 59620
Representing: State of Montana
Service Method: eService

Timothy Charles Little (Attorney)
P.O. Box 1728
Helena MT 59624-1728
Representing: Montana Human Rights Bureau
Service Method: eService

Luke Michael Casey (Attorney)
P.O. Box 202601
Helena MT 59620-2601
Representing: Montana Public Service Commission
Service Method: eService

Carrie A. Pintar (Appellant)
P.O. Box 1138
Livingston MT 59047
Service Method: Conventional

Electronically Signed By: Justin Wade Kraske
Dated: 06-17-2019