

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 21-0228

PETER GRIGG,

Plaintiff and Appellant,

v.

CABINET PEAKS MEDICAL CENTER,

Defendant and Appellee.

**BRIEF OF APPELLEE, ST. JOHN'S LUTHERAN HOSPITAL d/b/a
CABINET PEAKS MEDICAL CENTER**

On Appeal from the District Court of the Nineteenth Judicial District
of the State of Montana, In and For the County of Lincoln,
The Honorable Matthew J. Cuffe, District Judge, Presiding

APPEARANCES:

Tracey Neighbor Johnson
Alison R. Potts
BOONE KARLBERG P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Phone: (406) 543-6646
Facsimile: (406) 549-6804
tnjohnson@boonekarlberg.com
apotts@boonekarlberg.com
Attorneys for Defendant/Appellee

Peter Grigg
3055 Hwy 2 W.
Kalispell, MT 59901
Phone: (406) 253-5381
Pro Se Plaintiff/Appellant

TABLE OF CONTENTS

STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS.....	1
STANDARD OF REVIEW.....	3
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT	4
I. The District Court correctly entered judgment in favor of Cabinet Peaks because Mr. Grigg missed the statute of limitations.....	4
II. Mr. Grigg raises a number of issues on appeal for the first time which, due to issues of fairness, cannot be considered; and even if the issues had been raised at the District Court, the outcome would be the same	5
CONCLUSION	7
CERTIFICATE OF COMPLIANCE	8

TABLE OF AUTHORITIES

<u>State Cases</u>	<u>Page(s)</u>
<i>Bosch v. Town Pump, Inc.</i> , 2004 MT 330, 324 Mont. 138, 102 P.3d 32	5
<i>Campanella v. Mont. Dep't of Transp.</i> , 2007 MT 2, 335 Mont. 212, 156 P.3d 1	4
<i>Ellensburg v. Chase</i> , 2004 MT 66, 320 Mont. 315, 87 P.3d 473	7
<i>Flowers v. Board of Personnel Appeals</i> , 2020 MT 150, 400 Mont. 238, 465 P.3d 210	5
<i>Gomez v. State</i> , 1999 MT 67, 293 Mont. 531, 975 P.2d 1258	4
<i>Greenup v. Russell</i> , 2000 MT 154, 300 Mont. 136, 3 P.3d 124	5
<i>Hedges v. Woodhouse</i> , 2000 MT 220, 301 Mont. 180, 8 P.3d 109	3, 5
<i>Somers v. Cherry Creek Dev., Inc.</i> , 2019 MT 101, 395 Mont. 389, 439 P.3d 1281	7
<i>State v. Ferguson</i> , 2005 MT 343, 330 Mont. 103, 126 P.3d 463	7
<i>State v. Price</i> , 2007 MT 269, 339 Mont. 399, 171 P.3d 293	7
<i>Timis v. Young</i> , 2001 MT 63, 305 Mont. 18, 22 P.3d 1122	7
<i>Turner v. City of Dillon</i> , 2020 MT 83, 399 Mont. 481, 461 P.3d 122	4
<i>Zier v. Hancock</i> , 2008 MT 255, 345 Mont. 89, 189 P.3d 1193	4

State Statutes

Mont. Code Ann. § 3-1-8046
Mont. Code Ann. § 39-2-911 2, 3, 4

Rules

Mont. R. Civ. P. 2.12 5-6
Mont. R. Civ. P. 12 3

STATEMENT OF THE ISSUES

- I. Whether the District Court correctly entered judgment in favor of St. John's Lutheran Hospital, d/b/a Cabinet Peaks Medical Center by holding Mr. Grigg's claim for wrongful discharge was barred by the statute of limitations.

STATEMENT OF THE CASE

This case involves a wrongful termination claim filed by Mr. Grigg outside the applicable statute of limitations. Mr. Grigg's claim was dismissed by the Nineteenth Judicial District Court, Lincoln County, when it granted St. John's Lutheran Hospital, d/b/a Cabinet Peaks Medical Center ("Cabinet Peaks")¹ Motion for Judgment on the Pleadings. Mr. Grigg timely filed this appeal to reverse the District Court's Judgment. For the reasons discussed below, Mr. Grigg's appeal should be denied.

STATEMENT OF FACTS

Mr. Grigg was previously employed by Cabinet Peaks. On April 11, 2019, Mr. Grigg was terminated for ongoing failures to adhere to Cabinet Peaks' policies and standards. On April 14, 2019, Mr. Grigg filed a grievance with respect to his termination. (Def.'s Reply in Support of Mot. for J. on the Pleadings, Doc. 10). On April 22, 2019, Cabinet Peaks' CEO issued the final decision under the internal complaint procedure by denying Mr. Grigg's grievance. (Doc. 10, Ex. B).

¹ Mr. Grigg improperly named St. John's Lutheran Hospital, d/b/a Cabinet Peaks Medical Center in his Notice of Appeal. For continuity, Cabinet Peaks maintained the caption created by Mr. Grigg, but asserts "St. John's Lutheran Hospital, d/b/a Cabinet Peaks Medical Center" is the Appellee.

On November 9, 2020, nearly eighteen months after the final decision was issued by Cabinet Peaks' CEO, Mr. Grigg filed his Complaint for wrongful discharge in District Court, missing the applicable one-year statute of limitations by many months. (Compl., Doc. 3). Cabinet Peaks was served with Mr. Grigg's Complaint on February 18, 2021. Cabinet Peaks filed an Answer to Mr. Grigg's Complaint on March 11, 2021. (Def.'s Answer, Doc. 4).

On March 25, 2021, Cabinet Peaks filed a Motion for Judgment on the Pleadings as well as a Brief in Support of the Motion for Judgment on the Pleadings due to Mr. Grigg's failure to adhere to the one year statute of limitations under Mont. Code Ann. § 39-2-911. (Def.'s Mot. Judgment on the Pleadings, Doc. 7 and Brief in Support, Doc. 8). Mr. Grigg filed a Response to the Motion for Judgment on the Pleadings on March 29, 2021 arguing two unsupported points; that evidence had not yet been produced, and the statute of limitations on his claim is two years. (Notice of Filing, Doc. 9). Cabinet Peaks filed a Reply Brief in Support of the Motion for Judgment on the Pleadings on April 16, 2021. (Doc. 10).

Judgment was entered in Cabinet Peaks' favor on May 17, 2021. (Judgment, Doc. 14). Mr. Grigg's initial Appeal Brief did not conform with the Appellate Rules and he was provided an additional thirty days to re-file. Mr. Grigg re-filed

his Appeal Brief on August 18, 2021. Cabinet Peaks requested and was granted an additional thirty days to respond to Mr. Grigg's appeal.

STANDARD OF REVIEW

Because a motion for judgment on the pleadings is decided as a matter of law, this Court reviews a decision for correctness. *Hedges v. Woodhouse*, 2000 MT 220, ¶ 8, 301 Mont. 180, 8 P.3d 109. The party moving for judgment on the pleadings pursuant to Rule 12(c) of the Montana Rules of Civil Procedure must establish that no issue of material fact remains and that it is entitled to judgment as a matter of law. *Id.* In determining the same, the district court is to construe the pleadings in the light most favorable to the nonmoving party, whose allegations are taken as true. *Id.*

SUMMARY OF THE ARGUMENT

The District Court correctly entered judgment in favor of Cabinet Peaks. Even assuming arguendo that Mr. Grigg's allegations were true, he still missed the one-year statute of limitations imposed by Mont. Code Ann. § 39-2-911(1) on claims of wrongful discharge by many months. On appeal, Mr. Grigg raises a number of issues for the first time which cannot be considered by this Court. Moreover, even if Mr. Grigg had previously raised the issues he now raises for the first time, the outcome would have been the same.

ARGUMENT

I. The District Court correctly entered judgment in favor of Cabinet Peaks because Mr. Grigg missed the statute of limitations.

Under Mont. Code Ann. § 39-2-911, actions for wrongful discharge must be brought within one year of termination of employment. *See also Turner v. City of Dillon*, 2020 MT 83, ¶ 17, 399 Mont. 481, 461 P.3d 122; *Campanella v. Mont. Dep't of Transp.*, 2007 MT 2, ¶ 17, 335 Mont. 212, 156 P.3d 1; *Zier v. Hancock*, 2008 MT 255, ¶ 18, 345 Mont. 89, 189 P.3d 1193. The time can be tolled pending completion of an employer's internal procedures pursuant to Mont. Code Ann. § 39-2-911(2), but the clock begins to run once those internal procedures are completed. Statutes of limitation are intended to suppress stale claims. *Gomez v. State*, 1999 MT 67, ¶ 25, 293 Mont. 531, 975 P.2d 1258. They are not intended to “reward the plaintiff who sleeps on his or her rights to the detriment of a defendant.” *Id.*

Mr. Grigg's Complaint alleged he was terminated on February 12, 2019. (Doc. 3). Cabinet Peaks asserts Mr. Grigg's employment was terminated on April 11, 2019. (Doc. 8). Regardless, on April 14, 2019, Mr. Grigg filed a grievance with respect to his termination. (Doc. 10, Ex. A). Cabinet Peaks denied the grievance on April 22, 2019 which completed Cabinet Peaks' internal procedures. (Doc. 10, Ex. B). At the very latest date, Mr. Grigg should have filed his

Complaint by April 22, 2020. Instead, he waited until November 9, 2020 to file.² (Doc. 3).

This Court has upheld a District Court's entry of judgment where a defendant's motion for judgment on the pleadings was granted when the plaintiff missed the applicable statute of limitations by as little as two days. *Bosch v. Town Pump, Inc.*, 2004 MT 330, ¶ 7, 324 Mont. 138, 102 P.3d 32. Mr. Grigg missed the statute by more than six months. As a result, the District Court was correct in entering judgment in Cabinet Peaks' favor.

II. Mr. Grigg raises a number of issues on appeal for the first time which, due to issues of fairness, cannot be considered; and even if the issues had been raised at the District Court, the outcome would be the same.

This Court has long held that it will not consider issues and legal theories raised for the first time on appeal. *Flowers v. Board of Personnel Appeals*, 2020 MT 150, ¶ 14, 400 Mont. 238, 465 P.3d 210; *see also Hedges v. Woodhouse*, 2000 MT 220, ¶ 12, 301 Mont. 180, 8 P.3d 109. "It is unfair to fault the trial court for failing to rule correctly on an issue it was never given an opportunity to consider." *Flowers*, ¶ 14.

For the first time on appeal, Mr. Grigg argues new issues: (1) that Judge Cuffe should have recused himself before entering judgment pursuant to Rule

² Although pro se litigants are given a certain amount of latitude, "that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules." *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124. Allowing Mr. Grigg's claim to proceed despite his disregard for the statute of limitations would unduly prejudice Cabinet Peaks.

2.12(A) of the Judicial Code of Conduct; and (2) that Cabinet Peaks violated “the contract of Disciplinary Action” and “violated [the] Progressive Discipline Policy.”

Because these issues are being raised for the first time, this Court should not consider them. However, these new issues are without merit even if they had been raised below. Regarding Mr. Grigg’s assertion that Judge Cuffe should have recused himself, Mr. Grigg had an opportunity, as do all litigants in Montana State District Court, to substitute the Judge pursuant to Mont. Code Ann. § 3-1-804(1). If Mr. Grigg had been concerned about Judge Cuffe’s impartiality, he could have moved to substitute Judge Cuffe within thirty days of serving the summons upon Cabinet Peaks. Mont. Code Ann. § 3-1-804(1)(a). Moreover, even if Mr. Grigg had obtained a different judge below, the outcome of this action would have been the same since Mr. Grigg missed the statute of limitations. Judgment being entered in favor of Cabinet Peaks was not the result of an allegedly biased judge, it was the result of Mr. Grigg’s failure to adhere to procedural requirements. Regardless of the district court judge, the outcome would have been the same.

In addition to being barred for having not been raised below, Mr. Grigg’s second point, that Cabinet Peaks violated its own internal procedures, is baseless as well. Cabinet Peaks followed its internal complaint procedure. Mr. Grigg specifically requested in his Complaint Procedure Form to skip steps one through

three of the Complaint Procedure. (Doc. 10, Ex. A). Regardless, even if there were merits to this argument, which Cabinet Peaks denies, it was not raised below and therefore Mr. Grigg has waived his right to raise it now. *See Timis v. Young*, 2001 MT 63, ¶ 11, 305 Mont. 18, 22 P.3d 1122; *Somers v. Cherry Creek Dev., Inc.*, 2019 MT 101, ¶ 21, 395 Mont. 389, 439 P.3d 1281; *State v. Price*, 2007 MT 269, ¶ 14, 339 Mont. 399, 171 P.3d 293; *State v. Ferguson*, 2005 MT 343, ¶ 38, 330 Mont. 103, 126 P.3d 463; *Ellensburg v. Chase*, 2004 MT 66, ¶ 14, 320 Mont. 315, 87 P.3d 473. Simply put, the District Court was correct in entering judgment in favor of Cabinet Peaks. As such, Mr. Grigg's appeal should be denied.

CONCLUSION

For the reasons above, the Court should affirm the District Court's Order Re: Defendant's Motion for Judgment on the Pleadings.

Respectfully submitted this 18th day of October, 2021.

/s/ Alison R. Potts
Alison R. Potts
BOONE KARLBERG P.C.
Attorneys for Defendant/Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing *Appellee's Brief on Appeal* is proportionately spaced, printed with the typeface Times Roman 14-point font, is double-spaced, and contains approximately 1,665 words, excluding the Table of Contents, Table of Authorities and Certificate of Compliance.

Respectfully submitted this 18th day of October, 2021.

/s/ Alison R. Potts

Alison R. Potts

BOONE KARLBERG P.C.

Attorneys for Defendant/Appellee

CERTIFICATE OF SERVICE

I, Alison Potts, hereby certify that I have served true and accurate copies of the foregoing Brief
- Appellee's Response to the following on 10-18-2021:

Tracey Neighbor Johnson (Attorney)
Boone Karlberg P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula MT 59802
Representing: Cabinet Peaks Medical Center
Service Method: eService

Peter Grigg (Appellant)
3055 Hwy. 2 W.
Kalispell MT 59901
Service Method: Conventional

Electronically Signed By: Alison Potts
Dated: 10-18-2021