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By *[Signature]*

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**MONTANA TWELFTH JUDICIAL DISTRICT COURT, CHOUTEAU COUNTY**

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ROBERT SAYERS,  
Plaintiff,

v.

HARVEY WORRALL, personally, DALE  
HANKINS, personally, and STEVE GANNON,  
personally,  
Defendants.

Cause No. DV-17-28

**Order on Sayer's Rule 60 Motion  
and  
Chouteau County's Rule 11 Motion**

CHOUTEAU COUNTY,  
Cross-Claimant,

v.

ROBERT SAYERS,  
Cross-Claim Defendant.

A hearing on Plaintiff/Cross-Claim Defendant Robert Sayers' (hereinafter  
"Sayers") Rule 60 Motion and Cross-Claimant Chouteau County's (hereinafter  
"Chouteau County") Rule 11 Motion for Sanctions was conducted on May 29, 2019 with

Kellie G. Sironi and Susan B. Swimley present on behalf of Chouteau County and Daniel T. Jones and Fernando J. Terrones present on behalf of Robert Sayers.

Oral arguments were held after which the Court made the following rulings:

#### **FINDINGS OF FACT**

Robert Sayers has been suing Chouteau County for several years. His actions are related to the same set of facts, including but not limited to his allegation that the County wrongfully removed his gate and cattle guards off of a public roadway and arrested him for various actions, including threatening County workers.

Sayers' various actions sought the same relief.

Sayers persisted in improperly using the legal system for his complaints. (Docket No. 77).

In 2017, Sayers filed a new action, naming County employees, Harvey Worrall, Dale Hankins, and Steve Gannon, in their personal capacities (DV 17-28, 12<sup>th</sup> Judicial District).

Sayers' claims against these men involved the same transactions and occurrences as his complaints the previous years.

On November 1, 2017, Chouteau County moved to intervene in the present action pursuant to M.R.Civ. P. 24(a)(2) because Worrall, Hankins, and Gannon were at all time for all allegations acting in an official capacity on behalf of Chouteau County. (Docket No. 4).

Chouteau County styled its action as a cross-claim under Rule 13.

The standards for intervening by counterclaim or cross-claim are the same.

On November 9, 2017, Plaintiff filed *Motion to Disqualify Chouteau County to Intervene and S. Swimley Attorney*. (Docket No. 9). In his filing Plaintiff objected to the factual and legal allegations of Chouteau County's cross-claim.

On November 28, 2017, the District Court entered its Order Granting Motion to Intervene Cross-Claim by Chouteau County. (Docket No 13).

Sayers had twenty-one (21) days from the issuance of the Order to file his Answer to the Cross-Claim.

On December 8, 2017, Sayers filed his Answer to the Cross-Claim as well as a request for reconsideration of objection to cross-claim. *Answer and Brief and Request Reconsideration* (Docket No. 21).

On January 8, 2018, Sayers again objected to Chouteau County's intervention in the case when he filed *Answer to Defendants Notice of Motion Pending Ruling & Brief*. (Docket No. 29).

On January 8, 2018 in *Order On Motions*, this Court denied Sayers' request for reconsideration of the granted Chouteau County intervention and denied Sayers' motion to disqualify Chouteau County as an intervenor. (Docket No. 31).

On January 23, 2018, in his *Answer to Notice of Admission and Brief*, Sayers again objected to the Cross-Claim. (Docket No. 35).

On April 6, 2018, Sayers filed *Motion for Dismissal of Cross-Claimant, Motion for Pre-hearing on Authenticity and Hearsay Exception for Exhibits*. (Docket No. 63). This filing again challenged Chouteau County's intervention and cross-claim regarding declaration Sayers a vexatious litigant.

This Court held a hearing in the action and Chouteau County's cross-claim request that Sayers be declared a vexatious litigant.

Sayers had notice of what Chouteau County was claiming regardless of the claim's label.

Sayers had full due process.

After a noticed hearing, when considering the law and facts, this Court declared Sayers a vexatious litigant.

On October 10, 2018, the Court entered a Notice of Entry of Judgment for the Cross-Claim (the "Vexatious Ruling"). (Docket No. 78).

On October 15, 2018, Sayers filed his Notice of Appeal. (Docket No. 79).

On November 27, 2018, attorneys Jones and Terrones entered their appearance on behalf of Sayers in the Montana Supreme Court.

Sayers' appeal included a request for review of the substantive claims he brought in the underlying action (i.e. "Gannon did have Sayers arrested for putting a Cattle Guard [sic] on his own driveway. . . ." Sayers Opening Appeal Brief, p. 4).

Sayers also appealed the Court's decision to allow the County to intervene. "That they District court Errored By allowing Chouteau county to Intervene as defendants. Harvey Worrall, Steve Gannon & Dale Hankins were all sued personally, the reason was that Steve Gannon county Attorney wanted them to intervene was for county to Pay His legal bill," (Sayers' Opening Appeal Brief, p. 5, errors in original).

The Order of Vexatious Litigant and County's intervention in the case were before the Supreme Court.

On December 26, 2018, Sayers moved the Supreme Court to dismiss the appeal, which it did the following day.

Sayers then filed his a motion to dismiss in this Court, asking this Court to dismiss its Vexatious Litigant Ruling (the “Rule 60 Motion”). Sayers’ Rule 60 Motion again attacked Chouteau County’s intervention as its main basis.

Sayers filed his motion under Rule 60(b)(4), which requires compliance with the deadlines of Rule 59(b), giving Sayers only 28 days after the entry of judgment to file the Rule 60 Motion.

This Court’s Notice of Entry of Judgment was mailed on October 3, 2018 but Sayers did not file his Rule 60 Motion for 79 days later on December 26, 2018.

Sayers first complained this Court had no jurisdiction to hear the County’s cross-claim in his Rule 60 Motion.

Chouteau County wrote December 31, 2018, asking Sayers to withdraw his Rule 60 Motion, which letter complied with M.R.Civ.Pro.5.

The County’s Rule 11 Motion complies with Rule 11(c)(2), M.R.Civ.P., satisfying the 21-day safe harbor period.

Mr. Sayers refused to withdraw his Rule 60 Motion.

Sayers’ Rule 60 Motion elevated form over substance. It made the unfounded claim that the Court had no jurisdiction over Chouteau County’s intervention because of the name of the claim by which it is intervening rather than the claim’s substance. Sayers alleged that the Court’s jurisdiction and power to rule on Chouteau County’s vexatious litigant claim was removed or never attached because of how Chouteau County styled the caption of its claim.

The Rule 60 Motion is frivolous; without legal or factual basis; costs everyone unnecessary expense of time and money; and increases the delay in resolving the vexatious litigant issue.

Sayers was the party in *Sayers v. Worrall et al / Chouteau County v. Sayers*, Montana 12<sup>th</sup> Judicial District Court, DV 17-28 as well as Chouteau County, the subject matter is the cross claim for vexatious litigant, the issues are the same (Mr. Sayers objected to the County's intervention and the Cross-Claim not less than three times and arguably five times), and the capacities of the person in reference to the subject matter had not changed.

Sayers and his counsel had notice, opportunity to appear, and a reasonable opportunity to respond to the County's Rule 11 Motion.

#### CONCLUSIONS OF LAW:

Rule 11 M.R.Civ.P prohibits abuse of the legal process. *See Byrum v. Andren*, 2007 MT 107, ¶32, 337 Mont. 167, 159 P.3d 1062 (quoting *Brandt v. Sande*, 2000 MT 98, ¶35, 299 Mont. 256, 1 P.3d 929, citing *D'Agostino v. Swanson*, 240 Mont. 435, 446, 784 P.2d 919, 926 (1990)).

A fundamental purpose of Rule 11 is to reduce frivolous claims, defenses or motions and to deter costly meritless maneuvers to avoid delay and unnecessary expense in litigation. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9<sup>th</sup> Cir. 2002)(internal citation omitted) (discussing the Federal version of Rule 11).

A finding of significant delay or expense is not required under Rule 11. *Christian*, 286 F.3d at 1127.

When a party's counsel files a pleading, he certifies that, to the best of their "knowledge, information and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;  
....;
- (2) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Mont. R. Civ. Pro. 11.

By signing a pleading for submission to the Court, the person certifies he or she has made an inquiry reasonable under the circumstances that the claims are supported by existing law (or contain a good-faith argument to change existing law), the facts have evidentiary support, and the pleading is not filed for an improper purpose. *In re Guardianship of A.M.M.*, 2015 MT 205, ¶73, 380 Mont. 451, 356 P.3d 474.

If a Court determines "Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rules or is responsible for the violation." Rule 11(c) M.R.Civ.P.; *also see Bulen v. Navajo Refining Co., Inc.*, 2000 MT 22, ¶19, 301 Mont. 195, 9 P.3d 607.

When the rules of civil procedure are abused, litigants and their attorneys are subject to sanctions. *Id.*

This Court has the necessary flexibility to deal appropriately with violations of Rule 11 and has discretion to tailor sanctions to the particular facts of the case. *In re Guardianship of A.M.M.* ¶73 (quoting *Davenport v. Odlin*, 2014 MT 109, ¶9, 374 Mont. 503, 327 P.3d 478).

Monetary sanctions can be used as a punishment of wasteful and abusive litigation tactics in order to deter the use of such tactics in the future. *In re Morin*, 2013 MT 146, ¶38, 370 Mont. 305, 317-18, 301 P.3d 96 (quoting *D'Agostino* 240 Mont. at 444-45, 784 P.2d at 925).

The Rule 60 Motion, filed on December 26, 2018, has no basis in fact.

Article VII, Section 4(1) of the Montana Constitution grants district courts “original jurisdiction in ... all civil matters and cases at law and equity.” *See also*, Mont. Code Ann. § 3-5-302(1).

“Subject-matter jurisdiction is a court’s fundamental authority to hear and adjudicate a particular class of cases or proceedings.” *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶57; *see also Ballas v. Missoula City Bd. of Adjustment*, 2007 MT 299, ¶12 (“Subject matter jurisdiction refers simply to a court’s power to hear and adjudicate a case.”)

Sayers cites no authority for his claim this Court had no subject matter jurisdiction to hear Chouteau County’s vexatious litigant claim because it was an improper “cross claim” that “did not arise from the same transaction or occurrence that was the subject matter of Robert Sayers’ main claim . . . .” (Sayers’ Response Brief, p. 8).

Sayers deliberately and without candor to this Court asserted that Chouteau County’s intervention was an improper cross-claim that could only be brought against a co-party.

Once this Court granted Chouteau County’s intervention in the present action, the cross-claim against Sayers arising out of the transaction or occurrence, which is the subject matter of the original claim were appropriately lodged and adjudicated.

Sayers' Complaint, while naming Worrall, Hankins and Gannon individually in the caption, acknowledged the alleged actions took place while each was a County employee.

Sayers' allegations for which Chouteau County intervened included allegations that involved County's actions of allegedly forging a document, removing Sayers' gate obstructing a public road, removing Sayers' cattle guard from obstructing a public road, Sayers' arrest while confronting Chouteau County employees, the County Attorney not prosecuting a decade old "bad check," and Sayers' arrest after threatening County Commissioners associated with a Human Rights Division decision.

Chouteau County had to enter the lawsuit to defend the prior rulings on the same allegations, present the immunity defenses, if necessary, and seek relief to stop Sayers' repetitive and abusive filings.

By ignoring these facts upon which Chouteau County intervened, the Rule 60 Motion has no basis in fact.

Sayers' withdrawal on December 26, 2018 of his Montana Supreme Court appeal in this case served as the final judgment on the issues decided by the District Court.

"[T]he Supreme Court's dismissal of appeal is *with prejudice* and *constitutes a final judgment of the supreme court.*" Mont. R. App. Pro. 19(2), emphasis added.

The final order of the Montana Supreme Court is the unmodified District Court *Findings of Fact, Conclusions of Law and Order RE: Cross-Claimant Chouteau County's Motion for Summary Judgment* as entered in this case. (Docket No. 77). *See. Touris v. Flathead County*, 2011 MT 165, ¶15, 361 Mont. 172, 258 P.3d 1, *Beasley v. Flathead County*, 2005 MT 121, ¶19, 350 Mont. 177, 206 P.3d 915.

The issues raised in Sayers' Rule 60 Motion are barred by the doctrine of *res judicata*, which bars a party from relitigating a matter that party has already had the opportunity to litigate. See, *Xin Xu v. McLaughlin Research Inst. for Biomedical Sci. Inc.*, 2005 MT 209, ¶19, 328 Mont. 232, 119 P.3d 100, *Carlson v. State Farm Mut. Auto. Ins. So.* 2005 Montana District Court 8<sup>th</sup> Judicial District, BDV 00 – 140(c) ¶19), and *Estate of Watkins v. Hedman, Hileman & Lacosta*, 2004 MT 143, ¶3, 321 Mont. 419, 91 P.3d 1264.

Sayers' claims are barred by *res judicata* because

- (1) The parties or their privies are the same (Sayers was the party in *Sayers v. Worrall et al/Chouteau County v. Sayers*, Montana 12<sup>th</sup> Judicial District Court, DV 17-28 as well as Chouteau County);
- (2) The subject matter of the present and past actions is the same (The subject matter is the cross claim for vexatious litigant);
- (3) The issues are the same and related to the same subject matter (Sayers objected to the County's intervention and the Cross-Claim not less than three times and arguably five times); and
- (4) The capacities of the persons are the same in reference to the subject matter between them.

*Carlson*, at ¶15.

Sayers relies on an unreported federal case to argue "*res judicata* did not bar plaintiff's Rule 60(b)(4) motion mainly because the court never explicitly decided the question of subject-matter jurisdiction." (Sayers' Response Brief, p. 6).

An unreported case does not bind this Court.

Sayers cites no Montana law barring *res judicata* principles from being applied to an argument that a judgment is void.

Sayers' reliance on Peoples v. Sales, 195 Ill. App. 3d 160, 551 N.E.2d 1359 (Ill. Spp. 2 Dist. 1990) is without merit. The case is precedential for Montana District Courts and stands for the proposition that the Illinois court exceeded its statutorily granted

authority when ordered the Illinois driver's services division to issue to a restricted driver's permit to an aggravated sexual abuser.

Sayers' focus on form over substance is unreasonable. The Montana Supreme Court has repeatedly, in all areas of law, rejected to elevate form over substance.

Sayers admits his "motion to dismiss is the result of Chouteau County intervening under Rule 24 while improperly cross-claiming under Rule 13(g)."

Sayers' position that mis-captioning a claim ignores that the standard applied to intervening with a cross-claim is the same standard applied to a counterclaim. M. R. Civ. P. 13.

Because the County's claims arose from the same transaction or occurrence that is the subject matter of Sayers' original action, whether the County styled its claim a cross-claim or a counterclaim is irrelevant.

If Sayers did not agree with this Court's decision, he had a pending appeal to raise it before the Supreme Court. His decision to dismiss the appeal fully adjudicated all claims. After dismissal of the Supreme Court appeal, raising these issues back before the district court is costing time and money for everyone involved.

Sayers' Rule 60 Motion has no factual basis and is precluded by law in a case in which the District Court has already recognized that Sayers has wasted the time and resources of the Court and Chouteau County.

Sayers' Rule 60 Motion is a waste of time, a tactic for delay, and another frivolous move by a vexatious litigant.

Sayers' Rule 60 Motion is untimely.

Despite the seriousness of the accusations raised to Sayers in Chouteau County's request to withdraw the Rule 60 Motion, he continued to proffer the unfounded Motion.

Sayers' response showed no regard for the legal process and their Rule 11 obligations.

Sayers' filing of the Rule 60 Motion violated Rule 11 M.R.Civ.P.

Chouteau County is entitled to sanctions against Sayers in the form of reimbursement of legal fees. Sanctions are an appropriate remedy to deter Sayers from continuing to act as a vexatious litigant.

### **ORDER**

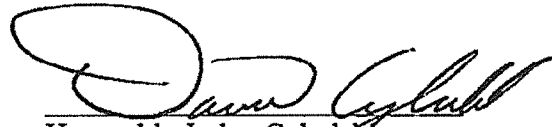
Based upon the briefing in this matter, the oral arguments, and for good cause appearing,

IT IS HEREBY ORDERED Plaintiff Robert Sayers' Rule 60 Motion is hereby DENIED.

IT IS FURTHER ORDERED that Chouteau County's Rule 11 Motion for Sanctions is hereby GRANTED. Mr. Sayers, and not his counsel, will reimburse Chouteau County and each named defendant the total amount of their legal fees incurred in this action from the date it was filed to the current, with the exception of any fees related to the Court's granting of the vexatious litigant claim. Mr. Sayers shall have 10 days after being served with an Affidavit of Attorneys Fees to file a written objection with this Court to any amount listed in the Affidavit of Attorneys Fees. Should the Court overrule any written objection Mr. Sayers files to the Affidavit of Attorneys Fees, Mr.

Sayers will also be liable to reimburse to Chouteau County and each named defendant the legal fees and costs incurred in defending against the overruled objection.

Dated this 2<sup>nd</sup> day of July, 2019.



Honorable Judge Cybulski

cc:  
S. Swimley  
K. Sironi  
D. Jones  
F. Terrones