

FILED

06/16/2020

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 20-0227

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0227

FILED

IN THE MATTER OF:

JUN 16 2020

*Debbie Marie Welsch*

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

Claims of Discrimination, Breach of Contract, Wrongful Discharge with  
Spectrum Medical/Benefis Health Systems.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Eight Judicial District Court,  
Cascade County, The Honorable Judge Elizabeth Best, Presiding.

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**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... ii-vi

STATEMENT OF ISSUES ..... 1-2

STATEMENT OF THE CASE ..... 2-3

STATEMENT OF THE FACTS ..... 3-6

SUMMARY OF ARGUMENT ..... 6-8

STANDARD OF REVIEW ..... 8-16

ARGUMENT ..... 16-17

    A. This is blatant discrimination. Every other employee at the facility was allowed to work until the end of the contract. Every other employee was allowed to apply for positions within the company. Spectrum did not make reasonable accommodation for me to continue to work for the company in any capacity, or apply for another position. ....18

    B. This is breach of contract with theory of detrimental reliance. I underwent those tests and incurred those medical bills only to get my job back, and only because I expected spectrum to pay those bills, as they said that they would. ....18

    C. This also supports my claim of wrongful discharge. If it wasn't wrongful discharge, why tamper with the evidence? If actually broke the rules and created unsafe situations, why not just fire me or write me up. Why the whole charade, making me go to doctors and promising to pay for it and take me back? ..... 6

CONCLUSION.....	17
CERTIFICATE OF SERVICE.....	18
CERTIFICATE OF COMPLIANCE.....	19
ATTACHMENTS .....	20

**TABLE OF AUTHORITIES**

**CASES**

<i>IN RE</i> 122 PENN ST. L. REV,573, PG. 1, (PA)(2017-2018) .....	13
<i>IN RE</i> BETHLEY V. SIMMONS, CAL, NO. 50,788-CA, PG. 7, (LA) (2016) ....	13
<i>IN RE</i> CASEY V. RIEDEL, USDC CD, NO CIV.4-00-CV-20334, PG. 5, (IA)(2002).....	10
<i>IN RE</i> DAGGETT V. WOLLANGK, USCA 7C, NO. 05-4125, PG. 2, (WI) (2006) .....	14
<i>IN RE</i> MESIAS V. CRAVATH, SWAINE, & MOORE LLP, USDC NY, NO 14CIV. 7070 (PAC), PG. 3, (NY) (2015) .....	11
<i>IN RE</i> SINGH V. NEW YORK STATE DEPT. OF TAXATION AND FINANCE, USDC WDNY, NO 06-CV-0299-JTC-LGF, PG. 3, (NY) (2012) .....	9

**ACTS**

AMERICAN DISABILITY ACT.....	9
AMERICAN DISABILITY ACT § 35.149, § 35.150 (1).....	16
AMERICAN DISABILITY ACT OF 1990 (ADA), § 102(d)(4)(A).....	14
CIVIL RIGHTS ACT 1964, § 701 et seq. ....	10
CIVIL RIGHTS ACT 1964, § 703. ....	11
CIVIL RIGHTS ACT 1964, § 703 (a)(1). ....	15

FAIR EMPLOYMENT AND HOUSING ACT (FEHA).....	9
FAMILY AND MEDICAL LEAVE ACT .....	14
FAMILY AND MEDICAL LEAVE ACT OF 1993, § 101 (11), 102 (a)(1)(c).....	11
FAMILY AND MEDICAL LEAVE ACT OF 1993, § 105.....	12
FMLA FACT SHEET #28 .....	12, 13, 14

**STATUTES**

**MONTANA CODE ANNOTTED**

M.C.A. 39-2-904.....	16
M.C.A. 45-7-207.....	10
M.C.A. 50-5-105.....	14
M.C.A. 72-7-407.....	13

**UNITED STATES CODE ANNOTTED**

18 U.S.C.A. § 1001 .....	11, 12, 15, 16
28 U.S.C.A. § 2614 (c)(3)(ii) .....	9
29 U.S.C.A. § 2612 (a)(1) .....	12
29 U.S.C.A. § 2612 (a)(3)(D).....	11
29 U.S.C.A. § 2614 (c)(3)(A)(ii).....	11
29 U.S.C.A. § 2615 (a)(1) .....	12
42 U.S.C.A. § 12112(d)(4)(A).....	14
42 U.S.C.A. § 1983 (2988).....	13
42 U.S.C.A. § 2000e-2 .....	9, 11
42 U.S.C.A. § 2000e-2(l) .....	9
42 U.S.C.A. § 2000e-2(a)(1) .....	15

42 U.S.C.A. § 2000et seq. .... 10

**FEDERAL REGISTER**

FED RULES CIV.PROC. RULE 56 ..... 9

**DISTRICT COURT DOCKETS**

**APPELLANT'S**

DISCLOSURES OF EXPERT WITNESSES FOR DMW, DATED FEBRUARY 28<sup>TH</sup> 2020, PG. 24-26 ..... 5, 11

DMW BRIEF IN SUPPORT OF MOTION TO STRIKE DEFENDANTS BRIEF IN SUPPORT OF MOTION IN LIMINE RE: TRIAL EVIDENTIARY MATTERS AND MOTION IN LIMINE RE: TRIAL EVIDENTIARY MATTERS, DATED MARCH 30<sup>TH</sup> 2020, PG. 8-9 ..... 5

DMW BRIEF IN SUPPORT OF MOTION TO STRIKE DEFENDANTS BRIEF IN SUPPORT OF MOTION IN LIMINE RE: TRIAL EVIDENTIARY MATTERS AND MOTION IN LIMINE RE: TRIAL EVIDENTIARY MATTERS, DATED MARCH 30<sup>TH</sup> 2020, PG. 11-17 ..... 6

DMW FACTS IN SUPPORT OF A MOTION FOR SUMMARY JUDGEMENT RE: DISCRIMINATION, DATED MARCH 16<sup>TH</sup> 2020, PG. 10 ..... 15

DMW SECOND STATEMENT OF DISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT RE: DISCRIMINATION, DATED SEPTEMBER 21<sup>ST</sup> 2019, PG. 70-73 ..... 4

STIPULATION AND ORDER GOVERNING DISCOVERY, DATED JANUARY 23<sup>RD</sup> 2020, PG. 22 AND PG. 24-25..... 3, 4

**APPELLEE**

SPECTRUM MEDICAL'S ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL, DATED DECEMBER 26<sup>TH</sup> 2019, PG. 1-4..... 4

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGEMENT RE: BREACH OF CONTRACT, DATED APRIL 13<sup>TH</sup> 2020, PG. 3..... 8

SPECTRUM MEDICAL'S ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL, DATED DECEMBER 26<sup>TH</sup> 2019, PG. 1-4..... 4

SPECTRUM MEDICAL'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT RE: BREACH OF CONTRACT, DATED MARCH 16<sup>TH</sup> 2020, PG. 6-9..... 3

SPECTRUM MEDICAL'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT RE: BREACH OF CONTRACT, DATED MARCH 16<sup>TH</sup> 2020, PG. 7..... 4

SPECTRUM MEDICAL'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT RE: BREACH OF CONTRACT, DATED MARCH 16<sup>TH</sup> 2020, PG. 11-2 & 15-17..... 3

SPECTRUM MEDICAL'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT RE: BREACH OF CONTRACT, DATED MARCH 16<sup>TH</sup> 2020, PG. 17..... 6

SPECTRUM MEDICAL'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT RE: BREACH OF CONTRACT, DATED MARCH 16<sup>TH</sup> 2020, PG. 18..... 10

**JUDGE BEST**

ORDER AFTER STATUS CONFERENCE, DATED MARCH 20<sup>TH</sup> 2020,

PG. 1-2, ALSO SEE DOCK. #69 AND #72..... 5

## STATEMENT OF ISSUES

1. Did the District Court err in granting Spectrum Motion for Partial Summary Judgement RE: Wrongful Discharge?
2. Did the District Court err in granting Spectrum Motion for Partial Summary Judgement RE: Breach of Contract?
3. Did the District Court err in granting Spectrum Motion for Partial Summary Judgement RE: Discrimination?
4. Did the District Court err to let Spectrum allege that Debbie has a mental disability and or serious health condition in 2015, 2016, or 2017?
5. Did the District Court err to let Spectrum wrongfully discharge Debbie from her Administrative Assistant Position?
6. Did the District Court err to let Spectrum discriminate against Debbie?
7. Did the District Court err to let Spectrum commit breach of contract with Debbie?
8. Did the District Court err to let Spectrum take out her 2016 Basic Competency Checklist out of Debbie's employee file?
9. Did the District Court err to let Spectrum add documents to employee file, after my request for them in Discovery?
10. Did the District Court err to let Spectrum tamper with evidence, in claims with Debbie?
11. Did the District Court err to let Spectrum believe that the first meeting with Spectrum was on September 14<sup>th</sup> 2016 and or September 16<sup>th</sup> 2016? It was on September 21<sup>st</sup> 2016.
12. Did the District Court err to let Spectrum get Debbie's medical records, and medical bills?

13. Did the District Court err to let Spectrum improperly blame Debbie without proper evidence?
14. Did the District Court err to let Spectrum treat Debbie differently than the other Spectrum employees?
15. Did the District Court err to let Spectrum not let Debbie apply for other positions at Spectrum?
16. Did the District Court erred to let Spectrum's; Fitness for Duty paperwork not had any memory problems on it?
17. Did the District Court err to let Spectrum force Debbie to sign a blank FMLA paperwork on Dec. 5<sup>th</sup> 2016?

### STATEMENT OF THE CASE

All of my claims of **DISCRIMINATION, WRONGFUL DISCHARGE** and **BREACH OF CONTRACT**, against Spectrum are obvious, blatant, based in fact, truth and supported by evidence, law, precedent and logic. Spectrum's arguments are specious and contradictory. The facts of the case speak for themselves. Therefore the Appellant respectfully asks Montana Supreme Court to consider all facts, issues, laws and grant that I was discriminated against, wrongfully discharged and penalize of breach of contract with Spectrum. I rightfully deserve justice for the claim of discrimination, claim of wrongful discharge and claim of breach of contract.

On December 5<sup>th</sup>, 2016, I started to get information/forms from the EEOC (Seattle, WA), then the Human Rights Bureau (Helena, MT), and the Unemployment Office, to start my claims against Spectrum. Then in April, 2018, I filed all my proper documentation with the Montana Eight Judicial District Court, Cascade County for my claims against Spectrum.

The District Court on April 14<sup>th</sup>, 2020; decided to Order of Granting Defendant's Motion for Partial Summary Judgement RE: Wrongful Discharge was entered in this matter on September 16<sup>th</sup>, 2019; the Order Granting Defendant's Motion for Partial Summary Judgement RE: Breach of Contract was entered on April 13<sup>th</sup>, 2020; and the order granting defendant's Motion for Partial Summary Judgement RE: Discrimination was entered on April 13<sup>th</sup>, 2020.

On April 21<sup>st</sup>, 2020, I have sent all documentation to start an Appeal process with the Montana Supreme Court.

### **STATEMENT OF THE FACTS**

I worked for Spectrum as an Administrative Assistant at the Cascade County Detention Center from August 17<sup>th</sup>, 2015 until December 5<sup>th</sup>, 2016. *See doc. Spectrum Medical's Statement of Undisputed Facts in Support of Motion for Partial Summary Judgement RE: Breach of Contract, dated March 16<sup>th</sup>, 2020, pg. 6-9.* On that day, all of the employees were notified that Spectrum had lost the jail contract, which would end on March 5<sup>th</sup>, 2017. Employees were offered a severance package and encouraged to apply for other positions with Spectrum. Immediately after that meeting, I was taken aside by some of my bosses and told that I had been making mistakes at my job, and could not work at the jail anymore, due to safety concerns. *See doc. Spectrum Medical's Statement of Undisputed Facts in Support of Motion for Partial Summary Judgement RE: Breach of Contract, dated March 16<sup>th</sup>, 2020, pg. 11-12 & 15-17.* They believed that I had some mental issue and or serious health condition that was causing these mistakes, and told me that I could return to work once I had a doctors/physical therapist complete the Fitness for Duty form that they provided. *See doc. Stipulation and Order Governing Discovery, dated January 23<sup>rd</sup>, 2020, pg. 22 and pg. 24-25.* Spectrum first mentions this on September 21<sup>st</sup>, 2016, and I also expressed concern

about the cost of medical bills; they said that Spectrum would pay for all of them. Then on December 5<sup>th</sup>, 2016, they insisted/forced that I sign a blank request for Family/Medical Leave, which I did. *See doc. DMW Second Statement of Disputed Facts in Support of Motion for Partial Summary Judgement RE: Discrimination, dated September 21<sup>st</sup>, 2019, pg. 70-73 and see doc. Spectrum Medical's Statement of Undisputed Facts in Support of Motion for Partial Summary Judgement RE: Breach of Contract, dated March 16<sup>th</sup>, 2020, pg. 7.*

I complied with Spectrum's demands, seeing my primary care physician and the specialists that he sent me to. After many tests, none of the doctors found any evidence of mental impairment and or serious health condition, but the Fitness for Duty form that Spectrum had provided had no place for any mental issues. It only dealt with physical abilities. Even when I returned the completed form to Spectrum, they refused to let me return to work, and I was notified that I did not qualify for Family/Medical Leave. *See doc. Stipulation and Order Governing Discovery, dated January 23<sup>rd</sup>, 2020, pg. 22 and pg. 24-25.*

I did not sign and return my severance package form because it included a waiver of all claims against Spectrum, and I didn't want to sign away anything until this was cleared up. I did apply for other positions at Spectrum until I received a phone call from them telling me to stop applying. And I received notice from Spectrum saying that they would not pay my medical bills. *See doc. Spectrum Medical's Statement of Undisputed Facts in Support of Motion for Partial Summary Judgement RE: Breach of Contract, dated March 16<sup>th</sup>, 2020, pg. 7.*

These are the facts of the case. Spectrum has repeatedly stated that these facts are not in dispute, in their requests for partial summary judgment. Spectrum admits that this is what happened, that they did these things to me. *See doc. Spectrum Medical's Answer to Plaintiff's Third Amended Complaint and Demand for Jury Trial, dated December 26<sup>th</sup> 2019, pg. 1-4.*

This is blatant discrimination. Every other employee at the facility was allowed to work until the end of the contract. Every other employee was allowed to apply for other positions within the company. I did apply for other positions at Spectrum until I received a phone call on February 9<sup>th</sup>, 2017, at 4:22pm, from 406-455-5160, stating to me, to stop applying for jobs. *See doc. DMW Brief in Support of Motion to Strike defendants Brief in Support of Motion in Limine RE: Trial Evidentiary Matters and Motion in Limine RE: Trial Evidentiary Matters, dated March 30<sup>th</sup>, 2020, pg. 8-9.* Spectrum believed that I had a mental disability and or serious health condition that meant that I could not perform my duties, but Spectrum did not make any reasonable accommodation for me to continue to work for the company in any capacity, or apply for another position. *See doc. Disclosures of Expert Witnesses for DMW, dated February 28<sup>th</sup> 2020, pg. 24-26.*

This is de-facto wrongful discharge. Even though I was not officially terminated until later, I was prevented from working.

This is breach of contract with theory of detrimental reliance. I underwent those tests and incurred those medical bills only to get my job back, and only because I expected Spectrum to pay those bills, as they said that they would.

After exhausting the formal complaint process, I filed suit. In the first round of Discovery, Spectrum demanded that I sign a form releasing all of my medical records. Meanwhile, Spectrum's Discovery questions made it obvious that they had already accessed my medical records, demanding that I admit that I had been diagnosed with certain conditions at specific medical appointments that I had not even told them about. This is a blatant violation of my right to medical privacy, protected by Roe vs. Wade and HIPAA. *See doc. Order After Status Conference, dated March 20<sup>th</sup>, 2020, pg. 1-2, also see dock. #69 & #72.*

Furthermore, in October 2016, I had an exemplary employee job evaluation, meeting high standards in all categories, but when Spectrum finally released my

employee file through Discovery, it contained multiple allegations of wrongdoing, which Spectrum claimed justified my not being allowed to work, and my employee evaluation was missing from the file. *See doc. DMW Brief in Support of Motion to Strike defendants Brief in Support of Motion in Limine RE: Trial Evidentiary Matters and Motion in Limine RE: Trial Evidentiary Matters, dated March 30<sup>th</sup>, 2020, pg. 11-17.* All of these allegations supposedly occurred before my employee evaluation in October, but none of them were in the file at that time, nor were they discussed at the evaluation. If these alleged violations and mistakes were egregious enough to justify termination, they would have precluded high scores, and certainly been discussed at the evaluation. Also in my employee file, numerous pages were included; one of them states that the meeting on September 21<sup>st</sup> 2016 was on September 14<sup>th</sup> 2016. That is not true! Obviously these allegations were added after the fact, blatantly tampering with evidence, and Spectrum violated Discovery rules by omitting my evaluation and adding additional documents. Thankfully, I already had a copy of my evaluation. *See for one of the pages added, see doc. Spectrum Medical's Statement of Undisputed Facts in Support of Motion for Partial Summary Judgement RE: Breach of Contract, dated March 16<sup>th</sup>, 2020, pg. 17.*

This also supports my claim of wrongful discharge. If it wasn't wrongful discharge, why tamper with the evidence? If I actually broke the rules and created unsafe situations, why not just fire me or write me up? Why the whole charade making me go to doctors and promising to pay for it and take me back? If they really believed that I was mentally disabled, or had a serious health condition, why not make reasonable accommodation?

### **SUMMARY OF ARGUMENT**

In my summary argument with Spectrum, for all my facts of truth, they all are supported by my claim of discrimination, wrongful discharge, evidence

tampering and breach of contract. Why evidence tampering, you are asking? Since I requested a copy of my employee file from Spectrum with my first Discovery questions, there was no job evaluation included, dated 07-SEP-2016-03-OCT-2016, and numerous other pages added, which stated that meeting took place in September, happened on the 14<sup>th</sup> not the 21<sup>st</sup> for which it happened. If there was documentation during the meeting, it should have been put in my file with the date of September 21<sup>st</sup>, 2016.

Spectrum whole charade of events that happened at the CCDC, I truthfully, speculate that Spectrum is covering up something bad that happened in the medical department, for which I didn't know about in 2016, at the CCDC. I was being used as a scapegoat for what is being covered up at the CCDC or Spectrum.

Spectrum committed discrimination against me. Every other employee at the facility was allowed to work until the end of the contract. Every other employee was allowed to apply for positions within the company. Spectrum did not make reasonable accommodation for me to continue to work for the company in any capacity, or apply for another position.

This is breach of contract with theory of detrimental reliance. I underwent those tests and incurred those medical bills only to get my job back, and only because I expected spectrum to pay those bills, as they said that they would.

Spectrum committed the act of wrongful discharge. If actually I broke the rules and created unsafe situations, why not just fire me or write me up. Why the whole charade, making me go to doctors and promising to pay for it and take me back?

This also supports my claim of wrongful discharge. If it wasn't wrongful discharge, why tamper with the evidence? I had an exemplary employee evaluation, meeting high standards in all categories. This states to me that I was doing my job correctly. In September of 2016, in the meeting stating that I wasn't

doing my job correctly and to my employee evaluation is dated 07-SEP-2016-03-OCT-2016. As you see these dates overlap each other, and I was doing my job accurately and I was dismissed for doing my job correct.

### **STANDARD OF REVIEW**

The Supreme Court needs to review the decision of the Montana Eighth Judicial District Court, Cascade County, with the Honorable Judge Elizabeth Best, presiding. The District Court refused to consider my Second Motion for Summary Judgement RE: Discrimination & Breach of Contract and my Second Facts/Statements in Support of Motion for Summary Judgement RE: Discrimination & Breach of Contract after I emailed it to Spectrum and Tina Henry/Clerk of District Court on April 16<sup>th</sup>, 2020. These documents should have been submitted to my claims against Spectrum.

*See DOC Order Granting Defendant's Motion for Partial Summary Judgement RE: Breach of Contract, dated April 13<sup>th</sup>, 2020, from District Court. dated April 13<sup>th</sup>, 2020, pg. 3, it states; "agreed on September 16<sup>th</sup>, 2016, to pay for one medical appointment for Welsch, and did pay for that appointment." This statement tells me that the District Court wrongfully admitted evidence for abuse of discretion. Also there are all the other facts in my claims, that the District Court did not review and got the facts wrong for clear err.*

I will present below my arguments and how to review the decision of the District Court.

I received my 2016 Basic Competency Checklist (Job Evaluation) dated 07-SEP-2016-03-OCT-2016 on my employee email. I had an exemplary employee evaluation, meeting high standards in all categories. This states that I was doing my job correctly.

In 42 U.S.C.A. § 2000e-2(l) states; It shall be unlawful employment practice for a respondent, in connection with selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin. Also in *Singh v . New York State Dept. of Taxation and Finance, USDC WDNY, NO 06-CV-0299-JTC-LGF, pg. 3, (NY) (2012)* states; that a District Court has duty not only to liberally interpret pro se submissions, but also to give pro se plaintiffs “extra consideration” and special latitude on summary judgement motions. See *Fed. Rules Civ. Proc. Rule 56*, and 28 U.S.C.A. § 2614 (c)(3)(ii).

With the reference from 42 U.S.C.A. § 2000e-2(l), I was applying for different jobs in the city of Great Falls, including Spectrum/Benefis. On the 9<sup>th</sup> of February, 2017, I received a phone call from Benefis HR at 4:22 pm, from this phone number 406-455-5160. It was a female voice, but she told me not to apply any more for any jobs at Spectrum/Benefis. In the *American Disability Act*, the employer is required to make reasonable accommodations to allow the employee to continue working for the company, including allowing employee to apply for other positions within the company.

Whether an “adverse employment action” was caused by the employee’s disability is irrelevant to a failure to accommodate claim under *Fair Employment and Housing Act* (FEHA); the employer’s failure to reasonably accommodate a disabled individual is a violation of the statute in and of itself,

Spectrum shows that there has been evidence tampering and or adverse inference in my employee file. By taking out evidence and putting in other evidence in my employee file. How I know this, my job evaluation was not in my employee file at my request, and that a meeting with me on the incorrect date or no date on document. Spectrum did not state a legitimate, nondiscriminatory reason

for adverse employment actions. See doc. *Spectrum Medical's Statement of Undisputed Facts in Support of Motion for Partial Summary Judgement RE: Breach of Contract, dated March 16<sup>th</sup>, 2020, pg. 18*. It also states in *Casey v. Riedel, USDC CD, NO CIV.4-00-CV-20334, pg. 5, (IA)(2002)*, series of retaliatory actions falling short of discharge or termination can constitute adverse employment action, as would support prima facie case of retaliation under Title VII; such series of actions may include reduction of duties, disciplinary action, negative personnel reports, and "papering" file to support employer's ultimate recommendation of termination. *Civil Rights Act 1964, § 701 et seq.*, and *42 U.S.C.A. § 2000e et seq.*

*M.C.A. 45-7-207* states; a person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted the person: alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in the proceeding or investigation; or makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in the proceeding or investigation. A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000 or both.

Spectrum claims on September 21<sup>st</sup> 2016, that I had mental disabilities, memory issues and or serious health condition. Spectrum has my medical records from September 1<sup>st</sup> 2016 to present. The records speak for themselves and show that I do not have mental disabilities, memory issues or a serious health condition. Spectrum has made a false representation under statute by whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or

representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both. 18 U.S.C.A. §1001.

The *Family and Medical Leave Act of 1993*, § 101 (11), 102(a)(1)(c) states the following; Individual must be incapacitated to have a “**serious health condition**”. See doc. *Disclosures of Expert Witnesses for DMW*, dated February 28<sup>th</sup> 2020, pg. 24-26. In 29 U.S.C.A. §2614 (c)(3)(A)(ii) states; a certification issued by a health care provider of the eligible employee, in case of an employee unable to return to work because of a condition specified in section 2612 (a)(3)(D) of this title. 29 U.S.C.A. §2612(a)(3)(D) states; Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

In the United States Courts have decided in several cases that severely limit civil rights claims and remedies available to a plaintiff claiming Improper Blame and also claiming employment discrimination. There should be proof in facts before you blame someone for doing something with no proof.

For example in *Mesias v. Cravath, Swaine, & Moore LLP*, USDC NY, NO 14 CIV. 7070 (PAC), pg. 3, (NY), (2015), an Haitian employee’s allegation that her supervisor blamed her for mistakes that was made by coworker failed to give rise to inference of discrimination, as required to state claim against employer for national origin discrimination under Title VII; only nexus between allegation and employee’s national origin was that coworker who allegedly made mistake was not Haitian, and nothing in complaint indicated that supervisor blamed employee for mistake because of her national origin. *Civil Rights Act of 1964*, § 703, and 42 U.S.C.A. § 2000e-2.

Spectrum has made false allegations of wrong doing, with no proof. Under the statute by whoever, in any matter within the jurisdiction of any department knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry. *18 U.S.C.A. §1001* December 5<sup>th</sup>, 2016, Spectrum insisted/forced that I sign a blank request for Family/Medical Leave, which I did. I do not have any mental disabilities, memory issues and or serious health condition. By my job evaluation I was exemplary employee, and qualified to work in my position.

An involuntary-leave claim arises under the FMLA when; an employer forces an employee to take FMLA leave when the employee does not have a serious health condition that precludes her from working. *Family and Medical Act of 1993 § 105*, and *29 U.S.C.A. § 2615 (a)(1)*. In assessing an FMLA interference claim, the issue is simple whether the employer provided its employee the entitlements set forth in FMLA, for example, a 12-week leave or reinstatement after taking a medical leave, *29 U.S.C.A. § 2612 (a)(1)*. In *FMLA Fact Sheet #28* it states under certification; when an employee requests FMLA leave due to his or her own serious health conditions or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition.

On September 21<sup>st</sup> 2016, Terry Preiti stated to me that Spectrum would pay for all my medical bills (plural). With this promise to me, Spectrum committed a Breach of Contract with theory of detrimental reliance.

In *Bethley v. Simmons, CAL, NO. 50,788-CA, pg. 7, (LA) (2016)*; states; a tacit acknowledgment occurs when a debtor performs acts of reparation or indemnity, makes an unconditional offer or payment, or lulls the creditor into believing he will not contest liability. Conversely, mere Settlement offers or conditional payments, humanitarian or charitable gestures, and recognition of disputed claims will not constitute acknowledgments.... Our courts have added to the above generalizations other criteria that evidence an acknowledgement, including undisputed liability, repeated and open ended reassurances of payment, and continuous and frequent contract with the creditor throughout the prescriptive period. Also in *FMLA Fact Sheet #28* it states under certification; when an employee requests FMLA leave due to his or her own serious health, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (**at the employer's expense**) and periodic recertification of a serious health condition.

*M.C.A. 72-7-407* states; The remedy for a powerholder's breach of a contract to appoint or not appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Furthermore, even if I had been diagnosed with mental disabilities, memory issues, and or serious health condition, that would constitute a disability, and Spectrum must also consider whether I should be reassigned to a different position that was available. Which Spectrum did not do! *122 Penn St. L. Rev, 573, pg. 1, (2017-2018)* shows that this law limits employers as to the amount and depth of information they may obtain when attempting to certify their employee's alleged medical conditions.

In *42 U.S.C.A. §1983 (2988)* reads: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the

District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. *Re: Daggett v. Wollangk, USCA 7C, NO. 05-4125, pg. 2, (WI) (2006).*

I complied with Spectrums demands, seeing my primary care physician and the specialist as well. With all this testing, none of my doctors found evidence of mental disabilities, memory issues, and or serious health condition. Spectrum provided me with fitness for duty paperwork; this paperwork had no place for mental issues. It only dealt with physical abilities! Even when I returned a completed form, spectrum refused to let go back to work.

For example; an employee out on medical leave sued the Postal Service, claiming that the Service's failure to reinstate her unless she submitted to a fitness for duty medical examination was a violation of the *Family and Medical Leave Act* (FMLA). It also states in *FMLA Fact Sheet #28*; in Job Restoration; upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy. Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave.

*Americans with Disabilities Act of 1990 (ADA), § 102(d)(4)(A)*, does not confer upon employers an affirmative right to conduct job-related examinations, but merely exempts such examinations from its prohibitions. *Re: 42 U.S.C.A. § 12112(d)(4)(A).*

This is blatant discrimination! Every other employee at the facility was allowed to work until end of contract, and allowed to apply for other positions

within the company. Spectrum did not accommodate for me to continue to work for the company. I was defiantly treated differently than any other employee for Spectrum.

*M.C.A. 50-5-105* states; All phases of the operation of health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

A plaintiff establishes prima facie case of discrimination under Title VII by demonstrating that: (1) she was in a protected group, (2) she was qualified for position, (3) she was subject to adverse employment action, and (4) adverse employment action occurred under circumstances giving rise to inference of discrimination. Which I have done, *see doc. DMW Facts in Support of a Motion for Summary Judgement RE: Discrimination, dated March 16<sup>th</sup> 2020, pg. 10, Civil Rights Act of 1964, § 703 (a)(1), and 42 U.S.C.A. §2000e-2(a)(1).*

With all this information at hand, you can see why I have a Discrimination Claim, Wrongful Discharge Claim, and Breach of Contract Claim against Spectrum.

Spectrum has made a false representation under statute by whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both. *18 U.S.C.A. §1001.*

*Americans with Disabilities Act, § 35.149, § 35.150 (1)*, except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or usable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities.

Spectrum committed Wrongful Discharge! With all the facts above, in *18 U.S.C.A. § 1001* states; false representation under statute prohibiting making of false statements to the United States requires proof that defendant knowingly made false or fraudulent statement; concealment requires proof of willful nondisclosure by means of trick, scheme, or device.

*M.C.A. 39-2-904* states; Elements of wrongful discharge – presumptive probationary period. The discharge was not for good cause and the employee had completed the employer's probationary period of employment.

### **ARGUMENT**

My argument with Spectrum, with all my facts, they are supported my claim of discrimination, wrongful discharge and breach of contract. If it wasn't wrongful discharge, it was Discrimination! If it isn't breach of contract, it was tampering with the evidence! In all, with this whole charade of events from Spectrum, I speculate that Spectrum is covering up something that happened in the medical department in 2016, at the CCDC.

Spectrum committed discrimination against me. Every other employee at the facility was allowed to work until the end of the contract. Every other employee was allowed to apply for positions within the company. Spectrum did not make

reasonable accommodation for me to continue to work for the company in any capacity, or apply for another position .

This is breach of contract with theory of detrimental reliance. I underwent those tests and incurred those medical bills only to get my job back, and only because I expected spectrum to pay those bills, as they said that they would.

Spectrum committed the act of wrongful discharge. If actually I broke the rules and created unsafe situations, why not just fire me or write me up. Why the whole charade, making me go to doctors and promising to pay for it and take me back?

### CONCLUSION

All of my claims of **DISCRIMINATION, WRONGFUL DISCHARGE** and **BREACH OF CONTRACT**, against Spectrum are obvious, blatant, based in fact, true and supported by evidence, law, precedent and logic. Spectrum's arguments are specious and contradictory. The facts of the case speak for themselves, and Spectrum does not dispute them. Judge Best has provided no reason for finding in Spectrum's favor. Therefore the Appellant respectfully asks Montana Supreme Court to consider all facts, issues, laws and grant that I was discriminated against, wrongfully discharged and the victim of breach of contract with Spectrum. I rightfully deserve compensation for lost income in both wages and severance pay, for expenses incurred in compliance with Spectrum's offer, for mental anguish and personal time spent seeking justice. Punitive damages are also in order. Punitive damages are rewarded when a defendant's actions are willful, oppressive, fraudulent or reckless. Spectrum did!!

**CERTIFICATE OF SERVICE**

I, Debbie M. Welsch, hereby certify that I have served true and accurate copies of the forgoing Brief - Appellant's Opening to the following on 06-16-2020:

Bowen Greenwood  
Clerk of the Supreme Court  
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A handwritten signature in blue ink that reads "Debbie M. Welsch". The signature is written in a cursive style and is positioned above a horizontal line.

Debbie Marie Welsch

Appellant

**CERTIFICATE OF COMPLIANCE**

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that this Appellant's Opening Brief is printed with proportionately-spaced Times New Roman typeface of 14 points; 20 typewritten pages; 6,178 words, is double spaced for lengthy quotations and or footnotes, and does not exceed 10,000 words, excluding the Table of Contents, the Table of Authorities, Certificate of Service, and Certificate of Compliance, as calculated by my Microsoft Word software.

Dated this 16<sup>th</sup> day of June, 2020.



Debbie Marie Welsch

Appellant