

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA -21-0507

CURTIS B. HARRIS,
Plaintiff and Appellant,

v.

MIRABAI HENLEY, INDIVIDUALLY.
Defendant and Appellee.

On Appeal from the Montana Nineteenth Judicial District Court
Cause No. DV-2020-0000235

APPELLANT'S OPENING BRIEF APPENDIX

APPEARANCES:

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APPELLEE:

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Appellee/Plaintiff

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STATUTES

Uniform District Court Rule 2 Mt. R. Civ.P. 60 9b), 59(f), 60(c).....2-8, 10,11

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8 IN THE SUPREME COURT OF THE STATE OF MONTANA

9 CURTIS B. HARRIS

10 Appellant,

11 vs.

12 MIRABAI HENLEY,
13 INDIVIDUALLY,

14 Appellee.

) Case No.:

) **APPELLANT'S OPENING BRIEF**

15
16
17
18 **I. ISSUES PRESENTED FOR REVIEW**

19
20 The Appellant hereby submits the presents the following issue presented for
21 review to the Montana Supreme Court:

22
23 (1) Did the District Court abuse it's discretion by failing to grant Harris'

24 Rule 60 (b) Motion set aside the Order of Dismissal in favor of

25
26 Defendant Henley and against Plaintiff Harris;

27
28 **II. STATEMENT OF THE CASE**

1 Plaintiff Curtis B. Harris (Harris) through Counsel Filed a Complaint and
2 Demand for Jury Trial on December 4th, 2020 alleging personal injury resulting
3 from a dog attack and bite on premises owned by the Defendant Appellee Mirabai
4 Henley (Henley). Appendix Doc #1.

5
6
7 Henley filed an Answer to Complaint on May 4th, 2021. Appendix Doc #2.

8 Henley filed a Motion for Dismissal on June 7th, 2021. Appendix Doc
9 #7. Harris did not file an Answer Brief to the Motion for Dismissal within the 14
10 days provided by Rule 2 Uniform District Court rules.

11
12 As a result, the District Court issued an Order Granting Motion to Dismiss
13 Defendant Mirabai Henley on July 1st, 2021. Appendix Doc #8.

14
15 Harris then filed a Rule 60 (b) Motion for relief from Order Dismissing
16 Defendant Mirabai Henley on July 16th, 2021. Appendix Doc #9

17
18
19 That Rule 60 (b) Motion was not ruled upon and was deemed denied (upon
20 the expiration of 60 days) on September 14th, 2021. M.R.Civ.P. 59, 60.

21
22 The instant Notice of Appeal was then filed on October 12th, 2021.

23
24
25 **STATEMENT OF FACTS**
26
27
28

1 No facts have been established in this case other than what is admitted in the
2 Answer filed by Henley on May 4th, 2021 or may otherwise be inferred from the
3 record.
4

5 There were no hearings and consequently there is no transcript.
6

7
8 **III. STANDARD OF REVIEW**

9 **SLIGHT ABUSE OF DISCRETION**
10

11 Mt. R. Civ. P. 60 (b) states:

12 Ground for relief from a final judgment, Order or proceeding on motion and
13 just terms, the Court may relieve a party of its legal representative from a final
14 judgment, order, or proceeding for the following reasons: mistake, inadvertence,
15 surprise, or excusable neglect;...reminder deleted.
16
17

18 The trial court denied Curtis Harris' Rule 60 (b) Motion for Relief from Order
19 Dismissing Defendant Mirabai Henley by not ruling on the motion within 60 days
20 of its filing date. M.R.Civ. P. 59 (f), 60 (c).
21

22 Where a trial court denies a motion to set aside a default judgment the
23 standard of review is that "no great abuse of discretion need be shown to warrant
24 reversal," or, alternatively, 'slight abuse' is sufficient to reverse an order refusing
25 to set aside a default." *Lords v Newman (1984), 212 Mont 359, 364, 688 P2d 290,*
26
27
28

1 293, as cited in *Blume v Metropolitan Life Insurance Company*, 242 Mont. 465,
2 791 P2d 784 (1990).
3
4

5 **IV. SUMMARY OF THE ARGUMENT**
6

7 Plaintiff Harris filed a Mt.R.Civ. P 60(b) Motion to set aside an Order of
8 Dismissal granted in favor of Defendant Henley due to failure to file an answer
9 brief to a motion for dismissal previously filed by Defendant Henley.
10

11 Harris submits that the trial court committed an abuse of discretion by failing
12 to rule on a Mt.R.Civ.P 60(b) motion to set aside the Order of Dismissal within 60
13 days which is deemed a denial of the motion.
14

15 Harris contends that the reasons for which the court may relieve a party or its
16 legal representative from a Final Judgment, Order, or Proceeding, those being (1)
17 mistake, inadvertence, surprise, or excusable neglect, are present in this case and
18 include:
19
20

21 (a) Harris' Counsel anticipated a brief in support of Henley's Motion for
22 Dismissal may be filed contemporaneously and delayed calendaring an answer for
23 a couple of days which inadvertently resulted in Counsel neglecting to thereafter
24 note an answer due on the office scheduling calendar;
25
26
27
28

1 (b)Harris delayed filing an answer to the Henley Motion for Dismissal for the
2 purpose of addressing issues that may be raised in a brief supporting the Motion;
3

4 (c)A brief in support of the Henley Motion for Dismissal was not forthcoming
5 and Counsel inadvertently failed to then note that an answer brief was due in
6 response to the Motion;
7

8 (d)Harris' Counsel responded promptly to the trial court's Order of Dismissal
9 by filing Harris' Rule 60(b) motion.
10

11 (e)Harris has filed a valid and legally meritorious answer opposing the Henley
12 Motion for Dismissal included within his Rule 60(b) motion;
13

14 (f)Harris did not act to hinder, delay, or obstruct Henley's defense to the
15 lawsuit.
16

17 18 **V. ARGUMENT**

19
20 Plaintiff Curtis Harris filed a lawsuit on December 4th, 2020 against three
21 defendants identified as Mirabai Henley, Individually, and as agent for Shameless
22 Oasis, L.L.C., and Mike Brooks.
23

24
25 The lawsuit alleged that Henley, Shameless Oasis, and Mike Brooks were
26 negligent under Montana premises liability law for injuries to Harris resulting from
27 a non-provoked dog bite on the Shameless Oasis, L.L.C premises. See Complaint
28 and Demand for Jury Trial. Appendix Doc #1.

1 Defendant Mirabai Henley filed her Individual Answer to Complaint on
2 May 4th, 2021 but did not serve the Answer on Harris until June 1st, 2021.

3
4 Certificate of Service to Answer Complaint, Appendix Doc#5.

5
6 Henley then filed a Motion for Dismissal date stamped by the Clerk of Court
7 on June 7th, 2021 but with a Certificate of Service dated June 1st, 2021. Appendix
8 Doc #7.

9
10 Harris did not file an answer brief opposing the Henley Motion for
11 Dismissal within 14 days. The trial court then granted Henley's Motion for
12 Dismissal on July 1st, 2021 as to Henley in her individual capacity leaving
13 Shameless Oasis, L.L.C., and Mike Brooks as active party Defendants. See Order
14 Granting Motion to Dismiss Defendant Henley dated July 1, 2021. Appendix Doc
15 #8.

16
17
18
19 Plaintiff Harris filed the instant Rule 60 (b) Motion for Relief from Order
20 dismissing Defendant Henley on July 16th, 2021.

21
22
23 (1) COUNSEL FOR HARRIS INITIALLY ACTED TO
24 REASONABLY RESPOND TO THE HENLEY MOTION FOR
25 DISMISSAL BY ANTICIPATING A BRIEF.

26
27 Harris' Counsel S. Charles Sprinkle (Counsel) filed an affidavit with the
28 Rule 60 (b) Motion for relief. Appendix Doc's #9, 10.

1 The affidavit chronicles the service of the Henley Motion for Dismissal on
2 Harris, the evaluation of the subject Motion as conclusory and un-briefed, and an
3 expectation that a brief may be forthcoming in a day or two.
4

5
6 Counsel for Harris then explains that the delay in waiting for a supporting
7 brief initially resulted in counsel neglecting to calendar a response.
8

9 When no supporting brief, was filed or served that would remind counsel to
10 file or calendar an answer brief, counsel inadvertently missed the 14-day briefing
11 limit per U.D.C. rule #2.
12

13
14 (2) HARRIS PROCEEDED WITH DILIGENCE TO SET ASIDE
15 THE ORDER OF DISMISSAL.
16

17 The Henley Motion for Dismissal was filed on June 7th, 2021. The Order
18 Granting the Motion for Dismissal was filed on July 1st, 2021. The Harris Rule 60
19 (b) Motion for relief was filed on July 16th, 2021. To the extent a court's refusal to
20 set aside an entry of default is analogous to refusal to set aside an Order of
21 Dismissal, it has been held that: an entry of default may be set aside by showing
22 good cause...portion deleted...Good cause is shown by: the Plaintiff proceeded
23 with diligence to set aside the default judgment; the Plaintiff's excusable neglect;
24 the judgment will be injurious to the Plaintiff if allowed to stand, and the Plaintiff
25
26
27
28

1 has a meritorious defense to the Plaintiff's cause of action. *Blume v Metropolitan*
2 *Life Ins. Co. (1990), 242 Mt 465, 467, 791 P2d, 784, 786.*
3

4 (3)EXCUSABLE NEGLECT
5

6 The affidavit by Counsel in support of Harris' Rule 60 (b) Motion shows
7 that Counsel's intent was to delay a day or two and then respond to a brief in
8 support of the Henley Dismissal Motion and address those issues with a reasonably
9 articulate answer brief. This resulted in Counsel neglecting to calendar a response,
10 and, when no brief was filed, inadvertently overlooking the need to then calendar
11 an answer due date for the Motion for Dismissal. Affid. Appendix Doc #10
12
13

14
15 Only a slight abuse of discretion in refusing to set aside a default judgment
16 is sufficient to justify a reversal, and when a motion to vacate a default judgment is
17 supported by a showing which leaves the Court in doubt or upon which reasonable
18 minds might reach different conclusions, the doubt should be resolved in favor of
19 the motion. *Sewell vs Beatrice Foods Co., 145 Mont. 337, 400 P2d 892, cited in*
20 *Uffleman v Labbitt, 152 Mont. 238, 448 P.2d. 690 (1968).*
21
22

23
24 (4)HARRIS HAS MERITORIOUS ANSWER IN RESPONSE TO
25 THE HENLEY MOTION FOR DISMISSAL
26

27 The Rule 60 (b) Motion filed by Harris included an Answer Brief Opposing
28 Defendant Henley's Motion for Dismissal. Appendix Doc #11.

1 Harris' Answer Brief identifies issues of material facts that preclude
2 summary judgment, i.e. including:
3

- 4 (i) Did Henley expose Curtis Harris to a vicious dog;
- 5 (ii) Was Harris attacked without provocation;
- 6 (iii) Was Henley negligent
- 7 (iv) Is Henley liable for Mike brooks' dog's conduct
- 8 (5) PLAINTIFF HARRIS' RIGHT TO RECOVER DAMAGES FOR
- 9

10 BODILY INJURY WILL BE COMPROMISED IF DISMISSAL
11 ORDER NOT REVERSED.
12

13 Mirabai Henley admits in her answer that Harris was bitten and that Mike
14 Brooks may be responsible. The Henley answer denies liability on behalf of
15 Mirabai Henley, for damages, loss, and injuries to Curtis Harris but cites no legal
16 authority to substantiate her claim.
17
18

19 Without reversal, the Order of Dismissal will permit Henley to proceed
20 without accountability for her alleged negligence.
21

22 A factor to be considered in setting aside a default judgment is whether the
23 result will be injurious to the party defaulted (dismissed). *Blume vs. Metropolitan*
24 *Life Ins co. (1990) 242 Mont 465, 467, 791 P2d 784, 786.*
25
26
27
28

1 Harris submits that the record supports the conclusion that not granting Rule
2 60 (b) relief and reversing the Order of Dismissal would deny his right to recover
3 damages and be injurious to his case.
4

5
6 **VI. CONCLUSION**
7

8 In conclusion, Harris has pursued Mt. R. CivP. 60 (b) relief from an Order
9 of Dismissal and demonstrated that:
10

11 (1) Harris' Rule 60(b) Motion for Relief was filed promptly after the Order
12 of Dismissal was issued;
13

14 (2) Harris' Counsel delay in responding to the Henley Motion for Dismissal
15 was to further the interests of both parties in considering their respective
16 legal claims and the resulting neglect to calendar which in turn caused
17 Counsel to inadvertently overlook the need to schedule a response was
18 excusable neglect;
19
20

21 (3) Harris has meritorious answer to the Motion for Dismissal;
22

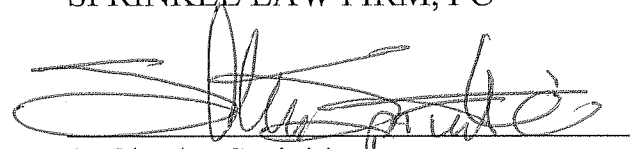
23 (4) It would be injurious to Harris' case if Henley was not reinstated as party
24 defendant;
25

26 (5) Henley's case would not be compromised if reinstates as party
27 Defendant.
28

1 The Rule 60 (b) Motion should be granted and Henley reinstated as party
2 defendant.
3

4 DATED this 10th day of November, 2021.
5

6 SPRINKLE LAW FIRM, PC

7 
8
9 S. Charles Sprinkle

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1 CERTIFICATE OF COMPLIANCE

2 Pursuant to Rule 11(4)(d) of the Montana Rules of Appellate Procedure, I
3 certify that this Brief is printed with a proportionately spaces Times New Roman
4 text, typeface of 14 points, is double spaced, and the word count calculated by
5 Microsoft Word is not more than 10,000 words, not averaging more than 280
6 words per page, excluding the Certificate of Service and the Certificate of
7 Compliance.
8
9
10

11 DATED this 10th day of November, 2021
12

13
14 SPRINKLE LAW FIRM, PC

15
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17 

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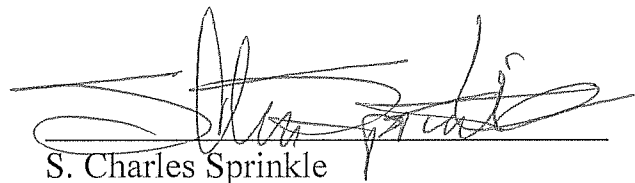
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing APPELLANTS' OPENING BRIEF in the above matter by mailing a copy thereof, first class postage prepaid, to:

Mirabai Henley
Yaak River Rd
Troy, MT 59935

DATED this 10th day of November, 2021.

SPRINKLE LAW FIRM, PC



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