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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0416

MISSOULA COUNTY FOURTH JUDICIAL DISTRICT COURT

ANNELISE AIKING-TAYLOR,

Plaintiff and Appellant,

v.

OLIVER SERANG,

Defendant and Appellee.

Cause No. DV-19-1076-JL

Dept. 3

Hon. John W. Larson

MOTION TO DISMISS APPEAL
WITHOUT PREJUDICE
AND
BRIEF IN SUPPORT

Counsel for Parties:

Plaintiff/Appellant:
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Defendant/Appellee:
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MOTION TO DISMISS

Defendant/Appellee Oliver Serang, by and through counsel of record, Jessie Lundberg of ASUM Legal Services, hereby moves the Court for dismissal of Plaintiff/Appellant's appeal without prejudice, for the reason that no final judgment has been entered in the District Court case from which she appeals. Counsel for Defendant/Appellee has contacted Plaintiff/Appellant regarding whether she objects to this motion, and she has indicated she does object.

BRIEF IN SUPPORT

Rule 6(1), M.R.A.P., specifies that the Montana Supreme Court may review only the appeal of a final judgment, unless one of the exceptions set forth in M.R.A.P. 6(2) or 6(3) apply. None of those exceptions apply here. Therefore, Plaintiff/Appellant is prohibited from proceeding with an appeal in this matter unless she can demonstrate the District Court has issued a final judgment in the underlying case.

Rule 4(1)(a), M.R.A.P, defines a final judgment as one that conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, **including any necessary determination of the amount of costs and attorney fees awarded** or sanction imposed. No such final judgment has yet been entered in this matter. The District Court has merely issued an order granting Defendant/Appellee's motion for summary judgment and denying Plaintiff/

Appellant's motion for summary judgment. However, Rule 6(5)(b), M.R.A.P., expressly states orders denying motions for summary judgment are not appealable.

Based upon the foregoing, Rules 4(1)(a), 6(1), and 6(5)(b) of the M.R.A.P. require dismissal of Plaintiff/Appellant's present appeal without prejudice.

DATED this 21st day of September, 2020.

ASUM LEGAL SERVICES

/s/ Jessie Lundberg
Jessie Lundberg
Attorney for Defendant/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of the foregoing *Motion to Dismiss Appeal without Prejudice and Brief in Support* upon Plaintiff/Appellant by emailing electronic copies to the following address, with Plaintiff/Appellant's consent:

Plaintiff/Appellant Annelies Aiking-Taylor (Pro Se):
Email: annelies.aikingtaylor@gmail.com

and upon the court-appointed mediator in this matter, Andrea J. Olsen, through the Montana Courts E-Filing system.

DATED this 22nd day of September, 2020.

ASUM LEGAL SERVICES

/s/ Jessie Lundberg
Jessie Lundberg
Attorney for Defendant/Appellee

CERTIFICATE OF COMPLIANCE

Counsel for Defendant/Appellant hereby certifies that the foregoing document has line spacing of 2.0; the typeface is proportionately spaced with a 14-point size; and the word count excluding the certificate of service and this certificate of compliance is 373 words.

DATED this 21st day of September, 2020.

ASUM LEGAL SERVICES

/s/ Jessie Lundberg

Jessie Lundberg

Attorney for Defendant/Appellee

CERTIFICATE OF SERVICE

I, Jessie Lea Lundberg, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 09-21-2020:

Annelies Aiking-Taylor (Appellant)
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Electronically Signed By: Jessie Lea Lundberg
Dated: 09-21-2020