

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 20-0416

---

ANNELIES AIKING-TAYLOR

Plaintiff and Appellant,

v.

OLIVER SERANG

Defendant and Appellee.

---

**APPELLEE'S RESPONSE BRIEF**

---

From the Montana Fourth Judicial District Court  
Missoula County  
District Court Cause No. DV-19-1076-JL  
Honorable John W. Larson Presiding

---

APPEARANCES:

ANNELIES AIKING-TAYLOR  
430 Evans Ave.  
Missoula MT 59801  
Telephone: Unknown  
Email: annelies.aikingtaylor@gmail.com  
*Appellant pro se*

JESSIE LUNDBERG  
ASUM LEGAL SERVICES  
University of Montana  
32 Campus Dr., Rm 116  
Missoula MT 59812  
Telephone: 406-243-6213  
Email: jessie.lundberg@mso.umt.edu  
*Attorney for Defendant/Appellee*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iv
INTRODUCTION .....	1
STATEMENT OF THE ISSUES .....	2
STATEMENT OF THE CASE .....	3
STATEMENT OF FACTS .....	12
STANDARDS OF REVIEW .....	17
SUMMARY OF THE ARGUMENT .....	18
ARGUMENT .....	21
A. Annelies’s revised appeal brief fails to meet the basic requirements of Rule 12, M. R. App. P., warranting its denial in its entirety.....	21
B. The District Court’s denial of Annelies’s motion for summary judgment is not appealable pursuant to Rule 6(5)(b), M. R. App. P.....	22
C. Annelies presents no legal authority or coherent argument demonstrating the District Court erroneously disregarded her arguments and evidence, ignored her requests for clarification, or mishandled her filings.....	22
D. Annelies failed to meet her initial threshold burden in District Court of opposing Oliver’s motion for summary judgment with any genuine issue of material fact as to whether she was entitled to damages for alleged cleaning, repairs, and lost rent .....	27
E. Annelies failed to demonstrate any genuine issues of material fact or legal argument that would preclude summary judgment in Oliver’s favor on his MCPA claims .....	29
F. Annelies failed to meet her burden of opposing Oliver’s motion for summary judgment with any genuine issue of material fact or legal argument	

demonstrating Oliver’s liability for a garbage bill for a three month-period after his tenancy.....	37
G. Annelies failed to meet her burden of opposing Oliver’s motion for summary judgment with any legal argument demonstrating Oliver’s liability for bank fees she incurred from over-drafting her checking account .....	38
CONCLUSION .....	40
CERTIFICATE OF COMPLIANCE .....	43

## TABLE OF AUTHORITIES

### Cases

<i>Greenup v. Russell</i> , 2000 MT 154, 300 Mont. 136, 3 P.3d 124 .....	2, 21
<i>Hiebert v. Cascade Co.</i> , 2002 MT 233, ¶ 21, 311 Mont. 471, 56 P. 3d 848 .....	18
<i>McClue v. Safeco Ins. Co.</i> , 2015 MT 222, 380 Mont. 204, 354 P.3d 604.....	18
<i>McCulley v. Am. Land Title Co.</i> , 2013 MT 89, 369 Mont. 433, 300 P.3d 679.....	22, 23, 24, 26, 36, 38
<i>Rohrer v. Knudson</i> , 2009 MT 35, 349 Mont. 197, 203 P.3d 759.....	30, 31
<i>Smith v. Burlington Northern &amp; Santa Fe Ry.</i> , 2008 MT 225, 344 Mont. 278, 187 P.3d 639.....	18
<i>Weaver v. State</i> , 2013 MT 247, 371 Mont. 476, 310 P.3d 495.....	18, 37

### Statutes

Mont. Code Ann. § 30-14-103.....	30
Mont. Code Ann. § 30-14-133(1).....	37
Mont. Code Ann. § 70-25-101.....	30
Mont. Code Ann. § 70-25-201.....	20, 28, 29
Mont. Code Ann. § 70-25-202.....	20, 29
Mont. Code Ann. § 70-25-203.....	29

## **Rules**

Rule 6(5)(b), M. R. App. P.....	3, 19, 22, 23, 24
Rule 12, M. R. App. P.....	2, 19, 21
Rule 56, M. R. Civ. P.....	18
Rule 56(e), M. R. Civ. P.....	1, 7, 28, 33, 35, 40, 41
Rule 602, M. R. Evid.....	26
Rule 802, M. R. Evid.....	26

## INTRODUCTION

At first blush, this appeal presents a simple landlord-tenant dispute.

Appellant Annelies Aiking-Taylor (“Annelies”) rented a house to Appellee Oliver Serang (“Oliver”). Things started out rosy. Then, as landlord-tenant relationships are wont to do, things went south as the parties approached the end of the lease and the question of Oliver’s \$1,200 security deposit. The parties ended up in Justice Court, and Annelies was the prevailing party. However, she was unsatisfied and appealed to District Court. In District Court, Oliver was the non-prevailing party and Annelies filed the instant appeal.

However, on appeal, the core issues no longer turn on landlord-tenant law, but on questions of civil procedure – namely, the burden of a party opposing summary judgment under Rule 56(e), M. R. Civ. P. Upon Oliver’s filing of a motion for summary judgment in District Court, Annelies simply failed to meet her burden of demonstrating either genuine issues of material fact or that Oliver was not entitled to judgment as a matter of law.

While Annelies was represented by counsel in her original Justice Court case against Oliver, she was unrepresented throughout her subsequent appeal to the District Court. It is well-established that pro se parties are extended some leniency regarding procedural requirements. *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124. However, “that latitude cannot be so wide as to prejudice

the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules.” *Id.*

At the end of the day, the standards for summary judgment must apply equally to all, and it was those standards Annelies did not meet. Ultimately, what she perceives as injustice was actually the opposite: the operation of the judicial system in an orderly and predictable manner, to *prevent* injustice, and thereby achieve justice, its constant aim.

## **STATEMENT OF THE ISSUES**

Annelies purports to present four issues on appeal, according to her Statement of Issues. Appellant’s Br., 4. Issue 1 and Issue 3 each consist of three separate sub-issues, for a total of eight issues. *Id.* However, in her Summary of Argument and Argument, Annelies then switches to a list of 10 “Mistakes.” *Id.* at 11-43. Oliver restates the dispositive issues as follows:

1. Whether Annelies’s appeal brief meets the basic requirements of Rule 12, M. R. App. P., with regard to content and clarity of appellate briefs.
2. Whether the District Court’s order denying Annelies’s motion for summary judgment is appealable in light of Rule 6(5)(b), M. R. App. P.
3. Whether, as a matter of law, the District Court erroneously disregarded evidence or arguments presented by Annelies or otherwise acted improperly with regard to her requests for clarification and legal advice or its handling of her filings.

4. Whether Annelies's brief in opposition to Oliver's motion for summary judgment established any issue of fact as to whether she was entitled to damages for cleaning, repairs, and lost rent.

5. Whether Annelies's brief in opposition to Oliver's motion for summary judgment raised any genuine issues of material fact or legal arguments precluding summary judgment in Oliver's favor on his claims under the Montana Consumer Protection Act.

6. Whether Annelies, in her brief in opposition to Oliver's motion for summary judgment, met her burden of establishing that as a matter of law she was entitled to hold Oliver liable for a garbage bill for the three month-period following his tenancy.

7. Whether Annelies, in her brief in opposition to Oliver's motion for summary judgment, met her burden of establishing that as a matter of law she was entitled to hold Oliver liable for bank fees she incurred from over-drafting her checking account.

### **STATEMENT OF THE CASE**

This appeal arises from a residential landlord-tenant dispute. Annelies originally sued Oliver in Justice Court, and Oliver filed counterclaims. Annelies prevailed in Justice Court, but appealed the matter to the District Court, arguing she was entitled to significantly higher damages and attorney fees. Docs. 1-3. The parties filed cross-motions for summary judgment. Docs. 5, 27-30, 38, 39, 42. The District Court denied Annelies's motion and granted summary judgment in favor of Oliver. Doc. 80.

That brief summary belies the procedural morass that plagued this case in District Court. Annelies filed numerous documents lacking any procedural basis,



including affidavits not accompanying anything to support (Docs. 36, 41 (Aff. of E.Taylor, stricken March 18, 2020), 61-68); a response to Oliver's summary judgment affidavit (Doc. 35); a motion to strike a motion to strike filed by Oliver (Doc. 33); a response to a court order (Doc. 45); requests for personal confirmation from District Judge Larson that he was receiving the documents she was filing (Docs. 73 and 74); and requests for investigation into the District Court and clerk of court's office (Docs. 73 and 74).

Annelies's communications with the District Court's chambers and Clerk of Court's Office resulted in the District Court ordering early on that she was "prohibit[ed] from placing phone calls or contacting the Court's Judicial Aide or any Court staff, including calling the Clerk of Court's office for interpretation of court documents." Doc. 15 at 2. The District Court ordered that if Annelies contacted court personnel again, they were not allowed to talk to her, and "shall bring this to the attention of the Court who may impose sanctions." *Id.*

It is against this background that this matter wound its way through Annelies's District Court appeal, and against which the District Court issued the rulings Annelies now appeals. Ultimately, review of the District Court record demonstrates that the unfairness Annelies perceives in the District Court's rulings was in fact merely routine application of the Montana Rules of Civil Procedure, Montana Rules of Evidence, and substantive law to the parties' filings.

### **A. Justice Court Case**

Annelies sued Oliver in Missoula County Justice Court in 2018, alleging he violated the Montana Residential Landlord Tenant Act (MRLTA) and the parties' lease at the end of his tenancy at a property she owned. Pl.s' Compl. (Dec. 03, 2018). Annelies claimed Oliver cracked a toilet seat, made the carpet wrinkle, left a final power bill, garbage bill, and late fee outstanding, caused her to incur overdraft fees, and caused other various repairs and cleaning to be needed after his tenancy. *Id.* She further claimed Oliver wrongfully withheld his last month's rent, leaving her to instead keep the equal security deposit he had paid her at the beginning of the lease. *Id.*

Oliver filed an answer and counterclaim. Ans. & Counterclaim (Dec. 28, 2018). He disputed the alleged damages and counterclaimed against Annelies for violations of the MRLTA and Security Deposit Act (SDA). *Id.* He argued his withholding of the last month's rent was warranted, where Annelies had divulged shortly before the end of the lease that she no longer had his security deposit and was depending on either borrowing money from someone or having incoming tenants to replenish it. *Id.*

Upon trial, the Justice Court ruled in favor of Annelies on some issues and in favor of Oliver on others. Ord. & Rationale (Sept. 4, 2019). Annelies was the net prevailing party by \$213.54 and was awarded \$500.00 for attorney fees. *Id.* at 3.

Annelies appealed to the Missoula County Fourth Judicial District Court, arguing she was entitled to higher damages and attorney fees. Docs. 1-3.

### **B. District Court Appeal**

Shortly after filing her District Court appeal, Annelies filed a motion for summary judgment, accompanied by an affidavit and 39 exhibits, many of which consisted of multiple documents. Doc. 5. Oliver subsequently amended his counterclaim as permitted in the case scheduling order, Doc. 10, and Annelies filed an amended reply. Doc. 19. Oliver then responded to Annelies's summary judgment motion, Docs. 27, 28, and filed his own motion for summary judgment. Docs. 29, 30.

Oliver also filed a motion to strike significant portions of Annelies's summary judgment brief, supporting exhibits, and her affidavit. Doc. 31. He objected that material in her brief, exhibits, and affidavit was inadmissible hearsay, lay witness opinion testimony, character testimony, lacking foundation, and irrelevant, under the Montana Rules of Evidence. *Id.*

On February 18, 2020, Annelies filed a new affidavit titled, "Plaintiff's Additional and Affirming Affidavit," stating in general terms that everything she ever said in any of her filings was true and all her exhibits filed in the past were authentic and true, including the ones created by third parties. Doc. 36. This affidavit was not filed concurrently with any brief.

On February 26, 2020, Annelies filed her reply brief in support of her motion for summary judgment, titled, “Plaintiff’s Overview, with Support for Statements and All Claims, in Reply to ‘Defendant’s Brief in Opposition to Plaintiff’s Motion for Summary Judgment.” Doc. 38.

On March 2, 2020, Annelies filed a response brief in opposition to Oliver’s motion for summary judgment. Doc. 39. Nothing was attached to her opposition brief. While her brief made numerous references back to unrelated documents,<sup>1</sup> she provided no affidavits, exhibits, or other supporting material as contemplated under Rule 56(e) for defeating an opposing party’s motion for summary judgment.

The District Court subsequently granted Oliver’s still-pending motion to strike Annelies’s affidavit and exhibits. Doc. 40. In the same order, the District Court scheduled a summary judgment hearing for June 3, 2020. *Id.* at 2.

On March 6, 2020, Annelies filed an affidavit by her daughter, Elissa Taylor. Doc. 41. The affidavit was filed alone, unattached to any brief. Oliver moved to strike Taylor’s affidavit as procedurally unfounded. Doc. 43. The District Court granted Oliver’s motion. Doc. 44.

---

<sup>1</sup> The documents she referenced included Justice Court pleadings and other filings; exhibits attached to her unsuccessful motion for summary judgment in Justice Court; the generic “Plaintiff’s Additional and Affirming Affidavit” she had filed on February 18, 2020 unattached to anything, Doc. 36; her reply brief in support of her own pending motion for summary judgment, Doc. 38; and documents she cited in her reply brief, but did not attach to that brief, either.

After the District Court granted Oliver's motions to strike, Annelies filed a "Response to Court Order and Request for Clarification" (hereinafter, "Request for Clarification"). Doc. 45. She stated she did not understand how the District Court could have stricken her affidavits and exhibits when she had filed the second "Plaintiff's Additional and Affirming Affidavit" to remedy the first affidavit's deficiencies. *Id.* at 2. She stated she "had the impression that [the second affidavit] solved most of the issues." *Id.*

In her Request for Clarification, Annelies asked numerous questions requesting explanation of various aspects of the District Court's order granting Oliver's motion to strike. *Id.* at 1-12. She also requested that the District Court simply replace certain of her stricken exhibits with other documents, including documents she had filed in Justice Court. *Id.* at 3-10. Oliver objected to Annelies's Request for Clarification as procedurally unfounded. Doc. 46. The District Court agreed and denied it. Doc. 49.

On April 17, 2020, Annelies filed "Plaintiff's Motion for Leave to Amend and Supplement Plaintiff's Motion for Summary Judgment," arguing that the District Court erred in striking her exhibits and affidavits, and that she wished to file a new, "supplemental" brief with replacement affidavits and exhibits. Doc. 51. Concurrently with her motion, she filed the proposed supplemental brief, Doc. 52, along with 133 pages of exhibits. Doc. 54.

On May 4, 2020, Annelies filed a “Motion for Leave to Amend Document #38” (her reply brief in support of her own motion for summary judgment). Doc. 55. She attached to her motion a new brief titled, “Plaintiff’s Amended Document #38, Plaintiff’s Overview of the Whole Case (In Reply), Entirely Backed Up By Law and Evidence.” In support of her motion for leave to amend, Annelies relied on Rule 15(a), Mont. R. Civ. P., governing amended and supplemental pleadings. Doc. 55. Oliver objected that Rule 15(a) applies only to pleadings, not briefs. Doc. 58. Annelies filed reply briefs to both of her motions to supplement/amend. Docs. 59, 60. A week later, she filed a third personal affidavit and seven more affidavits from other individuals. Docs. 62-68. The District Court ultimately did not rule on Annelies’s motions to amend her opening summary judgment brief and reply brief.

On May 27, 2020, six days before the hearing scheduled on summary judgment, Annelies filed proposed findings of fact and conclusions of law. Doc. 61. At the hearing, she inquired whether District Court Judge Larson had received her proposed findings of fact and conclusions of law. Doc. 72. His response indicated that he had not yet reviewed it but was sure it was in the file. Transcript of Summary Judgment Hrg., pp. 7-8 (June 3, 2020).

Based upon this exchange and prior court rulings with which she disagreed, Annelies became convinced someone within the District Court or clerk of court’s office was withholding from Judge Larson the documents she was filing with the

clerk's office. On June 5, 2020, Annelies sent the clerk of court's office an email addressed to Judge Larson himself, claiming he had "invited" her at the summary judgment hearing to send him an email. Doc. 73, Attachment 2. She claimed he had unequivocally stated at the summary judgment hearing that he had in fact not received her findings of fact and conclusions of law. *Id.*

Annelies stated she believed the clerk of court's office was not giving Judge Larson the documents she was filing. *Id.* She provided a list of the 39 documents she had filed to date and requested that Judge Larson personally verify he had received each of the 39 documents. *Id.* at 4-6. Finally, Annelies also now made it clear she was relying on her proposed findings of fact and conclusions of law as support for her summary judgment arguments and expected the District Court to do the same. *Id.* at 5.

On June 15, 2020, having not yet received a response from Judge Larson, Annelies filed a document titled, "1. Request for Confirmation of Receipt, and 2. Request Investigation into 'Obstacle.'" Doc. 73. Annelies alleged her filings were being "blocked" from Judge Larson, either through a "technical problem, or someone's choice." *Id.* at 1-2. She attached a copy of her June 5, 2020 email addressed to Judge Larson, and again requested personal confirmation from Judge Larson that he had received every one of her filings. *Id.* at 2, 4-6.

Three days later, Annelies filed a “2<sup>nd</sup> Request for Confirmation of Receipt, and Investigation, by Judge J.W. Larson.” Doc. 74. Annelies now argued that, despite having since received a copy of the electronic docket from the clerk’s office, she was positive that, “*despite the existence of the docket sheet* Judge Larson does sometimes not receive Plaintiff’s filings,” and she was being “duped by it considerably.” *Id.* at ¶¶ 1-4 (emphasis in original).

Annelies claimed that Judge Larson “assured Plaintiff *personally* and *positively* [at the summary judgment hearing] on 6-3-2020 that he had not received Plaintiff’s filings of 5-27-2020” (her proposed findings of fact and conclusions of law). *Id.* at ¶ 3 (emphasis in original). Annelies now requested Judge Larson sign a form she had prepared and attached, titled, “Confirmation of Receipt and Reading of Document #73 by Judge J. W. Larson.” *Id.* at ¶ 5 and p. 3. Finally, she again requested an investigation into her allegations that Judge Larson was not receiving her filings from the Clerk of Court’s office. *Id.* at ¶ 6.

Oliver filed an objection to Annelies’s ongoing requests for investigations and personal communications from Judge Larson. Doc. 75, 2-9. Oliver also objected to Annelies’s attempt to incorporate her proposed findings of fact and conclusions of law as part of her summary judgment arguments. *Id.* at 12-17.



The District Court subsequently denied Annelies's motion for summary judgment and granted summary judgment in Oliver's favor. Doc. 80. The District Court entered its final judgment on September 23, 2020. Doc. 88.

### **STATEMENT OF FACTS**

Annelies's Statement of the Facts on appeal consists almost entirely of unsupported allegations that were not before the District Court on its consideration of Oliver's motion for summary judgment. She made many of these same bare assertions in her various District Court filings, but upon filing her response brief in opposition to Oliver's motion for summary judgment, Doc. 39, she failed to support it with any admissible evidence. Therefore, her cites in her Statement of Facts are not to any evidence that was attached to her opposition brief, but to other filings or to exhibits that were attached to those other filings, including exhibits which were stricken by the District Court for being inadmissible.

For that reason, Oliver submits the following Statement of the Facts, of the facts that were actually before the District Court when it ruled on Oliver's motion for summary judgment.

At the time Oliver began his tenancy on September 1, 2017, he provided a security deposit of \$1,200.00 to Annelies. Doc. 30, ¶ 5 (Feb. 4, 2020). On May 31, 2018, Annelies emailed Oliver and asked him if he would consider staying and renting the property for another year. *Id.* at ¶ 11 & Exh. 1, p.1 (emails between

Annelies and Oliver). Oliver declined because he was buying his own property and asked if Annelies would consider allowing him to apply his \$1,200.00 security deposit to his last month of rent (August 2018), of the same amount. *Id.* at ¶¶ 12-13 and Exh. 1, p.2. Annelies emailed back and stated:

I've thought long and hard about your request to use your deposit to pay the rent for August, my heart says yes, but my brain says no. I have twice trusted someone that way . . . and gotten burned by that. It is not anything against you . . . . I can't give the deposit back before it has served its purpose, even though I really think you will leave the house spotless in great order.

*Id.* at ¶ 15 and Exh. 1, p.3.

This response implied, and led Oliver to believe, that Annelies did have his security deposit but was simply being understandably cautious in not returning it early. *Id.* at ¶ 16. Oliver responded the same day,

I can definitely see your side with respect to the deposit . . . . Is there a way that your friend . . . could come by and inspect the property in early August? Or is there any chance you would be back? If you are too skeptical, then it would help me very much if you had a specific date and time when we could do the walkthrough for you or someone else to see everything.

*Id.* at ¶ 16 and Exh. 1, p.4. Annelies responded, "You're right, I could ask a friend to come check the house in the beginning of August. I'll think about it . . . I'll stay in touch and let you know more as soon as I can." *Id.* at ¶ 17 and Exh. 1, p.5.

Annelies's response again implied, and led Oliver to believe, that Annelies had his deposit and would be able to return it whenever the parties were able to

arrange the inspection. *Id.* at ¶ 17 and Exh. 1, p. 5. However, Oliver heard nothing more from Annelies until July 20, when she emailed back,

I thought up a possible scenario, where you could get your deposit back earlier . . . . As soon as I have found a new renter, I could ask him/her/them to judge the house for themselves, and if they like it as is, give their deposit straight to you. I know there are some total insecurities in there, but if it works, you could have your deposit back earlier.

*Id.* at ¶ 18 and Exh. 1, p.5.

Annelies went on to now admit to Oliver,

Financially, I'm just stuck between a rock and a hard place, because I have no income, and the rent doesn't cover the mortgage fully, so I'm having trouble making the ends meet. I'm borrowing and such. But borrowing \$1,200 at once I don't find easy, and even if I could get it from someone here, I would still have to exchange it and send it over to my bank[.]

*Id.* at ¶ 19 and Exh. 1, p.5.

This response from Annelies greatly concerned Oliver. *Id.* at ¶ 20. Clearly, it conveyed Annelies did not have his security deposit currently in her possession.

The next day, Oliver responded, in part,

I have a question about the deposit. If I pay August's rent on 1 August, do you think you'll be able to refund the deposit by September? If you do not get a new renter, from your email it sounds like that might be difficult. But it would be very difficult for me to live without the money after moving out. But even though the above is good to plan for, I agree that the best shared strategy . . . is to help you get a new renter.

*Id.* at ¶ 21 and Exh. 1, p. 6.

On July 26, Annelies responded, in part,

Yes, having a new renter by september [sic] would certainly be very nice, and **solve the problem of the deposit**. If it doesn't work, and there is no new renter, I'll give you your deposit back as soon as the house has been checked (like sept. 1), **I owe you that, and I'll somehow find a solution to it.**"

*Id.* at ¶ 22 and Exh. 1, p.5 (emphasis added).

This response from Annelies concerned Oliver even further that Annelies would not have his security deposit on time. *Id.* at ¶ 23.

On August 2, Oliver responded, in part,

Can we arrange a concrete date and time when the house will be inspected? Things are hectic and it would help a lot. Also, will you be in the U.S. to do it? If not, do you have someone who can come see that everything is in good order? Nearly any day before August 27 would work for me (after that classes are in session).

*Id.* at ¶ 24 and Exh. 1, p.7. Oliver also attached receipts for \$295.14 for medical equipment and other items he had been mailing to Annelies in the Netherlands and paying for out of his own pocket. *Id.*

On August 3, Annelies responded, in part, that she was not sure she had \$295 in her checking account but would check and "transfer it right away online to you **if I can**. Thank you so much once again for lending it to me!" *Id.* at ¶ 25 and Exh. 1, p.8 (emphasis added). She continued, "I'm still in unsureness when I will fly to Missoula. . . . As soon as I know anything more, I'll email you." *Id.*

In her August 3 email, Annelies again failed to directly answer Oliver's request to make more specific arrangements for an inspection. *Id.* at ¶ 26 and Exh.

1, p.8. It also indicated Annelies was not sure she had even \$295 in her checking account to reimburse Oliver for money she already owed him. *Id.*

The next day, August 4, Oliver emailed Annelies back, in part,

If you [personally] will visit / return to Missoula, then this sets me at ease – then we would hopefully have an upper bound on when an inspection can be done. What is important to me is to make sure I can get reimbursed in the first week of September, so if you can promise me that, it would mean very much to me! (Also, I will try to make sure I transfer the rent by the 5th so that I am not late for you : ).

*Id.* at ¶ 26 and Exh. 1, p.9.

Oliver did not hear back from Annelies the next day, or the next. *Id.* at ¶ 27.

Annelies's sudden silence, combined with her prior comments about not having the security deposit, avoiding setting a date for the inspection, and possibly not having \$295 on hand to reimburse him for the money he spent to mail her items overseas, caused Oliver to seriously doubt whether Annelies would be able to return his deposit on time. *Id.* For that reason, and that reason only, he did not transfer the rent payment he normally would have for the month of August 2018. *Id.*

On August 16 and 17, Annelies emailed Oliver about not having received his August rent and informed Oliver she had overdrawn her checking account due to having insufficient funds on hand to pay her mortgage payment. *Id.* at ¶ 30 and Exh. 2 at 1 (emails between Oliver and Annelies from Aug. 16-19, 2020). He responded that he had withheld it because she clearly no longer had his security deposit. *Id.* at ¶ 31 and Exh. 2, pp. 1-2.

Prior to the end of Oliver’s lease, he had repeatedly requested that Annelies schedule a time to conduct a move-out inspection together. *Id.* at ¶ 36 and Exh. 1. On August 29, Annelies notified Oliver by email that she would be inspecting the house the following afternoon. *Id.* at ¶ 37 and Exh. 3 (emails between the parties concerning the inspection). However, on August 31, she emailed again and said simply, “Not that I expect it matters to you, but the inspection will be later.” *Id.* at ¶ 38 and Exh. 3. She never provided a new date and time for an inspection. *Id.* at ¶ 39. After conducting the inspection, Annelies never provided Oliver with a list of items that needed additional cleaning or repairs. *Id.*

When Oliver moved out, he left the property in overall good repair and clean condition inside and out. *Id.* at ¶ 41-50. The parties had made no agreement that Oliver was responsible for the garbage bill for three months after he moved out. *Id.* ¶ 53-54.

## **STANDARDS OF REVIEW**

The Montana Supreme Court reviews de novo a district court’s grant of summary judgment, using the same standards a district court applies under M. R. Civ. P. 56. *Smith v. Burlington Northern & Santa Fe Ry.*, 2008 MT 225, ¶ 10, 344 Mont. 278, 187 P.3d 639. The moving party has the initial burden of establishing an absence of genuine issues of material fact and entitlement to judgment as a

matter of law. *Id.* The non-moving party must then “present substantial evidence essential to one or more elements of the case to raise a genuine issue of material fact.” *Id.* “The non-moving party must set forth **specific facts** and cannot simply rely upon their pleadings, nor upon **speculative, fanciful, or conclusory statements.**” *Hiebert v. Cascade Co.*, 2002 MT 233, ¶ 21, 311 Mont. 471, 56 P.3d 848 (quotation omitted; emphasis added).

Evidentiary rulings are reviewed for an abuse of discretion. *McClue v. Safeco Ins. Co.*, 2015 MT 222, ¶ 8, 380 Mont. 204, 354 P.3d 604.

The Montana Supreme Court does not address issues raised for the first time on appeal. *Weaver v. State*, 2013 MT 247, ¶ 38, 371 Mont. 476, 310 P.3d 495.

## **SUMMARY OF ARGUMENT**

As a threshold matter, Annelies’s revised opening brief does not meet the standards set forth in Rule 12, M. R. App. P. Despite the Court’s Order on October 29, 2020, requesting fewer issues and referring Annelies to applicable rules of appellate procedure, her brief still far exceeds the number of recommended issues, fails to set forth coherent issues or citations, and fails to set forth the required standards of review. These deficiencies prejudice Oliver in responding and burden the Court in discerning Annelies’s arguments and citations on appeal. For this reason, it should be denied.

If Annelies's appeal is found to meet the requirements of Rule 12 and permitted to proceed, a second preliminary procedural issue is that Annelies's appeal includes numerous challenges to the District Court's denial of her motion for summary judgment. However, that ruling is not appealable, under M. R. App. P. 6(5)(b). Therefore, her requests for review in that regard must be declined.

With regard to her remaining arguments on appeal, Annelies fails to explain how the District Court erroneously or unfairly disregarded any of her arguments or evidence. She likewise fails to provide any legal basis for her claims that the District Court was obligated to provide her with legal advice, clarifications, or personal responses.

Annelies fails to demonstrate why the District Court erred in granting summary judgment in Oliver's favor on her claims for damages for cleaning, repairs, and lost rent where, regardless of whether she was subject to the notice requirements of Mont. Code Ann. §§ 70-25-201 and -202, she failed to present a genuine issue of material fact as to whether she incurred any such damages.

Annelies likewise fails to show that the District Court erred in granting summary judgment on Oliver's claims under the Montana Consumer Protection Act. She failed to demonstrate any genuine issue of material fact as to whether she (1) had Oliver's security deposit in her possession just prior to the last month of his tenancy, and 2) initially misled Oliver to believe she did have it. Her own written



statements to Oliver by email speak for themselves, and even if they did not, she attached no sworn statements to her opposition brief stating the contrary.

Likewise, Annelies fails to demonstrate how the District Court erred as a matter of law in holding her actions were unfair and deceptive. Oliver has never argued Annelies was required to keep his deposit in a separate account, so her argument that Montana law does not require that is irrelevant. Annelies fails to provide any legal basis whatsoever for her assertion that the District Court's grant of Oliver's consumer protection claims was somehow an unlawful penalty for a "suspected future contract breach," and did not raise that argument in District Court. Annelies's claim that the security deposit was "returned" a month early is disingenuous, where it was not "returned" but rather Oliver was forced to withhold his last month's rent in order to mitigate his damages. Finally, Annelies's argument that Oliver was not entitled to statutory damages under the MCPA because he did not demonstrate "ascertainable damages" must be disregarded because Annelies did not raise it in District Court.

Finally, the District Court correctly determined Annelies failed to demonstrate either a genuine issue of material fact or a basis of law showing Oliver was somehow liable for a garbage bill for a three-month period occurring after Oliver's tenancy, or for Annelies's overdraft fees after she had insufficient funds in her bank account to pay her mortgage payment.

## ARGUMENT

### **A. Annelies's Revised Appeal Brief Fails to Meet the Basic Requirements of Rule 12, M. R. App. P., Warranting Its Denial in Its Entirety.**

As a threshold matter, Annelies's revised opening brief still does not meet the standards set forth in Rule 12, M. R. App. P. "While pro se litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules." *Greenup*, ¶ 15. It is well-established the Montana Supreme Court is "not obligated to develop arguments on behalf of parties to an appeal, nor are we to guess a party's precise position, or develop legal analysis that may lend support to his position." *McCulley v. Am. Land Title Co.*, 2013 MT 89, ¶ 20, 369 Mont. 433, 438, 300 P.3d 679, 683.

Here, the Montana Supreme Court provided Annelies with guidance as to the form and substance of her appeal. Order, Oct. 29, 2020. It emphasized that Rule 12(b) encourages parties to limit their appeal to no more than four issues. *Id.* at 1. Annelies was given the opportunity to amend her brief accordingly. *Id.* at 2.

Despite that assistance and opportunity, Annelies's revised opening brief still far exceeds the number of recommended issues and fails to set forth its numerous issues in a coherent manner. It does not appear any arguments were actually removed; rather, they were merely rearranged into "four" supposed issues.

Appellant's Br., 4. However, those four issues then transform into ten "Mistakes," each comprised of multiple sub-arguments. *Id.* at 11-15 (ten "Mistakes"), *see, e.g.*, 31-34 ("Mistake 7" described as "2 factual and 3 legal mistakes").

Similarly, Annelies's brief fails to set forth comprehensible standards of review or functional citations to relevant material in the District Court's record. Due to the difficulty in understanding Annelies's brief, Oliver requests its denial for failure to meet the threshold requirements of Rule 12.

**B. The District Court's Denial of Annelies's Motion for Summary Judgment is Not Appealable pursuant to Rule 6(5)(b), M. R. App. P.**

If Annelies's opening brief is deemed to meet the requirements of Rule 12 and permitted to proceed, the next issue is its significantly over-broad scope. One of the numerous rulings of which Annelies requests review is the District Court's denial of her motion for summary judgment. Appellant's Br., 10-11. However, M. R. App. P. 6(5)(b) provides that orders denying motions for summary judgment are not appealable. Therefore, review must be limited to Oliver's motion for summary judgment, Annelies's response thereto, and the District Court's order granting judgment in Oliver's favor.

**C. Annelies Presents No Legal Authority or Coherent Legal Argument Demonstrating the District Court Erroneously Disregarded Her Arguments and Evidence, Ignored Her Requests for Clarification, or Mishandled Her Filings.**

Annelies claims the District Court treated her unfairly by disregarding her arguments and evidence, declining to provide her with explanations of its rulings or other legal advice, and intentionally withholding her filings from Judge Larson. Appellant's Br. 4 ("Issue 4"), 15 ("Mistake 8"), 35-38. However, her claims in this regard are ill-defined, unsupported by any legal authority, and must be denied.

As stated above, the Montana Supreme Court is not obligated to develop a party's arguments, guess at her position, or develop her legal analysis. *McCulley*, ¶ 20. While Annelies identifies certain District Court rulings she believes were unfair, she fails to develop any clear legal arguments as to why they were erroneous as a matter of law.

The lack of legal authority or analysis in this portion of Annelies's brief would require the Court to perform exactly the type of labor it declined to undertake in *McCulley*. This supports simply rejecting Annelies's appeal pertaining to treatment in District Court she simply claims was "unfair."

In the event the Montana Supreme Court declines to reject this portion of Annelies's appeal, Annelies sets forth a list of five "examples" she claims show the District Court disregarded her evidence and arguments. *Id.* at 36-38. However, none of the evidence identified in those "examples" is even relevant to any appealable issue. None of it was filed with her opposition brief to Oliver's motion for summary judgment. Therefore, none of it could have even been considered by

the District Court in its ruling on Oliver's motion for summary judgment, which is the only appealable issue in this regard.

All of the affidavits and exhibits Annelies points to on appeal were either unattached to anything or were attached to her briefs in support of her own motion for summary judgment. However, the District Court's denial of Annelies's motion for summary judgment is not appealable, under Rule 6(5)(b), M. R. App. P. Therefore, Annelies's claims that the District Court improperly disregarded her evidence and affidavits are moot on appeal.

She next protests the events of the parties' ten-minute summary judgment hearing via Zoom, wherein Judge Larson indicated he had not yet reviewed the proposed findings of fact and conclusions of law Annelies had filed the week before. Appellant's Br., 36. However, she fails to explain how this demonstrates her filings were being disregarded, why Judge Larson was required to read parties' proposed findings of fact and conclusions of law prior to conducting a ten-minute summary judgment hearing, or how his not having done so prejudiced her in any way. Absent any such explanation, Annelies fails to demonstrate any error here.

Annelies next points to the fact that Judge Larson did not respond to her requests for his personal confirmation that he was receiving her filings. *Id.* at 37. Those requests were in the form of an email addressed directly to Judge Larson, two court filings requesting his confirmation of receipt and investigation into the

District Court and Clerk of Court's Office, and a form she personally created for him to sign, verifying he had received and read her filings. Docs. 73 and 74.

Again, Annelies points to no legal basis requiring a district court judge to respond to emails from parties or confirm receipt of documents when the case docket clearly shows they were filed. Nor does she provide any authority for her assertion that Judge Larson was required to sign and return a form she prepared for him to certify he was receiving and reading the documents she was filing.

Annelies also claims that unfairness was demonstrated by the District Court's orders granting Oliver's motions to strike her affidavits and exhibits. Appellant's Br., 37-38; Docs. 31, 40, 43, 44. Oliver objected to the affidavits and exhibits at issue as inadmissible under Rules 602 and/or 802 of the Montana Rules of Evidence, as lay witness testimony without personal knowledge, hearsay, irrelevant, and lacking foundation. Docs. 31, 43. The District Court agreed and struck them on that basis. Docs. 40, 44.

On appeal, Annelies bears the burden of identifying the specific items of evidence she asserts should not have been stricken, and why, under applicable rules of evidence, the District Court erred in striking each item. *McCulley*, ¶ 20. She has not done so, but rather provides only blanket assertions of unfairness. Once again, it is not the Montana Supreme Court's obligation to develop Annelies's arguments for her on appeal. *Id.*

Annelies protests that the District Court's disregard of her arguments and evidence is demonstrated by its denial of her two motions for clarification of the orders striking her exhibits and for other relief. Appellant's Br., Docs. 45, 47, and 49. However, Annelies points to no legal basis suggesting the District Court erred as a matter of law in declining to provide extra explanation of its orders.

She also protests that, in denying her motions for clarification, the District Court used language from Oliver's objection brief to her motion. This is one of Annelies's repeated complaints throughout her appeal, that the District Court used language from motions and proposed orders filed by Oliver. Appellant's Br., 5 (arguing the summary judgment order "was a replication of DF's motion for summary judgment") 6 ("DC never acknowledged any of PL's arguments and evidence, but quoted DF's motions as DC's own rulings."). However, again, she states no legal authority prohibiting the District Court from using language from a party's filings with which the District Court agrees.

Another of Annelies's specific areas of dissatisfaction was not receiving an order in response to every motion she filed. However, she fails to cite to any legal authority requiring a district court to rule on every motion, especially where subsequent rulings make the earlier motions moot.

In sum, Annelies presents no legal authority showing the District Court acted in disregard of any applicable rule or law in rejecting her arguments and

evidence. She simply failed to provide the District Court with persuasive legal authority or arguments, or admissible evidence. While she may be dissatisfied that the District Court did not have to comply with her every demand and expectation of unusual accommodation, that does not constitute error on the part of the District Court. Therefore, Oliver asserts this portion of Annelies's appeal must be denied.

**D. Annelies Failed to Meet Her Initial Threshold Burden in District Court of Opposing Oliver's Motion for Summary Judgment with Any Genuine Issue of Material Fact as to Whether She Was Entitled to Damages for Alleged Cleaning, Repairs, and Lost Rent.**

Annelies argues the District Court erred in ruling on summary judgment that she was barred from pursuing damages for cleaning, repairs, and lost rent she claims she incurred following Oliver's tenancy. However, she overlooks the fact that her opposition brief failed to demonstrate any genuine issue of material fact as to whether she incurred any such damages in the first place.

Oliver testified he left the house in good, clean condition without any damages. Doc. 30, ¶¶ 41-52. In order to defeat summary judgment, Annelies was then required to demonstrate a genuine issue of material fact as to whether she incurred the alleged damages. Rule 56(e), M. R. Civ. P. However, she presented no evidence whatsoever in that regard. Her opposition brief was unaccompanied by any affidavit, other sworn testimony, or evidence to support her alleged cleaning and repair damages, or any rent lost due to time spent cleaning or repairing the rental. Therefore, she did not meet the threshold requirement of demonstrating an



issue of fact as to whether she suffered the alleged damages, and her appeal of the District Court's dismissal of her claims for cleaning, damages, and related lost rent must be denied.

Annelies's main argument is that she was not subject to the statutory requirements set forth in Mont. Code Ann. §§ 70-25-201, -202, and -203. Those statutes prohibit a landlord from deducting from a tenant's security deposit for cleaning or repairs unless the landlord provided the tenant with (1) a written notice of cleaning that remains undone following the move-out inspection and 24 hours to perform the cleaning, and (2) a written notice of security deposit withholdings, within 30 days of the end of the tenancy. Annelies argued that as a matter of law she was not required to provide either of those notices, because there was no security deposit from which to "deduct." Appellant's Br., 23-28. Therefore, she argues, the District Court could not use that as a basis for denying her claims for cleaning, repair, and lost rent damages.<sup>2</sup>

That argument is a moot point. As explained above, Annelies failed to establish an issue of fact as to whether she even incurred the claimed damages.

---

<sup>2</sup> Annelies overlooks the fact that the reason she did not have a security deposit from which to deduct damages is that she had already depleted it herself prior to the last month of Oliver's tenancy. Had she not done so, she would have had a security deposit of \$1,200.00 on hand at the end of the tenancy, and there would be no question she would be subject to the notice requirements of Mont. Code Ann. §§ 70-25-201, -202, and -203. Instead, she now seeks to benefit from her own mishandling of Oliver's security deposit.

Absent that showing, it was undisputed based on Oliver's sworn affidavit testimony that he did not leave the rental in a condition requiring additional cleaning or repairs, and in turn did not cause Annelies to lose days of rent due to cleaning or repairs. Doc. 30, ¶¶ 41-52. Therefore, it does not matter whether Annelies was required to provide the required notices of cleaning and deductions or not, and she fails to demonstrate how the District Court erred in granting Oliver summary judgment on these claims.

**E. Annelies Failed to Demonstrate Any Genuine Issues of Material Fact or Legal Argument that Would Preclude Summary Judgment in Oliver's Favor on His MCPA Claims.**

With regard to Oliver's consumer protection claims, Annelies challenges both the District Court's findings that no genuine issue of material fact existed and its application of the Montana Consumer Protection Act as a matter of law. These challenges are wound throughout her appeal brief. Appellant's Br. 4 ("Issue 1" and "Issue 2"), 11-12 (summarizing "Mistake 1"), 14-15 (summarizing "Mistake 6," "Mistake 7," and "Mistake 8"), 15-22 (argument on MCPA issues under "Mistake 1"), and 29-35 (addressing additional MCPA issues under "Mistake 6," "Mistake 7", and "Mistake 8").

The Montana Consumer Protection Act (MCPA) prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Mont. Code Ann. § 30-14-103. An unfair act or practice is "one which offends established

public policy and which is either immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.” *Rohrer v. Knudson*, 2009 MT 35, ¶ 31, 349 Mont. 197, 203 P.3d 759.

Before the District Court, Oliver argued that, as a matter of law, it is unfair for a landlord to spend a tenant’s security deposit, let alone with no means to immediately repay it. A security deposit is defined as money or value given by a tenant “to secure the payment of rent . . . or to secure payment for damage to and cleaning of the leasehold premises.” Mont. Code Ann. § 70-25-101. Therefore, by definition, it remains the property of the tenant, held in trust by the landlord with the sole purpose of securing payment for unpaid rent, cleaning, or repairs.

As Oliver argued to the District Court, expending a tenant’s security deposit is simply unfair pursuant to *Rohrer*. It “offends established public policy” to allow landlords to use tenants’ security deposits as a slush fund for personal needs. *Rohrer*, ¶ 31. It is unethical and unscrupulous for one person to take money belonging to another person and spend it without the owner’s permission. Finally, it is “substantially injurious to consumers” for landlords to be permitted to deplete residential tenants’ security deposits as a loan for personal use.

In support of his motion for summary judgment, Oliver presented abundant evidence showing Annelies first implied she had the deposit to refund, then admitted she no longer had it, in emails written between the parties. Specifically, in

June 2018, Oliver asked Annelies whether she would consider allowing him to apply his security deposit to his last month's rent, and Annelies responded:

I've thought long and hard about your request to use your deposit to pay the rent for August, my heart says yes, but my brain says no. I have twice trusted someone that way . . . and gotten burned by that. It is not anything against you . . . I can't give the deposit back before it has served its purpose, even though I really think you will leave the house spotless in great order.

*Id.* at ¶ 15 and Exh. 1, p.3.

The foregoing response by Annelies conveyed she had the deposit. Saying, "I can't give the deposit back" requires that one has the deposit in the first place. Saying she could not give it back "before it has served its purpose" required she had it in her possession to apply to any subsequent cleaning or repair damages. When Oliver then suggested the alternative of an earlier inspection, Annelies again implied she had the security deposit to refund. *Id.* at ¶ 17 and Exh. 1, p. 5 (stating, "You're right, I could ask a friend to come check the house in the beginning of August. I'll think about it.") Based on Annelies's own written statements, Oliver set forth sufficient facts demonstrating Annelies in fact implied she had Oliver's security deposit in her possession as of July 2018.

Oliver likewise demonstrated that, as the end of his tenancy drew near and he continued to seek increasingly specific commitments from Annelies regarding setting up an inspection and when she would be able to refund his security deposit

after his lease ended, Annelies disclosed she had actually spent his security deposit and was going to have difficulty replacing it.

For example, Annelies stated:

Financially, I'm just stuck between a rock and a hard place, because I have no income, and the rent doesn't cover the mortgage fully, so I'm having trouble making the ends meet. I'm borrowing and such. But borrowing \$1,200 at once I don't find easy, and even if I could get it from someone here, I would still have to exchange it and send it over to my bank[.]

Doc. 30, Exh. 1, p. 5.

The next day, July 21, Oliver specifically sought reassurance from Annelies, asking,

I have a question about the deposit. If I pay August's rent on 1 August, do you think you'll be able to refund the deposit by September? If you do not get a new renter, from your email it sounds like that might be difficult. But it would be very difficult for me to live without the money after moving out.

*Id.* Annelies replied,

Yes, having a new renter by september [sic] would certainly be very nice, and **solve the problem of the deposit**. If it doesn't work, and there is no new renter, I'll give you your deposit back as soon as the house has been checked (like sept. 1), **I owe you that, and I'll somehow find a solution to it**.

*Id.*

The excerpts above were clearly sufficient to establish that, as a matter of fact, Annelies no longer had Oliver's security deposit and was relying on getting

either a loan or a new renter in order to be able to refund it to Oliver. Thus, under Rule 56(e), M. R. Civ. P., the burden shifted to Annelies to demonstrate a genuine issue of material fact or legal authority and argument demonstrating that, even were the facts undisputed, they did not entitle Oliver to summary judgment on this claim as a matter of law. On appeal, Annelies asserts “2 factual and 3 legal mistakes.” Appellant’s Br., 31.

### **1. Annelies’s Claimed “Factual Mistakes”**

Annelies claims two disputed issues of fact should have prevented summary judgment in Oliver’s favor. Appellant’s Br., 23.

a. First, Annelies argues her actions were not unfair or deceptive because factually she could have and would have had the \$1,200 deposit to refund to Oliver by the time he moved out. *Id.* She further claims that although she did not possess the \$1,200 at the time of her emails with Oliver, she nonetheless “had access to” it.

However, that was not the precise issue before the District Court. The issue was whether she in fact had it shortly before the end of Oliver’s tenancy, and if she did not, whether she deceptively omitted that fact from the parties’ discussions about the deposit. Doc. 29, 16-17.

While Annelies argues strenuously on appeal that she somehow would have had Oliver’s security deposit back by September 1, 2018, she attached

no such sworn testimony or any other evidence to her opposition brief before the District Court. Doc. 39. She now attempts to introduce bank statements from mid-August 2018, showing a balance in her account sufficient to return Oliver's deposit. *Id.* at 32. However, she never presented those statements to the District Court with her opposition brief. Therefore, they are to no avail.

b. In Annelies's second challenge to the District Court's findings, she claims she never implied she still had Oliver's deposit, essentially asserting the District Court read her emails to Oliver wrong. *Id.* at 32-33. However, this is directly contradicted by the emails between the parties that Oliver attached to his affidavit in support of his motion for summary judgment, which Annelies did not refute in District Court.

As set forth above, Oliver supported his motion for summary judgment on this claim with Annelies's email expressly stating, "I can't give the deposit back before it has served its purpose," which was undeniably stating she in fact had the deposit to return and/or apply charges against. Doc. 30, ¶ 15 and Exh. 1, p.3. Under Rule 56(e), M. R. Civ. P., the burden then shifted to Annelies to rebut Oliver's assertions by demonstrating a genuine issue of material fact. However, in her opposition brief, Annelies produced no affidavit or evidence to demonstrate any genuine issue of material fact to prevent summary judgment on this issue.

## **2. Annelies's Claims of Incorrect Application of MCPA**

Annelies raises four arguments that the District Court incorrectly applied the law in Oliver's favor on his consumer protection claims.

a. First, Annelies argues that Montana has no law requiring that a tenant's security deposit be kept in a separate account. This argument is irrelevant. In District Court, Oliver did not argue a landlord needed to keep the deposit in a certain or separate account. He argued that the landlord needed to keep the deposit, period. Doc. 29, 12-16.

Oliver never addressed the legality of a landlord comingling her funds with those of a tenant, because that question would not even apply here. By definition, an issue of comingling would require that the landlord actually *had* the tenant's security deposit to comeingle. Here, Annelies simply no longer had Oliver's deposit – in her account, a separate account, or any account. She flat-out admitted she simply no longer had it and was relying on either borrowing it from someone or finding a new renter to replenish it. Doc. 30, ¶¶ 18-19, 22, and Exh. 1, p.5. Therefore, any arguments about keeping the deposit in a separate account are irrelevant.

b. Second, Annelies argues the District Court erred in holding that her actions of spending the security deposit and implying she still had it were unfair and deceptive, because that was akin to a penalty for a “suspected



future contract breach that never occurred.” Appellant’s Br., 14. Again, she fails to present any legal authority or analysis demonstrating how the District Court’s enforcement of the MCPA in this instance was a penalty for a possible future breach of contract. It is not the Montana Supreme Court’s obligation to develop that authority or argument for her. *McCulley*, ¶ 20.

Regardless, Annelies never raised this argument in her Opposition Brief before the District Court, Doc. 39, denying Oliver the opportunity to address it and the District Court the opportunity to consider it. The Montana Supreme Court does not address issues raised for the first time on appeal. *Weaver*, ¶ 38. Therefore, Annelies is precluded from raising this argument.

c. Third, Annelies argues her actions were not unfair or deceptive, and/or caused no harm, because “the deposit was fully returned a month before the due date.” *Id.* at 31. This is a wholly disingenuous portrayal of the disposition of the security deposit. There was no “return” of Oliver’s deposit. Rather, Oliver merely mitigated his damages by withholding his rent, after which Annelies then overdrew her checking account.

d. Fourth, Annelies argues Oliver was not entitled to statutory damages of \$1,000 pursuant to Mont. Code Ann. § 30-14-133 for Annelies’s two MCPA violations, because he suffered no “ascertainable damages.” *Id.* at However, Annelies did not raise this argument before the District Court,

denying Oliver the opportunity to address it and the District Court the opportunity to consider it. The Montana Supreme Court does not address issues raised for the first time on appeal. *Weaver*, ¶ 38. Therefore, Annelies is precluded from raising this argument now for the first time on appeal.

**F. Annelies Failed to Meet Her Burden of Opposing Oliver’s Motion for Summary Judgment with Any Genuine Issue of Material Fact or Legal Argument Demonstrating Oliver’s Liability for a Garbage Bill for a Three Month-Period after His Tenancy.**

The District Court correctly held Oliver was entitled to dismissal of Annelies’s claim that Oliver was liable for garbage bill for a three-month period occurring after his tenancy. Oliver testified in his affidavit that he did not agree to pay any such bill. *Id.* at ¶¶ 53-54. As the party opposing summary judgment, Annelies then bore the burden of demonstrating either a genuine issue of material fact or that Oliver was not entitled to judgment as a matter of law.

However, in her opposition brief, she stated merely that “the garbage bill was mutually agreed upon[.]” Doc. 39, p. 8. She instructed the District Court to “see Plaintiff’s Overview” at various pages and “points,” *id.*, but nothing was attached to her opposition brief. Absent any factual evidence, legal authority, or argument, the District Court had no obligation to develop Annelies’s argument for her, and neither does the Montana Supreme Court on appeal. *McCulley*, ¶ 20. Thus, Annelies failed to meet her burden of demonstrating any genuine issue of material fact or legal basis that would make Oliver liable for the garbage bill at issue.

**G. Annelies Failed to Meet Her Burden of Opposing Oliver’s Motion for Summary Judgment with Any Legal Argument Demonstrating Oliver’s Liability for Bank Fees She Incurred from Over-Drafting Her Checking Account.**

Finally, the District Court correctly held that Oliver was entitled to dismissal of Annelies’s claim that Oliver was liable for overdraft fees she incurred for overdrafting her checking account when she had insufficient funds available to pay the rental property’s mortgage payment without Oliver’s last month of rent.

Annelies erroneously asserts it was “not disputed” in District Court that “the bank fees . . . were the direct consequence of [Oliver]’s first contract breach.”

Appellant’s Br., 28. To the contrary, Oliver argued the exact opposite on summary judgment – that Annelies’s overdrafting of her bank account was due solely to her own personal financial management choices. Doc. 29, 12. He argued he could not be expected to assume that, upon withholding his last month’s rent in order to mitigate his damages, Annelies would have no other source of funds for the rental property’s mortgage payment. *Id.*

In her opposition brief, the full extent of Annelies’s response was, “the bank fees were the immediate consequence of Defendant’s first contract breach. . . . For the bank fees please see Plaintiff’s Overview page 3 and 4 – point 8 and 9, and page 14 and 15 – Claim 14 (and referrals).” Doc. 39, 8-9. However, nothing was attached to her opposition brief, by way of affidavit, evidence, or anything else. “Plaintiff’s Overview” presumably referred to Annelies’s reply brief in support of

her motion for summary judgment, which clearly was not admissible evidence for the purpose of opposing Oliver's motion for summary judgment.

The foregoing response, unsupported by anything else, demonstrated neither any genuine issue of material fact nor any legal basis establishing Oliver's liability for Annelies's overdraft fees. On appeal of this issue, Annelies cites to numerous statutes, District Court filings, and documents she filed or attempted to file as exhibits in support of her own motion for summary judgment. Appellant's Br., 28-29. However, that effort now cannot retroactively replace her lack of any such argument in her opposition brief that was actually before the District Court. Therefore, Annelies failed to meet the burden required of her under Rule 56(e) in order to defeat Oliver's motion for summary judgment on this issue, and the District Court correctly granted it.

## **CONCLUSION**

Despite Annelies's extensive arguments and citations on appeal, most of her issues are clearly disposed of by the simple fact she did not present any admissible evidence with her brief in opposition to Oliver's motion for summary judgment. She strenuously argues she presented vast amounts of evidence, but none of it was properly admissible evidence attached to her opposition brief. Therefore, she failed

to meet the basic threshold requirement of Rule 56(e), M. R. Civ. P., requiring that a party opposing summary judgment establish a genuine issue of material fact.

With regard to her other issues on appeal, she fails to explain any legal basis for her assertions that the District Court treated her unfairly by granting Oliver's motions, using language from his motions and proposed orders, declining to provide her with clarification and legal advice, or declining to issue a ruling on every single motion, many of which had become moot. Likewise, she fails to demonstrate any basis for her claims that the District Court or clerk of court's office were intentionally misrouting her filings to prevent Judge Larson from seeing them, or that Judge Larson was either deliberately or negligently ignoring her filings and evidence.

Based upon the foregoing, Annelies fails to demonstrate on appeal how any ruling or action by the District Court was erroneous, improper, or an abuse of discretion. Therefore, Oliver respectfully requests her appeal be denied in full.

DATED this 21st day of December, 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 Appellee's Response Brief upon Plaintiff/Appellant by emailing electronic copies to the following address, with Plaintiff/Appellant's consent:

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

DATED this 21st day of December, 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 9988 words.

DATED this 21st day of December, 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 Brief - Appellee's Response to the following on 12-21-2020:

Annelies Aiking-Taylor (Appellant)  
430 Evans Ave.  
Missoula MT 59801  
Service Method: E-mail Delivery

Electronically Signed By: Jessie Lea Lundberg  
Dated: 12-21-2020