

IN THE SUPREME COURT OF THE STATE OF MONTANA

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Supreme Court No. DA 20-0373

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PAUL S. PARISER,

Petitioner and Appellee,

and

JUDITH SHRIAR,

Respondent and Appellant.

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JUDITH SHRIAR,

Counter Plaintiff and Appellant.

v.

PAUL S. PARISER,

Counter Defendant and Appellee.

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On Appeal from the Eighth Judicial District Court,  
Cascade County, Montana Cause No. DDV-17-0798  
Honorable Elizabeth A. Best

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APPELLANT'S REPLY BRIEF AND ANSWER BRIEF TO CROSS-APPEAL  
(AND REQUEST FOR ORAL ARGUMENT)

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## STATEMENT OF THE ISSUES

- I. THE APPELLEE’S ANSWER AND CROSS-APPEAL BRIEF (HEREIN “RESPONSE BRIEF”) MISREPRESENTS THE FACTS BELOW AND FAILS TO ACKNOWLEDGE THAT THOSE FACTS WHICH WERE IN FRONT OF THE COURT MUST BE CONSTRUED IN FAVOR OF SHRIAR, THE PARTY DEFENDING THE MOTIONS FOR SUMMARY JUDGMENT.
  - A. The Response Brief mischaracterizes the terms of the oral contract on which the breach of contract claim was based.
  - B. It is not an accurate reading of Mont. Code Ann. 27-1-602 to suggest that the only fraudulent misrepresentation claims expressly preserved are those based on fraudulent inducement.
  - C. The Response Brief completely ignores the breach of written contract claim dismissed by the District Court on the theory it was barred by MCA 27-1-601.
  - D. The Response Brief misrepresents the basis on which the anticipatory breach of contract claim was asserted and analyzes the decision as if it were a finding on the merits after a trial.
  - E. The Response Brief doesn’t even pretend to address the arguments raised in the opening brief on the abuse of process claim or to explain why the decisions cited by Shriar are inapplicable.
- II. THE DISTRICT COURT DID NOT ACT ARBITRARILY AND WAS ACTING WITHIN ITS DISCRETION WHEN IT MADE ITS ATTORNEY’S FEE AWARD.
  - A. Pariser fails to acknowledge the evidentiary hearing held and totality of the evidence considered by the district court in arriving at the attorney fee award.
  - B. The evidence before the court on the attorney fee issue would actually justify a far higher award for Shriar’s counsel.

## ARGUMENT

- I. THE APPELLEE’S ANSWER AND CROSS-APPEAL BRIEF (HEREIN “RESPONSE BRIEF”) MISREPRESENTS THE FACTS BELOW AND FAILS TO ACKNOWLEDGE THAT THOSE FACTS WHICH WERE IN FRONT OF THE COURT MUST BE CONSTRUED IN FAVOR OF SHRIAR, THE PARTY DEFENDING THE MOTIONS FOR SUMMARY JUDGMENT.

The Statement of Facts in the Response Brief, and indeed the factual recitation throughout the Argument, inaccurately represents to this Court the “facts” before the district court. A key example is paragraph 5 of the Statement of Facts which claims Shriar was scheduled to retire in “December of 2021” citing as authority the Complaint ¶ 7. That allegation was denied as is evident from the responsive pleading. [Doc. 2 ¶ 7]. The statement is simply untrue. There was no evidence before the district court in the summary judgment proceedings supporting a claim that “Shriar was scheduled to retire in December of 2021 when the parties renewed their relationship in 2016.” Multiple other instances exist throughout the Statement of Facts and Argument in the Answer Brief where there is either no citation to support what is represented as a fact or the citation is merely to a Pariser pleading making that claim.

- A. The Response Brief mischaracterizes the terms of the oral contract on which the breach of contract claim was based.

The Response Brief at page 18 asserts “when distilled to its basic terms, Shriar’s breach of oral contract claim is that Pariser promised Shriar that if she moved to part-time status and married him (emphasis added) she would not suffer a



financial loss.” But, nowhere does the Response Brief point to evidence to support that claim.

Neither of Shriar’s affidavits say that Pariser promised to make her whole if she married him to induce her to file her papers to move to part-time status. *See* Shriar Affidavit, Ex. A to Shriar’s Statement of Disputed Material Facts and Statement of Undisputed Facts filed April 18, 2019 [Doc. 69] and Shriar Affidavit I, Ex. 1 to the Statement of Disputed Material Facts in Response to Second Motion for Summary Judgment filed September 23, 2019 [Doc. 114]. Pariser offered no affidavit or sworn testimony claiming the oral promise was, if Shriar moved to part-time status and married him, that she would not suffer financial loss. In fact, there was no commitment on the part of either party to marry the other when the contract was made. That is, there was no commitment to marry when Pariser insisted Shriar move to a part-time status in return for Pariser’s promise that she would be made whole, i.e., would not suffer any loss, if she did so. *See* Shriar Affidavit, Ex. A to Shriar’s Statement of Disputed Material Facts and Statement of Undisputed Facts filed April 18, 2019 [Doc. 69, ¶¶ 21, 22, 23, 24, 25, 26].

The Response Brief then goes on at page 18 to claim that promises made in an anticipation of marriage are expressly barred by Mont. Code Ann. §27-1-602 citing *Albinger v. Harris*, 2002 MT 118, 310 Mont. 27, 48 P.3d 711. In doing so, the Response Brief misconstrues or completely misreads *Albinger*. (The operative

language of Mont. Code Ann. 27-1-602 says “All causes of action for breach of contract to marry are hereby abolished . . . .” The language in the statute does not say, “all promises made in anticipation of marriage” are abolished.) Shriar and Pariser were married and, in fact, remain married to this day. In other words, the anticipated marriage did take place.

*Albinger* involved, among other things, the issue of whether an engagement ring was a conditional gift which expressly contemplated marriage so that any action to recover the engagement ring when the anticipated marriage did not take place was barred by Mont. Code Ann. §27-1-602. *Albinger*, ¶ 11. Note that the *Albinger* court stated, “According to the District Court’s analysis, the statute goes no farther than to bar actions for general damages sustained by the loss of marriage such as humiliation, lost opportunities, emotional suffering and other non-specific consequences of the breach. We agree with the court’s conclusion that the rights and duties of the parties regarding property exchanged ‘in contemplation of marriage’ are still determined by existing law and common law principles.” *Albinger*, ¶ 19 (emphasis added). In short, *Albinger* rejects an interpretation of Mont. Code Ann. 27-1-602 which would bar claims for everything which happens in contemplation of marriage.

Similarly here, even if the facts below showed that there was some discussion that the promise to make whole was part of the planned marriage, nothing in *Albinger*

suggests that such actions would be barred by Mont. Code Ann. 27-1-602. In fact, as is noted in the cited language from ¶ 19, *Albinger* stands for the proposition that the rights and obligations of the parties in connection with acts in contemplation of marriage should be determined by existing law and common law principles. The *Albinger* court noted that “the ‘anti-heart balm’ statutes closed courtrooms across the nation to female plaintiffs seeking damages for antenuptical pregnancy, ruined reputation, lost love and economic insecurity.” *Albinger* at ¶ 39.

The *Albinger* court also noted, “although the court implied a condition of marriage attaching to the gift (of the engagement ring at issue) as a matter of law, we do not. In our judgment, the gift was complete upon delivery, and a completed gift is not revocable.” *Albinger* at ¶ 36. Thus, to the extent Pariser wishes to imply that marriage was a condition to his promise to make Shriar whole if she moved to a part-time status, something not established by the facts, that implication would be no different than the implication which would attach to an engagement ring. We would be left with the conclusion that the contractual rights, i.e., the offer, acceptance, and consideration of the deal if the partial retirement occurred, should be determined by existing law and common law principles.

While the Response Brief at page 18 pretends that Shriar pled heart balm damages citing paragraphs of the counterclaim outlining the factual basis for the claim for intentional infliction of emotional distress, there was no prayer for heart

balm damages in the counterclaim, no claim for ruined reputation or lost love. It was those damages which were the items precluded by the Montana legislature when it passed Mont. Code Ann. 27-1-602. *Albinger*, ¶¶ 19, 26-28, 39.

But to return to the beginning, Shriar's claims were not that Pariser breached a contract to marry. They did marry. She did assert claims against Pariser for breach of contracts and torts he committed but did not make any claim that he did not marry her and that she had therefore suffered heart balm damages.

- B. It is not an accurate reading of Mont. Code Ann. 27-1-602 to suggest that the only fraudulent misrepresentation claims expressly preserved are those based on fraudulent inducement.

The Response Brief correctly quotes language from page 7 of the district court decision [Doc. 85] as saying that the type of deceit and fraud claims contemplated by Mont. Code Ann. 27-1-602 occur only where one party induced the other to marry and did not disclose that there existed a "legal impediment" to marriage citing *Albinger v. Harris*, 2002 MT 118 ¶ 27, 310 Mont. 27, 48 P.3d 711. But, a review of the *Albinger* case and, in particular, the paragraph cited, make clear that simply is not true. Paragraph 27 of *Albinger* has nothing to do with the exception in Mont. Code Ann. 27-1-602 which expressly permits claims for fraud which the statute says may still be pursued.

While the *Albinger* court does make mention of the fraud exception to Mont. Code Ann. 27-1-602 in ¶ 18, nowhere in its decision does *Albinger* in any way limit

an action for fraud or deceit expressly preserved by statute to those based only on fraud in the inducement.

A fraud in the inducement claim with a limitation that it must be based on a legal impediment to the marriage is relevant only in the context of whether Pariser could prove fraud sufficient to justify his demanded annulment. Mont. Code Ann. 40-1-402(a), *See Turfe v. Turfe* 233 Cal.Rept.3d 313, 320-21, 23 Cal.App.5th 1118, 1125-26 (Cal. App. 2018). The district court held that Pariser could not do so precisely because the type of fraud and deceit contemplated to permit an annulment is only that where there was a legal impediment to marriage. Order Granting Cross Motions for Summary Judgment pgs. 4-5. [Doc 154].

It is not clear how the district court confused those two very different concepts but the quoted language belongs in the earlier section of the trial court's May 23, 2019 Order Denying Pariser's Motion for Summary Judgment [Doc. 85] which dealt with the deficiencies in Pariser's claim of fraud justifying an annulment. It appears that the language may have been copied from another document and simply pasted in the wrong location when the Order was being prepared.

The Response Brief then argues beginning at page 20 that there can be no fraud claim because "the parties contracted what Shriar's remedy was for entering semi-retirement. . . ." Several points are relevant in response. First, how does the execution of a later signed document negate a fraudulent inducement claim? Pariser

provides no case authority for that proposition. The Response Brief simply makes that bald statement.

Second, the issue raised on appeal is whether the district court was correct in granting summary judgment dismissing the fraud claim on grounds that it was barred by Mont. Code. Ann. 27-1-602. This Court reviews that decision de novo as both parties set out in the Standard of Review sections of the briefs. The district court was not correct because the statute says “However, where a plaintiff has suffered actual damage due to fraud ....., the plaintiff may maintain an action for fraud.....and recover therein only the actual damage proved....” The district court, therefore, should be reversed because the statutory exception clearly permits this cause of action. Mont. Code Ann. 27-1-602.

Third, Pariser’s motion for summary judgment and related pleadings claiming the statute barred the fraudulent misrepresentation claim **did not argue** that the premarital agreement was a contract for Shriar’s recovery on semi-retirement which barred the fraud claim. [Doc. 48, 49, 50 and 75]. Finally, the facts, particularly when viewed in a light most favorable to Shriar, are that the premarital agreement was first suggested by Pariser many months after he induced her to file her early retirement papers based on his promises that he was a man of his word and she would never suffer any financial loss if she did so. *See* ¶¶ 11, 12, 13, 14, 15, 16, 17 of Shriar Affidavit of April 15, 2019. [Doc. 69 (Exhibit A)].

- C. The Response Brief completely ignores the breach of written contract claim dismissed by the District Court on the theory it was barred by MCA 27-1-602.

Nowhere does the Response Brief provide justification for the trial court's dismissal of the breach of written contract claim on summary judgment on the theory Pariser urged below that it was barred by Mont. Code Ann. § 27-1-602. That was the position Pariser took from the time he retained Mr. Terrazas as his counsel in late May 2019. *See* Pariser's Motion for Protective Order and Brief in Support filed June 22, 2018. [Doc. 18 and 19]. That was the position Pariser took in his Motion for Summary Judgment filed March 25, 2019. [Doc. 48, 49 and 50].

As explained in Shriar's Opening Brief, the breach of written contract (breach of the signed premarital agreement) was the refusal by Pariser to execute the waiver of survivorship documents (something he still has not done) so that Shriar could file for pension benefits unless Pariser could first obtain her signature on an amendment to the premarital agreement allowing him to avoid its terms by filing for divorce.

No discovery was permitted on the claim because Pariser had earlier secured an order barring discovery on the counterclaims. [Doc. 22]. Thus, we are left at the summary judgment stage with the district court dismissing the breach of written contract claim for the reason the Response Brief doesn't even pretend to try to justify, i.e., that it was barred by Mont. Code Ann. 27-1-602. Shriar's evidence was that Pariser's refusal to sign the survivorship documents limited the options open to

her when she filed and may cost her \$220,000 or more over her lifetime if Pariser predeceases her as is statistically likely given he is older than she is. Shriar Affidavit ¶ 10, Ex. 1 to Statement of Disputed Material Facts in Response to Second Motion for Summary Judgment filed September 23, 2019. [Doc. 114].

Moreover, the Response Brief provides no explanation or justification for the granting of summary judgment on the claim for breach of the implied covenant of good faith and fair dealing which accompanies all Montana contracts. The district court order at issue [Doc. 85] similarly provides no cited authority or rationale for holding that claim was barred by Mont. Code Ann 27-1-602.

It can't be said even now that Pariser has complied with his obligations under the premarital agreement even though the court has found it enforceable. Pariser has never completed the actions required to waive his survivorship rights. (Though he initiated the required action shortly before argument on the second summary judgment and the transcript of the hearing on summary judgment contains numerous statements of what Pariser's counsel said was then being done, the required action was never completed.) He has not paid the attorney fees which the premarital agreement required that he pay and which the district court found should be paid in the amount of \$97,660.00.



- D. The Response Brief misrepresents the basis on which the anticipatory breach of contract claim was asserted and analyzes the decision as if it were a finding on the merits after a trial.

It is important to note that the anticipatory breach claim was based principally on Pariser's repeated statements to Shriar, both in front of others and to her alone, that he would never pay her a penny under the premarital agreement. Shriar's Statement of Disputed Material Facts and Statement of Undisputed Facts filed April 18, 2019 ¶¶ 6, 35 [Doc. 69], Statement of Disputed Material Facts in Response to Second Motion for Summary Judgment filed September 23, 2019, ¶¶ 13, 14, 15 [Doc. 114]. He further told her that he would not pay a judgment even if the court ordered him to pay something under the premarital agreement. *Id.* ¶ 13.

The Response Brief suggests at page 24 that a statement by Pariser recited by the district court along the lines of, "I never said I would not honor the prenup!" somehow erases all of the prior statements he had made that he wouldn't pay anything ever, under any circumstances, and would not comply with a court order in ordering him to do so, but Shriar is entitled to all reasonable inferences. When deposed, Pariser admitted he had told her in front of witnesses that he would never pay her a penny as has been noted several times in the briefing. Thus, Parsier's statement cited by the district court was a falsehood when Pariser made it unless he was just being cute and pointing out he had not used those exact words.

More importantly to this de novo review of the summary judgment order, the record before the district court, when viewed in a light most favorable to Shriar, make clear that a jury might believe Shriar's testimony and disregard Pariser's statement after filing suit that he never said he would not honor the prenup or that he had changed his position.

In fact, one could take the view that Pariser was choosing his words carefully. Even he doesn't say in the quoted language that he would pay her what was required by the agreement. He merely made the point that he had not used those words previously.

This is not a matter of using a court to resolve the interpretation of the contract as argued by the Response Brief at page 25. Pariser's Complaint sought to nullify the premarital agreement. Further, as is evidenced by Pariser's Declaration notarized February 15, 2019 marked Plaintiff's Ex. 34 (App. 57-60), Pariser was telling the Canadian Pension Authorities even then that his apparent marriage was void. He was still maintaining that the premarital agreement was void for that reason, so he had no obligation to Shriar.

The issue is whether one party, bound by a contract, can repeatedly tell the other party in front of third-parties, as Pariser admits he did, that he has no intention of ever performing and wouldn't comply with an order and then, after the filing of suit, deny having that intention to avoid the effect of the prior repudiation. Pariser

cites no case supporting that proposition and, indeed, it makes no sense because any well counseled client would then “reconsider” after suit is filed. Further, as is noted previously, Pariser has not, even up to the present, taken any action which would constitute compliance with his obligations under the premarital agreement.

- E. The Response Brief doesn’t even pretend to address the arguments raised in the opening brief on the abuse of process claim or to explain why the decisions cited by Shriar are inapplicable.

The Response Brief does no more than repeat the district court’s citation to *Brault v. Smith*, 209 MT 21, 679 P.2d 236 (1984) as requiring summary judgment for Pariser. The Response Brief makes no effort to explain why the analysis by the Montana Supreme Court in *Seltzer v. Morton*, 2007 MT 62, ¶¶ 57-60, 336 Mont. 225, 154 P.3d 561 or *Seipel v. Olympic Coast Investments*, 2008 MT 237, ¶ 25, 344 Mont. 415, 188 P.3d 1027, both of which postdate the *Brault* decision, would not be applicable to these facts.

As established in Shriar’s Opening Brief, the facts, when viewed in a light most favorable to the non-movant, Shriar, on this issue, were that Pariser: 1) knew he didn’t have a valid claim, 2) wanted Shriar to either agree to amend the premarital agreement so he could file a divorce or annulment action or to file an action for divorce or annulment herself so he could avoid paying her anything under the premarital agreement, 3) knew he couldn’t force Shriar to sign an amendment or file an action for divorce or annulment, 4) knew she couldn’t afford the legal costs he

could impose on her by filing and aggressively pursuing a suit against her in Montana, yet 5) filed suit knowing his claims of fraud were non-meritorious and would be embarrassing to her given her judicial position in an effort to force Shriar to give up the claims to which she was entitled under the premarital agreement. Pariser's explanations of the fraud he was relying on for his annulment focused on his claims that Shriar did not please him when intimate and were plainly intended to embarrass her. *See* Statement of Disputed Facts in Resistance to Pariser's Motion for Declaratory Ruling or Summary Judgment filed April 18, 2019. [Doc. 69, ¶ 7].

It is clear today that Pariser did not assert a valid claim in his complaint. The facts before the court were that he knew he had no valid claim of fraud by Shriar from the outset and was using the courts to extract something which he could not otherwise obtain. That, under Montana law as explained in *Seltzer v. Morton*, 2007 MT 62, ¶¶ 57-60, 336 Mont. 225, 154 P.3d 561 and *Seipel v. Olympic Coast Investments*, 2008 MT 237, ¶ 25, 344 Mont. 415, 188 P.3d 1027, is an abuse of process. The district court decision should be reversed, and the claim should be reinstated. Shriar should be permitted to do discovery and present her facts to a jury.

II. THE DISTRICT COURT DID NOT ACT ARBITRARILY AND WAS ACTING WITHIN ITS DISCRETION WHEN IT MADE ITS ATTORNEY'S FEE AWARD.

- A. Pariser fails to acknowledge the evidentiary hearing held and totality of the evidence considered by the district court in arriving at the attorney fee award.

Although not mentioned anywhere in the cross-appeal brief, the district court held an evidentiary hearing on the attorney fee issue on July 7, 2020. *See* Doc 201, App. 2-4. The district court heard the testimony of witnesses. *Id.* Pariser called and presented the testimony of an expert. *Id.* The Court was offered and accepted exhibits [Doc. 202] including, among others, Exhibits A, A-1, A-2, A-3 (App. 5-45), the itemization of legal services by counsel for Shriar, as well as itemized invoices for services provided by counsel for Pariser. The court received briefs from and heard argument from counsel for both parties. Court reporter W. Fiske is identified and reader is told a verbatim transcript can be obtained.

Pariser failed to order a copy of the transcript of the July 7, 2020 hearing within eleven (11) days as required by Rule of Appellate Procedure 8(3). To the extent he wants to argue the Court acted arbitrarily after hearing the evidence, Pariser as the Cross-Appellant had a duty to present a record of the hearing to the court. Pariser's failure to do so should result in an affirmance of the district court. *See* Rule of Appellate Procedure 8(2).

- B. The evidence before the court on the attorney fee issue would actually justify a far higher award for Shriar's counsel.

There is no disputing that the guiding case is *Plath v. Schonrock*, 2003 MT 21, 314 Mont. 101, 64 P.3d 984. That was recognized by the district court in the order on fees. (App. 50-56). The district court properly analyzed all seven factors suggested as guidelines by the *Plath* court. *See* July 7, 2020 Order on Fees. [Doc 203]. (App. 50-56). Those factors are not exclusive, and the court may consider other factors as well. *Plath* ¶ 36. The court's personal knowledge of the case and work performed provides a basis to evaluate a reasonable fee. *Tacke v. Energy West Inc.*, 2010 MT 39, ¶¶ 34, 38, 355 Mont. 243, 227 P.3d 601 (2010).

Shriar was required to retain counsel and defend the case filed by Pariser in Cascade County District Court. From the time her U.S. counsel was retained through the granting of summary judgment on October 31, 2019, she was billed \$234,934.50 for his services as is set out in the itemization of dates, description of services provided, and charges evidenced by Exhibits A-1, A-2, and A-3. *See* Ex. A, ¶ 1 (App. 5-6), and Exs. A-1, A-2, and A-3 (App. 16-45). Those were the fees sought in the motion to recover fees before the court on July 7, 2019. The requested award did not include the costs of Shriar's Canadian counsel or the expenses incurred for expert work, travel, depositions, and other case-related costs.

The district court accurately recited the detailed work done by Shriar's counsel which included 598.50 hours by lead counsel and 45 hours by law clerks or

associates through October 31, 2019. Pariser's counsel billed 1142.30 hours in the same time period as was evidenced in the record and is reflected in Shriar's brief in support of motion for fees. [Doc. 186, pg. 7]. In other words, the court heard testimony and received exhibits demonstrating that counsel representing Pariser in that same period billed far more hours than had counsel for Shriar. Shriar Reply Brief. [Doc. 197].

The court heard testimony from Shriar's counsel that he concluded, after analyzing the time entries and the work reflected as laid out in the numerous docket entries in the district court clerk's docket and his discovery docket (Ex. H) (App. 46-49), admitted at the hearing on fees, approximately 80% of the total time was focused solely on the premarital agreement. *See* Ex. A ¶¶ 11, 12, 13, 14, 15, 16 (App. 9-11). That was due in large part to the fact that all work from July 12, 2018 and June 23, 2019 necessarily dealt solely with the premarital agreement and Pariser's attempts to set it aside. *Id.* ¶12.

That was true because all work had been stayed on the counterclaims at Pariser's request from July 12, 2018 to June 28, 2019. As is noted in Shriar's May 27, 2019 Brief in Support of Fees [Doc 186], even when it came to the summary judgment briefing on the counterclaims Pariser's counsel chose to combined a brief for declaratory ruling that the counterclaims were in fact a dissolution action negating any right to recover under the premarital agreement with his motion for

summary judgment on the counterclaims. [Doc.48, 49 and 50]. As the court's minute entry of May 10, 2019 [Doc. 78] (App. 1) reflects, Pariser's counsel "argued the validity of the premarital agreement and the fact that Mr. Pariser believes he was involuntarily admitted to the marriage." Therefore, a substantial portion of Shriar's briefing and argument on Pariser's summary judgment motion was to uphold the premarital agreement. In addition, of course, the work to file the motion for summary judgment on the complaint in September 2019 [Doc. 111, 112, 113 and 146] was necessarily required in defense of the premarital agreement.

Citing to the length of the premarital agreement as the Response Brief does at page 29 and plucking several items out of the docket before suggesting that is all that was supportive of the premarital agreement ignores the fact that the order staying any work on the counterclaims was entered on July 12, 2019 at docket 22. The order lifting the stay is found seventy-one (71) docket entries later on June 28, 2019. Exhibit H (App. 46-49) shows service of 14 discovery requests or responses by both parties in that same period. Document production by Shriar exceeded 2,700 pages and Pariser's exceeded 900 pages. (Shriar Brief in Support of Fees, pg. 5 [Doc. 186].) An examination of the time entries on Exhibits A-1, A-2, and A-3 (App. 16-45), shows Shriar's counsel had 310.6 hours of attorney time between those two dates alone which clearly doesn't include any of the legal work to answer Pariser's



Complaint, or to brief and argue the Motion for Summary Judgment on the complaint filed September 16, 2019. [Doc. 111,112, 113].

Shriar sought and believes a far higher fee award was justified by the work imposed by Pariser and the time devoted by her counsel to upholding the premarital agreement. While the district court refers to a “war of the roses” it must be noted that this proceeding was initiated by Pariser and prosecuted aggressively by him from the outset for the reasons noted in support of the abuse of process claim. Shriar simply refused to be bullied into giving him what he demanded.

The court held a hearing, took evidence, briefs and heard argument on the fees. Absent an abuse of discretion where a court has an evidentiary hearing and bases the decision on competent evidence, the decision on fees will not be reversed on appeal. *Renville v. Farmers Ins. Exchange* 2004 MT 366, ¶ 20, 324 Mont, 509, 105 P.3d 280.

Given the evidence the court heard, exhibits and affidavits offered, an examination of the court file and the court’s knowledge of the multiple issues that had arisen throughout the case the court’s exercise of discretion was within reason. In fact, the trial court’s determination that 257 hours would be deemed compensable is more than justified by the 310.6 hours Shriar’s attorney devoted to the case while the stay on discovery of the counterclaims was in place. Pariser claims the decision

was arbitrary but the law requires the award to be reasonable. *Houden v. Todd* 2014 MT ¶ 14, 375 Mont. 1, 324 P.3d 1157.

Under the evidence before the court, it was in fact on the low side favoring Pariser. Given the standard of review for such decisions though, the district court decision on the attorney fee award should be affirmed.

### CONCLUSION

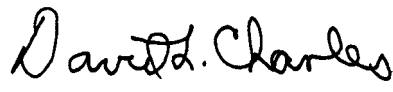
The trial court completely misapplied or misunderstood Mont. Code Ann. § 27-1-602 in dismissing the counts of the counterclaim asserting breach of oral contract, fraudulent misrepresentation, breach of written contract and breach of the implied covenant of good faith and fair dealing. Moreover, when the evidence before the court at the summary judgment stage is construed as it must be at that point, Shriar plainly had established factual issues precluding summary judgment on any of her counterclaims, particularly on her anticipatory breach of contract claims and the abuse of process claim. All litigants, including those from another country, are entitled to have the laws fairly implied to the facts. The trial court's orders on summary judgment dismissing those portions of Shriar's counterclaims should be reversed and those portions of this case returned to the trial court for further proceeding.

Given the wide discretion which rests in a trial court in handling attorney fee award decisions, the trial court should be affirmed on the award it made for attorney

fees even though it is far less than Shriar requested and far less than could be reasonably justified by the evidence before the trial court. Shriar respectfully requests that this Court affirm the trial court on that issue.

RESPECTFULLY SUBMITTED, this 27th day of January, 2021.

BELIN McCORMICK, P.C.

By:   
\_\_\_\_\_  
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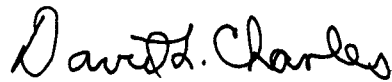
ATTORNEYS FOR APPELLANT

### CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(a) and (d), M. R. App. P., I certify that this brief:

1. is proportionately spaced Times New Roman text typeface of 14 points, except for footnotes which are size 12 font;
2. is double spaced (except that footnotes and quoted and indented material are single spaced);
3. has left, right, top and bottom margins of 1 inch; and
4. has a word count calculated by Microsoft Word of 4,865 words (excluding the Table of Contents, Table of Citations, Certificate of Compliance, and Certificate of Service).

Dated: January 27, 2020.



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David L. Charles

## CERTIFICATE OF SERVICE

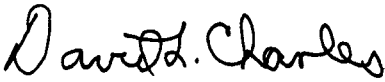
I, hereby certify that on the 27th day of January, 2021, I have filed a true and accurate copy of the foregoing APPELLANT’S REPLY BRIEF AND ANSWER BRIEF TO CROSS-APPEAL with the Clerk of the Montana Supreme Court; and that I have served a true and accurate copy of the foregoing upon the Clerk of the District Court, each attorney of record, and each attorney of record, and each party not represented by an attorney in the above-referenced district court action, as follows:

☐ U.S. Mail  
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☐ Hand-Delivery  
☐ Facsimile  
☐ Email  
☒ Electronic Filing System

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The Honorable Elizabeth A. Best  
District Court Judge  
Cascade County District Court  
415 2nd Avenue North  
Great Falls, MT 59401



\_\_\_\_\_  
David L. Charles

## **CERTIFICATE OF SERVICE**

I, David L. Charles, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant Reply and Answer to Cross Appeal to the following on 01-27-2021:

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Service Method: eService

Electronically Signed By: David L. Charles  
Dated: 01-27-2021