Jacob Smith ao#41666
50 Crossroads drive
Shelby, Mt. 59474

appearing pro se



IN THE SUPREME COURT OF THE STATE OF MONTANA
DA 21-0394

JACOB SMITH,

Petitioner and Appellant,

vs.

STATE OF MONTANA, et al.,

Respondent and Appellee.

ON APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT
JUDGE MICHAEL MCMAHON,
CIVIL COMPLAINT

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# OPENING BRIEF ON APPEAL

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Defendants Patti Renenger, Krista Mix, Brian Fischer, Tara Harris, Wendy Holden, State of Montana, City of Helena.

Counsel for Defendants:
City Defendants, Sarah Mazanec 111 N. Last Chance Gulch Suite 3J Helena, Mt. 59601.
State Defendants;
Andrew Cziok
PO Box 201440
Helena, Mt. 59620

TABLE OF CONTENTS

Table of ~~Contents~~ Authorities

Table of Authorities continued from pg. ii

## STATEMENT OF ISSUES

1. Did the districi court abuse its discretion, and erroneously dismiss the State Defendant's when it gave more weight to the testimony of the moving party rather than Smith, the non-movant?

2. Did the district court abuse its discretion, and erroneously rejct Plaintiffs' Second Proposed Amended Complaint after the district court issued an Order on October 2, 2020, specifically requiring Plaintiff Smith to file the Second Proposed Amended Complaint?

3. Did the district court, either the judge himself or his judicial officers, engage in ex parte communications with the opposing counsel?

4. Was the district court hostile and bias against Plaintiff Smith due to his incarcerated status, or in its effort to sytematically dismiss the complaint to protect Helena law enforcement agents and proxies in the justice system and CPS?

5. Did the district court abuse its discretion when it cut plaintiff off from his examination of the witnesses during the April 20, 2021, Hearing on Motions?

6. Did the district court abuse its discretior when it denied the recommendation of counsel?

## STATEMENT OF THE CASE

Helena law enforcement, child protective services agents, prosecutors, and citizen Wendy Johnson used the full power of the State to attack, terrorize, and maliciously abuse Plaintiff Jacob Smith and his family in order to cover up and conceal their culpability and negligence. Smith's two daughters, nine month old K.S. and nine year old T.K-S., were drugged and placed in foster surrogate home, used to threaten witnesses, used for barter, and they were abused and suffer permanent damage as a result of the Defendant's actions. Smith sought damages, inter alia, for emotional distress and psychological, harm to himself. His daughters were unable to receive justice for themselves as

Smith's family and resources were destroyed, and the girls remained minors. Justice for them will be forthcoming.Smith recognizes that he is an incarcerated pro se plaintiff taking on the full power of the State and its resources, and with no legal training. Instead of giving latitude, the district court excercised acute unfairness in its sytematic dismissal of Smith's properly brought and served claims, shown extreme bias, and assisted the State in their strategically timed "propsed orders" and ex parte communications. The court, Judge Michael McMahon, yelled at Smith multiple times at the April 20, 2021, hearing on motions which Smith filed a motion for in order offer testimony concerning a telephone call wherein the State counsel waived service of process on the Department of Administration. The hearing morphed into the issue of the complaint being amended multiple times. The Court continued its blame of Plaintiif Smith for violating civil rules which was repeatedly shown that the Defendant's were responsible. The Court made inaccurate statements that the Second Propsed Amended Complaint was never authorized to be filed. See October 2, 2020, Order. When Smith attempted to complete his examination of the opposing counsel he was cut off by Judge McMahon, harshly as usual, and denied further examination while allowing the opposing counsel full reighn of examination. Plaintiff Smith filed numerous motions to amend, propsed amended complaints, notices, and moptions to clarify in order to bring his claims to litigation on the merits, however, the complaint was dismissed in its entirety.

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STATEMENT OF FACTS: SUMMARY OF THE CASE:

The District Court denied Plaintiff's motion for the recommendation of the appointment of counsel, Exh. 101-116. Plaintiff's two minor daughters, K.S. and T.K-S., were originally plaintiff's of the civil complaint who were summarily dismissed by order of the court.

The District Court concluded in its October 2, 2020, Order that Tiara Lynn Kopp-Smith and Kaylee Mae Smith, Plaintiff Jacob Smith's minor daughters, whose victimization by the State of Montana and City of Helena were the subject of multiple causes of action in the orifginal compaint, cannot be represented by Jacob because Jacob cannot practice law, Mont. Code Ann. §37-61-201. Therefore, the girls can never seek or obtain justice in a Montana Court of Law.

The October 2, 2020, Order explicitly directed Plaintiff to re-file and properly serve his Second Propsoed Amended Complaint. The Court subsequently, at the April 21, 2021, hearing on pending motions, contradicted itself by stating that it had never authorized the filing of the Second Proposed Amended Complaint.

In either June or July 2021, the Court, or its judicial officers, engaged in ex parte communications with the defendants attorney/s and directed them to prepare a 'proposed order' dismissing the case in its entirety based upon Summary Dismissal arguments which focused solely upon the Original Complaint.

The District Court dismissed the State Defendant's from the complaint as a result of self-serving statements made by the Defendant's counsel wherein the attorney (Ben Eckstein) denied waiving service of process on the Department of Administration; while at the same time waiving service of process in a related case during the same phone conversation. Plaintiff Jacob Smith swore under oath that Mr. Eckstein waived service of process for both cases during the same phone conversation.

PROCEDURAL HISTORY

1. Plaintiff filed a civil complaint ("initial complaint") on September 26, 2017.

2. September 4, 2020, plaintiff filed Notcie of Amended Pleading Once As A Matter Of Course, pursuant to Mont.R.Civ.P.15(a)(1), and Plaintiff's Opposed Motion For Leave to Amend Complaint, Rule 15(a)(2).

3. On October 2, 2020, the district court issued an Order finding that plaintiff failed to serve the non-state Defendant's. (The 'non-state' Defendant's P.O. Box on their documents was inaccurate, See their Errata. Smith was accused of not following rules, by the court, when the Defendant's were responsible.)

4. The State Defendant's made their formal intitial appearance January 25, 2021. (Although the Court itself stated essentially that the Smith was to "properly servee all partiesthat have **APPEARED** in this proceeding with a second proposed amended complaint. Clearly implying the State Defendant's had appeared for all intents and purposes.) Oct 2, 2020 Order

5. On February 4, 2021, Plaintiff filed an Affidavit, Exh. 14, swearing under oath that Defendant's counsel waived service of process on the DOA during a phone call in August 2020.

The relief Smith is seeking from the Montana Supreme Court pertains to issues through the months of August 2020 - February 2021. Although extensive litigation occurred throughout March 2021 - July 2021, nothing concerning those legal arguments, beyond the issues up until February 2021, are being documented in this procedural history, with the exception of the April 20, 2021, hearing on pending motions.

6. A hearing occurred on April 20, 2021, "on Pending Motions", wherein the court dismissed the State Defendant's and directed Smith to file a new motion to amend.

DID THE DISTRICT COURT ABUSE ITS DISCRETION BY ERRONEOUSLY DISMISSING THE STATE DEFENDANTS?

On April 28, 2021, the District Court Judge, Michael McMahon, entered an order dismissing the State Defendants from the complaint for failure to properly serve the Department of Administration (DOA). This order was issued approximately eight (8) months after the State Defendants made their first appearance in the case in August 2020. The order was the final result of a hearing which occurred on April 20, 2021, which Smith will be heavily referencing from the transcripts.

On or about August 3, 2020, Smith engaged in a telephone conversation with State Defense Counsel, Ben Eckstein ("Ben"), wherein the issue of Process of Service ("POS") was the topic of discussion as well as Smith's intention to amend the complaint.

Smith's testimony and sworn affidavit, Exhibits 14& 2. transcripts exs 33-74, pgs 21-30 Related case is BDV-2017-830, probation officers concealed two lab reports which are evidence of actual innocence.

**Transcript Of Proceedings Motion Hearing, Tuesday April 20, 2021.**

Page 25 ¶14, Ben Eckstein testimony, examination by new State counsel Lindsey Simon. Q. In this phone call did you discuss service of the director of the DOA with Mr. Smith? A. No, not to my recollection. Q. Did you tell Mr. Smith that you were waiving the requirement that he would have to serve the director of the DOA. A. Not in this lawsuit. And just to clarify, I say that because I was representing seperate Defendants in a seperate lawsuit with Mr. Smith. **And in that case, that was an issue, but, no, not in this case.** (italics Smith's)

Transcript page 26: Q. And did Mr. Smith, during this phone call, say

anything to the effect that he was aware that he had not served the director of the DOA? A. No. Q. And just to be clear. did you tell him anything, like, "Oh. Don't worry about it." or to that effect during the phone call? A. No. skip forward to ¶22. Q. Okay, And, Mr. -- Mr. Eckstein, in your employment as an assistan of Attorney General, would you have ever wauved a technical service requirement on behalf of your clients? A. In some circumstances, yes. And -- and so there was another lawsuit with Mr. Smith where that -- that was actually the case. But it depends on the particular case, and as a matter of course, no.

**It is unreasonable to believe that Smith and and Ben Eckstein did not discuss the POS in both cases.**

First, Ben does not recall discussingh the POS on the DOA director at all. When further questioned about whether or not he waived the POS requirement, Ben suddenly remembers, but "not in this lawsuit", "in another case it was an issue".
(The related lawsuits had similar POS deadlines of September 2020, both cases were admittingly discussed on the same phone call, and Ben Eckstein's statements are contradictory at best.)

It is an indisputable fact that, even Ben's testimony supports, Smith was knowledgeable of the Title II POS on the DOA along with the civil rules. See Ben's testimony, "in another case it was an issue", and was discussed. If Ben's testimony was that he did not say, "Don't worry about it", in this case, what did he say concerning the related case, BDV-2017-830?

DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT REJECTED PLAINTIFF'S SECOND PROPOSED AMENDED COMPLAINT?

Concerning the October 2, 2020, Order. First the Court berates Smith for failing to comply with Mont.R.Civ.P.5, "There's no proof or certificate of service upon either City or County with his (Smith's) Sept. 4, 2020 "notice" or proposed second amended complaint." This is factually untrue, the Court failed to review its own record and considered only the City's calim that they did not receive the documents, which they did. The City, and State, Defendant's counsel repeatedly made errors for which multiple Errata's had to be filed, Exh's 1-7, While the Court continued to chastize Smith for their mistakes - even continuing to do so throughout its Order's even when the mistakes were discovered to be the Defendant's. Clear and obvious bias by the court against Smith can be seen by the Court which Smith never hesitated to point out to the Court, more specifically Judge Michael McMahon.

The district court explicitely gave leave to amend, pg. 4 Oct 2nd Order, "IT IS ORDERED, ADJUDGED AND DECREED that Smith shall have until October 25th, 202? to re-file and properly serve all parties that have appeared in this proceeding with a second proposed amended complaint." **It does not include in this statement a motion to amend.** It was presumed that this Order was, not only granting leave, but specifically ordered Smith to only re-file the proposed second amended complaint. (Smith was extremely sick with Covid-19 beginning mid October and lasting several weeks, and sought, and was granted, extension of time to re-file the proposed second amended complaint on December 18th, 2020.) (Smith made a subsequent technical amendment to the second

amended complaint by removing his minor childrens names from the title page, although thee claims associated with the children were removed from the claims).

It is beyond unreasonable to require briefing to secure leave of the court to file the second propsed amended complaint based upon the Oct. 2nd Order.

The operative complaint in this case should be the Amended Civil Complaint and Demand For Jury Trial Exhibits 75-99. This complaint, i if subjected to scrutiny would comply with statutory authority and the elements required to bring a cognizable claim for relief.

However, the Plaintiff's in this case were originally Jacob Smith and his minor daughters. The Supreme Court should remand this entire issue concerning the complaint and parties to the district court and further order that the district court recommend counsel to the three original plaintiffs in the interest of justice.

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DID THE COURT, OR ITS JUDICIAL OFFICERS, ENGAGE IN EX PARTE COMMUNICATIONS WITH THE DEFENDANT'S COUNSEL?

The Court, or its officers, ex parte communicated to the opposition counsel instructing them to file proposed orders in a collaborative and concerted effort to systematically dismiss the complaint. Plaintiff Smith is not referring to the proposed court orders in which the court instructed the Defendant's counsel to prepare an order which was instructed at the April 20, 2021, hearing on motions, but rather the proposed order prepared in July 2021, which was the final order dismissing the complaint in its entirety. It is not possible for the Defendant's to have prepared and submitted this Order without being communicated to do so by the court. See legal argument page 14.
proposed order, Order, Ex. 117-121

DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT CUT PLAINTIFF OFF FROM HIS EXAMINATION OF THE APPEARING ATTORNEY"S AT THE APRIL 20, 2021, HEARING ON MOTIONS?

**During the April 20, 2021, hearing on motions, the court interjected in the middle of Smith's examination of the lawyer's and yelled at Smith as it did so, as it did repeatedly throughout the hearing while it catered to the lawyer's; showing extreme bias and prejudice due to social status. Transc. pg. 29 ¶21-25.**

[O]pinions formed by ther judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display deep-seated favortis or antagonism that would make fair judgement impossible. Liteky v. United States, 510 U.S. 540, 555, 114 S.Ct. 1147, 1157 (1994).

## DISCUSSION

The Court's dismissal of the State Defendant's upon a conclusion drawn from testimony by Plaintiff Jacob Smith and Defendant's counsel Ben Eckstein, wherein it became a 'my word against his' scenario. This testimony was based upon a phone call between Smith and Eckstein which occurred approximately August 3rd, 2020, nearly nine (9) months before the hearing. The phone call would have been tangible evidence had Ben Eckstein went through the normal channels of communication between an inmate and an outside lawyer, which was consistanly on an inmates **recorded** phone system, and not the personal phone of prison case managers as was used in this atypical phone call.

The Court abused its discretion when it dismissed every State Defendant based upon conflicting statements. An abuse of discretion occurs whena district court acts arbitrarily without copnscientious judgement or exceeds the bounds of reason. Simmons Oil Cor'p. v. Wells Fargo Bank, 1998 MT 129, P17, 289 Mont. 119, P17, 960 P.2d, P17.

Notwithstanding the fact that Smith is an inmate and Eckstein is an ~~attorney, social status cannot be considered. The district court was openly heavily bias against Smith throughout the litigation in this case and rulings should never be based upon social conditions.~~

~~Because there was no tangible evidence to prove the waiver of~~

attorney, social status cannot be considered. The district court was openly heavily bias against Smith throughout the litigation in this case and rulings should never be based upon social conditions.

Because there was no tangible evidence to prove the waiver of service one way or the other, likely because Eckstein made such evidence unavailable by his atypical phone call, the Court based its decision on Eckstein's self-serving statements. Self-serving statements are the poorest form of evidence. Lacking detailed facts and supporting evidence is insufficient to create issue of fact. F.T.C. v. Pub'g Clearing Houise Inc., 104 F.3d 1168. 1171 (9th Cir. 1997).

Substantial credible evidence is such evidence which a reasonable mind could accept as adequate to support a conclusion. Evidence is substantial even if it's contradicted by other evidence, somewhat less than a proponderance, or inherently weak, D.R. Four Beat Alliance, LLC v. Siarra Prod. Co., 2009 MT 319, ¶23,352 Mont. 435, 218 P.3d 827.

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"The Court acquires personal jurisdiction only by personal service of process on the adverse party or if the party submits to the jur isdiction of the court by voluntary appearance." Nolan v. Riverstone Health Care, 2017 MT 63, ¶11, 387 Mont. 97, 391 P.3d 95.

Ben Eckstein drafted a letter, Exh. 16, wherein he stated "State Defendants will temporarily forgo making an initial appearance, inter alia. Then the new State attorney's, William Holahan - Andrew Cziok - and Lindsey Simon, all subseqently argued that because the State had not made an appearance in the case then, somehow, service of process was never complete. Smith thought Ben Eckstein was engaging in good faith discussions and agreements, however, these were acts of bad faith and unfair dealing.

The agreement was a contractual agreement made by the parties. The ~~con~~ covenant of good faith and fair dealing is implied into every contract. The nature and extent of the obligation is measured by the justifiable expectations of the parties. Talley v. Flathead Valley Community College, 259 M 479, 857 P.2d 701, 50 St.Rep. (1993). Ben Attempts to argue he "never 'appeared' in the case, Transc. pg. 23-26," Had Smith not conveyed to Ben Eckstein in August 2020, that he (Ben) need not prepare a responsive pleading to the complaint because Smith was amending it, Ben would have had to appear in the case in **August 2020**.

Why did the State attorney's fail to file their motion to dismiss for failure to serve the Department of Administration until January 2021? Five months after the deadline for service of process. Why did five months of litigation and the filing of the second amended complaint? That does not make any more sense then Eckstein's claim that

service of process on the DOA was discussed in August 2020 in one case but not the other case, when Eckstein admits that both cases were discussed during the same August phone call.

All issued should be construed in the light most favorable to the Plaintiff, and all allegations of fact are to be taken as true.

Whether a court lacks subject matter jurisdiction to adjuticate a controversy is a question of law reviewed de novo. Harrington v. Energy W. Inc., 2015 MT 233, ¶7, 380 Mont. 356 P.3d 441.

A complaint may be dismissed for lack of personal jurisdiction on insufficient service of process. Mont.R.Civ.P. 12(b)(2); Mont.R.Civ.P. 12(b)(5). Mont.R.Civ.P. 4(b)(2) provides that "[j]urisdiction may be acquired by Montana court's over any person through service of process as herein provided." If a plaintiff fails to properly serve party in accordance with Mont.R.Civ.P. 4, the court must dismiss the action. See Nolan v. Riverstone Health Care, 2017 MT 63, ¶11, 387 Mont. 97, 391 P.3d 95.

"The court acquires personal jursidiction only by personal service of process on the adverse party or if ther party submits to the jurisidiction of the court by voluntary appearance. Nolan, ¶11. "Because proper service of process is madatory. Id. (internal citations omitted). "A plaintiff must effect service within three (3) years of the date of filing of the complaint. Id. **In this case Smith had until September 27th 2020, in which to complete mservice of process on the DOA. Smith discussed the issue with Ben Eckstein on or about August 4th 2020. Is it more or less likely Smith was familiar with the above rules, and just completely neglected to complete service?**

Mont.R.Civ.P.4 establishes the means for proper service on State Defendants. "The state, as well as any state board or agency, must be served by delivering a copy of the summons and complaint to the Attorney General and any other party prescribed by statute." Mont.R.Civ.P.4(1). "Whenever an officer or employee of the state is sued in an individual capacity or for an act or omission occurring in connection with dities performed on the state's behalf, a party must serve the state and also serve the officer or employee." Id. With respect to tort claims against the state, "the summons and complaint must be serfed on the director of administration in addition to service required by" Mont.R.Civ.P.4(1). Mont.Code Ann. §2-9-313. **Smith had accomplished, as of August 4th 2020, service of process on the attorney general and each individual employee within the month of July 2020, with over a month and a half to complete service on the DOA, and would have done so without the waiver by BEN ECKSTEIN.**

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**Ex parte communications materially prejudiced Plaintiff:**

Rules of Professional Conduct 3.5 - A lawyer shall not: (b) communicate ex parte with such a person except as permitted by law. Rule 3(b) Mont. U.D.C. Rules requires that prior to the issuance of an ex parte order, the attorney seeking the order must file a certificate that the opposing counsel has been given reasonable notice of the proposed ex parte communication.

Canon 17 of the Canons of Judicial Ethics provides that [a] judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not presented before him, except in cases where provision is made by law for ex parte applications.

Canon 4 states that "[a] judge's official conduct should be free from impropriety. In our case law, we have held that a judge should be removed from a case when ex parte communicatiopns cause an aura of bias or prejudice and a perceived notion that justice is not being served. See, e.g., Washington v. Montana Mining Properties (1990), 243 Mont. 509, 516, 795 P.2d 460, 464-65; In re Marriage of Miller (1989), 239 Mont. 12, 19, 778 P.2d 888, 892.

Although there is no tangible proof that the court, or its officers, ex parte communicated with the Assistant Attorney Generals defending this case - because the individuals involved would not plausibly make it part of the official record or would they leave documentary evidence - the fact that the defendant's counsel prepared the July 2021 proposed order is obvious proof that they were conveyed to do so, and only the court or judicial officers could have had motive.

This allegation should be investigated by and through testimony.

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STANDARDS OF REVIEW: Ruling on Mont.R.Civ.P. 12(b)(6)

The Supreme Court reviews a district court's ruling on a Rule 12(b)(6) motion to dismiss de novo. Plakorus v. Univ. of Mont. 2020 MT 312, ¶8, 402 Mont. 263, 477 P.3d 311 (citations omitted). A district court look solely at the complaint when ruling on a Rule 12(b)(6) motion. Meagher v. Butte-Silver Bow City-County, 2007 MT 129, ¶15, 337 Mont. 339, 160 P.3d 552.

"A claim is subject to dismissal under REule 12(b)(6) if it either fails to state a cognizable legal theory for rleif or states an otheerwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under the claim. [**5] In re Estate of Swanberg, 2020 MT 153, ¶6, 400 Mont. 247, 465 P.3d 1165 (citation omitted).

STANDARDS OF REVIEW: Denial of Motion to Amend

The Supreme Court will not disturb a district court's ruling on the grant or denial of a motion to amend the pleadings absent an abuse of discretion. Stipe v. First Interstate Bank-Polson, 2008 MT 239. P27, 344 Mont. 435, 188 P.3d 1063.

STANDARDS OF REVIEW: Conclusions of Law

The Supreme Court conducts plenary Review to the xtent the district court basis its discretionary ruling upon conclusions of law. Jacobsen v. Allstate Ins. Co., 2009 MT 248, P26, 351 Mont. 464, 215 P.3d 649.

The Supreme Court reviews issues of law to determine whether the district.court's application or interpretation of the law is correct. Hollister v. Forsythe (1995), 270 Mont. 91, 93, 889 P.2d 1205, 1206.

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ISSUE: 6

STANDARD OF REVIEW: Denial of the appointment of counsel

Plaintiff resorts to federal law.

The denial of motion for the appointment of counsel is reviewed for an abuse of discretion. Baranowski v. Hart, 486 F.3d 112 (5th Cir. 2007).

A §1983 Plaintiff, even if demonstrably indignent, is not entitled to appointment of counsel as a matter of right. Ulmer v. Chancellor, 691 F.2d 209, 212, (5th Cir. 1982). The Petitoner is ineligi

determines that his claims meet a threshold level of plausibility. The barrier to frvolous suits "embraces not only the inargable legal conclusion, b also the fanciful factual allegations." Neitzke v. Williams, 490 U.S. 319, 324, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

Second, even when a plaintiff has nonfrivolus claims, a "trial court is not required to appoint counsel... unless the case presentsexceptional circumstances." Ulmer, 691 F.2d at 212.

Factors that a district court should consider in determining whether exceptional circumstances warrant the appointment of counsel include:

1. the type and complexity of the case; 2. the plaintiff's ability to present and investigate the case; 3. the presence of evidence that largely consists of conflicting testimony so as to require skill in presentation of of evidence and in cross-examination; and 4. the likelihood that appointmen will benefit the plaintiff, the court, and the defendant's by shortening the trial and assisting in just determination. Parker v. Carpenter, 978 F.2d 190, 193 (5th Cir. 1992).

After what clearly occurred in the district court proceedings, it is unquestionable that this plaintiff, and the original minor plaintiffs, require a licensed attorney be recommended by the court in order for the claims to be properly presented and litigated. This plaintiff is in prison based upon <u>INFIRM CONVICTIONS</u>. See exhibits 122-123.

A motion to Dismiss is viewed with disfavor and rarely granted. Steele v. McGregor, 1998 MT 85, P9, 288 Mont. 238, P9, 956 P.2d 1364, P9; See also Varco-Pruden v. Nelson (1979), 181 Mont. 252, 593 P.2d 48.

Dismissal of an action is justified only when the complaint clearly demonstrates that the plaintiff does not have a claim. Butrell v. McBride Land & Livestock (1976), 170 Mont. 296, 298, 553 P.2d 407, 408.

STANDARD OF REVIEW: Denying Rule 60 motions

The Supreme Court reviews orders denying Rule 60(b) motions for an abuse of discretion. Hall v. Heckerman, 2000 MT 300, P12, 302 Mont. 345, P12, 15 P.3d 869, P12.

Rule 60(b) permits parties to seek relief from a final order for a variety of reasons including any reason justiying relief from a judgement. In re Adoption of C.C.L.B., 2001 MT 66, P45, 305 Mont. 22, P45, 22 P.3d 646, P45.

Plaintiff exhausted every possible remedy at the district court level by arguing facets of Mont.R.Civ.P. motions, which were summarily denied.

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## CONCLUSION

Plaintiff, Jacob Smith, hereby prays for the following relief:

1. Remand and Order requiring the district court to recommend the appointment of counsel.

2. Remand ordering that the district court recuse itself for improper, and prejudicial ex parte communications, and inviting another judge.

3. Order declaring that the district court abused its discretion when it dismissed the State Defendant's based upon self-serving statements.

4. Order the Second Amended Complaint be adopted and that the original minor plaintiff's be reinstituted upon the recommendation of counsel.

5. Ant other relief this court deems just.

DATED this 8th day of April, 2022.

Jacob Smith

EXHIBITS OR EXCERPTS OF THE RECORD

LABELED EXHIBITS 1 - 121

Certificate of Compliance

In compliance with M.R.APP.P. 11(4)(e), the opening brief was typed on a typewriter double spaced on 18 pages.

DATED this 8 day of April, 2022.

Jacob Smith

Certificate of Service

I, Jacob Smith, hereby certifies that a true and accurate copy of the foregoing brief was served upon Sarah Mazanec at 111 N. Last Chance Gulch Suite 3J Helena, Mt. 59601 and Andrew Cziok at PO Boz 201440 Helena,Mt. 59620.

DATED this 8 day of April, 2022. Jacob Smith