

ORIGINAL

Jason Newberry #3002932
700 Conley Lake Road
Deer Lodge, MT 59722

FILED

03/03/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 21-0124

OP 21-0124

FILED

IN BEFORE THE MONTANA SUPREME COURT

MAR 03 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Jason Newberry,
Plaintiff,

Cause No: DV-19-33

V.

Motion for Supervisory Control

Montana Third Judicial
District Court for
Powell County,
Defendant.

Comes now, Jason Newberry (hereafter Plaintiff) with his Motion for Supervisory Control. On or about November 30, 2020 the Plaintiff had filed Motions/Complaints regarding to the facts of Medical Neglect. Since then Judge Ray Dayton has refused to address the following issues regarding to said cause.

- A) The Plaintiff filed a Motion to show Medical Neglect against Steve Bullock (Governor), Riginald Michael (DOC Director), Cindy Hiner (Medical Service Bureau Chief), Connie Winners (Clinical Service Administrator), Lynn Guyer (Warden), Bill Weddington (PREA Coordinator), Dr. Paul Reese, and Dr. James Hurst. Also I see where the Powell County Court sent an e-mail to Nicole here at MSP Infirmary filed on April 22, 2019, still to no avail.
- B) Filed a Motion to Lien on Dr. Paul Reese and Dr. James Hurst for failure to provide proper medical treatment, filed on June 06, 2019 still to no avail, no medical treatment, still

in sever pain everyday, also seen where the Powell County Court sent an e-mail to Nicole here at MSP Infirmary.

- C) Filed Motion to Answer Complaint, still to no avail, also seen where another e-mail was sent to Nicole here at MSP Infirmary, still in sever pain, this was filed on June 24, 2019.
- D) Filed on August 19, 2019 Amended Information to my Complaint, still to no avail and once again still in sever pain.
- E) Filed on August 19, 2019 Motion to Submittal requesting the Court to answer Motions, still to no avail.
- F) Filed on August 19, 2019 a Motion to File a Complaint, still not answered to no avail.
- G) Filed on August 19, 2019 Motion to Subpoena, still to no avail.
- H) Filed on August 19, 2019 Motion to Order of Protection due to the sexual advancement made by DR. Hurst, Dr. Reese and now the Nurse Joesph.
- I) Filed on August 19, 2019 Motion to Amend, still to no avail.
- J) Filed on November 21, 2019 Complaint, still not answered, to no avail.
- K) Eight summons issued; Bullock, Michael, Reese, Hurst, Hiner, Guyer, Weddington, Winners, mailed out through the mail with witnesses and Affidavits, they have been served, November 21, 2019.
- L) January 29, 2020 Motion to Submit Affidavit's, all copies are filed with Court.
- M) January 29, 2020 filed Affidavit's with Powell County Court certified mailed for complaint/summons, wavior of service.

- N) January 29, 2020 filed Affidavit's with Powell County Court certified mail for complaint/summons waiver of service.
- O) February 10, 2020 enter request for Default Judgment, seen where Powell County Court e-mailed Zac, what is it with all these e-mails? this is like having an inside source, and this is just not fair justice.
- P) February 10, 2020 Filed Motion for Default Judgment.
- Q) February 14, 2020 response to Motion for Default Judgment.
- R) March 02, 2020 Plaintiff's reply to Defendent's Motion for Default Judgment.
- S) March 02, 2020 order from Ray Dayton denying Default Judgment, also seen where another e-mail was sent to Simon and mailed to the Plaintiff.
- T) Also sent letter to the court asking for the Sheriff to make a report of sexual harassment.
- U) Sent letter to local Sheriff requesting for a report to be made of sexual harassment, told to get ahold of the court, just another run-around.
- V) Also filed a complaint with the medical licensing board on Reese, one of the Defendent's in my cause claim.
- W) By Dayton not ruling on any of my motions Reese has stripped me away from my Bendryl, I have sever allergies for over 14 years, I have had my blister packs in my cell with no write-ups for abusing any medications.
- X) Filed a motion to R.Civ. P. 4(d)(3), still to no avail, also requested for a temporary Attorney be appointed to get this suit on the way.

Y) I feel that Dayton has failed to protect me against the hands of Dr. Reese, Dr. Hurst, Nurse Joesph. Both doctors have shown verbal abuse and Dr. Hurst made a sexual advancement towards me, just view the camera's, it says its all, and Nurse Joesph made a threat towards me in retaliation to these law-suits that are pending.

Z) Have one case in the Federal Court; 6:19-CV-00050-DLC-JTJ.

BRIEF OUTLINE

I had slipped and fell down the stair case over on the low side here at MSP, which however the stairs are not up to current State/Federal, OSHA and ADA codes which has caused several injuries over the years. Dr. Martini, Dr. Day, Dr. Ranz, Dr. Kohut, Dr. Pirianian and Dr. Bradley has all came up with a treatment plan that has been sucessful over the years which is spinal ephdural with the following medications being administrated into my spine just so I can go about my daily activities, remember the Plaintiff did not inflict this injury on himself, the icy and faulty stair case did.

- 1) Kenolog
- 2) Omnipaque
- 3) Midazolam
- 4) FentaNYL
- 5) Marcaine

Now the Plaintiff has trouble sleeping, walking, breathing, can't work, problems showering, missed meals and now the Plaintiff suffers from DDD Disease for over the last two years. I have been left in sever pain and in emotional distrot all because a Judge has straight up ignored my motions.

It said when you hear inmates and even staff saying that the infirmery has Judge Dayton in their back pockets what kind of justice is this, so at this time I pray that this court grant me relief.

In the name of justice, the Plaintiff hereby requests for this State Supreme Court to take Supervisory Control over the Plaintiff's case under Cause No: DV-19-33, out of Powell County for justice to prevail, if not Judge Dayton will let it sit still until time runs out.

Respectfully Submitted on this 30 day of NOV, 2020.



Jason Newberry

REFERENCES

Rio Grande R. Co. V. Gomila, 132 U.S. 478

United States V. Ramsey, 217 U.S. 467

United States V. Bowling, 256 U.S. 484

Kennerly V. District Court of Ninth Judicial Dist., 400 U.S. 423

Board of Education V. Superior Court of California, 448 U.S. 1343

WRIT OF SUPERVISORY CONTROL

To justify such a writ, an exigency or emergency must be shown to exist, or that a gross injustice would result from a denial of the writ, and absence of other adequate relief.

Supervisory control has its own appropriate functions, and one of them is to enable the court to control the course of litigation in the district courts where these courts are proceeding within their jurisdiction, but by mistake of law, or willful disregard of it, are doing a gross injustice, and there is no appeal or the remedy by appeal is inadequate.

Article VII, Section 2 of the Montana Constitution gives Montana Supreme Court "original jurisdiction" to hear, to issue and determine writs." Supervisory control is appropriate where the district court is proceeding under a mistake of law, and in so doing is causing a gross injustice. State ex rel. Forsyth V. District Court, (1985), 216 Mont. 480, 484, 701 P.2d 1346, 1348 (over ruled on other grounds); State ex rel. Fitzgerald V. District Court, (1985), 217 Mont. 106, 114 703 P.2d 148, 153-54

In Tipton V. Mont. Thirteenth Judicial Dist. Court, 2018 MT 164 was granted for Writ of Supervisory Control, court order reversed and case remanded. The State's case is strong and scientific evidence is compelling, but the Supremacy Clause of the United States Constitution (see U.S. Const., Article VI, cl 2) compels the judges of the State to apply the federal constitution as interpreted by the United States Supreme Court, therefore, the charges against Tipton must be dismissed. Apply the rule of law as the court must, the State's arguments fail.

Standard of Review: Supervisory Control is an extra ordinary remedy and is appropriate when the normal appeals process is inadequate, when the case involves purely legal questions, and when one or more of the following exists:

- (1) The other court is proceeding under a mistake of law and is causing a gross injustice;
- (2) Constitutional issues of statewide importance are involved; or
- (3) The other court has granted or denied a motion for substitution of a judge in a criminal case.

Supremacy Clause, Supreme law of the land, the Supremacy clause of the United States Constitution, Article VI, cl.2 compels the judges of a state to apply the federal constitution as interpreted by the United States Supreme Court.

This case satisfies the criteria under a Writ of Supervisory Control. See, Stokes V. Mont. Thirteenth Judicial Dist. Court, 2011 MT 182. Here Tipton raises a constitutional question of state wide importance whether the State of Montana may prosecute cold cases in which DNA evidence has conclusively identified a suspect, but the statute of limitations expired before 45-1-205(a) MCA came into effect. Tipton won his argument and his case was dismissed even though he was guilty of sexually assaulting an eight year old girl, having sexual intercourse without consent, the DNA evidence linked Tipton to that rape.

CERTIFICATE OF SERVICE

I attest I mailed a copy of Supervisory Control Motion for Cause Number DV-19-33 to the following:

Asst. Attorney General
Lindsey Simon
1712 Ninth Ave.
P.O. Box 201440
Helena, MT. 59620-1440

Jill Paull
Powell County Clerk of Court
409 Missouri Ave., Suite 302
Deer Lodge, MT. 59722

Montana Supreme Court
P.O. Box 233003
Helena, MT. 59620



Jason Newberry

12-14-2020