

FILED

10/04/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 21-0398

ORIGINAL

Form 11(6)(b)

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 21-0398.

[to be assigned by Clerk of Supreme Court]

Zachary Rusk

Petitioner /Appellant,

[Designation of Party in District Court]

v. Thomas Roseen, Cindy Roseen
and Shawn Roseen,

Respondants /Appellee.

[Designation of Party in District Court]

FILED

SEP 28 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S BRIEF
[for name of document being filed]

On appeal from the Montana Eighteenth
County of Gallatin
Cause No. DV-21-423B, [District Court Cause No.]

Honorable Presiding [District Court Judge's name]

Appearances:

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TABLE OF AUTHORITIES:

Montana Rules of Civil Procedure 8(a), 12(b)6.

Montana Code Annotated 2019

TITLE 27. CIVIL LIABILITY, REMEDIES, AND LIMITATIONS

CHAPTER 1. AVAILABILITY OF REMEDIES -- LIABILITY

Part 8. Libel and Slander Defamation -- How Effected

27-1-801. Defamation -- how effected. Defamation is effected by: (1) libel; (2) slander.

Montana Code Annotated 2019

TITLE 45. CRIMES CHAPTER

8. OFFENSES AGAINST PUBLIC ORDER

Part 2. Offensive, Indecent, and Inhumane Conduct Criminal Defamation

45-8-212. Criminal defamation.

(1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, including by electronic communication, as defined in 45-8-213, communicates any defamatory matter to a third person without the consent of the

person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than \$500, or both.

Montana Defamation Definitions

A defamatory statement is one that damages the reputation of a person, business or group. Libel is written defamation; slander is spoken. If an inaccurate story is printed in a newspaper, Montana defamation law says the paper may be charged with libel. However, if the paper can show that it had no reason to believe the statement was false at the time of the printing, libel will not be charged. Same goes for video and radio broadcasts.

Montana Defamation: Private v. Public

In Montana, as in all 50 states, public figures must meet a higher standard of proof to win a defamation claim. In such cases, the famous plaintiff must prove actual malice — or, to put it another way, “intentional lying to cause harm.”

Employee Reference Libel Laws in Montana

In most cases, a former employer who gives a reference to a prospective employer about a person cannot be sued for libel because over the assessment so long as the information is not knowingly false. In that way, the former employer is protected from a lawsuit by the ex-employee.

But Montana is somewhat different. Its law says that an employer has to give a truthful statement about why the ex-employee was discharged. It does not,

however, actually state that the employer cannot be sued for giving out the data.

Montana Defamation: Civil and Criminal

Montana is one of 17 states that has a so-called criminal defamation law. It charges a person with giving a communication about someone and in doing so implies that the written or verbal statement is a fact when it is really false. In states that still have criminal defamation laws on the books, it's a difficult charge to prove because the First Amendment protects freedom of speech rights for all U.S. citizens.

In accordance with Montana law, it is illegal to provide a false statement, whether written or oral, of an individual's character and/or reputation, which:

1. Consists of any false statement, pictures or video intended to cause harm or damage another's character and/or reputation;
2. is communicated to another either in writing or verbally; and
3. the offending party is aware or should have been aware that such statement, pictures or video was false.

STATEMENT OF CASE

This is a Slander and Libel Case whereby Appellant and Petitioner (“Rusk”) petitioned the district court to order Appellee’s and Respondents (“Roseens”) to cease and desist any and all further unlawful defamation, slander and libel; correct any and all past unlawful defamation, slander and libel of theirs, to issue the court a copy of such attempts to correct all of their past unlawful defamation, slander and libel, furnish Rusk with a copy of the afore-noted corrections, award Appellant costs of suit and tax to the Appellees for having to pursue this action given that the Appellees failed to sign and return the assurances in the Cease and Disist’s they were each served, and failed to discontinue their unlawful defamation, slander and libel.

QUESTIONS FOR REVIEW:

1. Did the district court error in failing to consider relevant facts and evidence filed with the court and from petitioner?
2. Referencing the respondents 12(b)1 motion, did the district court error in stating that petitioner failed to state a claim for which relief may be granted?
3. Did the district court error in failing to consider petitioners exhibits including emails, texts, cease and desist letters and failing further to find that they set forth facts and direct evidence of wrongdoing to support the legal cause against the respondents?

ARGUMENT

1. The district court erred in failing to consider relevant facts and evidence filed with the court and from petitioner. Referencing the respondents 12(b)1 motion, did the district court erred in stating that petitioner failed to state a claim for which relief may be granted. See pages 19-25 & 52-65 of Petition three Exhibits named REQUEST TO CEASE AND DESIST ALL DEFAMATION, SLANDER AND/OR LIBEL OF CHARACTER AND REPUTATION. P. 24, 57 & 64 stated:

In accordance with Montana law, it is illegal to provide a false statement, whether written or oral, of an individual's character and/or reputation, which:

1. Consists of any false statement, pictures or video intended to cause harm or damage another's character and/or reputation;
2. is communicated to another either in writing or verbally; and
3. the offending party is aware or should have been aware that such statement, pictures or video was false.

THEREFORE, you are hereby requested to immediately CEASE and DESIST the illegal defamation, slander and/or libel and within 10 business days, return the signed written assurance below affirming that you will refrain from any further acts of said defamation, slander and/or libel with regards to my character and/or reputation. Failure to comply with this cease and desist request, and/or return the signed assurance within the stipulated time, will leave me no other alternative but to pursue all available legal remedies, including, but not limited to, filing a motion for injunctive relief, monetary damages, filing fees, court costs and/or attorney fees.

ASSURANCE TO CEASE AND DESIST FURTHER ACTS OF DEFAMATION,
SLANDER AND/OR LIBEL

In accordance with the above request and stipulation, I, Thomas Roseen; Cindy Roseen; Shawn Roseen, do hereby agree to immediately cease and desist the defamation of Mr. Zach Rusk's character and/or reputation. And in turn, Mr. Zach Rusk will release me from all acts of defamation, slander and/or libel relating to this incident. HOWEVER, should I act or behave in such a manner that would result in a breach of this agreement, Mr. Zach Rusk shall be entitled to filing fees, courts costs and attorney fees in any action which may be filed in an effort to enforce this agreement, in addition to any injunctive relief and/or monetary damages that Mr. Zach Rusk may have been entitled to had this assurance never been signed.

2. The district court erred in failing to consider petitioners exhibits including emails, texts, cease and desist letters and failing further to find that they set forth facts and direct evidence of wrongdoing to support the legal cause against the respondents. In petitioners 92 page Motion for a Directed Verdict with statement of facts section proved through the corresponding exhibits show and prove the afore noted:

1. Respondents have not denied that they consume and/or deal illicit drugs.
2. Respondents have not denied that they engage in welfare fraud.
3. Respondents have not denied that they engage in conduct that can be characterized as company theft.
4. Respondents have not denied that they have engaged in slander.

5. Respondents have not denied that they have engaged in libel.
6. Respondents have not denied that they have engaged in defamation.
7. Respondents have not denied that they have engaged in harassment.
8. Respondents have not denied that they have filed false police reports.
9. Any and all declarations submitted by respondents are unsworn, non-notarized declarations.
10. Any and all declarations submitted by opposing counsel are unsworn, non-notarized declarations.
11. Unsworn, non-notarized declarations are inadmissible under the rules of evidence.
12. On Mar 16, 2021 10:02 PM Respondent Thomas Roseen wrote in a group text "Hi everyone, I am so upset that this situation with Zach Rusk is happening, and that I must write this message. Zach has threatened to send all of you lies about me. I asked him not to, and he says he will not. However, if he sends you anything, please delete it immediately. Zach has email analytics that show if you have opened the email. I am doing this at the request of Greg, my therapist. I also believe it is the right message to send." (Exhibit A #1)
13. Mar 17, 2021 07:37 AM Tom texted the same group stating: "Thanks everyone. Once again, please be careful and do not gaslight or defame Zach. It's best to keep this within our family." (Exhibit A #8)
14. On April 8, 2021 at 1:14PM respondent Thomas Roseen emailed over five people stating the following: "Hi everyone, I am so upset about this situation and I been working hard to try to resolve it. I need to begin by telling you that I lied to all of you in my communications during the week of March 15th, when Zach and I were on the verge of breaking up. I caused great confusion for everyone involved. In my communications I said that Zach may send you all lies about me, but this was not true. He was considering sending all of you our text communications since July, to show the objective picture. I also said that he is a "master manipulator," but this is also not true. I did not call him a psycho, but that term arose in our texts. That is also not true. I asked that we keep this within our family and I hope that you all have. If you have talked about this or shared our written communications with anyone, please correct that, and it would be helpful to let me know. If Zach is injured in the future and unable to make a living, he may pursue a claim due to third party defamation. I will be in touch with more later. I may need to add to this email to make sure that I did not miss any details. I am so sorry." (Exhibit B)

15. In December, Cindy texted Tom, "are we still on the same page about moving in together? I'm thinking late spring. (Exhibit C #403)
16. Tom replied, No, I dont think we are on the same page. (Exhibit C #404)
17. Cindy replied, "super cool tom". (Exhibit C #407)
18. In January 2021 Cindy texted Tom stating "you are not moving in with him, that is a stupid idea" in reference to tom telling Cindy he is planning to move in with petitioner. (Exhibit D)
19. Cindy also texted Tom "We have talked about this for a while and now that Zach is here, you are ditching me." (Exhibit C #410)
20. In addition, Cindy texted Tom, "To be fair, you never gave me a solid answer but you were never direct with me either. We had been talking about this for a while.". (Exhibit C #422)
21. Moreover, on Apr 06, 2021 07:59 PM Cindy texted Thomas Roseen "Enjoy living with a dog that bites and a master manipulator." (Exhibit C #503)
22. Mar 18, 2021 06:02 PM Cindy texted Tom "Between Wiley calling me and Ben getting in touch with me today, that's it. So no, I don't think so but I'm just protecting myself." This was just after Tom send the following texts to Cindy. (Exhibit C #480)
23. Mar 18, 2021 04:10 PM Tom texted Cindy "Are people talking about Zach at gfc? That could be detrimental" (Exhibit C #477)
24. Mar 18, 2021 04:48 PM Tom texted Cindy "Have a minute to talk? Sorry I'm just anxious. I think it will be fine" (Exhibit C #478)
25. On Feb 14, 2021 07:49 PM Respondent Thomas Roseen texted respondent Shawn Roseen "I just want to make sure I clarify. I'm not sure why you assumed Zach gave that edible to me, but just for the record he did not give me an edible. It was Peter." (Exhibit G #363)
26. On Feb 14, 2021 07:49 PM Respondent Shawn Roseen texted Respondent Thomas Roseen "Yeah I know now. Because Zach had talked about you hitting the bong earlier that night haha" (Exhibit G #364)
27. On Feb 14, 2021 07:56 PM Respondent Thomas Roseen texted respondent Shawn Roseen "Im not sure what you mean about him talking about that, but maybe you just overheard me saying that I had never done that. Did Peter offer you an edible?" (Exhibit G #366)
28. On Feb 14, 2021 07:59 PM Respondent Shawn Roseen texted Respondent Thomas Roseen "I know you haven't had much of any experience with weed. I knew they were available but I can't have weed because I could be drug tested" (Exhibit G #367)

29. On Feb 14, 2021 09:44 PM Respondent Thomas Roseen texted respondent Shawn Roseen n "Thanks for your response. Over Thanksgiving, you and Cindy told Zach and I about going to the yurt a week or two after the holidays and said you'd be doing psilocybin. Wouldn't that be part of your drug testing? We did not go, because I was worried about COVID, and I was. You two invited us but we decided not to go. Prior to that, I told Zach that when I tried psilocybin with you, Cindy and Dan, I passed out and woke up to Cindy yelling at me. This worried Zach, and he discouraged me from going because he worried for my health and safety (I also did not want to go). I'm concerned about Zach being blamed for last night because he is not like that." (Exhibit G #368)

30. On Mar 16, 2021 10:07 PM Respondent Shawn Roseen texted Respondent Thomas Roseen wrote in a group text stating that Petitioner "is a fucking psycho". (Exhibit A #3)

31. On Apr 06, 2021 07:59 PM Respondent Cindy Roseen wrote Tom "Enjoy living with a dog that bites and a master manipulator." (Exhibit C #503)

32. On June 13th 2021 at 10:17pm, Respondent Thomas Roseen emailed himself an email stating: "I accidentally added a question mark to a text that Zach sent at 9:26pm today....I

recall this happening another time as well...I need to...correct false info, like the email I sent today to Collin... I'm concerned that he will use this as a violation of rat request to cease and desist..." (Exhibit H)

33. On or around April 14th 2021, Respondents Thomas Roseen, Cindy Roseen and Shawn Roseen were served a "REQUEST TO CEASE AND DESIST ALL DEFAMATION, SLANDER AND/OR LIBEL OF CHARACTER AND REPUTATION". (Exhibits K, L)

34. The letter included the following statements:

35. In accordance with Montana law, it is illegal to provide a false statement, whether written or oral, of an individual's character and/or reputation, which: (Exhibit L)

36.1. Consists of any false statement, pictures or video intended to cause harm or damage another's character and/or reputation; (Exhibit L)

37. 2. is communicated to another either in writing or verbally; and the offending party is aware or should have been aware that such statement, pictures or (Exhibit L)

38. 3. video was false. (Exhibit L)

39. THEREFORE, you are hereby requested to immediately CEASE and DESIST the illegal defamation, slander and/or libel and within 10 business days, return the signed written assurance below affirming that you will refrain from any further acts of said defamation, slander and/or libel with regards to my character and/or reputation. (Exhibit L)

40. Failure to comply with this cease and desist request, and/or return the signed assurance within the stipulated time, will leave me no other alternative but to pursue all available legal remedies, including, but not limited to, filing a motion for injunctive relief, monetary damages, filing fees, court costs and/or attorney fees. (Exhibit L)

41. In accordance with the above request and stipulation, I, Thomas Roseen/Cindy Roseen/Shawn Roseen, do hereby agree to immediately cease and desist the defamation of Mr. Zach Rusk's character and/or reputation. And in turn, Mr. Zach Rusk will release me from all acts of defamation, slander and/or libel relating to this incident. (Exhibit L)

42. HOWEVER, should I act or behave in such a manner that would result in a breach of this agreement, Mr. Zach Rusk shall be entitled to filing fees, courts costs and attorney fees in any action which may be filed in an effort to enforce this agreement, in addition to any injunctive relief and/or monetary damages that Mr. Zach Rusk may have been entitled to had this assurance never been signed. (Exhibit L)

43. Petitioner never received any assurance from any of the three respondents in this matter and gave respondents far more than enough time for proper notice as to this lawsuit to be filed in the absence thereof. Nor has petitioner of course received any assurances in a timely manner as laid out in the C&D.

ANALYSIS:

- Mar 16, 2021 10:02 PM Respondent Thomas Roseen wrote a text to Mary Roseen, Cindy Roseen, Shawn Roseen, Kathy Roseen and Eric Roseen. (Exhibit A #1)
- Mary Roseen, Cindy Roseen, Shawn Roseen, Kathy Roseen and Eric Roseen were third parties to this text Mar 16, 2021 10:02 PM.
- On April 8, 2021 at 1:14PM, Respondent Thomas Roseen wrote an email to Mary Roseen, Cindy Roseen, Shawn Roseen, Kathy Roseen and Eric Roseen. (Exhibit B)
- Mary Roseen, Cindy Roseen, Shawn Roseen, Kathy Roseen and Eric Roseen were third parties to this email from April 8, 2021 at 1:14PM. (Exhibit B)
- In this email (April 8, 2021 at 1:14PM), Respondent Thomas Roseen stated that his Mar 16, 2021 10:02 PM text was false. (Exhibit B)
- In this email (April 8, 2021 at 1:14PM) Respondent Thomas Roseen stated that he lied because "[Petitioner] was considering sending all of you our text communications since July, to show the objective picture." (Exhibit B. See also Exhibit J)

- This email from April 8, 2021 at 1:14PM was “intended to cause harm or damage Petitioner’s character and/or reputation.” (Exhibit B. See also Exhibit J)
- In this email (April 8, 2021 at 1:14PM), Respondent Thomas Roseen stated that Respondent Cindy Roseen’s Apr 06, 2021 07:59 PM was false. (Exhibit B)
- Respondent Thomas Roseen was a third party to this Apr 06, 2021 07:59 PM text. (Exhibit C)
- Respondent Cindy’s Apr 06, 2021 07:59 PM text was "intended to cause harm or damage Petitioner’s character and/or reputation” because Cindy wanted to move in with Respondent Thomas Roseen and did not want Respondent Thomas Roseen to move in with Petitioners, because she felt Thomas Roseen is ‘ditching her now that Petitioners is here” and because Petitioner “reported Cindy for Company Theft and Welfare Fraud”. (Exhibits C-F; I)
- In this email (April 8, 2021 at 1:14PM), Respondent Thomas Roseen stated Respondent Shawn Roseen’s Mar 16, 2021 10:07 PM was false. (Exhibit B)
- In Respondent Thomas Roseen’s Feb 14, 2021 07:49 PM text to Respondent Shawn Roseen, Thomas stated that Shawn Roseen’s comment to Thomas about Petitioner on February 13th 2021 with regard to Respondent Thomas Roseen's illicit drug use was false. (Exhibit G)
- Respondent Thomas Roseen was a third party to this text and comment. (Exhibit G #363)
- Respondent Shawn Roseens Mar 16, 2021 10:07 PM text was in response to Tom and Zach calling Shawn out on his and and Respondent Cindy Roseens illicit drug use. (Exhibit G #368) and was “intended to cause harm or damage Petitioner’s character and/or reputation.”
- On June 13th 2021 at 10:17pm, Respondent Thomas Roseen emailed himself an email stating that he wrote an email to Collin that was false. (Exhibit H)
- Collin was a third party to this email. (Exhibit H)

REQUEST FOR RELIEF.

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Issue an order enjoining Defendant to cease and desist from the conduct described above, and from retaliating, slandering, libeling, defaming and disparaging Plaintiff in any manner whatsoever.
2. An injunction or order against the respondents to correct any and all past occurrences of theirs in terms of anything that can be remotely seen or characterized as slander and libel against petitioner — within 10 days for it's order, and to supply the court and respondent with such evidence of corrections within said time.
3. An injunction or order requiring respondents to discontinue their slander and libel against petitioner and a schedule of possible sanctions as to if further slander and libel from respondents occur in the future, in violation of any possible prospective order from the Court as to #1, in an effort to help respondents take this seriously and deter respondents from engaging in such lawless conduct again there-forward (against "anyone").
4. An order of restitution against the respondents to pay petitioners costs and fees incurred to have to litigate this matter.

CONCLUSION.

For the foregoing reasons, Petitioner respectfully requests that the Court grant his motion for a directed verdict as to his pleadings as a matter of law.

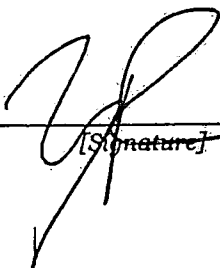
Dated September 21st 2021.

/s/ Zachary Rusk

in propria persona

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 10,000 words.



[Signature]



Affidavit of Service

STATE OF MONTANA)

.SS

County of Gallatin)

Case No. DA-21-0398

Court: Montana Supreme

County: Gallatin

Tyler Restvedt, being duly sworn states that I am over the age of eighteen (18) and I am not a party to, nor an attorney for, any person involved in these proceedings and that I received the within:

Corrected MSC Brief 24 pages, light blue cover page, Table of Contents, Table of Authorities p 2-4), State of Case (p 5), Questions for Review (p 6), Argument (p 7-14), MSc Order (p16-18), District Court Order (19-22)



I served the same



Attempted Service



Did not serve at client's request



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Jason Armstrong

(Person/Entity to be served)

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State: MT

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On the day of: 10/5/21 @ 1:00pm

Service Fees \$: 80.00

I declare under penalty of perjury that the foregoing is true and correct.

Sworn to and subscribed before me

On this ___ day of _____ A.D. 20__

By: Tyler Restvedt

Process Server: Tyler Restvedt

License No. 21595

Notary Seal

(Signature of Notary)

State of Montana, County of Gallatin

CERTIFICATE OF SERVICE

I certify that I filed this

☐ Petition

☐ Motion

☒ Other

Corrected MSc Appellant Brief

[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Jason Armstrong

[Name of opposing counsel]

Cromwell Law Bozeman

Bozeman MT 59715

[Address]

Thomas Roseen, Cindy Roseen, Shawn Roseen, et al
Counsel for

Zach Rusk

[Other party representing himself or herself]

211 N 10th Ave Bozeman MT 59715

[Address]

DATED this 5 day of October, 2021.

[Signature]

Zach Rusk

[Print name]

