

ORIGINAL

FILED

02/10/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0055

Randy S. Laedeke
1148 Patriot Street
Billings, MT 59105
(406) 850-3766
randylaedeke56@gmail.com
Appellant and Defendant

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 21-0055

FILED

FEB 10 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

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| STATE OF MONTANA |) | |
| |) | |
| Plaintiff Appellee, |) | |
| |) | |
| -vs- |) | |
| |) | |
| RANDY S. LAEDEKE, |) | MOTION FOR |
| |) | RELEIF FROM ORDER OF DISTRICT |
| |) | COURT, STAY OF EXECUTION, |
| |) | AND STAY OF PROCEEDINGS |
| Defendant Appellant. |) | PENDING OUTCOME OF APPEAL |

Appellant/Defendant, Randy S. Laedeke, pursuant to Rule 22 (2), Montana Rules of Appellate Procedure, hereby moves the Montana Supreme Court FOR RELEIF FROM ORDER OF DISTRICT COURT, STAY OF EXECUTION Of The District Court Orders, and STAY OF PROCEEDINGS PENDING THE OUTCOME OF THE ABOVE ENTITLED APPEAL.

Rule 22 (2) is as follows:

- (a) On the grant or denial of a motion for relief from the district court order may be filed in the Supreme Court within 11 days of the date of the district court order.

The general rule of stays of execution pending appeal is set forth in Nepstad v. East Chicago Oil Ass'n, 96 Mont. 183 (1934). In Nepstad the Montana Supreme Court explained that **when the law (statute) makes no provision for a stay, the appellate court should grant a supersedeas [stay of execution and/or proceedings] whenever it is reasonably necessary to protect the appellant from serious injury in case of reversal.**

The relevant portion setting forth the **Nepstad rule** is reproduced below:

Nepstad v. East Chicago Oil Ass'n, 96 Mont. 183 (1934), provides as

follows on page 4 of the opinion:

In 2 Cal. Jur. 464, it is said: "The power of an appellate court to issue a writ of supersedeas exists in cases where the statute regulating a stay of proceedings on appeal makes no provision for such stay in the particular case, but where the writ is necessary to preserve the status quo, so that rights involved in an appeal when determined by the appellate court may not be lost or prejudiced by reason of the intervening execution of the judgment or order appealed from.

The district court, in its order denying motion for stay of execution that §46-20-204, MCA, does not apply in this case because the District Court did not set an appeal bond at the time the District Court issued the new sentence on January 15, 2021. Rather than give Appellant an opportunity to file a notice of appeal, file a motion for stay of execution, and post an appeal bond, the District Court had Appellant taken straight to jail to serve 30 days' so that Appellant would not be able to exercise his rights while he was locked up in the county jail.

It would be a travesty of justice for this Appellant to be denied a stay pending the outcome of appeal because Appellant was denied his right to bail after the District Court revoked his sentence and sent Appellant to jail from the court room before the issue is decided on appeal.

There is no question that this Appellant will be further irreparably damaged if a stay of execution pending the outcome of appeal is not granted by being incarcerated for the remainder of the additional 30 days jail imposed.

THE DISTRICT COURT HAS BEEN DEFIANT OF REALITY IN THIS CASE.

As an excuse to deny this defendant's motion for stay of execution the district court alleges defendant is not entitled to bail because of his defiance of the conditions of his suspended sentence, and claims defendant is a danger to the community because defendant is likely to subject his horses to abuse or neglect should the district court stay execution of Mr. Laedeke's sentence. Nothing could be further from the truth.

The fact of the matter is despite the district court's orders and conditions of suspended sentence being based on false claims, the district court's conditions of suspended sentence were fully complied with prior to its February 1, 2021 order denying defendant's motion for stay of execution.

All of the defendant's horses had been sold or otherwise transferred prior to the January 15, 2021 hearing. Defendant and two of the purchasers emailed copies of the notarized bills of sale to deputy county attorney Ingrid Rosenquist prior to the hearing, which she acknowledged at the hearing.

Defendant Randy Laedeke brought the original bills of sale with him to the January 15, 2021 hearing with an additional bill of sale and brand inspections for 3 horses sold to Henry Small, which he transported to the Billings Livestock Brand office and then to his ranch near Lodge Grass, Montana. I stopped at the Montana Brand office, obtained copies of the brand inspections, bills of sale and took them to the hearing.

After Ingrid Rosenquist falsely claimed at the hearing that she had received emailed documents from my ex-wife in Texas, Jessie Morril, I stood up and advised the court that Jessie Morril is the purchaser of 3 of my horses, Jessie Morril lives in the Houston area and is not my ex-wife. My so called ex-wife lives near Gillette, Texas which is south of San Antonio, Texas.

At that time Jessie Morrill did not think she could come to Montana to retrieve her three horses until her spring break in March as she is working at the University of Texas and obtaining her PHD in Animal Science there. Jessie Morrill currently has a Masters Degree in Animal Science from Texas A&M.

With that information deputy county attorney advised district court judge Donald Harris that defendant Randy Laedeke could still adequately care for five head of horses and should be allowed to do so. At that time I, defendant Randy Laedeke, stood up with the original notarized bills of sale for the horses I had sold over the past two years. I advised that I had the notarized bills of sale he had previously claimed he required in my hand and asked if he would like to see them. Judge Harris, to my surprise, said “no, they are not relevant anymore!”

At my last appearance in this judge’s court in November or December 2020, when I advised him I was filing a Petition for Rehearing with the Montana Supreme Court, he advised that he would set a disposition hearing for January 15, 2021; and if the Supreme Court did not grant my Petition for Rehearing I had until the January 15, 2021 hearing to comply with his orders.

At the January 15, 2021 hearing I explained the difficulties I had experienced selling my remaining 5 head of horses due to my pickup being wrecked when he had me in jail for 10 days in 2019 for not having notarized bills of sale; people not paying for horses due to corona virus pandemic; and having to sell my last 5 horses for about 1/3rd of the value in order to comply with his last order to sell or transfer the rest of my horses.

Despite the fact that I stood there with the documentation that I had transferred all of my horses, this district court judge disregarded everything I explained to him and proceeded to revoke my previous suspended sentence and ordered my sentence to be changed to 11 months and forty days (subtracting 10 days jail already served) with all but 30 days suspended, whereupon I was taken directly to the Yellowstone County Detention Facility from the court room.

Judge Harris's statement that he finds that Mr. Laedeke is unfit to care for horses and is likely to subject them to abuse or neglect should this court stay execution of Mr. Laedeke's sentence is completely without merit and contrary to the facts. It is even contrary to the testimony of the state's own witness, Deputy Ken O'Donald, given at the March 11, 2019 hearing. At that hearing Sgt. O'Donald testified that Mr. Laedeke had always cooperated with his requests to inspect his horses and found them to be in good condition.

Also Jessie Morril, attests in her attached affidavit that when she came to Montana and picked up her horses upon learning that I had been re-sentenced and taken to jail, all of the Laedeke horses she observed, including the ones she purchased, were in good condition. Jessie Morril also attests that when she left with her horses there were no horses remaining on the Laedeke property. [See affidavit of Jessie Morril]

Finally. There is absolutely no evidence, nor even any allegations, that supports Judge Harris's statement that Randy Laedeke is a danger to the community and not entitled to bail pending appeal. Quite to the contrary. Defendant Randy Laedeke was released on his own recognizance with no cash bail required throughout the proceedings of this case until now. No bail has ever been requested by the county attorney's office because Mr. Laedeke is not a danger to the community and has always appeared in court when requested or ordered to do so without a cash bail or any other kind being required. Mr. Laedeke has resided in the Billings, Montana area for most of his 64 years and is well known in the legal community throughout the state of Montana.

Conclusion

WHEREFORE, Appellant/Defendant, Randy Laedeke, respectfully submits that the Montana Supreme Court should ~~issue an order staying the execution of the District Court orders and stay the proceedings in the District Court pending the outcome of this appeal.~~ issue an order staying the execution of the District Court orders and stay the proceedings in the District Court pending the outcome of this appeal.

DATED this 26th day of February, 2021.

By: Randy S. Laedeke
Randy Laedeke, Defendant

CERTIFICATION OF COMPLIANCE WITH WORD COUNT AND WORDS PER PAGE PURSUANT TO ~~SUBRULE 20~~ RULE 22 MONTANA RULE OF APPELLANT PROCEEDURE

I hereby certify that the foregoing Petition for Rehearing complies with section 3 of Rule 20 in that it does not exceed 2,500 words proportionally spaced or 10 pages if monospaced.

By Randy S. Laedeke
Randy S. Laedeke

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing MOTION FOR RELIEF FROM ORDER OF DISTRICT COURT, STAY OF EXECUTION, AND STAY OF PROCEEDINGS PENDING OUTCOME OF APPEAL, was served on the Montana Attorney General's

Office by e mailing a copy to Deputy Attorney General Mark Fowler at cfowler@mt.gov and Brad Fjeldheim at Brad.Fjeldheim@mt.gov
On 8th February, 2021 and e mailing a copy to the Yellowstone County Attorney's Office Ingrid Rosenquist at irosenquist@co.yellowstone.mt.gov to be and mailed by U.S. First Class Mail, postage prepaid, to:

Counsel for Plaintiffs and Appellee
Tim Fox, MT Attorney General
Mark C. Fowler, Assistant Montana AG
215 N. Sanders
P.O. BOX 201401
Helena, MT 59620

Scott Twito, Yellowstone County Atty
Ingrid Rosenquist
P.O. Box 35025
Billings, MT 59107

DATED: 8th day of February, 2021

By

A handwritten signature in blue ink, appearing to read "David S. LaBelle", written over a horizontal line. Below the signature is a large, stylized flourish or scribble.

GENERAL AFFIDAVIT

STATE OF MONTANA

COUNTY OF YELLOWSTONE

PERSONALLY came and appeared before me, the undersigned Notary, the written named JESSIE MORRILL, who is a resident of BRAZORIA COUNTY, State of TEXAS, and makes this her statement and General Affidavit upon oath and admission of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge.

STATEMENT

On January 15, 2021, I signed a notarized Bill of Sale to acquire three horses from Mr. Randy S. Laedeke. I contacted Mr. Laedeke in early January 2021, when I started looking for horses to purchase for my family. I have known Mr. Laedeke for over fifteen years; in my opinion, Mr. Laedeke has raised foals with some of the best bloodlines in the state of Montana. I have also personally observed Mr. Laedeke take care of and treat horse injuries with proper care and know that he has made considerable financial commitments in obtaining and caring for his animals.

When I arrived to pick up the horses I would be transferring to Texas, there were ten horses on the property. At the time of my arrival, none of the horses had signs of major injuries or lameness. Horses had access to clean water and there was evidence of the horses being fed supplemental feedstuffs. In my opinion, all of the horses on the property had Henneke horse body condition scores ranging from 4-5; the Henneke scoring condition was developed at Texas A&M University and states that a score of 5 is considered ideal. Two of the horses that I considered to have body condition scores of 4 came from Thoroughbred racehorse bloodlines. In my lifetime of being raised around Thoroughbred racehorses, particularly in Montana winters,

body condition scores of 4 can be very common and can occur even in well-supplemented horses. I feel confident in my ability to determine nutrition status and body condition in livestock animals, because of both my background of being raised around livestock and also with my formal academic training. I received a Bachelor of Science in Animal Science and a Master of Science in Animal Science with an emphasis in Animal Nutrition from Texas A&M University. I am currently a PhD candidate at The University of Texas MD Anderson Cancer Center UTHealth Graduate School of Biomedical Sciences, where I am studying appetite and body weight regulation in animals.

Of note, I also observed each of the ten horses be removed from Mr. Laedeke's property on January 22, 2021, after all necessary health certifications and brand inspections were obtained. To the best of my knowledge, none of the horses have been returned, nor are there plans for any of them to return to Mr. Laedeke's property, as of today, February 9, 2021.

DATED this the 9th day of February, 2021

Jessie C. Morrill
Signature of Affiant

SWORN to subscribed or affirmed before me, this 9th day of February, 2021

Ussaldo Martinez Jr
NOTARY PUBLIC

My commission expires November 03 2024

Seal or stamp must be affixed to each original.

