

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Case No. DA 20-0465

---

**SIEBEN RANCH COMPANY,**

Plaintiff/Appellee,

v.

**RANDALL G. ADAMS, a/k/a RANDY ADAMS, a/k/a RAY ADAMS;  
& LEE McDONALD,**

Defendants/Appellants.

---

**APPELLANT LEE McDONALD'S OPENING BRIEF**

---

**On Appeal from the Montana First Judicial District Court  
Lewis and Clark County Cause No. DV 2019-1539**

---

**Appearances:**

Jesse Kodadek  
WORDEN THANE PC  
321 W. Broadway, Suite 300  
Missoula, Montana 59802  
(406) 721-3400  
[jkodadek@wordenthane.com](mailto:jkodadek@wordenthane.com)

Jack Morris  
Beebe & Flowers  
110 N. Warren Street  
Helena, Montana 59601  
(406) 442-3300  
(406) 461-6240  
[jackhnmorris61@gmail.com](mailto:jackhnmorris61@gmail.com)

Lee McDonald  
One Hughes Center Dr. #902  
Las Vegas, Nevada 89169  
(702) 750-0297  
[lemcdonald@msn.com](mailto:lemcdonald@msn.com)

Attorney for Plaintiff-Appellee  
Sieben Ranch Company

Attorney for Defendant-  
Appellant Randall G. Adams

Pro se

## TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Status of the Case .....	3
A. Fraud Upon the Court .....	4
B. 2/21/2020 Motion by Defendant well pleaded .....	4
C. Questions for Supreme Court .....	6
D. History of Lyons Creek public/highway above Sieben Ranch gate .....	7
STANDARD OF REVIEW .....	10
A. Subject Matter Jurisdiction .....	10
B. Findings of of Fact .....	10
SUMMARY OF ARGUMENT .....	11
ARGUMENT / DISCUSSION .....	12
CONCLUSION .....	14
PRAYER .....	16
CERTIFICATE OF COMPLIANCE .....	17
CERTIFICATE OF SERVICE BY MAILING .....	19
APPENDIX.....	20

## TABLE OF CASES

### Page

<i>Baltrusch v. Baltrusch</i> , 2006 MT 51, 331 Mont. 281, 130 P.3d 1267 .....	12
<i>Board of County Com'rs v. District Court</i> , 203 Mont. 44, 659 P.2d 266 .....	12
<i>City of Billings v. O.E. Lee Co.</i> , 168 Mont. 264, 542 P.2d 97 (1995) .....	14
<i>McCauley v. Thompson-Nistler</i> , 2000 MT 215, 301 Mont. 81, 10 P.3d 794 .....	13, 14
<i>Orlando v. Prewett</i> , 236 Mont. 478, 481, 771 P.2d 111, 113 (1989) .....	13
<i>State ex rel Dansje v. Nolan</i> , 58 Mont. 167, 173, 191 P. 150, 152 (1920) .....	13
<i>State v. Fisher</i> , 2003 MT 207, 317 Mont. 49, 75 P3d 338 .....	14
<i>State v. Southwick</i> , 2007 MT 257, at 15, 339 Mont. 281, 169 P.3d 698 .....	13
<i>Swanson v. Consumer Direct</i> , 2017 MT 57, 387 Mont. 37, 391 P.3d79 .....	10
<i>Thibodeau v. Bechtold</i> , 2008 MT 412, at14, 347 Mont. 277, 198 P.3d 785 .....	10
<i>Touris v. Flathead County</i> , 2011 MT 165, DA 10-0514 .....	13

## TABLE OF STATUTES

	<u>Page</u>
Mont. Code Ann. 60-2-107.....	6, 10, 11, 14, 15
Mont. Code Ann. 7-5-2101.....	12
Chapter 140, Rev. Codes of Mont. (1935).....	8, 9, 11, 13
Rule 3.3 Candor Toward the Tribunal .....	2, 4, 7, 9, 12, 16
Rule 8.4 Professional Misconduct .....	11, 12
2600, Codes and Statutes of Montana (1895) .....	13
2601, Codes and Statutes of Montana (1895) .....	14

## MISCELLANEOUS AUTHORITIES

	<u>Page</u>
Public Map 1889 .....	7
Commissioner dedication (1923) .....	1, 2, 4, 7, 8, 10, 13, 14, 15
Commissioner ruling (1950) .....	2, 5, 8, 9, 10, 11, 13, 15
Deed of Record (1926) .....	1, 3, 8, 11, 15
County Map (1988).....	9
County Map (2019).....	9, 10
Public Road Tax map (2020/2021).....	10
<i>Publicintegrity.org</i> , <a href="https://publicintegrity.org/politics/state-politics/state-integrity-investigation/montana-gets-d-grade-in-2015-state-integrity-investigation/">https://publicintegrity.org/politics/state-politics/state-integrity-investigation/montana-gets-d-grade-in-2015-state-integrity-investigation/</a> .....	6, 15

## **STATEMENT OF THE CASE**

### **Nature of the Case**

This is an appeal from an Order arising without a bench trial and without oral argument conducted by First Judicial Court, Lewis & Clark County. A copy of the Order is attached as Exhibit 1. This case involves a dispute initiated by Sieben Ranch over the status of Lyons Creek Road beyond a gate locked in 2003 denying public access into Township 14 North, Range 5 West. On November 8, 2019, a Complaint was filed extending denial to private property and leases owned by defendants McDonald or Adams.

Sieben Ranch Company bought their property from the Barnes family in 1948. The Barnes family's ownership is from 1919 and 1926. The deed received by Barnes in 1926 is for 2 1/2 sections and is subject to an easement in the public. The 1919 homestead patent is subject to the public highway dedication in 1923 established from 30 years or more of public access.

Sieben Ranch Company petitioned unsuccessfully in 1950 for abandonment of the public highway to unburden their underlying 1919 and 1926 title limited by an easement for the public highway. On November 8, 2019, Sieben Ranch filed a verified complaint, signed by John Baucus stating Lyons Creek road through Sieben Ranch property was private. Prior to filing before the District Court,

plaintiff was aware that 'subject matter jurisdiction' resided with the county commissioners, who had previously heard and rejected plaintiff's petition for abandonment.<sup>1</sup>

Defendant Adam's initial Answer on December 18, 2019, addressing jurisdiction, pointed out the District Court lacked 'subject matter jurisdiction' (power to hear the kind of case this lawsuit involves). And Defendant McDonald raised jurisdiction in his initial 2/19/20 Answer. The case should have been dismissed. Instead, plaintiff's counsel avoided 'Candor towards the Tribunal' to engage Malicious Prosecution. This led to an Order on 8/07/20, declaring the road above the locked gate private, denying 'access and use' to over 10,000 acres of private property and public lands. The Order slandered the 1923 commissioner's dedication and 1950 rulings, calling them: "*older commission meeting notes*". (Page 3, lines 22 & 23).

Defendant McDonald on February 21, 2020, filed a Motion before the District Court for a Partial Final Summary Judgment, and: "For a Final Order of the Court declaring upper Lyons Creek road to be a public highway beyond the Sieben Ranch gate erected between Section 13, T14NR5W and Section 19, T14NR4W". Plaintiff's counsel did not deny the above motion. It is deemed well pleaded. The

---

<sup>1</sup> Failure to perform Candor Towards the Tribunal to conceal perjury and promote fraud by client is appalling. Anchoring the unethical abuse with Malicious Prosecution in defiance of the public records, deeds of record, and a personal arrangement with the county commissioners in 1950 to accept the public highway, is fraud upon the court.

motion was preceded on 2/19 to filings referencing the public highway over 40 times.<sup>2</sup>

Based upon innuendos not supported by material fact, plaintiff's counsel presented an unrelated matter to the District Court as the case, and engaged in Malicious Prosecution to obtain the 8/07/20 Order.

To protect against the Malicious Prosecution, Defendant McDonald filed a counterclaim lawsuit and also named Fraud Upon the Court as issues. The counterclaim complaint further identifies perjury, promissory estoppel, malicious prosecution, slander of title, fraud/misrepresentation, plus other issues.<sup>3</sup>

### **Status of the Case**

Appellant/Defendant Lee McDonald is appealing an Order and Judgment of the First Judicial Court declaring Lyons Creek Road a private road above the Sieben Ranch gate. Lyons Creek road is a dedicated public highway established in 1923 by the county commissioners, with them holding 'subject mat-

---

<sup>2</sup> County maps, public road tax records, the county's road history list, Commissioner journals, and controlling documents in the clerk & recorder's office, evidence the road above Sieben Ranch gate as public and as having been in public use for over 130 years. There is no dispositive material evidence with the county or in the county records indicating the road to have ever been private.

1) The 1923 dedication by the County Commissioners of the public highway is in the public record;  
2) The 1926 reservation to the public of an easement through Sieben Ranch is a matter of public record; and  
3) Sieben Ranch's acknowledgement in 1950 of the statutory public highway is in the public records.

<sup>3</sup>As an example of an 'other' issue, the counterclaims reach to an audit issue first publicized in the Billings Gazette in 2014, called Double Dipping, in which millions of dollars of State and Federal monies are affected.

ter jurisdiction' to declare public road usage into a public highway. The commissioner's dedication of Lyons Creek road a public highway is based upon evidence of public road use for at least 30 years prior to the commissioner court's May 22, 1923 dedication.

**A. Fraud Upon the Court.**

The Order is the product of plaintiff and counsel concealing material evidence from the Court. The material facts are of record in the county court house. The evidence exposes client to perjury and fraud. The court's Order is clear and convincing to what is possible when a lack of Candor Towards the Tribunal predominates. It encouraged Malicious Prosecution. And the resulting malicious prosecution emboldens additional failure to perform Candor Toward the Tribunal.<sup>4</sup>

**B. 2/21/2020 Motion by Defendant well pleaded.**

Defendant on February 21, 2020 filed a Motion before the District Court for a Partial Final Summary Judgement, as follows:

"For a Final Order of the court declaring upper Lyons Creek road to be a public highway beyond the Sieben Ranch gate erected between Section 13, T14NR5W and Section 19, T14NR4W."

Material fact evidence identifying the existence of upper Lyons Creek road a public highway was submitted with Defendant's 2/21/2020 Motion.

---

<sup>4</sup>What a tangled web we weave when we practice to deceive. Shakespeare (from Macbeth). Illegal misconduct starts small. Suddenly 1,000s of acres were affected. And it continues. It now appears that millions of dollars of State and Federal monies may be at issue as others are swept in.



The Motion for Partial Summary Judgment for a Final Order of the court declaring upper Lyons Creek road to be a public highway cut through the malicious prosecution. Plaintiff Sieben Ranch Company and counsel, aware of the public highway, were caught. The deception which started with the verified complaint claiming Lyons Creek road through Sieben Ranch property to be private, had backfired.

Under malicious prosecution and failure to provide Candor Toward the Tribunal, it did not matter to plaintiff and counsel the public record established the road as public and proved plaintiff personally aware of this from 1950 or earlier. What mattered is what counsel could get the District Court to accept. So, counsel spun the story that the road above the locked gate is not a county road; the ploy succeeded.<sup>5</sup> The District Court dismissed the motion:

“For a Final Order of the court declaring upper Lyons Creek road to be a public highway beyond the Sieben Ranch gate erected between Section 13, T14NR5W and Section 19, T14NR4W.”

In Defendant's 2/19/2020 filings the term 'public highway' appears 40 times. You cannot get more direct. Defendant's Motion to Dismiss, dated 2/20/2020, includes three exhibits from the clerk & recorder's office recognizing upper Lyons Creek road a public highway.

---

<sup>5</sup> By covering up perjury and concealing fraud by client, plaintiff's counsel is concealing from the District Court over 130 years of evidence for the public road, (and from 1923) public highway, above the Sieben Ranch gate.

The 2/21/2020 Motion for Partial Final Summary Judgment for a Final Order declaring Lyons Creek road a public highway above the Sieben Ranch gate is a follow up from the 2/19/20 filings addressing the public highway. The filings of 2/19/20 refer to the 'public highway' over 40 times.

The District Court got confused by the malicious prosecution and plaintiff's counsel's failure to perform Candor Towards the Tribunal. As this case proves, the system does not function when a ward of the Court determines it is in his client's best interest to disregard counsel's duties to the Court.<sup>6</sup>

Thus, plaintiff counsel was emboldened to go deeper into the Malicious Prosecution, and pretend the Motion was over a county road. Plaintiff counsel could not refute the Motion as written because there was nothing in the public record to refute the Motion:

“For a Final Order of the court declaring upper Lyons Creek road to be a public highway beyond the Sieben Ranch gate erected between Section 13, T14NR5W and Section 19, T14NR4W.”

Plaintiff had to treat the Motion well pleaded.

### **C. Questions For Supreme Court.**

1. Did District Court violate 'subject matter jurisdiction' in accepting the case?
2. Does Section 60-2-107, MCA ascribe subject matter jurisdiction to the County

Commissioners for a statutory public highway?

---

<sup>6</sup> The Order in effect reallocates 'access and use' to over 10,000 acres of public and private property. A 2015 study conducted by [publicintegrity.org](http://publicintegrity.org), gives Montana a D- grade for Judicial Accountability, and an F for Ethical Enforcement Agencies.

3. Is the Order and Judgment a fraud against defendant, public, and legal system for failure by counsel to show Candor Towards the Tribunal?
4. Does the Supreme Court protect the system from attorney(s) who destroy the impartiality, issue of themselves due process, and disregard the oath?
5. Is plaintiff's Complaint frivolous based upon the public record?
6. What is the Court's policy for Malicious Prosecution?

**D. History of Lyons Creek Public/Highway above Sieben Ranch gate.**

For over 130 years Lyons Creek Road has been a public road. Lyons Creek road use was dedicated a public highway by Commissioner court in 1923<sup>7</sup> (Exh. 3) Public use existed in the 1880s. For example ... The original 1907 Township/Range Survey map for T. 14N, R. 5W, compiled from 1888 triangulation records and the 1889 topography by the USGS historical file topographic division, shows a mine with boarding house and office in 1888 and 1889.<sup>8</sup> (Exh. 4) & (Exh. 4a) & (Exh. 4b)

Lyons Creek Road above the Sieben Ranch gate was dedicated by the County Commissioners a public highway in 1923. (Exh. 3) Lyons Creek Road

---

<sup>7</sup> Counsel's failure to show Candor Towards the Tribunal finessed the Court into entering an Order stripping over 10,000 acres of 130 years or more of year round 'access and use'. The lack of Candor towards the Tribunal led to the District Court slandering commissioner court dedications and rulings as "older commission meeting notes".

Defendant reminded counsel he had a legal duty to show Candor Towards the Tribunal. The reminder was filed in the District Court. Counsel's malicious prosecution seeks to hide the perjury and fraud by client.

<sup>8</sup> To create the appearance of subject matter jurisdiction, material facts were concealed by plaintiff counsel. The integrity of the legal system was buried to protect client Sieben Ranch Company's perjury, fraud and other illegal activities from prosecution.

terminates in Section 31, Township 15 North, Range 5 West, approximately 8 miles above the Sieben Ranch gate. (Exh. 2)

To understand the events leading to Commissioner court dedication, review the events involving B. H. Barnes, who, relying upon his 1919 homestead patent, (silent at the time of issuance regarding the public road), blocked off the public road at the SW4 of Section 10, Township 14 North, Range 5 West. Mr. H. J. Herrin complained to the County Commissioners. It was developed that Lyons Creek road had been in public use for 30 years or more prior to the dedication. The commissioner court's dedication of Lyons Creek road above Mr. Barnes locked gate provided Mr. Herrin access to his game ranch and the general public access to thousands of acres of public lands. (Exh. 3)

In 1926, William Vestal Barnes, a predecessor to Sieben Ranch Company, purchased the N1/2 of section 9, and all of sections 11 and 13, in Township 14 North, Range 5 West. The purchase was:

*subject to an easement in the public for any public roads heretofore laid out or established and now existing over any part of the property.* (Exh. 5)

In 1948 appellee Sieben Ranch Company purchased Barnes' property. Sieben Ranch Company filed a petition for abandonment of the public highway with Commissioner court. The petition for abandonment was denied May 22, 1950: (Exh. 7) The petition for abandonment was in accordance with the provisions of Ch. 140,

Rev. Codes of Montana (1935). (Exh. 3) In 1996 appellee Sieben Ranch Company executed Deed(s) of Conservation Easement and a Management Plan affirming the 'access and use' rights for Sections 3, 5 and 31. In those documents plaintiff extended the access for Section 3 to include an easement for utilities. (Exh. 8)

Lyons Creek Road above the Sieben Ranch gate is shown upon the county records as being a public road or public highway for over 130 years. Discrepancies regarding the distance of the public road above the locked gate arise from poor dissemination of public information and lack of uniformity. For example:<sup>9</sup>

1. The county map in 1988 shows a public road into Section 5, Township 14 North, Range 5 West; (Exh. 9)
2. County records dated August 8, 2019, depict the public road into Section 10, Township 14 North, Range 5 West;
3. 2018 MDOT road data records depict the road into Section 10;

---

<sup>9</sup>The 1961 opinion plaintiff counsel introduced for lower Lyons Creek, is situated in a road index after 5 prior entries for upper Lyons Creek road. Those entries discuss the public highway counsel concealed from the court as this didn't support counsel's malicious prosecution and such Candor Towards the Tribunal would have exposed his client to perjury and fraud.

17	18	Jan. 10, 1923	Discussion & steps to re-open Lyons Creek Road
17	138	June 2, 1923	Protest on proposed Lyon Creek Road
17	234	Sep. 26, 1923	Hearing & declaration of public highway on Lyons Creek Road
27	474	Apr. 27, 1949	Petition rec'd for abandonment Lyons Creek Road — no action taken
27	476	Apr. 28, 1949	Date for hearing set on abandonment of Lyons Cr. Road
27	484	May 22, 1950	Petition to close Lyons Cr. Road denied
31	388	Nov. 1, 1961	Opinion by Co. Atty on Status of Lyons Cr. Road (See also Exh. 12)

Without Candor Towards the Tribunal from a sworn officer and ward of the court, the District Court appears 'stupid' and 'incompetent'. As follows: In the Order the Court (1) Refers to a county road when the subject is public highway, and (2) Describes commissioner court dedications and rulings as "older commission meeting notes". [Order - Page 3; lines 22 & 23]. All maps compiled by Lewis and Clark County portray a public road/public highway above the Sieben Ranch gate.

4. Lewis and Clark County Map 77, (2019) depict the public road into Section 10, Township 14 North, Range 5 West; (Exh. 10)
5. The 2020/2021 map for public road taxes affects the road into Section 10, Township 14 North, Range 5 West; (Exh. 11)
6. The Commissioner's dedication in 1923 of Lyons Creek Road a public highway is to Section 31, Township 15 North, Range 5 West. Lyons Creek road ends in Section 31. (Exh. 2)

## **STANDARD OF REVIEW**

### **A. Subject Matter Jurisdiction.**

When the District Court lacks 'subject matter jurisdiction' there is no standard for review. *Section 60-2-107, MCA* is the standard.

### **B. Findings of Fact.**

The Commissioner court's dedication in 1923 and rulings in 1950, portrayed as "older commission meeting notes" by the District Court, is reviewed to determine if this is clearly erroneous; whether the record's findings are supported by substantial evidence, not contrary findings. *Thibodeau v. Bechtold*, 2008 MT 412, at 14, 347 Mont. 277, 198 P.3d 785. The standard of review of a district court's Order granting summary judgment de novo looks to M. R. Civ. P. 56 to determine whether conclusions of law are correct and not clearly erroneous. *Swanson v. Consumer Direct*, 2017 MT 57, at 12, 387 Mont. 37, 391 P.3d 79.

## SUMMARY OF ARGUMENT

Appellee's sworn statement that Lyons Creek road above the Sieben Ranch gate is a private road is not borne out by the material facts in the public record. In 1950 appellee petitioned Commissioner court for an abandonment of the public highway and filed the petition in accordance with the provisions of Chapter 140, Revised Codes of Montana 1935. Appellee's efforts to change the public highway into a private road failed on May 22, 1950. (Exh. 9)

Appellee's underlying 1926 title upon Lyons Creek road above the Sieben ranch gate remained restricted by the following reservation<sup>10</sup>:

*Subject to an easement in the public for any public roads heretofore laid out or established and now existing over any part of the property.*

Statutory public highways are administered in Montana under Section 60-2-107, MCA (a/k/a abandonment statute). The District Court is barred from invoking 'subject matter jurisdiction' for itself. The District Court had no authority to dismiss Commissioner court as 'older commission meeting notes' to invoke subject matter jurisdiction for itself. The District Court appears to have done so

---

<sup>10</sup> The deed in 1926 is a chain of title document reserving in the public access across Sieben Ranch. On May 22, 1950, Sieben Ranch was bound by this chain of title reservation when Commissioner court refused to abandon the public highway. (Plaintiff's counsel concealed from the District Court the existence of the document reserving access to the public in 1926. This document is especially enlightening with plaintiff's concealed petition for abandonment failure in 1950)

On August 31, 2020 the firm Worden Thane PC, pre-eminent public road firm in Montana, was personally served with 'Candor Toward the Tribunal' and Montana Rules of Professional Conduct. [Respondeat Superior]

based upon counsel not reporting the public records with Candor Towards the Tribunal.

The concealing of the public record and illegal activities of client, in spite of a friendly reminder in the District Court from Defendant, violates Rule 3.3 Candor Towards the Tribunal and Rule 8.4 Professional Conduct.<sup>11</sup>

### **ARGUMENT / DISCUSSION**

Lyons Creek Road is a county road below the Sieben Ranch gate.

Lyons Creek Road above the Sieben Ranch gate is a dedicated public highway administered by the county commissioners. Section 7-5-2101, MCA.

The District Court does not have subject matter jurisdiction over a public highway. *Board of County Com'rs v. District Court*, 203 Mont. 44, 659 P.2d 266 is one of many cases addressing the lack of subject matter jurisdiction.

When the District Court exceeds its jurisdiction and issued an Order that, in effect, abandoned a public highway, a party is not held in contempt for disobeying an Order which the district court had no authority to make. *Board of County Com'rs v. District Court*, 203 Mont. 44, 659 P.2d 266.

Plaintiff is precluded from bringing subsequent proceedings to challenge an outcome that has already been decided. *Baltrusch v. Baltrusch*, 2006 MT 51, 331 Mont. 281, 130 P.3d 1267. A matter is res judicata if four elements are met:

---

<sup>11</sup> On August 31, 2020 the firm Worden Thane PC, pre-eminent public road firm in Montana, was personally served with 'Candor Toward the Tribunal' and Montana Rules of Professional Conduct. [Respondeat Superior]



1. The parties or their privies are the same;
2. The subject matter of the present and past actions is the same;
3. The issues are the same and relate to the same subject matter; and
4. The capacities of the parties are the same to the subject matter and issues between them.

*Touris v. Flathead County*, 2011 MT 165, DA 10-0514, at 13, *State v. Southwick*, 2007 MT 257, @15, 339 Mont. 281, 169 P.3d 698; *Orlando v. Prewett*, 236 Mont. 478, 481, 771 P.2d 111, 113 (1989).

In 1895, the legislature passed 2600, The Codes and Statutes of Montana (1895), which provided:

“All highways, roads, streets, alleys, courts, places, and bridges, laid out or erected by the public, or now traveled or used by the public, or if laid out or erected by others, dedicated to the public, or made such by the partition of real property, are public highways.”

In *State ex rel Dansje v. Nolan*, 58 Mont. 167, 173, 191 P. 150, 152 (1920) (citing four ways to establish a public highway) — Lyons Creek Road became a dedicated public highway by an act of proper authorities in 1923.

In *McCauley v. Thompson-Nistler*, 2000 MT 215, 301 Mont. 81, 10 P.3d 794, the court addressed the period of use required for a public road to be a public highway (at least five years). Appellee/Plaintiff filed an unsuccessful petition to abandon the 1923 public highway. The petition was filed in accordance with the provisions of Chapter 140, Revised Codes of Montana (1935). On May 22, 1950,

the petition to close Lyons Creek Road (above the Sieben Ranch closed gate), was denied.<sup>12</sup>

Section 2601, Codes and Statutes of Montana (1895), today's Section 60-2-107, MCA, (a/k/a the abandonment statute), establishes jurisdiction for public highways. To claim abandonment the burden of proving acts claimed to constitute abandonment must demonstrate a decisive and conclusive intent to abandon the road. *State v. Fisher*, 2003 MT 207, at 9, 317 Mont. 49, 75 P3d 338 (finding no abandonment by government entity).

To demonstrate an intent to abandon there must be some affirmative official act, and not mere implication. Mere nonuse, even for extended periods of time, is not sufficient to find abandonment of a road. *McCauley* at 30, citing *City of Billings v. O.E. Lee Co.* (1975), 168 Mont. 264, 542 P.2d 97.

This Court has made clear that the concept of 'abandonment' applies only to title to public roads and such term must be distinguished from a right of road use created by public prescriptive easements. *McCauley v. Thompson-Nistler*, 2000 MT 215, 301 Mont. 81, 10 P.3d 794.

## CONCLUSION

Lyons Creek Road is a 1923 dedicated public highway, acknowledged as

---

<sup>12</sup> The Commissioners established that Lyons Creek Road had been in use for over 30 years prior to the dedication in 1923.

such by Appellee in 1950. Appellee cannot claim Lyons Creek road through Sieben Ranch Company to be private when predecessor in 1926 reserved public access for the benefit of the public:

*Subject to an easement in the public for any public roads heretofore laid out or established and now existing over any part of the property.*

By engaging in Malicious Prosecution, counsel concealed the above document from the District Court, concealed the 1923 dedication of Lyons Creek road, and concealed plaintiff's rejected Petition for Abandonment. Without Candor Towards the Tribunal, counsel's Malicious Prosecution led to an Order destroying 'access and use' rights to over 10,000 acres of public and private property.<sup>13</sup> The Malicious Prosecution and failure to perform 'Candor Towards the Tribunal' deceived the court into issuing an Order that in effect converts a public highway into a private road, all, without 'subject matter jurisdiction'. The Order violates state law. The laws of Montana do not allow an abandonment:

"of a highway, road, or right-of-way used to provide existing legal access to public lands or water, including access for public recreational ... unless another highway, road, or right-of-way provides substantially the same access."  
Section 60-2-107(4), MCA.

---

<sup>13</sup> A study from publicintegrity.org, published in 2015, gives Montana a D- rating for Judicial Accountability, an F for Ethics Enforcement Agencies, an F for Lobbying Disclosure, and an F for Public Access to information. <https://publicintegrity.org/politics/state-politics/state-integrity-investigation/montana-gets-d-grade-in-2015-state-integrity-investigation/> :

This Order, which cleverly takes away 'access and use' to over 10,000 acres of public and private ownership, in the eyes the public, strains the court's tenuous judicial accountability.<sup>14</sup>

### PRAYER

The Orders and Judgments of the District Court lack "subject matter jurisdiction". Appellant prays for the legal right to file his dismissed counterclaim complaint in an appropriate forum. Material fact evidence of illegal and fraudulent activities, currently delayed with malicious prosecution and failure to perform Candor Towards the Tribunal, is impeded. Appellant prays for the Supreme Court to free this up.

DATED this 30<sup>th</sup> day of December, 2020.



---

Lee McDonald, Appellant Pro se

---

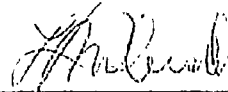
<sup>14</sup> A political melt down we can live with, governmental meltdowns we cannot.

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word, is less than 6,000 words, excluding the Tables of Authority and Contents, and Certificate of Compliance and Service.

Footnotes are in Times New Roman text typeface 9, and single spaced.

DATED this 30<sup>th</sup> day of December 2020.



---

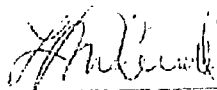
Lee McDonald  
*Pro se Appellant*

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word, is less than 6,000 words, excluding the Tables of Authority and Contents, and Certificate of Compliance and Service.

Footnotes are in Times New Roman text typeface 9, and single spaced.

DATED this 30<sup>th</sup> day of December 2020.



Lee McDonald  
*Pro se Appellant*

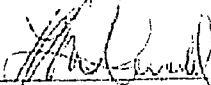
## CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of December, 2020, a true and correct copy of the foregoing *Appellant Lee McDonald's Opening Brief* was duly served, via First Class U.S. Mail, postage prepaid, on the attorneys of record address as follows:

Jesse Kodadek  
Worden Thane PC  
321 West Broadway, Suite 300  
Missoula, Montana 59802

Jack Morris  
Beebe & Flowers  
110 N. Warren Street  
Helena, Montana 59601

Judge Mike Menahan  
1st Judicial District Court  
228 Broadway  
Helena, Montana 59601

  
\_\_\_\_\_  
Lee McDonald  
*pro se*

## **APPENDIX**

<b>Exhibit 1</b>	<b>August 7, 2020 District Court Order</b>
<b>Exhibit 2</b>	<b>Lyons Creek Road Map</b>
<b>Exhibit 3</b>	<b>Commissioner's Journal No. 17 (1923)</b>
<b>Exhibit 4</b>	<b>1907 Township/Range survey</b>
<b>Exhibit 4a</b>	<b>U.S.G.S. 1889 topographic map</b>
<b>Exhibit 4b</b>	<b>U.S.G.S. 1889 topographic map</b>
<b>Exhibit 5</b>	<b>Deed of Conveyance, Northern Pacific Railway Co. to William Vestel Barnes (1926)</b>
<b>Exhibit 7a</b>	<b>Commissioner's Journal No. 27, April 27, 1950</b>
<b>Exhibit 7</b>	<b>Commissioner's Journal No. 27, May 1950</b>
<b>Exhibit 8</b>	<b>Lyons Creek Conservation Easement Management Plan; Sieben Ranch Deed of Conservation Easement; O'Connell Ranch Deed of Conservation Easement</b>
<b>Exhibit 9</b>	<b>Lewis and Clark County Road Map/1988</b>
<b>Exhibit 10</b>	<b>Lewis and Clark County T14N-R5W-Map 77 (2019)</b>
<b>Exhibit 11</b>	<b>Lewis and Clark County Fuel Tax SFY 2021</b>
<b>Exhibit 12</b>	<b>Lewis and Clark County Road History (Index) List of filings for Lyons Creek Road</b>